

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. 4

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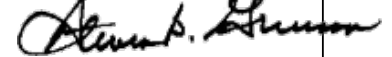
Electronically Filed
Oct 25 2021 08:24 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO.:

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

CHRONOLOGICAL INDEX OF APPENDIX

Description	Date Filed	Vol.	Page No.	Bate No.
Plaintiff's Reply to Defendant's Opposition to plaintiff's Notice of Motion and Motion for Summary Judgment and Related Relief and Opposition to Countermotion for Attorney's Fees and Costs and All Other Related Relief	07/06/21	4	003-110	ROA000682-ROA000789
Court Mins from July 7, 2021	07/07/21	4	111	ROA000790
Transcript from July 7, 2021 Hearing	07/07/21	4	112-127	ROA000791-ROA000806
Order from July 7, 2021 Motion Hearing	09/09/21	4	128-133	ROA000807-ROA000812
Notice of Entry of Order	09/09/21	4	134-142	ROA000813-ROA000821



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

TESSIE ELMA ALMARIO,)	CASE NO.: D-19-596071-D
	)	DEPT NO.: U
Plaintiff,)	
	)	PLAINTIFF'S REPLY TO
	)	DEFENDANT'S OPPOSITION TO
	)	PLAINTIFF'S NOTICE OF MOTION
vs.	)	AND MOTION FOR SUMMARY
	)	JUDGMENT AND RELATED RELIEF
SHERYL ATTERBERG, ON	)	AND OPPOSITION TO
BEHALF OF HER WARD	)	COUNTERMOTION FOR
RODNEY WILKINSON,	)	ATTORNEY'S FEES AND COSTS
	)	AND ALL OTHER RELATED
	)	RELIEF.
Defendant.)	
	)	ORAL AGRUMENT REQUESTED
)	
	)	Date of Hearing: July 7, 2021
	)	Time of Hearing: 11:00 a.m.

COMES NOW, Plaintiff Tessie Elma Almario ("Tessie"), by and through her attorney, Bradley J. Hofland, Esq. of Hofland & Tomsheck, and hereby submits this PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT AND RELATED RELIEF AND OPPOSITION TO COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS AND ALL OTHER RELATED RELIEF

1 against Defendant Rodney Wilkinson (“Rodney”) and respectfully requests this
2 Court enter an Order:

- 3 1. Finding no genuine issues of material fact exist because Rodney was
4 found to be competent by another court at the time he executed the Decree
5 and when it was entered;
- 6 2. Finding, as a matter of law, Tessie is entitled to judgment as a matter of
7 law finding Rodney was competent at the time the Decree was executed;
- 8 3. Finding Rodney failed to disclose this fact to this Court and that because
9 of such judicial determination, Rodney is collaterally estopped from
10 relitigating the issue of his competency;
- 11 4. Granting summary judgment in favor of Tessie and dismissing
12 Defendant’s action;
- 13 5. Denying Defendant’s opposition and counter-motion in its entirety;
- 14 6. Awarding Tessie attorney’s fees for having to defend Defendant’s
15 baseless action and corresponding bad faith; and
- 16 7. Addressing any additional relief this Court deems necessary.

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

20 Dated this 6th day of July, 2021.

21 **HOFLAND & TOMSHECK**

22 By: /s/ Bradley J. Hofland

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28 *Attorneys for Plaintiff*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **Introduction**

4 In short, after uncovering what Defendant concealed from the Court, an
5 Evidentiary Hearing in this matter should have **never** been set. The Evidentiary
6 Hearing must, respectfully, be vacated and summary judgment entered in favor of
7 Plaintiff.

8 No doubt this Court is familiar with the old legal aphorism that goes, “If you
9 have the facts on your side, pound the facts. If you have the law on your side,
10 pound the law. If you have neither on your side, pound the table.” Because the
11 facts are against Defendant, Defendant *conceals* or distorts them. Because the law
12 lends *no* support for Defendant’s actions, Defendant ignores or misstates the law.
13 As a result, Defendant figuratively pounds the table to distract, divert focus, and
14 obscure the facts and law that are fatal to the relief Defendant endeavored to obtain
15 from this Court.

16 Try as Defendant may, his desperate measures are transparent, and there is no
17 question Defendant:

- 18 (1) violated NRCP 11 by filing the instant action,
19 (2) violated the duty of candor by concealing the fact that Defendant’s
20 competency has already been litigated and ***confirmed*** for the period in
21 question,
22 (3) violated the duty of candor by concealing the fact that Defendant’s
23 guardian relied on Defendant’s competency months ***after*** the subject
24 Divorce in order to initiate litigation,
25 (4) is ***collaterally estopped*** from relitigating the issue of Defendant’s
26 competency at the time at issue, and
27 (5) is ***unable*** to defeat Plaintiff’s motion for summary judgment.
28

1 This action must be dismissed with prejudice and Defendant sanctioned
2 accordingly.

3 II.

4 Statement of Facts

5 Defendant is making a mockery of the judicial system and incredulously
6 seeks the assistance of this Court in doing so. Of course, neither this Court, or any
7 Court for that matter, would *knowingly* condone such an unethical and
8 impermissible endeavor, so Defendant conceals the facts and law that merits an
9 immediate dismissal of the instant action.

10 Because the dispositive facts are irrefutable, Defendant delves into the
11 peripheral and the meaningless, hoping such an excursion creates such a
12 smokescreen that the Court will be misled, confused, and manipulated from the
13 resulting distraction. It is believed Defendant's reliance on this Court's gullibility
14 or ignorance is grossly ill-judged.

15 Indeed, this Court will readily determine that Defendant's "Statement of
16 Facts" completely ignores those dispositive facts that necessitate summary
17 judgment in Plaintiff's favor. Notably, Defendant's so called "facts" pertain to a
18 guardianship that Sheryl Atterberg was able to obtain *in the State of Colorado* on
19 November 23, 2021—approximately ten (10) months *after* Defendant's Stipulated
20 Decree of Divorce.

21 Defendant *concealed* from the Court, however,

22 (1) unsuccessful efforts to obtain a guardianship in Kansas;

23 (2) *conceals* the fact that Sheryl Atterberg *relied* upon Defendant's
24 competency *after* the parties' divorce in order of obtain a Power of
25 Attorney (which by law can only be executed by a competent person) to
26 initiate a law suit in North Dakota and is therefore estopped from
27 challenging Defendant's competency during a period prior to such
28

1 reliance¹;

2 (3) *conceals* that *in said litigation*, in which the Defendant did not prevail,
3 *the Defendant expressly asserted* that Plaintiff (Rodney/Defendant in this
4 action) “*was incompetent to enter into the contracts*”, which was fully
5 litigated and *Defendant was expressly found to be competent both prior*
6 *to and subsequent to the date of the parties’ Stipulated Decree of*
7 *Divorce*²; and

8 (4) *conceals* the fact that Defendant is collaterally estopped from relitigating
9 his competency during the same period with a different adversary.

10 Accordingly, Defendant’s reliance on whatever findings or excerpts of a
11 November 2020 Colorado Order is ineffective and candidly, meaningless.
12 Although the Colorado Order is taken out of context and incomplete, it must still be
13 noted the Colorado Court never ruled Defendant was incompetent ten (10) months
14 earlier (as noted above, a subsequent court confirmed that he was, in fact,
15 competent).

16 Defendant does *not* address Defendant’s *continued failure to properly*
17 *respond* to discovery requests³ that are believed will confirm that the Colorado
18 Order is actually *void and ineffective for any purpose*⁴. Such documentation will
19

20
21 ¹ See Power of Attorney obtained by Sheryl Atterberg on September 4, 2020
(*almost seven months after the subject stipulated Decree of Divorce*)

22 ² See Findings of Fact and Conclusions of Law and Order for Judgment of
23 December 29, 2020, submitted herewith for the Court’s convenience, review and
consideration as Exhibit “A”.

24 ³ See Plaintiff’s motion to compel and related reply submitted herewith as Exhibits
“B” and “C” respectively.

25 ⁴ Defendant’s discovery misconduct is the subject of an upcoming discovery
26 hearing. See *Jalepeno Prop. Mgmt., LLC v. Dukas*, 265 F.3d 506 (2001); *Soriano v.*
27 *Gillespie*, 857 So. 2d 64 (2003) (“If the judgment is void, the trial court has no
28 discretion. The court must set the void judgment aside.”); *Mitchell Capital, LLC v.*
Powercom, Inc., 2015 Nev. Unpub. LEXIS1182.

1 further confirm Defendant's violation of NRCP 11 and need of sanctions.

2 The guardian, Sheryl Atterberg also does not address, or more importantly
3 *does not dispute*, that she relied and acted upon Rodney's competency, by
4 obtaining a Power of Attorney from Rodney, more than six months *following* the
5 Stipulated Decree so she could litigate on his behalf. Hence, Sheryl is estopped
6 from challenging Rodney's competency prior to that date.

7 Lastly, as noted above, Defendant does not address the fact that a district
8 court of competent jurisdiction—where Defendant initiated suit—**confirmed that**
9 **Rodney was competent both prior to and subsequent to his participation in the**
10 **Stipulated Decree of Divorce**. Hence, Defendant/Sheryl Atterberg is collaterally
11 estopped from relitigating "competency" in this action.

12 Likewise, any reference to Defendant's "expert" is likewise immaterial.
13 First, such evidence cannot be considered because of the estoppel established
14 above. Second, Plaintiff's expert has confirmed Rodney's competency at the time
15 of the Stipulated Decree—consistent with the judicial determination noted above.

16 In sum, Defendant is unable to present any facts or law to stave off summary
17 judgment. The remainder of the dispositive facts that were presented by Tessie, and
18 not challenged by Defendant, is simply incorporated herein for the sake of brevity.

19 III.

20 **LEGAL ANALYSIS**

21 It is significant to note the very issue the subject of the instant action before
22 this Court, to wit: Rodney's competency in January/February of 2020, **was actually**
23 **and fully litigated in December of 2020 after Rodney asserted he was not**
24 **competent to enter into contracts** which resulted in a specific findings that
25 Rodney was in fact competent at the time *this Decree was executed and entered*.
26 Notably, this adverse determination was concealed from this Court. *Had such*
27 *information been provided this Court, coupled with Defendant's subsequent*
28

1 *actions and collateral estoppel, this Court would have never entertained*
2 *Defendant's action or set it for an Evidentiary Hearing.*

3 Defendant tactic to ignore the dispositive and damning facts against him,
4 which firmly establish the merit for summary judgment, Defendant's "legal
5 analysis" is equally infirm and legally unsustainable.

6 Under Nevada law, if a party has no evidence to support an essential element
7 of its claim, summary judgment is appropriate. This Court confirmed the crux of
8 this case (*rendered before the above facts were discovered and/or otherwise*
9 *disclosed*), or the essential element of Defendant's action, when it established the
10 parameters of the Evidentiary Hearing to determine (1) "Defendant's *competency* at
11 the time of the signing of the Decree of Divorce and" (2) "how much Plaintiff knew
12 about Defendant's *competency*." Notably, Defendant concedes the accuracy of this
13 statement.⁵

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

21 **IV.** 22 **Legal Analysis**

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

24 The standard for granting summary judgment is a familiar one and also not
25 disputed by Defendant⁶. A district court should grant, indeed "*shall*" grant,
26 summary judgment when "there are no genuine issues as to any material fact and...

27
28 ⁵ See Defendant's opposition, page 4 of 21, line 20, page 5 of 21, lines 1-3.

⁶ *Id.*, page 5 of 21, line 15, through page 8 of 21, line 4.

1 the moving party is entitled to judgment as a matter of law.”⁷ “[A] genuine issue of
2 material fact is one where the evidence is such that a reasonable jury could return a
3 verdict for the non-moving party.”⁸ Also, a “material fact” is a fact “that might
4 affect the outcome of the suit under the governing law.”⁹

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

11 With respect to burdens of proof and persuasion in the summary judgment
12 context, Nevada courts have adopted the federal approach as outlined in *Celotex v.*
13 *Catrett*, 477 U.S. 317 (1986)¹². Specifically, the party moving for summary
14 judgment bears the initial burden of production to show the absence of a genuine
15 issue of material fact¹³. Upon such a showing, **the party opposing summary**
16 **judgment assumes a burden of production to show the existence of a genuine**
17 **issue of material fact**¹⁴. As detailed *infra*, Defendant is **estopped** from relitigating
18 the issue of Rodney’s competency at the time of the parties stipulated Decree of
19 Divorce, and thus, **as a matter of law, unable to sustain her burden** and show the
20 existence of a genuine issue of material fact.

21 ⁷NRCP 56(c); *Posadas v. City of Reno*, 109 Nev 448, 452, 851 P.2d 438, 441-42
22 (1993); *Bird v. Casa Royale West*, 97 Nev. 67, 69 (1981); *Boland v. Nevada Rock*
23 *& Sand Co.*, 111 Nev. 608, 610 (1995).

24 ⁸ *Riley v. OPP IX, L.P.*, 112 Nev. 826, 830, 919 P.2d 1071, 1074 (1996), citing
25 *Valley Bank v. Marble*, 105 Nev. 366, 266, 775 P.2d 1278, 1279 (1989).

26 ⁹*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505 (1986).

27 ¹⁰ *Taylor v. List*, 880 F.2d 1040, 1045 (1989), *quoting Celotex Corp. v. Catrett*, 477
28 U.S. 317, 322 (1986); *see also Ray v. Continental W. Ins. Co.*, 920 F. Supp. 1094,
1097 (1994) (emphasis supplied).

¹¹ *Taylor*, at 880 F.2d at 1045; *Ray*, 920 F. Supp. At 1097 (emphasis supplied).

¹² *See Cuzze v. Univ. and Comm. Col. Sys of NV*, 172 P.3d 131, 134 (2007)

¹³ *Id.*

¹⁴ *Id.*

1 When the nonmoving party bears the burden of persuasion, the moving party
2 can submit evidence that negates an element of the nonmoving party's claim or
3 point out the lack of evidence to support the nonmoving party's claims¹⁵. The
4 nonmoving party is unable to successfully rebut the motion for summary judgment
5 unless he is able to point to facts supported by the record which demonstrate a
6 genuine issue of material fact¹⁶. In this case, Rodney is estopped, as a matter of law
7 of meeting his burden.

8 The United States Supreme Court has explained that the "[s]ummary
9 judgment procedure is properly regarded not as a disfavored procedural shortcut,
10 but rather as an integral part of the [procedural process] as a whole, which [is]
11 designed 'to secure the just, speedy and inexpensive determination of every
12 action.'"¹⁷ (See *Celotex*, 477 at 327; *Wood* at 1030; NRCP 1).

13 In conclusion, the Defendant is collaterally estopped from relitigating the
14 issue of Defendant's competency, and thus the purported "material fact(s)" that
15 Defendant claims cannot be relitigated, and thus, the very agreed upon material
16 facts and essential elements of this action cannot be raised or litigated by
17 Defendant. This Court must comply with applicable precedent and grant Plaintiff's
18 motion for summary judgment.

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

21 The same policy and precedent recognized and implemented 'to secure the
22 just, speedy and inexpensive determination of every action' equally pertains to
23 collateral estoppel.

24 ¹⁵ *Cuzze*, 123 Nev. at 602-3.

25 ¹⁶ 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).

¹⁷ See *Celotex*, 477 at 327; *Wood* at 1030

1 Under the Full Faith and Credit Act, 28 U.S.C. § 1738, the acts of state
2 tribunals are given the same "full faith and credit" as they have by law in the states
3 of their origin. Issue preclusion, or collateral estoppel, is applied to conserve
4 judicial resources, maintain consistency, and avoid harassment or oppression of the
5 adverse party. *Berkson v. LePome*, 126 Nev. 492, 245 P.3d 560, 566 (2010). For
6 this doctrine to apply, the following four elements must be met:

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

12 *Five Star Capital Corp. v. Ruby*, 124 Nev.1048, 1055, 194 P.3d at 709, 713 (2008)
13 quoting *Tarkanian*, 110 Nev. at 598, 879 P.2d at 1191); *See also Elyousef v.*
14 *O'Reilly & Ferrario, LLC*, 126 Nev. 441, 245 P.3d 547 (2010). Defendant
15 concedes such precedent and cites the same in his opposition. Notwithstanding,
16 Defendant thereafter proceeds to misstate the law.

17 **(1) The issue decided in the prior litigation is identical to the issue**
18 **presented in the current action;**

19 Contrary to Defendant's self-serving and selective mischaracterizations,
20 Defendant's competency in early 2020 was actually and unequivocally litigated in
21 Case Number CV-2020-0303 in December 2020. Review of the Court's findings
22 confirm that:

- 23 • Sheryl Atterberg confirmed (and therefore waived any claim against)
24 Rodney's competency when she obtained from Rodney "powers of
25 attorneys" on September 4, 2020. The law has long held that only
26 competent people can execute powers of attorney—and Sheryl relied on
27 Rodney's competency to seek financial gain. By so doing she waived the
28

1 ability to contest Rodney's competency prior to that date and she is now
2 estopped from relitigating that issue¹⁸.

- 3 • The Court expressly found "no evidence" of Rodney's "cognitive
4 shortcomings" between June of 2019 through September of 2020. Rodney
5 made no mention of any cognitive limitations and none were noticed.¹⁹
- 6 • The Court considered contracts Rodney entered into between August 21
7 and again in February of 2020 (after the stipulated Decree of Divorce).²⁰
- 8 • The Court expressly determined "there has been no evidence presented to
9 this Court to show that [Rodney] was incompetent or not able to enter into
10 a binding contract" at those times.²¹
- 11 • The Court also found "no evidence to prove that the Defendant and his
12 agents knew or should have known of any cognitive limitations on the
13 part of [Rodney]."²²
- 14 • The Court expressly confirmed Rodney's guardians "were permitted to
15 argue that the written contracts between the parties were void due to
16 [Rodney's] alleged incompetency to contract and they requested the
17 return of all the property to Rodney."²³
- 18 • The Court expressly found "at all relevant times related to [Rodney's]
19 cause of action (between June of 2019 and September of 2020 (the
20 stipulated Decree of Divorce was in February of 2020) "was competent to
21 contract."²⁴

22 This element clearly exists and is satisfied.

24 ¹⁸ December 2020 Court Order, page 2, ¶ 2.

25 ¹⁹ *Id.*, page 3, ¶¶ 3, 5.

26 ²⁰ *Id.*, page 5, ¶ 11, page 6, ¶ 13. Page 7, ¶ 17

27 ²¹ *Id.*, page 7, ¶ 17.

27 ²² *Id.*, page 8, lines 1-2.

28 ²³ *Id.*, page 9, ¶ 23.

²⁴ *Id.*, page 10, ¶ 2.

1 **(2) The initial ruling must have been on the merits and have**
2 **become final;**

3 Significantly, the Defendant concedes this element “is satisfied because the
4 North Dakota Tribal Court matter was decided on the merits and has since become
5 final.”²⁵ This element clearly exists and is satisfied.

6 **(3) The party against whom the judgment is asserted must have**
7 **been a party or in privity with a party to the prior litigation;**

8 As a threshold matter, Defendant’s claim that Tessie spoke during the North
9 Dakota district court trial is not only patently false²⁶, but immaterial. Rodney was a
10 party in the North Dakota action, and Sheryl Atterberg was involved in her capacity
11 as guardian—and Rodney is a party in this action, and Sheryl Atterberg is again
12 involved in her capacity as guardian. Hence, *being the same parties and*
13 *individuals, this element clearly exists and is also satisfied.*

14 Defendant’s commentary that Tessie was not “a party to the [North Dakota]
15 action” is a red-herring and irrelevant. As noted above, this element applies to
16 “[the] party against whom the judgment is asserted”, which in this case is
17 Defendant and his guardian—the same parties involved in the North Dakota action.

18 Indeed, courts have long ago discarded the traditional requirement of strict
19 mutuality of the parties in the context of res judicata and collateral estoppel in civil
20 cases²⁷. The appropriate focus is whether the parties *against whom collateral*
21 *estoppel is asserted* “have been afforded their day in court on those facts and
22 issues.” *Kenny*, 279 Md. at 35, 367 A.2d at 490; *Pat Perusse Realty*, 249 Md. at 45,

23
24 ²⁵ Defendant’s opposition, page 11 of 21, lines 2-3.

25 ²⁶ Tessie was completely unaware of the North Dakota litigation until receipt of
26 discovery—and this Court was never apprised of such a proceeding.

27 ²⁷ See *Caldor, Inc. v. Bowden*, 625 A.2d 959 (1993) *MPC, Inc. v. Kenny*, 279 Md.
28 29, 34-35, 367 A.2d 486, 490-91 (1977); *Pat Perusse Realty Co. v. Lingo*, 249 Md.
33, 45, 238 A.2d 100, 107 (1968); see also *Nevada v. United States*, 463 U.S. 110,
103 S. Ct. 2906 (1983) (*holding mutuality has, for the most part, been abandoned*
in cases involving collateral estoppel).

1 238 A.2d at 107. Thus, it is irrelevant that the party seeking to assert collateral
2 estoppel was not a party to the prior proceeding. Only the party against whom
3 collateral estoppel is asserted need be a party or in privity with a party in the prior
4 adjudication²⁸.

5 Rodney and his guardian were parties and participants in the North Dakota
6 litigation and thus, collaterally estopped with that ruling. This element firmly exists
7 and is satisfied.

8 **(4) The issue was actually and necessarily litigated.**

9 Defendant's argument that because the North Dakota district court did not
10 consider the "present divorce suit" is patently absurd, legally insignificant, and a
11 gross misapplication of the law. In short, divorce was not the issue in North
12 Dakota, and thus, the fact it was not discussed is meaningless.

13 At issue in the North Dakota action was Rodney's claim of "incompetency"
14 between August of 2019 and February of 2020, a "basis" *he asserted* entitled him
15 to void the contracts (3) that were entered into during that period, and compel the
16 Court to order Rodney's property, which was the subject of the contracts, returned
17 to him, and other financial relief.

18 Defendant's argument that the North Dakota district court did not find or
19 conclude Rodney was competent to enter into a binding contract agreement, is
20 patently false—and easily refuted with review of the North Dakota order.
21 *Defendant's attempted semantic quibble reeks of desperation²⁹, and confirms the*
22 *absence of legal authority that would support Defendant's argument.*

23
24 ²⁸ See also *Exotics Hawaii-Kona, Inc. v. E.I. du Pont de Nemours & Co.*, 104 Haw.
25 358, 90 P.3d 250 (2004) ("[I]t is *not necessary that the party asserting issue*
26 *preclusion in the second suit was a party in the first suit.*").

27 ²⁹ Indeed, to argue the North Dakota court finding there was no evidence Rodney
28 was incompetent isn't a finding the Court found Rodney competent is contrary to
the court's decision, defies logic, and is patently ridiculous. Such flawed logic
would be akin to an argument that a court finding someone "an adult" isn't a
finding that the person is no longer a minor.

1 Defendant wanted the Court to find contracts he entered into between August
2 of 2019 and February of 2020 to be declared void because of his alleged
3 incompetency. It was expressly determined, after carefully considering the merits,
4 that ***Rodney was competent during that time period—which expressly***
5 ***encompasses the time the Decree was executed and entered.***

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

12 Courts have determined that litigants have the right to try their case, but
13 public interest and case precedent firmly establish that they are limited to one such
14 opportunity. Rodney is disallowed, as a matter of law, to have another opportunity
15 to rehash his “competency” during the time of his agreement and divorce of
16 Plaintiff, by switching adversaries. Indeed, issue preclusion and collateral estoppel
17 applies ***even though the causes of action are substantially different***, if the same
18 fact issue is presented³⁰.

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

23 Contrary to Defendant’s false and unsupported conclusions, Tessie has easily
24 satisfied each element for the applicability of collateral estoppel and the
25 corresponding basis for summary judgment.

27 ³⁰ *LaForge v. State ex rel. univ. & Cmty. College Sys.*, 116 Nev. 415, 997 P.2d 130
28 (2000); the Supreme Court now generally uses the term “issue preclusion” instead
of “collateral estoppel

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

3 It is a sad commentary that Defendant launches a narrative he hopes is so
4 “emotional” it will somehow result in the Court ignoring the dispositive facts of
5 this action and applicable legal authority. The maneuver is shameless and made in
6 bad faith.

7 First, Defendant ignores the facts, but this Court cannot. Defendant ignores
8 and misstates the law, but this Court cannot. Defendant’s claim he has been taken
9 advantage of his entire life is not only false, but immaterial to the instant motion.
10 Likewise, the assertion that Rodney will now no longer have a “normal life” is
11 likewise irrelevant to this motion. Whatever state of Rodney’s mental health at
12 present, affords no ability to this Court to ignore the preclusive effects of collateral
13 estoppel.

14 Lastly, Defendant’s defamatory remarks directed to Tessie, coupled with his
15 brazen disregard of the Rules of Civil Procedure, his repeated violations of the duty
16 of candor owed to this Court, his dismissal of applicable legal precedent, and his
17 attempted manipulation of the legal system and this Court, require Tessie be
18 compensated for her fees and costs having to respond to a baseless and improper
19 action. Defendant’s insatiable greed is not tempered by facts, truth, or legal
20 precedent.

21 In fact, it is telling that Defendant ***incredulously*** asks for “his attorney’s fees
22 and costs ***if nothing else***”³¹. In this case, Rodney has acted undeniably acted in bad
23 faith. In their endeavor to manipulate this Court, Rodney not only violates the duty
24 of candor that is owed to this Court, Rodney has violated NRCP 11. Quite frankly,
25 Rodney’s conduct mandates an award of attorney’s fees to Tessie for having to
26 defend and respond to such a frivolous pleading.

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³¹ Defendant’s opposition, page 14 of 21, lines 14-15.

1 For the sake of brevity, the legal authority and argument supporting an award
2 of attorney's fees to Tessie set forth in the underlying motion is incorporated herein
3 by reference.

4 In conclusion, Defendant cannot proceed with the instant litigation and is
5 certainly not entitled to be rewarded for his wrongful conduct with an award of
6 attorney's fees.

7 **IV.**

8 **Conclusion**

9 Based upon the foregoing, Tessie reasonable requests summary judgment be
10 entered because no genuine issues of material fact exist that Defendant is allowed to
11 relitigate because Rodney was found to be competent by another court at the time
12 he entered into his agreement with Plaintiff and executed the Decree. As a matter
13 of law, Tessie is entitled to judgment as a matter of law finding Rodney was
14 competent at the time the Decree was executed and entered; Rodney is
15 barred/estopped as a matter of law from relitigating his "competency", and Plaintiff
16 should be awarded attorney fees and costs associated with defending the frivolous
17 unsupported claim filed and pursued by Rodney.

18 Dated this 6th day of July, 2021.

19
20 **HOFLAND & TOMSHECK**

21 By: /s/ Bradley J. Hofland

22 Bradley J. Hofland, Esq.

23 State Bar of Nevada No. 6343

24 228 South 4th Street, First Floor

25 Las Vegas, Nevada 89101

26 (702) 895-6760

27 *Attorneys for Plaintiff*

1 **DECLARATION OF TESSIE ELMA ALMARIO**

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

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

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

11 DATED this 6th day of July, 2021.

12 /s/ Tessie Elma Almario
13 Tessie Elma Almario
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HOFLAND & TOMSHECK, that pursuant to Administrative Order 14-2, NEFCR 9, and NRC 5(b), on the 6th day of July, 2021, I served the forgoing **PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT AND RELATED RELIEF AND OPPOSITION TO COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS AND ALL OTHER 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 “A”

**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

ROA000701

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

ROA000702

**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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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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 ID4429ICOL0 (wrecker) and the 1980 Cozad Jeep Trailer VIN CC80062 (lowboy trailer) and the Plaintiff shall immediately transfer titles to that property to the Defendant. Failure to do so within 30 days may result in further orders directing that alternative titles be issued and it is further

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

Each side will bear their own costs and fees

LET JUDGMENT BE ENTERED ACCORDINGLY.

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

Each side will bear their own costs and fees

LET JUDGMENT BE ENTERED ACCORDINGLY.

So ordered this 29th day of December 2020.

BY ORDER OF THE COURT:

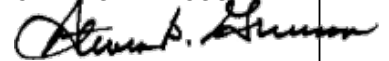
B. J. Jones

Associate Judge BJ Jones **WILK000446**

EXHIBIT “B”

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

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Steven D. Grierson
CLERK OF THE COURT



HOFLAND & TOMSHECK

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Telephone: (702) 895-6760
Facsimile: (702) 731-6910
bradh@hoflandlaw.com

Attorney for Plaintiff, Tessie Elma Almario

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

TESSIE ELMA ALMARIO,

Plaintiff,

vs.

SHERYL ATTERBERG, ON
BEHALF OF HER WARD
RODNEY WILKINSON,

Defendant.

) CASE NO.: D-19-596071-D

) DEPT NO.: U

) **PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO COMPEL
DISCOVERY AND FOR
ATTORNEY'S FEES**

) [Before the Discovery Commissioner]

) **ORAL ARGUMENT REQUESTED**

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

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

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion on for hearing before the Discovery Commissioner at the courtroom of the above-entitled court, located at 200 Lewis Avenue, Las Vegas, Nevada, 89155, at the date and time set by the Court.

Plaintiff Tessie Elma Almario (“Tessie”), by and through her attorneys, Bradley J. Hofland, Esq. of HOFLAND & TOMSHECK, and hereby moves the Court for an Order:

1. Compelling Defendant Sheryl Atterberg, on behalf of her ward Rodney Wilkinson (“Defendant”) to provide complete and non-evasive responses and production of documents to Plaintiff’s First Set of Request for Production of Documents numbers 7 and 8 served upon her;

2. Awarding Tessie attorney's fees and costs; and

3. For any other relief this Court deems fair and appropriate.

This Motion is supported by the pleadings and papers on file, documents attached thereto, the Points and Authorities submitted herewith, the Declaration attached hereto and any further evidence and oral argument the Court may entertain at the hearing in this matter.

Dated this 15th day of June, 2021.

HOFLAND & TOMSHECK

By: /s/Bradley J. Hofland

Bradley J. Hofland, Esq.

Nevada Bar No. 6343

228 South 4th Street, 1st Floor

Las Vegas, Nevada 89101

Telephone: (702) 895-6760

Attorneys for Plaintiff, Tessie Elma Almario

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **Statement of Facts**

4 On March 30, 2021, Defendant was served with Tessie's First Set of
5 Requests for Production of Documents.

6 On April 29, 2021, Defendant answered Tessie's First Set of Requests for
7 Production of Documents. The responses to Request for Production of Documents
8 similarly contained incomplete and evasive responses and objections -- only eight
9 pages from the conservatorship/guardianship case were produced from In the
10 Matter of the Estate of: Rodney Edward Wilkinson, Case No. 2020PR30016 and
11 no documents from the conservatorship/guardianship case in the State of Kansas
12 were produced. (See Defendant's Responses to First Set of Requests for
13 Production of Documents attached as Exhibit "1").

14 On May 6, 2021, Tessie's counsel sent an ECDR 2.34 letter to counsel for
15 Defendant addressing the deficiencies in Defendant's responses to First Set of
16 Requests for Production of Documents. (See letter of May 6, 2021 attached as
17 Exhibit "2").

18 On May 17, 2021, a "Meet and Confer" was held between Tessie's counsel
19 and Defendant's counsel to discuss Defendant's deficiencies in his responses to
20 First Set of Request for Production of Documents. The deficient responses were
21 discussed in detail, including Defendant providing a copy of the
22 petition/application for guardianship and other documents filed in the guardianship
23 cases in both Colorado and Kansas. Defendant's counsel claimed that it was
24 Plaintiff's duty to obtain the records from the Court and that Defendant would
25 provide copies of the documents in his possession. At the conclusion of the
26 conference, Defendant's counsel agreed to provide supplemental responses on or
27 before May 24, 2021. A follow-up letter was sent by Tessie's counsel
28 memorializing the meet and confer conference. (See letter of May 18, 2021
attached as Exhibit "3").

1 On May 24, 2021, Defendant served his supplemental responses to First Set
2 Request for Production of Documents, but did not supplement his response to
3 Request for Production of Documents No. 8. Defendant provided only two pages
4 in response to Request for Production of Documents No. 7 and provided no
5 additional documents in response to Request for Production of Documents No. 8.
6 The petition/application for guardianship/conservatorship, among other
7 documents, in the Colorado case (Case No. 2020PR30016) or Kansas case (Case
8 No. 2020-PR-12) have not been produced. (See Defendant's Supplemental
9 Responses to First Set of Requests for Production of Documents attached as
10 Exhibit "4")

11 Tessie's counsel contacted the Clerk of Court in Colorado and was advised
12 that Defendant's Guardianship file is "very large" and that many of the documents
13 are "protected", including the petition/application, and cannot be obtained by third
14 parties. The clerk also advised counsel that the unprotected documents could be
15 obtained through cocourts.com (Colorado Courts Record Search). Counsel
16 attempted to obtain the court docket for the guardianship case through
17 cocourts.com and was unable to locate the guardianship/conservatorship case.

18 Additionally, Tessie's counsel searched the Kansas District Court Public
19 Access Portal for the In the Matter of the Estate of Rodney Wilkinson, 2020-PR-
20 12, in Sherman County, Kansas and was not available and presumed to be sealed
21 or private.

22 Defendant's counsel has been adequately advised that a motion to compel
23 would be filed if the supplemental responses and documents were provided.

24 Defendant has demonstrated a settled intent to evade discovery and prevent
25 the disclosure of the materials that will substantiate and confirm Tessie's claims.
26 Defendant remains evasive and noncompliant with discovery. It is incumbent that
27 Defendant be compelled to provide the requested documents and adequately and
28

1 properly respond to the discovery that has been propounded upon him in order to
2 ensure justice is reached.

3 II.
4 Legal Analysis.

5 A. Motion to Compel

6 Nevada Rules of Civil Procedure, Rule 37 (2009), reads in pertinent parts:

7 (a) Motion for Order Compelling Disclosure or Discovery. A party, upon
8 reasonable notice to other parties and all persons affected thereby, may apply for
9 an order compelling discovery as follows:

10 (2) Motion.

11 (B) If a deponent fails to answer a question propounded or
12 submitted under Rules 30 or 31, . . . or a party fails to answer an
13 interrogatory submitted under Rule 33, or if a party, in response to a
14 request for inspection submitted under Rule 34, fails to respond, that
15 inspection will be permitted as requested or fails to permit inspection
16 as requested, any party may move for an order compelling an answer,
or a designation, or an order compelling inspection in accordance with
the request

17 (3) Evasive or Incomplete Disclosure, Answer or Response. For
18 purposes of this subdivision an evasive or incomplete disclosure, answer
or response is to be treated as a failure to disclose, answer or respond.

19 (4) Expenses and Sanctions.

20 (A) If the motion is granted or if the disclosure or requested
21 discovery is provided after the motion was filed, the court shall, after
22 affording an opportunity to be heard, require the party or deponent
23 whose conduct necessitated the motion or the party or attorney
24 advising of such conduct or both of them to pay to the moving party
25 the reasonable expenses incurred in making the motion, including
attorney's fees

26 The Courts have inherent equitable powers to impose sanctions for abuses
27 concerning discovery. The Courts may dismiss actions or enter default judgments
28 for abusive litigation practices, and such powers permit sanctions for abuses
concerning discovery or litigation not specifically proscribed by statute. *Young v.*

1 *Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990); *see also Dep't of*
2 *Indus. Relations v. Albanese*, 112 Nev. 851, at 856, 919 P.2d 1067 (1996). It is not
3 an abuse of discretion to strike a party's answer and enter default for failure to
4 answer interrogatories relating to certain defenses.

5 For example, in an action based upon contract, where the defendant failed to
6 answer interrogatories relating to its second and fourth defenses, the striking of
7 defendant's entire answer and the entry of default judgment, pursuant to N.R.C.P.
8 37(b)(2)(C) and 37(d), was not an abuse of the trial court's discretion. *Kelly*
9 *Broadcasting Co. v. Sovereign Broadcast, Inc.*, 96 Nev. 188, 606 P.2d 1089
10 (1980); *see also, Havas v. Bank of Nevada*, 96 Nev. 567, 570, 613 P.2d 706
11 (1980); *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777
(1990).

12 The Courts have held a poor alternative to answering discovery inquiries is
13 to simply refer the inquiring party to prior discovery previously provided or
14 allegedly to have been provided. This method of response is disfavored, as it fails
15 to provide the necessary specific response to the discovery request. *See Omega*
16 *Engineering, Inc. v. Omega, S.A.*, 2001 U.S. Dist. Lexis 2016 (D.Conn. 2001).
17 Responses which merely say "previously provided" or "provided at 16.1
18 conference" or "see deposition testimony" or even "Plaintiffs already have in their
19 possession" are simply non-answers, especially when they are coupled with
20 blanket objections, thwarts legitimate discovery.

21 Repeating the familiar phrase that each request is "vague, ambiguous, overly
22 broad, unduly burdensome and oppressive, not relevant nor calculated to lead to
23 the discovery of admissible evidence and, further, seeks material protected by the
24 attorney/client work privilege and the work product doctrine" is insufficient.
Pleasants v. Allbaugh, 2002 U.S. Dist. Lexis 8941 (D.D.C. 2002).

25 Bare assertions of undue burden do not suffice. *Tucker v. Ohtsu Tire &*
26 *Rubber Co.*, 191 F.R. D. 495 (D.Nev. 1997).

27 A party cannot avoid answering because some information is no longer
28 available and, indeed, must use reasonable efforts to obtain responsive

1 information. *Olivarez v. Rebel Oil Company, et al.*, Discovery Commissioner
2 Opinion #11 (April 2003). If the answering party lacks the necessary information
3 to make a full, fair and specific answer to an interrogatory, it should so state under
4 oath and should set forth in detail the efforts made to obtain the information.

5 Further, pursuant to NRCP 34(a), in response to a request for documents, a
6 party must produce documents, electronically stored information, or tangible things
7 within the "responding party's possession, custody, or control. ***Control is to be***
8 ***broadly construed so that party may be obligated to produce documents requested***
9 ***even though party may not actually possess documents.*** *Poole v. Textron, Inc.*, 192
10 F.R.D. 494, 46 Fed. R. Serv. 3d (Callaghan) 572 (D. Md. 2000). [***As long as party***
11 ***has legal right or ability to obtain documents from another source on demand,***
12 ***that party is deemed to have "control."***]; *Am. Rock Salt Co. v. Norfolk S. Corp.*,
13 228 F.R.D. 426 (W.D.N.Y. 2005). [Actual possession is not key, rather it is
14 practical ability to obtain records that governs request].

15 Here, Defendant has repeatedly obstructed the discovery process.
16 Defendant stonewalled the discovery process and continues to do so. *See Havas v.*
17 *Bank of Nev.*, 96 Nev. 567, 613 P.2d 706 (1980) [Trial court did not abuse its
18 discretion in striking the pleading of a party for his failure to answer
19 interrogatories where party willfully failed to respond by giving incomplete or
20 evasive answers].

21 **B. Insufficient Responses to Request for Production of Documents**

22 In an obvious and transparent attempt to conceal, withhold, and prevent
23 Tessie from obtaining the documentation that disproves the representations and
24 claims Defendant has made before this tribunal, and in so doing, confirms her
25 wrongdoings.
26
27
28

1 Additionally, despite Defendant's mischaracterization of the effort expected
2 of her through her boilerplate objections¹, the requests for production of the
3 documents are reasonable, to be expected, and required of litigants—and must not
4 be condoned or permitted from recalcitrant ones. Further, Defendant fails to set
5 forth in detail the efforts made to obtain the information and documents whether
6 the documents exist and are or are not in her custody and control. Defendant's
7 extensive evasive and nonresponsive responses are set forth below.

8 **REQUEST FOR PRODUCTION NO. 7:**

9 Please provide any and all documents, including without limitation,
10 pleadings, orders, motions, exhibits and supporting documents filed in,
11 and pertaining to, the conservatorship/guardianship case you and/or
12 Rodney Wilkinson were/was involved in the State of Kansas.

13 **RESPONSE REQUEST FOR PRODUCTION NO. 7:**

14 Objection. Defendant objects to this Request as vague, ambiguous,
15 overbroad, and unduly burdensome on its face due to its use of "any
16 and all," "without limitation," and "pertaining to" in order to identify a
17 broad range of documents. Defendant further objects to this Request as
18 vague and ambiguous as to the terms "supporting" and "involved in."
19 Defendant further objects to this Request as vague and ambiguous as
20 to providing a timeframe for which "you and/or Rodney Wilkinson
21 were/was involved in the State of Kansas." Defendant further objects
22 to this Request as the documents sought in this Request for Production
23 are publicly available and are more appropriately collected from
24 sources other than Defendant. Defendant further objects to this
25 Request as it is intended to be an unwarranted annoyance, is
26 oppressive and is intended to harass Defendant as it seeks

27 ¹ Such infirm and inaccurate objections include "irrelevant, broad, overly
28 burdensome and is not reasonably calculated to lead to discovery of admissible
evidence."

1 documentation that is publicly available and easily obtained by
2 Plaintiff. Without waiving said objections, Plaintiff responds as
3 follows:

4 Defendant has no responsive documents in its possession, custody, or
5 control. Discovery is ongoing and Defendant will supplement this
6 response if and when additional documentation becomes available in
7 accordance with Nev.R.Civ.P. Rule 26(e).

8 **SUPPLEMENTAL RESPONSE TO REQUEST FOR**
9 **PRODUCTION NO. 7:**

10 Please see Exhibit B. Discovery is ongoing and Defendant will
11 supplement this response if and when additional documentation
12 becomes available in accordance with Nev.R.Civ.P. Rule 26€.

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

14 Please provide any and all documents, including without limitation,
15 pleadings, orders, motions, exhibits and supporting documents filed in,
16 and pertaining to, the conservatorship/guardianship case *In the Matter*
17 *of the Estate of: Rodney Edward Wilkinson*, Case No. 2020PR30016
18 filed in the District Court, Lincoln County, Colorado.

19 **RESPONSE REQUEST FOR PRODUCTION NO. 8:**

20 Objection. Defendant objects to this Request as vague, ambiguous,
21 overbroad, and unduly burdensome on its face due to its use of "any
22 and all," "without limitation," and "pertaining to" in order to identify a
23 broad range of documents. Defendant further objects to this Request as
24 vague and ambiguous as to the terms "supporting" and "pertaining to."
25 Defendant further objects to this Request as vague and ambiguous as
26 to providing a timeframe for the documents requested, thereby making
27 this Request overbroad and unduly burdensome in scope. Defendant
28 further objects to this Request as the documents sought in this Request

1 for Production are publicly available and are more appropriately
2 collected from sources other than Defendant. Defendant further objects
3 to this Request as it is intended to be an unwarranted annoyance, is
4 oppressive and is intended to harass Defendant as it seeks
5 documentation that is publicly available and easily obtained by
6 Plaintiff. Without waiving said objections, Plaintiff responds as
7 follows:

8 Defendant has no responsive documents in its possession, custody, or
9 control, other than those that have already been produced to Plaintiff.
10 Please refer to *Defendant's Initial NRCP 16.2 Disclosure*, served on
11 April 15, 2021, specifically WILK000321 through WILK000328.
12 Discovery is ongoing and Defendant will supplement this response if
13 and when additional documentation becomes available in accordance
14 with Nev.R.Civ.P. Rule 26(e).

15 No supplemental responses were provided to Request for Production of
16 Documents No. 8.

17 In this case, given the nature of the above actions and Sheryl's role as the
18 Guardian of the Ward Rodney Wilkinson, she is the only party that can obtain the
19 requested documents, and must do so in accordance with applicable precedent.
20 Ms. Atterberg has been appointment the co-guardian of Mr. Wilkinson, she has
21 access, and the ability to obtain, all documents filed in other guardianship case.

22 Tessie's counsel contacted the Clerk of Court in Colorado and was advised
23 that Defendant's Guardianship file is "very large" and that many of the documents
24 are "protected", including the petition/application, and cannot be obtained by third
25 parties. The clerk also advised counsel that the unprotected documents could be
26 obtained through cocourts.com (Colorado Courts Record Search). Counsel
27 attempted to obtain the court docket for the guardianship case through
28 cocourts.com and was unable to locate the guardianship/conservatorship case.

1 Additionally, Tessie's counsel searched the Kansas District Court Public
2 Access Portal for the In the Matter of the Estate of Rodney Wilkinson, 2020-PR-
3 12, and in Sherman County, Kansas was not available and presumed to be sealed
4 or private.

5 As such, any documents in Defendant's possession, custody, or control must
6 be produced, or provide an explanation concerning the efforts to locate documents
7 and what happened to the documents.

8 **C. Tessie is entitled to an award of attorney fees and costs**

9 NRCp 37(4)(A), entitled, Expenses and Sanctions, states that if the motion
10 to compel is granted, the court shall, after affording an opportunity to be heard,
11 require the party whose conduct necessitated the motion to pay the moving party
12 the reasonable expenses incurred in making the motion including attorney's fees.

13 The Courts have inherent equitable powers to impose sanctions for abuses
14 concerning discovery. The Courts may dismiss actions or enter default judgments
15 for abusive litigation practices, and such powers permit sanctions for abuses
16 concerning discovery or litigation not specifically proscribed by statute. *Young v.*
17 *Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990); *see also Dep't of*
18 *Indus. Relations v. Albanese*, 112 Nev. 851, at 856, 919 P.2d 1067 (1996). It is not
19 an abuse of discretion to strike a party's answer and enter default for failure to
20 answer interrogatories relating to certain defenses. For example, in an action
21 based upon contract, where the defendant failed to answer interrogatories relating
22 to its second and fourth defenses, the striking of defendant's entire answer and the
23 entry of default judgment, pursuant to N.R.C.P. 37(b)(2)(C) and 37(d), was not an
24 abuse of the trial court's discretion. *Kelly Broadcasting Co. v. Sovereign*
25 *Broadcast, Inc.*, 96 Nev. 188, 606 P.2d 1089 (1980); *see also, Havas v. Bank of*
26 *Nevada*, 96 Nev. 567, 570, 613 P.2d 706 (1980); *Young v. Johnny Ribeiro Bldg.,*
27 *Inc.*, 106 Nev. 88, 92, 787 P.2d 777 (1990).

28 Here, Defendant obstructed the discovery process by providing boilerplate
objections, evasive and nonresponsive responses and only five pages of
documents, and stonewalled the discovery process. *See Havas v. Bank of Nev.*, 96

1 Nev. 567, 613 P.2d 706 (1980) [Trial court did not abuse its discretion in striking
2 the pleading of a party for his failure to answer interrogatories where party
3 willfully failed to respond by giving incomplete or evasive answers].

4 Accordingly, because Defendant provided boilerplate objections, evasive
5 and nonresponsive responses and produced only eight pages from the
6 conservatorship/guardianship case in the Colorado case, Case No. 2020PR30016
7 and only two pages from the conservatorship/guardianship case in the Kansas case,
8 Case No. 202-PR-1, Tessie respectfully requests an Order be entered compelling
9 Defendant to supplement his responses and documents and award appropriate
10 sanctions and attorney fees and costs associated with this motion in the sum of
\$3,500.00.

11 **III.**
12 **Conclusion**

13 Based upon the foregoing, Tessie reasonably requests an order is issued:

14 1. Compelling Defendant Sheryl Atterberg, on behalf of her ward
15 Rodney Wilkinson (“Defendant”) to provide complete and non-evasive responses
16 and production of documents to Plaintiff’s First Set of Request for Production of
17 Documents numbers 7 and 8 served upon her;

18 2. Awarding Tessie attorney’s fees and costs; and

19 3. For any other relief this Court deems fair and appropriate.

20 Dated this 15th day of June, 2021.

21 **HOFLAND & TOMSHECK**

22 By: /s/Bradley J. Hofland

23 Bradley J. Hofland, Esq.

24 Nevada Bar No. 6343

25 228 South 4th Street, 1st Floor

26 Las Vegas, Nevada 89101

27 Telephone: (702) 895-6760

28 *Attorney for Plaintiff, Tessie Elma Almario*

1 **DECLARATION OF BRADLEY J. HOFLAND, ESQ.**

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

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

5 2. On March 30, 2021, Defendant was served with Tessie’s First Set of
6 Requests for Production of Documents.

7 3. On April 29, 2021, Defendant answered Tessie’s First Set of Requests
8 for Production of Documents. The responses to Request for Production of
9 Documents similarly contained incomplete and evasive responses and objections --
10 only eight pages from the conservatorship/guardianship case were produced from
11 In the Matter of the Estate of: Rodney Edward Wilkinson, Case No. 2020PR30016
12 and no documents from the conservatorship/guardianship case in the State of
13 Kansas were produced. (See Defendant’s Responses to First Set of Requests for
14 Production of Documents attached as Exhibit “1”).

15 4. On May 6, 2021, an ECDR 2.34 letter was to counsel for Defendant
16 addressing the deficiencies in Defendant’s responses to First Set of Requests for
17 Production of Documents. (See letter of May 6, 2021 attached as Exhibit “2”).

18 5. On May 17, 2021, Dina DeSousa Cabral, Esq. on behalf of
19 HOFLAND & TOMSHECK appeared via telephone for the scheduled “Meet and
20 Confer” conference with Mr. Kwon to discuss Defendant’s deficiencies in his
21 responses to First Set of Request for Production of Documents.

22 6. During the conversation, open, lengthy, and meaningful dialog and
23 discussion resulted.

24 7. The deficient responses were discussed in detail, including Defendant
25 providing a copy of the petition/application for guardianship and other documents
26 filed in the guardianship cases in both Colorado and Kansas.

27 8. Mr. Kwon claimed that it was Plaintiff’s duty to obtain the records
28 from the Court and that Defendant would provide copies of the documents in his
possession.

1 9. At the conclusion of the conference, Mr. Kwon agreed to provide
2 supplemental responses on or before May 24, 2021.

3 10. A follow-up letter was sent memorializing the meet and confer
4 conference on May 18, 2021. (See letter of May 18, 2021 attached as Exhibit “3”).

5 11. On May 24, 2021, Defendant served his supplemental responses to
6 First Set Request for Production of Documents, but did not supplement his
7 response to Request for Production of Documents No. 8. Defendant provided only
8 two pages in response to Request for Production of Documents No. 7 and provided
9 no additional documents in response to Request for Production of Documents No.
10 8. The petition/application for guardianship/conservatorship, among other
11 documents, in the Colorado case (Case No. 2020PR30016) or Kansas case (Case
12 No. 2020-PR-12) have not been produced. (See Defendant’s Supplemental
13 Responses to First Set of Requests for Production of Documents attached as
14 Exhibit “4”)

15 12. I contacted the Clerk of Court in Colorado and was advised that
16 Defendant’s Guardianship file is “very large” and that many of the documents are
17 “protected”, including the petition/application, and cannot be obtained by third
18 parties. The clerk also advised counsel that the unprotected documents could be
19 obtained through cocourts.com (Colorado Courts Record Search). I also
20 attempted to obtain the court docket for the guardianship case through
21 cocourts.com and was unable to locate the guardianship/conservatorship case.

22 13. I searched the Kansas District Court Public Access Portal for the In
23 the Matter of the Estate of Rodney Wilkinson, 2020-PR-12, in Sherman County,
24 Kansas and was not available and presumed to be sealed or private.

25 14. I submit the conference was conducted in good faith and was
26 meaningful, but unfortunately, did not result in the resolution of the dispute.

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

3 DATED this 15th day of June, 2021.

4 /s/ Bradley J. Hofland
5 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 NRCP 5(b), on the 15th day of June, 2021, I served the forgoing **PLAINTIFF’S NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY AND FOR ATTORNEY’S FEES** 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”

JAMES KWON, LLC

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

1 **RESP**

JAMES W. KWON, ESQ.

2 Nevada Bar No. 8146

JAMES KWON, LLC

3 6280 Spring Mountain Rd., Suite 100

Las Vegas, Nevada 89146

4 P: (702) 515-1200

F: (702) 515-1201

5 jkwon@jwklawfirm.com

Attorney for Sheryl Atterberg,

6 *On behalf of her Adult Ward,*

Defendant, Rodney Wilkinson

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

TESSIE E. WILKINSON a/k/a TESSIE

10 ELMA ALMARIO,

Plaintiff,

11 vs.

12 RODNEY WILKINSON,

13 Defendant.

Case No.: D-19-596071-D

Dept.: U

14 **DEFENDANT RODNEY WILKINSON'S RESPONSES TO**
15 **PLAINTIFF TESSIE ELMA ALMARIO'S FIRST SET OF REQUESTS FOR**
16 **PRODUCTION OF DOCUMENTS TO DEFENDANT RODNEY WILKINSON**

17 Pursuant to Rules 26 and 34 of the Nevada Rules of Civil Procedure, Sheryl
18 Atterberg, on behalf of her Adult Ward, Defendant, Rodney Wilkinson, by and
19 through her attorney of record, James W. Kwon, Esq., of the law firm James Kwon,
20 LLC, hereby responds and objects to *Plaintiff Tessie Elma Almario's First Set of*
Requests for Production of Documents to Defendant Rodney Wilkinson as follows:

GENERAL OBJECTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

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

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

18 Please provide any and all documents relating to your (Rodney Wilkinson's)
19 health from January 2017 through the present date, including without limitation, all:
20 medical reports, mental health records, medical evaluations, mental health

1 evaluations, hospital charts and records, medical prescriptions, receipt for purchase
2 of drugs, admission and release forms, and any other type of medical analysis from
3 doctors or other health care professionals.

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

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,” “relating to,”
7 “without limitation,” and “all” in order to identify a broad range of documents.
8 Defendant further objects to this Request as vague and ambiguous as to the terms
9 “health,” “any,” “other,” “type,” “medical analysis,” “other healthcare
10 professionals.” Defendant further objects to this Request as being duplicative in that
11 the documents have previously been disclosed to Plaintiff. Defendant further objects
12 to this Request as it is intended to be an unwarranted annoyance, is oppressive and is
13 intended to harass Defendant as it seeks information that has already been provided
14 to Plaintiff. Without waiving said objections, Defendant responds as follows:

15 Please refer to *Defendant’s Initial NRCP 16.2 Disclosure*, served on April 15,
16 2021, specifically WILK000001 through WILK000308. Please also refer to
17 *Defendant’s First Supplemental List of Expert Witnesses*, served April 19, 2021,
18 specifically Exhibit C thereto. Discovery is ongoing and Defendant will supplement
19 this response if and when additional documentation becomes available in accordance
20 with Nev.R.Civ.P. Rule 26(e).

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

2 Please provide complete pharmacy records related to all prescriptions
3 prescribed and/or provided to you (Rodney Wilkinson) from January 1, 2017
4 through the present. A sufficient response will include, but not be limited to: a) A
5 prescription history from each and every pharmacy utilized from January 1, 2017
6 through the present; and b) Any and all documents related to prescriptions in
7 Defendant Rodney Wilkinson's possession.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

9 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,
10 and unduly burdensome on its face due to its use of "each and every" and "related
11 to" in order to identify a broad range of documents. Defendant further objects to this
12 Request as vague and ambiguous as to the terms "complete," "provided," and
13 "history." Defendant further objects to this Request as being duplicative in that
14 medications prescribed or given to Defendant are delineated in the medical records
15 previously disclosed to Plaintiff. Defendant further objects to this Request as it is
16 intended to be an unwarranted annoyance, is oppressive and is intended to harass
17 Defendant as it seeks information that has already been provided to Plaintiff.
18 Without waiving said objections, Defendant responds as follows:

19 Please refer to *Defendant's Initial NRCP 16.2 Disclosure*, served on April 15,
20 2021, specifically WILK000001 through WILK000308. Additionally, Defendant has

1 requested his prescription records from his pharmacy, but has not yet obtained said
2 records. 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. 3:**

6 Please produce any and all documents, including without limitation, expert
7 reports, conservatorship documents, communications, medical reports, mental health
8 records, medical evaluations, mental health evaluations, hospital charts and records,
9 medical prescriptions, receipt for purchase of drugs, admission and release forms,
10 and any other type of medical analysis from doctors or other health care
11 professionals provided to Dr. Paul H. Janda, Esq., FAAN and/or Las Vegas
12 Neurology Center.

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

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," "without
16 limitation," and "any other type" in order to identify a broad range of documents.
17 Defendant further objects to this Request as vague and ambiguous as to the terms
18 "other," "type," and "medical analysis." Defendant further objects to this Request as
19 many of the documents requested are publicly available and should be already in the
20 possession of Plaintiff. Defendant further objects to this Request as being duplicative

1 in that the documents requested have already been provided to Plaintiff. Defendant
2 further objects to this Request as it is intended to be an unwarranted annoyance, is
3 oppressive and is intended to harass Defendant as it seeks information that has
4 already provided to Plaintiff. Without waiving said objections, Defendant responds
5 as follows:

6 Please refer to *Defendant's Initial NRCP 16.2 Disclosure*, served on April 15,
7 2021, specifically WILK000001 through WILK0003010. Please also refer to
8 *Defendant's First Supplemental List of Expert Witnesses*, served April 19, 2021,
9 specifically Exhibit C thereto. Please also refer to Exhibit A attached hereto and
10 bates stamped WILK000331. All other documentation provided to Dr. Janda for his
11 review, which is identified in list format in the beginning of Dr. Janda's Expert
12 Report attached as Exhibit C to *Defendant's First Supplemental List of Expert*
13 *Witnesses*, served April 19, 2021, is publicly available and should already be in the
14 possession of Plaintiff. Discovery is ongoing and Defendant will supplement this
15 response if and when additional documentation becomes available in accordance
16 with Nev.R.Civ.P. Rule 26(e).

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

18 **OMITTED BY PLAINTIFF, TESSIE ELMA ALMARIO**

19 ///

20 ///

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

2 Please produce any and all documents and other materials you intend to
3 provide Dr. Paul H. Janda, Esq., FAAN, Las Vegas Neurology Center.

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

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" in order to identify
7 a broad range of documents. Defendant further objects to this Request as vague and
8 ambiguous as to the terms "other," "materials," and "intend." Defendant further
9 objects to this Request has been asked and answered in Defendant's Response to
10 Request for Production No. 3. Without waiving said objections, Defendant responds
11 as follows:

12 Asked and answered. Please refer to Defendant's Response to Request for
13 Production No. 3. Discovery is ongoing and Defendant will supplement this
14 response if and when additional documentation becomes available in accordance
15 with Nev.R.Civ.P. Rule 26(e).

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

17 Please produce any and all documents upon which you intend to rely on at the
18 trial of this matter, including copies of any and all exhibits you may use in any
19 pleading or at the time of trial.
20

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

2 Objection. Defendant objects to this Request as vague, ambiguous, overbroad,
3 and unduly burdensome on its face due to its duplicative use of “any and all” in
4 order to identify a broad range of documents. Defendant further objects to this
5 Request as vague and ambiguous as to the terms “intend,” “rely,” “copies,” and “any
6 pleading.” Defendant further objects to this Request as vague and ambiguous as to
7 providing a timeframe for which Defendant “may use in any pleading.” Defendant
8 further objects to this Request as being duplicative in that the documents requested
9 have already been provided to Plaintiff and should already be in Plaintiff’s
10 possession. Defendant further 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 information that has already provided to Plaintiff. Without waiving said objections,
13 Defendant responds as follows:

14 Please refer to *Defendant’s Initial NRCP 16.2 Disclosure*, served on April 15,
15 2021. Please also refer to *Defendant’s List of Expert Witnesses*, served March 24,
16 2021. Please also refer to *Defendant’s First Supplemental List of Expert Witnesses*,
17 served April 19, 2021. Please also refer to Exhibit A attached hereto and bates
18 stamped WILK000331. Discovery is ongoing and Defendant will supplement this
19 response if and when additional documentation becomes available in accordance
20 with Nev.R.Civ.P. Rule 26(e).

1 **REQUEST FOR PRODUCTION NO. 7:**

2 Please provide any and all documents, including without limitation, pleadings,
3 orders, motions, exhibits and supporting documents filed in, and pertaining to, the
4 conservatorship/guardianship case you and/or Rodney Wilkinson were/was involved
5 in the State of Kansas.

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

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,” “without
9 limitation,” and “pertaining to” 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 “supporting” and “involved in.” Defendant further objects to this Request as vague
12 and ambiguous as to providing a timeframe for which “you and/or Rodney
13 Wilkinson were/was involved in the State of Kansas.” Defendant further objects to
14 this Request as the documents sought in this Request for Production are publicly
15 available and are more appropriately collected from sources other than Defendant.
16 Defendant further objects to this Request as it is intended to be an unwarranted
17 annoyance, is oppressive and is intended to harass Defendant as it seeks
18 documentation that is publicly available and easily obtained by Plaintiff. Without
19 waiving said objections, Plaintiff responds as follows:

20 Defendant has no responsive documents in its possession, custody, or control.

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

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

5 Please provide any and all documents, including without limitation, pleadings,
6 orders, motions, exhibits and supporting documents filed in, and pertaining to, the
7 conservatorship/guardianship case *In the Matter of the Estate of: Rodney Edward*
8 *Wilkinson*, Case No. 2020PR30016 filed in the District Court, Lincoln County,
9 Colorado.

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

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,” “without
13 limitation,” and “pertaining 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 “supporting” and “pertaining to.” Defendant further objects to this Request as vague
16 and ambiguous as to providing a timeframe for the documents requested, thereby
17 making this Request overbroad and unduly burdensome in scope. Defendant further
18 objects to this Request as the documents sought in this Request for Production are
19 publicly available and are more appropriately collected from sources other than
20 Defendant. Defendant further objects to this Request as it is intended to be an

1 unwarranted annoyance, is oppressive and is intended to harass Defendant as it seeks
2 documentation that is publicly available and easily obtained by Plaintiff. Without
3 waiving said objections, Plaintiff responds as follows:

4 Defendant has no responsive documents in its possession, custody, or control,
5 other than those that have already been produced to Plaintiff. Please refer to
6 *Defendant's Initial NRCP 16.2 Disclosure*, served on April 15, 2021, specifically
7 WILK000321 through WILK000328. Discovery is ongoing and Defendant will
8 supplement this response if and when additional documentation becomes available
9 in accordance with Nev.R.Civ.P. Rule 26(e).

10 DATED this 29 day of April, 2021.

11 JAMES KWON, LLC

12
13 
JAMES W. KWON, ESQ.

Nevada Bar No. 8146

6280 Spring Mountain Rd., Suite 100

Las Vegas, Nevada 89146

14
15 *Attorney for Sheryl Atterberg, on behalf*
16 *of her Adult Ward, Defendant, Rodney*
17 *Wilkinson*
18
19
20

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of James Kwon, LLC, and that on this 29th day of April, 2021, I caused the above and foregoing document entitled *Defendant Rodney Wilkinson's Responses to Plaintiff Tessie Elma Almarino's First 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 29th day of April, 2021.

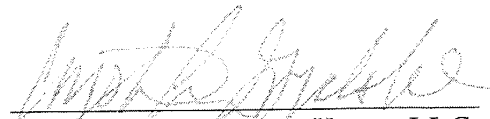

An employee of James Kwon, LLC

EXHIBIT A

EXHIBIT A

Rodney felt guilty about his 1974 car accident which is why he started giving his paycheck to women in 1987. First with Ms. Stevenson who had three small children and then also with Tessie in 1988 who had two small children at the time.

Rodney was in the Vietnam draft and because he had a relatively low number he was not selected for active duty because the war ended. He thought he would help someone since he didn't go to war. Ms. Stevenson was Vietnamese. Tessie was from the Philippines. However, they both proved to be scam artists.

Rodney's mother made sure he had food and clothes until she passed away in 2006. Rodney didn't manage his own finances since 1979. So, after Rodney's mother passed away others took advantage of that. The Cognisat test at Aurora Medical Center confirms that Rodney didn't understand finances which was probably caused by the TBI from 1974.

Rodney had PTSD as indicated by Dr Fox and was treated for shock which in 1974 was probably a TBI. He didn't get the mental help he needed until we stepped in in 2020 but it was difficult because Tessie had Rodney so brainwashed (like a cult) that we couldn't get Rodney to understand what Tessie was doing to him.

Back in the 2000s Rodney would ask me what autism was because Tessie's daughter was "making fun" of Rodney by calling him autistic. Tessie also had been calling Rodney autistic using this to take his money. Both her daughter and Tessie KNEW Rodney had some sort of mental problem and took advantage of it with many instances of money theft.

Tessie had promised to live with Rodney which is why Rodney signed the marriage license but like most things Tessie does they are less than truthful as evidenced by the fact that she did not live with him for most of the marriage.

Rodney thought when Tessie ran off with the over \$1 million from the sale of his inheritance (the farm) it was over never imagined she would come back to take everything through use of a one-sided divorce decree. He closed the joint checking account after six months later after realizing she was draining (stealing) from that as well. He is quite upset that she has been living with another man according to the Las Vegas home neighbors as "her husband".

In North Dakota, Rodney was scammed by a man claiming to be a Preacher. Rodney signed documents not understanding that it was a way to steal Rodney's equipment.

It took quite a bit to get the guardianship because Tessie was controlling Rodney by telling him his sister Sheryl was causing all of the problems. Until Rodney started on the correct medication's he was unable to understand.

Tessie and others were mistreating a dependent adult. Unfortunately, because Rodney signed documents there is no protection from these agencies to help him.

WILK000331

ROA000750

EXHIBIT “2”

Hofland &
Tomsheck

ATTORNEYS AND COUNSELORS AT LAW

BRADLEY L. HOFLAND
JOSH TOMSHECK
MATTHEW D. MANNING (1970 - 2005)

May 6, 2021

Via E-Service

James Kwon, Esq.
JAMES KWON, LLC
6280 Spring Mountain Road, Suite 100
Las Vegas, Nevada 89146

Re: Tessie Almario vs. Sheryl Atterberg, on behalf of her adult ward
Rodney Wilkinson
Case No: D-19-596071-D

Dear Mr. Kwon:

This letter is written pursuant to EDCR 2.34 as a request to schedule a meaningful meet and confer meeting with regards Defendant's Responses to Plaintiff's First Set of Requests for Production of Documents. We are available on May 11, 2021 at 2:00 p.m., May 12, 2021 at 2:00 p.m. and May 13, 2021 at 3:00 p.m. Please advise of your availability for the meet and confer conference by 5:00 p.m. tomorrow, May 7, 2021. If we do not receive a response by 5:00 p.m. on May 7, 2021, the meet and confer conference will be scheduled for **May 12, 2021 at 2:00 p.m.** and will consider your silence on the selection and acceptance on your part of the default date and time set forth above.

Of particular concern, and what will specifically be addressed at our agreed upon meet and confer meeting, will be:

REQUEST FOR PRODCUTION NO. 7:

Please provide any and all documents, including without limitation, pleadings, orders, motions, exhibits and supporting documents filed in, and pertaining to, the conservatorship/guardianship case you and/or Rodney Wilkinson were/was involved in the State of Kansas.

RESPONSE REQUEST FOR PRODCUTION NO. 7:

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of "any and all," "without limitation," and "pertaining to" in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms "supporting" and "involved in." Defendant further objects to this Request as vague and ambiguous as to providing a timeframe for which "you and/or Rodney Wilkinson were/was involved in the State of Kansas." Defendant further objects to this Request as the documents sought in this Request for Production are publicly available and are more appropriately collected from sources other than Defendant. Defendant further objects to this Request as it is intended to be an unwarranted annoyance, is oppressive and is intended to harass Defendant as it seeks documentation that is publicly available and easily obtained by Plaintiff. Without waiving said objections, Plaintiff responds as follows:

Defendant has no responsive documents in its possession, custody, or control. 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).

The request for production requests documents pertaining to the guardianship case pertaining to, the conservatorship/guardianship case you and/or Rodney Wilkinson were/was involved in the State of Kansas, which is narrowly tailored and specifically defined to obtain information relevant to the underlying issues in this litigation relating to Rodney's competency at the time of signing the Decree of Divorce and Tessie's knowledge.

Repeating the familiar phrase that each request is "vague, ambiguous, overly broad, unduly burdensome and oppressive, not relevant nor calculated to lead to the discovery of admissible evidence and, further, seeks material protected by the attorney/client work privilege and the work product doctrine" is insufficient. *Pleasants v. Allbaugh*, 2002 U.S. Dist. Lexis 8941 (D.D.C. 2002). The Courts have long held that such boilerplate objections are insufficient and improper. See *Pleasants v. Allbaugh*, 2002 U.S. Dist. Lexis 8941 (D.D.C. 2002), *Tucker v. Ohtsu Tire & Rubber Co.*, 191 F.R. D. 495 (D.Nev. 1997), and *Havas v. Bank of Nev.*, 96 Nev. 567, 613 P.2d 706 (1980) [Trial court did not abuse its discretion in striking

the pleading of a party for his failure to answer (discovery) where party willfully failed to respond by giving incomplete or evasive answers]. Further pursuant to NRCP 34(a), in response to a request for documents, a party must produce documents, electronically stored information, or tangible things within the "responding party's possession, custody, or control. ***Control is to be broadly construed so that party may be obligated to produce documents requested even though party may not actually possess documents. Poole v. Textron, Inc.***, 192 F.R.D. 494, 46 Fed. R. Serv. 3d (Callaghan) 572 (D. Md. 2000). [***As long as party has legal right or ability to obtain documents from another source on demand, that party is deemed to have "control."***]; *Am. Rock Salt Co. v. Norfolk S. Corp.*, 228 F.R.D. 426 (W.D.N.Y. 2005). [Actual possession is not key, rather it is practical ability to obtain records that governs request].

In this case, given the nature of the above actions and Sheryl's role as the Guardian of the Ward Rodney Wilkinson, she is the only party that can obtain the requested documents, and must do so in accordance with applicable precedent.

Accordingly, please remove reference to the insufficient, improper and the evasive boilerplate objections and kindly provide documents responsive to request for production number 7, including the Petition for Appointment of Guardian, and any and all other documents filed in the State of Kansas in which Ms. Atterberg or any other individual sought guardianship of Mr. Wilkinson. As Ms. Atterberg has been appointment the co-guardian of Mr. Wilkinson, she has access, and the ability to obtain, all documents filed in other guardianship case. As such, any documents in Defendant's possession, custody, or control must be produced, or provide an explanation concerning the efforts to locate documents and what happened to the documents. If the documents do not exist or if there has been no guardianship matters filed in the State of Kansas on behalf of Mr. Wilkinson, please state so.

REQUEST FOR PRODCUTION NO. 8:

Please provide any and all documents, including without limitation, pleadings, orders, motions, exhibits and supporting documents filed in, and pertaining to, the conservatorship/guardianship case *In the Matter of the Estate of: Rodney Edward Wilkinson*, Case No. 2020PR30016 filed in the District Court, Lincoln County, Colorado.

RESPONSE REQUEST FOR PRODCUTION NO. 8:

Objection. Defendant objects to this Request as vague, ambiguous, overbroad, and unduly burdensome on its face due to its use of "any and all," "without limitation," and "pertaining to" in order to identify a broad range of documents. Defendant further objects to this Request as vague and ambiguous as to the terms "supporting" and "pertaining to." Defendant further objects to this Request as vague and ambiguous as to providing a timeframe for the documents requested, thereby making this Request overbroad and unduly burdensome in scope. Defendant further objects to this Request as the documents sought in this Request for Production are publicly available and are more appropriately collected from sources other than Defendant. Defendant further objects to this Request as it is intended to be an unwarranted annoyance, is oppressive and is intended to harass Defendant as it seeks documentation that is publicly available and easily obtained by Plaintiff. Without waiving said objections, Plaintiff responds as follows:

Defendant has no responsive documents in its possession, custody, or control, other than those that have already been produced to Plaintiff. Please refer to *Defendant's Initial NRCP 16.2 Disclosure*, served on April 15, 2021, specifically WILK000321 through WILK000328. 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).

The request for production requests documents pertaining to the guardianship case of *In the Matter of the Estate of: Rodney Edward Wilkinson*, Case No. 2020PR30016 filed in the District Court, Lincoln County, Colorado, which is narrowly tailored and specifically defined to obtain information relevant to the underlying issues in this litigation relating to Rodney's competency at the time of signing the Decree of Divorce and Tessie's knowledge.

Repeating the familiar phrase that each request is "vague, ambiguous, overly broad, unduly burdensome and oppressive, not relevant nor calculated to lead to the discovery of admissible evidence and, further, seeks material protected by the attorney/client work privilege and the work product doctrine" is insufficient. *Pleasants v. Allbaugh*, 2002 U.S. Dist. Lexis 8941 (D.D.C. 2002). The Courts have long held that such boilerplate objections are insufficient and improper. See *Pleasants v. Allbaugh*, 2002 U.S. Dist. Lexis 8941 (D.D.C. 2002), *Tucker v. Ohtsu*

Tire & Rubber Co., 191 F.R. D. 495 (D.Nev. 1997), and *Havas v. Bank of Nev.*, 96 Nev. 567, 613 P.2d 706 (1980) [Trial court did not abuse its discretion in striking the pleading of a party for his failure to answer (discovery) where party willfully failed to respond by giving incomplete or evasive answers]. Further pursuant to NRCP 34(a), in response to a request for documents, a party must produce documents, electronically stored information, or tangible things within the "responding party's possession, custody, or control. ***Control is to be broadly construed so that party may be obligated to produce documents requested even though party may not actually possess documents.*** *Poole v. Textron, Inc.*, 192 F.R.D. 494, 46 Fed. R. Serv. 3d (Callaghan) 572 (D. Md. 2000). [***As long as party has legal right or ability to obtain documents from another source on demand, that party is deemed to have "control."***]; *Am. Rock Salt Co. v. Norfolk S. Corp.*, 228 F.R.D. 426 (W.D.N.Y. 2005). [Actual possession is not key, rather it is practical ability to obtain records that governs request].

As noted above, in this case, given the nature of the above actions and Sheryl's role as the Guardian of the Ward Rodney Wilkinson, she is the only party that can obtain the requested documents, and must do so in accordance with applicable precedent.

Accordingly, please remove reference to the insufficient, improper and the evasive boilerplate objections and kindly provide documents responsive to request for production number 8, including the Petition for Appointment of Guardian, referenced in the Order Appoint Guardian for Adult, and any and all other documents filed in the *In the Matter of the Estate of: Rodney Edward Wilkinson*, Case No. 2020PR30016. As Ms. Atterberg has been appointment the co-guardian of Mr. Wilkinson, she has access, and the ability to obtain, all documents filed in the case. As such, any documents in Defendant's possession, custody, or control must be produced, or provide an explanation concerning the efforts to locate documents and what happened to the documents.

Thank you for your prompt attention to this matter. In the interim should you have any questions please do not hesitate to contact this office.

Sincerely,

/s/ Bradley J. Hofland

Bradley J. Hofland, Esq.

cc: Client

ROA000756

EXHIBIT “3”

Hofland &
Tomsheck

ATTORNEYS AND COUNSELORS AT LAW

BRADLEY J. HOFLAND
JOSEF TOMSHECK
MATTHEW D. MANNING (1970 - 2005)

May 18, 2021

Via E-Service

James Kwon, Esq.
JAMES KWON, LLC
6280 Spring Mountain Road, Suite 100
Las Vegas, Nevada 89146

Re: Tessie Almario vs. Sheryl Atterberg, on behalf of her adult ward
Rodney Wilkinson
Case No: D-19-596071-D

Dear Mr. Kwon:

This letter is in follow-up to our telephonic meet and confer conference on this date. During our meet and confer, the matters discussed are summarized as follows:

Defendant's Response to Request for Production No. 7: Defendant will supplement his response to the request and provide copies of the documents filed in the Kansas guardianship action in Defendant's possession, custody or control, which includes documents Defendant has access to through the court. If Defendant is unable to obtain said documents, Defendant will provide an explanation concerning the efforts that have been made to locate the documents. Defendant will provide the Case Number of the guardianship case filed in Kansas. Defendant will supplement his response on or before May 24, 2021.

Defendant's Response to Request for Production No. 8: Defendant will supplement his response to the request and provides copies of the documents filed in the Colorado guardianship action in Defendant's possession, custody or control, which includes documents Defendant has access to through the court. If Defendant is unable to obtain said documents, Defendant will provide an explanation concerning the efforts that have been made to locate the documents. Defendant will supplement his response on or before May 24, 2021.

Plaintiff's responses to Defendant's discovery requests (Request for Admissions, Interrogatories, Request for Production of Documents): Plaintiff will supplement her responses on or before May 24, 2021 in accordance with the Court's findings at the April 28, 2021 hearing that finances, assets and debts up to time of entry of the decree are relevant.

Order After Hearing of April 28, 2021: Ms. DeSousa will provide requested changes to the order. Mr. Kwon confirmed that the order has not been submitted to the Court.

Stipulation and Order for Expert Examination/Evaluation: Mr. Kwon confirmed he received the SAO and will review and provide Ms. DeSousa with any requested changes. If there are no changes Mr. Kwon will sign the SAO and forward to Ms. DeSousa for submission to the Court. The Examination is scheduled for May 24, 2021 and Ms. DeSousa advised Mr. Kwon that Plaintiff's expert has already made travel arrangements. As such, please sign the SAO provide requested changes by close of business on May 19, 2021.

Deposition of Defendant Rodney Wilkinson scheduled for May 19, 2021 at 10:00 a.m.: Ms. DeSousa indicated that the Colorado Guardianship order did not state that Mr. Wilkinson was incompetent and that it did not include the guardian managing Mr. Wilkinson's finances. Ms. DeSousa also indicated that the Court has not determined Mr. Wilkinson to be incompetent and that a witness is presumed to be competent to testify unless the contrary is established. Mr. Kwon indicated that Defendant's expert has found Mr. Wilkinson to have dementia and that he is incompetent. Mr. Kwon indicated that they filed an objection to Mr. Wilkinson's deposition and that Mr. Wilkinson would not be attending the deposition. Based on Mr. Kwon's assertion, Mr. Wilkinson's deposition has been taken off calendar.

HIPPA Releases: Ms. DeSousa advised Mr. Kwon that upon his request, the HIPPA releases are being revised and will be resent for the guardian's signature.

Subpoenas Duces Tecum pertaining to financial information (Eastern Colorado Bank, Norman R. Taylor, CPA, PC, US Bank, Chase Bank and Cornerstone Bank): Ms. DeSousa advised Mr. Kwon that Plaintiff's counsel and that counsel only became aware of the subpoenas being served through Cornerstone Bank's email requesting clarification. Ms. DeSousa advised Mr. Kwon, that the motion for protective order was denied without prejudice based on procedural error in Ms. DeSousa's Declaration in support of the motion and that a new declaration and request to reset hearing was filed on April 21, 2021. Ms. DeSousa also advised that on April 28, 2021, the Court ordered that financial records *only up* to the time of entry of the Decree are relevant. Mr. Kwon advised that the subpoenas were not

amended. However, upon review of the subpoena received by Cornerstone, the subpoena was amended with a new date for production and was not re-noticed or served upon Plaintiff's counsel. Ms. DeSousa also indicated that such conduct by Mr. Kwon is sanctionable.

Thank you for your prompt attention to this matter. In the interim should you have any questions please do not hesitate to contact this office.

Sincerely,

/s/ Dina DeSousa-Cabral

Dina DeSousa-Cabral, Esq.

cc: Client

ROA000760

EXHIBIT “4”

JAMES KWON, LLC

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

1 **SUPP**

JAMES W. KWON, ESQ.

2 Nevada Bar No. 8146

JAMES KWON, LLC

3 6280 Spring Mountain Rd., Suite 100

Las Vegas, Nevada 89146

4 P: (702) 515-1200

F: (702) 515-1201

5 jkwon@jwklawfirm.com

Attorney for Sheryl Atterberg,

6 *On behalf of her Adult Ward,*

Defendant, Rodney Wilkinson

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

TESSIE E. WILKINSON a/k/a TESSIE

10 ELMA ALMARIO,

Plaintiff,

11 vs.

12 RODNEY WILKINSON,

13 Defendant.

Case No.: D-19-596071-D

Dept.: U

14 **DEFENDANT RODNEY WILKINSON'S SUPPLEMENTAL RESPONSES TO**
15 **PLAINTIFF TESSIE ELMA ALMARIO'S FIRST SET OF REQUESTS FOR**
16 **PRODUCTION OF DOCUMENTS TO DEFENDANT RODNEY WILKINSON**

17 Pursuant to Rules 26 and 34 of the Nevada Rules of Civil Procedure, Sheryl
18 Atterberg, on behalf of her Adult Ward, Defendant, Rodney Wilkinson, by and
19 through her attorney of record, James W. Kwon, Esq., of the law firm James Kwon,
20 LLC, hereby responds and objects to *Plaintiff Tessie Elma Almario's First Set of*
Requests for Production of Documents to Defendant Rodney Wilkinson as follows:

GENERAL OBJECTIONS

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

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

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

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

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

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

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

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

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

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

19
20

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

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

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

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

12 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

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

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

18 Please provide complete pharmacy records related to all prescriptions
19 prescribed and/or provided to you (Rodney Wilkinson) from January 1, 2017
20 through the present. A sufficient response will include, but not be limited to: a) A

1 prescription history from each and every pharmacy utilized from January 1, 2017
2 through the present; and b) Any and all documents related to prescriptions in
3 Defendant Rodney Wilkinson's possession.

4 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

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

8 **REQUEST FOR PRODUCTION NO. 7:**

9 Please provide any and all documents, including without limitation, pleadings,
10 orders, motions, exhibits and supporting documents filed in, and pertaining to, the
11 conservatorship/guardianship case you and/or Rodney Wilkinson were/was involved
12 in the State of Kansas.

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

JAMES KWON, LLC


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

1 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

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

5 DATED this 24 day of May, 2021.

6 JAMES KWON, LLC

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, on behalf*
13 *of her Adult Ward, Defendant, Rodney*
14 *Wilkinson*

JAMES KWON, LLC

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of James Kwon, LLC,
and that on this 24 day of May, 2021, I caused the above and foregoing document
entitled *Defendant Rodney Wilkinson's Supplemental Responses to Plaintiff Tessie
Elma Almario's First 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 24 day of May, 2021.


An employee of James Kwon, LLC

EXHIBIT A

EXHIBIT A

PHARMACY RECORDS PRODUCED NOT
RELEVANT TO THE INSTANT MOTION –
WILL BE PROVIDED AT THE COURT’S
REQUEST.

EXHIBIT B

EXHIBIT B

ELECTRONICALLY FILED
2020 Oct 01 PM 4:13
CLERK OF THE SHERMAN COUNTY DISTRICT COURT
CASE NUMBER: 2020-PR-000012



Court: Sherman County District Court
Case Number: 2020-PR-000012
Case Title: In the Matter of the Estate of Rodney Wilkinson
Type: Order for Dismissal

SO ORDERED.

A handwritten signature in cursive script, reading "Scott Showalter". To the right of the signature is a circular official seal of the Sherman County District Court, featuring a star and the words "SHERMAN COUNTY DISTRICT COURT".

/s/ Honorable Scott Showalter, District Court Judge

Electronically signed on 2020-10-01 16:13:39 page 1 of 2

ROA000772

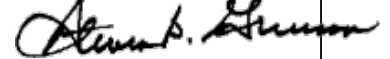
CASE NO. 2020-PR-12

www.ck12.org

THIS ORDER IS EFFECTIVE as of the date and time shown on the electronic file stamp.

ROA000773

EXHIBIT “C”



HOFLAND & TOMSHECK

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Attorney for Plaintiff, Tessie Elma Almario

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

TESSIE ELMA ALMARIO,

Plaintiff,

vs.

SHERYL ATTERBERG, ON
BEHALF OF HER WARD
RODNEY WILKINSON,

Defendant.

) CASE NO.: D-19-596071-D

) DEPT NO.: U

) [Before the Discovery Commissioner]

) **ORAL ARGUMENT REQUESTED**

) **PLAINTIFF'S REPLY TO**
) **DEFENDANT'S OPPOSITION TO**
) **PLAINTIFF'S NOTICE OF MOTION**
) **AND MOTION TO COMPEL**
) **DISCOVERY AND FOR**
) **ATTORNEY'S FEES AND**
) **OPPOSITION TO COUNTERMOTION**
) **FOR ATTORNEY'S FEES AND**
) **COSTS AND ALL OTHER RELATED**
) **RELIEF.**

) Date of Hearing: July 7, 2021

) Time of Hearing: 1:30 p.m.

)

Comes now, Plaintiff Tessie Elma Almario ("Tessie"), by and through her attorneys, Bradley J. Hofland, Esq. of HOFLAND & TOMSHECK, and hereby submits her REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY AND FOR ATTORNEY'S FEES AND OPPOSITION TO COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS AND ALL OTHER RELATED RELIEF and respectfully requests this Court to issue an Order:

1. Compelling Defendant Sheryl Atterberg, on behalf of her ward Rodney Wilkinson (“Defendant”) to provide complete and non-evasive responses and production of documents to Plaintiff’s First Set of Request for Production of Documents numbers 7 and 8 served upon her;
2. Finding Defendant’s filing captioned “DEFENDANT’S OPPOSITION TO PLAINTIFF’S NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY AND FOR ATTORNEY’S FEES AND COUNTERMOTION FOR ATTORNEY’S FEES AND COSTS AND ALL OTHER RELATED RELIEF” to be untimely, improper, and impermissible as a matter of Court Rule;
3. Finding Defendants “Countermotion” cannot be considered or decided by this Court as a matter of Court Rule;
4. Awarding Tessie attorney’s fees and costs; and
5. For any other relief this Court deems fair and appropriate.

This Reply is supported by the pleadings and papers on file, documents attached thereto, the Points and Authorities submitted herewith, the Declaration attached hereto and any further evidence and oral argument the Court may entertain at the hearing in this matter.

Dated this 6th day of July, 2021.

HOFLAND & TOMSHECK

By: /s/Bradley J. Hofland

Bradley J. Hofland, Esq.

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Las Vegas, Nevada 89101

Telephone: (702) 895-6760

Attorneys for Plaintiff, Tessie Elma Almario

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **Introduction**

4 As a threshold matter, the document filed by the Defendant is untimely, and
5 therefore improper and disallowed by local rule. See EDCR 5.502. By rule, a party
6 “may file and serve a written opposition, with or without a countermotion” within
7 14 days after service of the subject motion. In this case, Plaintiff filed this motion
8 on June 15, 2021 and service was made on the same date. Accordingly, if
9 Defendant was to file a “written opposition, with or without a countermotion”, it
10 necessarily had to be filed on or before June 29, 2021. No such opposition was
11 filed during the allowable window provided by Court Rule.

12 Instead, Defendant filed a fugitive document on June 30, 2021. Because an
13 opposition was *not* timely filed pursuant to EDCR 5.502, this Court may construe
14 the failure to file a timely opposition as “an admission that the motion is
15 meritorious and a consent that it be granted.” EDCR 5.503(b). Additionally,
16 EDCR 5.502(d) also provides that *only* “[a] *timely* countermotion will be heard and
17 decided at the same time set for the hearing of the original motion.” Thus, being
18 untimely filed, Defendant’s “countermotion” is not properly before this Court and
19 likewise cannot be considered or decided as a matter of rule.

20 Lastly, Defendant endeavors to evade accountability by ignoring the facts
21 (and Defendant’s irrefutable failure to provide the requested discovery) by
22 launching a lengthy, and highly immaterial, narrative that serves no purpose other
23 than to confuse and deflect. There is no merit to Defendant’s opposition (even if it
24 were timely—which it is not), and Plaintiff is clearly entitled to the requested relief.

25 **II.**

26 **Statement of Facts**

27 Defendant needlessly, and shamelessly, endeavors to confuse this Court, by
28 addressing the peripheral, the irrelevant, and compounds Defendant’s bad faith with

1 a lack of candor. For example, though irrelevant for purposes of this motion,
2 Defendant falsely represents that on February 4, 2021, the Court ruled Discovery to
3 close on June 16, 2021. Review of both the Court minutes and the corresponding
4 order prepared by Defendant confirms the Court *never* addressed or determined
5 when discovery was to close. The record confirms the discovery cutoff-date was
6 not provided counsel until February 10, 2021. Whether an intentional violation of
7 the duty of candor owed this Court, or simply gross carelessness, counsel's
8 argument is clearly not restrained by truth or accuracy.

9 Continuing, Defendant also grossly misstates the facts and circumstances
10 surrounding Plaintiff's motion for Expert Examination of Rodney. First, Defendant
11 conceals the fact that Defendant *failed to file* an opposition to Plaintiff's motion for
12 Expert Examination of Rodney. Second, while Plaintiff represents he did not
13 oppose Plaintiff's motion, the record confirms that on May 18, 2021, Defendant
14 actually filed a motion for a protective order precluding Plaintiff from taking
15 Defendant's deposition. Lastly, Defendant's representation that the Court, on April
16 28, 2021, resolved Plaintiff's objections to all five Subpoenas Duces Tecum and
17 permitted Rodney to send them out is contradicted by the record itself and
18 Rodney's actions—or better characterized—Rodney's inactions.

19 Indeed, Defendant failed to prepare an Order from the April 28, 2021
20 hearing, the court minutes refute Defendant's claims, and most importantly, Rodney
21 *never* sent any of the five subpoenas that were objected to¹. It is telling that
22 Defendant concedes the initial HIPAA releases he prepared and sought to utilize
23 were "entirely too broad for the purpose of this litigation", and for purposes of this
24 motion, irrelevant.

27 ¹ Those subpoena duces tecums that were objected to were to (1) Cornerstone Bank;
28 (2) Eastern Colorado Bank; (3) Norman R. Taylor, CPA; (4) U.S. Bank; and (5)
Chase Bank.

1 Continuing, Defendant's discussion of Plaintiff's discovery is meaningless.
2 Defendant has never claimed a discovery dispute, has not sought a meet and confer,
3 and while Defendant's narrative is grossly misleading, inaccurate, and speculative,
4 again, for purposes of this motion, such discussion is irrelevant. In fact, Defendant
5 does not even broach the subject of this motion until page 5 of his fugitive filing,
6 which consisted of nothing more than four (4) sentences of the final paragraph of
7 Defendant's "Statement of Facts"².

8 In short, the Defendant's "Statement of Facts" is nothing more than a
9 gallimaufry of irrelevant, inaccurate, and immaterial misstatements and
10 mischaracterizations. The dispositive facts have been detailed by Plaintiff in her
11 underlying motion, and for the sake of brevity, are incorporated herein by reference.

12 Review of Defendant's fugitive filing confirms the *only* statement made by
13 the Defendant and found in the purported "opposition", that actually pertains to the
14 motion was simply Defendant's singular, response (albeit false) that "Defendant
15 produced any and all documentation in Defendant's and/or Sheryl Atterberg's
16 reasonable possession, custody and control that were, in fact, responsive to the
17 Requests for Production No. 7 and No. 8 to Tessie's First Set of Requests for
18 Production of Documents."³

19 As detailed *infra*, Defendant's statement is patently false and sanctionable. It
20 is irrefutable that Defendant (Sheryl Atterberg) initiated/commenced the litigation
21 in the two matters in which discovery was sought....and thus obviously in
22 possession and control of all associated documents filed in connection with those
23 cases. Notwithstanding, Defendant produced just eight (8) pages from the
24 conservatorship/guardianship case (which she initiated and litigated) and *no*
25 documents from the conservatorship/guardianship case in the State of Kansas
26 (again which she initiated and litigated). Defendant is clearly being disingenuous

27
28 ² See Defendant's fugitive filing, page 5 of 14, lines 21-23, page 6 of 14, lines 1-2.

³ *Id.*

1 and dishonest with this Court, must be ordered to produce all documents associated
2 with said litigation (which she filed and/or received) and be sanctioned for her
3 brazen noncompliance.

4 **III.**
5 **Legal Analysis.**

6 **A. Motion to Compel**

7 Notably, the Defendant does not dispute or challenge the legal authority
8 provided by Plaintiff (Tessie), and thus, for the sake of brevity, such authority is
9 incorporated by reference. However, Defendant's claim any and all
10 documentation has already been produced defies reason, the evidence, and is
11 patently false.

12 First and foremost, the two requests for production of documents pertain to
13 two prior litigations that ***Defendant*** initiated, one in Kansas and one in Colorado.
14 Plaintiff (Tessie) was unaware of these actions and not a party—but the same issue
15 in those cases is the issue presently before this Court, to wit: Defendant's
16 competency. Plaintiff is simply requesting all documents that Defendant prepared
17 and filed with the respective Courts, all documents that ***were received by***
18 ***Defendant*** in connection of those cases, including all orders, dispositions, and
19 directives. As noted above, Defendant chose to provide only eight (8) documents
20 from Defendant's Colorado action and provided NO documents from the
conservatorship/guardianship case Defendant commenced in the State of Kansas.

21 Defendant commenced the above cases; Defendant certainly has the
22 documents prepared in connection with said litigation and those received. For
23 Defendant to argue she produced everything in her "reasonable possession"—and
24 curtly telling Plaintiff to get them from the respective Courts is not only absurd, it
is offensive, nonresponsive and sanctionable.

25 There is no question the requests for production of the documents are
26 reasonable and which Defendant must provide. Any suggestion that Defendant
27 somehow doesn't have any documents associated with those cases is disingenuous
28 and such an evasive tactic must not be permitted from recalcitrant litigants. On that

1 note, *it is significant to note that Defendant also previously litigated Defendant's*
2 *competency in North Dakota, where Defendant was expressly found to be*
3 *competent during the same time period at issue in the instant matter.*

4 In that case, Defendant was found to be competent and as a result Defendant
5 is collaterally estopped from picking a different adversary and relitigating that very
6 issue. Of course, *Defendant disregarded the bar, concealed that fact from*
7 *opposing counsel and the Court*, and maintains such lack of candor and
8 evasiveness when responding to Plaintiff's requests for production.

9 Frankly, Defendant has, or can readily obtain, the documents requested.
10 Instead, the following evasive and nonresponsive responses are given, along with
11 Defendant telling Plaintiff to get the requested documents from the respective
12 courts herself. Such a position is inexcusable.

12 **REQUEST FOR PRODUCTION NO. 7:**

13 Please provide any and all documents, including without limitation,
14 pleadings, orders, motions, exhibits and supporting documents filed in,
15 and pertaining to, the conservatorship/guardianship case you and/or
16 Rodney Wilkinson were/was involved in the State of Kansas.

17 **RESPONSE REQUEST FOR PRODUCTION NO. 7:**

18 Objection. Defendant objects to this Request as vague, ambiguous,
19 overbroad, and unduly burdensome on its face due to its use of "any
20 and all," "without limitation," and "pertaining to" in order to identify a
21 broad range of documents. Defendant further objects to this Request as
22 vague and ambiguous as to the terms "supporting" and "involved in."
23 Defendant further objects to this Request as vague and ambiguous as
24 to providing a timeframe for which "you and/or Rodney Wilkinson
25 were/was involved in the State of Kansas." Defendant further objects
26 to this Request as the documents sought in this Request for Production
27 are publicly available and are more appropriately collected from
28 sources other than Defendant. Defendant further objects to this

1 Request as it is intended to be an unwarranted annoyance, is
2 oppressive and is intended to harass Defendant as it seeks
3 documentation that is publicly available and easily obtained by
4 Plaintiff. Without waiving said objections, Plaintiff responds as
5 follows:

6 Defendant has no responsive documents in its possession, custody, or
7 control. Discovery is ongoing and Defendant will supplement this
8 response if and when additional documentation becomes available in
9 accordance with Nev.R.Civ.P. Rule 26(e).

10 **SUPPLEMENTAL RESPONSE TO REQUEST FOR**
11 **PRODUCTION NO. 7:**

12 Please see Exhibit B. Discovery is ongoing and Defendant will
13 supplement this response if and when additional documentation
14 becomes available in accordance with Nev.R.Civ.P. Rule 26e.

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

16 Please provide any and all documents, including without limitation,
17 pleadings, orders, motions, exhibits and supporting documents filed in,
18 and pertaining to, the conservatorship/guardianship case *In the Matter*
19 *of the Estate of: Rodney Edward Wilkinson*, Case No. 2020PR30016
20 filed in the District Court, Lincoln County, Colorado.

21 **RESPONSE REQUEST FOR PRODUCTION NO. 8:**

22 Objection. Defendant objects to this Request as vague, ambiguous,
23 overbroad, and unduly burdensome on its face due to its use of "any
24 and all," "without limitation," and "pertaining to" in order to identify a
25 broad range of documents. Defendant further objects to this Request as
26 vague and ambiguous as to the terms "supporting" and "pertaining to."
27 Defendant further objects to this Request as vague and ambiguous as
28 to providing a timeframe for the documents requested, thereby making

1 this Request overbroad and unduly burdensome in scope. Defendant
2 further objects to this Request as the documents sought in this Request
3 for Production are publicly available and are more appropriately
4 collected from sources other than Defendant. Defendant further objects
5 to this Request as it is intended to be an unwarranted annoyance, is
6 oppressive and is intended to harass Defendant as it seeks
7 documentation that is publicly available and easily obtained by
8 Plaintiff. Without waiving said objections, Plaintiff responds as
9 follows:

10 Defendant has no responsive documents in its possession, custody, or
11 control, other than those that have already been produced to Plaintiff.
12 Please refer to *Defendant's Initial NRCP 16.2 Disclosure*, served on
13 April 15, 2021, specifically WILK000321 through WILK000328.
14 Discovery is ongoing and Defendant will supplement this response if
15 and when additional documentation becomes available in accordance
16 with Nev.R.Civ.P. Rule 26(e).

17 No supplemental responses were provided to Request for Production of
18 Documents No. 8.

19 In this case, given the nature of the above actions and Sheryl's role as the
20 Guardian of the Ward Rodney Wilkinson, she is the *only* party that can obtain the
21 requested documents⁴, and must do so in accordance with applicable precedent.

23 ⁴ The Clerk of Court in Colorado advised Plaintiff that Defendant's Guardianship
24 file is "very large" and that many of the documents are "protected", including the
25 petition/application, and *cannot* be obtained by third parties. The clerk also
26 advised counsel that the unprotected documents could be obtained through
27 cocourts.com (Colorado Courts Record Search). Counsel attempted to obtain the
28 court docket for the guardianship case through cocourts.com and was unable to
locate the guardianship/conservatorship case.

Additionally, Tessie's counsel searched the Kansas District Court Public
Access Portal for the In the Matter of the Estate of Rodney Wilkinson, 2020-PR-12,

1 Ms. Atterberg has been appointment the co-guardian of Mr. Wilkinson, she has
2 access, and the ability to obtain, all documents filed in both cases.

3 As previously noted, and as well known by this Court, a party cannot avoid
4 answering because some information is no longer available and, indeed, must use
5 reasonable efforts to obtain responsive information. *Olivarez v. Rebel Oil*
6 *Company, et al.*, Discovery Commissioner Opinion #11 (April 2003). Further,
7 pursuant to NRCP 34(a), in response to a request for documents, a party must
8 produce documents, electronically stored information, or tangible things within the
9 "responding party's possession, custody, or control. ***Control is to be broadly***
10 ***construed so that party may be obligated to produce documents requested even***
11 ***though party may not actually possess documents.*** *Poole v. Textron, Inc.*, 192
12 F.R.D. 494, 46 Fed. R. Serv. 3d (Callaghan) 572 (D. Md. 2000). [***As long as party***
13 ***has legal right or ability to obtain documents from another source on demand,***
14 ***that party is deemed to have “control.”***]; *Am. Rock Salt Co. v. Norfolk S. Corp.*,
15 228 F.R.D. 426 (W.D.N.Y. 2005). [Actual possession is not key, rather it is
16 practical ability to obtain records that governs request].

17 Here, the Defendant is the only party that has the ability to comply with the
18 discovery requests⁵, but instead, Defendant has repeatedly obstructed the discovery
19 process. Defendant stonewalled the discovery process and continues to do so. *See*
20 *Havas v. Bank of Nev.*, 96 Nev. 567, 613 P.2d 706 (1980) [Trial court did not
21 abuse its discretion in striking the pleading of a party for his failure to answer
22 interrogatories where party willfully failed to respond by giving incomplete or
23 evasive answers].

24 and in Sherman County, Kansas, and learned the documents were not available and
25 presumed to be sealed or private.

26 ⁵ It is telling that Defendant's "Defense" is "questioning" Plaintiff's efforts to
27 obtain the documents herself despite Defendant's noncompliance and continued
28 refusal to provide the requested documents. The fact remains Defendant is legally
obligated to provide such documents and Defendant's argument/defense is legally
unsustainable.

1 It is incumbent that Defendant be compelled to provide the requested
2 documents and adequately and properly respond to the discovery that has been
3 propounded upon him in order to ensure justice is reached.

4 Even if Defendant believes such evasiveness is acceptable with a warped
5 (and undisclosed) characterization of what constitutes “possession”, Defendant is
6 required to produce documents in their “possession, custody, or control” and not
7 merely documents in their possession. Indeed, "A party must make
8 a reasonable inquiry to determine whether responsive documents exist, and if they
9 do not, the party should so state with sufficient specificity to allow the Court to
10 determine whether the party made a reasonable inquiry and exercised due
11 diligence." *See Perkins v. City of Modesto*, 2020 U.S. Dist. LEXIS 50028 citing
12 *Rogers v. Giurbino*, 288 F.R.D. 469 (2012).

13 As this Court knows, courts have not shielded publicly available documents
14 from discovery merely because of their accessibility, and in this case, Defendant’s
15 purported “public” documents are not—nor are they available to Plaintiff (or the
16 public), but they are certainly available to Defendant since he commenced the
17 actions and is the named party therein.

18 **B. Tessie is entitled to an award of attorney fees and costs**

19 NRCP 37(a)(5)(A) provides:

20 **(A) If the Motion Is Granted (or Disclosure or Discovery Is**
21 **Provided After Filing).** If the motion is granted — or if the
22 disclosure or requested discovery is provided after the motion was
23 filed — the court must, after giving an opportunity to be heard, require
24 the party or deponent whose conduct necessitated the motion, the party
or attorney advising that conduct, or both to pay the movant’s
reasonable expenses incurred in making the motion, including attorney
fees. But the court must not order this payment if:

25 (i) the movant filed the motion before attempting in good faith to
obtain the disclosure or discovery without court action;

26 (ii) the opposing party’s nondisclosure, response, or objection was
substantially justified; or

27 (iii) other circumstances make an award of expenses unjust.
28

1 It has now been discovered that Defendant has initiated three separate cases,
2 in three separate states, pertaining to Defendant's competency—and the instant
3 action makes case number 4. Notably, Defendant ignored and concealed the fact
4 Defendant has been found competent and denied his requested relief from this
5 Court.

6 Defendant obviously has (or can readily obtain) all documents associated
7 with those cases—but refuses to do so. It is respectfully submitted that such
8 discovery misconduct is attributable to the fact that those documents that are not
9 being provided are likewise damning to Defendant and fatal to the relief he was
10 hoping to obtain by *relitigating* the issue of his competency.

11 Defendant's bad faith and misconduct must not be rewarded. Defendant
12 should be directed to reimburse Plaintiff for the fees and costs she has incurred
13 addressing Defendant's discovery misconduct.

14 Here, Defendant obstructed the discovery process by providing boilerplate
15 objections, evasive and nonresponsive responses and only eight pages of
16 documents, and stonewalled the discovery process. See *Havas v. Bank of Nev.*, 96
17 Nev. 567, 613 P.2d 706 (1980) [Trial court did not abuse its discretion in striking
18 the pleading of a party for his failure to answer interrogatories where party
19 willfully failed to respond by giving incomplete or evasive answers].

20 Accordingly, because Defendant provided boilerplate objections, evasive
21 and nonresponsive responses and produced only eight pages from the
22 conservatorship/guardianship case in the Colorado case, Case No. 2020PR30016
23 and only two pages from the conservatorship/guardianship case in the Kansas case,
24 Case No. 202-PR-1, Tessie respectfully requests an Order be entered compelling
25 Defendant to supplement his responses and documents and award appropriate
26 sanctions and attorney fees and costs associated with this motion in the sum of
27 \$3,500.00.

28 In closing, the insufficiency of Defendant's "opposition" is further illustrated
by the fact Defendant remains nonresponsive and evasive throughout and spends

1 considerably more effort and attention towards an infirm request for attorney's fees
2 (which not only lacks factual support, it is disallowed as a matter of court rule).

3 **IV.**

4 **Conclusion**

5 Based upon the foregoing, in light of Defendant's brazen discovery
6 misconduct and corresponding bad faith, Tessie reasonably requests an order is
7 issued:

- 8 1. Compelling Defendant Sheryl Atterberg, on behalf of her ward Rodney
9 Wilkinson ("Defendant") to provide complete and non-evasive responses
10 and production of documents to Plaintiff's First Set of Request for
11 Production of Documents numbers 7 and 8 served upon her;
- 12 2. Finding Defendant's filing captioned "DEFENDANT'S OPPOSITION
13 TO PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL
14 DISCOVERY AND FOR ATTORNEY'S FEES AND
15 COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS AND
16 ALL OTHER RELATED RELIEF" to be untimely, improper, and
17 impermissible as a matter of Court Rule;
- 18 3. Finding Defendants "Countermotion" cannot be considered or decided by
19 this Court as a matter of Court Rule;
- 20 4. Awarding Tessie attorney's fees and costs; and
- 21 5. For any other relief this Court deems fair and appropriate.

22 Dated this 6th day of July, 2021.

23 **HOFLAND & TOMSHECK**

24 By: /s/Bradley J. Hofland

25 Bradley J. Hofland, Esq.

26 Nevada Bar No. 6343

27 228 South 4th Street, 1st Floor

28 Las Vegas, Nevada 89101

Telephone: (702) 895-6760

Attorney for Plaintiff, Tessie Elma Almario

1 **DECLARATION OF BRADLEY J. HOFLAND, ESQ.**

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

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

5 2. That my prior Declaration is incorporated herein by reference.

6 3. That I have read the document filed by the Defendant captioned
7 “DEFENDANT’S OPPOSITION TO PLAINTIFF’S NOTICE OF MOTION AND
8 MOTION TO COMPEL DISCOVERY AND FOR ATTORNEY’S FEES AND
9 COUNTERMOTION FOR ATTORNEY’S FEES AND COSTS AND ALL
10 OTHER RELATED RELIEF” and being untimely, cannot be considered as a
11 matter of Court Rule.

12 4. That I have read the above “PLAINTIFF’S REPLY TO
13 DEFENDANT’S OPPOSITION TO PLAINTIFF’S NOTICE OF MOTION AND
14 MOTION TO COMPEL DISCOVERY AND FOR ATTORNEY’S FEES AND
15 OPPOSITION TO COUNTERMOTION FOR ATTORNEY’S FEES AND
16 COSTS AND ALL OTHER RELATED RELIEF” and the factual averments it
17 contains are true and correct to the best of my knowledge, except as to those
18 matters based upon information and belief, and as to those matters, I believe them
19 to be true. Those factual averments contained in the foregoing Reply are
20 incorporated herein as if set forth in full.

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

23 DATED this 6th day of July, 2021.

24
25 /s/ Bradley J. Hofland
26 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 NRCP 5(b), on the 6th day of July, 2021, I served the forgoing **PLAINTIFF’S REPLY TO DEFENDANT’S OPPOSITION TO PLAINTIFF’S NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY AND FOR ATTORNEY’S FEES AND OPPOSITION TO COUNTERMOTION FOR ATTORNEY’S FEES AND COSTS AND ALL OTHER 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

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Location : [Family Courts](#) [Images Help](#)

R. GISTER OF ACTIONS

[CASE No. D-19-596071-D](#)

Tessie E Wilkinson, Plaintiff vs. Rodney Wilkinson, Defendant.

§
§
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§

Case Type: **Divorce - Complaint**
Subtype: **Complaint No Minor(s)**
Date Filed: **09/09/2019**
Location: **Department U**
Cross-Reference Case Number: **D596071**

PARTY INFORMATION

Defendant **Wilkinson, Rodney**
613 Eagle Drive Apt 36
Newton, ND 58763

Lead Attorneys
James W. Kwon
Retained
702-515-1200(W)

Plaintiff **Wilkinson, Tessie E *Now Known***
As Almario, Tessie Elma
8382 Hollywood Hills Ave
Las Vegas, NV 89178

Bradley J. Hofland
Retained
702-895-6760(W)

EVENTS ☐ ORDERS OF THE COURT

07/07/2021 [All Pending Motions](#) (11:00 AM) (Judicial Officer Throne, Dawn R.)

Minutes

07/07/2021 11:00 AM

- CALENDAR CALL... MOTION: PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT AND RELATED RELIEF. BlueJeans/video hearing. Discussion regarding discovery issues, Tribal Court proceedings, guardianship, assets, and financial related matters. Mr. Hofland's oral request for CASE STAYED for a WRIT to be entered. Upon Court's inquiry, Mr. Kwon represented that his client's desired a full accounting however, those attempts were blocked. Therefore, nothing was touched, sold, or transferred. Furthermore, there was a realtor involved in mid-early February in Kansas property (farm) when an inventory was attempted. Upon Court's inquiry (regarding the tribal Court), Mr. Hofland represented that Plaintiff did not take possession of the drill and/or equipment. COURT STATED ITS FINDINGS. The Court stated that Mr. Kwon shall go first at trial and therefore, COURT ORDERED, as follows: MOTION for SUMMARY JUDGEMENT (MSJ) is DENIED. Request for CASE STAYED is DENIED. JOINT PRELIMINARY INJUNCTION (JPI) ISSUED. Plaintiff shall not sell the property in Kansas (farm) and/or the property here. LIS PENDENS ENTERED. Defendant may file LIS PENDENS and RECORD it here and in Kansas. Non-Jury Trial SET 7-16-21 VACATED and RESET 11-12-21 at 9:00 a.m. Mr. Kwon shall prepare the Order from today's hearing and Mr. Hofland shall countersign.

[Parties Present](#)

[Return to Register of Actions](#)

ROA000790

1 TRANS

2
3 COPY

4 EIGHTH JUDICIAL DISTRICT COURT

5 FAMILY DIVISION

6 CLARK COUNTY, NEVADA

7 TESSIE E. WILKINSON,) CASE NO. D-19-596071-D
8 Plaintiff,) DEPT. U
9 vs.)
10 RODNEY WILKINSON,)
11 Defendant.)

12
13 BEFORE THE HONORABLE DAWN R. THRONE

14 TRANSCRIPT RE: ALL PENDING MOTIONS

15 WEDNESDAY, JULY 07, 2021

16 APPEARANCES:

17 Plaintiff: TESSIE E. WILKINSON
18 For Plaintiff: BRADLEY J. HOFLAND, ESQ.
228 S. Fourth St., Ste. 100
19 Las Vegas, Nevada 89101

20 Defendant: RODNEY WILKINSON (Not present)
21 For Defendant: JAMES W. KWON, ESQ.
6280 W. Spring Mountain Rd., #110
22 Las Vegas, Nevada 89146

23 Guardian of
24 Person and Estate: SHERYL ATTERBERG
For Guardian of
25 Person and Estate: JAMES W. KWON, ESQ.
6280 W. Spring Mountain Rd., #110
Las Vegas, Nevada 89146

1 LAS VEGAS, NEVADA

WEDNESDAY, JULY 07, 2021

2

PROCEEDINGS

3

(THE PROCEEDING BEGAN AT 11:25:55.)

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THE CLERK: We are on the record, Your Honor.

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THE COURT: Good morning. This is the time set for case

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D-19-596071-D.

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If we could have counsel make their appearances,

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please.

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MR. HOFLAND: Good morning, Your Honor. Brad Hofland,

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bar number 6343. And I represent Tessie Wilkinson, who's

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present along side of me in my office.

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MR. KWON: Good morning, Your Honor. James Kwon, bar

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number 8146, on behalf of Sheryl Atterberg, on behalf of the

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adult ward defendant, Rodney Wilkinson.

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THE COURT: All right. I apologize for the delay in

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getting back. Once we went to the break-out room, we

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couldn't get back in here. I wanted to take care of the

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other two because those were quick compared to this case.

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So I've read everything on the motion for summary

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judgment. And I find as follows. I'm not sure that the

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competency was fully litigated in the tribal court case

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because it was used as a defense to the enforcement of the

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contracts.

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Also even it was, it does not resolve the issues of

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the wife's fiduciary duty to her husband in this case, the

1 allegations of fraud on him and or undue influence. Because
2 of their marital relationship, their relationship is very
3 different than the relationship between Mr. Wilkinson and the
4 defendant in the tribal court on their contracts.

5 So the Court is going to deny the motion for
6 summary judgement at this time.

7 We're scheduled for a full day trial next Friday
8 the 16th. And you're first up. And I hate to -- I'd hate to
9 move it. But it looks like you guys might not be done with
10 discovery.

11 MR. HOFLAND: Your Honor, this is Brad Hofland. I --
12 and I -- the issue that's before the Court regarding the
13 summary judgment on the -- the issues which were briefed, we
14 believe that it's an important issue; and we'd like to writ
15 the issue with all consideration.

16 We just request a stay so we can do so because we
17 don't want to go through a trial, which we believe would be
18 unnecessary if the court of appeals or the supreme court
19 agrees with us.

20 So could we have that ability to do so, Judge?

21 THE COURT: I -- I wouldn't grant to a stay of this case
22 for a writ unless your client can put up a bond. The issue
23 is the assets are -- are moving. If I make any determination
24 in Mr. Wilkinson's favor and those assets are gone because
25 your client consumed them all, except for the house she's

1 living in apparently, then we got a bigger problem.

2 So I can't -- I don't think a stay is appropriate.
3 But it looks like, I mean, you guys have another hearing with
4 the discovery commissioner today; right?

5 MR. HOFLAND: That is correct.

6 MR. KWON: That's correct, Your Honor.

7 MR. HOFLAND: And, Your Honor, regarding the stay -- I
8 mean, regarding the assets, that was one of the things that
9 was litigated before the tribal court. Those are some of the
10 -- the items which you -- which were awarded to my client in
11 the decree.

12 So I mean, the concern that the Court would have,
13 those assets, I think the majority of those assets, have
14 already been -- have been liquidated by Rodney, himself.

15 THE COURT: Well, no, he hasn't liquidated those. I
16 don't think. I don't think he...

17 Mr. Kwon, did your clients, were they able to pick
18 up -- pick up the drill? (Indiscernible)...

19 MR. KWON: No, Your -- Your Hon- Your Honor, just to be
20 very clear. My understanding is that my clients had early
21 on, once this Court made a favorable ruling on setting the
22 evidentiary hearing, attempted to reach out to, I guess, a
23 property, the realtor there that was kind of in charge of the
24 -- the -- the property and various assets. Then apparently
25 Ms. Tessie Almario also got involved.

1 Because we want to do a full accounting. And we
2 were blocked to do anything, let alone touch the -- the
3 assets. So as far as my -- I'm aware, my discussions with my
4 client's representatives, nothing was, you know, sold or
5 transferred or anything.

6 We just wanted to take inventory to take a snapshot
7 to do the -- to do the financial disclosure on her. And we
8 got a lot of push back and we were not able to accomplish any
9 of that. Thank you.

10 THE COURT: Well, I mean, the Court can issue in essence
11 a joint preliminary injunction in this case. She shouldn't
12 be trying to sell the Kansas farm or her house here. We can
13 put a lis pendens on those. Those things should not be sold.

14 But the issues in the tribal court are as to
15 property, the drill and stuff that he was -- said he could
16 pick up if he paid the storage fees and the damages that were
17 awarded to the defendant. It's -- those are the assets that
18 were also awarded in the decree to the plaintiff. The drill
19 was awarded to her. Everything was awarded to her and all
20 the debt.

21 I mean, you can't even justify the division of
22 these assets the -- and debts the way they were, Mr. Hofland.
23 There's no -- there's no way you can justify that she gets
24 all the assets and he gets all the debts from the assets she
25 kept. I mean, there's no theory that that could be

1 justified.

2 Obviously, the debts go with the assets. No court
3 would award her the -- the property in Kansas, but he has to
4 pay the debt on it. And then there's debts on other things.

5 So did she pay -- did she pay the -- that defendant
6 in tribal court the storage fees and take possession of the
7 drill and...

8 MR. HOF LAND: No, Your Honor.

9 THE COURT: ...other equipment?

10 MR. HOF LAND: No. There -- there's no other debts
11 associated that -- that I am aware of. I mean, there's -- I
12 think the house is paid off in Kansas. I believe the
13 equipment is as well. I believe that there are some debts
14 that Rodney entered into. Regards to some items, I don't
15 know what those are. But...

16 THE COURT: Well...

17 MR. HOF LAND: ...we didn't learn of this litigation
18 until, Your Honor, the last day when discovery closed.
19 That's when we learned of the underlying litigation. As the
20 Court's aware on this, that there's a pending motion before
21 the Court regarding getting information regarding the
22 underlying guardianship, which was issued, and their attempts
23 to issue a guardianship in Kansas during 2020.

24 THE COURT: Okay.

25 MR. HOF LAND: So we've been -- and you saw the responses

1 to the discovery, as well, is that we've been -- our hands
2 were behind -- tied behind our back. We've been asking these
3 questions. We -- we've been stonewalled throughout the
4 litigation.

5 But I guess going back to the -- the -- what we're
6 requesting the Court -- the relief from the Court is the
7 issuance of the joint preliminary injunction (indiscernible)
8 by the Court is going to take care of all the concerns
9 regarding of the issuance of a stay at this time for us to
10 writ to address this issue.

11 THE COURT: Well, is your client in the process of
12 trying to sell the real estate in Kansas?

13 MR. HOFLAND: No.

14 THE COURT: Then why is there a realtor there involved,
15 Mr. Kwon?

16 MR. HOFLAND: There -- there's no -- I don't know why
17 there's a realtor there. Is there a realtor?

18 MS. WILKINSON: No, it's way before this started.

19 MR. HOFLAND: Oh it -- the realtor is before this action
20 started, Your Honor. But there's...

21 MR. KWON: Your -- Your Honor...

22 MR. HOFLAND: ...(indiscernible) there's not much...

23 MR. KWON: Your Honor, if I may.

24 THE COURT: Go ahead, Mister...

25 MR. KWON: Your Honor, if I may, my understanding was,

1 you know, our clients, after our early February hearing where
2 this Court had decided that an evidentiary hearing would be
3 appropriate, our clients attempted to kind of do an inventory
4 at the Kansas property. And they were told that the realtor
5 was in charge. I forget the gentleman's name.

6 And that realtor, they had a fiduciary duty to
7 contact Ms. Tessie, the plaintiff. So as far as we know, the
8 realtor was involved in the mid, early February time period.
9 As to his involvement now, I don't know.

10 As to his involvement of whether or not they're
11 actively trying to sell the property, I'm not -- I'm -- I
12 don't -- I don't have reason to believe one way or the other,
13 Your Honor, just to be very forthright with you, with the
14 Court. Thank you.

15 THE COURT: Well, because obviously the title wasn't
16 transferred to the plaintiff in a normal course. He didn't
17 sign a deed, right? Mr. Wilkinson didn't sign a deed. She
18 used the decree of divorce to record that and get the title
19 in her name only, right?

20 MR. KWON: That's my understanding, Your Honor. You are
21 correct.

22 THE COURT: So the best thing to do would be for the
23 defendant to file a lis pendens in this case and record it
24 here and record it in Kansas so that she cannot sell it.

25 I'm ordering her not to sell the property in Kansas

1 or here without approval of the Court. But I -- I don't know
2 what to do with regard to the discovery issues in this case.
3 My preference, because trials are set so far out, especially
4 a full day, would be for you guys to go forward next Friday.

5 But if you're both gonna tell me that there's still
6 discovery out there, it makes sense to me that the guardians
7 may not have all of the financial records of Mr. Wilkinson
8 available to them.

9 I don't know if your client does even, Mr. Hofland.
10 I don't know to the -- based on the -- the -- the factual
11 statements in there, I don't know if they filed joint returns
12 even for all of those years of their marriage and whether
13 your client would have access, Mr. Hofland.

14 MR. HOFLAND: The issue before the discovery
15 commissioner is the underlying copies of the -- the
16 guardianship that was filed in --- in Colorado and their
17 attempts to obtain a guardianship, any documents related to
18 that, the Colorado guardianship and the Kansas guardianship,
19 Your Honor. It's not in regards to getting other documents
20 regarding assets or anything else.

21 THE COURT: Okay. Because I was...

22 MR. HOFLAND: The only issue is these.

23 THE COURT: I was looking at what you provided in your
24 motion for summary judgment was some issues regarding
25 responses to discovery.

1 MR. HOF LAND: And then it was just a showing of, you
2 know, how they're treating the case. There has not been a
3 motion on those issues.

4 THE COURT: Okay.

5 MR. KWON: Your Honor, if I may make a comment on that.

6 THE COURT: Go ahead. Sure. I don't want you to get
7 sidetracked on discovery disputes which will be thoroughly
8 heard later on this afternoon.

9 But, you know, just to be very clear on that, you
10 know, this Court made it clear when the dates were. The date
11 would be back in early February on the evidentiary hearing to
12 be set on July 16th. You know, we started discovery
13 immediately. Just understanding that the timeline that it
14 took to -- to -- to get the requisite documents, given the
15 factual situation of Mr. Wilkinson, as well as Tessie
16 Almario.

17 So they could've easily filed and requested an out-
18 of-state subpoena, you know, early on and not later on, which
19 would have avoided this last-minute, at least from our
20 position, delay, Your Honor. We can only give what we have.
21 And that's it.

22 It's not my -- you know, I represent directly Mr.
23 Rodney Wilkinson. It's because he's a ward of the state.
24 You know, it's not the typical case where you would -- he
25 would have records, Your Honor. And that's kind of part of

1 difficulty on our side in which we did our best to convey to
2 opposing counsel and -- and that's why we're gonna need to
3 hear from the discovery commissioner on -- on -- on the
4 respective ruling.

5 But I -- I just wanted to make that comment because
6 it wasn't like we were trying to make any delays, Your Honor.
7 Just and that's all.

8 THE COURT: Well, I -- I guess I'm confused as to the
9 discovery dispute. I haven't read the discovery motions.
10 But it would seem that it would be very relevant for the
11 plaintiff to receive the documents that were filed in support
12 of this guardianship in Colorado, as well as, any documents
13 filed in -- in Kansas trying to get a guardianship of him
14 there when he was present in Kansas. So I don't understand
15 the discovery dispute, I guess.

16 MR. KWON: I -- I -- if --- if -- if I may, Your Honor,
17 as it relates to what our clients have possession of, it's
18 been provided to both counsel. What they don't have
19 possession of, you know, we provided the information where
20 they may have access to it. But once again, you know, we --
21 we'll address that with the discovery commissioner, Your
22 Honor.

23 THE COURT: Okay. Well, I -- I'm only caring about it
24 as it relates to whether you can go forward with trial next
25 Friday or do you guys need a -- a different date?

1 MR. HOFLAND: Your Honor, this is Brad Hofland. We
2 would like the opportunity in which to -- we made the request
3 before. We believe this is an important issue for the Court
4 regarding the -- the law of the case and regarding motion for
5 summary judgment.

6 I'd like the opportunity to go ahead and file a
7 writ in that case. It's not gonna be that -- we think it's
8 important. It's not gonna cause any prejudice or delay to
9 anybody else. If we go forward with the trial, we believe
10 that it's gonna go through a trial which will incur a lot of
11 costs and lots of money, which shouldn't have been done in
12 the first place. And so that's why we're asking for the
13 stay.

14 There's no prejudice if the Court's gonna issue an
15 order that the properties can't be sold. That takes care of
16 any issues. There -- there's nothing been presented to the
17 Court to show that my client's done anything to sell any of
18 the property.

19 MR. KWON: Your -- Your Honor, it's...

20 MR. HOFLAND: And we don't have the -- the discovery,
21 which we need to get that information, as well.

22 MR. KWON: Your Honor, if I make a comment, that might
23 help the Court make a decision on this issue. We've been, as
24 we're preparing for tr- the evidentiary hearing next week, we
25 just got kind of notified by our expert, Doctor Jonda that,

1 you know, he would not be available on that date. Now what
2 I'm trying to gather is how much time we needed to question
3 him and if we could question Doctor Jonda by Zoom or other
4 means.

5 So if I know if we have a, you know, a sliver of
6 two hours that we need for him, I was gonna see what we could
7 do to accommodate his schedule. Once again, we just found
8 out about that. And I just kind of wanted to, you know, be
9 forthright with the Court if that's gonna affect the Court's
10 decision one way or the other. And just I -- I wanted to let
11 the Court know, Your Honor.

12 THE COURT: My -- my concern also is you guys aren't
13 gonna finish in a day. But as far as witnesses, I'm doing
14 the trials in person. But if people need to appear by
15 BlueJeans that is not a -- not a problem. We've made that
16 happen. The rules definitely allow for that to happen.

17 So that's -- the other concern is you guys both
18 have expert witnesses. If you already have them ready and
19 paid for them to come next Friday and then you move that --
20 we move the trial date, I do have, it just came open, August
21 10th, a full day, if that would allow for the discovery.

22 But, Mr. Hofland, I'm not inclined to stay this
23 case for a writ. The court of appeals -- if -- 'cause you
24 file -- if you file a petition for a writ, the -- it will be
25 probably kicked over to the court of appeals. And they're

1 resolving them pretty quickly.

2 If we move the trial to August 10th and you get
3 that on file, they may disagree with me and say, yes, they
4 need more time, more briefing and that I should stay the
5 trial. And that's fine. We can do that. Or they may say
6 they don't. They've been resol- I've had one emergency
7 resolved in 24 hours. So they're very quick about that when
8 -- when they have the court of appeals review them.

9 So maybe we put it for the August 10th, let you
10 file your writ and see if they -- if they think it needs more
11 briefing than they can do in that time period and give us a
12 decision. That way I don't lose -- I just don't like losing
13 the trial dates, as well as, in this case you guys have
14 experts. So there's the scheduling and the costs of experts
15 that come up both ways.

16 MR. HOFLAND: And, Your Honor, August the 10th, I have a
17 trial on that day in the afternoon in Department J.

18 THE COURT: I would have November -- November 12th. But
19 some people may be taking a four-day weekend.

20 MR. KWON: Your Honor, James Kwon speaking. I'm
21 available at that time. And I think that's so far out, we
22 could basically would be able to get Doctor Jonda to block
23 two days, actually one day for him, so, for -- since his
24 testimony shouldn't take more than a day. So that's good for
25 us, Your Honor.

1 MR. HOFLAND: The 12th works for me, as well, Your
2 Honor.

3 THE COURT: Okay. I'm -- I'll put you then on November
4 12th.

5 And that also gives you the time, Mr. Hofland to
6 get that to -- your...

7 MR. HOFLAND: Yes, Your Honor.

8 THE COURT: ...writ done. I think and -- I think
9 they'll definitely give a decision of whether they need more
10 time by then. If we have to, we'll kick it off again. But
11 let's do November 12th, 9 a.m. I'm gonna time you then, so
12 we get done in one day. So you guys have three hours each to
13 present your time.

14 And Mr. Kwon will go first since it is your request
15 to set aside the terms of the decree of divorce.

16 MR. KWON: Thank you, Your Honor.

17 THE COURT: Okay. Anything else we need to talk about
18 today? I think that covers it, right?

19 MR. HOFLAND: (Indiscernible).

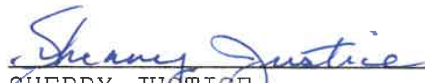
20 THE COURT: Mr. Kwon, I do need you to prepare the order
21 denying the motion for summary judgment. I think we need a
22 formal order.

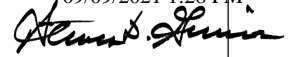
23 MR. KWON: Absolutely. I will absolutely do so and run
24 it by Mr. Hofland's office, as well. Thank you.

25 THE COURT: Yeah, and if you can do that quickly.

1 MR. HOFLAND: And, Your Honor (indiscernible).
2 Yeah, thank you, James.
3 THE COURT: So that he can get his -- his petition or
4 writ on file. And we'll know if the court of appeals wants
5 to address this further. We all know that. Again, for
6 scheduling purposes for those experts are -- they're paying
7 and you'll have to pay them ahead of time and then try to
8 reschedule them.
9 MR. KWON: Your Honor, I -- I...
10 THE COURT: (Indiscernible) have a very busy schedule.
11 MR. KWON: Yes, Your Honor. I was -- I just had -- not
12 had anything like this happen before. So I just -- I -- I -
13 I -- thank you, Your Honor.
14 MR. HOFLAND: Thank you, Judge.
15 THE COURT: Thank you both.
16 MR. KWON: Good day.
17 (THE PROCEEDING ENDED AT 11:45:32.)
18

19 * * * * *
20 ATTEST: I do hereby certify that I have truly and
21 correctly transcribed the video proceedings in the above-
entitled case to the best of my ability.

22
23 
24 SHERRY JUSTICE,
Transcriber II
25


CLERK OF THE COURT

ORDR

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Defendant, Rodney Wilkinson*

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

TESSIE ELMA ALMARIO,

Plaintiff,

vs.

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

Defendant.

Case No.: D-19-596071-D

Dept.: U

Date of Hearing: July 7, 2021

Time of Hearing: 11:00 AM

ORDER FROM JULY 7, 2021 MOTION HEARING

This matter having come before the Court on July 7, 2021 at 11:00 a.m. on
*Plaintiff's Notice of Motion and Motion for Summary Judgment and Related
Relief*, entered June 16, 2021 and heard on Order Shortening Time; *Defendant's
Opposition to Plaintiff's Motion to Compel Discovery and For Attorney's Fees
and Countermotion for Attorney's Fees and Costs and All Other Related Relief*,

1 entered June 30, 2021; *Plaintiff s Reply To Defendant s Opposition To Plaintiff s*
2 *Notice Of Motion And Motion For Summary Judgment And Related Relief And*
3 *Opposition To Countermotion For Attorney s Fees And Costs And All Other*
4 *Related Relief*, entered July 6, 2021; and Calendar Call; with Sheryl Atterberg on
5 behalf of her Adult Ward, Defendant, Rodney Wilkinson, appearing
6 telephonically; Defendant's attorney of record, James W. Kwon, Esq., of the law
7 firm James Kwon, LLC, appearing by video; Plaintiff, Tessie Almario fka Tessie
8 Wilkinson, appearing by video; and Plaintiff's attorney of record, Bradley J.
9 Hofland, Esq., of Hofland & Tomsheck, appearing by video, the Court having
10 reviewed the papers and pleadings on file herein, having heard oral argument,
11 and good cause appearing, therefore,

12 **THE COURT HEREBY NOTES** discussion regarding discovery issues,
13 Tribal Court proceedings, guardianship, and financial related matters. The Court
14 noted that the parties may not be done with discovery.

15 **THE COURT FURTHER NOTES** that Attorney Hofland made an oral
16 request to stay the case in order for a writ to be entered.

17 **THE COURT FURTHER NOTES** that, upon Court's inquiry, Attorney
18 Kwon represented that his clients desired a full accounting however, those
19 attempts were blocked. Therefore, nothing was touched, sold, or transferred.

20 **THE COURT FURTHER NOTES** that Attorney Kwon represented that

1 there was a realtor involved in mid-early February 2021 with the Kansas farm
2 property when the inventory was attempted.

3 **THE COURT FURTHER NOTES** that, upon the Court's inquiry
4 regarding the Tribal Court, Attorney Hofland represented that Plaintiff did not
5 take possession of the drill and/or equipment.

6 **THE COURT FURTHER NOTES** that its findings were stated on the
7 record. In particular, the Court found that Defendant's competency was not fully
8 litigated in the tribal court because it was used as a defense to the enforcement of
9 contracts. However, the Court found that even if Defendant's competency was
10 fully litigated in the tribal court, the issues of Plaintiff's fiduciary duty to
11 Defendant, allegations of Plaintiff's fraud upon defendant, and/or Plaintiff's
12 alleged undue influence upon Defendant have not been fully resolved.

13 **IT IS HEREBY ORDERED** that Attorney Kwon shall go first at trial.

14 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Summary
15 Judgment is DENIED.

16 **IT IS FURTHER ORDERED** that Plaintiff's request to stay the case is
17 DENIED.

18 **IT IS FURTHER ORDERED** that a Joint Preliminary Injunction is
19 hereby issued.

20 **IT IS FURTHER ORDERED** that Plaintiff shall not sell the Kansas farm

property and/or the property located in Las Vegas, Nevada.

IT IS FURTHER ORDERED that a Lis Pendens is entered.

IT IS FURTHER ORDERED that Defendant may file Lis Pendens and record it in Clark County, Nevada and in Kansas.

IT IS FURTHER ORDERED that the Non-Jury Trial currently set for July 16, 2021 is hereby vacated and reset for November 12, 2021 at 9:00 a.m.

IT IS FURTHER ORDERED that Attorney Kwon shall prepare the Order from today's hearing and Attorney Hofland shall countersign.

IT IS SO ORDERED.

Dated this 9th day of September, 2021



048 8D5 53A6 15F0
Dawn R. Throne
District Court Judge

Respectfully submitted by:
DATED this 2nd day of September 2021.

JAMES KWON, LLC

/s/ James W. Kwon, Esq.

JAMES W. KWON, ESQ.
Nevada Bar No. 8146
6280 Spring Mountain Road, Suite 100
Las Vegas, Nevada 89146
Attorneys for Sheryl Atterberg, on behalf of
her Adult Ward, Defendant, Rodney
Wilkinson

Approved as to form and content by:
~~DATED this ____ day of September 2021.~~

~~HOFLAND & TOMSHECK~~

~~BRADLEY J. HOFLAND, ESQ.
Nevada Bar No. 6743
228 South 4th Street, 1st Floor
Las Vegas, Nevada 89101
Attorney for Plaintiff,
Tessie Almaria fka Tessie Wilkinson~~

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Tessie E Wilkinson, Plaintiff

CASE NO: D-19-596071-D

7 vs.

DEPT. NO. Department U

8 Rodney Wilkinson, Defendant.

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/9/2021

15 Bradley Hofland

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16 Dina DeSousa Cabral

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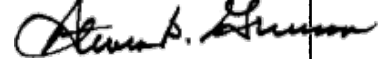
22
23 If indicated below, a copy of the above mentioned filings were also served by mail
24 via United States Postal Service, postage prepaid, to the parties listed below at their last
25 known addresses on 9/10/2021

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James Kwon

James Kwon, LLC
Attn: James Kwon, Esq
6280 W. Spring Mountain Rd., #100
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9 jkwon@jwklawfirm.com
10 *Attorney for Sheryl Atterberg, on Behalf of*
11 *Her Adult Ward, Defendant, Rodney Wilkinson*

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

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

Plaintiff,

12 vs.

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

Defendant.

Case No.: D-19-596071-D

Dept.: U

NOTICE OF ENTRY OF ORDER

16
17 PLEASE TAKE NOTICE that an *Order from July 7, 2021 Motion Hearing*
18 was entered by this Court on September 9, 2021. A copy of said Order is attached
19 hereto as Exhibit A.

20 Dated this 9th day of September 2021.

JAMES KWON, LLC

21 /s/ James W. Kwon, Esq.

22 JAMES W. KWON, ESQ.

23 Nevada Bar No. 8146

6280 Spring Mountain Road, Suite 100

24 Las Vegas, Nevada 89146

*Attorney for Sheryl Atterberg, on Behalf of Her
Adult Ward, Defendant, Rodney Wilkinson*

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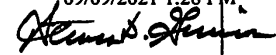
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EXHIBIT A

EXHIBIT A


CLERK OF THE COURT

1 **ORDR**
JAMES W. KWON, ESQ.
2 Nevada Bar No. 8146
JAMES KWON, LLC
3 6280 Spring Mountain Rd., Suite 100
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6 on behalf of Her Adult Ward,
Defendant, Rodney Wilkinson
7

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

10 TESSIE ELMA ALMARIO,
Plaintiff,
11 vs.

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

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 **ORDER FROM JULY 7, 2021 MOTION HEARING**

16 This matter having come before the Court on July 7, 2021 at 11:00 a.m. on
17 *Plaintiff's Notice of Motion and Motion for Summary Judgment and Related*
18 *Relief*, entered June 16, 2021 and heard on Order Shortening Time; *Defendant's*
19 *Opposition to Plaintiff's Motion to Compel Discovery and For Attorney's Fees*
20 *and Countermotion for Attorney's Fees and Costs and All Other Related Relief,*

1 entered June 30, 2021; *Plaintiff s Reply To Defendant s Opposition To Plaintiff s*
2 *Notice Of Motion And Motion For Summary Judgment And Related Relief And*
3 *Opposition To Countermotion For Attorney s Fees And Costs And All Other*
4 *Related Relief*, entered July 6, 2021; and Calendar Call; with Sheryl Atterberg on
5 behalf of her Adult Ward, Defendant, Rodney Wilkinson, appearing
6 telephonically; Defendant's attorney of record, James W. Kwon, Esq., of the law
7 firm James Kwon, LLC, appearing by video; Plaintiff, Tessie Almario fka Tessie
8 Wilkinson, appearing by video; and Plaintiff's attorney of record, Bradley J.
9 Hofland, Esq., of Hofland & Tomsheck, appearing by video, the Court having
10 reviewed the papers and pleadings on file herein, having heard oral argument,
11 and good cause appearing, therefore,

12 **THE COURT HEREBY NOTES** discussion regarding discovery issues,
13 Tribal Court proceedings, guardianship, and financial related matters. The Court
14 noted that the parties may not be done with discovery.

15 **THE COURT FURTHER NOTES** that Attorney Hofland made an oral
16 request to stay the case in order for a writ to be entered.

17 **THE COURT FURTHER NOTES** that, upon Court's inquiry, Attorney
18 Kwon represented that his clients desired a full accounting however, those
19 attempts were blocked. Therefore, nothing was touched, sold, or transferred.

20 **THE COURT FURTHER NOTES** that Attorney Kwon represented that

1 there was a realtor involved in mid-early February 2021 with the Kansas farm
2 property when the inventory was attempted.

3 **THE COURT FURTHER NOTES** that, upon the Court's inquiry
4 regarding the Tribal Court, Attorney Hofland represented that Plaintiff did not
5 take possession of the drill and/or equipment.

6 **THE COURT FURTHER NOTES** that its findings were stated on the
7 record. In particular, the Court found that Defendant's competency was not fully
8 litigated in the tribal court because it was used as a defense to the enforcement of
9 contracts. However, the Court found that even if Defendant's competency was
10 fully litigated in the tribal court, the issues of Plaintiff's fiduciary duty to
11 Defendant, allegations of Plaintiff's fraud upon defendant, and/or Plaintiff's
12 alleged undue influence upon Defendant have not been fully resolved.

13 **IT IS HEREBY ORDERED** that Attorney Kwon shall go first at trial.

14 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Summary
15 Judgment is DENIED.

16 **IT IS FURTHER ORDERED** that Plaintiff's request to stay the case is
17 DENIED.

18 **IT IS FURTHER ORDERED** that a Joint Preliminary Injunction is
19 hereby issued.

20 **IT IS FURTHER ORDERED** that Plaintiff shall not sell the Kansas farm

1 property and/or the property located in Las Vegas, Nevada.

2 **IT IS FURTHER ORDERED** that a Lis Pendens is entered.

3 **IT IS FURTHER ORDERED** that Defendant may file Lis Pendens and
4 record it in Clark County, Nevada and in Kansas.

5 **IT IS FURTHER ORDERED** that the Non-Jury Trial currently set for
6 July 16, 2021 is hereby vacated and reset for November 12, 2021 at 9:00 a.m.

7 **IT IS FURTHER ORDERED** that Attorney Kwon shall prepare the
8 Order from today's hearing and Attorney Hofland shall countersign.

9 **IT IS SO ORDERED.**

Dated this 9th day of September, 2021



048 8D5 53A6 15F0
Dawn R. Throne
District Court Judge

13 *Respectfully submitted by:*
DATED this 2nd day of September 2021.

14 JAMES KWON, LLC

Approved as to form and content by:
DATED this ____ day of September 2021.

HOFLAND & TOMSHECK

15 /s/ James W. Kwon, Esq.

16 JAMES W. KWON, ESQ.
17 Nevada Bar No. 8146
6280 Spring Mountain Road, Suite 100
Las Vegas, Nevada 89146
18 *Attorneys for Sheryl Atterberg, on behalf of*
19 *her Adult Ward, Defendant, Rodney*
Wilkinson

BRADLEY J. HOFLAND, ESQ.
Nevada Bar No. 6343
228 South 4th Street, 1st Floor
Las Vegas, Nevada 89101
Attorney for Plaintiff,
Tessie Almario fka Tessie Wilkinson

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

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6 Tessie E Wilkinson, Plaintiff

CASE NO: D-19-596071-D

7 vs.

DEPT. NO. Department U

8 Rodney Wilkinson, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/9/2021

15 Bradley Hofland

Bradh@hoflandlaw.com

16 Dina DeSousa Cabral

DinaD@hoflandlaw.com

17 James Kwon, Esq.

jkwon@jwklawfirm.com

18 Nikki Woulfe

clerk@hoflandlaw.com

19 Legal Assistant

LegalAssistant@jwklawfirm.com

20 Anna Stein

bhassistant@hoflandlaw.com

21 Crystal Ann Gorzalski

cgorzalski@jwklawfirm.com
22

23 If indicated below, a copy of the above mentioned filings were also served by mail
24 via United States Postal Service, postage prepaid, to the parties listed below at their last
25 known addresses on 9/10/2021
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James Kwon

James Kwon, LLC
Attn: James Kwon, Esq
6280 W. Spring Mountain Rd., #100
Las Vegas, NV, 89146