

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DATTALA

Appellant

vs.

PRECISION ASSETS and
ACRY DEVELOPMENT LLC and
WFG NATIONAL TITLE INSURANCE COMPANY}

Respondents

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Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT'S OPPOSITION TO MOTION TO STRIKE SUPPLEMENT

Appellant's Supplement filed January 9, 2023 made no new argument. He complied with NRAP 31(e) immediately upon becoming aware of additional supporting legal authority that bolstered exists arguments, as cited in the the Supplement. Lawyers have an ethical obligation to advise a court of the applicable law in a case; there are over 7 million reported cases in the United States, so finding a precise case given a set of facts is often challenging and imprecise.

///

NO NEW ARGUMENT IS PRESENTED

Sanchez v. Wal-Mart Stores 125 Nev. 818, 221 P.3d 1276, footnote 7 (2009), referenced as authority in the Motion and set forth below, addresses when new *ISSUES* that are raised on appeal. Appellant raises NO new issues, he simply discovered new controlling authority and brought it to the Court's attention, as allowed by the rule.

After briefing in this appeal had concluded, appellants filed a supplemental brief. In that supplemental brief, appellants provided additional authority, which was available when their reply brief was filed, and appellants asserted a new argument that was not previously raised in their opening or reply briefs. We did not consider the arguments raised in appellants' supplemental brief because they exceeded the scope of NRAP 31. See U.S. v. Vazquez-Rivera, 407 F.3d 476, 487

NO FACTUAL DISPUTE

There is no surprise to any party. There is no factual dispute in the case on appeal, factual dispute is precluded because the FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT [FFCL] filed October 15, 2021 [Exhibit 1] was not appealed. The facts are that Dattala was the victim of fraud and forgery in a real estate transaction in which Precision

Assets ended up with a deed from the perpetrator of the fraud. This was only a matter of several days after the fraud as committed. See Exhibit 1, 1540:2 - 3, 1536:31 - 1537:26, 1537:13-25, 1538:27 - 6, 1539:13-18, and 1540:2-3.

Nevada does not allow a thief to transfer title. This is based on unambiguous statutory authority enacted over a 150 years ago. Additionally, Dattala's title was stolen through the use of forged signatures. [Exhibit 1, 1539:7-18] The factual findings entered on October 15, 2021 eliminated any doubt about the existence of the material fact that Dattala was deprived of ownership of the Subject Properties by fraud, the recording of fraudulent deeds and by use of forged documents.

Therefore any deed to the two Subject Properties at issue in the case was void as to Precision Assets pursuant to NRS 111.025 and NRS 111.175:

NRS 111.025 Conveyances void against purchasers are void against their heirs or assigns. Every conveyance, charge, instrument or proceeding declared to be void by the provisions of this chapter, as against purchasers, shall be equally void as against the heirs, successors, personal representatives or assigns of such purchaser

NRS 111.175 Conveyances made to defraud prior or subsequent

purchasers are void. Every conveyance of any estate, or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made and created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents or profits, as against such purchasers, shall be void.

Yet, the trial court awarded Precision Assets free and clear title to the two Subject Properties, without a trial.

CONCLUSION

The Court should encourage the filing of supplemental authority as doing this leads to a more consistent, better reasoned decision. This case is one of first impression involving direct conflict of statutes, which makes the incentive to have a fully informed decision imperative.

The motion should be denied as the supplemental authority cited by Appellant raised no new issue, but is direct legal authority on point regarding Precision Assets' duty of inquiry when it purportedly purchased real estate. Appellant identified twelve red flags in the district court case indicating that there was a title issue. These are discussed in his Opening Brief on page 22.

The FFCL established as a fact that the deeds to Precision Asset's seller were forged and/or obtained by fraud. This has been the issue for since September, 2021 and the deeds to Precision Assets are void. The instant motion, by its express terms, seeks to prevent this Court from making an informed decision based on controlling Nevada law.

/s/ Benjamin B. Childs, Sr.
BENJAMIN B. CHILDS, Sr.ESQ.
NEVADA BAR # 3946
Attorney for Appellant

CERTIFICATE OF SERVICE

APPELLANT'S OPPOSITION TO MOTION TO STRIKE

SUPPLEMENT, with Exhibit, was served through the Nevada Supreme Court File and Serve system to opposing counsel at filing on January 19, 2023. Electronic service is in lieu of mailing.

/s/ Benjamin B. Childs, Sr.
BENJAMIN B. CHILDS, Sr.ESQ.
NEVADA BAR # 3946

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

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FFCL
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JOHN DATTALA

DISTRICT COURT
CLARK COUNTY, NEVADA

JOHN DATTALA

Plaintiff

vs.

EUSTACHIUS C. BURSEY and
PRECISION ASSETS and
ACRY DEVELOPMENT LLC and
LILLIAN MEDINA and
WFG NATIONAL TITLE INSURANCE
COMPANY and
JOHN DOES 1 through 5 inclusive and
ROE CORPORATIONS I through X

Defendants

=====

AND RELATED ACTIONS

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Case # A-19-794335-C
Dept # 14

Trial : October 13, 2021

FINDINGS OF FACTS, CONCLUSIONS OF LAW AND JUDGMENT AGAINST EUSTACHIUS
C. BURSEY AND LILLIAN MEDINA IN FAVOR OF JOHN DATTALA

The Court enters the following Findings of Fact, Conclusions of Law and Judgment after
the jury pool was dismissed and a prove up hearing conducted on October 13, 2021.

FINDINGS OF FACT

Calendar call was held at 2:00 PM on September 23, 2021.

Trial was scheduled beginning with jury selection at 11:00 AM on October 13, 2021.

All parties, though their attorneys, or directly in the case of EUSTACHIUS C. BURSEY
[Bursey herein], were informed of the court hearing dates, including the date and time of
calendar call and the date and time when trial was scheduled to begin.

Bursey has not participated in the case for many months, including failing to file a
pretrial memorandum, failing to appear at calendar call and failing to appear for jury selection to

1 begin the trial. Additionally, Bursey did not file an answer to the Second Amended Complaint
2 [SAC] which was filed and served on January 31, 2021.

3 LILLIAN MEDINA [Medina herein] has not participated in the case for many months,
4 including failing to file a pretrial memorandum, failing to appear at calendar call and failing to
5 appear for jury selection to begin the trial.

6 JOHN DATTALA [Dattala herein] has participated fully in the case from the beginning,
7 timely filed a pretrial memorandum after meeting and conferring with the other participating
8 parties, appeared in person and with his attorney Benjamin B. Childs at calendar call, and
9 appeared for jury selection to begin the trial with his attorney.

10 The paragraphs of the SAC that directly address Bursey, which paragraphs have
11 not been denied and are therefore admitted, are set forth below. These now are
12 established facts based not only on the fact that Bursey has not denied them but also
13 based the sworn testimony of Dattala to the Court on October 13, 2021 and the
14 documentary exhibits admitted into evidence on October 13, 2021.

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16 3. Defendant EUSTACHIUS C. BURSEY [Bursey] at all times relevant
17 to the transactions described herein was a resident of Las Vegas,
18 Clark County, Nevada. Bursey is now a resident of Detroit, Wayne
19 County, Michigan.

20 10. When Dattala met Bursey in 2016, Dattala owned the parcels of real
21 property described below, referred to collectively as the Subject
22 Properties.

23
24 a. 50 Sacramento Dr Las Vegas, NV 89110 was his residence
25 since 1992 [referred to herein as the 50 Sacramento Property].

26 Street Address : 50 Sacramento Dr Las Vegas, NV 89110
27 Brief Legal Description :
28 Lot 28 in Block 2 of MEADOW HOMES UNIT # 1 as shown in PLAT
29 BOOK 7 PAGE 5 in the Clark County Recorder's Office.
30 APN 140-31-817-043

31 b. 59 Sacramento Dr Las Vegas, NV 89110 [referred to herein as
32 the 59 Sacramento Property].

Street Address : 59 Sacramento Dr Las Vegas, NV 89110
Brief Legal Description :

Lot 87 in Block 5 of MEADOW HOMES UNIT # 3 2nd Amended as shown in PLAT BOOK 9 PAGE 63 in the Clark County Recorder's Office.
APN 140-31-810-025

11. Dattala had no relationship with Bursey other than through the dealings with the three Properties described above.
12. Throughout his dealings with Bursey, Dattala drafted no documents. Dattala is at most semi-literate and is incapable of drafting legal documents involving real estate transactions. Dattala does not even have a copier and until the middle of May, 2019 did not have an email address.
13. In 2017 Bursey sought to befriend Dattala and raised the idea of Dattala selling Dattala's three properties described above.
14. Bursey presented Dattala with a Purchase Agreement which was signed by Bursey and Dattala on June 3, 2018 for the purchase of the 50 Sacramento Property. The June 3, 2018 Purchase Agreement required Bursey pay Dattala \$5,000 and transfer was to be by "Warranty Deed or DEED OF TRUST". A Deed of Trust in the amount of \$150,000 was recorded on August 2, 2018 encumbering title to the 50 Sacramento Property.
Bursey did pay Dattala \$5,000 on or about June 3, 2018 as required by the June 3, 2018 Purchase Agreement
The August 2, 2018 Deed of Trust encumbering title to the 50 Sacramento Property states there is an associated Promissory Note, but Dattala does not believe there was ever a Promissory Note executed which was associated with the August 2, 2018 Deed of Trust.
With regards to the August 2, 2018 Deed of Trust encumbering title to the 50 Sacramento Property, Bursey did pay \$1,443 per month for ten months starting August, 2018, with the last payment being made May 4, 2019.
15. In the latter part of the year 2018, Bursey made the following factual

representations to Dattala :

- a. That Bursey's father had died.
 - b. That Bursey expected an inheritance from his deceased father's estate
 - c. That Bursey wanted to buy the 59 Sacramento Property and the Colusa Property from Dattala and planned to pay Dattala when Bursey received his inheritance from his father's estate.
16. On March 19, 2019, and again on March 27, 2019, Bursey represented to Dattala that Bursey needed to fix the 50 Sacramento Property so he could bring it up to code and get insurance and move back in, and that he had "a child on the way in September".
 17. Bursey's representations in the latter part of the year 2018 that his father had died and that he was waiting for his inheritance to come were false, when he made those representations Bursey knew those representations were false, and Bursey made those representations to induce Dattala to enter into sales agreements for the 59 Sacramento Property and the Colusa Property.
 18. Bursey's representation on March 19, 2019, and again on March 27, 2019 to Dattala that Bursey needed to fix the 50 Sacramento Property so he could bring it up to code and get insurance and move back in, and that he had "a child on the way in September" were false, when he made those representations Bursey knew those representations were false, and Bursey made those representations to induce Dattala to enter into sales agreements for the 59 Sacramento Property and the Colusa Property.
 19. For a purported purchase of the 59 Sacramento Property Bursey presented Dattala with a Deed of Trust in the amount of \$220,000 dated April 15, 2019 with a Zillow printout and amortization schedule at 8% interest.
 20. For a purported purchase of the 59 Sacramento Property, Bursey paid Dattala \$10,000 purportedly as an Earnest Money Deposit on April 19,

- 2019.
21. Bursey knew he did not intend to purchase the 59 Sacramento Property for \$220,000 at the time he presented Dattala with what was purported to be \$10,000 as an Earnest Money Deposit on April 19, 2019.
 22. Bursey knew he did not intend to purchase the 59 Sacramento Property for \$220,000 at the time he presented Dattala with a Deed of Trust in the amount of \$220,000 dated April 15, 2019 with a Zillow printout and amortization schedule at 8% interest.
 23. In April, 2019 Bursey stated to Dattala that once Bursey received his inheritance from his father's estate, he would pay Dattala the balance of the purchase prices for the 59 Sacramento Property as the April 19, 2019 \$10,000 payment was just earnest money or down payment until Bursey's inheritance came.
 24. In April, 2019, but prior to April 19, 2019, Bursy stated to Dattala that Bursey was waiting for money from his inheritance and would rent the properties out and make payments until he received his inheritance.
 25. In April, 2019, but prior to April 19, 2019, Bursy stated to Dattala that Bursey had to have a property management company come in to clean up the 59 Scaramento Property and that he needed to have documents signed and notarized.
 26. Bursey arranged for Dattala to sign two documents on April 5, 2019 being represented as a Warranty Deed and and a Deed of Trust and then Bursey had Dattala acknowledge his signatures on those two documents to Bonita Spencer [Spencer herein], a Nevada Notary Public, on the same date.
 27. Dattala did not know, and was never told, that Bursey intended to attach the signature page from one of the documents Dattala had signed and acknowledged to Spencer on April 5, 2019 to a Quitclaim Deed and that Bursey intended to, and did, record that Quitclaim Deed to attempt to obtain record title to the 50 Sacramento Property.
 28. Dattala did not know, and was never told, that Bursey intended to

1 attach the signature page from one of the documents Dattala had
2 signed and acknowledged to Spencer on April 5, 2019 to a Deed of
3 Reconveyance and that Bursey intended to, and did, record that
4 Deed of Reconveyance to attempt to remove the lien created by the
5 Deed of Trust described in Paragraph 14 above, which Deed of Trust
6 encumbered title to the 50 Sacramento Property.

7 29. Bursey forged Dattala's signature on a document entitled NOTICE OF
8 PURCHASE purportedly dated April 1, 2019 in an attempt to justify
9 why Dattala would accept a total amount of \$10,000 from Bursey for
10 the purported purchase of the 50 Sacramento Property, when Dattala
11 was entitled to receive payments under the Deed of Trust described in
12 Paragraph 14 above.

13 30. On April 29, 2019 Bursey and Medina conspired to further Bursey's
14 fraudulent scheme by forging Dattala's signature on two documents
15 titled Affidavit of Grantor purporting to state that Dattala was making
16 numerous factual representations about the title to the 59 Sacramento
17 Property and the Colusa Property, with Medina notarizing that
18 document.

19 41. Without an escrow or title insurance, Bursey recorded Quitclaim
20 Deeds for the Subject Properties as set forth below :

21 a. For the 50 Sacramento Property, Quitclaim Deed recorded April
22 8, 2019. As set forth in Paragraph 27 above, Bursey attached
23 the signature page from one of the documents Dattala had
24 signed and acknowledged to Spencer on April 5, 2019 to the
25 Quitclaim Deed Bursey recorded in an attempt to obtain title to
26 the 50 Sacramento Property.

27 b. For the 59 Sacramento Property, Quitclaim Deed recorded
28 April 22, 2019.

29 c. For the Colusa Property, Quitclaim Deed recorded April 22,
30 2019.

31 42. Ownership and financial issues regarding the Colusa Property were
32 resolved by FINDINGS OF FACTS, CONCLUSIONS OF LAW AND

JUDGMENT filed in this case on October 15, 2020.

43. Dattla was tricked and defrauded into signing the Quitclaim Deed for the 59 Sacramento Property to Bursey and Plaintiff received only the payment set forth in the table below from Bursey.

Property	Amount Received \$	Purchase Amount \$	DOV ¹ Amount \$
50 Sacramento	5,000 + 14,443 payments on Deed of Trust	150,000	73,540
59 Sacramento	10,000	220,000	79,091
Total	29,443 ²	370,000	152,263

44. Based on the purchase contracts drafted by Bursey, Dattala should have received a total of \$370,000 for the 50 Sacramento and the 59 Sacramento Properties, but instead received \$10,000 in earnest money down payments and \$4,467 principal and \$9,976 interest. Dattala should have received a total of \$152,263 based on the Declaration of Value forms for the 50 Sacramento and the 59 Sacramento Properties, which statements are made “under penalty of perjury”, executed by Bursey, or Bursey’s agent, attached to the recorded Quitclaim Deeds.
45. As to the 50 Sacramento Property, Bursey immediately transferred his interest to Precision Assets, LLC by Grant, Bargain and Sale deed recorded April 15, 2019, purportedly for \$95,000.
47. As to the 59 Sacramento Property, Bursey immediately transferred his

¹ DOV is an abbreviation of the Declaration of Value form which is signed “under penalty of perjury” and is required to be recorded with each deed stating the transaction value.

². \$4,467 of principal and \$9,976 of interest

1 interest to Precision Assets by Grant, Bargain and Sale deed recorded
2 May 2, 2019, purportedly for \$130,000.

3 48. Dattala seeks to impose a constructive trust on the proceeds of the
4 sales to Bursey and on title to the 50 Sacramento Property and the 59
5 Sacramento Properties based on Bursey obtaining the Quitclaim
6 Deeds from Plaintiff by fraud and failing to pay fair value for the 50
7 Sacramento and the 59 Sacramento properties as described above.
8 Bursey further attached a signature page from another document to
9 the deed to the 50 Sacramento Property as set forth in Paragraph 27
10 above.

11 49. Bursey and Medina engaged in concerted action intended to
12 accomplish an unlawful objective for the purpose of harming Plaintiff.

13 57. Bursey never paid Plaintiff the full amount due to Plaintiff, and Plaintiff
14 never received the full amount due to him from Bursey for the sale of
15 the Subject Properties.

16 58. When Bursey transferred his interest in the 50 Sacramento Property
17 on April 15, 2019, it was with actual intent to hinder, delay or defraud
18 Plaintiff.

19 59. When Bursey transferred his interest in the 59 Sacramento Property
20 on May 2, 2019, it was with actual intent to hinder, delay or defraud
21 Plaintiff.

22 60. Plaintiff suffered damages as a result of Bursey's actions.

23 62. The forged Affidavits of Grantor described in Paragraph 30 above are
24 evidence of the concert of action between Bursey and Medina.

25 63. Bursey and Medina engaged in concerted action to allow Bursey to
26 sell the 50 Sacramento Property and the 59 Sacramento Property
27 using an escrow and title insurance as described above.

28 64. The concerted action engaged in by Bursey and Medina was intended
29 to accomplish an unlawful objective for the purpose of harming
30 Plaintiff.

31 65. Plaintiff was damaged by the act or acts of Bursey and Medina and
32 Plaintiff has suffered and will suffer general and consequential

1 damages in excess of fifteen thousand dollars (\$15,000), exclusive of
2 costs and interest, in an amount to be determined according to proof
3 adduced at trial.

4 66. Plaintiff has further been required to retain the services of an attorney
5 to prosecute this action on its behalf, and as such are entitled to
6 attorney's fees and costs incurred in prosecuting this matter.

7 84. Defendant Bursey engaged in criminal enterprise with at least one
8 other individual and engaged in criminal activity by knowingly making
9 false representations of fact to commit fraud on Plaintiff, forging
10 Plaintiff's signature on real estate and financial documents, placing
11 forged documents in the public record, committing perjury by executing
12 and recording false Declaration of Value forms, and conspiring with
13 Medina as a Nevada Notary Public to fabricate signatures on
14 documents, to sign and stamp real estate documents with notary
15 seals to give the document the appearance of authenticity,
16 genuineness and enforceability.

17 85. Defendant Medina engaged in criminal enterprise with at least one
18 other individual by engaging in criminal activity with Bursey by falsely
19 notarizing real estate documents in violation of NRS 240.001 to
20 240.169, inclusive, or a regulation or order adopted or issued pursuant
21 thereto, by forging Dattala's signature in her notary book, and by
22 committing perjury by executing the affidavits described above in
23 Paragraphs 34 and 35.

24 86. NRS 240.175 makes violation of NRS 240.001 to 240.169, inclusive,
25 or a regulation or order adopted or issued pursuant thereto, a
26 category D felony.

27 87. Defendant Medina engaged in criminal enterprise with at least one
28 other individual, that being Bursey, by engaging in criminal activity
29 with Bursey by violating NRS 205.120, which is a category D felony.

30 88. Defendant Medina engaged in criminal enterprise with at least one
31 other individual, that being Bursey, by engaging in criminal activity
32 with Bursey by violating NRS 205.090, which is a category D felony.

- 1 89. Medina committed perjury by executing the affidavits described above
2 in Paragraphs 34 and 35.
3 90. Medina offered false evidence by executing the affidavits described in
4 Paragraphs 34 and 35.
5 91. Bursey and Medina engaged in unlawful activity as defined by NRS
6 207.400.
7 92. As a direct and proximate result of the actions of Defendants Bursey
8 and Medina, Plaintiff has suffered and will suffer general and
9 consequential damages in will suffer general and consequential
10 damages in the amount of three hundred and seventy thousand
11 dollars (\$370,000), exclusive of costs and interest.

12
13 The Court finds that an appropriate sanction for Medina's failure to participate in the
14 case as summarized above, pursuant to EDCR 2.67 and EDCR 2.69, is striking of
15 Medina's answer, entry of default and entry of default judgment. The paragraphs of the
16 SAC that directly address Medina set forth below are deemed admitted. These now are
17 established facts based not only on the fact that Medina's answer has been stricken, but
18 also based the sworn testimony of Dattala to the Court on October 13, 2021 and the
19 documentary exhibits admitted into evidence on October 13, 2021.

- 20
21 5. LILLIAN MEDINA [Medina] is, and at all relevant times was, a
22 resident of Las Vegas, Clark County, Nevada. Medina, during all
23 times relevant hereto, was employed and/or the agent of WFG and
24 was within her scope of employment or her agency relationship in
25 performing the acts described below.
26 30. On April 29, 2019 Bursey and Medina conspired to further Bursey's
27 fraudulent scheme by forging Dattala's signature on two documents
28 titled Affidavit of Grantor purporting to state that Dattala was making
29 numerous factual representations about the title to the 59 Sacramento
30 Property and the Colusa Property, with Medina notarizing that
31 document.
32 31. Dattala did not sign the Affidavits of Grantor described in Paragraph

- 30 above.
32. Medina is a Notary Public for the state of Nevada and she produced what she represented to be a true, correct and complete copy of her notary book associated with Dattala's purported signatures on the Affidavits of Grantor described in Paragraph 30 above.
33. Mednina purportedly provided a copy of her Notary Log Book to support her own affidavits to WFG, and WFG provided that copy to Bursey, and that copy was filed with the court by Bursey's attorney on June 3, 2019, to contradict Dattala's statements about not signing the Affidavits of Grantor described in Paragraph 30 above.
34. Medina signed an affidavit dated April 29, 2019 falsely stating that she had "complied with all applicable State and Local laws" concerning Bursey's signature on the Affidavits of Grantor described in Paragraph 30 above.
35. Medina signed an affidavit dated June 3, 2019 falsely stating that she had "complied with all applicable State and Local laws" concerning Dattala's signature on the Affidavits of Grantor described in Paragraph 30 above.
36. Both of Medina's affidavits described in Paragraphs 34 and 35 above purport to be supported by a copy of her Notary Log Book.
37. In both of Medina's affidavits described in Paragraphs 34 and 35 above she certifies "under penalty of perjury that I am authorized to act as a Notary Public in and for the above County and State and that in performing my duties as a Notary Public I have complied with all applicable State and Local Laws ...".
38. NRS 240.120(1)(d) states as follows :

NRS 240.120 Journal of notarial acts: Duty to maintain; contents; verification based upon credible witness; copy of entry; storage; period of retention; report of loss or theft; exceptions.

1. Except as otherwise provided in subsection 2, each notary public shall keep a journal in his or her office in which the notary public shall enter for each notarial act performed, at the time the act is performed:

(d) Except as otherwise provided in subsection 3, the name and **signature of the person whose signature is being notarized;**

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39. Medina's Notary Log Book filed on June 3, 2019 does not have the signature of either Dattala or Bursey.
40. In an effort to cover up her violation of NRS 240.120(1)(d), Medina either forged, or had someone forge, Dattala's signature in her notary book.
61. Plaintiff realleges and incorporates herein all of the allegations previously made in all previous paragraphs as though fully set forth herein.
62. The forged Affidavits of Grantor described in Paragraph 30 above are evidence of the concert of action between Bursey and Medina.
63. Bursey and Medina engaged in concerted action to allow Bursey to sell the 50 Sacramento Property and the 59 Sacramento Property using an escrow and title insurance as described above.
64. The concerted action engaged in by Bursey and Medina was intended to accomplish an unlawful objective for the purpose of harming Plaintiff.
65. Plaintiff was damaged by the act or acts of Bursey and Medina and Plaintiff has suffered and will suffer general and consequential damages in excess of fifteen thousand dollars (\$15,000), exclusive of costs and interest, in an amount to be determined according to proof adduced at trial.
66. Plaintiff has further been required to retain the services of an attorney to prosecute this action on its behalf, and as such are entitled to attorney's fees and costs incurred in prosecuting this matter.
67. Plaintiff realleges and incorporates herein all of the allegations previously made in all previous paragraphs as though fully set forth herein.
68. NRS 240.120(1)(d) imposes a specific duty on a notary.

NRS 240.120 Journal of notarial acts: Duty to maintain; contents; verification based upon credible witness; copy of entry; storage; period of retention; report of loss or theft; exceptions.

1 1. Except as otherwise provided in subsection 2, each notary public
2 shall keep a journal in his or her office in which the notary public shall
enter for each notarial act performed, at the time the act is performed:

3 (d) Except as otherwise provided in subsection 3, the name and
4 **signature of the person whose signature is being**
5 **notarized;**

6 69. Medina breached that duty by notarizing the two affidavits described
7 in Paragraph 30 above without complying with NRS 240.120(1)(d).

8 70. Medina at all relevant times was an employee or agent under the
9 control of WFG.

10 71. Medina at all relevant times was either within the nature and scope of
11 her employment as an employee of WFG or was acting as WFS's
12 agent and was within the scope of her agency when performing the
13 notarial acts described above.

14 72. Dattala is in the class of persons whom NRS 240.120(1)(d) is
15 intended to protect and the injury to him is of the type against which
16 NRS 240.120(1)(d) is intended to protect.

17 73. WFG is liable for damages Dattala incurred as a result of Medina's
18 negligence under the doctrine of respondeat superior.

19 74. Due to the violation of NRS 240.120(1)(d), Plaintiff has been damaged
20 in an amount in excess of Fifteen Thousand Dollars (\$15,000.00),
21 which amount will be set forth and proven at the time of trial.

22 75. It has been necessary for Plaintiff to retain the services of an attorney
23 and to incur other court costs to prosecute this action. Defendants
24 Medina and WFG should be required to pay attorneys' fees and costs
25 incurred by Plaintiff in this action.

26 83. Plaintiff realleges and incorporates herein all of the allegations
27 previously made in all previous paragraphs as though fully set forth
28 herein.

29 84. Defendant Bursey engaged in criminal enterprise with at least one
30 other individual and engaged in criminal activity by knowingly making
31 false representations of fact to commit fraud on Plaintiff, forging
32 Plaintiff's signature on real estate and financial documents, placing

1 forged documents in the public record, committing perjury by executing
2 and recording false Declaration of Value forms, and conspiring with
3 Medina as a Nevada Notary Public to fabricate signatures on
4 documents, to sign and stamp real estate documents with notary
5 seals to give the document the appearance of authenticity,
6 genuineness and enforceability.

7 85. Defendant Medina engaged in criminal enterprise with at least one
8 other individual by engaging in criminal activity with Bursey by falsely
9 notarizing real estate documents in violation of NRS 240.001 to
10 240.169, inclusive, or a regulation or order adopted or issued pursuant
11 thereto, by forging Dattala's signature in her notary book, and by
12 committing perjury by executing the affidavits described above in
13 Paragraphs 34 and 35.

14 86. NRS 240.175 makes violation of NRS 240.001 to 240.169, inclusive,
15 or a regulation or order adopted or issued pursuant thereto, a
16 category D felony.

17 87. Defendant Medina engaged in criminal enterprise with at least one
18 other individual, that being Bursey, by engaging in criminal activity
19 with Bursey by violating NRS 205.120, which is a category D felony.

20 88. Defendant Medina engaged in criminal enterprise with at least one
21 other individual, that being Bursey, by engaging in criminal activity
22 with Bursey by violating NRS 205.090, which is a category D felony.

23 89. Medina committed perjury by executing the affidavits described above
24 in Paragraphs 34 and 35.

25 90. Medina offered false evidence by executing the affidavits described in
26 Paragraphs 34 and 35.

27 91. Bursey and Medina engaged in unlawful activity as defined by NRS
28 207.400.

29 92. As a direct and proximate result of the actions of Defendants Bursey
30 and Medina, Plaintiff has suffered and will suffer general and
31 consequential damages in will suffer general and consequential
32 damages in the amount of three hundred and seventy thousand

dollars (\$370,000), exclusive of costs and interest.

93. Plaintiff has further been required to retain the services of an attorney to prosecute this action on its behalf, and as such are entitled to attorney's fees and costs incurred in prosecuting this matter.

Dattala pled causes of action against Bursey in the SAC for Fraudulent Conveyance, Civil Conspiracy, and RICO pursuant to NRS 240.175.

Dattala has proven all the elements of each cause of action pled in the SAC against Bursey.

Dattala pled causes of action against Medina in the SAC for Civil Conspiracy, Negligence per se and RICO pursuant to NRS 240.175.

Dattala has proven all the elements of each cause of action pled in the SAC against Medina.

Dattala proved he incurred monetary damages caused by Bursey and Medina in the amount of \$355,533.

Dattala affirmatively waived his right to seek an award of attorney fees and costs incurred in prosecuting this matter against Bursey.

Dattala affirmatively waived his right to seek an award of attorney fees and costs incurred in prosecuting this matter against Medina.

The Court expressly determines that there is no just reason for delay in entering final judgment in favor of Dattala against Bursey.

The Court expressly determines that there is no just reason for delay in entering final judgment in favor of Dattala against Medina.

CONCLUSIONS OF LAW

Eighth Judicial District Court Rule [EDCR herein] 2.67(a) requires a meeting of counsel before calendar call and "[t]he attorneys must then prepare a joint pretrial memorandum which must be served and filed not less than 15 days before the date set for trial."

EDCR 2.67 (c) states as follows :

When a party is not represented by an attorney the party must comply

1 with this rule. Should the designated trial attorney or any party in proper
2 person fail to comply, a judgment of dismissal or default or other
3 appropriate judgment may be entered or other sanctions imposed.

4 EDCR 2.69 (c) states as follows :

5 (c) Failure of trial counsel to attend calendar call and/or failure to submit required
6 materials shall result in any of the following which are to be ordered within the
7 discretion of the court:

- 8 (1) Dismissal of the action.
- 9 (2) Default judgment.
- 10 (3) Monetary sanctions.
- 11 (4) Vacation of trial date.
- 12 (5) Any other appropriate remedy or sanction.

13 The Court has jurisdiction over the parties and the Subject Properties described in the
14 SAC.

15 Venue is proper as the causes of action arose in Clark County, Nevada and the Subject
16 Properties at issue are located in Clark County, Nevada.

17 The elements of each cause of action are addressed in turn.

18 A. FRAUDULENT CONVEYANCE

19 Nevada's Fraudulent Conveyance statute is set forth in NRS Chapter 112. The most
20 relevant statute for purposes of this motion is NRS 112.180, set forth below.

21 NRS 112.180 Transfer made or obligation incurred with intent to
22 defraud or without receiving reasonably equivalent value; determination of
23 intent.

24 1. A transfer made or obligation incurred by a debtor is fraudulent as
25 to a creditor, whether the creditor's claim arose before or after the
26 transfer was made or the obligation was incurred, if the debtor made
27 the transfer or incurred the obligation:

- 28 (a) With actual intent to hinder, delay or defraud any creditor of
29 the debtor; or
- 30 (b) Without receiving a reasonably equivalent value in exchange
31 for the transfer or obligation, and the debtor:

32 (1) Was engaged or was about to engage in a business
or a transaction for which the remaining assets of the
debtor were unreasonably small in relation to the
business or transaction; or

(2) Intended to incur, or believed or reasonably should

1 have believed that the debtor would incur, debts beyond
2 his or her ability to pay as they became due.

3 2. In determining actual intent under paragraph (a) of subsection 1,
4 consideration may be given, among other factors, to whether:

- 5 (a) The transfer or obligation was to an insider;
- 6 (b) The debtor retained possession or control of the property
7 transferred after the transfer;
- 8 (c) The transfer or obligation was disclosed or concealed;
- 9 (d) Before the transfer was made or obligation was incurred, the
10 debtor had been sued or threatened with suit;
- 11 (e) The transfer was of substantially all the debtor's assets;
- 12 (f) The debtor absconded;
- 13 (g) The debtor removed or concealed assets;
- 14 (h) The value of the consideration received by the debtor was
15 reasonably equivalent to the value of the asset transferred or
16 the amount of the obligation incurred;
- 17 (i) The debtor was insolvent or became insolvent shortly after
18 the transfer was made or the obligation was incurred;
- 19 (j) The transfer occurred shortly before or shortly after a
20 substantial debt was incurred; and
- 21 (k) The debtor transferred the essential assets of the
22 business to a lienor who transferred the assets to an insider of
23 the debtor.

24 B. CIVIL CONSPIRACY

25 To prevail in a civil conspiracy action, a plaintiff must prove an agreement between the
26 tortfeasors, whether explicit or tacit.. See Eikelberger v. Tolotti, 96 Nev. 525, 528 n.1, 611 P.2d
27 1086, 1088 n.1 (1980)

28 Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1311, 971 P.2d 1251,
29 1258 (1998) sets forth the elements of civil conspiracy.

30 An actionable civil conspiracy “consists of a combination of two or more
31 persons who, by some concerted action, intend to accomplish an unlawful
32 objective for the purpose of harming another, and damage results from the act or
acts.” Hilton Hotels v. Butch Lewis Productions, 109 Nev. 1043, 1048, 862 P.2d
1207, 1210 (1993) (citing Sutherland v. Gross, 105 Nev. 192, 196, 772 P.2d
1287, 1290 (1989)).

1 C. RACKETEERING INFLUENCED AND CORRUPT ORGANIZATIONS ACT aka RICO

2
3 Civil RICO is a statutory cause of action, as set forth below.

4
5 NRS 207.360 "Crime related to racketeering" defined. "Crime related to
6 racketeering" means the commission of, attempt to commit or conspiracy to
7 commit any of the following crimes:

- 8 9. Taking property from another under circumstances not amounting to
9 robbery;
10 13. Forgery, including, without limitation, forgery of a credit card or debit
11 card in violation of NRS 205.740;
12 28. Obtaining possession of money or property valued at \$650 or more,
13 or obtaining a signature by means of false pretenses;
14 29. Perjury or subornation of perjury;
15 30. Offering false evidence;
16 35. Any violation of NRS 205.377 [statutory definition set forth below]

17
18 NRS 205.377 - Multiple transactions involving fraud or deceit in course of
19 enterprise or occupation; penalty.

20 1. A person shall not, in the course of an enterprise or occupation,
21 knowingly and with the intent to defraud, engage in an act, practice or
22 course of business or employ a device, scheme or artifice which operates
23 or would operate as a fraud or deceit upon a person by means of a false
24 representation or omission of a material fact that:

- 25 (a) The person knows to be false or omitted;
26 (b) The person intends another to rely on; and
27 (c) Results in a loss to any person who relied on the false
28 representation or omission,

29 in at least two transactions that have the same or similar pattern, intents,
30 results, accomplices, victims or methods of commission, or are otherwise
31 interrelated by distinguishing characteristics and are not isolated
32 incidents within 4 years and in which the aggregate loss or intended loss
is more than \$650.

2. Each act which violates subsection 1 constitutes a separate offense.

3. A person who violates subsection 1 is guilty of a category B felony and
shall be punished by imprisonment in the state prison for a minimum term
of not less than 1 year and a maximum term of not more than 20 years,
and may be further punished by a fine of not more than \$10,000.

4. In addition to any other penalty, the court shall order a person who
violates subsection 1 to pay restitution.

5. A violation of this section constitutes a deceptive trade practice for the

purposes of NRS 598.0903 to 598.0999, inclusive.

6. As used in this section, "enterprise" has the meaning ascribed to it in NRS 207.380.

NRS 207.380 "Enterprise" includes:

1. Any natural person ...

NRS 207.390 "Racketeering activity" defined. "Racketeering activity" means engaging in at least two crimes related to racketeering that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents, if at least one of the incidents occurred after July 1, 1983, and the last of the incidents occurred within 5 years after a prior commission of a crime related to racketeering.

NRS 207.470 authorizes this civil action for damages resulting from racketeering, venue is proper, and Plaintiff is entitled to triple damages.

NRS 207.470 Civil actions for damages resulting from racketeering.

1. Any person who is injured in his or her business or property by reason of any violation of NRS 207.400 **has a cause of action against a person causing such injury for three times the actual damages sustained. An injured person may also recover attorney's fees in the trial** and appellate courts and costs of investigation and litigation reasonably incurred. The defendant or any injured person in the action may demand a trial by jury in any civil action brought pursuant to this section. Any injured person has a claim to forfeited property or the proceeds derived therefrom and this claim is superior to any claim the State may have to the same property or proceeds if the injured person's claim is asserted before a final decree is issued which grants forfeiture of the property or proceeds to the State.

2. A final judgment or decree rendered in favor of the State in any criminal proceeding under NRS 205.322 or 207.400 estops the defendant in any subsequent civil action or proceeding from denying the essential allegations of the criminal offense.

3. **Any civil action or proceeding under this section must be instituted in the district court of the State in the county in which the prospective defendant resides or has committed any act which subjects him or her to criminal or civil liability** under this section or NRS 205.322, 207.400 or 207.460.

1 4. Any civil remedy provided pursuant to this section is not exclusive of any
2 other available remedy or penalty.

3
4 D. NEGLIGENCE PER SE

5
6 Atkinson v. MGM Grand Hotel, Inc., 120 Nev. 639, 641, 98 P.3d 678, 679 (2004);
7 Gordon v. Hurtado, 96 Nev. 375, 609 P.2d 327 (1980) holds that the violation of a statute
8 constitutes negligence per se if (1) the injured party belongs to the class of individuals the
9 statute was intended to protect, and (2) the injury suffered is the type the statute was intended
10 to prevent.
11

12
13 ENTRY OF FINAL JUDGMENT AUTHORIZED IF COURT EXPRESSLY DETERMINES THAT
14 THERE IS NO JUST REASON FOR DELAY.
15

16 NRCP 54(b) states, in relevant part, as follows :
17

18
19 (b) Judgment on Multiple Claims or Involving Multiple Parties. When an
20 action presents more than one claim for relief — whether as a claim,
21 counterclaim, crossclaim, or third-party claim — or when multiple parties are
22 involved, the court may direct entry of a final judgment as to one or more, but
23 fewer than all, claims or parties only if the court expressly determines that
24 there is no just reason for delay.
25

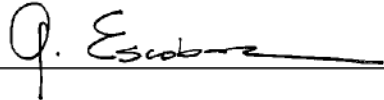
26
27 JUDGMENT
28

29
30 Good cause appearing based on the Findings of Facts and Conclusions of Law set forth
31 above, Judgment is entered as set forth below.
32

1. Compensatory damages in the amount of \$355,533 [Three Hundred and Fifty-Five Thousand, Five Hundred and Thirty-Three dollars] is a judgment in favor of JOHN DATTALA and against both EUSTACHIUS C. BURSEY and LILLIAN MEDINA, jointly and severally.
2. Pursuant to NRS 207.470 (1), Dattala is awarded three times the actual damages he sustained due to, and caused by, Bursey and Medina's actions. Three times \$355,533 is \$1,066,599. Thus, John Dattala is awarded an additional judgment in the amount of \$1,066,599 [One Million, Sixty-Six Thousand, Five Hundred and Ninety-Nine dollars], which amount is a judgment in favor of John Dattala against both EUSTACHIUS C. BURSEY and LILLIAN MEDINA, jointly and severally.
3. Dattala affirmatively waived his right for an award of attorney fees and costs against both Bursey and Medina, and so none are awarded.
4. Pursuant to NRCP 54(b), this is certified as a final, appealable judgment.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated this 15th day of October, 2021



1B8 434 6AA1 A180
Adriana Escobar
District Court Judge

Respectfully Drafted and Submitted by :

/s/ Benjamin B. Childs
BENJAMIN B. CHILDS, ESQ.
Nevada Bar # 3946
Attorney for Plaintiff
JOHN DATTALA

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 John Dattala, Plaintiff(s)

CASE NO: A-19-794335-C

7 vs.

DEPT. NO. Department 14

8 Eustachius Bursey, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/15/2021

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26
27 Dattal v. Precision Assets et al

Case # 84762

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