
IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 83356

Electronically Filed
Jan 10 2022 04:43 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GREGORY GARMONG,

Appellant

--against--

WESPAC; GREG CHRISTIAN,

Respondents

Appeal from the Second Judicial District Court of Washoe County, Nevada
Judge Lynne Simons, Case No. CV12-01271

APPELLANT'S APPENDIX VOLUME 9

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Gregory Garmong*

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Transcript of Proceedings
Arbitration
Thursday, October 18, 2018

4/JA 618-629

1 CODE: 2645
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8 Attorney for Defendants

9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
10 **IN AND FOR THE COUNTY OF WASHOE**

11 GREGORY GARMONG, CASE NO. CV12-01271
12 Plaintiff, DEPT. NO. 6

13 v.

14 WESPAC, GREG CHRISTIAN, and
15 Does 1-10,
16 Defendants.

17 **DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR EXTENSION OF TIME**

18 Defendants Wespac and Greg Christian, by and through their counsel, Thomas C. Bradley, Esq.,
19 hereby oppose Plaintiff Gregory Garmong's *Motion for Extension of Time to File Opposition to*
20 *Defendants' Second Amended Motion for Attorney's Fees and Costs* ("Motion for Extension of
21 Time"). Defendants' *Opposition* is based on the following Points and Authorities, and all other
22 pleadings, briefs, and exhibits identified below.

23 ***Affirmation:*** *The undersigned verifies that this document does not contain the personal*
24 *information of any person.*

25 DATED this 6th day of May, 2021.

26 /s/ Thomas C. Bradley
27 THOMAS C. BRADLEY, ESQ.
28 Attorney for Defendants

1 **POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Gregory Garmong stipulated, and this Court ordered, that his Opposition to Defendants' Second
4 Amended Motion for Attorney's Fees and Costs was required to be filed and served within 10 days
5 following the Supreme Court's ruling upon his Petition for Review. *See* Court Order dated March 1,
6 2021. The Nevada Supreme Court issued its denial of Mr. Garmong's Petition for Review on April 6,
7 2021. Accordingly, Mr. Garmong's Opposition was due to be filed on or before April 16, 2021. Mr.
8 Garmong failed to timely file his Opposition and now requests that this Court exercise its discretion
9 to permit the late filing of his Opposition.

10 **II. LAW**

11 **A. District Court Rule 13**

12 District Court Rule 13 (3) provides that if a party fails to file and serve an opposition in a timely
13 manner, the district court has discretion to construe that failure as an admission that the motion is
14 meritorious and the party failing to file an opposition consents to the court's granting of the motion.
15 There is no requirement in the rule that counsel remind the opposing party or his lawyer of their duty
16 to timely file an opposition or of the date that the opposition is due.

17 **B. Rule 3.5 of the Rules of Professional Conduct**

18 Mr. Garmong's reliance upon Rule 3.5A of the Rules of Professional Conduct is misplaced.
19 Rule 3.5A is limited to situations where counsel seeks entry of a default or a complete dismissal of an
20 action. The Rule does not relate to a litigant's responsibility to timely file a pleading. In fact, District
21 Court Rule 13 notably does not require that the opposing party be reminded of their responsibility to
22 follow the Rules of Civil Procedure.

23 **C. Thomas C. Bradley's Declaration**

24 Additionally, Mr. Garmong attacks Thomas C. Bradley's Declaration because it does not contain
25 the words "personal knowledge." Although the law requires that a declaration contain information
26 that is within the declarant's own "personal knowledge," there is no requirement that the declaration
27 include the words "personal knowledge" as long as it is clear that the averments in the declaration are
28

1 within the declarant's personal knowledge. For example, it is clearly within counsel's personal
2 knowledge how much he charges his clients per hour, when and where he graduated from law school,
3 his prior legal experience, whether or not he was president of the local chapter of the Inns of Court,
4 the amount of his current hourly rate for security arbitration cases, the number of hours that he worked
5 and billed on the instant case, and his personal supervision of Mr. Hume's assistance on the case. In
6 any event, counsel has attached a Supplemental Declaration that includes the words "personal
7 knowledge." See Exhibit "1."

8 **D. Paralegal Fees are Properly Awarded as Part of an Award of Attorney Fees**

9 Mr. Garmong also attacks defendant's request that they be compensated for the work performed
10 by Michael Hume, a paralegal working for Mr. Bradley. The Nevada Supreme Court recently held
11 that fees for paralegal services are recoverable and stated:

12 *Rather, we agree with the majority opinion in that case, which stated that*

13
14 *[A] "reasonable attorney's fee" cannot have been meant to compensate only work*
15 *performed personally by members of the bar. Rather, the term must refer to a*
16 *reasonable fee for the work product of an attorney. Thus, the fee must take into account*
17 *the work not only of attorneys, but also of secretaries, messengers, librarians, janitors,*
18 *and others whose labor contributes to the work product for which an attorney bills her*
*client.... We thus take as our starting point the self-evident *770 proposition that the*
"reasonable attorney's fee" provided for by statute should compensate the work of
paralegals, as well as that of attorneys. Jenkins, 491 U.S. at 285, 109 S.Ct. 2463.

19 *Further, the use of paralegals and other nonattorney staff reduces litigation costs, so*
20 *long as they are billed at a lower rate. Id. at 288, 109 S.Ct. 2463. The Ninth Circuit*
21 *and other jurisdictions have also adopted this position. See Richlin Sec'y Serv. Co. v.*
22 *Chertoff, 553 U.S. 571, 580–83, 128 S.Ct. 2007, 170 L.Ed.2d 960 (2008) (reaffirming*
23 *Jenkins); Trs. of Constr. Indus. & Laborers Health & Welfare Trust v. Redland Ins.*
24 *Co., 460 F.3d 1253, 1257 (9th Cir.2006) ("[F]ees for work performed by nonattorneys*
25 *such as paralegals may be billed separately, at market rates, if this is the prevailing*
26 *practice in a given community." (internal quotations omitted)); U.S. Football League*
27 *v. Nat'l Football League, 887 F.2d 408, 416 (2d Cir.1989) ("Paralegals' time is*
28 *includable in an award of attorney's fees."); Todd Shipyards Corp. v. Dir., Office of*
Workers' Comp. Programs, 545 F.2d 1176, 1182 (9th Cir.1976) ("Paralegals can do
some of the work that the attorney would have to do anyway and can do it at
substantially less cost per hour."); Guinn v. Dotson, 23 Cal.App.4th 262, 28
Cal.Rptr.2d 409, 413 (1994) (reasonable attorney fees include necessary support
services for attorneys). As NRS 17.115(4)(d)(3) and NRCP 68(f)(2) both refer to

1 “reasonable attorney’s fees,” we conclude that this phrase includes charges for
2 persons such as paralegals and law clerks. Therefore, we conclude that the district
3 court did not abuse its discretion by including charges for these services in its
4 calculation of attorney fees.

5 See Las Vegas Metropolitan Police Department v. Yeghiazarian, 129 Nev. 760,769-770, (2013). The
6 Nevada Supreme Court, however, requires that this Court make a specific finding as to the
7 reasonableness of the paralegal’s hourly rate and the number of hours expended by the paralegal. *Id.*

8 Mr. Garmong also incorrectly claims that the declaration of Mr. Bradley is insufficient to support
9 the award of paralegal fees. In his declaration, Mr. Bradley explained:

10 *I retained Michael Hume to assist me in the defense of Mr. Garmong’s claims. I paid*
11 *Mr. Hume \$100.00 per hour to assist me before this Court. Mr. Hume is a very*
12 *experienced securities arbitration consultant. He has assisted lawyers throughout the*
13 *United States in excess of one thousand security arbitration cases over the past 25*
14 *years. Mr. Hume assisted me in reviewing and analyzing voluminous pleadings and*
15 *exhibits filed by Mr. Garmong. Mr. Hume further assisted me with locating referenced*
16 *and citations to the arbitration hearing. I have carefully reviewed, approved, and*
17 *verified all of Mr. Hume’s work and the accuracy and reasonableness of his*
18 *invoices. Mr. Hume worked a total of 31.75 hours for a total \$3,175.00.*

19 Defendants do not believe that a Declaration is required by Mr. Hume. In any event, to avoid
20 further complaints from the Plaintiff, Defendants attach a declaration by Mr. Hume to support the
21 award of paralegal fees. See Declaration of Michael Hume attached as Exhibit “2.”

22 **E. Mr. Garmong is a Vexatious Litigant Who Does Not Deserve an Extension of Time**

23 Mr. Garmong has filed frivolous lawsuits against (1) Nevada Supreme Court Justices Hardesty,
24 Pickering, Gibbons, Cherry, Douglas, Saitta and Parraguirre in 2016; (2) all members of the Tahoe
25 Regional Planning Agency (TRPA) in 2017, (3) Lyon County Board of Commissioners, Smith Valley
26 Fire Protection District, and Verizon Wireless in 2017; (4) Nevada Energy in 2016; (5) the Silverman
27 Law firm who previously represented him in 2011; (6) the Maupin, Cox, Legoy Law firm who
28 previously represented him in 2017; (7) his building contractor in 2008; and (8) his former wife in
different cases in 2010, 2011, 2012, and 2017. Sadly, this list is not exhaustive. This Court should
take judicial notice that Appellant never won any of these cases.

1 In this case, he has attacked the decisions of Judge Pro, this Court, and the Court of
2 Appeals. In fact, in his Petition for Review, Mr. Garmong contended that:

3 *The Appeals Judges swore the oath of office of NRS 282.020, and they are required*
4 *to adhere to the Code (see Code Part 6 VI, Scope [2] and Application Sec. I(A). The*
5 *oath requires all judges, including Appeals Judges, to “support, protect and defend*
6 *the Constitution and Government of the United States, and the Constitution and*
7 *government of the State of Nevada . . . and to . . . well and faithfully perform all the*
8 *duties of the office.” The Code requires all judges to “comply with the law, including*
9 *the code of Judicial Conduct” (Rule 1.1), “uphold and apply the law, and . . . perform*
10 *all duties of judicial office fairly and impartially” (Rule 2.2), “decide cases according*
11 *to the law and facts” (Rule 2.4, comment [1]).*

12 *In the present case, the Appeals Judges did not adhere to the law, their oaths, or*
13 *the Code, resulting in a decision contrary to the applicable rule of law.*

14 See page 9 of Garmong’s Petition for Review filed on March 22, 2021.

15 **III. CONCLUSION**

16 This Court should deny Mr. Garmong’s request to file a late Opposition to Defendants’ Second
17 Amended Motion for Attorney’s Fees and Costs. A denial would preclude Mr. Garmong from making
18 additional frivolous arguments and more personal attacks against the Nevada Judiciary.

19 DATED this 6th day of May, 2021.

20 /s/ Thomas C. Bradley
21 THOMAS C. BRADLEY, ESQ.
22 Attorney for Defendants
23
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Thomas C. Bradley, Esq., and on
3 the date set forth below, I served a true copy of the foregoing document on the party(ies) identified
4 herein, via the following means:

5
6 X Second Judicial District Court Eflex system

7 Carl Hebert, Esq.
8 carl@cmhebertlaw.com
9 202 California Avenue
10 Reno, Nevada 89509
11 Attorney for Plaintiff

12 DATED this 6th day of May, 2021.

13
14 By: Mehi Aonga
15 Employee of THOMAS C. BRADLEY, Esq.
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INDEX OF EXHIBITS

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2	Declaration of Michael Hume	2

EXHIBIT 1

EXHIBIT 1

SUPPLEMENTAL DECLARATION OF THOMAS C. BRADLEY

I, Thomas C. Bradley, declare under penalty of perjury to the following facts, knowing them to be true of my own personal knowledge:

1. I have been counsel of record in Garmong v. WESPAC since 2012.
2. I charged WESPAC \$395.00 per hour, which I believe is a fair and reasonable hourly rate based upon the following:
 - a. I graduated from Arizona State University School of Law in 1984;
 - b. I clerked for the Honorable Bruce R. Thompson for two years;
 - c. I am a member of both the Nevada and California Bar Association;
 - d. I worked as an Associate for Lawrence J. Semenza for five years;
 - e. I have worked in private practice for over twenty years;
 - f. I was President of the Local Chapter of the Inns of Court;
 - g. I have successfully represented parties in over 200 securities arbitration cases, many of which I have tried to an arbitration panel;
 - h. My current hourly rate for security arbitration cases is \$395.00 per hour;
 - i. It is my understanding that a majority of attorneys in Reno, Nevada charge \$300.00 or more per hour; and
 - j. WESPAC has paid all of my outstanding fees.

3. The area of securities arbitration is complicated and requires specialized knowledge and experience. Moreover, Mr. Garmong's three Motions to Vacate, Opposition to Motion to Confirm and three Replies were very detailed and voluminous, and contained numerous exhibits.

4. I believe that I provided zealous and superior representation before this Court on behalf of my clients. The quality of such representation, however, required me to spend many hours working on the case. I hereby certify that I worked a total of 62.1 hours and billed a total of TWENTY-FOUR THOUSAND FIVE HUNDRED TWENTY-NINE DOLLARS AND FIFTY CENTS (\$24,529.50), and that the invoice was accurate, and all hours worked were reasonable and necessary. Attached to this Declaration is a true and correct copy of my invoice in this matter.

5. I retained Michael Hume to assist me in the defense of Mr. Garmong's claims. I paid Mr. Hume \$100.00 per hour to assist me before this Court. Mr. Hume is a very experienced securities arbitration consultant. He has assisted lawyers throughout the United States in excess of one thousand security arbitration cases over the past 25 years. Mr. Hume assisted me in reviewing and analyzing voluminous pleadings and exhibits filed by Mr. Garmong. Mr. Hume further assisted me with locating referenced and citations to the arbitration hearing. I have carefully reviewed, approved, and verified all of Mr. Hume's work and the accuracy and reasonableness of his invoices. Mr. Hume worked a total of 31.75 hours for a total \$3,175.00.

6. I did not charge my clients for any time expended on any pleadings to make a certain exhibit confidential or for any telephone calls, e-mails, or legal research regarding that subject.

7. To support, confirm, and defend the District Court's Order of Affirmance before the Nevada Court of Appeals, I hereby certify that I performed 31.8 hours of legal work. I believe that I provided zealous and superior representation before the Nevada Court of Appeals on behalf of my clients. I charged \$395 per hour for my legal work. Accordingly, I billed the Defendants a total of \$12,561.00 while the case was on Appeal.

8. Thus, total fees and costs incurred and paid by the Defendants following the Arbitration Award are \$45,084.50.

I swear under penalty of perjury that the foregoing statements in this Supplemental Declaration are true and correct of my own personal knowledge.

DATED this 5th day of May, 2021.

By /s/ Thomas C. Bradley
THOMAS C. BRADLEY, ESQ.

DECLARATION OF MICHAEL HUME

I, Michael Hume, declare under penalty of perjury to the following facts, knowing them to be true of my own personal knowledge:

1. I was retained Thomas Bradley to assist him in the defense of Mr. Garmong's claims.
2. I was paid \$100.00 per hour to assist Mr. Bradley.
3. I am an experienced securities arbitration consultant. I have assisted lawyers throughout the United States in excess of one thousand security arbitration cases over the past 25 years.
4. I assisted Mr. Bradley in reviewing and analyzing voluminous pleadings and exhibits filed by Mr. Garmong. I further assisted Mr. Bradley with locating referenced and citations to the arbitration hearing.
5. I have carefully reviewed and verified 's the accuracy and reasonableness of my invoice in this litigation.
6. I worked a total of 31.75 hours for a total \$3,175.00.

I swear under penalty of perjury that the foregoing statements in this Declaration are true and correct of my own personal knowledge.

DATED this 6th day of May 2021.

By: 
MICHAEL HUME

CARL M. HEBERT, ESQ.
Nevada Bar #250
2215 Stone View Drive
Sparks, NV 89436
(775) 323-5556

Attorney for plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA IN AND FOR THE COUNTY OF WASHOE

GREGORY O. GARMONG,

Plaintiff,

vs.

CASE NO. : CV12-01271

WESPAC; GREG CHRISTIAN;
DOES 1-10, inclusive,

DEPT. NO.: 6

Defendants.

**REPLY TO DEFENDANTS' OPPOSITION
TO PLAINTIFF'S MOTION TO STRIKE**

Plaintiff Garmong replies to Defendant Wespac's Opposition to the Motion to Strike, and the attempt to introduce a Second (Supplemental) Declaration of Thomas C. Bradley.

Garmong has also filed "Motion for Extension of Time to File Opposition to Defendants' Second Amended Motion for Attorney's Fees and Costs; Opposition Points and Authorities," a completely separate motion. No extension of time is required for the present Motion to Strike.

APPLICABLE LAW

The Motion to Strike at 2:26-3:27 demonstrates that the First Declaration of Thomas C. Bradley (“First Declaration”), submitted with Defendants’ Second Amended Motion for Attorney’s Fees, was not legally sufficient because it was not based upon Bradley’s “personal knowledge.” The Opposition implicitly admits that the Motion to Strike should be granted, because it submits the Supplemental or Second Declaration of Thomas C. Bradley (“Second Declaration”), which is different from the legally insufficient First Declaration. The Opposition did not, by contrast, argue that the First Declaration was legally sufficient, and rely upon that First Declaration.

Wespac’s implicit admission that the First Declaration is legally insufficient has important consequences in light of other rules. The rules expressly require that a legally sufficient, proper Declaration must be served with the Second Amended Motion for Attorney’s Fees. NRCP 6(c)(2) provides in part: “Any affidavit supporting a motion must be served with the motion.” (Emphasis added). “The use of the word ‘must’ means that the rule’s requirements are mandatory.” Vanguard Piping v. Eighth Jud. Dist. Ct., 129 Nev. 602, 608 (2013). See also NRCP 54(d)(2), addressing the award of attorney’s fees after final judgment, and providing in part:

(B) Timing and Contents of the Motion. Unless a statute provides

1 otherwise, the motion must be filed no later than 20 days after
2 notice of entry of judgment is served; specify the judgment and
3 the statute, rule, or other grounds entitling the movant to the
4 award; state the amount sought or provide a fair estimate of it;
5 and be supported by counsel's affidavit swearing that the fees
6 were actually and necessarily incurred and were reasonable,
7 documentation concerning the amount of fees claimed, and points
8 and authorities addressing appropriate factors to be considered
9 by the court in deciding the motion. The time for filing the motion
10 may not be extended by the court after it has expired.

11 (Emphasis added).

12 The inclusion of an affidavit or declaration is a substantive requirement
13 of a motion for attorney's fees. Muniz v. United Parcel Serv., Inc., 738 F.3d
14 214, 222 (9th Cir. 2013) ("Declarations in support of attorney fee awards
15 should be based upon personal knowledge."). The rules quoted above do
16 not allow a party to file a legally insufficient first declaration with a motion,
17 and then later seek to cure the failure by filing a second declaration.
18 "Plaintiffs have identified nothing that would excuse their failure to submit the
19 affidavits and raise their standing arguments with their initial motion." Nguyen
20 v. U.S. Dept. of Homeland Sec., 460 F. Supp. 3d 27, 34 (D.D.C. 2020)
21 (rejecting affidavits attached to a reply brief). "It is plainly improper to submit
22 on reply evidentiary information that was available to the moving party at the
23 time that it filed its motion and that is necessary in order for that party to meet
24 its burden." Revise Clothing, Inc. v. Joe's Jeans Subsidiary, Inc., 687 F.

1 Supp. 2d 381, 387 (S.D.N.Y. 2010) “[N]ew arguments and evidence may not
2 be raised for the first time in a reply brief. Reply briefs are for replying, not
3 raising new arguments or arguments that could have been advanced in the
4 opening brief.’ . . . ‘[T]his serves to prevent the nonmoving party from being
5 sandbagged.’” GEFT Outdoor, L.L.C. v. City of Westfield, 491 F. Supp. 3d
6 387, 396 (S.D. Ind. 2020).

7
8 The attempt to file the Second Declaration violates Rule 6, because it
9 was not served with the Second Amended Motion for Attorney’s Fees. This
10 late-coming declaration cannot be corrected as an exhibit to an opposition to
11 a motion to strike, now that the plaintiff has brought its deficiencies to the
12 attention of the Court. And, without a legally sufficient declaration attached
13 to the initial moving papers, no award of attorney’s fees may be granted.

14 **BRADLEY DECLARATIONS MADE ON “BELIEF”**

15 The First Declaration at ¶¶ 2, 4 and 7, and the Second Declaration at
16 ¶¶ 2, 4 and 7, each bases assertions upon what the declarant “believes” in
17 relation to billings, not upon actual facts. That approach is insufficient,
18 because it gives no standards of comparison. For example, the First and
19 Second Declarations do not indicate if Mr. Bradley bills and collects from
20 other clients at a comparable rate, or other Reno attorneys bill and collect
21 from their clients at a comparable rate. As stated in Morgan v. Board of

1 Com'rs of Eureka County, 9 Nev. 360, 368 (1874):

2 An affidavit which states no fact within the knowledge of the
3 person making it would be of but little weight in any legal
4 proceeding. Such an affidavit does not establish any fact required
5 by the law to be established; it makes no statement of facts upon
6 which the minds of the commissioners could be informed, or upon
7 which they could base a decision. We think, as a general rule,
8 that when the law requires any fact to be established by an
9 affidavit, without prescribing its form, if made upon 'information
10 and belief,' it will be insufficient, unless it states positively the
11 facts and circumstances upon which such belief is founded. Such
12 is the rule in regard to affidavits and attachments.

11 **INVOICE/TIME RECORDS OF BRADLEY**

12 Exhibits 2-5 submitted with the Second Motion, and referenced in the
13 First Declaration, set forth alleged invoices/time records of Mr. Bradley. For
14 the reasons stated above, the First Declaration is not legally valid, because
15 it was not made on the "personal knowledge" of Mr. Bradley.

16 The Second Declaration states in paragraph 4, "Attached to this
17 Declaration is a true and correct copy of my invoice in this matter." This is a
18 false statement, inasmuch as no invoice was attached to the Second
19 Declaration. Moreover, for the reasons stated above, the Second Declaration,
20 and anything attached to it, is untimely sandbagging.

21 **RESPONSE TO ARGUMENTS OF OPPOSITION**

22 The Opposition argues that it is not necessary for the attorney's
23 Declaration accompanying a motion for attorney's fees to be made on
24

1 “personal knowledge.” Bradley takes his usual approach of labeling any
2 attempt to hold him to the rules as “frivolous” (Opposition 2:4), and then
3 attempts to introduce his Second Declaration because he is fully aware that
4 his First Declaration was legally insufficient.
5

6
7 Motion to Strike 3:7-14 demonstrates that in fact it was mandatory that
8 the declaration supporting a motion for attorney’s fees must be made on
9 personal knowledge. Opposition 3:7-12 attempts to circumvent the
10 requirement with attorney argument, but that is not sufficient. If attorney
11 argument were sufficient, there would be no requirement in the first place for
12 a supporting affidavit or declaration.
13
14

15 **SUMMARY AND CONCLUSION**

16 Rule 6 and Rule 54(d)(2) both require that, in order to be a valid and
17 complete motion, Defendants’ Second Amended Motion for Attorney’s Fees
18 necessarily should have been accompanied by a valid Bradley declaration.
19 There is no question, and Bradley implicitly admits, that the First Declaration
20 of Thomas C. Bradley was not a valid document, because it did not claim to
21 be made on personal knowledge.
22
23

24
25 The Second Amended Motion for Attorney’s Fees was incomplete.
26 Under the rules, it cannot now be amended or supplemented. The
27 declaration submitted with the Second Amended Motion for Attorney’s Fees
28

1 should be stricken, the proposed revised declaration accompanying the
2 defendants' opposition to the motion to strike rejected as untimely, and the
3 motion for fees denied as inadequately supported by required evidence.
4

5 **THE UNDERSIGNED DOES HEREBY AFFIRM THAT THIS DOCUMENT**
6 **DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY**
7 **PERSON.**

8 DATED this 12th day of May, 2021.

9 /S/ Carl M. Hebert

10 CARL M. HEBERT, ESQ.

11
12 Counsel for plaintiff Garmong
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Attorney for plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

GREGORY O. GARMONG,
Plaintiff,

vs.

CASE NO. : CV12-01271

WESPAC; GREG CHRISTIAN;
DOES 1-10, inclusive,

DEPT. NO. : 6

Defendants.

**REPLY POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR
EXTENSION OF TIME AND OPPOSITION TO THE DEFENDANTS'
SECOND AMENDED MOTION FOR ATTORNEY'S FEES AND COSTS**

Plaintiff Gregory O. Garmong submits the following reply points and authorities in support of his motion for extension of time to file an opposition to the defendants' second amended motion for attorneys' fees and costs.

EXTENSION OF TIME

The plaintiff overlooked the stipulated deadline to file an opposition to the defendants' second amended motion for attorneys fees and costs, which was pegged to the date, unknown at the time of stipulation, when the appellate proceedings in this case were concluded. In his rush to take an unearned tactical advantage of the plaintiff, counsel for the defendants did not inquire of counsel for the plaintiff whether he intended to file an opposition. See RPC 3.5A on relations with opposing counsel. This deliberately blind eye

1 toward relations with counsel for the plaintiff is borne out by the haste with which counsel
2 for the defendant filed a request for submission of the plaintiff's motion for extension of
3 time with the obvious objective of having this Court consider the motion without the benefit
4 of reply points and authorities. The motion for extension of time to oppose the defendants'
5 second amended motion for fees and costs was filed on April 27, 2021. The defendants
6 filed their opposition on May 6, 2021. On May 12, 2021 counsel for the defendants filed
7 a rather nonstandard request for submission, which stated, in its entirety:

9 Defendants WESPAC and Greg Christian, by and through their
10 counsel, Thomas C. Bradley, Esq., hereby request to submit Plaintiff Gregory
11 Garmong's Motion for Extension of Time to File Opposition to Defendants'
12 Second Amended Motion for Attorney's Fees and Costs; Opposition Points
13 and Authorities ('Motion for Extension of Time') filed on April 27, 2021. On
14 May 6, 2021, Defendants filed an Opposition to the Motion for Extension of
15 Time. District Court Rule 13(4) provides that 'the moving party may serve
16 and file reply points and authorities within 5 days after service of the
17 answering point and authorities. Upon expiration of the 5-day period either
18 party may notify the calendar clerk to submit the matter for decision by filing
19 and serving all parties with a written request for submission of the motion on
20 a form supplied by the calendar clerk.' Accordingly, if Plaintiff intended to file
21 a Reply brief it was due no later than May 11, 2021.

22 Mr. Garmong elected not to file a Reply brief within the time required
23 by District Court Rule 13(4). Accordingly, Defendants hereby submit
24 Plaintiff's Motion for Extension of Time for decision.¹

25 The problem with the request for submission is that it was premature. D.C.R. 13(4) was
26 amended on December 23, 2020, effective February 22, 2021. The current, amended
27 version reads:

28 4. The moving party may serve and file reply points and authorities within 7
days after service of the answering points and authorities. Upon the
expiration of the 7-day period, either party may notify the calendar clerk to
submit the matter for decision by filing and serving all parties with a written
request for submission of the motion on a form supplied by the calendar
clerk. A copy of the form shall be delivered to the calendar clerk, and proof

¹ The defendants helpfully submitted a proposed order as an exhibit to the request
for submission.

1 of service shall be filed in the action.

2 (Emphasis added). In reality, the plaintiff has to and including May 13, 2021 within which
3 to file reply points and authorities.

4 This Court should reject the sharp practice, in violation of RPC 3.5A, by which
5 counsel for the defendants continues to ignore any semblance of professional relations
6 with opposing counsel by first not inquiring whether the plaintiff intended to file an
7 opposition and, second, prematurely submitting the plaintiff's motion for extension of time
8 to deprive the plaintiff of a reply.

9
10 There will be no prejudice to the defendants if the plaintiff is granted a short
11 extension of time to file an opposition to the Second Amended Motion for Attorney's Fees
12 and Costs. The initial motion for fees was filed August 8, 2019. The first amended motion
13 for fees was filed December 9, 2019. The second amended motion for fees and costs was
14 filed on February 18, 2021. The purpose of these continued amendments was to allow the
15 defendants to claim fees and costs from the appellate proceedings. Given the length of
16 time already given to the defendants to pursue their fees and costs it would not cost them
17 much to extend the same courtesy here in granting additional time to the plaintiff to file an
18 opposition. See Dougan v. Gustaveson, 108 Nev. 517, 523 (1992), *abrogated on other*
19 *grounds by* Scrimmer v. Eighth Jud. Dist. Ct. ex rel. County of Clark, 116 Nev. 507 (2000)
20 and Arnold v. Kip, 123 Nev. 410 (2007): "We therefore commend the district courts and
21 discovery commissioners for their vigilance in promoting reasonable diligence on the part
22 of counsel. However, we are mindful that occasionally an overly strict application of a
23 rule—especially when coupled with ultimate sanctions²—will defeat the very ends of justice
24
25
26

27 ² Here there is \$45,084.50 in attorney's fees and costs at issue, a considerable sum
28 representing fees and costs claimed by the defendants in post-arbitration confirmation

1 that the rules are designed to promote.”

2 **OPPOSITION TO SECOND AMENDED MOTION FOR FEES AND COSTS**

3 **Supplemental declarations.** In the defendants’ opposition to the motion for
4 extension/opposition filed by the plaintiff they submit the supplemental declaration of
5 Thomas C. Bradley and a declaration from Michael Hume. This after-the-fact attempt to
6 correct deficiencies in the initial second amended motion for attorney’s fee and costs
7 should be rejected by this Court. The rules expressly require that a legally sufficient,
8 proper declaration must be served with the Second Amended Motion for Attorney’s Fees.
9 NRCP 6(c)(2) provides in part: “Any affidavit supporting a motion must be served with
10 the motion.” (Emphasis added). “The use of the word ‘must’ means that the rule’s
11 requirements are mandatory.” Vanguard Piping v. Eighth Jud. Dist. Ct., 129 Nev. 602,
12 608 (2013). See also NRCP 54(d)(2), addressing the award of attorney’s fees after final
13 judgment, and providing in part:
14
15

16 (B) Timing and Contents of the Motion. Unless a statute provides otherwise,
17 the motion must be filed no later than 20 days after notice of entry of
18 judgment is served; specify the judgment and the statute, rule, or other
19 grounds entitling the movant to the award; state the amount sought or
20 provide a fair estimate of it; and be supported by counsel’s affidavit swearing
21 that the fees were actually and necessarily incurred and were reasonable,
22 documentation concerning the amount of fees claimed, and points and
authorities addressing appropriate factors to be considered by the court in
deciding the motion. The time for filing the motion may not be extended by
the court after it has expired.

23 (Emphasis added).

24 The inclusion of an affidavit or declaration is a substantive requirement of a motion
25 for attorney’s fees. Muniz v. United Parcel Serv., Inc., 738 F.3d 214, 222 (9th Cir. 2013)

26
27 _____
28 proceedings. While not an “ultimate sanction,” the issue is certainly significant to Mr.
Garmong.

1 (“Declarations in support of attorney fee awards should be based upon personal
2 knowledge.”). The rules quoted above do not allow a party to file a legally insufficient first
3 declaration with a motion, and then later seek to cure the failure by filing a second
4 declaration. “Plaintiffs have identified nothing that would excuse their failure to submit the
5 affidavits and raise their standing arguments with their initial motion.” Nguyen v. U.S.
6 Dept. of Homeland Sec., 460 F. Supp. 3d 27, 34 (D.D.C. 2020) (rejecting affidavits
7 attached to a reply brief). “It is plainly improper to submit on reply evidentiary information
8 that was available to the moving party at the time that it filed its motion and that is
9 necessary in order for that party to meet its burden.” Revise Clothing, Inc. v. Joe’s Jeans
10 Subsidiary, Inc., 687 F. Supp. 2d 381, 387 (S.D.N.Y. 2010). “[N]ew arguments and
11 evidence may not be raised for the first time in a reply brief. Reply briefs are for replying,
12 not raising new arguments or arguments that could have been advanced in the opening
13 brief.’ . . . [T]his serves to prevent the nonmoving party from being sandbagged.” GEFT
14 Outdoor, L.L.C. v. City of Westfield, 491 F. Supp. 3d 387, 396 (S.D. Ind. 2020).

15
16
17 The filing of Mr. Bradley’s supplemental declaration to supply personal knowledge
18 and Mr. Humes’ declaration to overcome the hearsay nature of the first declaration of Mr.
19 Bradley violates Rule 6, because it was not served with the Second Amended Motion for
20 Attorney’s Fees. The requirements of a motion for fees and costs should have been known
21 to Mr. Bradley at the time he filed the motion. Any knowledge on how to do it correctly
22 gained after filing is too late to use. The first declaration of Mr. Bradley cannot be
23 corrected as an exhibit to an opposition to this motion for extension/opposition, now that
24 the plaintiff has brought its deficiencies to the attention of the Court. And, without a legally
25 sufficient declaration attached to the initial moving papers, no award of attorney’s fees (or
26
27
28

1 Mr. Humes' consulting fees) may be granted.

2 **Characterization of Mr. Humes' charges.** In their opposition the defendants call
3 Mr. Hume a paralegal and attempt to roll his charges into the category of attorney's fees.
4 Opposition 3-4, "D. Paralegal Fees Are Properly Awarded as Part of an Award of
5 Attorney's Fees." The truth is that Mr. Hume is a "consultant" on securities arbitrations.
6 See the supplemental declaration of Thomas C. Bradley at ¶ 5: "Mr. Humes is a very
7 experienced securities arbitration consultant." (Emphasis added). Mr. Humes makes the
8 same statement at ¶ 3 of his declaration. Nowhere in either declaration is the word
9 "paralegal" used. The rebranding of Mr. Humes as a paralegal is nothing more than an
10 attempt to sidestep the requirements of NRS 18.110 for submitting a verified memorandum
11 of costs. See NRS 18.005(5) (expert witness fees are costs) and (17) (any other
12 reasonable and necessary expense); Pub. Employees' Ret. System of Nevada v. Gitter,
13 113 Nev. 126, 134 (2017) ("With respect to cases in which the expert acts only as a
14 consultant and does not testify, however, district courts may award \$1,500 or less, so long
15 as the district court finds such costs constitute '[r]easonable fees.' NRS 18.005(5)."
16 (Emphasis added).

17 **Attacks on Mr. Garmong.** Finally, counsel for the defendants indulges in an *ad*
18 *hominem* attack on Mr. Garmong, essentially stating that because he has lost on the
19 merits on other occasions in other litigation, he should lose here. This somehow makes
20 Mr. Garmong a "vexatious litigant."

21 Mr. Garmong has never been declared a vexatious litigant by any court. See
22 *generally*, Jordan v. State ex rel. Dept. of Motor Vehicles and Pub. Safety, 121 Nev. 44,
23 58-62 (2005), *abrogated on other grounds by* Buzz Stew, LLC v. City of N. Las Vegas, 124

1 Nev. 224, 228 n. 6 (2008). Moreover, this Court has never sanctioned Mr. Garmong for
2 bad faith litigation, NRS 18.010(2)(b), or under NRCP 11. The Court should reject this
3 small-minded resort to prejudice out of hand.
4

5 **CONCLUSION**

6 Plaintiff Garmong respectfully requests that this Court grant his request for an
7 extension of time, consider his opposition points and authorities on the merits and deny the
8 defendants' second amended motion for attorneys fees and costs for the reasons stated
9 above.
10

11 **THE UNDERSIGNED DOES HEREBY AFFIRM THAT THIS DOCUMENT DOES NOT
12 CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON.**

13 DATED this 13th day of May, 2021.

14 /S/ Carl M. Hebert
CARL M. HEBERT, ESQ.

15 Counsel for plaintiff Garmong
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1 CODE NO. 3370
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 GREGORY O. GARMONG,

Case No. CV12-01271

10 Plaintiff,

Dept. No. 6

11 vs.

12 WESPAC; GREG CHRISTIAN; DOES 1-10,
13 inclusive,

14 Defendants.
15 _____/

16 **ORDER DENYING MOTION FOR EXTENSION OF TIME TO FILE OPPOSITION TO**
17 **DEFENDANTS' SECOND AMENDED MOTION FOR ATTORNEY'S FEES AND COSTS**

18 Before this Court is a *Motion for Extension of Time to File Opposition to Defendants'*
19 *Second Amended Motion for Attorney's Fees and Costs; Opposition Points and Authorities*
20 *("Motion")* filed by Plaintiff GREGORY O. GARMONG ("Mr. Garmong"), by and through his
21 attorney of record, Carl M. Herbert, Esq.
22

23 Defendants WESPAC and GREG CHRISTIAN (collectively "Defendants" unless
24 individually referenced) filed the *Defendants' Opposition to Plaintiff's Motion for Extension of*
25 *Time ("Opposition")* by and through their attorney of record, Thomas C. Bradley, Esq.
26

27 //

28 //

1 Mr. Garmong filed the *Reply Points and Authorities in Support of Motion for*
2 *Extension of Time and Opposition to the Defendants' Second Amended Motion for*
3 *Attorney's Fees and Costs ("Reply")* and the matter was thereafter submitted to the Court for
4 consideration.¹

5
6 **I. PROCEDURAL BACKGROUND.**

7 This is an action for breach of a financial management agreement and carries with it
8 a robust procedural history. Mr. Garmong filed his *Complaint* on May 9, 2012, alleging the
9 following claims for relief:

- 10 1) Breach of Contract;
- 11 2) Breach of Nevada Deceptive Trade Practices Act;
- 12 3) Breach of Implied Covenant of Good Faith and Fair Dealing;
- 13 4) Unjust Enrichment;
- 14 5) Breach of Fiduciary Duty;
- 15 6) Malpractice; and
- 16 7) Negligence.

17
18
19 On September 19, 2012, Defendants filed their *Motion to Dismiss and Compel*
20 *Arbitration*. On December 13, 2012, the Court entered its *Order* granting Defendants'
21 request to compel arbitration but denying the motion to dismiss. Mr. Garmong then filed his
22 *Combined Motions for Leave to Rehear and for Rehearing of the Order of December 13,*
23 *2012 Compelling Arbitration ("Reconsider Motion")*. The motion was opposed by
24 Defendants. Mr. Garmong did not file a reply and this case was stagnant for nearly a year
25

26
27 ¹ Also currently pending before the Court is Defendants' *Second Amended Motion for Attorney's*
28 *Fees* and Mr. Garmong's *Motion to Strike Declaration of Thomas C. Bradley in Support of Second*
Amended Motion for Attorney's Fees and Costs. Both the aforementioned motions were submitted
before the instant *Motion*, however, the Court finds it necessary to decide the motions out of order to
keep a clean record.

1 until January 13, 2014, when the Court entered its *Order to Proceed*. Mr. Garmong filed his
2 reply on February 3, 2014. The *Reconsider Motion* was denied on April 2, 2014.

3 Mr. Garmong then sought writ relief from the Nevada Supreme Court. On December
4 18, 2014, the Nevada Supreme Court entered its *Order Denying Petition for Writ of*
5 *Mandamus or Prohibition*. The Supreme Court next entered its *Order Denying Rehearing*
6 on March 18, 2015, and, subsequently, entered its *Order Denying En Banc Reconsideration*
7 on May 1, 2015.

9 After the Nevada Supreme Court's orders were entered, this Court again entered an
10 *Order for Response*, instructing the parties to proceed with this case. *Order for Response*,
11 November 17, 2015. In response, the parties indicated they had initiated an arbitration
12 proceeding with JAMS in Las Vegas. *Notice of Status Report*, December 1, 2015.

14 On June 8, 2016, Mr. Garmong filed his *Motion for a Court-Appointed Arbitrator*,
15 arguing the JAMS arbitrators were prejudiced against Mr. Garmong. This matter was fully
16 briefed; and, on July 12, 2016, this Court entered its *Order re: Arbitration* requiring each
17 party to submit three arbitrators to the Court so the Court could select one name to act as
18 arbitrator. The parties then stipulated to select one arbitrator, to reduce costs. *Stipulation to*
19 *Select One Arbitrator*, October 17, 2016. In accordance, this Court entered its *Order*
20 *Appointing Arbitrator* on October 31, 2016, appointing Michael G. Ornstil, Esq., as arbitrator.
21 After it was determined Mr. Ornstil was unavailable, Mr. Garmong stipulated to the
22 appointment of either retired Judge Phillip M. Pro,² or Lawrence R. Mills. Esq.
23

25 On November 13, 2017, this Court entered its *Order Granting Motion to Strike*, which
26 stayed the proceeding pending the outcome of the arbitration, and directed the parties to file
27

28 _____
² Mr. Garmong stipulated to Judge Pro despite previously moving to preclude a judge from serving
as an arbitrator.

1 an amended complaint and other responsive papers at the direction of Judge Phillip M. Pro.
2 *Order Granting Motion to Strike*, p. 2. On February 21, 2017, this Court entered its *Order*
3 *Appointing Arbitrator*, appointing Judge Phillip M. Pro (“Judge Pro”).
4

5 On March 27, 2017, Mr. Garmong filed *Plaintiff's Objection Pursuant to NRS*
6 *38.231(3) and 38.241(e) That There is No Agreement to Arbitrate; Notification of Objection*
7 *to the Court*. Despite prior determinative orders from this Court, Mr. Garmong again
8 objected to arbitration on the basis there was no agreement to arbitrate.
9

10 On May 23, 2017, this Court entered its *Order to Show Cause Why Action Should not*
11 *be Dismissed for Want of Prosecution Pursuant to NRCP 41(E)* (“OSC Order”), finding “Mr.
12 Garmong and Defendants were ordered numerous times to participate in arbitration as early
13 as December 13, 2012.” The Court found the file did not contain any evidence the parties
14 had proceeded to arbitration as ordered. *OSC Order*, p. 4. Accordingly, the Court ordered
15 the parties to show cause why the action should not be dismissed for want of prosecution
16 and required each party to file one responsive brief. *OSC Order*, p. 4.
17

18 In the responsive briefs, the parties state they attended their first arbitration
19 conference in April 2017. The Court acknowledged sufficient cause was shown in the *Order*
20 entered June 30, 2017.
21

22 On July 22, 2018, without asking for leave of Court to lift the stay, Mr. Garmong filed
23 his *Motion to Disqualify Arbitrator Pro, Vacate Order Denying Motion for Summary*
24 *Judgment and Appoint New Arbitrator* (“*Motion to Disqualify*”). The Court thereafter entered
25 its *Order Denying Plaintiff's Motion to Disqualify Arbitrator Pro; Order Denying Motion to*
26 *Vacate Order Denying Motion for Summary Judgment; Order Denying Motion to Appoint*
27 *New Arbitrator* (“*Arbitrator Order*”) on November 11, 2019.
28

1 Defendants thereafter filed *Defendants' Motion for Limited Relief From Stay to File*
2 *Motion for Attorney's Fees and Sanctions* ("Motion for Sanctions") requesting limited relief
3 from this Court's order staying the proceeding pending the outcome of arbitration. While the
4 *Motion for Sanctions* was under consideration, Defendants filed their *Notice of Completion*
5 *of Arbitration Hearing* on October 22, 2018. The Court found, with completion of the
6 arbitration, Defendants' *Motion for Sanctions* was moot. Additionally, the Court took notice
7 of Defendants' *Notice of Completion of Arbitration* and determined there were additional
8 decisions to be rendered regarding the *Notice of Completion of Arbitration*.
9

10
11 Judge Pro found Mr. Garmong's claims, for: (1) Breach of Contract, (2) Breach of
12 Implied Warranty, (3) Breach of the Implied Covenant of Good Faith and Fair Dealing, (4)
13 Nevada's Deceptive Trade Practices Act, (5) Breach of Fiduciary Duty of Full Disclosure, (6)
14 Intentional Infliction of Emotional Distress and (7) Unjust Enrichment all failed as a matter of
15 law because Mr. Garmong did not establish his claims by a preponderance of the evidence.
16
17 See Final Award, p. 8-9. Furthermore, after weighing the necessary factors required by
18 Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), Judge
19 Pro found Defendants were entitled to an award of reasonable attorneys' fees in the total
20 sum of \$111,649.96. *Final Award*, p. 11.
21

22 After the *Final Award*, the litigation proceeded with several filings. On August 8,
23 2019, this Court entered its *Order Re Motions* ("ORM"): (1) granting *Defendants' Petition for*
24 *an Order Confirming Arbitrator's Final Award and Reducing Award to Judgment, Including,*
25 *Attorneys' Fees and Costs*; (2) denying *Plaintiff's Motion to Vacate Arbitrator's Final Award*;
26 (3) denying *Plaintiff's Motion to Vacate Arbitrator's Award of Attorneys' Fees*; (4) denying
27 *Plaintiff's Motions to Vacate Arbitrator's Award of Denial of Plaintiff's Motion for Partial*
28

1 *Summary Judgment and for the Court to Decide and Grant Plaintiff's Motion for Partial*
2 *Summary Judgment ("Motion to Vacate MSJ Decision"); and, (5) granting Defendants'*
3 *Motion for an Order to File Exhibit as Confidential. ORM, p. 15-16.*

4
5 On August 27, 2019, this Court entered its *Order* directing: (1) WESPAC to file an
6 *Amended Motion for the Award of Attorneys' Fees*; (2) allowing Mr. Garmong the standard
7 response time to file and serve his opposition to Defendants' *Amended Motion for the*
8 *Award of Attorneys' Fees*; and, (3) providing WESPAC would not be required to file a
9 *Proposed Final Judgment* until ten (10) days following this Court's ruling on WESPAC's
10 *Amended Motion for the Award of Attorneys' Fees. Order, p. 1.*

11
12 On December 6, 2019, this Court entered its *Order Denying Motion to Alter or Amend*
13 *Judgment ("AA Order")* maintaining its prior rulings within the *ORM*. On January 7, 2020,
14 Mr. Garmong filed his *Notice of Appeal* to the Nevada Supreme Court regarding this Court's
15 *Arbitrator Order, ORM, and AA Order.*

16
17 On December 9, 2019, the *Defendants' Amended Motion for Attorney's Fees* was
18 filed. Mr. Garmong filed his *Notice of Appeal* on January 7, 2020, and the Court entered the
19 *Order Holding Issuance of Order on Defendants' Amended Motion for Attorney's Fees in*
20 *Abeyance*. On December 1, 2020, the Nevada Supreme Court issued its *Order of*
21 *Affirmance* upholding this Court's judgment in its entirety and noting Defendants may seek
22 amended fees pursuant to the fee shifting provision in NRCP 68 that extends to fees
23 incurred on and after appeal.

24
25 On February 18, 2021, Defendants filed the *Defendants' Second Amended Motion*
26 *for Attorney's Fees*. On February 22, 2021, the Nevada Supreme Court entered its *Order*
27 *Denying Rehearing* pursuant to NRAP 40(c). Next, the parties entered into a stipulation to
28

1 extending the time for Mr. Garmong to file an opposition to the *Defendants' Second*
2 *Amended Motion for Attorney's Fees*. The stipulation is memorialized in the *Order*
3 *Extending Time for Plaintiff to File Points and Authorities in Opposition to the Defendants'*
4 *Second Amended Motion for Fees* entered by the Court on March 1, 2021 and allows Mr.
5 Garmong ten calendar days after the Nevada Supreme Court acts on Mr. Garmong's
6 petition for review of the *Order of Affirmance*. On April 6, 2021, the Nevada Supreme Court
7 entered the *Order Denying Petition for Review*. On April 21, 2021, Mr. Bradley, counsel for
8 Defendants, filed a *Request for Submission* for *Defendants' Second Amended Motion for*
9 *Attorney's Fees*.

12 On April 26, 2021, Mr. Garmong filed his *Motion to Strike Declaration of Thomas C.*
13 *Bradley in Support of Second Amended Motion for Attorney's Fees and Costs* ("Motion to
14 *Strike*"). On April 27, 2021, Mr. Garmong filed the instant *Motion*.

16 In the *Motion*, Mr. Garmong states the deadline for him to file his opposition was April
17 16, 2021, and counsel overlooked deadline. *Motion*, p. 2. Mr. Garmong notes counsel has
18 worked together on extensions of time and have liberally granted extensions, however,
19 when counsel for Defendants noticed Mr. Garmong had not filed an opposition, he
20 submitted the *Defendants' Second Amended Motion for Attorney's Fees* instead of reaching
21 out to counsel pursuant to Rule of Professional Conduct ("RPC") Rule 3.5A. *Motion*, p. 3.
22 Mr. Garmong likens the situation to Defendants seeking a default against Mr. Garmong. *Id.*
23 Mr. Garmong argues there is a preference to decide cases on the merits and then
24 addresses the merits of the *Defendants' Second Amended Motion for Attorney's Fees* and
25 Mr. Garmong's *Motion to Strike*. *Motion*, p. 4.

1 In the *Opposition*, Defendants note District Court Rule 13(3) carries no requirement
2 that counsel remind the opposing party of their duty to timely file an opposition. *Opposition*,
3 p. 2. Defendants state Mr. Garmong's reliance on RPC 3.5A is misplaced because Rule
4 3.5A applies when counsel seeks entry of a default or complete dismissal of an action and
5 does not relate to a litigant's responsibility to timely file a pleading. *Id.* Defendant likewise
6 argues the merits of the *Defendants' Second Amended Motion for Attorney's Fees* and the
7 *Motion to Strike*.³ *Opposition*, pp. 2-4. Defendants next contend Mr. Garmong is a
8 vexatious litigant who has filed frivolous, unsuccessful cases against multiple defendants
9 and therefore Mr. Garmong is not entitled to an extension of time. *Opposition*, p. 4.
10
11

12 In the *Reply*, Mr. Garmong notes Defendants filed a *Request for Submission* for the
13 instant *Motion*, however, the Defendants' *Request for Submission* was premature because
14 DCR 13(4) was amended and allowed seven days for a reply brief to be filed. *Reply*, p. 2.
15 Mr. Garmong maintains there will be no prejudice to Defendants if he is granted a short
16 extension of time as the *Motion* has effectively been pending since August 8, 2019. *Reply*,
17 p. 3. Mr. Garmong denies he is a vexatious and notes he has never been declared a
18 vexatious litigant by any court, nor has this Court sanctioned Mr. Garmong for bad faith
19 litigation. *Reply*, pp. 6-7.
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27 _____
28 ³ Pursuant to Washoe District Court Rule 10(3)(a), "[a]ny motion, opposition, reply, etc., must be filed as a separate document unless it is pleaded in the alternative." Mr. Garmong does not plead in the alternative and the Court declines to consider these matters here as each will be decided on the merits in their respective orders.

1 **II. APPLICABLE LAW AND ANALYSIS.**

2 Nevada Rules of Civil Procedure Rule 6 governs extending time and states, in
3 pertinent part:
4

5 (1) In General. When an act may or must be done within a specified
6 time:

7 (A) the parties may obtain an extension of time by stipulation if approved
8 by the court, provided that the stipulation is submitted to the court before
9 the original time or its extension expires; or

10 (B) the court may, for good cause, extend the time:

11 (i) with or without motion or notice if the court acts, or if a request is
12 made, before the original time or its extension expires; or

13 (ii) on motion made after the time has expired if the party failed to act
14 because of excusable neglect.

15 (2) Exceptions. A court must not extend the time to act under Rules
16 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(c)(1), and must not
17 extend the time after it has expired under Rule 54(d)(2).

18 NRCP 6(b)(1)-(2). In Huckabay Props. V. NC Auto Parts, 130 Nev. 196, 198, 322 P.3d 429,
19 430 (2014), the Nevada Supreme Court explained the policy of deciding cases on the merits
20 “is not absolute and must be balanced against countervailing policy considerations.” These
21 considerations include “the public’s interest in expeditious resolution of appeals, the parties’
22 interests in bringing litigation to a final and stable judgment, prejudice to the opposing side,
23 ad judicial administrations concerns, such as the court’s need to manage its sizeable and
24 growing docket.” Id., 130 Nev. at 198, 322 P.3d at 430-31.

25 The Court does not find good cause exists to extend the deadline for Mr. Garmong to
26 file an opposition in light of the policy considerations discussed in Huckabay Props. Mr.
27 Garmong has received an adverse judgment through arbitration which has been reviewed
28 by the Nevada Supreme Court and affirmed in its entirety; the petition for rehearing was
denied; and, Mr. Garmong’s petition for review was denied. See Order of Affirmance, p. 10.
As Huckabay Props describes, there is a strong public interest in resolving cases

1 expeditiously and this case has languished for over nine years. The parties' interests in
2 reaching a stable and final judgment are high as the parties have undoubtedly lost time at
3 great expense over the past nine years and allowing further litigation of attorney's fees after
4 the arbitrator's award has been confirmed only extends that time and expense for both
5 parties.
6

7 Defendants would suffer prejudice as they would have to again incur costs to file a
8 reply to Mr. Garmong's opposition and may have to field a motion for reconsideration. Mr.
9 Garmong missed his deadline even after the parties stipulated to allow Mr. Garmong to
10 respond after the Nevada Supreme Court acted on his petition for review, and Mr. Garmong
11 notes Defendants have been generous with extensions in the past.⁴ Nothing requires
12 Defendants to do so now at the end of litigation as RPC 3.5A applies to defaults. It is also
13 worth noting Defendants filed the *Request for Submission* five days after Mr. Garmong's
14 opposition was due, giving Mr. Garmong further time to respond. Mr. Garmong's argument
15 that Defendants would not suffer prejudice because the *Defendants' Second Amended*
16 *Motion for Attorney's Fees* has been pending since August of 2019, illustrates the point that
17 Defendants have had judgment in their favor for nearly two years and, yet, this case still has
18 not concluded. Finally, this Court has an interest in concluding this litigation and efficiently
19 manage its remaining docket.
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⁴ See Order Extending Time for Plaintiff to File Points and Authorities in Opposition to the Defendants' Second Amended Motion for Fees entered by the Court on March 1, 2021.

1 **III. ORDER.**

2 For the foregoing reasons, and good cause appearing therefor,

3 **IT IS HEREBY ORDERED** *Motion for Extension of Time to File Opposition to*
4
5 *Defendants' Second Amended Motion for Attorney's Fees and Costs* is DENIED.

6 Dated this 11th day of June, 2021.

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DISTRICT JUDGE

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I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT; that on the 11th day of June, 2021, I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

CARL HEBERT, ESQ.
THOMAS BRADLEY, ESQ.

And, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Heidi Boe

1 CODE NO. 3370

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 GREGORY O. GARMONG,

Case No. CV12-01271

10 Plaintiff,

Dept. No. 6

11 vs.

12 WESPAC; GREG CHRISTIAN;
13 DOES 1-10, inclusive,

14 Defendants.
15 _____/

16 **ORDER DENYING MOTION TO STRIKE DECLARATION OF THOMAS C. BRADLEY IN**
17 **SUPPORT OF SECOND AMENDED MOTION FOR ATTORNEY'S FEES AND COSTS**

18 Before this Court is a *Motion to Strike Declaration of Thomas C. Bradley in Support of*
19 *Second Amended Motion for Attorney's Fees and Costs* ("Motion") filed by Plaintiff
20 GREGORY O. GARMONG ("Mr. Garmong"), by and through his counsel, Carl M. Herbert,
21 Esq.
22

23 Defendants WESPAC and GREG CHRISTIAN (collectively "Defendants" unless
24 individually referenced) filed *Defendants' Opposition to Plaintiff's Motion to Strike*
25 (*"Opposition"*), by and through their counsel, Thomas C. Bradley, Esq.
26

27 Mr. Garmong filed his *Reply to Defendants' Opposition to Plaintiff's Motion to Strike*
28 (*"Reply"*) and the matter was thereafter submitted to the Court for consideration.

1 **I. PROCEDURAL BACKGROUND.**

2 This is an action for breach of a financial management agreement and carries with it
3 a robust procedural history. Mr. Garmong filed his *Complaint* on May 9, 2012, alleging the
4 following claims for relief:
5

- 6 1) Breach of Contract;
- 7 2) Breach of Nevada Deceptive Trade Practices Act;
- 8 3) Breach of Implied Covenant of Good Faith and Fair Dealing;
- 9 4) Unjust Enrichment;
- 10 5) Breach of Fiduciary Duty;
- 11 6) Malpractice; and
- 12 7) Negligence.

13
14 On September 19, 2012, Defendants filed their *Motion to Dismiss and Compel*
15 *Arbitration*. On December 13, 2012, the Court entered its *Order* granting Defendants'
16 request to compel arbitration but denying the motion to dismiss. Mr. Garmong then filed his
17 *Combined Motions for Leave to Rehear and for Rehearing of the Order of December 13,*
18 *2012 Compelling Arbitration ("Reconsider Motion")*. The motion was opposed by
19 Defendants. Mr. Garmong did not file a reply and this case was stagnant for nearly a year
20 until January 13, 2014, when the Court entered its *Order to Proceed*. Mr. Garmong filed his
21 reply on February 3, 2014. The *Reconsider Motion* was denied on April 2, 2014.
22

23
24 Mr. Garmong then sought writ relief from the Nevada Supreme Court. On December
25 18, 2014, the Nevada Supreme Court entered its *Order Denying Petition for Writ of*
26 *Mandamus or Prohibition*. The Supreme Court next entered its *Order Denying Rehearing*
27
28

1 on March 18, 2015, and, subsequently, entered its *Order Denying En Banc Reconsideration*
2 on May 1, 2015.

3 After the Nevada Supreme Court's orders were entered, this Court again entered an
4 *Order for Response*, instructing the parties to proceed with this case. *Order for Response*,
5 November 17, 2015. In response, the parties indicated they had initiated an arbitration
6 proceeding with JAMS in Las Vegas. *Notice of Status Report*, December 1, 2015.

7
8 On June 8, 2016, Mr. Garmong filed his *Motion for a Court-Appointed Arbitrator*,
9 arguing the JAMS arbitrators were prejudiced against Mr. Garmong. This matter was fully
10 briefed; and, on July 12, 2016, this Court entered its *Order re: Arbitration* requiring each
11 party to submit three arbitrators to the Court so the Court could select one name to act as
12 arbitrator. The parties then stipulated to select one arbitrator, to reduce costs. *Stipulation to*
13 *Select One Arbitrator*, October 17, 2016. In accordance, this Court entered its *Order*
14 *Appointing Arbitrator* on October 31, 2016, appointing Michael G. Ornstil, Esq., as arbitrator.
15 After it was determined Mr. Ornstil was unavailable, Mr. Garmong stipulated to the
16 appointment of either retired Judge Phillip M. Pro,¹ or Lawrence R. Mills. Esq.

17
18 On November 13, 2017, this Court entered its *Order Granting Motion to Strike*, which
19 stayed the proceeding pending the outcome of the arbitration, and directed the parties to file
20 an amended complaint and other responsive papers at the direction of Judge Phillip M. Pro.
21 *Order Granting Motion to Strike*, p. 2. On February 21, 2017, this Court entered its *Order*
22 *Appointing Arbitrator*, appointing Judge Phillip M. Pro ("Judge Pro").

23
24 On March 27, 2017, Mr. Garmong filed *Plaintiff's Objection Pursuant to NRS*
25 *38.231(3) and 38.241(e) That There is No Agreement to Arbitrate; Notification of Objection*
26

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28

¹ Mr. Garmong stipulated to Judge Pro despite previously moving to preclude a judge from serving
as an arbitrator.

1 to the Court. Despite prior determinative orders from this Court, Mr. Garmong again
2 objected to arbitration on the basis there was no agreement to arbitrate.

3 On May 23, 2017, this Court entered its *Order to Show Cause Why Action Should not*
4 *be Dismissed for Want of Prosecution Pursuant to NRCP 41(E)* (“OSC Order”), finding “Mr.
5 Garmong and Defendants were ordered numerous times to participate in arbitration as early
6 as December 13, 2012.” The Court found the file did not contain any evidence the parties
7 had proceeded to arbitration as ordered. OSC Order, p. 4. Accordingly, the Court ordered
8 the parties to show cause why the action should not be dismissed for want of prosecution
9 and required each party to file one responsive brief. OSC Order, p. 4.

10 In the responsive briefs, the parties state they attended their first arbitration
11 conference in April 2017. The Court acknowledged sufficient cause was shown in the *Order*
12 entered June 30, 2017.

13 On July 22, 2018, without asking for leave of Court to lift the stay, Mr. Garmong filed
14 his *Motion to Disqualify Arbitrator Pro, Vacate Order Denying Motion for Summary*
15 *Judgment and Appoint New Arbitrator* (“*Motion to Disqualify*”). The Court thereafter entered
16 its *Order Denying Plaintiff’s Motion to Disqualify Arbitrator Pro; Order Denying Motion to*
17 *Vacate Order Denying Motion for Summary Judgment; Order Denying Motion to Appoint*
18 *New Arbitrator* (“*Arbitrator Order*”) on November 11, 2019.

19 Defendants thereafter filed *Defendants’ Motion for Limited Relief From Stay to File*
20 *Motion for Attorney’s Fees and Sanctions* (“*Motion for Sanctions*”) requesting limited relief
21 from this Court’s order staying the proceeding pending the outcome of arbitration. While the
22 *Motion for Sanctions* was under consideration, Defendants filed their *Notice of Completion*
23 *of Arbitration Hearing* on October 22, 2018. The Court found, with completion of the

1 arbitration, Defendants' *Motion for Sanctions* was moot. Additionally, the Court took notice
2 of Defendants' *Notice of Completion of Arbitration* and determined there were additional
3 decisions to be rendered regarding the *Notice of Completion of Arbitration*.

4
5 Judge Pro found Mr. Garmong's claims for: (1) Breach of Contract; (2) Breach of
6 Implied Warranty; (3) Breach of the Implied Covenant of Good Faith and Fair Dealing; (4)
7 Nevada's Deceptive Trade Practices Act; (5) Breach of Fiduciary Duty of Full Disclosure, (6)
8 Intentional Infliction of Emotional Distress; and (7) Unjust Enrichment all failed as a matter of
9 law because Mr. Garmong did not establish his claims by a preponderance of the evidence.
10
11 See Final Award, p. 8-9. Furthermore, after weighing the necessary factors required by
12 Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), Judge
13 Pro found Defendants were entitled to an award of reasonable attorneys' fees in the total
14 sum of \$111,649.96. *Final Award*, p. 11.

15
16 After the *Final Award*, the litigation proceeded with several filings. On August 8,
17 2019, this Court entered its *Order Re Motions* ("ORM"): (1) granting *Defendants' Petition for*
18 *an Order Confirming Arbitrator's Final Award and Reducing Award to Judgment, Including,*
19 *Attorneys' Fees and Costs*; (2) denying *Plaintiff's Motion to Vacate Arbitrator's Final Award*;
20 (3) denying *Plaintiff's Motion to Vacate Arbitrator's Award of Attorneys' Fees*; (4) denying
21 *Plaintiff's Motions to Vacate Arbitrator's Award of Denial of Plaintiff's Motion for Partial*
22 *Summary Judgment and for the Court to Decide and Grant Plaintiff's Motion for Partial*
23 *Summary Judgment* ("*Motion to Vacate MSJ Decision*"); and (5) granting *Defendants'*
24 *Motion for an Order to File Exhibit as Confidential*. *ORM*, p. 15-16.

25
26 On August 27, 2019, this Court entered its *Order* directing and allowing, respectively:
27 (1) WESPAC to an *Amended Motion for the Award of Attorneys' Fees*; (2) Mr. Garmong the
28

1 standard response time to file and serve his opposition to Defendants' *Amended Motion for*
2 *the Award of Attorneys' Fees*; and (3) WESPAC was not required to file a *Proposed Final*
3 *Judgment* until ten (10) days following this Court's ruling on WESPAC's *Amended Motion for*
4 *the Award of Attorneys' Fees*. Order, p. 1.

5
6 On December 6, 2019, this Court entered its *Order Denying Motion to Alter or Amend*
7 *Judgment* ("AA Order") maintaining its prior rulings within the ORM. On January 7, 2020,
8 Mr. Garmong filed his *Notice of Appeal* to the Nevada Supreme Court regarding this Court's
9 *Arbitrator Order, ORM, and AA Order*.

10
11 On December 9, 2019, the *Defendants' Amended Motion for Attorney's Fees* was
12 filed. Mr. Garmong filed his *Notice of Appeal* on January 7, 2020, and the Court entered the
13 *Order Holding Issuance of Order on Defendants' Amended Motion for Attorney's Fees in*
14 *Abeyance*. On December 1, 2020, the Nevada Court of Appeals issued its *Order of*
15 *Affirmance* upholding this Court's judgment in its entirety and noting Defendants may seek
16 amended fees pursuant to the fee shifting provision in NRCP 68 that extends to fees
17 incurred on and after appeal.

18
19 On February 18, 2021, Defendants filed the *Defendants' Second Amended Motion*
20 *for Attorney's Fees*. On February 22, 2021, the Nevada Court of Appeals entered its *Order*
21 *Denying Rehearing* pursuant to NRAP 40(c). Next, the parties entered into a stipulation to
22 extend the time for Mr. Garmong to file an opposition to the *Defendants' Second Amended*
23 *Motion for Attorney's Fees*. The stipulation is memorialized in the *Order Extending Time for*
24 *Plaintiff to File Points and Authorities in Opposition to the Defendants' Second Amended*
25 *Motion for Fees* entered by the Court on March 1, 2021 and allows Mr. Garmong ten (10)
26 calendar days after the Nevada Supreme Court acts on Mr. Garmong's petition for review of
27
28

1 the *Order of Affirmance*. On April 6, 2021, the Nevada Supreme Court entered the *Order*
2 *Denying Petition for Review*. On April 21, 2021, Mr. Bradley, counsel for Defendants, filed a
3 *Request for Submission for Defendants' Second Amended Motion for Attorney's Fees*. The
4 instant briefing followed.

5
6 In the *Motion*, Mr. Garmong moves to strike the declaration of Mr. Bradley filed in
7 support of the Defendants' *Second Amended Motion for Attorney's Fees*. *Motion*, p. 1. Mr.
8 Garmong argues declarations in support of attorney's fee awards should be based upon
9 personal knowledge and Mr. Bradley's is legally insufficient because it does not include a
10 statement regarding personal knowledge. *Motion*, p. 3.

11
12 In the *Opposition*, Defendants acknowledge the law requires declarations to contain
13 information within the declarant's own personal knowledge, however, there is no
14 requirement that the declaration include the words "personal knowledge" as long as the
15 averments are within the declarant's personal knowledge. *Opposition*, p. 2. Defendants
16 confirm the information presented in the declaration is within Mr. Bradley's personal
17 knowledge and provide an updated declaration including the words personal knowledge. Id.

18
19 In the *Reply*, Mr. Garmong argues the second declaration is an admission the first
20 declaration was legally insufficient, and the rules expressly require service of a proper
21 declaration with the *Second Amended Motion for Attorney's Fees*. *Reply*, p. 2. Mr.
22 Garmong contends the rules do not allow a party to file a second legally sufficient
23 declaration and reply briefs cannot contain new arguments or evidence. Id. Mr. Garmong
24 next argues the first and second declarations do not indicate if Mr. Bradley bills and collects
25 from other clients at a comparable rate nor do they compare Mr. Bradley's rates to other
26 Reno attorneys. *Reply*, p. 4.
27
28

1 **II. APPLICABLE LAW AND ANALYSIS.**

2 Pursuant to NRCP 56(c)(4), an affidavit or declaration used to support or oppose a
3 motion must be made on personal knowledge, set out facts that would be admissible in
4 evidence, and show that the affiant or declarant is competent to testify on the matters
5 stated. "An affidavit which states no fact within the knowledge of the person making it would
6 be of but little weight in any legal proceeding." Morgan v. Board of Com'rs of Eureka Cty., 9
7 Nev. 360, 368 (1874).
8

9 The Court is satisfied Mr. Bradley's first declaration is legally sufficient because "it
10 states positively the facts and circumstances upon which such belief is founded" as required
11 by Morgan. Id. For example, Mr. Bradley details the ten reasons he believes his hourly rate
12 of \$395.00 per hour is fair. Additionally, Mr. Garmong cites no authority which strictly
13 requires the words "personal knowledge" to be included in the declaration and it is clear Mr.
14 Bradley's declaration is based on facts he has personal knowledge of.
15
16

17 As Mr. Garmong's *Reply* states, new arguments and evidence should not be made in
18 a reply brief. Mr. Garmong first raises arguments about the contents of Mr. Bradley's billing
19 statements in the *Reply* which the Court cannot consider. Mr. Garmong asserts Mr. Bradley
20 does not compare his rates to other attorneys and does not state whether he bills other
21 clients at the same rate. The Court does not consider those arguments as they are not
22 properly raised.
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1 **III. ORDER.**

2 For the foregoing reasons, and good cause appearing therefor,

3 **IT IS HEREBY ORDERED** *Motion to Strike Declaration of Thomas C. Bradley in*
4
5 *Support of Second Amended Motion for Attorney's Fees and Costs* is DENIED.

6 DATED this 7th day of July, 2021.

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9 DISTRICT JUDGE

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CARL HEBERT, ESQ.
THOMAS BRADLEY, ESQ.

And, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Holly Longe

1 CODE NO. 3370

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 GREGORY O. GARMONG,

Case No. CV12-01271

10 Plaintiff,

Dept. No. 6

11 vs.

12 WESPAC; GREG CHRISTIAN; DOES 1-10,
13 inclusive,

14 Defendants.
15 _____/

16 **ORDER GRANTING DEFENDANTS' SECOND AMENDED MOTION**
17 **FOR ATTORNEY'S FEES; ORDER CONFIRMING ARBITRATOR'S FINAL AWARD**

18 Before this Court is *Defendants' Second Amended Motion for Attorney's Fees*
19 (*"Motion"*) filed by Defendants WESPAC and GREG CHRISTIAN (collectively "Defendants"
20 unless individually referenced).
21

22 Plaintiff GREGORY O. GARMONG ("Mr. Garmong") did not timely file an opposition
23 but instead filed a *Motion for Extension of Time to File Opposition to Defendants' Second*
24 *Amended Motion for Attorney's Fees and Costs*.

25 Next, the Court entered its *Order Denying Motion for Extension of Time to File*
26 *Opposition to Defendants' Second Amended Motion for Attorney's Fees and Costs*, finding
27 //
28

1 good cause did not exist to extend the deadline for Mr. Garmong to oppose the *Motion* and
2 Defendants would be prejudiced by further extension.

3 **I. PROCEDURAL BACKGROUND.**

4 This is an action for breach of a financial management agreement and carries with it
5 a robust procedural history. Mr. Garmong filed his *Complaint* on May 9, 2012, alleging the
6 following claims for relief:
7

- 8 1) Breach of Contract;
- 9 2) Breach of Nevada Deceptive Trade Practices Act;
- 10 3) Breach of Implied Covenant of Good Faith and Fair Dealing;
- 11 4) Unjust Enrichment;
- 12 5) Breach of Fiduciary Duty;
- 13 6) Malpractice; and
- 14 7) Negligence.
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17 On September 19, 2012, Defendants filed their *Motion to Dismiss and Compel*
18 *Arbitration*. On December 13, 2012, this Court¹ entered its *Order* granting Defendants'
19 request to compel arbitration but denying the motion to dismiss. Mr. Garmong then filed his
20 *Combined Motions for Leave to Rehear and for Rehearing of the Order of December 13,*
21 *2012 Compelling Arbitration ("Reconsider Motion")*. The motion was opposed by
22 Defendants. Mr. Garmong did not file a reply and this case was stagnant for nearly a year
23 until January 13, 2014, when the Court entered its *Order to Proceed*. Mr. Garmong filed his
24 reply on February 3, 2014. The *Reconsider Motion* was denied on April 2, 2014.
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28 ¹ Judge Brent T. Adams originally presided over this proceeding in Department 6 before his
retirement. Judge Lynne K. Simons was sworn in on January 5, 2015, and is presiding in
Department 6.

1 Mr. Garmong then sought writ relief from the Nevada Supreme Court. On December
2 18, 2014, the Nevada Supreme Court entered its *Order Denying Petition for Writ of*
3 *Mandamus or Prohibition*. The Supreme Court next entered its *Order Denying Rehearing*
4 on March 18, 2015, and, subsequently, entered its *Order Denying En Banc Reconsideration*
5 on May 1, 2015.
6

7 After the Nevada Supreme Court's orders were entered, this Court again entered an
8 *Order for Response*, instructing the parties to proceed with this case. *Order for Response*,
9 November 17, 2015. In response, the parties indicated they had initiated an arbitration
10 proceeding with JAMS in Las Vegas. *Notice of Status Report*, December 1, 2015.
11

12 On June 8, 2016, Mr. Garmong filed his *Motion for a Court-Appointed Arbitrator*,
13 arguing the JAMS arbitrators were prejudiced against Mr. Garmong. This matter was fully
14 briefed; and, on July 12, 2016, this Court entered its *Order re: Arbitration* requiring each
15 party to submit three arbitrators to the Court so the Court could select one name to act as
16 arbitrator. The parties then stipulated to select one arbitrator, to reduce costs. *Stipulation to*
17 *Select One Arbitrator*, October 17, 2016. In accordance, this Court entered its *Order*
18 *Appointing Arbitrator* on October 31, 2016, appointing Michael G. Ornstil, Esq., as arbitrator.
19 After it was determined Mr. Ornstil was unavailable, Mr. Garmong stipulated to the
20 appointment of either retired Judge Philip M. Pro,² or Lawrence R. Mills. Esq.
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22

23 On November 13, 2017, this Court entered its *Order Granting Motion to Strike*, which
24 stayed the proceeding pending the outcome of the arbitration, and directed the parties to file
25 an amended complaint and other responsive papers at the direction of Judge Philip M. Pro.
26 *Order Granting Motion to Strike*, p. 2. On February 21, 2017, this Court entered its *Order*
27

28 ² Mr. Garmong stipulated to Judge Pro despite previously moving to preclude a judge from serving
as an arbitrator.

1 *Appointing Arbitrator*, appointing Honorable Philip M. Pro (Ret.) (“Judge Pro”).

2 On March 27, 2017, Mr. Garmong filed *Plaintiff's Objection Pursuant to NRS*
3 *38.231(3) and 38.241(e) That There is No Agreement to Arbitrate; Notification of Objection*
4 *to the Court*. Despite prior determinative orders from this Court, Mr. Garmong again
5 objected to arbitration on the basis there was no agreement to arbitrate.
6

7 On May 23, 2017, this Court entered its *Order to Show Cause Why Action Should not*
8 *be Dismissed for Want of Prosecution Pursuant to NRCP 41(E)* (“OSC Order”), finding “Mr.
9 Garmong and Defendants were ordered numerous times to participate in arbitration as early
10 as December 13, 2012.” The Court found the file did not contain any evidence the parties
11 had proceeded to arbitration as ordered. *OSC Order*, p. 4. Accordingly, the Court ordered
12 the parties to show cause why the action should not be dismissed for want of prosecution
13 and required each party to file one responsive brief. *OSC Order*, p. 4.
14

15 In the responsive briefs, the parties state they attended their first arbitration
16 conference in April 2017. The Court acknowledged sufficient cause was shown in the *Order*
17 entered June 30, 2017.
18

19 On July 22, 2018, without asking for leave of Court to lift the stay, Mr. Garmong filed
20 his *Motion to Disqualify Arbitrator Pro, Vacate Order Denying Motion for Summary*
21 *Judgment and Appoint New Arbitrator*. The Court thereafter entered its *Order Denying*
22 *Plaintiff's Motion to Disqualify Arbitrator Pro; Order Denying Motion to Vacate Order*
23 *Denying Motion for Summary Judgment; Order Denying Motion to Appoint New Arbitrator*
24 (“*Arbitrator Order*”) on November 11, 2019.
25

26 Defendants thereafter filed *Defendants' Motion for Limited Relief From Stay to File*
27 *Motion for Attorney's Fees and Sanctions* (“*Motion for Sanctions*”) requesting limited relief
28

1 from this Court's order staying the proceeding pending the outcome of arbitration. While the
2 *Motion for Sanctions* was under consideration, Defendants filed their *Notice of Completion*
3 *of Arbitration Hearing* on October 22, 2018. The Court found, with completion of the
4 arbitration, Defendants' *Motion for Sanctions* was moot. Additionally, the Court took notice
5 of Defendants' *Notice of Completion of Arbitration* and determined there were additional
6 decisions to be rendered regarding the *Notice of Completion of Arbitration*.
7

8 Judge Pro found Mr. Garmong's claims, for: (1) Breach of Contract; (2) Breach of
9 Implied Warranty; (3) Breach of the Implied Covenant of Good Faith and Fair Dealing; (4)
10 Nevada's Deceptive Trade Practices Act; (5) Breach of Fiduciary Duty of Full Disclosure; (6)
11 Intentional Infliction of Emotional Distress; and, (7) Unjust Enrichment all failed as a matter
12 of law because Mr. Garmong did not establish his claims by a preponderance of the
13 evidence. See Final Award, p. 8-9. Furthermore, after weighing the necessary factors
14 required by Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33
15 (1969), Judge Pro found Defendants were entitled to an award of reasonable attorneys' fees
16 in the total sum of \$111,649.96. *Final Award*, p. 11.
17

18
19 After the *Final Award*, the litigation proceeded with several filings. On August 8,
20 2019, this Court entered its *Order Re Motions ("ORM")*: (1) granting *Defendants' Petition for*
21 *an Order Confirming Arbitrator's Final Award and Reducing Award to Judgment, Including,*
22 *Attorneys' Fees and Costs*; (2) denying *Plaintiff's Motion to Vacate Arbitrator's Final Award*;
23 (3) denying *Plaintiff's Motion to Vacate Arbitrator's Award of Attorneys' Fees*; (4) denying
24 *Plaintiff's Motions to Vacate Arbitrator's Award of Denial of Plaintiff's Motion for Partial*
25 *Summary Judgment and for the Court to Decide and Grant Plaintiff's Motion for Partial*
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1 *Summary Judgment*; and, (5) granting *Defendants' Motion for an Order to File Exhibit as*
2 *Confidential*. ORM, p. 15-16.

3 On August 27, 2019, this Court entered its *Order* directing: (1) WESPAC to file an
4 *Amended Motion for the Award of Attorneys' Fees*; (2) allowing Mr. Garmong the standard
5 response time to file and serve his opposition to *Defendants' Amended Motion for the*
6 *Award of Attorneys' Fees*; and (3) providing WESPAC would not be required to file a
7 *Proposed Final Judgment* until ten (10) days following this Court's ruling on WESPAC's
8 *Amended Motion for the Award of Attorneys' Fees*. *Order*, p. 1.

9
10 On December 6, 2019, this Court entered its *Order Denying Motion to Alter or Amend*
11 *Judgment* ("AA Order") maintaining its prior rulings within the ORM. On January 7, 2020,
12 Mr. Garmong filed his *Notice of Appeal* to the Nevada Supreme Court regarding this Court's
13 *Arbitrator Order*, ORM, and AA Order.

14
15 On December 9, 2019, the *Defendants' Amended Motion for Attorney's Fees* was
16 filed. Mr. Garmong filed his *Notice of Appeal* on January 7, 2020, and the Court entered the
17 *Order Holding Issuance of Order on Defendants' Amended Motion for Attorney's Fees in*
18 *Abeyance*. On December 1, 2020, the Nevada Court of Appeals issued the *Order of*
19 *Affirmance* upholding this Court's judgment in its entirety and noting Defendants may seek
20 amended fees pursuant to the fee shifting provision in NRCP 68 that extends to fees
21 incurred on and after appeal.

22
23 On February 18, 2021, Defendants filed the *Defendants' Second Amended Motion*
24 *for Attorney's Fees*. On February 22, 2021, the Nevada Court of Appeals entered its *Order*
25 *Denying Rehearing* pursuant to NRAP 40(c). Next, the parties entered into a stipulation to
26 extend the time for Mr. Garmong to file an opposition to the *Defendants' Second Amended*
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1 *Motion for Attorney's Fees*. The stipulation is memorialized in the *Order Extending Time for*
2 *Plaintiff to File Points and Authorities in Opposition to the Defendants' Second Amended*
3 *Motion for Fees* entered by the Court on March 1, 2021, and allows Mr. Garmong ten (10)
4 calendar days after the Nevada Supreme Court acts on Mr. Garmong's petition for review of
5 the *Order of Affirmance*. On April 6, 2021, the Nevada Supreme Court entered the *Order*
6 *Denying Petition for Review*. The Court now considers the *Motion*.

8 In the *Motion*, Defendants note this Court previously confirmed the Arbitration Award,
9 including the Arbitrator's award of fees and costs and states Defendants have now incurred
10 substantial fees seeking confirmation of the Arbitration Award. *Motion*, p. 2. Defendants
11 make their *Motion* pursuant to NRS 38.239, 38.241, 38.242, and 38.243(3). *Id.* Defendants
12 verify the fees requested are reasonable considering the Brunzell factors. *Motion*, pp. 3-4.

14 **II. APPLICABLE LAW AND ANALYSIS.**

15 Chapter 38 of the Nevada Revised Statutes addresses attorney's fees under the
16 Uniform Arbitration Act of 2000. After a party to an arbitration proceeding receives notice of
17 an award, the party may make a motion to the Court for an order confirming the award at
18 which time the Court shall issue a confirming order. NRS 38.239. If the Court denies a
19 motion to vacate an award, it shall confirm the award unless a motion to modify or correct
20 the award is pending. NRS 38.241(4). Unless a motion to vacate is pending, the Court
21 shall confirm the award. NRS 38.242(2). On application of a prevailing party under NRS
22 38.239, 38.241 or 38.242, the Court may add reasonable attorney's fees and other
23 reasonable expenses of litigation incurred in a judicial proceeding after the award is made to
24 a judgment confirming, vacating without directing a rehearing, modifying or correcting an
25 award. NRS 38.243(3).
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1 Accordingly, this Court examines the reasonableness of Defendants' attorney's fees
2 under the factors set forth in Brunzell v. Golden Gate Nat. Bank:

3 (1) the qualities of the advocate: his ability, his training, education, experience,
4 professional standing and skill; (2) the character of the work to be done: its
5 difficulty, its intricacy, its importance, time and skill required, the responsibility
6 imposed and the prominence and character of the parties where they affect
7 the importance of the litigation; (3) the work actually performed by the lawyer:
the skill, time and attention given to the work; (4) the result: whether the
attorney was successful and what benefits were derived.

8 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

9 The district court's decision to award attorney fees is within its discretion and will not
10 be disturbed on appeal absent a manifest abuse of discretion. Capanna v. Orth, 134 Nev.
11 888, 895, 432 P.3d 726, 734 (2018). Furthermore, district courts have great discretion to
12 award attorney fees, and this discretion is tempered only by reason and fairness. Haley v.
13 Dist. Ct., 128 Nev. 171, 178, 273 P.3d 855, 860 (2012).

14 The Court finds an additional award of attorney's fees is appropriate.³ In the *Order re*
15 *Motions* entered August 8, 2019, the Court affirmed the Arbitrator's award, and the Nevada
16 Court of Appeals entered the *Order of Affirmance* confirming this Court's decision on
17 December 1, 2020. The prerequisites to awarding attorney's fees in this matter have
18 therefore been met. NRS 38.242(3).

19 The Court now evaluates the reasonableness of the fees Defendants requested
20 pursuant to Brunzell. First, the quality of the advocates is high. The *Declaration of Thomas*
21 *C. Bradley* ("*Bradley Decl.*") states Mr. Bradley has worked in private practice for over
22 twenty years and has represented parties in over 200 securities arbitration cases. *Bradley*
23 *Decl.*, ¶¶ 2. Mr. Bradley retained Mr. Michael Hume to assist Mr. Bradley and Mr. Hume
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³ The Court previously confirmed Judge Pro's award of \$111,649.96 prior to Mr. Garmong's appeal of the
Arbitrator's Award. See Order Denying Motion to Alter or Amend Judgment entered December 6, 2019, p. 13.

1 likewise has over twenty years of experience in securities arbitration, increasing the quality
2 of the work provided. *Bradley Decl.*, ¶ 5.

3 Second, the work done was complex as securities arbitration necessitates
4 specialized knowledge. The case lasted over nine years, and Mr. Bradley verifies Mr.
5 Garmong submitted detailed and voluminous motions against Defendants which Mr. Bradley
6 navigated and responded to. *Bradley Decl.*, ¶ 3. Mr. Bradley was successful in defending
7 the Arbitrator's Award at the Nevada Court of Appeals and in defending against Mr.
8 Garmong's motions since the *Order of Affirmance* issued.

9
10 Third, Mr. Bradley has represented Defendants in this matter since the inception of
11 the case in May of 2012. Mr. Bradley successfully compelled arbitration and was generally
12 successful in the motions he filed and defended against. Additionally, the record reflects
13 Mr. Bradley worked to keep the case progressing as he promptly replied to motions when
14 filed. Mr. Bradley has provided the Court with records of his billing statements detailing the
15 work completed in this matter.

16
17 Fourth, Mr. Bradley achieved a favorable Arbitrator's Award for his clients and then
18 defended the award at both the district court and appeals court level.

19
20 The Court has reviewed the *Bradley Decl.*, the *Motion*, and the attached exhibits.
21 The total amount of fees requested incurred in the confirmation of the Arbitrator's Award
22 before this Court and the Nevada Court of Appeals totals \$45,084.50. The final amount of
23 fees incurred by Defendants in this suit totals \$156,734.46.

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1 **III. CONCLUSION AND ORDER.**

2 For the foregoing reasons, and good cause appearing therefor,

3 **IT IS HEREBY ORDERED** Defendants' *Second Amended Motion for Attorney's Fees*
4 is GRANTED.
5

6 **IT IS FURTHER ORDERED** pursuant to the *Order* entered August 27, 2019,
7 Defendants shall have ten (10) days following the entry of this order to file a proposed Final
8 Judgment.

9 Dated this 10th day of July, 2021.
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12 DISTRICT JUDGE
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CARL HEBERT, ESQ.
THOMAS BRADLEY, ESQ.

Holly Longe

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I certify that I am an employee of CARL M. HEBERT, ESQ., and that on January 10, 2022, I

_____hand-delivered

_____mailed, postage pre-paid U.S. Postal Service in Reno, Nevada

_____e-mailed

_____telefaxed, followed by mailing on the next business day,

 X served through use of the court's electronic filing system pursuant Nevada

EFCR 9(c),

a copy of the attached

APPELLANT'S APPENDIX VOLUME 9

addressed to:

THOMAS C. BRADLEY, ESQ.

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775-323-5178

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Counsel for defendants/respondents

WESPAC; Greg Christian

/S/ Carl M. Hebert

An employee of Carl M. Hebert, Esq.