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IN THE SUPREME COURT OF THE STATE OF NEVADA

TODD ROBBER,

Petitioner,

vs.

THE ESTATE OF THOMAS JOSEPH  
HARRIS TRUST; AND THOMAS J. HARRIS  
TRUST,

Respondents,

---

Electronically Filed  
Feb 24 2023 12:32 PM  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 2022-PB-00119

RECORD ON APPEAL  
VOLUME 3

COPIES OF ORIGINAL PLEADINGS  
PAGES 300-436

TODD ROBBER  
P.O. BOX 4251  
SONORA, CALIFORNIA 95370

PETITIONER IN PROPER PERSON

F. MCCLURE WALLACE, ESQ  
510 W. PLUMB LANE, SUITE A  
RENO, NEVADA 89509

COUNSEL FOR RESPONDENTS

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Todd Robben  
In Pro per  
PO Box 4251  
Sonora, CA 95370  
Robben.tv@gmail.com  
(209)540-7713

**RECEIVED**

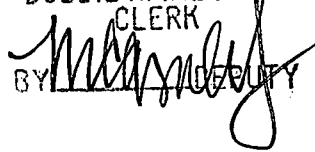
OCT 21 2022

Douglas County  
District Court Clerk

**FILED**

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BOBBIE R. WILLIAMS  
CLERK

BY  DEPUTY

**IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

TODD ROB BEN,  
Petitioner

Vs.

THE ESTATE OF THOMAS JOSEPH  
HARRIS; THOMAS J. HARRIS TRUST,  
Deceased,  
Respondent.

CASE NO.: 2022-PB-00119

PETITIONER TODD ROB BEN'S  
VERIFIED OBJECTION TO  
RESPONDENT'S MOTION FOR  
SUMMARY JUDGMENT

Related cases:

Ninth District Court Case No.:  
2021-PB00034

Nevada Supreme Court Case No.:  
84948

Petitioner, Todd Robben, timely objects to the Respondent's Motion for  
Summary Judgment based on the following memorandum of points and authorities.

**MEMORANDUM OF POINTS & AUTHORITIES**

**I. INTRODUCTION**

The Petitioner re-asserts his statutory right to counsel pursuant to Nevada  
Revised Statute ("NRS") 136.200 in order secure his property rights and have his



1 case determined on the merits pursuant to the U.S. and State of Nevada  
2 Constitutional due-process and equal-protection of the law<sup>1</sup>. The Respondent  
3 concedes<sup>2</sup> to this argument by failing to address it.

4 The court cannot grant the Respondent's Motion for Summary Judgment on the  
5 grounds there are disputed material facts to be decided by a jury including the  
6 existence of the former trust called the Olga and Thomas J. Harris Living Trust.

7 The Petitioner has verified this pleading signed "under penalty of perjury" and  
8 this pleading acts as Petitioner affidavit of truth in support of his petition. This verified  
9 pleading, the Petitioner having been duly sworn, and signed "under penalty of perjury"  
10 is also "material evidence".

11 The material facts along with the law and controlling case law mandate the  
12 denial of the Respondent's Motion for Summary Judgment on the grounds of disputed  
13 material facts to be decided by a jury. Also, the Petitioner has standing is named in  
14 this instant case as a party to the action, and the Petitioner is an "interested person"  
15 and even a "beneficiary" as a matter of both material facts and law.

16 This Petitioner can prove the existence of the previous trust called the Olga and  
17 Thomas J. Harris Living Trust to which would be the operative trust and any "intestate  
18 succession" is moot. Under Nevada law, the Petitioner would inherit the entire Olga  
19 and Thomas J. Harris Living Trust & Estate, and what is left of the current Thomas J.  
20 Harris Trust and Estate on the grounds the other beneficiaries are deceased.

---

21  
22  
23  
24 <sup>1</sup> Petitioner affirmatively asserts he is a "class of one" and "indigent" for the purpose of  
25 class of person classification pursuant to U.S. Fourteenth Amendment equal-protection  
26 clause. Village of Willowbrook v. Olech :: 528 U.S. 562 (2000).

27 <sup>2</sup> "A point not urged in the trial court is deemed to have been waived and will not  
28 be considered on appeal." See Old Aztec Mine, Inc. v. Brown, 623 P. 2d 981 - Nev:  
Supreme Court 1981

1 This Petitioner has presented a remedy to the Respondent's that would keep  
2 the current Thomas J. Harris Living Trust and all current beneficiaries active without  
3 invalidating the trust. Said offer is conditional on including this Petitioner as a  
4 beneficiary receiving at least what Jeff D. Robben and Thomas A. Harris (Thomas J.  
5 Harris son) inherited in total the Petitioner is entitled to the higher amount. With Jeff D.  
6 Robben have passed away in 2020, there is no loss to anyone. The stolen assets  
7 including the house in Minden, NV on Pebble Beach Ct., all other real property, real  
8 estate and the entire contents and assets/money stolen from the safe deposit box  
9 listed in the Thomas J. Harris will and trust. There's more than enough money to pay  
10 this Petitioner and everyone else.

11 Incidentally, the simple fact this case number 2022-PB-00119 has a "PB"  
12 designation indicates this case is, as a matter of fact, in the "probate court" and any  
13 doubts are argued below and on the Petitioner's Objections to the Respond's Motion  
14 to Dismiss.

## 15 II. ARGUMENT

16  
17 The Petitioner also asserts his U.S. Constitutional Seventh Amendment<sup>3</sup>  
18 right to a jury trial to determine all disputed material facts in addition to arguments  
19 made below.  
20  
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---

25  
26 <sup>3</sup> U.S. 7<sup>th</sup> Amendment states: "In suits at common law, where the value in controversy shall  
27 exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury,  
28 shall be otherwise reexamined in any court of the United States, than according to the rules of  
the common law."

1                   **A.     DISPUTED MATERIAL FACTS MAKE SUMMARY JUDGMENT**  
2   **INAPPROPRIATE**

3                   In SATICOY BAY LLC SERIES 5733 v. MARINES ATLANTIC PORTFOLIO,  
4 LLC, Nev: Supreme Court 2021 "A factual dispute is genuine when the evidence is  
5 such that a rational trier of fact could return a verdict for the nonmoving party."  
6 Id. (quoting Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)).  
7 "All evidence, and any reasonable inferences drawn from it, must be viewed in a  
8 light most favorable to the nonmoving party." Id. at 135-36, 460 P.3d at 463  
9 (internal quotation marks omitted).

10                  The Petitioner included admissible evidence in his exhibits to his petition in this  
11 instant case. There can be no doubt as to the material fact that there was a prior trust  
12 called the Olga and Thomas J. Harris Trust.

13                  The Petitioner doesn't even need to prove the existence or contents of the  
14 former Thomas Joseph and Olga Harris Living Trust to render the current Thomas J.  
15 Harris Trust null & void based on a *prima facie* case of presumed undue influence  
16 based on the undisputed facts that Jeff D. Robben, the brother of the Petitioner, was  
17 1: The caretaker of Thomas J. Harris; 2: The Financial advisor for Thomas J. Harris; 3:  
18 Helped create the current Thomas J. Harris trust; 4. Had "undue influence" and  
19 "presumed undue influence" of Thomas J. Harris; 5: Jeff D. Robben influenced  
20 Thomas J. Harris to disinherit based on the animus and vexation of Jeff D. Robben.

21                  "A rebuttable presumption of undue influence is raised if the testator and the  
22 beneficiary shared a fiduciary relationship, but undue influence may also be proved  
23 without raising this presumption." In re Estate of Bethurem, 313 P. 3d 237, 241 (2013),  
24 at 329. "The essence of a fiduciary or confidential relationship is that the parties do not  
25 deal on equal terms, since the person in whom trust and confidence is reposed and  
26 who accepts that trust and confidence is in a superior position to exert unique  
27 influence over the dependent party." Hoopes v. Hammargren, 725 P. 2d 238, 242  
28

1 (1986) quoting Barbara A. v. John G., 145 Cal.App.3d 369, 193 Cal.Rptr. 422, 432  
2 (1983). "Once raised, a beneficiary may rebut such a presumption by clear and  
3 convincing evidence." Betherum, at 241.

4 If it turns out the Thomas Joseph and Olga Harris Living Trust is lost or  
5 destroyed, the Petitioner can produce two witnesses, Todd C. Robben and Stephen J.  
6 Robben to attest to the existence and contents of the Thomas Joseph and Olga Harris  
7 Living Trust. A third witness may include Abigail G. Stephenson, Esq since the  
8 Thomas Joseph and Olga Harris Living Trust was addressed by Abigail G.  
9 Stephenson, Esq. dated March 6, 2020 from Blanchard, Krasner & French  
10 acknowledging the existence of the August 26, 1998 trust known as the Thomas  
11 Joseph and Olga Harris Living Trust. Please see EXHIBIT A in the initial petition filing  
12 of this instant case.

13 Further research will determine if a copy of the Thomas Joseph and Olga  
14 Harris Living Trust exists. If not, Petitioner can produce two witnesses, Todd C.  
15 Robben and Stephen J. Robben to attest to the existence and contents of the Thomas  
16 Joseph and Olga Harris Living Trust pursuant to [1] NRS 136.240(3) which provides:  
17 No will shall be allowed to be proved as a lost or destroyed will unless the same shall  
18 be proved to have been in existence at the death of the person whose will it is claimed  
19 to be, or be shown to have been fraudulently destroyed in the lifetime of such person,  
20 nor unless its provisions shall be clearly and distinctly proved by at least two credible  
21 witnesses.

22 Todd C. Robben and Stephen J. Robben could have attested under oath that  
23 Olga Harris, the mother of Petitioner Todd C. Robben spoke of the will/trust several  
24 times, including Petitioner's wedding day. The beneficiaries included Thomas J.  
25 Harris's son Todd Harris, note Thomas A. Harris was *not* a beneficiary and  
26 disinherited; Olga Harris's sons Jeff D. Robben and Todd C. Robben. Each was to  
27 receive one third.  
28

1 If the court decides otherwise, the case goes to probate with only two  
2 remaining blood hairs, Thomas. A. Harris and Petitioner, Todd C. Robben.

3 This Petitioner has stated and will state again in simple terms that he desires a  
4 situation either by settlement, or court order, to remedy the matter to include the  
5 Petitioner into to trust with a reasonable percentage and to include a full accounting of  
6 any and all assets, money, expenses, etc. A complete transparent paper trail of the  
7 money trail. Where are the contents of the missing safe deposit box addressed as  
8 "Exhibit "A" to Declaration of Trust by Thomas J. Harris". See EXHIBIT B in the initial  
9 petition filing of this instant case.

10  
11 **1. Safe Deposit Box:** All of Trustor's right, title and interest in and to all  
12 contents in the safe deposit box located at Wells Fargo Bank in Carson  
13 City, NV, branch office, including but not limited to cash, bonds, stock,  
14 securities, and tangible property therein.

15 **2. Bank Accounts:** All cash, bonds, stock, securities and other property  
16 held with Wells Fargo Bank, including but not limited to account  
17 #####1233.

18 **3. All Other Personal Property:** All of Trustor's right, title, and interest  
19 subject to all liabilities attached thereto in all automobiles, boats, airplanes,  
20 vehicles, trailers, silverware, chinaware, wine, books, pictures, paintings,  
21 works of art, household furniture and furnishings, clothing, jewelry, pets,  
22 assets in digital form for which Trustor is the owner or author, including  
23 without limitation, lists of passwords, user account information, social  
24 media sites, blogs, e-books, and other Web-hoster materials, all digital  
25 albums and videos, websites on which Trustor conducts business  
26 transactions, and all other personal property (together with any insurance  
27 on such property) now owned or acquired later during Trustor's lifetime.

28 It is undisputed that the house in Minden, Nevada on Pebble Beach Court was  
transferred into the name of Jeff D. Robben and/or Jeff D. Robben Trust or sub trust.  
Said house of Thomas J. Harris was worth approximately \$450,000.00 dollars and the

1 money should be put back into the Thomas J. Harris Trust to be distributed to the  
2 beneficiaries. There are questions as to another home on April Drive in South Lake  
3 Tahoe worth approximately \$1, 500,000.00 dollars that should have been in the  
4 Thomas J. Harris trust.

5 This Petitioner believes the estate and trust value of the Thomas J. Harris Trust  
6 is grossly undervalued because of the fraud and theft that has occurred to transfer  
7 assets into other accounts to defraud the Thomas J. Harris beneficiaries of millions of  
8 dollars when just the two homes are added back in addition to the missing contents on  
9 the safe deposit box. Furthermore, Petitioner must see all insurance (death and life  
10 insurance payouts), Pension and 401K information in addition to at least the least  
11 twenty years of IRS and state tax returns.

12 This Petitioner attests the following document is authentic and this pleading is  
13 verified i.e. "signed under penalty of perjury".  
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1  
2 **BLANCHARD, KRASNER & FRENCH**

A PROFESSIONAL LAW CORPORATION

3 ABIGAIL G. STEPHENSON, ESQ.

5470 KIETZE LANE, SUITE 200  
RENO, NEVADA 89511

ALAN W. FRENCH  
(Deceased)

4 TELEPHONE: (775) 384-0022  
FACSIMILE: (775) 236-0901  
E-MAIL: [astephenso@bkflaw.com](mailto:astephenso@bkflaw.com)  
5 WEB: <http://www.bkflaw.com>

6 ADMITTED IN:  
California and Nevada

March 6, 2020

7 **VIA U.S. PRIORITY MAIL/DELIVERY CONFIRMATION REQUESTED**

8 Mr. Thomas Anthony Harris  
9 P.O. Box 364  
10 Santa Cruz, CA 95061

11 Re: Estate and Trust of Thomas J. Harris  
Our File No.: 8269-020

12 Dear Mr. Harris:

13 Please accept our condolences on the death of Thomas J. Harris ("Thomas"). As you may  
14 know, Thomas' wife Olga Harris predeceased him on March 23, 2019. As part of Thomas' and  
15 Olga's estate plan, they created a trust known as the Thomas Joseph and Olga Harris Living Trust  
16 dated August 26, 1998 (the "Thomas and Olga Harris Trust"). After Olga's death, Thomas  
17 terminated the Thomas and Olga Harris Trust, and established a new living trust called the Thomas  
18 J. Harris Trust on June 12, 2019. All of the remaining property of the Thomas and Olga Harris  
19 Trust was transferred to the Thomas J. Harris Trust (hereafter, the "Trust") on June 12, 2019. A  
copy of the Trust which includes all of the terms of the Trust as they pertain to you is enclosed for  
your information. Also enclosed is a copy of Thomas' Last Will and Testament naming the Trust  
as the sole beneficiary of his Estate, and a Trustee's Notice pursuant to Nevada Revised Statutes  
§ 164.021. The purpose of this letter is to make you aware of the existence of the Trust, the specific  
gift intended for you from the Trust, and to explain briefly the process of trust administration.

20 Under NRS Section 164.021, a Trustee may serve a notification to beneficiaries, heirs, or  
21 other interested persons when a trust becomes irrevocable by reason of the death of the person who  
22 created the trust (the "settlor" or "trustor"). You are receiving the enclosed notice because Thomas,  
either personally or in honor of Olga (or both), named you as a beneficiary of the Trust.

23 Pursuant to Paragraph A-4(a) of the Trust, the specific gift intended for you from the Trust  
24 is seventeen and one-half percent (17.5%) of the remaining Trust property after paying all of  
25 Thomas' just debts, medical expenses, taxes, and other costs of administration of his Estate and  
the Trust. *Please bear in mind distribution of this gift is subject to availability of funds after all  
such expenses have been ascertained and satisfied.*

26 Jeff D. Robben ("Jeff") is the successor trustee of the Trust. As Trustee, Jeff has authority  
27 to manage the Trust, make investment decisions, distribute property, and otherwise deal with the  
28 Trust's property in accordance with the terms of the Trust. The Trustee is also responsible for  
keeping financial records and filing tax returns for the Trust. Jeff is working diligently to satisfy  
the terms of the Trust. These efforts generally take several months or even years before a trust is

1 in a position to distribute property to its beneficiaries. Please be patient as this work is being done.  
2 *To assist the Trustee in fulfilling his duties, please complete the enclosed IRS Form W-9 and*  
3 *return it to the undersigned in the postage-paid envelope provided.*

4 The Trust's property consists mainly of the Trust's beneficial interest in an annuity. At this  
5 time, I am unable to provide you an estimate of the funds you may receive from the residual Trust  
6 estate. Paragraph B-42 of Schedule B of the Trust provides, "The Trustee shall account to the  
7 beneficiaries periodically and, if requested by a beneficiary, at least annually." Please take note  
8 the Trustee intends to provide the first accounting to the beneficiaries in January 2021, for the  
9 period commencing with Thomas' date of death on December 30, 2019 (the date upon which Jeff  
10 became the Trustee), and ending December 30, 2020. The Trustee would like you to be aware that  
11 each beneficiary of the Trust will receive a Schedule K-1 commencing with tax year 2020, which  
12 will be prepared by the Trust's CPA and mailed directly to the beneficiaries, and which you will,  
13 in turn, need to provide to your own tax professionals for your own income tax returns.

14 The law firm of Blanchard, Krasner & French, APC, represents the Trustee and not the  
15 beneficiaries. Thus, we cannot give you legal advice concerning your interest as a beneficiary. If  
16 you have any questions concerning your rights and interests with respect to the Trust, please  
17 consult your own attorney.

18 Sincerely,

19 

20 Abigail G. Stephenson, Esq.  
21 for Blanchard, Krasner & French

22 AGS:mew  
23 Enclosures  
24 cc: Jeff D. Robben, Trustee

## 25 **B. PETITIONER HAS ADMISSIBLE EVIDENCE**

26 The Petitioner asserted in his verified petition that his evidence, including his  
27 sworn statements, are admissible evidence and not subject to any hearsay limitations.  
28 The Respondent has conceded to this fact and matter of law. The Respondent's do  
not even argue the issue in their Motion for Summary Judgment. **"A point not urged  
in the trial court is deemed to have been waived and will not be considered on  
appeal."** See Old Aztec Mine, Inc. v. Brown, 623 P. 2d 981 - Nev: Supreme Court  
198.1



1 **C. PETITIONER "HAS STANDING" AS AN "INTERESTED PARTY" &**  
2 **"BENEFICIARY" AND "THE COURT HAS JURISDICTION" TO HEAR THIS CASE.**  
3

4 This indigent pro se<sup>4</sup> Petitioner has been denied his statutory right to court  
5 appointed counsel discussed above and is denied his due-process and equal-  
6 protection going forward as a pro se litigant. That said, this Petitioner will clearly  
7 articulate this court has jurisdiction and the petition is not time barred or barred by  
8 issue or claim preclusion.

9 The Petitioner without counsel easily defeats the Respondents Motion to  
10 Dismiss since this court has jurisdiction of this instant case, and case 2021-PB00034  
11 under NRCP Rule §§ 60, 60(b) and 60(d) and NRS §§ 30 and NRS 136.010 and NRS  
12 §§164 and NRS 137.010 (1). Also See NRS 11.500 (allowing a party to recommence  
13 an action in a court having jurisdiction where a different court dismissed the same  
14 action for lack of subject matter jurisdiction).

15 The Petitioner can amend his previous petition/filings in case number 2021-  
16 PB00034 pursuant to NRCP 60 and NRCP 15 which would relate back to the timely  
17 filing and correct any problems, add or amend parties, claims or causes of action. See  
18 Tehansky v. Wilson, 428 P. 2d 375 - Nev: Supreme Court 1967 "Appellant further  
19 contends that such motion should be given retroactive effect under NRCP 15(c) to the  
20  
21

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22  
23 <sup>4</sup> "Pro se pleadings are to be considered without regard to technicality; pro se litigants'  
24 pleadings are not to be held to the same high standards of perfection as lawyers."  
25 Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co., 151 Fed 2nd  
26 240; Pucket v. Cox, 456 2nd 233; "Pleadings are intended to serve as a means of arriving  
27 at fair and just settlements of controversies between litigants. They should not raise  
28 barriers which prevent the achievement of that end. Proper pleading is important, but  
its importance consists in its effectiveness as a means to accomplish the end of a just  
judgment." Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938).

1 date of the original pleading, thus avoiding the statute of limitation violation under NRS  
2 137.080. We agree."

3 The Respondent confuses the word "court" with the word "case". See Ex Parte  
4 Gardner, 22 Nev. 280, 284 (Nev. 1895) "The judge alone does not constitute a  
5 "court." Burrill defines the term thus: "A 'court' may be more particularly  
6 described as an organized body with defined powers, meeting at certain times  
7 and places for the hearing and decision of causes and other matters brought  
8 before it, and aided in this, its proper business, by its proper officers; viz.:  
9 Attorneys and counsel to present and manage the business, clerks to record  
10 and attest its acts and decisions, and ministerial officers to execute its  
11 commands and secure due order in its proceedings." The Petitioner has filed in  
12 the proper venue and the proper court jurisdiction, i.e. The Ninth District Court in and  
13 for Douglas County, Nevada.

14 The Respondents conceded to this court's subject matter jurisdiction by  
15 arguing in their Motion to Dismiss, page 10 line 3 to 11, and page 12 line 10 to 17  
16 that this court is the same court is the same court as the probate court by stating  
17 "furthermore, even under the Supreme Court's decision interpreting the "adjudication  
18 upon the merits" phrase, preclusion would apply in this case, as the Supreme Court  
19 ruled that the phrase is meant to preclude the refiling of the same claim in the *same*  
20 *court in which the dismissal occurred.*" Five Star Capital Corp. v. Ruby, 194 P. 3d 709 -  
21 *Nev: Supreme Court 2008* citing Semtek Int'l Inc. v. Lockheed Martin Corp., 531 US 497  
22 - *Supreme Court 2001*.

23 Ninth DCR Rule 2. states (a) The Ninth Judicial District consists of two (2)  
24 departments. (b) The Judges of this court may interchange with each other. In  
25 the event of the absence or the incapacity of a Judge, or when agreed by the  
26 Judges, either Judge may act in the department of the other without specific  
27

1 assignment of the actions, unless the acting Judge has been disqualified from,  
2 stricken from, or recused himself or herself from the matter.

3 The orders in case number 2021-PB00034 are void since the Respondent  
4 and the Supreme Court in Case No. 84948 (see above) claim the district court  
5 lacked jurisdiction and in case number 2021-PB00034 and since the Petitioner  
6 was also not a party, and/or an interested person in and in case number 2021-  
7 PB00034, this unique collateral attack complies with the Supreme Court decision in  
8 State v. Sustacha, 826 P. 2d 959 - Nev: Supreme Court 1992 which states "In Smith  
9 v. District Court, 63 Nev. 249, 256-57, 167 P.2d 648, 651 (1946), we explained that a  
10 judgment is generally not subject to collateral attack "if the court which  
11 rendered it had jurisdiction of the subject matter and of the parties." Thus, only a  
12 void judgment is subject to collateral attack; a judgment is void only if the issuing  
13 court lacked personal jurisdiction or subject matter jurisdiction."

14 Judge Nathan Tod Young has been disqualified in this instant case and in case  
15 number 2021-PB00034 his orders are null and void in since he was bias against the  
16 Petitioner and there was an appearance of bias in violation of the U.S. fourteenth  
17 Amendment due-process in case number 2021-PB00034 as there is now in this  
18 instant case.

19 "The Due Process Clause of the Fourteenth Amendment establishes a  
20 constitutional floor, not a uniform standard," for a judicial bias claim. Bracy v. Gramley,  
21 520 U.S. 899, 904, 117 S.Ct. 1793, 138 L.Ed.2d 97 (1997). While most claims of judicial  
22 bias are resolved "by common law, statute, or the professional standards of the bench  
23 and bar," the "floor established by the Due Process Clause clearly requires a 'fair trial in  
24 a fair tribunal' before a judge with no actual bias against the defendant or interest in the  
25 outcome of his particular case." *Id.* at 904-05, 117 S.Ct. 1793 (quoting Withrow v.  
26 Larkin, 421 U.S. 35, 46, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975)). The Constitution  
27 requires recusal where "the probability of actual bias on the part of the judge or decision  
28

1 maker is too high to be constitutionally tolerable." Withrow, 421 U.S. at 47, 95 S.Ct.  
2 1456. Our inquiry is objective. Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 881,  
3 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009). We do not ask whether [the judge ] actually  
4 harbored subjective bias . Id. Rather, we ask whether the average judge in her position  
5 was likely to be neutral or whether there existed an unconstitutional potential for bias .  
6 Id. "Every procedure which would offer a possible temptation to the average . . . judge to  
7 forget the burden of proof required to convict the defendant, or which might lead him not  
8 to hold the balance nice, clear and true between the State and the accused, denies the  
9 [accused] due process of law." Tumey v. Ohio, 273 U.S. 510, 532, 47 S.Ct. 437, 71  
10 L.Ed. 749 (1927). In the criminal context, Edwards v. Balisok, 520 US 641 - Supreme  
11 Court 1997, states **"A criminal defendant tried by a partial judge is entitled to have**  
12 **his conviction set aside, no matter how strong the evidence against him.** Tumey v.  
13 Ohio, 273 U. S. 510, 535 (1927); Arizona v. Fulminante, 499 U. S. 279, 308 (1991).

14 The Petitioner requires counsel to articulate this profound case that raises one  
15 or more issues that involve substantial precedential, constitutional, and public policy  
16 questions identical to the on point case Barefoot v. Jennings, 456 P. 3d 447 - 2020 -  
17 Cal: Supreme Court , which was decided by the California Supreme Court in January  
18 2020, the Court held, **"we conclude that claims that trust provisions or**  
19 **amendments are the product of incompetence, undue influence, or fraud, as is**  
20 **alleged here, should be decided by the probate court, if the invalidity of those**  
21 **provisions or amendments would render the challenger a beneficiary of the**  
22 **trust. [Citation omitted.] So when a plaintiff claims to be a rightful beneficiary of**  
23 **a trust if challenged amendments are deemed invalid, she has standing to**  
24 **petition the probate court under section 17200."** The California Supreme Court  
25 recognized the inequity that could result if a beneficiary was prohibited from  
26 challenging a trust based on an invalid trust amendment obtained through fraud,  
27 undue influence or lack of capacity that disinherited an interested beneficiary.

1 Nevada routinely looks to California precedent for guidance as it should  
2 with Barefoot v. Jennings, supra to determine the definition of an “interested  
3 person” when the inequity that could result if a beneficiary was prohibited from  
4 challenging a trust based on an invalid trust amendment obtained through  
5 fraud, undue influence or lack of capacity that disinherited an interested  
6 beneficiary.

7 See LOCAL GOVT. EMPLOYEE-MANAGEMENT v. ESEA, 429 P. 3d 658 -  
8 Nev: Supreme Court 2018 “Because no Nevada precedent is instructive on this  
9 issue, we look to California precedent for guidance.” See Shapiro v. Welt, 133  
10 Nev. 35, 39, 389 P.3d 262, 268 (2017) (observing that because “California’s and  
11 Nevada’s anti-SLAPP statutes are similar in purpose and language, we look to  
12 California law for guidance” (internal quotation marks and citations omitted)).

13 See Coker v. Sassone, 432 P. 3d 746 - Nev: Supreme Court 2019 “This court  
14 has repeatedly recognized the similarities between California’s and Nevada’s anti-  
15 SLAPP statutes, routinely looking to California courts for guidance in this area.[3] See,  
16 e.g., Patin v. Lee, 134 Nev. \_\_\_, 429 P.3d 1248, 1250-51 (2018); Shapiro, 133 Nev. at  
17 40, 389 P.3d at 268 (adopting California’s “guiding principles” to define “an  
18 issue of public interest” pursuant to NRS 41.637(4)); John, 125 Nev. at 752, 219  
19 P.3d at 1281 (describing both states’ anti-SLAPP statutes as “similar in purpose  
20 and language”). As such, we turn to Park v. Board of Trustees of California  
21 State University, wherein the California Supreme Court explained...

22 In Hamm v. Carson City Nugget, Inc., 450 P. 2d 358 - Nev: Supreme Court  
23 1969 Since the problem has not been decided in Nevada we must look  
24 elsewhere for guidance. The common law is the rule of decision in our courts  
25 unless in conflict with constitutional or statutory commands. NRS 1.030;  
26 Davenport v. State Farm Mutual, 81 Nev. 361, 404 P.2d 10 (1965).  
27  
28

1 After case number 2021 PB00034 was decided and an order issued denying  
2 this Petitioner counsel on the grounds he is not an interested person pursuant to NRS  
3 § 132.185 this Petitioner filed a motion to reconsider and notice of appeal and to  
4 request the stay. Both were denied without reaching the merits of what an "interested  
5 person" is and is not pursuant to NRS 132.185 which states "Interested person"  
6 defined as **"Interested person means a person whose right or interest under an  
7 estate or trust may be materially affected by a decision of a fiduciary or a  
8 decision of the court.** The fiduciary or court shall determine who is an interested  
9 person according to the particular purposes of, and matter involved in, a proceeding."  
10 Based on this definition, the Petitioner is indeed an Interested person pursuant to  
11 **NRS 132.185.**

12 Although not named in the trust or will as a beneficiary, as a matter of  
13 law, this Petitioner is legally a "Beneficiary" based "contingent" on his  
14 "present interest" and "future interest" which are both vested and contingent and  
15 he would be the owner of an interest by assignment or other transfer from the Thomas  
16 J. Harris Trust ...or from the Thomas J. and Olga Harris Living Trust. See Barefoot v.  
17 Jennings, supra.

18 NRS 132.050 states "Beneficiary" defined. "Beneficiary," as it relates to: 1.  
19 **"A trust, includes a person who has a present or future interest, vested or  
20 contingent, and the owner of an interest by assignment or other transfer".**

21 Compare NRS 132.050 with the California equivalent Section 17200,  
22 subdivision (b)(3) contemplates the court's determination of "the validity of a trust  
23 provision. "Plainly, the term "trust provision" incorporates any amendments to a trust.  
24 Section 24, subdivision (c) defines a "beneficiary" for trust purposes, as "a  
25 **person who has any present or future interest, vested or contingent."** Assuming  
26 plaintiff's allegations are true, **she has a present or future interest**, making her a  
27  
28

1 beneficiary permitted to petition the probate court under section 17200." See Barefoot  
2 v. Jennings, supra.

3 The Nevada Supreme Court summarily dismissed the appeal because they  
4 claim this Petitioner lacks standing and is not a party to the action i.e. not named in  
5 the lawsuit/petition as a respondent/defendant or petitioner/plaintiff. The Nevada  
6 Supreme Court failed to even consider the facts before they were filed that shows the  
7 Petitioner is, in fact, named in the will/trust as being disinherited.

8 The Petitioner styled is argument in case number 2021 PB00034 as the same  
9 argument in Barefoot v. Jennings, infra.

10 If this ruling stands, nobody in Nevada can petition the court for probate  
11 or presumed undue influence or fraud or lack of capacity if they are presumably  
12 not already a beneficiary. This Petitioner was undisputedly "disinherited" albeit by  
13 way of presumed undue influence and undue influence.

14 A similar situation occurred in California in Barefoot v. Jennings, 456 P. 3d 447  
15 - Cal: Supreme Court 2020.<sup>5</sup>

16 In early November 2019, the California Supreme Court heard oral  
17 arguments in the Barefoot case, and in late January 2020, the California  
18 Supreme Court issued its opinion reversing the Court of Appeal decision.  
19 The California Supreme Court held as follows: **"We disagree with the**  
20 **Court of Appeal, and hold today that the Probate Code grants**  
21 **standing in Probate Court to individuals who claim that trust**  
22 **amendments eliminating their beneficiary status arose from**  
23 **incompetence, undue influence or fraud."**

24 California probate Section 17200, subdivision (b)(3) contemplates the  
25 court's determination of "the validity of a trust provision." Plainly, the term  
26 "trust provision" incorporates any amendments to a trust. Section 24,  
27 subdivision (c) defines a "beneficiary" for trust purposes, as "a person who  
28 has any present or future interest, vested or contingent." Assuming  
plaintiff's allegations are true, she has a present or future interest, making

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<sup>5</sup> Source: <https://keystone-law.com/legal-standing-trust-contests/>

1 her a beneficiary permitted to petition the probate court under section  
2 17200.[vii] (Emphasis added).

3 The California Supreme Court held that with this interpretation, when  
4 a plaintiff claims to be a rightful beneficiary of a trust, if the  
5 challenged amendments are deemed invalid, then the plaintiff has  
6 standing to petition the Probate Court under Section 17200.

7 The Court added that this expansive reading of the standing  
8 requirement afforded to trust contests under Section 17200 “not only  
9 makes sense as a matter of judicial economy, but it also recognizes  
10 the probate court’s inherent power to decide all incidental issues  
11 necessary to carry out its express powers to supervise the  
12 administration of the trust.”

13 Section 17200, subdivision (b)(3) contemplates the court’s determination  
14 of “the validity of a trust provision.” Plainly, the term “trust provision”  
15 incorporates any amendments to a trust. Section 24, subdivision (c)  
16 defines a “beneficiary” for trust purposes, as “a person who has any  
17 present or future interest, vested or contingent.” Assuming plaintiff’s  
18 allegations are true, *she has a present or future interest*, making her a  
19 beneficiary permitted to petition the probate court under section 17200.[vii]  
20 (Emphasis added)..”

21 The Court cautioned, however, that its ruling in Barefoot did have certain  
22 limitations in its applicability, stating: “Our holding does not allow  
23 individuals with no interest in a trust to bring a claim against the trust.  
24 Instead, we permit those whose well-pleaded allegations show that  
25 they have an interest in a trust — because the amendments  
26 purporting to disinherit them are invalid — to petition the probate  
27 court.”

28 Thus, by so holding, the Supreme Court’s ruling could potentially exclude  
a Decedent’s heirs (who were not named as beneficiaries in any prior  
version of the Decedent’s estate plan, but who would otherwise have a  
beneficial interest through intestate succession in the event the Decedent  
did not have a valid estate plan) from filing a Section 17200 contest in  
Probate Court. Thus, any such contests currently pending by such heirs in  
Probate Court may be subject to attack based on the heirs’ lack of  
standing.

Accordingly, the effect of the California Supreme Court’s decision  
was not to limitlessly expand the universe of potential litigants who  
can bring trust contest claims in the future, but rather, to confirm



1 **that Section 17200 can be used by *disinherited* beneficiaries as it had**  
2 **been in the past**, while leaving open this unresolved issue concerning a  
3 Decedent's heirs.

4 Cal. Prob. Code § 17200 Current through the 2022 Legislative Session is  
5 the equivalent of NRS 164.015

6 Section 17200 - Petition concerning internal affairs or determine  
7 existence; internal affairs of trust

8 **(a) Except as provided in Section 15800, a trustee or beneficiary of a**  
9 **trust may petition the court under this chapter concerning the**  
10 **internal affairs of the trust or to determine the existence of the trust.**

11 (b) Proceedings concerning the internal affairs of a trust include, but are  
12 not limited to, proceedings for any of the following purposes:

13 (1) Determining questions of construction of a trust instrument.

14 (2) Determining the existence or nonexistence of any immunity, power,  
15 privilege, duty, or right.

16 (3) Determining the validity of a trust provision.

17 (4) Ascertaining beneficiaries and determining to whom property shall  
18 pass or be delivered upon final or partial termination of the trust, to the  
19 extent the determination is not made by the trust instrument.

20 (5) Settling the accounts and passing upon the acts of the trustee,  
21 including the exercise of discretionary powers.

22 (6) Instructing the trustee.

23 (7) Compelling the trustee to do any of the following:

24 (A) Provide a copy of the terms of the trust.

25 (B) Provide information about the trust under Section 16061 if the trustee  
26 has failed to provide the requested information within 60 days after the  
27 beneficiary's reasonable written request, and the beneficiary has not  
28 received the requested information from the trustee within the six months  
preceding the request.

(C) Account to the beneficiary, subject to the provisions of Section 16064,  
if the trustee has failed to submit a requested account within 60 days after  
written request of the beneficiary and no account has been made within  
six months preceding the request.

(8) Granting powers to the trustee.

(9) Fixing or allowing payment of the trustee's compensation or reviewing  
the reasonableness of the trustee's compensation.

- (10) Appointing or removing a trustee.
- (11) Accepting the resignation of a trustee.
- (12) Compelling redress of a breach of the trust by any available remedy.
- (13) Approving or directing the modification or termination of the trust.
- (14) Approving or directing the combination or division of trusts.
- (15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service.
- (16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction.
- (17) Directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another.
- (18) Approving removal of a testamentary trust from continuing court jurisdiction.
- (19) Reforming or excusing compliance with the governing instrument of an organization pursuant to Section 16105.
- (20) Determining the liability of the trust for any debts of a deceased settlor. However, nothing in this paragraph shall provide standing to bring an action concerning the internal affairs of the trust to a person whose only claim to the assets of the decedent is as a creditor.
- (21) Determining petitions filed pursuant to Section 15687 and reviewing the reasonableness of compensation for legal services authorized under that section. In determining the reasonableness of compensation under this paragraph, the court may consider, together with all other relevant circumstances, whether prior approval was obtained pursuant to Section 15687.
- (22) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a deceased member under Section 9764, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a deceased member shall apply to the petition brought under this section.
- (23) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a disabled member under Section 2468, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a disabled member shall apply to the petition brought under this section.

(c) The court may, on its own motion, set and give notice of an order to show cause why a trustee who is a professional fiduciary, and who is required to be licensed under Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code, should not be removed for failing to hold a valid, unexpired, unsuspended license. Ca. Prob. Code § 17200

Amended by Stats 2010 ch 621 (SB 202), s 11, eff. 1/1/2011.  
Amended by Stats 2003 ch 629 (SB 294), s 8, eff. 1/1/2004.  
EFFECTIVE 1/1/2000. Amended July 26, 1999 (Bill Number: AB 239) (Chapter 175).

Compare Cal. Prob. Code § 17200 to Nevada NRS 164.015 Petition concerning internal affairs of nontestamentary trust; jurisdiction of court; procedure for contests of certain trusts; final order; appeal.

**1. The court has exclusive jurisdiction of proceedings initiated by the petition of an interested person concerning the internal affairs of a nontestamentary trust, including a revocable living trust while the settlor is still living if the court determines that the settlor cannot adequately protect his or her own interests or if the interested person shows that the settlor is incompetent or susceptible to undue influence. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts, including petitions with respect to a nontestamentary trust for any appropriate relief provided with respect to a testamentary trust in NRS 153.031 and petitions for a ruling that property not formally titled in the name of a trust or its trustee constitutes trust property pursuant to NRS 163.002.**

**2. A petition under this section or subsection 2 of NRS 30.040 that relates to a trust may be filed in conjunction with a petition under NRS 164.010 or at any time after the court has assumed jurisdiction under that section.**

**3. If an interested person contests the validity of a revocable nontestamentary trust, the interested person is the plaintiff and the trustee is the defendant. The written grounds for contesting the validity of the trust constitutes a pleading and must conform with any rules applicable to pleadings in a civil action. This subsection applies whether the person**

1       contesting the validity of the trust is the petitioner or the objector and  
2       whether or not the opposition to the validity of the trust is asserted under  
3       this section or subsection 2 of NRS 30.040.

4       4. In a proceeding pursuant to subsection 3, the competency of the  
5       settlor to make the trust, the freedom of the settlor from duress, menace,  
6       fraud or undue influence at the time of execution of the will, the execution  
7       and attestation of the trust instrument, or any other question affecting the  
8       validity of the trust is a question of fact and must be tried by the court,  
9       subject to the provisions of subsection 5.

10       5. **A court may consolidate the cases if there is a contest of a**  
11       **revocable nontestamentary trust and a contest relating to a will**  
12       **executed on the same date.** If a jury is demanded pursuant to NRS  
13       137.020 for the contest of the will, the court may instruct the jury to render  
14       an advisory opinion with respect to an issue of fact pursuant to subsection  
15       4 in the contest of the trust.

16       6. Upon the hearing, the court shall enter such order as it deems  
17       appropriate. The order is final and conclusive as to all matters determined  
18       and is binding in rem upon the trust estate and upon the interests of all  
19       beneficiaries, vested or contingent, except that appeal to the appellate  
20       court of competent jurisdiction pursuant to the rules fixed by the Supreme  
21       Court pursuant to Section 4 of Article 6 of the Nevada Constitution may be  
22       taken from the order within 30 days after notice of its entry by filing notice  
23       of appeal with the clerk of the district court. The appellant shall mail a copy  
24       of the notice to each person who has appeared of record. If the  
25       proceeding was brought pursuant to subsection 3, 4 or 5, the court must  
26       also award costs pursuant to chapter 18 of NRS.

27       7. **Except as otherwise ordered by the court,** a proceeding under  
28       this section does not result in continuing supervisory proceedings, and the  
29       administration of the trust must proceed expeditiously in a manner  
30       consistent with the terms of the trust, without judicial intervention or the  
31       order, approval or other action of any court, **unless the jurisdiction of**  
32       **the court is invoked by an interested person or exercised as**  
33       **provided by other law.**

34       8. As used in this section, "nontestamentary trust" has the meaning  
35       ascribed to it in NRS 163.0016.

36       See NRS 164.040 Power or jurisdiction of court not abridged; court may  
37       take action necessary or proper to dispose of matter presented by petition.

1           1.   **NRS 164.010 and 164.015 do not limit or abridge the power or**  
2           **jurisdiction of the district court over trusts and trustees.**

3           2.   **The court may enter any order or take any other action**  
4           **necessary or proper to dispose of the matters presented by a**  
5           **petition, including the appointment of a temporary trustee to**  
6           **administer the trust in whole or in part.**

7           This Petitioner has asserted a "property right" in the Thomas J. Harris trust, will,  
8           estate and related probate contests and the previous Thomas Joseph and Olga Harris  
9           Living Trust. This Petitioner is denied procedural and substantive due-process and  
10          equal protection of the law pursuant to the U.S. Fourteenth Amendment as well as  
11          Nevada Constitution Article 1 Section 1 "Inalienable rights. All men are by Nature  
12          free and equal and have certain inalienable rights among which are those of enjoying  
13          and defending life and liberty; **Acquiring, Possessing and Protecting property** and  
14          pursuing and obtaining safety and happiness" and Article 1 Section 8 (2) **"No person**  
15          **shall be deprived of life, liberty, or property, without due process of law"**.

16          **"The Federal and Nevada Constitutions provide that no person shall be**  
17          **deprived of life, liberty, or property without due process of law. Essentially, "the**  
18          **State owes to each individual that process which, in light of the values of a free**  
19          **society, can be characterized as due." Substantive due process ensures that**  
20          **state action is not random and unpredictable; it restricts the government's**  
21          **ability to interfere with a person's life, liberty, or property. Kirkpatrick v. Dist. Ct.,**  
22          **43 P. 3d 998 – Nev. Supreme Court 2002. (Emphasis added by Petitioner).**

23          For the purpose of the equal protection clause of U.S. Fourteenth Amendment,  
24          the Petitioner is in a class of indigent litigant and also a class-of-one.

25          Additionally, the Revised Nevada Code Of Judicial Conduct Rule 2.6. Ensuring  
26          the Right to Be Heard states **"(A) A judge shall accord to every person who has a**  
27          **legal interest in a proceeding, or that person's lawyer, the right to be heard**  
28          **according to law."**

1 NRS 136.200 is applicable in this current case involving the instant Thomas J.  
2 Harris Trust and will and estate and any related probate including "special  
3 qualifications" because there is fraud and theft of assets in the trust(s), will(s) and  
4 estate(s) including a missing home from Pebble beach Court Minden, Nevada and an  
5 entire safe deposit box of assets.

6 See In re Herrmann, 100 Nev. 1, 4-5 (Nev. 1984) 677 P.2d 594 "Judge Waters  
7 appointed appellant Flangas as their counsel pursuant to NRS 136.200.  
8 Subsequently, on March 20, 1973, Judge Waters appointed appellant Ross as co-  
9 counsel to Mr. Flangas. It appears of record that Mr. Flangas and Mr. Ross had  
10 **special qualifications**, known to Judge Waters, which had application to a  
11 **matter of vital importance to the Estate of Herrmann**, to-wit: the subdivision and  
12 development of the Lyon County ranch for residential housing purposes."

13 NRS 136.200 also applies to CHAPTER 164 - ADMINISTRATION OF  
14 TRUSTS, NRS 164.005 Applicability of provisions of chapters 132, 153 and 155 of  
15 NRS regulating matters of estates. When not otherwise inconsistent with the  
16 provisions of chapters 162 to 167, inclusive, of NRS, all of the provisions of chapters  
17 132, 153 and 155 of NRS regulating the matters of estates:

- 18 1. Apply to proceedings relating to trusts, as appropriate; or
- 19 2. May be applied to supplement the provisions of chapters 162 to 167,  
20 inclusive, of NRS.

21 Since the will, trust and estate controversy may lead to probate, NRS 136.200  
22 also applies to NRS 30.040 which states "Questions of construction or validity of  
23 instruments, contracts and statutes. Any person interested under a deed, written  
24 contract or other writings constituting a contract, or whose rights, status or other legal  
25 **relations are affected by a statute, municipal ordinance, contract or franchise,**  
26 **may have determined any question of construction or validity arising under the**  
27 **instrument, statute, ordinance, contract or franchise and obtain a declaration of**

1 **rights, status or other legal relations thereunder.”** In a proceeding pursuant to  
2 subsection 3, the competency of the settlor to make the trust, the freedom of the  
3 settlor from duress, menace, fraud or undue influence at the time of execution  
4 of the will, the execution and attestation of the trust instrument, or any other  
5 question affecting the validity of the trust is a question of fact and must be tried  
6 by the court, subject to the provisions of subsection 5.

7 Indeed, the Thomas J. Harris Trust and Will were executed on the same  
8 date, June 12, 2019 See Exhibits A and B in the petition.

9 NRS 164.015 Subsection 5 states “**A court may consolidate the cases if**  
10 **there is a contest of a revocable nontestamentary trust and a contest relating to**  
11 **a will executed on the same date.”** If a jury is demanded pursuant to NRS 137.020  
12 for the contest of the will, the court may instruct the jury to render an advisory opinion  
13 with respect to an issue of fact pursuant to subsection 4 in the contest of the trust.  
14  
15

16 **NRS 30.040 Questions of construction or validity of instruments,**  
17 **contracts and statutes.**

18 1. Any person interested under a deed, written contract or other  
19 writings constituting a contract, or whose rights, status or other legal  
20 relations are affected by a statute, municipal ordinance, contract or  
21 franchise, may have determined any question of construction or validity  
arising under the instrument, statute, ordinance, contract or franchise and  
obtain a declaration of rights, status or other legal relations thereunder.

22 2. A maker or legal representative of a maker of a will, trust or  
23 other writings constituting a testamentary instrument may have  
24 determined any question of construction or validity arising under the  
25 instrument and obtain a declaration of rights, status or other legal  
26 relations thereunder. Any action for declaratory relief under this  
subsection may only be made in a proceeding commenced pursuant to  
the provisions of title 12 or 13 of NRS, as appropriate.  
27  
28

1           3. A principal or a person granted authority to act for a principal  
2 under power of attorney, whether denominated an agent, attorney-in-fact  
3 or otherwise, may have determined any question of construction or validity  
4 arising under the instrument and obtain a declaration of rights, status or  
5 other legal relations thereunder. Any action for declaratory relief under this  
6 subsection may only be made in a proceeding commenced pursuant to  
7 the provisions of title 12 or 13 of NRS, as appropriate.

8           In this instant case, the Petitioner has a right and property interest to both the  
9 estate and trust which is be materially affected by a decision of a fiduciary or a  
10 decision of the court.

11           In case number: 2021 PB00034, the Respondent offers no points of authority,  
12 nor any precedent or case law to support its argument and NRS 132.185 is inapposite  
13 to the Respondent's argument. Nether does Judge Young offer any points of authority,  
14 nor any precedent or case law to support his order ...and the Nevada supreme Court's  
15 order in case 84948. The NRS 132.185 issue was never decided on the merits in any  
16 court and does not preclude adjudication in this case on grounds of issue preclusion  
17 i.e. *res judicata* or claim preclusion i.e. *collateral estopple*.

18           Since this court has jurisdiction, and judge Nathan Tod Young has been  
19 disqualified, and there is both intrinsic and extrinsic fraud, and the crux of the case is  
20 based on fraud, the Petitioner requests and the court can reopen case 2021-PB00034  
21 with the currently assigned senior judge pursuant to NRCP Rule §§ 60 where the  
22 actual claim and merits of the petition are argued making an undisputed *prima facie*  
23 case for presumed undue influence and undue influence that the Respondent  
24 concedes to in this motion and the Respondent's Motion for Summary Judgment.

25           Indeed, "undue influence ... is a species of fraud. A rebuttable  
26 presumption of undue influence is raised if the testator and the beneficiary  
27 shared a fiduciary relationship, but undue influence may also be proved without  
28



1 raising this presumption." *In re Estate of Bethurem*, 313 P. 3d 237, 241 (2013), at  
2 329.

3 Fraud and theft has occurred with undisputed assets missing including a  
4 \$450,000.00 home on Pebble Beach Court in Minden, NV transferred from the  
5 Thomas J. Harris Trust into the position of Jeff D. Robben who was the fiduciary and  
6 caretaker for Thomas J. Harris which creates "presumed undue influence." This is  
7 undisputed and Respondents have conceded this issue. The entire contents of the  
8 safe deposit box of Thomas J. Harris is not accounted for along with stocks, cash,  
9 gold, annuities, 401K, IRAs, pension, insurance, etc. This is undisputed and  
10 Respondents have conceded this issue.

11 There was fraud upon the court perpetuated by Respondent's counsel, Fred  
12 McClure Wallace who misrepresented to the court a material fact that there was no  
13 prior trust called the Thomas Joseph and Olga Harris Living Trust.

14 Judge Nathan Tod Young is disqualified in this instant case yet he presided in  
15 2021-PB00034 despite being bias against the Petitioner in violation of the U.S.  
16 Fourteenth Amendment due-process clause and NRS 1.230 which prohibits a judge  
17 from presiding over any matter when actual or implied bias exists on the part of the  
18 Judge. In Nevada, "a judge has a general duty to sit, unless a judicial canon, statute,  
19 or rule requires the judge's disqualification." *Millen v. Dist. Ct.*, 122 Nev. 1245, 1253,  
20 148 P.3d 694, 700 (2006).

21 It appears there was and still is fraud and a conspiracy to defraud  
22 Petitioner (and the other beneficiaries) out of vast sums of money as proven by  
23 the missing items in the safe deposit box and the home in Minden, Nevada on  
24 Pebble Beach Court was fraudulently transferred out of the Thomas J. Harris  
25 Trust by way of undue influence of Jeff D. Robben. Interestingly, this is a multi-  
26 state problem involving California, Nevada and Washington states. It's  
27  
28

1 understood Scott Barton is a resident of Washington state. Since this involves  
2 interstate commerce and mail fraud, perhaps the feds will be interested too.

3 With the known conflicts-of-interests between Scott Barton and  
4 Blanchard, Krasner & French working both Jeff Robben's trust/will/instruments  
5 and Thomas J. Harris's trust/will/instruments it appears there is a conspiracy  
6 along with Tara Flannagan and you to cover-up the money trail. Indeed, follow-  
7 the-money... Where is it?

8 The Petitioner has been subject to vexation by the Thomas J. Harris trust  
9 administrator, Tara M. Flanagan who has abuse her position as a California  
10 Superior Court Judge in volition the state judicial ethics & canons to have the  
11 Alameda County authorities attempt to intimate this Petitioner from his legal  
12 rights to pursue his claims and expose the corruption. According to Cal. Judicial  
13 Canon 2: A Judge Shall Avoid Impropriety and the Appearance of Impropriety in  
14 All of the Judge's Activities A. Promoting Public Confidence B. Use of the  
15 Prestige of Judicial Office.

16 According to Cal. Judicial Canon 4: A Judge Shall So Conduct the Judge's  
17 Quasi-Judicial and Extrajudicial Activities as to Minimize the Risk of Conflict with  
18 Judicial Obligations

- 19 **A. Extrajudicial Activities in General**  
20 **B. Quasi-judicial and Avocational Activities**  
21 **C. Governmental, Civic, or Charitable Activities**  
22 **D. Financial Activities**  
23 **E. Fiduciary Activities**  
24 **F. Service as Arbitrator or Mediator**  
25 **G. Practice of Law**  
26 **H. Compensation and Reimbursement**

27 There has been a total break-down and failure to communicate by Tara M.  
28 Flanagan, F. McClure Wallace and Scott Barton. Tara M. Flanagan knows of the  
fraud and theft conducted by Scott William Barton Cal. State BAR # 160262, a

1 California lawyer. Pursuant to California Judicial Canon III, D II: (2) Whenever a  
2 judge has personal knowledge that a lawyer has violated any provision of the  
3 Rules of Professional Conduct, the judge shall take appropriate corrective action.

4 **"Silence can only be equated with fraud where there is a legal or**  
5 **moral duty to speak or where an inquiry left unanswered would be**  
6 **intentionally misleading."** United States v. Prudden, 424 F.2d 1021 p.  
7 1032.(5th Cir. 1970), cert. denied, 400 U.S. 831, 91 S.Ct. 62, 27 L.Ed.2d 62  
8 (1970).

9 **"Fraud on the court is "a species of fraud which does, or attempts to,**  
10 **subvert the integrity of the court itself, or is a fraud perpetrated by officers of**  
11 **the court so that the judicial machinery cannot perform in the usual manner its**  
12 **impartial task of adjudging cases."** NC-DSH, INC. v. Garner, 218 P. 3d 853 - Nev:  
13 *Supreme Court 2009.*

14 The Petitioner continued to be subjected to fraud and the Petitioner's State and  
15 Federal due-process was violated since he was NEVER timely notified by the  
16 Respondent of any probate, trust or will or even the death of Thomas J. Harris and  
17 the Petitioner has been both timely and diligent pursuing judicial relief as soon as  
18 learning of said probate, trust or will and death of Thomas J. Harris discussed below  
19 with controlling case law supporting the Petitioner.

20 Indeed, the Petitioner addressed this NRCP Rule 60 issue in his petition and  
21 the Respondent has conceded to the merits. In NC-DSH, INC. v. Garner, 218 P. 3d  
22 853 - Nev: *Supreme Court 2009* the Nevada Supreme Court stated "As amended  
23 effective January 1, 2005, NRCP 60(b) largely replicates Fed. R.Civ.P. 60(b), as  
24 written before the Federal Rules' 2007 revisions.[1] Like its federal counterpart, NRCP  
25 60(b) has two separate provisions that address fraud. The first is NRCP 60(b)(3),  
26 which provides, **"On motion and upon such terms as are just, the court may**  
27 **relieve a party ... from a final judgment, order, or proceeding for ... fraud**  
28

1 (whether heretofore denominated intrinsic or extrinsic), misrepresentation or  
2 other misconduct of an adverse party." The second provision addressing fraud  
3 appears in NRCP 60(b)'s "savings clause." The savings clause says, "This rule does  
4 not limit the power of a court to entertain an independent action to relieve a  
5 party from a judgment, order, or proceeding, or to set aside a judgment for fraud  
6 upon the court." [2] While a motion under NRCP 60(b)(3) must be made "not more  
7 than 6 months after the proceeding was taken or the date that written notice of entry of  
8 the judgment or order was served," NRCP 60(b) does not specify a time limit for  
9 motions seeking relief for "fraud upon the court."

10 NRCP Rule 60. Relief From a Judgment or Order

11 (a) Corrections Based on Clerical Mistakes; Oversights and  
12 Omissions. The court may correct a clerical mistake or a mistake arising  
13 from oversight or omission whenever one is found in a judgment, order, or  
14 other part of the record. The court may do so on motion or on its own, with  
15 or without notice. But after an appeal has been docketed in the appellate  
16 court and while it is pending, such a mistake may be corrected only with  
17 the appellate court's leave.

18 (b) Grounds for Relief From a Final Judgment, Order, or  
19 Proceeding. On motion and just terms, the court may relieve a  
20 party or its legal representative from a final judgment, order, or  
21 proceeding for the following reasons:

22 (1) mistake, inadvertence, surprise, or excusable neglect;

23 (2) newly discovered evidence that, with reasonable  
24 diligence, could not have been discovered in time to move for a new  
25 trial under Rule 59(b);

26 (3) fraud (whether previously called intrinsic or extrinsic),  
27 misrepresentation, or misconduct by an opposing party;

28 (4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged;  
it is based on an earlier judgment that has been reversed or vacated;  
or applying it prospectively is no longer equitable; or

1  
2 (6) any other reason that justifies relief.

3 (c) Timing and Effect of the Motion.

4 (1) Timing. A motion under Rule 60(b) must be made within a  
5 reasonable time—and for reasons (1), (2), and (3) no more than 6 months  
6 after the date of the proceeding or the date of service of written notice of  
7 entry of the judgment or order, whichever date is later. The time for filing  
8 the motion cannot be extended under Rule 6(b).

9 (2) Effect on Finality. The motion does not affect the judgment's  
10 finality or suspend its operation.

11 (d) Other Powers to Grant Relief. This rule does not limit a  
12 court's power to:

13 (1) entertain an independent action to relieve a party from a  
14 judgment, order, or proceeding;

15 (2) upon motion filed within 6 months after written notice of  
16 entry of a default judgment is served, set aside the default judgment  
17 against a defendant who was not personally served with a summons  
18 and complaint and who has not appeared in the action, admitted  
19 service, signed a waiver of service, or otherwise waived service; or

20 (3) set aside a judgment for fraud upon the court.

21 (e) Bills and Writs Abolished. The following are abolished: bills of  
22 review, bills in the nature of bills of review, and writs of coram nobis,  
23 coram vobis, and audita querela.

24 This court has jurisdiction pursuant to Nevada Constitution Article 6 Section 1:  
25 "The judicial power of this State shall be vested in a court system, comprising a  
26 Supreme Court, district courts, and justices of the peace. The Legislature may also  
27 establish, as part of the system, courts for municipal purposes only in incorporated  
28 cities and towns."

The Supreme of the Land can be found in the decisions of the U.S. Supreme  
Court. In Old Wayne Mut. L. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907),

1 the Supreme Court ruled that: "Chief Justice Marshall had long before observed in  
2 Ross v. Himely, 4 Cranch 241, 269, 2 L.ed. 608, 617, that, upon principle, the  
3 operation of every judgment must depend on the power of the court to render that  
4 judgment. In Williamson v. Berry, 8 How. 495, 540, 12 L.ed. 1170, 1189, **it was said**  
5 **to be well settled that *the jurisdiction of ANY COURT exercising authority over a***  
6 ***subject` may be inquired into in EVERY OTHER COURT when the proceedings***  
7 ***in the former are relied upon and brought before the latter by a party claiming***  
8 ***the benefit of such proceedings,*** and the rule prevails whether `the decree or  
9 judgment has been given, in a court of admiralty, chancery, ecclesiastical court,  
10 or court of common law, or whether the point ruled has arisen under the laws of  
11 nations, the practice in chancery, *or the municipal laws of states.*" [Emphasis  
12 added].

13 See Klabacka v. Nelson, 394 P. 3d 940 – Nev: Supreme Court 2017 "NRS  
14 164.015(1), "[t]he court has exclusive jurisdiction of proceedings initiated by the petition  
15 of an interested person concerning the internal affairs of a nontestamentary trust." As  
16 used in both statutes, "court" is defined as "a district court of this State sitting in  
17 probate or otherwise adjudicating matters pursuant to this title." NRS 132.116;  
18 see also NRS 164.005 (applying NRS 132.116 to trust proceedings under Title 13)."

19 In addition to NRCP Rule 60(b) and (d), The petition was also filed in part  
20 pursuant to NRS 164.010 and NRS 164.015 which states:

21  
22 NRS 164.005 Applicability of provisions of chapters 132, 153 and 155 of  
23 NRS regulating matters of estates. When not otherwise inconsistent with  
24 the provisions of chapters 162 to 167, inclusive, of NRS, all of the  
25 provisions of chapters 132, 153 and 155 of NRS regulating the matters of  
26 estates:

- 27 1. Apply to proceedings relating to trusts, as appropriate; or  
28

1           2. May be applied to supplement the provisions of chapters 162 to  
2 167, inclusive, of NRS.

3  
4 NRS 164.010 Petition for assumption of jurisdiction; circumstances in  
5 which trust is domiciled in this State; determination of venue; powers of  
6 court; petition for removal of trust from jurisdiction of court.

7           1. Upon petition of any person appointed as trustee of an express  
8 trust by any written instrument other than a will, or upon petition of a  
9 settler or beneficiary of the trust, the district court of the county in which  
10 any trustee resides or conducts business at the time of the filing of the  
11 petition or in which the trust has been domiciled as of the time of the filing  
12 of the petition shall assume jurisdiction of the trust as a proceeding in rem  
13 unless another court has properly assumed continuing jurisdiction in rem  
14 in accordance with the laws of that jurisdiction and the district court  
15 determines that it is not appropriate for the district court to assume  
16 jurisdiction under the circumstances.

17           2. For the purposes of this section, a trust is domiciled in this State  
18 notwithstanding that the trustee neither resides nor conducts business in  
19 this State if:

20           (a) The trust instrument expressly provides that the situs of the trust is  
21 in this State or that a court in this State has jurisdiction over the trust;

22           (b) A person has designated for the trust that this State is the situs or  
23 has jurisdiction, if such person made the designation at a time during  
24 which he or she held the power to make such a designation under the  
25 express terms of the trust instrument;

26           © The trust owns an interest in real property located in this State;

27           (d) The trust owns personal property, wherever situated, if the trustee  
28 is:

          (1) Incorporated or authorized to do business in this State;

          (2) A trust company licensed under chapter 669 of NRS;

          (3) A family trust company, as defined in NRS 669A.080; or

          (4) A national association having an office in this State;

1  
2 (e) One or more beneficiaries of the trust reside in this State; or

3 (f) At least part of the administration of the trust occurs in this State.

4 3. Notwithstanding the provisions of this section, if a court of a  
5 jurisdiction other than this State has jurisdiction over a trust and grants an  
6 order authorizing a transfer of jurisdiction over that trust to this State, the  
7 district court has the power to assume jurisdiction over the trust and to  
8 otherwise supervise the administration of that trust in accordance with the  
9 procedures set forth in this title.

10 4. For the purposes of determining venue, preference is given  
11 in the following order:

12 (a) To the county in which the situs or domicile was most  
13 recently declared by a person granted the power to make such a  
14 declaration under the terms of the trust instrument at the time of the  
15 filing of the petition;

16 (b) To the county in which the situs or domicile is declared in the  
17 trust instrument; and

18 (c) To the county in which the situs or domicile is declared by  
19 the trustee at the time of the filing of the petition in a certification of  
20 the trust which complies with subsection 2 of NRS 164.400 and  
21 subsection 2 of NRS 164.410 and which contains a declaration of the  
22 trust's situs or domicile as authorized in subsection 1 of NRS  
23 164.410.

24 5. When the court assumes jurisdiction pursuant to this  
25 section, the court:

26 (a) Has jurisdiction of the trust as a proceeding in rem as of the  
27 date of the filing of the petition;

28 (b) Shall be deemed to have personal jurisdiction over any trustee  
confirmed by the court and any person appearing in the matter, unless  
such an appearance is made solely for the purpose of objecting to the  
jurisdiction of the court;

© May confirm at the same time the appointment of the trustee and  
specify the manner in which the trustee must qualify; and



1 (d) May consider at the same time granting orders on other matters  
2 relating to the trust, including, without limitation, matters that might be  
3 addressed in a declaratory judgment relating to the trust under  
4 subsection 2 of NRS 30.040 or petitions filed pursuant to NRS  
5 153.031 or 164.015 whether such matters are raised in the petition to  
6 assume jurisdiction pursuant to this section or in one or more  
7 separate petitions that are filed concurrently with the petition to  
8 assume jurisdiction.

9 6. At any time, the trustee may petition the court for removal of the  
10 trust from continuing jurisdiction of the court.

11 7. As used in this section, "written instrument" includes, without  
12 limitation, an electronic trust as defined in NRS 163.0015.

13 [1:22:1953]—(NRS A 1961, 400; 1999, 2377; 2001, 2352; 2015, 3551;  
14 2017, 1695)

15 **NRS 164.015 Petition concerning internal affairs of**  
16 **nontestamentary trust; jurisdiction of court; procedure for contests**  
17 **of certain trusts; final order; appeal.**

18 1. The court has exclusive jurisdiction of proceedings initiated  
19 by the petition of an interested person concerning the internal affairs  
20 of a nontestamentary trust, including a revocable living trust while the  
21 settler is still living if the court determines that the settler cannot  
22 adequately protect his or her own interests or if the interested person  
23 shows that the settler is incompetent or susceptible to undue  
24 influence. Proceedings which may be maintained under this section  
25 are those concerning the administration and distribution of trusts,  
26 the declaration of rights and the determination of other matters  
27 involving trustees and beneficiaries of trusts, including petitions  
28 with respect to a nontestamentary trust for any appropriate relief  
provided with respect to a testamentary trust in NRS 153.031 and  
petitions for a ruling that property not formally titled in the name of a  
trust or its trustee constitutes trust property pursuant to NRS  
163.002.

2 2. A petition under this section or subsection 2 of NRS 30.040  
3 that relates to a trust may be filed in conjunction with a petition  
4 under NRS 164.010 or at any time after the court has assumed  
5 jurisdiction under that section.



1  
2 8. As used in this section, "nontestamentary trust" has the meaning  
3 ascribed to it in NRS 163.0016.

4 In his petition, the Petitioner states "Judge Nathan Tod Young is bias and  
5 prejudiced against this Petitioner in case number 2021 PB00034. Judge Young  
6 violated this Petitioner's State and Federal Constitutional due-process and equal  
7 protection rights violated as well as the State Statutory right to appointed counsel. All  
8 Judge Young's orders are null and void since he is bias against this Petitioner and did  
9 not even issue a verbal or written order with a reason as to his alleged claim that this  
10 Petitioner is not an interested person."

11 Judge Nathan Tod Young is disqualified in this instant case and going forward,  
12 in any further future presiding in case number 2021 PB00034.

13 **D. PETITIONER IS ENTITLED TO RELIEF**

14 The Petitioner doesn't even need to prove the existence or contents of the  
15 former Thomas Joseph and Olga Harris Living Trust to render the current Thomas J.  
16 Harris Trust null & void based on a *prima facie* case of presumed undue influence  
17 based on the undisputed facts that Jeff D. Robben, the brother of the Petitioner, was  
18 1: The caretaker of Thomas J. Harris; 2: The Financial advisor for Thomas J. Harris; 3:  
19 Helped create the current Thomas J. Harris trust; 4. Had "undue influence" and  
20 "presumed undue influence" of Thomas J. Harris; 5: Jeff D. Robben influenced  
21 Thomas J. Harris to disinherit based on the animus and vexation of Jeff D. Robben.

22 "A rebuttable presumption of undue influence is raised if the testator and the  
23 beneficiary shared a fiduciary relationship, but undue influence may also be proved  
24 without raising this presumption." *In re Estate of Bethurem*, 313 P. 3d 237, 241 (2013),  
25 at 329. "The essence of a fiduciary or confidential relationship is that the parties do not  
26 deal on equal terms, since the person in whom trust and confidence is reposed and  
27 who accepts that trust and confidence is in a superior position to exert unique  
28

1 influence over the dependent party." Hoopes v. Hammargren, 725 P. 2d 238, 242  
2 (1986) quoting Barbara A. v. John G., 145 Cal.App.3d 369, 193 Cal.Rptr. 422, 432  
3 (1983). "Once raised, a beneficiary may rebut such a presumption by clear and  
4 convincing evidence." Betherum, at 241.

5 If it turns out the Thomas Joseph and Olga Harris Living Trust is lost or  
6 destroyed, the Petitioner can produce two witnesses, Todd C. Robben and Stephen J.  
7 Robben to attest to the existence and contents of the Thomas Joseph and Olga Harris  
8 Living Trust. A third witness may include Abigail G. Stephenson, Esq since the  
9 Thomas Joseph and Olga Harris Living Trust was addressed by Abigail G.  
10 Stephenson, Esq. dated March 6, 2020 from Blanchard, Krasner & French  
11 acknowledging the existence of the August 26, 1998 trust known as the Thomas  
12 Joseph and Olga Harris Living Trust. Please see EXHIBIT A in the initial petition filing  
13 of this instant case.

14 Further research will determine if a copy of the Thomas Joseph and Olga  
15 Harris Living Trust exists. If not, Petitioner can produce two witnesses, Todd C.  
16 Robben and Stephen J. Robben to attest to the existence and contents of the Thomas  
17 Joseph and Olga Harris Living Trust pursuant to [1] NRS 136.240(3) which provides:  
18 No will shall be allowed to be proved as a lost or destroyed will unless the same shall  
19 be proved to have been in existence at the death of the person whose will it is claimed  
20 to be, or be shown to have been fraudulently destroyed in the lifetime of such person,  
21 nor unless its provisions shall be clearly and distinctly proved by at least two credible  
22 witnesses.

23 Todd C. Robben and Stephen J. Robben could have attested under oath that  
24 Olga Harris, the mother of Petitioner Todd C. Robben spoke of the will/trust several  
25 times, including Petitioner's wedding day. The beneficiaries included Thomas J.  
26 Harris's son Todd Harris, note Thomas A. Harris was *not* a beneficiary and  
27

1 disinherited; Olga Harris's sons Jeff D. Robben and Todd C. Robben. Each was to  
2 receive one third.

3 If the court decides otherwise, the case goes to probate with only two  
4 remaining blood hairs, Thomas. A. Harris and Petitioner, Todd C. Robben.

5 This Petitioner has stated and will state again in simple terms that he desires a  
6 situation either by settlement, or court order, to remedy the matter to include the  
7 Petitioner into to trust with a reasonable percentage and to include a full accounting of  
8 any and all assets, money, expenses, etc. A complete transparent paper trail of the  
9 money trail. Where are the contents of the missing safe deposit box addressed as  
10 "Exhibit "A" to Declaration of Trust by Thomas J. Harris". See EXHIBIT B in the initial  
11 petition filing of this instant case.

12  
13 **1. Safe Deposit Box:** All of Trustor's right, title and interest in and to all  
14 contents in the safe deposit box located at Wells Fargo Bank in Carson  
15 City, NV, branch office, including but not limited to cash, bonds, stock,  
securities, and tangible property therein.

16 **2. Bank Accounts:** All cash, bonds, stock, securities and other property  
17 held with Wells Fargo Bank, including but not limited to account  
18 #####1233.

19 **3. All Other Personal Property:** All of Trustor's right, title, and interest  
20 subject to all liabilities attached thereto in all automobiles, boats, airplanes,  
21 vehicles, trailers, silverware, chinaware, wine, books, pictures, paintings,  
22 works of art, household furniture and furnishings, clothing, jewelry, pets,  
23 assets in digital form for which Trustor is the owner or author, including  
24 without limitation, lists of passwords, user account information, social  
25 media sites, blogs, e-books, and other Web-hoster materials, all digital  
26 albums and videos, websites on which Trustor conducts business  
27 transactions, and all other personal property (together with any insurance  
28 on such property) now owned or acquired later during Trustor's lifetime.

1 It is undisputed that the house in Minden, Nevada on Pebble Beach Court was  
2 transferred into the name of Jeff D. Robben and/or Jeff D. Robben Trust or sub trust.  
3 Said house of Thomas J. Harris was worth approximately \$450,000.00 dollars and the  
4 money should be put back into the Thomas J. Harris Trust to be distributed to the  
5 beneficiaries. There are questions as to another home on April Drive in South Lake  
6 Tahoe worth approximately \$1, 500,000.00 dollars that should have been in the  
7 Thomas J. Harris trust.

8 This Petitioner believes the estate and trust value of the Thomas J. Harris Trust  
9 is grossly undervalued because of the fraud and theft that has occurred to transfer  
10 assets into other accounts to defraud the Thomas J. Harris beneficiaries of millions of  
11 dollars when just the two homes are added back in addition to the missing contents on  
12 the safe deposit box. Furthermore, Petitioner must see all insurance (death and life  
13 insurance payouts), Pension and 401K information in addition to at least the least  
14 twenty years of IRS and state tax returns.

15  
16 **E. THE PETITIONER IS ENTITLED TO COUNSEL.**

17  
18 This Petitioner, a "non resident" of Douglas County Nevada, is entitled to  
19 counsel as requested in his petition pursuant to NRS 136.200, this court has  
20 jurisdiction, and the Respondent has conceded by not arguing this point. **"A point not  
21 urged in the trial court is deemed to have been waived and will not be  
22 considered on appeal."** See Old Aztec Mine, Inc. v. Brown, 623 P. 2d 981 - Nev:  
23 *Supreme Court 1981.*

24 The Nevada Supreme Court has identified NRS 136.200 as a "statutory  
25 right" to appointment of counsel in other types of civil cases. "there is no statutory  
26 right to appointment of counsel for appellate review in this type of civil case as there is  
27  
28

1 in criminal cases and other types of civil cases. ...NRS 136.200" Casper v. Huber, 456  
2 P. 2d 436 - Nev. Supreme Court 1969.

3 NRS 136.200 Appointment of attorney to represent minors, unborn  
4 members of interested class or **nonresidents**; retention of other counsel.

5  
6 1. If a will is offered for probate and it appears there are minors or  
7 unborn members of a class who are interested, **or if it appears there are**  
8 **other interested persons who reside out of the county and are**  
9 **unrepresented, the court may, whether there is a contest or not,**  
10 **appoint an attorney for them.**

11 The State Bar of Nevada has a pro bono program for indigent people<sup>6</sup> and the  
12 Nevada Supreme Court and State Legislature can provide this court with guidance as  
13 to funding any non pro bono appointed counsel. It was not the responsibility of this  
14 Plaintiff to inform the court of payment options.

15 The Revised Nevada Code Of Judicial Conduct Rule 3.7. comments state:

16 **[5] In addition to appointing lawyers to serve as counsel for indigent**  
17 **parties** in individual cases, a judge may promote broader access to justice  
18 by encouraging lawyers to participate in pro bono public legal services, if  
19 in doing so the judge does not employ coercion, or abuse the prestige of  
20 judicial office.

### 21 III. CONCLUSION

22 The Respondent's Motion for Summary Judgment must be denied based on the  
23 points and authorities above including there is a dispute as to a material fact if the  
24 previous trust, the Olga and Thomas J. Harris Living Trust existed and/or still exists  
25 and it the Petitioner was a beneficiary in the Olga and Thomas J. Harris Living Trust.

26 Petitioner still requests counsel, yet even without a lawyer, this Petitioner has  
27 provided the facts, evidence and law to support the Thomas J. Trust to be declared

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28 <sup>6</sup> <https://nvbar.org/for-the-public/pro-bono-for-the-public/>

1 null & void based on the showing of lack of jurisdiction, fraud, surprise, error and this  
2 courts having jurisdiction to decide these matters. Petitioner has made a remedy offer  
3 to amicably resolve these matters in everyone's best interests. Respondent is  
4 unresponsive to a remedy.

5 The issues of presumed undue influence and undue influence has been  
6 conceded by the Respondent who did not attack the merits of presumed undue  
7 influence and undue influence in the instant Motion for Summary Judgment or the  
8 Respondent's Motion to Dismiss.

9 The crux of the case is identical to Barefoot v. Jennings, *supra* and the Nevada  
10 Courts must rectify this public concern just like California did or else future cases of  
11 undue influence and disinheritance will suffer a miscarriage of justice.

12 NRS 132.050 states "Beneficiary" defined. "Beneficiary," as it relates to: 1.  
13 **"A trust, includes a person who has a present or future interest, vested or**  
14 **contingent, and the owner of an interest by assignment or other transfer".**  
15 Compare NRS 132.050 with the California equivalent Section 17200, subdivision  
16 (b)(3) contemplates the court's determination of "the validity of a trust provision.  
17 "Plainly, the term "trust provision" incorporates any amendments to a trust. Section 24,  
18 subdivision (c) defines a "beneficiary" for trust purposes, as "a person who has  
19 any present or future interest, vested or contingent." Assuming plaintiff's  
20 allegations are true, **she has a present or future interest**, making her a beneficiary  
21 permitted to petition the probate court under section 17200." See Barefoot v.  
22 Jennings, *supra*.

23 Respectfully signed under penalty of perjury,

24 

25 /s/ Todd Robben

26 October 20, 2022



**CERTIFICATE OF SERVICE**

I, Stephen James Robben, declare under penalty of perjury under the law of the State of Nevada that the following is true and correct copy of the filed document. That on October 21, 2022, service of the document was made pursuant to NRCP 5(b) by depositing a email to: F. McClure Wallace, counsel for Respondent, mcclure@wallacemillsap.com

DATED this 21 day of October, 2022

Submitted By: /s/ Stephen James Robben

RECEIVED

OCT 31 2022

Douglas County  
District Court Clerk

FILED

2022 OCT 31 PM 3:14

DOBBIE R. WILLIAMS  
CLERK

BY *[Signature]* DEPUTY

Case No.: 22-PB-00119

Dept. No.: II

The undersigned affirms this document  
does not contain the social security number  
or legally private information of any person.

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA IN AND FOR THE COUNTY OF DOUGLAS

TODD ROBBEN,

Petitioner;

vs.

THE ESTATE OF THOMAS J.  
HARRIS and THE THOMAS J.  
HARRIS TRUST,

Respondents.

REPLY IN SUPPORT OF  
MOTION TO DISMISS

The Estate of Thomas J. Harris (the "Estate"), by and through its duly appointed Successor Executor, Tara M. Flanagan, as represented by its counsel of record, Wallace & Millsap LLC, hereby files its Reply in Support of Motion to Dismiss (the "Reply"). This Reply is filed by the Estate in furtherance of its Motion to Dismiss filed on October 6, 2022, and in opposition to the Objection to Respondent's Motion to Dismiss filed by Petitioner Todd Robben on or about October 20, 2022. This Reply is made and based upon the pleadings and filings herein, the following Reply Points and Authorities, and any oral argument this Court may wish to entertain.

///

///

///

**REPLY POINTS AND AUTHORITIES**

**INTRODUCTION / STATEMENT OF THE ISSUE**

The Estate respectfully moves this Court for dismissal of Petitioner Todd Robben's Verified Petition to Invalidate the Thomas J. Harris Will and Trust; Petitioner's Request for Appointment of Counsel Pursuant to NRS 136.200; Emergency Request for Stay of Final Distribution; Preemptory Challenge to Judge Nathan Todd Young (the "Petition"). The Estate has requested dismissal of the Petition against the Estate pursuant to NRCP 12(b)(1) & 12(b)(5). Specifically, the Estate has demonstrated the Petition cannot be brought against the Estate of Thomas J. Harris because any allegations or claims related to the validity of the Last Will and Testament of Thomas J. Harris are:

- 1) subject to the exclusive jurisdiction of the separate probate proceeding before Department 1 of the Ninth Judicial District Court in Case No. 2021-PB00034, governing the administration of the Estate of Thomas J. Harris (the "Estate Case"),
- 2) long since time-barred by the applicable statutory time frame for post-probate will contests, and
- 3) barred by the doctrine of claim preclusion because they were previously litigated to their conclusion in the Estate Case.

Therefore, Mr. Robben's Petition is properly dismissed as to the Estate, with prejudice.

In objection to the Motion to Dismiss, Mr. Robben now presents a rambling Objection containing arguments related to the Thomas J. Harris Trust, references to Nevada trust law having no application to the Estate's underlying motion, references to California law having no application to this matter, and fugitive statements absent any legal or evidentiary support. As such, and as further demonstrated below, Mr. Robben's Objection fails to provide any meaningful

1 opposition to the Estate's Motion, and Mr. Robben's Petition is properly dismissed  
2 against the Estate with prejudice.

3 **STATEMENT OF RELEVANT PROCEDURE CONCERNING**  
4 **THE ESTATE OF THOMAS JOSEPH HARRIS**

5 In respect to judicial economy the Estate adopts and incorporates in full its  
6 "Statement of Relevant Procedure Concerning the Estate of Thomas Joseph Harris"  
7 presented in its Motion to Dismiss, which was not opposed in Mr. Robben's Objection.  
8 Still, in doing so the Estate highlights for the Court the simple irrefutable fact sitting  
9 at the heart of this matter – Mr. Robben is not an interested person to this Estate.  
10 See **Exhibit 6 to Motion to Dismiss**.<sup>1</sup> This determination was made by final  
11 adjudication before Department 1 of the Ninth Judicial District Court of the State of  
12 Nevada, in case no. 2021-PB00034 (the "Estate Case") and upheld by the Nevada  
13 Supreme Court in Appeal No.: 84948. *Id.*; see also **Exhibit 8 to Motion to Dismiss**.  
14 On this basis alone, Mr. Robben has no standing to name the Estate as a Respondent  
15 in this matter or contest the validity of the Decedent's Will, necessitating dismissal  
16 of his Petition with prejudice.

17 **LAW & ARGUMENT**

18 **I. THE PETITIONER'S OBJECTION FAILS TO REFUTE MANDATORY**  
19 **NEVADA LAW DICTATING THE DISMISSAL OF THE ESTATE FROM**  
20 **THIS MATTER.**

21 The law governing the Estate's Motion to Dismiss is clear and was not  
22 contested in Mr. Robben's Objection. NRCP 12(b)(1) allows a party to bring a motion  
23 to dismiss if the presiding court lacks subject matter jurisdiction over all or portions  
24 of a case. Similarly, NRCP 12(b)(5) states a party may assert the defense of failure  
25 to state a claim upon which the court may grant relief in a motion. To survive a  
26 motion to dismiss, a [petitioner] must do more than recite the formulaic elements of

27  
28 <sup>1</sup> Citations to documents which were exhibits to the Estate's Motion to Dismiss will be made  
to the exhibit as attached to the Motion to Dismiss.

1 a cause of action. *Allen v. United States*, 964 F. Supp. 2d 1239, 1251 (D. Nev. 2013).  
2 Additionally, although a court may accept factual allegations in a complaint as true,  
3 the court need *not* accept legal conclusions as true when determining a motion to  
4 dismiss for failure to state a claim upon which the court may grant relief. *Id.*  
5 (emphasis added). Thus, the court should dismiss a petition whenever it appears  
6 beyond a doubt the plaintiff could prove no set of facts, which, if true, would entitle  
7 the plaintiff to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228,  
8 181 P.3d 670, 672 (2008).

9 Mr. Robben's Objection, despite its length, fails to present any basis to  
10 overcome the legal realities entitling the Estate to being dismissed from this matter:  
11 1) this Court does not have subject matter jurisdiction over claims concerning the  
12 validity of the Decedent's Last Will and Testament, and 2) any contest of the  
13 Decedent's Last Will and Testament is barred by statute and by the doctrine of claim  
14 preclusion.

15 A. THERE CAN BE NO SUBJECT MATTER JURISDICTION OVER CLAIMS  
16 INVOLVING THE VALIDITY OF THE DECEDENT'S WILL BEFORE THIS  
17 COURT

18 Mr. Robben's Petition names the Decedent's Estate as a Respondent for the  
19 sole purpose of challenging the validity of the Decedent's Will. *See generally* the  
20 Petition. However, the Decedent's Estate – including the Decedent's Last Will and  
21 Testament – has already been subject to probate administration before Department  
22 1 of the Ninth Judicial District Court of the State of Nevada, in case no. 2021-  
23 PB00034 (the "Estate Case"). Therein, the Decedent's Will was admitted to probate  
24 as a valid will, and the Decedent's Estate was administered to the completion of the  
25 probate process. *See Exhibits 2 & 6 to Motion to Dismiss*. NRS 137.080 requires  
26 a contest of the validity of a will, initiated after the will has been admitted to probate,  
27 to be filed in the probate proceeding with the Court in which the will was admitted  
28 to probate. *See NRS 137.080*. Thus, any contest of the Decedent's Will could only

1 occur in the Estate Case where the Decedent's Will was admitted to probate. *Id.*; see  
2 also **Exhibits 2 & 6 to Motion to Dismiss**.

3 Mr. Robben's Objection does not contest or oppose the application of NRS  
4 137.080, but instead admits his attempt to use this case is a collateral attack to get  
5 around the final rulings entered in the Estate Case. See Objection, pg. 2, lns. 3-4.  
6 Specifically, Mr. Robben cites to NRCP 60 and the relation back doctrine to argue  
7 some ability to connect his Petition in this matter to the separate and distinct Estate  
8 Case he was dismissed from. See Objection, pg. 2. NRCP 60 and the relation back  
9 doctrine can only be used to address orders and filings in the particular case in which  
10 those orders and filings were made. See generally NRCP 60 and NRCP 15. These  
11 procedural rules cannot be used in separate, later cases to give dismissed litigants  
12 an impermissible second bite at the apple. Nevada law does not allow a litigant to  
13 bring a new and separate case to collaterally attack final rulings from a prior distinct  
14 matter, and certainly NRCP 60 and the relation back doctrine cannot be argued  
15 before this Court in order to make it some form of ad hoc appellate Court regarding  
16 the final rulings of the Estate Case. Mr. Robben's use of this matter as a self-  
17 described "collateral attack" is nothing more than an impermissible attempt to forum  
18 shop.

19 Mr. Robben's Objection goes on to cite NRS Chapter 30 and NRS 137.010 in  
20 an attempt to establish subject-matter jurisdiction over this matter, but again, these  
21 statutes are wholly unapplicable. See Objection, pg. 4. NRS Chapter 30 and NRS  
22 137.010 respectively address declaratory judgments over written instruments and  
23 pre-probate will contests. However, these statutes and the procedural options they  
24 provide are *only* available to an *interested person* to the written instrument in  
25 question – here, the Last Will and Testament of the Thomas J. Harris (the  
26 "Decedent's Will").<sup>2</sup> See generally NRS 30.040(1) and NRS 137.010(1). Mr. Robben  
27

28 <sup>2</sup> Likewise, NRS 137.010 only addresses a will contest brought by an *interested person* to the  
will *before* the will has been admitted to probate. Mr. Robben only attempted to appear in

1 has already been fully and finally adjudicated in the Estate Case to not be an  
2 interested person to the Estate, and as such to have no standing to contest the  
3 validity of the Decedent's Will, or as stated by the Nevada Supreme Court, Mr.  
4 Robben is "not an interested person in the [Estate Case] under NRS 132.185 and  
5 thus lack[s] standing to object to the probate petition or otherwise appear in the  
6 [Estate] proceedings." **See Exhibit 8 to Motion to Dismiss; see also Exhibit 6 to**  
7 **Motion to Dismiss.** As such, Mr. Robben is not an interested person with standing  
8 to seek and sort of declaratory ruling regarding the Decedent's Will under NRS  
9 Chapter 30, nor does he have standing to being any contest of the Decedent's Will  
10 under NRS 137. *Id.* Moreover, even if Mr. Robben had standing to contest the  
11 Decedent's Will, which he does not, he could only do so in the Estate Case – where  
12 his efforts have already been heard and dismissed.

13 Finally, Mr. Robben attempts random arguments absent any reasonable  
14 connection to the jurisdictional basis for dismissal of the Estate from this matter.  
15 Namely, Mr. Robben's Objection includes numerous block quotes and citations to  
16 California law in an effort to refute the Motion. However, the absence of this  
17 Honorable Court's subject matter jurisdiction is a matter governed by mandatory  
18 Nevada statutory law, rendering any reference or attempted application of  
19 California law an empty effort of no substance.<sup>3</sup>

20 In considering this Court's absence of subject-matter jurisdiction over the  
21 Estate by and through Mr. Robben's Petition, the analysis remains simple and  
22 straightforward. NRCP 12(b)(1) states a matter is properly dismissed in the absence  
23 of subject matter jurisdiction by the presiding court. Subject matter jurisdiction for  
24 a will contest brought after a will has been admitted to probate is governed by  
25

26 the Estate Case *after* the Decedent's Will had been admitted to probate, making NRS  
27 137.010 entirely inapplicable. *See* NRS 137.010.

28 <sup>3</sup> Mr. Robben's Objection makes arguments related to the Thomas J. Harris Trust, which is  
a separate Respondent in this matter, and who was brought separate motion practice before  
this Court.

1 Nevada Revised Statute 137.080. NRS 137.080 mandates any contest of a will must  
2 be brought by an interested person to the applicable estate proceeding, and must be  
3 brough before the Court in which the will was admitted to probate. *See* NRS 137.080.  
4 Here, the Decedent's Will was admitted to probate on April 6, 2021 in the Estate  
5 Case. *See Exhibit 2 to Motion to Dismiss.* As a result, the Court presiding over  
6 the Estate Case was the court of exclusive jurisdiction for any and all allegations  
7 and claims related to the validity of the Decedent's Will. *Id.*; *see also* NRS 137.080.  
8 Thus, no action concerning the validity of the Decedent's Will can be had before this  
9 Court as it is not the court in which the Decedent's Will was admitted to probate,  
10 i.e., it is not the Court which took jurisdiction of and oversaw the probate of the  
11 Decedent's Estate. *Id.* Moreover, Mr. Robben is not able to bring a contest of the  
12 Decedent's Will before this or any other Court as he has been conclusively found to  
13 lack standing to do so because he is not an interested person to the Estate. *See*  
14 **Exhibits 6 & 8 to Motion to Dismiss.**

15 As a result, there can be no subject-matter jurisdiction held by this Court for  
16 any claims or allegations contained in the Petition related to the validity Decedent's  
17 Will, mandating dismissal of the Estate from this matter pursuant to NRCP 12(b)(1).

18 **B. MR. ROBBEN'S ATTEMPT TO CONTEST THE VALIDITY OF THE**  
19 **DECEDENT'S WILL IS TIME BARRED**

20 Mr. Robben's Objection goes on to object to the Estate's contention that even  
21 if Mr. Robben had standing to contest the validity of the Trust, which he does not,  
22 his Petition is time barred. Attempting to decipher the contents of the Objection, it  
23 appears Mr. Robben argues his Petition is timely because he did not receive proper  
24 notice of the probate proceedings in the Estate Case. *See* Objection, pg. 30. To be  
25 clear, Mr. Robben was never entitled to any notice of Estate Case.

26 NRS 137.080 goes beyond establishing which court holds jurisdiction over a  
27 will contest, it also dictates who may bring a will contest and the time frame in which  
28 a person with requisite standing must file their contest. Specifically, NRS 137.080



1 requires any post-probate will contest to be brought by an interested person to the  
2 estate within 3 months after the order entering a will to probate has been entered.  
3 *Id.* Here, the Decedent's Will was admitted to probate on April 6, 2021. **See Exhibit**  
4 **2 to Motion to Dismiss.** Mr. Robben filed his Petition in this matter in July of  
5 2022, approximately 15 months after the Decedent's Will was admitted to probate,  
6 and certainly after the three-month statute of limitation mandated by NRS 137.080  
7 for post-probate will contests. More to the point, the Estate Court conclusively  
8 determined Mr. Robben was not an "interested person" to the Decedent's Estate,  
9 preventing him from having standing to ever assert any contest of the Decedent's  
10 Will. **See Exhibit 6 to Motion to Dismiss; see also** NRS 137.080.

11 Still, even if Mr. Robben was an "interested person," which he is not, any post-  
12 probate contest of the Decedent's Will was long since time barred three (3) months  
13 after the Decedent's Will was admitted to probate, which was over a year before Mr.  
14 Robben filed his Petition in this matter. In this regard, Mr. Robben's argument NRS  
15 137.080's time limitation does not apply to him because he did not receive notice of  
16 the Estate's probate proceedings has no merit because Mr. Robben was not entitled  
17 to notice of the Estate proceedings.

18 NRS 136.100(2) requires notice of probate proceedings to heirs of the testator  
19 and devisees of the Estate. Mr. Robben was never entitled to notice in the Estate  
20 case because he was neither a beneficiary (devisee) or heir of the Estate. More  
21 thoroughly stated, Mr. Robben was not a named beneficiary/devisee to the  
22 Decedent's valid Will which was admitted to probate in the Estate case. **See Exhibit**  
23 **1 to Motion to Dismiss.** Likewise, Mr. Robben was never an heir of the Estate as  
24 he was the step-son of the Decedent, and step-children do not qualify as heirs under  
25 Nevada law. *See* NRS 132.055; *see also* NRS Ch. 134. These facts were considered  
26 by the Court in the Estate Case in reaching its final ruling Mr. Robben was not an  
27 interested person to the Estate – a ruling upheld by the Nevada Supreme Court. *See*  
28 **Exhibits 6 & 8 to Motion to Dismiss.** As a result, Mr. Robben cannot argue any

1 absence of notice of the Estate Case prevented him from timely bringing a post-  
2 probate will contest, because Mr. Robben was not an interested person of the Estate,  
3 has no standing to appear in the Estate, and as such was never entitled to any notice  
4 of the Estate's probate proceedings.

5 Therefore, even assuming *arguendo* Mr. Robben had standing to assert a  
6 post-probate will contest – which he does not – Mr. Robben brought his Petition in  
7 this case before a Court lacking jurisdiction to consider the validity of the Decedent's  
8 Will, and Mr. Robben has done so long after any such effort was time barred by  
9 controlling Nevada statutory law. As a result, Mr. Robben's Petition presents a  
10 claim against the Decedent's Estate for which no relief can be granted, requiring  
11 dismissal of his Petition against the Estate with prejudice. *See* NRCP 12(b)(5).

12 C. ALL CLAIMS AND ALLEGATIONS CONCERNING THE VALIDITY OF THE  
13 DECEDENT'S WILL ARE BARRED BY CLAIM PRECLUSION

14 Finally, Mr. Robben's Objection to the Motion to Dismiss argues "claim  
15 preclusion and/or issue preclusion do not apply." *See* Objection, pg. 34.<sup>4</sup> In this  
16 regard, Mr. Robben fails to make a cogent argument against the application of claim  
17 preclusion, and instead merely presents large block quotes from outside sources. To  
18 the extent Mr. Robben does make an opposing argument, it appears to be that  
19 rulings made in the Estate case did not amount to a final judgment, as is required  
20 for the application of claim preclusion. Mr. Robben's argument is wrong.

21 As thoroughly presented in the underlying motion, a valid final judgement  
22 was entered in the Estate Case regarding Mr. Robben's attempt to contest the  
23 Decedent's Will. In the Estate Case, the Court issued its Order Granting the First  
24 and final Petition on June 22, 2022. *See Exhibit 6 to Motion to Dismiss.* NRCP  
25 41(b) states "any dismissal not under this rule – except one for lack of jurisdiction,  
26 improper venue, or failure to join a party under Rule 19 – operates as an *adjudication*

27  
28 <sup>4</sup> The Estate notes its Motion to Dismiss focuses on claim preclusion, and as such this Reply  
will likewise focus only on the application of claim preclusion.

1 on the merits.” (emphasis added). The Court’s June 22, 2022 Order was entered after  
2 multiple hearings where the Court considered Mr. Robben’s attempt to contest the  
3 validity of the Decedent’s Will, and is a final order regarding Mr. Robben’s ability to  
4 contest the Decedent’s Will or otherwise object to the administration of the  
5 Decedent’s Estate. Specifically, the Court’s June 22, 2022 Order in the Estate Case  
6 dismissing Mr. Robben from the Estate Case was not a dismissal for lack of  
7 jurisdiction, improper venue, or failure to join a party under rule 19, and as such is  
8 an “adjudication on the merits” under NRCP 41(b). **See Exhibit 6 to Motion to**  
9 **Dismiss.** Moreover, the Court’s June 22, 2022 Order in the Estate Case was upheld  
10 after Mr. Robben’s subsequent Motion for Reconsideration was denied, and Mr.  
11 Robben’s Appeal of the Court’s June 22, 2022 Order was dismissed by the Nevada  
12 Supreme Court. *See* NRCP 41(b); *see also* **Exhibits 8 & 9 to Motion to Dismiss.**

13 Further, the United States Supreme Court has interpreted the phrase  
14 “adjudication on the merits” to preclude the refiling of the same claim in the same  
15 court. *Five Star Capital Corp. v. Rudy*, 124 Nev. 1048, 1058, 194 P.3d 709, 715 (2008)  
16 *citing to Semtek Int’l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 506, 121 S.Ct 1020  
17 (2001). As both the Estate Case and this matter were filed in the Ninth Judicial  
18 District Court of the State of Nevada, it is “clearly proper to give preclusive effect”  
19 to the Orders issued in the Estate Case. *Id.* Consequently, the final orders issued  
20 in the Estate Case by Department I of this District Court and by the Nevada  
21 Supreme Court enacted a preclusive effect on all issues regarding the validity of the  
22 Decedent’s Will. *Id.*; *see also Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*,  
23 130 Nev. at 257; *see also* NRCP 41(b).

24 At the risk of being repetitive, but given the absence of clarity in Mr. Robben’s  
25 Objection, the Estate again provides its analysis demonstrating the application of  
26 claim preclusion to this matter bars Mr. Robben’s Petition against the Estate.  
27 Specifically, the Nevada Supreme Court has held claim preclusion applies when (1)  
28 the same parties or their privies are involved in both cases, (2) a valid final judgment

1 has been entered, and (3) the subsequent action is based on the same claims or any  
2 part of them that were or could have been brought in the first case. *See Alcantara*  
3 *ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 257, 321 P.3d 912, 915  
4 (2014); *quoting Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709,  
5 713. Applying this three-part analysis to Mr. Robben, it becomes readily apparent  
6 claim preclusion bars any claims involving the Estate or seeking to contest the  
7 validity of the Decedent's Will.in this matter.

8 First, the same parties at issue in this matter are identical to those who  
9 participated in the Estate Case, that being the Decedent's Estate and the Petitioner,  
10 Mr. Robben. Specifically, the Estate Case oversaw the administration of the  
11 Decedent's Estate, in which Mr. Robben appeared for the purpose of attempting to  
12 contest the Decedent's Will. **See Exhibits 4 through 9 to Motion to Dismiss.** Mr.  
13 Robben has now initiated this separate case naming the Decedent's Estate as a  
14 respondent for the purpose of again attempting to contest the validity of the  
15 Decedent's Will. Thus, Mr. Robben's Petition in this matter involves the same  
16 parties who previously appeared and participated in the Estate Case. *Id.*

17 Second, as addressed above the valid final judgment was entered in the Estate  
18 Case.

19 Third and finally, Mr. Robben's allegations in this matter related to the  
20 validity of the Decedent's Will are the same claims he previously brought in the  
21 Estate Case. Specifically, Mr. Robben filed multiple documents and appeared at two  
22 hearings in the Estate Case for the sole purpose of contesting the validity of the  
23 Decedent's Will. **See generally Exhibits 4 through 6 to Motion to Dismiss.** Now  
24 Mr. Robben brings forth his Petition in this matter again attempting to contest the  
25 validity of the Decedent's Will. Thus, Mr. Robben has brought forth the "same  
26 claims" regarding the validity of the Decedent's Will through his initial Petition in  
27 this matter that he previously – and unsuccessfully – brought forth in the Estate  
28 Case. **See Exhibits 6, 8, & 9 to Motion to Dismiss.**

1       “Claim preclusion applies to prevent a second suit based on all grounds of  
2 recovery that were or could have been brought in the first suit. *Five Star Capital*  
3 *Corp. v. Rudy*, 124 Nev. 1048, 1058, 194 P.3d 709, 715 (2008). Therefore, Mr.  
4 Robben’s attempt to reassert allegations and claims regarding the validity of the  
5 Decedent’s Will in this matter are barred as they were previously litigated to final  
6 judgment in the Estate Case. Therefore, and again, Mr. Robben’s Petition fails to  
7 state any claim against the Decedent’s Estate for which any relief can be granted  
8 because all such claims and allegations made in the Petition regarding the Estate  
9 are barred by the doctrine of claim preclusion, requiring the dismissal of the Estate  
10 from this matter. *See* NRCp 12(b)(5).

## 11       II.     ADDITIONAL ARGUMENTS

12       Mr. Robben’s Objection goes on to present a section entitled “Petitioner is  
13 Entitled to Relief.” *See* Objection, pg. 38. Therein, Mr. Robben makes unsupported,  
14 hearsay riddled allegations related solely to the Thomas J. Harris Trust. The  
15 underlying Motion and this Reply related solely to the Estate, and any presentation  
16 by Mr. Robben about the Trust is entirely irrelevant to the Estate and its Motion to  
17 Dismiss.

18       Finally, Mr. Robben concludes his Objection by stating he is entitled to  
19 Counsel under NRS 136.200. *See* Objection, pg. 41. This assertion is again, wrong.  
20 NRS 136.200(1) states “[i]f a will is offered for probate and it appears there are  
21 minors or unborn members of a class who are interested, or if it appears there are  
22 other interested persons who reside out of the county and are unrepresented, the  
23 court may, whether there is a contest or not, appoint an attorney for them.” Here,  
24 Mr. Robben is unable to be appointed Counsel pursuant to NRS 136.200 because 1)  
25 there is no will being admitted to probate in this matter, and 2) Mr. Robben has been  
26 determined to not be an interested person in the Decedent’s Estate.

27       First, appointment of Counsel under NRS 136.200 requires the matter to  
28 involve a will being admitted to probate. *See* NRS 136.200(1). In this matter no will

1 is being admitted to probate. The Last Will and Testament of Thomas Harris was  
2 previously admitted to probate and administered in a separate proceeding before  
3 Department 1 of the Ninth Judicial District Court in Case No. 2021 PB00034.  
4 Resultingly, NRS 136.200 is wholly inapplicable to this matter.

5 Second, by final order of the Court in the Estate Case, Mr. Robben has been  
6 ruled to not be an "interested person" regarding the Decedent's Estate or the  
7 Decedent's Will, again making him unable to receive an appointment of Counsel  
8 under NRS 136.200. **See Exhibits 6 & 8 to Motion to Dismiss.**

9 For these reasons, Mr. Robben's request for appointment of Counsel is  
10 unlawful and cannot be granted.

11 **CONCLUSION & REQUESTED RELIEF**

12 Mr. Robben has now admitted he named the Estate as a Respondent in this  
13 matter to collaterally attack the final rulings made in the Estate case. Stated  
14 otherwise, Mr. Robben is unlawfully using this matter to subvert and ignore the final  
15 rulings made in the Estate Case. Such blatant and irreverent forum shopping is not  
16 allowed, and only serves to abuse this Court's resources and harm the Estate.

17 For those reasons and arguments presented in the Estate's Motion to Dismiss,  
18 as well as this supporting Reply, Mr. Robben's Petition is properly dismissed  
19 because: 1) this Court lacks-subject matter jurisdiction over any alleged contest of  
20 the Decedent's Will, and 2) Mr. Robben's Petition fails to state a claim upon which  
21 relief can be granted against the Estate.

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Therefore, the Estate of Thomas Joseph Harris respectfully requests an order from this Court dismissing Mr. Robben's Petition against the Estate in its entirety, with prejudice.

**AFFIRMATION**

The undersigned affirms this document does not contain the social security number or legally private information of any person.

DATED this 31st day of October 2022.

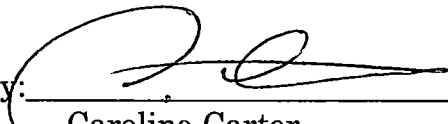
By: \_\_\_\_\_

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mcclure@wallacemillsap.com  
*Attorneys for Tara M. Flanagan  
in her capacity as the  
Personal Representative of the  
Estate of Thomas Harris*

**CERTIFICATE OF SERVICE**

The undersigned certifies the foregoing Reply in Support of Motion to Dismiss was served upon Petitioner Todd Robben via United States Mail at the address of P.O. Box 4251 Sonora, California 95370. The foregoing Reply was placed in the mail for service on the date shown below.

DATED this 31st day of October, 2022.

By:  \_\_\_\_\_  
Caroline Carter



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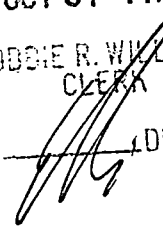
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Douglas County  
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BY  DEPUTY

Case No.: 22-PB-00119

Dept. No.: II

The undersigned affirms this document  
does not contain the social security number  
or legally private information of any person.

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS

TODD ROBBEN,

Petitioner;

vs.

THE ESTATE OF THOMAS J.  
HARRIS and THE THOMAS J.  
HARRIS TRUST,

Respondents.

THE THOMAS J. HARRIS TRUST'S  
REPLY POINTS & AUTHORITIES IN  
SUPPORT OF ITS MOTION FOR  
SUMMARY JUDGMENT

The Honorable Tara Flanagan, Trustee of the Thomas J. Harris Trust (the  
"Trust"), respectfully files the following Reply Points & Authorities in support of the  
Trust's Motion for Summary Judgment filed on October 6, 2022.<sup>1</sup>

**REPLY POINTS & AUTHORITIES**

**I. INTRODUCTION**

The premise of the Trust's Motion for Summary Judgment was simplistic – in  
order to meet Petitioner's burden of production to survive summary judgment under  
NRCF 56; the Petitioner must produce evidence showing he has a beneficial interest  
in a Trust instrument in dispute before the Court to establish his standing to contest

<sup>1</sup> Todd Robben's filed his Verified Objection to Respondent's Motion for Summary Judgment  
on or about October 21, 2022, which is hereinafter referred to as "Opposition".

1 the Trust. In response, the Petitioner pontificates for 42 pages about unsubstantiated  
2 claims of undue influence, embezzlement, fraud, constitutional rights violations, and  
3 an erroneous right to counsel; however, Petitioner failed to meet his burden of  
4 production to survive summary judgment – *produce evidence showing he has a*  
5 *beneficial interest in the Trust to establish his standing to contest the Trust*  
6 *under NRS 132.390(1)(d) and NRS 164.015 as an interested person.*

7 Instead, Petitioner claims he has two to three witnesses who will testify he is  
8 a beneficiary of a prior Trust instrument. However, the Opposition has no  
9 declarations or affidavits to that effect as required to lawfully oppose summary  
10 judgment. See NRCP 56(c). Similarly, the underlying Petition does not attach any  
11 affidavits or declarations testifying Petitioner is a beneficiary of a prior trust  
12 instrument of the Settlers. Therefore, Petitioner's own self-serving conjecture about  
13 the alleged testimony of other witnesses is insufficient to lawfully oppose summary  
14 judgment.

15 Additionally, the Opposition includes a letter from the Settlers' prior counsel  
16 (the "Letter") stating the Settlers had a prior Trust instrument entitled the Thomas  
17 Joseph and Olga Harris Living Trust dated August 26, 1998. Once again, the Letter  
18 does not establish Petitioner had a beneficial interest in that revoked Trust. For  
19 example, the Settlers could have executed 20, 30, prior trust instruments, wills, trust  
20 amendments, will codicils etc.; however, if Petitioner was not a beneficiary of those  
21 instruments they are of no consequence to him. Therefore, Petitioner must produce  
22 evidence showing he is a beneficiary of a prior Trust instrument in dispute in order  
23 to proceed with a contest of the Thomas J. Harris Trust as an interested person in  
24 the Trust. The Letter does not meet this basic requirement to oppose summary  
25 judgment because the Letter does not state Petitioner had a beneficial interest in the  
26 Settlers' prior Trust instrument. Consequently, Petitioner failed to meet his  
27 evidentiary burden of production to oppose summary judgment because the letter  
28 does not establish he was a beneficiary of any prior Trust of the Settlers, nor does

Petitioner proffer witness affidavits or declarations establishing he is a beneficiary of a prior version of the Trust. Therefore, summary judgment is mandatory against Petitioner because the Petition is devoid of any admissible evidence demonstrating Petitioner is an interested person in the Trust with standing to contest it as required by NRS 132.390(1)(d) and NRS 164.015.

## II. LAW & ARGUMENT

When construing the summary judgment standard, the Nevada Supreme Court adopted the United States Supreme Court's holdings in *Liberty Lobby, Celotex*, and *Matsushita* dictating when summary judgment is required. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In *Celotex*, the United States Supreme Court held Rule 56 must be construed with due regard for the rights of persons opposing claims and defenses with no factual basis. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555, 91 L. Ed. 2d 265 (1986). Consequently, Rule 56's principal purpose is to isolate and dispose of factually unsupported claims. *Id.* at 323-324, 2553.

**a. Summary judgment is mandatory against the Petition because the principal purpose of summary judgment is to dispose of factually unsupported claims like the Petition.**

The Petition seeks to invalidate the Thomas J. Harris Trust, and then bring related claims for an accounting, damages, etc. if the Trust is invalid. Therefore, Petitioner must fundamentally establish he has standing as an "interested person" in the Trust to proceed with his Trust contest and related claims. *See generally* NRS 164.015. In that regard, NRS 132.390(1)(d) states an interested person in a trust contest is either a beneficiary or trustee of any version of the trust documents in dispute. Consequently, the Trust filed a motion for summary judgment pointing out there is an absence of evidence to show Petitioner is a beneficiary or trustee of any version of the Trust Petitioner seeks to contest. *See Cuzze v. Univ. & Cmty. Coll. Sys.*

of Nevada, 123 Nev. 598, 602-603, 172 P.3d 131, 134 (2007) (stating whenever the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy its burden of production by pointing out there is an absence of evidence to support the nonmoving party's case.). The evidentiary burden to oppose summary judgment then shifted to Petitioner, which required him to produce admissible evidence showing he is a beneficiary or trustee of any version of the Trust documents in dispute in order to establish he is an interested person in the Trust with standing to contest it under NRS 132.390(1)(d). *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. at 603 (stating the nonmoving party must then transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact for trial or else summary judgment is mandatory.). Petitioner failed to meet his evidentiary burden of production to survive summary judgment because his Opposition did not contain any admissible evidence showing he is a beneficiary or trustee of any version of the Trust documents in dispute as required by NRS 132.390(1)(d) to be an interested person with standing to contest the Trust, thereby mandating entry of summary judgment against Petitioner.

Instead, Petitioner alleges there are two to three witnesses who will testify he was a beneficiary of the Settlers' prior Trust. However, no witness affidavits or declarations are attached to the Opposition testifying Petitioner was a beneficiary of a prior version of the Trust as required by NRCP 56(c). Similarly, no witness affidavits or declarations were attached to the underlying Petition testifying Petitioner was a beneficiary of a prior version of the Trust. Consequently, the Opposition is nothing more than Petitioner's own speculation and conjecture, devoid of any witness affidavits or declarations showing he is an interested person in the Trust as a prior beneficiary or trustee. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005) (holding "[t]he nonmoving party is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.").

1 Analogously, the Letter from Blanchard, Krasner and French cited in the  
2 Opposition does not state Petitioner is a prior beneficiary of the Trust in dispute. In  
3 fact, the Letter does not address Petitioner's alleged beneficial interest in a prior trust  
4 at all. The Letter is sent to Thomas Anthony Harris, *not the Petitioner*. The Letter  
5 pertains to Thomas Harris' beneficial interest in the Trust, *not the Petitioner's alleged*  
6 *interest*. The Letter does establish the Settlers executed a prior Trust in 1998.  
7 However, the Letter does not state Petitioner was a beneficiary of the Settlers' prior  
8 Trust instrument. Therefore, the Letter is insufficient to meet Petitioner's  
9 evidentiary burden of production to establish he is an interested person in the Trust  
10 with standing to contest it under NRS 132.390(1)(d) because *the Letter does not*  
11 *state Petitioner had a beneficial interest in the Settlers' prior Trust*.

12 In sum, summary judgment against Petitioner is mandatory because he cannot  
13 establish a fundamental prerequisite to proceed with this case – standing. Petitioner  
14 has no standing to contest the Trust because he is not an interested person in the  
15 Trust. See NRS 164.015. Petitioner is not an interested person in the Trust for  
16 purposes of a contest action, because Petitioner has proffered no admissible evidence  
17 demonstrating he is a prior beneficiary or trustee of any version of the Trust in  
18 dispute. NRS 132.390(1)(d). Consequently, summary judgment is mandatory against  
19 Petitioner without further delay to avoid the waste of additional Trust assets  
20 defending against Petitioner's factually devoid contest claim.

21 **b. Petitioner's due process rights have not been violated because**  
22 **he has had an opportunity to produce evidence establishing his**  
23 **standing to proceed and failed to produce such evidence as**  
24 **required by NRCP 56.**

25 Petitioner makes random arguments claiming a violation of his due process  
26 rights. These arguments are intended to distract from Petitioner's inability to  
27 establish he is an interested person in the Trust with standing to initiate a contest  
28 action under NRS 164.015 and NRS 132.390(1)(d). In truth, Petitioner was given an

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1 opportunity to produce evidence demonstrating he is an interested person in the  
2 Trust in his Opposition. He failed to produce any such evidence as required by NRC  
3 56 after being given a fair and impartial opportunity to do so in his Opposition to the  
4 Motion for Summary Judgment. Therefore, Petitioner's due process arguments are  
5 unfounded as the Trust followed Nevada's summary judgment protocol by pointing  
6 out an absence of evidence to support Petitioner's standing to proceed, which he was  
7 unable to lawfully rebut in his Opposition.

8 **c. Petitioner's alleged right to counsel is not a basis to preclude**  
9 **summary judgment.**

10 The issue before the Court is Petitioner's standing to proceed with a contest of  
11 the Trust, not his erroneous claim for appointment of counsel. In reality, Petitioner  
12 could have hired counsel at any time. Petitioner elected not to hire legal counsel and  
13 proceeded with his underlying Petition and his Opposition to the Motion for Summary  
14 Judgment in proper person. Therefore, Petitioner's machinations about his right to  
15 counsel are not a basis to oppose summary judgment because Petitioner elected not  
16 to hire counsel in favor of proceeding in proper person. Moreover, he has no right to  
17 appointment of counsel under NRS 136.200 as he claims in the Petition because NRS  
18 136.200 only applies to probate proceedings, which this is not, and only affords  
19 counsel to an interested person, which he is not. As such, Petitioner's right to counsel  
20 argument is a red herring the Court should disregard.

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1 **III. CONCLUSION AND REQUESTED RELIEF**

2 Based on the foregoing facts, law and argument, the Honorable Tara Flanagan,  
3 as Trustee of the Thomas J. Harris Trust, respectfully requests this Court grant  
4 summary judgment against Mr. Robben's Petition to Invalidate the Thomas J. Harris  
5 Trust because he is not an interested person in the Trust with standing to contest the  
6 Trust.

7 DATED this 31<sup>st</sup> day of October 2022.

8  
9 By: 

F. McClure Wallace, Esq.  
Nevada State Bar No. 10264  
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Reno, Nevada 89509  
Ph: (775) 683-9599  
mcclure@wallacemillsap.com

*Wallace & Millar*  
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**CERTIFICATE OF SERVICE**

The undersigned certifies these Reply Points & Authorities in Support of Motion for Summary Judgment were served upon Petitioner Todd Robben via United States Mail at the address of P.O. Box 4251 Sonora, California 95370. The foregoing Motion was placed in the mail for service on the date shown below.

Dated this 31<sup>st</sup> day of October, 2022.

By: 

Caroline Carter, Paralegal



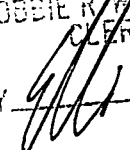
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Case No.: 22-PB-00119

Dept. No.: II

The undersigned affirms this document  
does not contain the social security number  
or legally private information of any person.

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA IN AND FOR THE COUNTY OF DOUGLAS

TODD ROBBEN,

Petitioner;

vs.

THE ESTATE OF THOMAS J.  
HARRIS and THE THOMAS J.  
HARRIS TRUST,

Respondents.

REQUEST FOR SUBMISSION

[THE THOMAS J. HARRIS TRUST'S  
MOTION FOR  
SUMMARY JUDGMENT]

The Honorable Tara Flanagan, Trustee of the Thomas J. Harris Trust,  
respectfully requests The Thomas J. Harris Trust's Motion for Summary Judgment  
filed herein on October 6, 2022, be submitted to the Court for decision. A proposed  
Order Granting Motion for Summary Judgment is attached hereto as **Exhibit 1**.

DATED this 31st day of October 2022.

By: 

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Counsel for Tara M. Flanagan

*Wallace & Millar*  
510 W Plumb Ln., Reno, Nevada / (775) 683-9599

**CERTIFICATE OF SERVICE**

The undersigned certifies the foregoing Request for Submission was served upon Petitioner Todd Robben via United States Mail at the address of P.O. Box 4251 Sonora, California 95370. The foregoing document was placed in the mail for service on the date shown below.

Dated this 31st day of October 2022.

By: 

Caroline Carter, Paralegal

LIST OF EXHIBITS

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Exhibit 1 - Order Granting Motion for Summary Judgment



# Exhibit 1

1 Case No.: 22-PB-00119

2 Dept. No.: II

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6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS

8

9 TODD ROBBEN,

10 Petitioner;

11 vs.

12 THE ESTATE OF THOMAS J.  
13 HARRIS and THE THOMAS J.  
14 HARRIS TRUST,

15 Respondents.

ORDER GRANTING THE THOMAS J.  
HARRIS TRUST'S MOTION FOR  
SUMMARY JUDGMENT

16

17 Petitioner Todd Robben ("Petitioner") filed a Petition to contest the validity of  
18 the Thomas J. Harris Trust (the "Trust"), and related claims, in July of 2022.  
19 Thereafter, the Trust moved for summary judgment against the Petition because the  
20 Petitioner did not have standing to proceed with a Trust contest as an interested  
21 person in the Trust. The Petitioner opposed the Motion for Summary Judgment, and  
22 the Trust filed Reply Points & Authorities in support of its Motion. Having  
23 considered the contents of the underlying Petition, the Motion for Summary  
24 Judgment, the Opposition thereto, and the Reply in support of the Motion, the Court  
25 finds good cause to make the following findings and issue the following order.

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1    **I. Summary Judgment Standard**

2           NRCp 56(a) states "[t]he court shall<sup>1</sup> grant summary judgment if the movant  
3 shows...there is no genuine dispute as to any material fact and the movant is entitled  
4 to judgment as a matter of law." When construing the summary judgment standard,  
5 the Nevada Supreme Court adopted the United States Supreme Court's holdings in  
6 *Liberty Lobby*, *Celotex*, and *Matsushita* dictating when summary judgment is  
7 required. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

8           In *Celotex*, the United States Supreme Court held "summary judgment  
9 procedure is properly regarded...as an integral part of the...Rules as a whole, which  
10 are designed to secure the just, speedy and inexpensive determination of every  
11 action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555, 91 L. Ed.  
12 2d 265 (1986). Therefore, Rule 56 must be construed with due regard for the rights  
13 of persons opposing claims and defenses with no factual basis. *Id.*

14           In order to dispose of baseless claims, the *Celotex* Court held summary  
15 judgment is mandatory against a claimant who cannot establish an essential element  
16 of the claim he or she must prove at trial. *Id.* at 322, 2552. "[A] summary judgment  
17 motion may properly be made in reliance solely on the pleadings, depositions,  
18 answers to interrogatories, and admissions on file." *Id.* at 324, 2553. In response, if  
19 the claimant fails to demonstrate an essential element of its claim, there is no genuine  
20 issue of material fact regarding the claim, because a complete failure of proof  
21 concerning an essential element of the claim renders all other facts immaterial. *Id.*  
22 at 322-323, 2552. As such, the moving party is entitled to a judgment as a matter of  
23 law whenever the claimant fails to make a sufficient showing on an essential element  
24 of a claim on which he or she has the burden of proof at trial. *Id.* at 323. Interpreting  
25 Rule 56 in this fashion serves Rule 56's principal purpose to isolate and dispose of  
26 factually unsupported claims. *Id.* at 323-324, 2553.

27  
28           <sup>1</sup> "The word 'shall' is generally regarded as mandatory." *Markowitz v. Saxon Special Servicing*, 129  
Nev. 660, 665, 310 P.3d 569, 572 (2013).

1 Of note, "the mere existence of some alleged factual dispute between the  
2 parties will not defeat an otherwise properly supported motion for summary  
3 judgment; the requirement is...there be no *genuine* issue of *material* fact." *Anderson*  
4 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202  
5 (1986). As to materiality, the substantive law will identify which facts are material.  
6 *Id.* at 248. A fact is only material if it might affect the outcome of the suit under the  
7 governing substantive law. *Id.* Irrelevant or unnecessary factual disputes do not  
8 preclude summary judgment because they are immaterial. *Id.* The substantive law  
9 governs which facts are material and which facts are irrelevant. *Id.*

10 In addition to the requirement of materiality, factual disputes must be  
11 "genuine" or else summary judgment is mandatory. *Matsushita Elec. Indus. Co. v.*  
12 *Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986).  
13 Consequently, when the moving party has carried its burden under Rule 56, the  
14 nonmoving party must do more than show there is some metaphysical doubt as to the  
15 material facts. *Id.* The language of Rule 56 requires the nonmoving party to come  
16 forward with specific facts showing there is a "genuine" issue for trial or else have  
17 summary judgment entered against it. *Id.* at 587. As such, "[w]here the record taken  
18 as a whole could not lead a rational trier of fact to find for the non-moving party,  
19 there is no genuine issue for trial." *Id.*

20 In consideration of the United States Supreme Court's holdings in *Liberty*  
21 *Lobby*, *Celotex*, and *Matsushita*, the Nevada Supreme Court required entry of  
22 summary judgment whenever "the pleadings, depositions, answers to interrogatories,  
23 admissions, and affidavits, if any, that are properly before the court demonstrate that  
24 no genuine issue of material fact exists, and the moving party is entitled to judgment  
25 as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. at 731, 121 P.3d at 1031. Nevada  
26 substantive law controls which factual disputes are material and will preclude  
27 summary judgment; other factual disputes are irrelevant. *Id.* A factual dispute is  
28 only genuine if a rational trier of fact could return a verdict for the nonmoving party



1 when considering the evidence. *Id.* "The nonmoving party is not entitled to build a  
2 case on the gossamer threads of whimsy, speculation, and conjecture." *Id.* at 732.

3       Procedurally, the "party moving for summary judgment bears the initial  
4 burden of production to show the absence of a genuine issue of material fact." *Cuzze*  
5 *v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007).  
6 "If such a showing is made, then the party opposing summary judgment assumes a  
7 burden of production to show the existence of a genuine issue of material fact." *Id.*  
8 The manner in which each party may satisfy its burden of production depends on  
9 which party will bear the burden of persuasion on the challenged claim at trial." *Id.*  
10 If the moving party will bear the burden of persuasion at trial, that party must  
11 present evidence that would entitle it to a judgment as a matter of law in the absence  
12 of contrary evidence. *Id.* However, if the nonmoving party will bear the burden of  
13 persuasion at trial, the party moving for summary judgment may satisfy its burden  
14 of production by either (1) submitting evidence that negates an essential element of  
15 the nonmoving party's claim, or (2) pointing out there is an absence of evidence to  
16 support the nonmoving party's case. *Id.* at 602-603. The nonmoving party must then  
17 transcend the pleadings and, by affidavit or other admissible evidence, introduce  
18 specific facts that show a genuine issue of material fact for trial or else summary  
19 judgment is mandatory. *Id.* at 603.

## 20   **II. Law Applicable to Initiation of a Trust Contest**

21       NRS 164.015(1) states an "interested person" may petition the Court  
22 concerning the internal affairs of a trust, including requesting the relief codified in  
23 NRS 153.031. NRS 153.031(1)(d) allows an interested person to petition the Court to  
24 determine whether a trust provision is valid. Similarly, NRS 164.015(3) only  
25 contemplates the procedure for an "interested person" to contest the validity of a  
26 nontestamentary trust. Thus, in order to contest the validity of a nontestamentary  
27 trust under NRS Chapter 164, the petitioner must be an "interested person" in the  
28 trust.

1 NRS 132.185 generally defines an interested person as "a person whose right  
2 or interest under an estate or trust may be materially affected by a decision of a  
3 fiduciary or a decision of the court." Additionally, NRS 132.390(1)(d) specifically  
4 identifies who are interested persons in a trust contest maintained under NRS  
5 164.015. In that regard, NRS 132.390(1)(d) states "a person is an interested person  
6 with respect to:...[a] revocable trust that is the subject of a petition under NRS  
7 164.015 relating to the validity of the trust or any trust-related document, if the  
8 person, after the death of the settlor, under the terms of any version of the trust  
9 documents in dispute, would be:

- 10 • A current beneficiary or a remainder beneficiary of that trust; or
- 11 • A trustee or a successor trustee, including, without limitation, a cotrustee."

12 Therefore, only a current or remainder beneficiary of the trust documents in  
13 dispute, or a trustee or successor trustee under the trust documents in dispute, is an  
14 interested person with standing to contest a trust under NRS 164.015 and NRS  
15 132.390(1)(d).

16 **III. Application of Law to the Absence of Facts Establishing Petitioner's**  
17 **Standing to Contest the Trust**

18 The Trust properly moved for summary judgment against Petitioner by  
19 pointing out there is an absence of evidence to support Petitioner's standing to initiate  
20 a Trust contest. Specifically, the Trust notes the Petitioner must be an interested  
21 person in the Trust to contest its validity under NRS 164.015, NRS 153.031 and NRS  
22 132.390(1)(d). The Trust further observes the Petitioner has not produced any  
23 admissible evidence to show he is a beneficiary or trustee of any version of the Trust  
24 documents in dispute in order to establish his standing to contest the Trust as an  
25 interested person. Having pointed out the Petition, and no other evidence before the  
26 Court, demonstrates Petitioner was a beneficiary or trustee of any version of the  
27 Trust in dispute, the burden shifted to the Petitioner to transcend the pleadings and,  
28

1 by affidavit or other admissible evidence, introduce specific facts that show he is an  
2 interested person in the Trust.

3       Accordingly, the Petitioner filed a Verified Objection to the Motion for  
4 Summary Judgment, which for all intents and purposes is an Opposition to the  
5 Motion for Summary Judgment. The Opposition does not contain any affidavits or  
6 declarations demonstrating Petitioner was a beneficiary or trustee of any version of  
7 the Trust documents in dispute before the Court. On the other hand, the Opposition  
8 does contain a Letter from the Settlers' Estate Planning Counsel, Blanchard, Krasner  
9 and French, indicating the Settlers had a prior trust instrument enacted in 1998.  
10 However, the Letter does not state the Petitioner was a beneficiary or trustee of the  
11 Settlers' former Trust. In fact, the Letter does not pertain to the Petitioner at all as  
12 the Letter was addressed to a separate beneficiary of the Trust, not the Petitioner.  
13 Therefore, the Petitioner has failed to meet his evidentiary burden to survive  
14 summary judgment by transcending the pleadings and, by affidavit or other  
15 admissible evidence, introducing specific facts that show he is an interested person  
16 in the Trust with standing to contest its terms as a beneficiary or trustee of any  
17 version of the Trust. In the absence of such evidence, summary judgment is  
18 mandatory to serve the principal purpose of NRCP 56 – disposal of factually  
19 unsupported claims. In light of the above summary judgment standard, applicable  
20 trust law, and absence of evidence before the Court, the Court orders as follows.

21  
22 ///

23  
24 ///

25  
26 ///

27  
28 ///

1 **IV. Order of the Court**

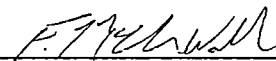
2 Summary Judgment in favor of the Trust and against Petitioner is  
3 **GRANTED**, thereby eliminating all claims alleged in the Petition.

4  
5 **IT IS SO ORDERED.**

6  
7 DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

8  
9 By: \_\_\_\_\_  
District Court Judge

10  
11 *Submitted by:*

12   
13 F. McClure Wallace, Esq.  
14 Nevada State Bar No. 10264  
15 WALLACE & MILLSAP  
16 510 W. Plumb Lane, Suite A  
17 Reno, Nevada 89509  
18 Ph: (775) 683-9599  
19 mcclure@wallacemillsap.com  
20 *Counsel for Tara M. Flanagan*

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District Court Clerk

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BOBBIE R. WILLIAMS  
CLERK

BY  DEPUTY

Case No.: 22-PB-00119

Dept. No.: II

The undersigned affirms this document  
does not contain the social security number  
or legally private information of any person.

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA IN AND FOR THE COUNTY OF DOUGLAS

TODD ROBBEN,

Petitioner;

vs.

THE ESTATE OF THOMAS J.  
HARRIS and THE THOMAS J.  
HARRIS TRUST,

Respondents.

REQUEST FOR SUBMISSION

[THE ESTATE OF THOMAS J.  
HARRIS' MOTION TO DISMISS]

The Honorable Tara Flanagan, Trustee of the Thomas J. Harris Trust,  
respectfully requests the Estate of Thomas J. Harris' Motion to Dismiss filed herein  
on October 6, 2022, be submitted to the Court for decision. A proposed Order  
Granting Motion for Summary Judgment is attached hereto as **Exhibit 1**.

DATED this 31st day of October 2022.

By: 

F. McClure Wallace, Esq.  
Nevada State Bar No. 10264  
WALLACE & MILLSAP  
510 W. Plumb Lane, Suite A  
Reno, Nevada 89509  
Ph: (775) 683-9599  
[mcclure@wallacemillsap.com](mailto:mcclure@wallacemillsap.com)  
Counsel for Tara M. Flanagan

**CERTIFICATE OF SERVICE**

The undersigned certifies the foregoing Request for Submission was served upon Petitioner Todd Robben via United States Mail at the address of P.O. Box 4251 Sonora, California 95370. The foregoing document was placed in the mail for service on the date shown below.

Dated this 31st day of October 2022.

By:   
Caroline Carter, Paralegal

*Wallace & Millar*  
510 W Plumb Ln., Reno, Nevada / (775) 683-9599

LIST OF EXHIBITS

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Exhibit 1 - Order Granting Motion to Dismiss





# Exhibit 1

1 Case No. 2022-PB-00119

2 Dept. No. II

3  
4  
5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF DOUGLAS

7 TODD ROBBEN,

8 Petitioner,

9 vs.

10 THE ESTATE OF THOMAS JOSEPH  
11 HARRIS, THOMAS J. HARRIS  
12 TRUST,

13 Respondent.  
14 \_\_\_\_\_/

15 ORDER GRANTING MOTION TO DISMISS OF RESPONDENT THE

16 ESTATE OF THOMAS JOSEPH HARRIS

17 The Estate of Thomas Joseph Harris, by and through its Court-appointed  
18 Successor Executor, Tara J. Flanagan (the "Estate" or the "Respondent"), and as a  
19 named Respondent in this matter, filed its Motion to Dismiss Petitioner Todd  
20 Robben's Verified Petition to Invalidate the Thomas J. Harris Will and Trust;  
21 Petitioner's Request for Appointment of Counsel Pursuant to NRS 136.200;  
22 Emergency Request for Stay of Final Distribution; Preemptory Challenge to Judge  
23 Nathan Todd Young<sup>1</sup> with this Court on October 6, 2022 (the "Motion to Dismiss" or  
24 the "Motion"). On or about October 20, 2022, Petitioner Todd Robben filed his  
25 Objection to Motion to Dismiss (the Petitioner's "Objection"). Thereafter, on October  
26 \_\_\_\_\_

27 <sup>1</sup> Todd Robben's Verified Petition to Invalidate the Thomas J. Harris Will and Trust;  
28 Petitioner's Request for Appointment of Counsel Pursuant to NRS 136.200; Emergency  
Request for Stay of Final Distribution; Preemptory Challenge to Judge Nathan Todd Young  
shall hereinafter be referred to as the "Petition."

1 31, 2022, the Estate filed its Reply in Support of Motion to Dismiss. The Estate also  
2 filed its Request for Submission of the Motion on October 31, 2022, submitting the  
3 matter to the Court for consideration and decision.

4 Having carefully considered the Motion, all exhibits to the Motion, and the  
5 entirety of the file in this matter, the Court, with good cause appearing, enters the  
6 following order.

7 **RELEVANT BACKGROUND / FINDINGS OF FACT**

8 1. The administration of the Estate – the probate of the Estate – was  
9 separately overseen by Department I of this District Court by and through case  
10 number 2021-PB00034 (the “Estate Case”).

11 2. The Last Will and Testament of Thomas Joseph Harris (the “Harris  
12 Will” or the “Decedent’s Will”) was admitted to probate in the Estate Case on April 6,  
13 2021.

14 3. Pursuant to the proceeding in the Estate Case, the Court overseeing the  
15 Estate Case held exclusive jurisdiction over the validity of the Decedent’s Will and  
16 the administration of the Decedent’s Estate.

17 4. On, April 14, 2022, the Successor Executor, Tara M. Flanagan, filed her  
18 Petition to Confirm First and Final Accounting, Request for Final Distribution, and  
19 Request for Payment of Professional’s Fees and Costs (the “First and Final Petition”)  
20 in the Estate Case. A hearing was scheduled on the Successor Executor’s First and  
21 Final Petition for May 24, 2022.

22 5. On May 23, 2022, Todd Robben appeared in the Estate Case through the  
23 filing of his Notice of Motion for Continuance and Motion for Continuance. Mr.  
24 Robben’s request for a continuance was based on allegations seeking to contest the  
25 validity of the Decedent’s Will.

26 6. A hearing was conducted in the Estate Case regarding the First and  
27 Final Petition on May 24, 2022. The Court heard the presentation of Mr. Robben, as  
28 well as multiple arguments from Counsel for the Estate, including but not limited to

1 presentation of the fact Mr. Robben was not an "interested person" in the Estate as  
2 defined by Nevada law, and had no standing upon which to appear, to contest the  
3 validity to the Decedent's Will, or otherwise state any objection in the Estate Case.  
4 At the conclusion of the hearing, the Court granted Mr. Robben a brief continuance  
5 out of an "abundance of caution" to present any basis upon which he could be  
6 identified as an interested person in the Estate Case, continuing the hearing on the  
7 First and Final Petition to June 21, 2022.

8 7. Thereafter, on June 15, 2022, Mr. Robben filed a Request for  
9 Appointment of Counsel in advance of the June 21, 2022, continued hearing.

10 8. A continued hearing was conducted on the First and Final Petition in  
11 the Estate Case on June 21, 2022. At the conclusion of the hearing, having heard  
12 arguments from Mr. Robben and Counsel for the Estate, F. McClure Wallace of  
13 Wallace & Millsap, the Court granted the Successor Executor's First and Final  
14 Petition in full and without exception. Moreover, the Court in the Estate Case ruled  
15 Mr. Robben was not an interested person to the proceeding, had produced no evidence  
16 upon which he could be found to be an interested person in the Estate Case, and as  
17 such had no basis to be appointed Counsel. As a result of the Court's ruling in the  
18 Estate case, Mr. Robben has no standing to appear in the Estate Case, and as such  
19 has no standing to contest the validity of the Last Will and Testament of Thomas J.  
20 Harris.

21 9. The Court codified its ruling through entry of its written Order Granting  
22 the First and Final Petition in the Estate Case on June 22, 2022, wherein it  
23 specifically found as follows:

24 "Finally, upon thorough review by the court, including review  
25 of Mr. Robben's written filings and hearing Mr. Robben's oral  
26 presentation at both the May 24, 2022 hearing as well as the  
27 June 21, 2022 continued hearing, the Court determines Mr.  
28 Robben is not an "interested person" in this Estate as defined

1 by NRS 132.185, and as such has no standing to object to the  
2 [First and Final] Petition, be appointed Counsel, or otherwise  
3 appear in this proceeding. Specifically, the Court heard from  
4 Mr. Robben, and after giving him additional time, Mr. Robben  
5 was unable to present any legal basis or admissible evidence  
6 to potentially allow a determination he is an interested person  
7 in this Estate. Therefore, Mr. Todd Robben is not an  
8 interested person to this Estate, and as such has no standing  
9 to oppose or object to the Petition, or otherwise appear in these  
10 proceedings.” See June 22, 2022 Order entered in the Estate  
11 Case, p. 5-6, ¶ 32.

12 10. Thereafter, on June 22, 2022, Mr. Robben filed an Emergency Stay  
13 Request – Emergency Verified Motion to Reconsider seeking reconsideration of the  
14 Court’s Order granting the Estate’s First and Final Petition and concluding Mr.  
15 Robben was not an interested person and had no standing in the Estate Case. Mr.  
16 Robben also filed separate Supplemental Points and Authorities in Support of his  
17 Motion to Reconsider on June 23, 2022, and filed a Motion to Expedite Stay Request  
18 Pending Reconsideration on June 24, 2022 (these papers are collectively referred to  
19 hereafter as Mr. Robben’s “Motion to Reconsider”).

20 11. On or about June 27, 2022, the Estate filed its Notice of Entry of Order  
21 Granting Petition to Confirm First and Final Accounting, Request for Final  
22 Distribution, and Request for Payment of Professional’s Fees and Costs.

23 12. On July 1, 2022, the Estate filed its Opposition to Mr. Robben’s Motion  
24 to Reconsider, to which Mr. Robben filed a Reply brief on July 5, 2022.

25 13. Separately, Mr. Robben sought to appeal the Court’s July 22, 2022 Order  
26 in the Estate Case, filing a Notice of Appeal with the Nevada Supreme Court on June  
27 27, 2022.

1           14.     Thereafter, on July 8, 2022, the Nevada Supreme Court filed its Order  
2 Dismissing Appeal, dismissing in entirety Mr. Robben's Appeal in the Estate Case.

3           15.     Additionally, on July 13, 2022, the Court in the Estate Case entered its  
4 Order denying Mr. Robben's Motion for Reconsideration and all filings associated  
5 with Mr. Robben's Motion for Reconsideration. As a result, Mr. Robben's efforts to in  
6 any way oppose or object to any part of the administration of the Decedent's Estate,  
7 including any contest of the Decedent's Will, was forever foreclosed and concluded.

8           16.     On or about July 15, 2022, the Estate filed its Notice of Entry of Order  
9 which denied Mr. Robben's Motion for Reconsideration.

10          17.     Subsequently, on or around July 20, 2022, Petitioner initiated this  
11 matter by the filing of his Verified Petition to Invalidate the Thomas J. Harris Will  
12 and Trust; Petitioner's Request for Appointment of Counsel Pursuant to NRS  
13 136.200; Emergency Request for Stay of Final Distribution; Preemptory Challenge to  
14 Judge Nathan Todd Young (the "Petition"). Mr. Robben's Petition names the Estate  
15 as a Respondent for the sole purpose of again seeking to contest the validity of the  
16 Decedent's Last Will and Testament.

17          18.     On October 6, 2022, the Estate filed its Motion to Dismiss. The Estate's  
18 Motion moves this Court for dismissal of the Petition with prejudice against the  
19 Estate pursuant to NRCP 12(b)(1) arguing this Court lacks subject matter  
20 jurisdiction over the Estate in this matter, and pursuant to NRCP 12(b)(5) arguing  
21 the Petition fails to state a claim against the Estate for which relief can be granted.  
22 As presented further below, the Court agrees and finds dismissal of the Estate from  
23 this matter with prejudice is appropriate.

24           **ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**

25           **I.     APPLICABLE LAW**

26           NRCP 12(b)(1) allows a party to bring a motion to dismiss if the presiding court  
27 lacks subject matter jurisdiction over all or portions of a case. Similarly, NRCP  
28

1 12(b)(5) states a party may assert the defense of failure to state a claim upon which  
2 the court may grant relief in a motion.

3 To survive a motion to dismiss, a [petitioner] must do more than recite the  
4 formulaic elements of a cause of action. *Allen v. United States*, 964 F. Supp. 2d 1239,  
5 1251 (D. Nev. 2013). In this regard, although a court may accept factual allegations  
6 in a complaint as true, the court need not accept legal conclusions as true when  
7 determining a motion to dismiss for failure to state a claim upon which the court may  
8 grant relief. *Id.* Thus, the court should dismiss a petition whenever it appears beyond  
9 a doubt the plaintiff could prove no set of facts, which, if true, would entitle the  
10 plaintiff to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181  
11 P.3d 670, 672 (2008).

12 **II. THIS COURT LACKS SUBJECT-MATTER JURISDICTION OVER A CONTEST OF**  
13 **THE LAST WILL AND TESTAMENT OF THOMAS JOSEPH HARRIS**

14 Mr. Robben's Petition initiating this matter identifies the Estate as a  
15 Respondent for the purpose of challenging the validity of the Decedent's Will. *See*  
16 *generally* Petition. The Decedent's Estate – including the Decedent's Last Will and  
17 Testament – has already been subject to probate administration before Department  
18 1 of the Ninth Judicial District Court of the State of Nevada, in case no. 2021-  
19 PB00034 (the "Estate Case"). Therein, the Decedent's Will was admitted to probate  
20 as a valid will, and the Decedent's Estate was administered to the completion of the  
21 probate process.

22 NRCP 12(b)(1) states a matter is properly dismissed in the absence of subject  
23 matter jurisdiction by the presiding court. Subject matter jurisdiction for a post-  
24 probate will contest is governed by Nevada Revised Statute 137.080. Specifically,  
25 NRS 137.080 requires a contest of the validity of a will, initiated after the will has  
26 been admitted to probate, to be filed in the probate proceeding with the Court in  
27 which the will was admitted to probate. *See* NRS 137.080. Thus, any contest of the  
28

1 Decedent's Will could only occur in the Estate Case where the Decedent's Will was  
2 admitted to probate.

3 This matter does not involve the probate of the Decedent's Estate and is not a  
4 proceeding in which the Decedent's Will could be admitted to probate. As such, this  
5 Court cannot, and does not, have subject matter jurisdiction over the Estate  
6 regarding a contest to the validity of the Decedent's Last Will and Testament. For  
7 that reason alone, Todd Robben's Petition is properly dismissed as to the Estate  
8 under NRCP 12(b)(1), in full and with prejudice, as this Court lacks subject matter  
9 jurisdiction over the Estate.

10 **III. THE PETITIONER IS NOT AN INTERESTED PERSON IN THE ESTATE AND**  
11 **LACKS STANDING TO NAME THE ESTATE AS A RESPONDENT IN THIS CASE**

12 As a foundational point to this Order, Mr. Robben was conclusively found to  
13 not be an "interested person" in the Estate as defined by NRS 132.185, and as such  
14 lacks standing to contest the validity of the Decedent's Will in this or any other  
15 matter. NRS 137.080 goes beyond establishing which court holds jurisdiction over a  
16 post-probate will contest, it also states who may contest the validity of a will and the  
17 time frame in which any such contest must be brought. Specifically, NRS 137.080  
18 requires any post-probate will contest to be brought by an interested person to the  
19 estate, within 3 months after the order entering a will to probate has been entered.

20 As referenced above, Mr. Robben is not an "interested person" in the Estate,  
21 and therefore lacks standing to contest the validity of the Decedent's Will. NRS  
22 137.080.

23 Further, the Decedent's Will was admitted to probate in the Estate Case on  
24 April 6, 2021. Even assuming Mr. Robben had standing to contest the validity of the  
25 Decedent's Will, which he decidedly does not, his effort to do so in this matter would  
26 be time barred. The Petition initiating this matter, which seeks to contest the  
27 validity of the Decedent's Will, was filed on July 20, 2022 - approximately 15 months  
28 after the Decedent's Will was admitted to probate and long after the established



1 statutory deadline. In this vein, Mr. Robben's attempt to argue the time limitation  
2 contained in NRS 137.080 does not apply to him because he did not receive notice of  
3 the probate proceeding in the Estate case lacks merit. As an individual who is not  
4 an interested person to the Estate, Mr. Robben was never entitled to notice of the  
5 proceedings in the Estate case, and for that reason cannot argue any type of tolling  
6 of the time frame set forth in NRS 137.080. *See also* NRS 136.100.

7 As such, the allegations in the Petition bearing any relation to the Estate are  
8 brought by a Petitioner who is not an interested person to the Estate, and who has  
9 no standing to contest the validity of the Decedent's Will. Therefore, the Petition  
10 fails to bring a claim upon which any relief can be granted. For this reason alone,  
11 the Petition is also properly dismissed as to the Estate, in full and with prejudice.

12 **IV. ALL ALLEGATIONS MADE IN THIS MATTER CONCERNING THE ESTATE ARE**  
13 **BARRED BY CLAIM PRECLUSION**

14 Mr. Robben's Petition in this matter names the Estate as a Respondent for  
15 the purpose of contesting the validity of the Decedent's Last Will and Testament. As  
16 outlined above, and as presented in detail in the Estate's Motion, the Petitioner  
17 previously attempted to contest the validity of the Decedent's Will in the Estate  
18 Case, with those efforts being fully and finally addressed by the Court overseeing  
19 the Estate Case who ruled Mr. Robben had no standing to contest the validity of the  
20 Decedent's Will. *See* Order Granting the First and Final Petition in the Estate Case  
21 entered on June 22, 2022. Given this history, the Estate argues any claims brought  
22 by the Petitioner in this matter regarding the validity of the Decedent's Will are  
23 barred by the doctrine of claim preclusion, and as a result fail to state a claim upon  
24 which relief can be granted. *See* NRCP 12(b)(5). The Court agrees.

25 In Nevada, claim preclusion applies when (1) the same parties or their privies  
26 are involved in both cases, (2) a valid final judgment has been entered, and (3) "the  
27 subsequent action is based on the same claims or any part of them that were or could  
28 have been brought in the first case. *See Alcantara ex rel. Alcantara v. Wal-Mart*

1 *Stores, Inc.*, 130 Nev. 252, 257, 321 P.3d 912, 915 (2014); quoting *Five Star Capital*  
2 *Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713. Applying this three-part  
3 analysis established by the Nevada Supreme Court, it is clear the Petitioner is  
4 barred from attempting to assert any claims against the Estate regarding the  
5 validity of the Decedent's Will in this matter.

6 First, the same parties in this matter are identical to those who participated  
7 in the Estate Case, that being the Decedent's Estate and the Petitioner, Mr. Robben.  
8 Second, a valid final judgement was entered in the Estate Case adjudicating Mr.  
9 Robben's lack of standing to contest the Decedent's Will by and through its June 22,  
10 2022 Order, which was subsequently upheld by the Nevada Supreme Court. See  
11 NRCP 41(a). Third and finally, Mr. Robben's allegations in this matter related to  
12 the validity of the Decedent's Will are the same claims he previously brought in the  
13 Estate Case.

14 "Claim preclusion applies to prevent a second suit based on all grounds of  
15 recovery that were or could have been brought in the first suit. *Five Star Capital*  
16 *Corp. v. Rudy*, 124 Nev. 1048, 1058, 194 P.3d 709, 715 (2008). It is beyond question  
17 Mr. Robben filed multiple documents and appeared in the Estate Case for the sole  
18 purpose of contesting the validity of the Decedent's Will. See generally *Court Docket*  
19 *in the Estate Case*. Now Mr. Robben brings forth his Petition in this matter again  
20 attempting to contest the validity of the Decedent's Will. Otherwise stated, Mr.  
21 Robben's Petition in this matter repeats the previous claims unsuccessfully he  
22 brought in the Estate Case. Therefore, Mr. Robben's attempt to reassert allegations  
23 and claims regarding the validity of the Decedent's Will in this matter are barred as  
24 they were previously alleged and litigated to their conclusion in the Estate Case.

25 Even assuming, arguendo, Mr. Robben had not brought forth such claims and  
26 allegations in the Estate Case, which he did, the claims and allegations he sets forth  
27 in his Petition regarding the Decedent's Will would still be barred, as the third prong  
28 of claim preclusion acts to bar any claims – or part of any claims – that were or could

1 have been brought in the Estate Case. *See Five Star Capital Corp. v. Rudy*, 124 Nev.  
2 at 1058. As established above, the Estate Case held exclusive jurisdiction over any  
3 and all claims involving the validity of the Decedent's Will. *See* NRS 137.080. Thus,  
4 any and all claims involving the Decedent's Will not only were brought, but could  
5 [only] have been brought in the Estate Case, and are precluded from ever being  
6 brought again in this or any other matter. *Id.*

7 Consistent with the analysis above, Mr. Robben's Petition against the  
8 Decedent's Estate is barred by the doctrine of claim preclusion, and therefore fails  
9 to assert a claim against the Estate for which any relief can be granted, requiring  
10 the dismissal of the Estate from this matter with prejudice. *See* NRCP 12(b)(5).

11  
12 **WHEREFORE, and good cause appearing, the Motion to Dismiss**  
13 **presented by the Estate of Thomas Joseph Harris is GRANTED in full, and**  
14 **with prejudice.**

15 **IT IS SO ORDERED.**

16  
17 **DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022**

18  
19 **By: \_\_\_\_\_**  
20 **District Court Judge**

21 *Submitted by:*

22   
23 F. McClure Wallace, Esq.  
24 Nevada State Bar No. 10264  
25 WALLACE & MILLSAP  
26 510 W. Plumb Lane, Suite A  
27 Reno, Nevada 89509  
28 Ph: (775) 683-9599  
[mcclure@wallacemillsap.com](mailto:mcclure@wallacemillsap.com)  
*Counsel for Tara M. Flanagan*

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District Court Clerk

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In Pro per  
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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

TODD ROBBEN,  
Petitioner

Vs.

THE ESTATE OF THOMAS JOSEPH  
HARRIS; THOMAS J. HARRIS TRUST,  
Deceased,  
Respondent.

CASE NO.: 2022-PB-00119

PETITIONER TODD ROBBEN'S  
NOTICE AND AFFIDAVITS IN  
SUPPORT OF THE PRE-EXISTING  
OLGA AND THOMAS J. HARRIS  
LIVING TRUST WITH PETITIONER  
NAMED BENEFICIARY

Related cases:

Ninth District Court Case No.:  
2021-PB00034

Nevada Supreme Court Case No.:  
84948

.Petitioner, Todd Robben, provides two affidavits that support the fact Todd Robben was named a beneficiary in the Olga and Thomas J. Harris Living Trust.

The Petitioner's verified statements in his previous filings are evidence of the existence of the Olga and Thomas J. Harris Living Trust and the witnesses including Stephen James Robben, Mike Weston and the Petitioner. As to other witnesses, this Petitioner has attempted to contact the former lead counsel, Abigail Stephenson whom signed the letters in exhibit A in the petition. Petitioner is unable to contact Abigail Stephenson and will request a summons or subpoena to question Abigail Stephenson.

**AFFIDAVIT OF MIKE WESTON**

1. I am Mike Weston, a resident of Reno, NV.
2. I am over 18 and willing to testify in person if need.
3. My phone number to verify my identity is 775-359-7070.
4. I have know Todd Robben for over 10 years.
5. During the times Mr. Robben was in jails in Nevada and California including CDCR prison, I communicated with Olga Harris, Todd's mother on a regular basis before she passed away.
6. Olga Harris loved her son Todd Robben and continued to put money on his books in prison until she passed away in 2019.
7. Olga had to send money to me to put on Todd's books because of the undue influence of Jeff Robben and Thomas J. Harris coercing her to not love Todd and send him money to help him survive.
8. I can attest that there was obvious undue influence and Olga had to keep the money sending a secret.
9. To the best of my knowledge Olga Harris indicated Todd would be OK in the future when he gets out of prison and back on his feet because he was a beneficiary in the Olga and Thomas J. Harris Living Trust.
10. **Based on my knowledge and observations Todd would have inherited a sum equal to his brother Jeff Robben, but for, the undue influence perpetuated on Thomas J. Harris by Jeff D. Robben .**
11. I am willing to take a polygraph lie detector test if needed.
12. I am digitally signing due to my geographical location and the urgency of this affidavit.

Respectfully signed under penalty of perjury,

/s/ Mike Weston  
November 02, 2022

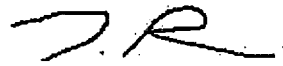
**AFFIDAVIT OF STEPHEN J. ROBBEN**

1. I am Stephen J. Robben, a resident of Tuolumne County, CA.
2. I am over 18 and willing to testify in person if need.
3. My phone number to verify my identity is 209-206-8662
4. I have know Todd Robben for over 50 years.
5. I was directly involved and witnessed Jeff Robben's undue influence on Thomas J. Harris and Olga Harris. I spoke with Jeff Robben during the macular degeneration issues and told him to work it out with his brother Todd.
6. Olga loved Todd and told me Todd would be taken care of in the future because he was a beneficiary in the Olga and Thomas J. Harris Trust.
7. **Based on my knowledge and observations Todd would have inherited a sum equal to his brother Jeff Robben, but for, the undue influence perpetuated on Thomas J. Harris by Jeff D. Robben .**
8. I am willing to take a polygraph lie detector test if needed.
9. I am digitally signing the document because I am unable to sign in personal signature due to the urgency of this affidavit and my geographical location and lack of a scanner to copy my signature.

Respectfully signed under penalty of perjury,

/s/ Stephen J. Robben  
November 02, 2022

Respectfully signed under penalty of perjury,



/s/ Todd Robben

November 02, 2022

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1 **CERTIFICATE OF SERVICE**

2

3 I, Stephen James Robben, declare under penalty of perjury under the law of the

4 State of Nevada that the following is true and correct copy of the filed document. That

5 on November 02, 2022, service of the document was made pursuant to NRCP 5(b) by

6 depositing a email to: F. McClure Wallace, counsel for Respondent,

7 mcclure@wallacemillsap.com

8

9 DATED November 02, 2022

10

11 Submitted By: /s/ Stephen James Robben

12

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Wallace & Milloap  
510 W Plumb Ln., Reno, Nevada / (775) 683-9599

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BOBBIE R. WILLIAMS  
CLERK

BY  DEPUTY

1 Case No.: 22-PB-00119

2 Dept. No.: II

3 The undersigned affirms this document  
4 does not contain the social security number  
5 or legally private information of any person.

6 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF DOUGLAS**

8 **TODD ROBBEN,**

9 **Petitioner;**

10 **vs.**

11 **THE ESTATE OF THOMAS J.**  
12 **HARRIS and THE THOMAS J.**  
13 **HARRIS TRUST,**

14 **Respondents.**

**THE THOMAS J. HARRIS TRUST'S  
SUPPLEMENTAL BRIEF TO ITS  
MOTION FOR SUMMARY  
JUDGMENT ADDRESSING  
FUGITIVE AFFIDAVITS FILED BY  
PETITIONER TODD ROBBEN**

16  
17 The Honorable Tara Flanagan, Trustee of the Thomas J. Harris Trust (the  
18 "Trust"), filed a Motion for Summary Judgment on October 6, 2022. Petitioner filed  
19 a Verified Objection to the Motion for Summary Judgment on or about October 21,  
20 2022. The Verified Objection is essentially an opposition to the Motion for Summary  
21 Judgment and will be referred to herein as the "Opposition." The Trust filed Reply  
22 Points & Authorities on October 31, 2022 (the "Reply") dispelling the erroneous  
23 arguments in the Opposition. One argument advanced in the Reply was Petitioner's  
24 failure to attach any affidavit or declaration to his Opposition demonstrating he is an  
25 interested person in the Trust with standing to bring a contest action. Having  
26 reviewed the Trust's Reply Points & Authorities, Petitioner has now filed two  
27 "Affidavits" in a misguided attempt to cure his failure to lawfully oppose the Motion  
28 for Summary Judgment. The Trust now files the following Supplemental Brief in

1 response to Petitioner's fugitive Affidavits demonstrating the Affidavits hold no  
2 evidentiary merit to the issue before the Court – whether Petitioner is an interested  
3 person in the Trust with standing to contest its terms.

4  
5 **SUPPLEMENTAL POINTS & AUTHORITIES TO MOTION FOR SUMMARY**

6 **JUDGMENT ADDRESSING FUGITIVE AFFIDAVITS**

7  
8 **I. The Affidavits are invalid as a matter of law and, therefore, cannot**  
9 **serve as a basis to oppose summary judgment.**

10 Nevada's summary judgment standard required the Petitioner to produce  
11 admissible evidence in opposition to the Motion for Summary Judgment. In other  
12 words, Petitioner cannot oppose summary judgment by using inadmissible and  
13 unlawful evidence.

14 Here, the Affidavits are unlawful because the Affidavits violate NRS 53.010.  
15 Specifically, NRS 53.010 states "[a]n affidavit to be used before any court, judge or  
16 officer of this State may be taken before any justice, judge or clerk of any court, or  
17 any justice of the peace or notary public in this State." Petitioner's purported  
18 Affidavits are not taken before any judicial officer or notary public and, therefore, the  
19 Affidavits violate NRS 53.010. Since the Affidavits are unlawful, the Court should  
20 disregard the fugitive Affidavits when deciding the Motion for Summary Judgment  
21 because the Court must rely on admissible evidence, or the lack thereof, to determine  
22 the Motion, not illegal Affidavits.

23 In addition, the Affidavits are unlawful because neither Affidavit complies  
24 with the Uniform Law on Notarial Acts found in NRS 240.161 to NRS 240.169,  
25 inclusive. Specifically, the Affidavits are unlawful because the Affidavits are not  
26 certified by a person authorized to perform notarial acts as set forth in NRS 240.1635  
27 or NRS 240.164. The Affidavits are unlawful because the Affidavits do not identify  
28 the state and county where each Affidavit was certified as required by NRS 240.1655.

1 The Affidavits are unlawful because the Affidavits are not signed by either Affiant as  
2 required by NRS 240.1655. The Affidavits are unlawful because the Affidavits are  
3 not signed and dated by the person performing the notarial act as mandated by NRS  
4 240.1655. The Affidavits are unlawful because the Affidavits do not contain an  
5 acknowledgement in the same, or substantially similar, form to NRS 240.166. Thus,  
6 the fugitive Affidavits are not hand signed, notarized or certified in the manner  
7 required by the Uniform Law on Notarial Acts, thereby rendering the Affidavits  
8 invalid.

9 Consequently, the Court should disregard the Affidavits when deciding the  
10 Motion for Summary Judgment because each Affidavit constitutes inadmissible  
11 evidence violative of NRS 53.010 and the Uniform Law on Notarial Acts.

12 **II. The Court should not consider the Affidavits when deciding the**  
13 **Motion for Summary Judgment because the Affidavits were not timely**  
14 **submitted in opposition to the Motion.**

15 Setting aside the illegality of the Affidavits discussed above, the Affidavits  
16 should not be considered when determining the Motion for Summary Judgment  
17 because the Affidavits are untimely. Specifically, D.C.R. 13(3) allowed the Petitioner  
18 14 days to oppose the Motion for Summary Judgment. Petitioner submitted the  
19 Affidavits in opposition to the Motion after the 14-day period to oppose the Motion for  
20 Summary Judgment lapsed, and after the matter had been submitted to the Court  
21 for decision. As such, the Affidavits constitute an untimely opposition to the Motion  
22 filed without leave of Court, rendering the Affidavits fugitive filings inappropriate for  
23 consideration when determining the Motion for Summary Judgment.

24 ///

25 ///

26 ///

27 ///

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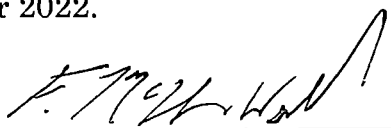
1 III. Substantively, the Affidavits are irrelevant to whether Petitioner is  
2 an interested person with standing to contest the Trust because  
3 neither Affidavit states Petitioner is a beneficiary or trustee of any  
4 version of the Trust documents in dispute before the Court.

5 Even if the Court considered the illegal Affidavits when deciding the Motion  
6 for Summary Judgment, each Affidavit is irrelevant to whether Petitioner is an  
7 interested person in the Trust. As discussed in the Motion and Reply, Petitioner is  
8 attempting to contest the Thomas J. Harris Trust. However, in order to contest the  
9 Trust and bring related claims, the Petitioner must be an interested person in the  
10 Trust according to NRS 164.015, NRS 153.031 and NRS 132.390(1)(d). In order to be  
11 an interested person with standing to contest the Trust, NRS 132.390(1)(d) states the  
12 Petitioner must either be a beneficiary or trustee of any version of the Trust  
13 documents in dispute. *The Affidavits do not state Petitioner is a beneficiary or*  
14 *trustee of any version of the Trust documents Petitioner is contesting.* Instead,  
15 the Affidavits generically state but for the undue influence of Jeff Robben, Petitioner  
16 would have inherited monies equal to Jeff Robben. However, the Affidavits do not  
17 state how Petitioner would have inherited the funds i.e. through a prior version of  
18 the Trust of which Petitioner is a beneficiary. Consequently, the Affidavits do not  
19 evidence Petitioner is an interested person with standing to contest the Trust because  
20 the Affidavits do not state how Petitioner would inherit the funds if he invalidated  
21 the Trust, such as a prior version of the Trust of which Petitioner is a beneficiary.  
22 Consequently, even if Petitioner succeeded in invalidating the Trust, the proceeding  
23 would be moot because the corpus would not pass to Petitioner under the laws of  
24 intestate succession or through a prior trust Petitioner validly placed before the Court  
25 of which he is a beneficiary. Therefore, summary judgment remains mandatory, even  
26 considering the Affidavits, because Petitioner has presented no evidence, including  
27 the Affidavits, to establish he is a beneficiary or trustee of the Trust documents in  
28 dispute with standing to contest the Trust as interested person under NRS  
132.390(1)(d).

CONCLUSION AND REQUESTED RELIEF

Based on the foregoing facts, law and argument, the Honorable Tara Flanagan, as Successor Trustee of the Thomas J. Harris Trust, respectfully requests this Court grant summary judgment against Mr. Robben's Petition to Invalidate the Thomas J. Harris Trust because he is not an interested person with standing to contest the Trust.

DATED this 4<sup>th</sup> day of November 2022.

By:   
F. McClure Wallace, Esq.  
Nevada State Bar No. 10264  
WALLACE & MILLSAP  
510 W. Plumb Lane, Suite A  
Reno, Nevada 89509  
Ph: (775) 683-9599  
mcclure@wallacemillsap.com

**CERTIFICATE OF SERVICE**

The undersigned certifies the foregoing Supplemental Brief was served upon Petitioner Todd Robben via United States Mail at the address of P.O. Box 4251 Sonora, California 95370. The foregoing Brief was placed in the mail for service on the date shown below.

Dated this 4<sup>th</sup> day of November 2022.

By. 

Caroline Carter, Paralegal

1 Todd Robben  
2 In Pro per  
3 PO Box 4251  
4 Sonora, CA 95370  
5 Robben.ty@gmail.com  
6 (209)540-7713

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BY Arbela DEPUTY

7 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 TODD ROBBERN,  
11 Petitioner

CASE NO.: 2022-PB-00119

13 Vs.

PETITIONER'S MOTION TO STRIKE  
RESPONDENTS UNLAWFUL  
SURREPLY

14  
15 THE ESTATE OF THOMAS JOSEPH  
16 HARRIS; THOMAS J. HARRIS TRUST,  
17 Deceased,  
18 Respondent.

19  
20 Petitioner, Todd Robben, objects and move to strike the Respondents unlawful  
21 surreply they never requested leave to file. The Petitioner had simply supplemented  
22 his own sworn statements that he had witnesses including himself, Stephen J. Robben  
23 and Mike Weston after the Respondent claimed otherwise if its reply brief. The  
24 common law affidavits are perfectly acceptable in Nevada and out of necessity the  
25 affidavits were filed as such because the witness does not even live near Nevada and  
26 the information was urgent for the court to decide the merits of the case. If the court  
27  
28

1 requires a Notary or in person or zoom confirmation of the affidavits, this Petitioner  
2 can comply.

## 3 4 MEMORANDUM OF POINTS & AUTHORITIES

### 5 6 I. THE COURT MUST STRIKE RESPONDENTS FRIVOLOUS FILING

7  
8 The Respondent did not move to strike the Petitioner's affidavits, instead the  
9 supplement the Motion for Summary Judgment in the form of a sur-reply that they did  
10 not request leave to file. See Nutton v. Sunset Station, Inc., 131 Nev. Adv. Op. 34 -  
11 Nev: Supreme Court 2015 (it is not clear that the district court would have permitted  
12 Sunset Station to file a sur-reply so that Nutton's request could be fully considered.).

13 The sur-reply acts to amend and/or supplement without permission. "After a  
14 responsive pleading is filed, a party may amend his or her pleading "only by leave of  
15 court or by written consent of the adverse party; and leave shall be freely given when  
16 justice so requires." NRCP 15(a). Although the rule states that leave to amend shall  
17 be given when justice so requires, "[t]his does not . . . mean that a trial judge may not,  
18 in a proper case, deny a motion to amend. If that were the intent, leave of court would  
19 not be required." Stephens v. Southern Nevada Music Co., 89 Nev. 104, 105, 507  
20 P.2d 138, 139 (1973). Sufficient reasons to deny a motion to amend a pleading  
21 include undue delay, bad faith or dilatory motives on the part of the movant. See id. at  
22 105-06, 507 P.2d at 139. Furthermore, "[a] motion for leave to amend pursuant to  
23 NRCP 15(a) is addressed to the sound discretion of the trial court, and its action in  
24 denying such a motion will not be held to be error in the absence of a showing of  
25 abuse of discretion." Connell v. Carl's Air Conditioning, 97 Nev. 436, 439, 634 P.2d  
26 673, 675 (1981)." Kantor v. Kantor, 8 P. 3d 825 - Nev: Supreme Court 2000.



1 The Respondent make arguments in an effort to have the court essentially  
2 strike the affidavits and that the affidavits somehow fail to establish the Petitioner was  
3 not a beneficiary of the Olga and Thomas J. Harris Living Trust.  
4

5 **II. COMMON LAW AFFIDAVITS ARE ACCEPTABLE**  
6

7 NRS 1.030<sup>1</sup> allows for a common law affidavit signed under penalty of perjury.  
8 This was a case where, out of necessity, and urgency, the Petitioner was able to back  
9 up his own sworn statements with additional sworn statements from Stephen J.  
10 Robben and Mike Weston that the Petitioner was named as a beneficiary in the Olga  
11 and Thomas J. Harris Living Trust.

12 *In Crawford v. Washington, 541 US 36 - Supreme Court 2004* "Thus, while I  
13 agree that the Framers were mainly concerned about sworn affidavits and depositions,  
14 it does not follow that they were similarly concerned about the Court's broader  
15 category of testimonial statements. See 2 N. Webster, An American Dictionary of the  
16 English Language (1828) (defining "Testimony" as "[a] solemn declaration or  
17 affirmation made for the purpose of establishing or proving some fact. Such affirmation  
18 in judicial proceedings, may be verbal or written, but must be under oath" (emphasis  
19 added)). As far as I can tell, unsworn testimonial statements were treated no  
20 differently at common law than were nontestimonial statements, and it seems to me  
21 any classification of statements as testimonial beyond that of sworn affidavits and  
22 depositions will be somewhat arbitrary, merely a proxy for what the Framers might  
23

---

24  
25 <sup>1</sup> NRS 1.030 Application of common law in courts. The common law of England, so far as it  
26 is not repugnant to or in conflict with the Constitution and laws of the United States, or the  
27 Constitution and laws of this State, shall be the rule of decision in all the courts of this State.  
28

1 have intended had such evidence been liberally admitted as substantive evidence like  
2 it is today."

3  
4  
5 **III. RELIEF REQUEST**  
6

7 The Respondents Supplemental Briefing must be stricken and the Petitioners  
8 affidavits remain to prove the Petitioner was, in fact ,a beneficiary of the Olga and  
9 Thomas J. Harris Living Trust.

10  
11  
12 Respectfully signed under penalty of perjury,

13  
14 

15 /s/ Todd Robben

16 November 07, 2022  
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1 Case No.: 22-PB-00119

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3 The undersigned affirms this document  
4 does not contain the social security number  
or legally private information of any person.

BY *A. Salm* DEPUTY

5  
6 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF DOUGLAS**

8  
9 **TODD ROBBEN,**

**Petitioner;**

11 **vs.**

12 **THE ESTATE OF THOMAS J.**  
13 **HARRIS and THE THOMAS J.**  
14 **HARRIS TRUST,**

15 **Respondents.**

**THE THOMAS J. HARRIS TRUST'S  
OPPOSITION TO MOTION TO  
STRIKE**

16  
17 The Honorable Tara Flanagan, Trustee of the Thomas J. Harris Trust (the  
18 "Trust"), opposes the Petitioner's Motion to Strike filed November 7, 2022. This  
19 Opposition is based on the following Points & Authorities, any exhibits attached  
20 thereto, any oral argument this Court wishes to entertain, and the papers and  
21 pleadings on file before the Court of utility in deciding the Motion to Strike.

22  
23 **POINTS & AUTHORITIES**

24 It is unfortunate the Trust must continue to oppose, or otherwise address,  
25 unlawful filings by the Petitioner. Particularly when the Petitioner does not have  
26 standing to have even initiated this matter. Indeed, the Petitioner's latest filing is  
27 another vexatious undertaking. To see this, the Court need look no further than the  
28 fact Petitioner filed a Motion to Strike a Surreply when the Supplement to the Motion

1 for Summary Judgment *is not a surreply*. Specifically, the movant files a motion, the  
2 opponent files an opposition, and the movant files a reply. Only the party opposing  
3 the motion can file a surreply to the movant's reply. In other words, the movant  
4 cannot file a surreply because a surreply is the opponents' response to the movant's  
5 reply.

6 In this case, the Trust moved for summary judgment, Petitioner opposed the  
7 Motion, and the Trust filed its Reply in support of the Motion for Summary Judgment.  
8 Consequently, only the Petitioner could file a surreply to the Trust's Reply. Petitioner  
9 effectively filed a surreply, without leave of court, to the Trust's Reply when  
10 Petitioner filed two affidavits in response to the Trust's Reply in support of summary  
11 judgment. In other words, it is the Petitioner, not the Trust, who filed an untimely  
12 and unlawful surreply in the form of purported affidavits responding to the Trust's  
13 Reply.

14 In addition to Petitioner's erroneous argument claiming the Supplement is a  
15 "surreply", Petitioner cites numerous cases considering NRCP 15, which governs the  
16 amendment of pleadings. *See generally* NRCP 15. The Motion for Summary  
17 Judgment, Reply, and Supplement are not pleadings. *See* NRCP 7. Therefore,  
18 Petitioner cites cases inapplicable to his own argument, and in doing so causes  
19 continued waste of judicial and Trust resources.

20 Despite the Trust never filing a surreply, the Petitioner moved the Court to  
21 strike the Supplement as a "surreply" presumably so the Petitioner could make  
22 arguments about the propriety of his illegal affidavits. In that regard, Petitioner  
23 claims the Court should overlook his failure to comply with Nevada's statutory  
24 requirements to execute a valid affidavit by treating the illegal affidavits as "common  
25 law" affidavits. Yet, Petitioner cites no precedential authority from Nevada common  
26 law standing for the proposition district courts may consider illegally executed  
27 affidavits replete with hearsay as valid evidence in determining a motion for  
28 summary judgment. Consequently, Petitioner's creative "common law affidavit"

1 theory is not a theory at all, and most importantly is not a product of precedential  
2 authority taken from Nevada's common law. As such, the Trust respectfully requests  
3 the Court deny Petitioner's Motion to Strike the Trust's Supplemental Brief.

4 **CONCLUSION & REQUESTED RELIEF**

5 The Trust is cognizant of this Opposition's brevity. However, the Opposition's  
6 brevity is intentional to prevent the incurrence of additional attorney's fees to dispel  
7 in detail every one of Petitioner's unrelated or unlawful arguments irrelevant to the  
8 issue at hand – Petitioner's inability to produce a trust document showing he is a  
9 beneficiary of the Trust in dispute to confer standing upon him as an interested  
10 person to contest the Trust. Petitioner failed to produce this evidence in the Estate  
11 Matter. Petitioner has failed to produce this elemental piece of evidence in this Trust  
12 Matter. Rather than simply produce the evidence required to deem him an interested  
13 person in the Trust, Petitioner repetitively posits irrelevant or inapplicable  
14 arguments in his continued attempt to avoid the appropriate outcome of this matter  
15 - the dismissal of his Petition. The Trust requests the Court grant it summary  
16 judgment, and in doing so prevent this matter from causing continued depletion of  
17 the Trust's assets and harm to the Trust's beneficiaries.

18 DATED this 14<sup>th</sup> day of November 2022.

19  
20 By: 

F. McClure Wallace, Esq.  
Nevada State Bar No. 10264  
WALLACE & MILLSAP  
510 W. Plumb Lane, Suite A  
Reno, Nevada 89509  
Ph: (775) 683-9599  
mcclure@wallacemillsap.com

**CERTIFICATE OF SERVICE**

The undersigned certifies the foregoing Opposition was served upon Petitioner Todd Robben via United States Mail at the address of P.O. Box 4251 Sonora, California 95370. The foregoing Opposition was placed in the mail for service on the date shown below.

Dated this 14<sup>th</sup> day of November, 2022.

By: 

Caroline Carter, Paralegal

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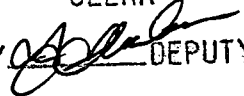
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BY  DEPUTY

Todd Robben  
In Pro per  
PO Box 4251  
Sonora, CA 95370  
Robben.ty@gmail.com  
(209)540-7713

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

TODD ROBBEN,  
Petitioner

Vs.

CASE NO.: 2022-PB-00119

PETITIONER'S REPLY IN SUPPORT  
OF MOTION TO STRIKE  
RESPONDENTS UNLAWFUL  
SURREPLY

THE ESTATE OF THOMAS JOSEPH  
HARRIS; THOMAS J. HARRIS TRUST,  
Deceased,  
Respondent.

Petitioner, Todd Robben was correct to move to strike the Respondents sur-reply because it was a sur-reply to their Motion for Summary Judgment.

The Petitioner did not file memorandum of points and authorities, or a sur-reply, he had simply filed a notice and affidavits and requested direction from the court as to any hearing in person or zoom to verify the affidavits in person with each witness. Or, the court can order the Petitioner to provide notarized affidavits from both California for Stephen James Robben and Todd Robben and Nevada for Mike Weston. The



1 court can order all three notarized affidavits from Nevada and the court can accept  
2 what has been provided with are three witnesses that Todd Robben was indeed a  
3 beneficiary in the Olga and Thomas J. Harris Living Trust.  
4

5 The Respondent is the one who has overreacted and filed an unlawful sur-reply  
6 without requesting leave from the court. The Respondent is desperate because it  
7 knows this Petitioner has, without counsel and in pro se, won this case and proven he  
8 has standing, in an "interested person" and, indeed, he is a beneficiary and the  
9 Respondent conceded by not arguing anything about the Barefoot v. Jennings, 456 P.  
10 3d 447 - 2020 - Cal: Supreme Court , case.  
11

12 After case number 2021 PB00034 was decided and an order issued denying  
13 this Petitioner counsel on the grounds he is not an interested person pursuant to NRS  
14 § 132.185 this Petitioner filed a motion to reconsider and notice of appeal and to  
15 request the stay. Both were denied without reaching the merits of what an "interested  
16 person" is and is not pursuant to NRS 132.185 which states "Interested person"  
17 defined as **"Interested person means a person whose right or interest under an  
18 estate or trust may be materially affected by a decision of a fiduciary or a  
19 decision of the court.** The fiduciary or court shall determine who is an interested  
20 person according to the particular purposes of, and matter involved in, a proceeding."  
21 Based on this definition, **the Petitioner is indeed an Interested person pursuant to  
22 NRS 132.185.**

23 Although not named in the trust or will as a beneficiary, as a matter of  
24 law, this Petitioner is legally a "Beneficiary" based "contingent" on his  
25 "present interest" and "*future* interest" which are both vested and contingent and  
26 he would be the owner of an interest by assignment or other transfer from the Thomas  
27  
28

1 J. Harris Trust ...or from the Thomas J. and Olga Harris Living Trust. See Barefoot v.  
2 Jennings, supra.

3 NRS 132.050 states "Beneficiary" defined. "Beneficiary," as it relates to: 1.  
4 **"A trust, includes a person who has a present or future interest, vested or**  
5 **contingent, and the owner of an interest by assignment or other transfer".**

6 Compare NRS 132.050 with the California equivalent Section 17200,  
7 subdivision (b)(3) contemplates the court's determination of "the validity of a trust  
8 provision. "Plainly, the term "trust provision" incorporates any amendments to a trust.  
9 Section 24, subdivision (c) defines a "beneficiary" for trust purposes, as "a  
10 **person who has any present or future interest, vested or contingent.**" Assuming  
11 plaintiff's allegations are true, ***she has a present or future interest***, making her a  
12 beneficiary permitted to petition the probate court under section 17200." See Barefoot  
13 v. Jennings, supra.

14 The Nevada Supreme Court summarily dismissed the appeal because they  
15 claim this Petitioner lacks standing and is not a party to the action i.e. not named in  
16 the lawsuit/petition as a respondent/defendant or petitioner/plaintiff. The Nevada  
17 Supreme Court failed to even consider the facts before they were filed that shows the  
18 Petitioner is, in fact, named in the will/trust as being disinherited.

19 The Petitioner styled is argument in case number 2021 PB00034 as the same  
20 argument in Barefoot v. Jennings, infra.

21 **If this ruling stands, nobody in Nevada can petition the court for probate**  
22 **or presumed undue influence or fraud or lack of capacity if they are presumably**  
23 **not already a beneficiary.** This Petitioner was undisputedly "disinherited" albeit by  
24 way of presumed undue influence and undue influence.  
25

1 A similar situation occurred in California in Barefoot v. Jennings, 456 P. 3d 447  
2 - Cal: Supreme Court 2020.<sup>1</sup>

3 In early November 2019, the California Supreme Court heard oral  
4 arguments in the Barefoot case, and in late January 2020, the California  
5 Supreme Court issued its opinion reversing the Court of Appeal decision.  
6 The California Supreme Court held as follows: **"We disagree with the  
7 Court of Appeal, and hold today that the Probate Code grants  
8 standing in Probate Court to individuals who claim that trust  
9 amendments eliminating their beneficiary status arose from  
10 incompetence, undue influence or fraud."**

11 California probate Section 17200, subdivision (b)(3) contemplates the  
12 court's determination of "the validity of a trust provision." Plainly, the term  
13 "trust provision" incorporates any amendments to a trust. Section 24,  
14 subdivision (c) defines a "beneficiary" for trust purposes, as "a person who  
15 has any present or *future* interest, vested or *contingent*." Assuming  
16 plaintiff's allegations are true, she has a present or future interest, making  
17 her a beneficiary permitted to petition the probate court under section  
18 17200.[vii] (Emphasis added).

19 The California Supreme Court held that with this interpretation, when  
20 a plaintiff claims to be a rightful beneficiary of a trust, if the  
21 challenged amendments are deemed invalid, then the plaintiff has  
22 standing to petition the Probate Court under Section 17200.

23 The Court added that this expansive reading of the standing  
24 requirement afforded to trust contests under Section 17200 "not only  
25 makes sense as a matter of judicial economy, but it also recognizes  
26 the probate court's inherent power to decide all incidental issues  
27 necessary to carry out its express powers to supervise the  
28 administration of the trust."

29 Section 17200, subdivision (b)(3) contemplates the court's determination  
30 of "the validity of a trust provision." Plainly, the term "trust provision"  
31 incorporates any amendments to a trust. Section 24, subdivision (c)  
32 defines a "beneficiary" for trust purposes, as "a person who has any  
33 present or future interest, vested or contingent." Assuming plaintiff's  
34 allegations are true, ***she has a present or future interest***, making her a  
35 beneficiary permitted to petition the probate court under section 17200.[vii]  
36 (Emphasis added).."

---

37 <sup>1</sup> Source: <https://keystone-law.com/legal-standing-trust-contests/>

1  
2 The Court cautioned, however, that its ruling in Barefoot did have certain  
3 limitations in its applicability, stating: "Our holding does not allow  
4 individuals with no interest in a trust to bring a claim against the trust.  
5 Instead, we permit those whose well-pleaded allegations show that  
6 they have an interest in a trust — because the amendments  
7 purporting to disinherit them are invalid — to petition the probate  
8 court."

9 Thus, by so holding, the Supreme Court's ruling could potentially exclude  
10 a Decedent's heirs (who were not named as beneficiaries in any prior  
11 version of the Decedent's estate plan, but who would otherwise have a  
12 beneficial interest through intestate succession in the event the Decedent  
13 did not have a valid estate plan) from filing a Section 17200 contest in  
14 Probate Court. Thus, any such contests currently pending by such heirs in  
15 Probate Court may be subject to attack based on the heirs' lack of  
16 standing.

17 Accordingly, the effect of the California Supreme Court's decision  
18 was not to limitlessly expand the universe of potential litigants who  
19 can bring trust contest claims in the future, but rather, to confirm  
20 that Section 17200 can be used by disinherited beneficiaries as it had  
21 been in the past, while leaving open this unresolved issue concerning a  
22 Decedent's heirs.

23 Cal. Prob. Code § 17200 Current through the 2022 Legislative

24 Session is the equivalent of NRS 164.015. Cal. Prob. Code § Section 17200

25 - Petition concerning internal affairs or determine existence; internal affairs of  
26 trust

27 (a) Except as provided in Section 15800, a trustee or beneficiary of a  
28 trust may petition the court under this chapter concerning the  
internal affairs of the trust or to determine the existence of the trust.

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**CERTIFICATE OF SERVICE**

I, Stephen James Robben, declare under penalty of perjury under the law of the State of Nevada that the following is true and correct copy of the filed document. That on November 21, 2022, service of the document was made pursuant to NRCP 5(b) by depositing a email to: F. McClure Wallace, counsel for Respondent, mcclure@wallacemillsap.com

DATED this 21 day of November, 2022

Submitted By: /s/ Stephen James Robben

1 Todd Robben  
2 In Pro per  
3 PO Box 4251  
4 Sonora, CA 95370  
5 Robben.ty@gmail.com  
6 (209)540-7713

RECEIVED

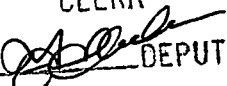
NOV 21 2022

Douglas County  
District Court Clerk

FILED

2022 NOV 21 PM 12:51

BOBBIE R. WILLIAMS  
CLERK

BY  DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9  
10 TODD ROBBERN,  
11 Petitioner

CASE NO.: 2022-PB-00119

PETITIONER'S REQUEST FOR  
SUBMISSION

12  
13 Vs.

14  
15 THE ESTATE OF THOMAS JOSEPH  
16 HARRIS; THOMAS J. HARRIS TRUST,  
17 Deceased,  
18 Respondent.

19  
20 Petitioner requests the Motion to Strike Respondents Unlawful Sur-  
21 reply to be submitted for decision by the court.

22 Respectfully,

23  
24 

25 /s/ Todd Robben

26 November 21, 2022

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1 Case No. 2022-PB-00119

2 Dept. No. II

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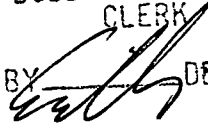
NOV 30 2022

Douglas County  
District Court Clerk

FILED

2022 NOV 30 PM 4:20

BOBBIE R. WILLIAMS  
CLERK

BY  DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS

9 TODD ROBBERN,

10 Petitioner,

11 vs.

ORDER SETTING HEARING

12 THE ESTATE OF THOMAS JOSEPH  
13 HARRIS; THOMAS J. HARRIS TRUST,

14 Respondent.  
14 \_\_\_\_\_/

15 The above-entitled matter is set for:

16 (XX) Oral Argument: *Motion for Summary Judgment; Motion to*  
17 *Dismiss; and Petitioner Todd Robben's Verified Petition to*  
18 *Invalidate the Thomas J. Harris Will and Trust; Petitioner's*  
19 *Request for Appointment of Counsel Pursuant to NRS 136.200;*  
*Emergency Request for Stay of Final Distribution; Peremptory*  
*Challenge to Judge Nathan Tod Young*

20 Time Allowed: 2 hours

21 TO COMMENCE on Friday, January 6, 2023 at the hour of 9:00 a.m.<sup>1</sup>

22 DATED this 30<sup>th</sup> day of November, 2022.

23 \_\_\_\_\_  
24 /s/ Robert E. Estes

25 ROBERT E. ESTES  
26 SENIOR JUDGE  
27  
28

<sup>1</sup> Parties, counsel and witnesses shall appear in-person except as provided by Nevada Supreme Court Rule Part IX.

1 Copies served by mail on November 30<sup>th</sup>, 2022, addressed to:

2 Todd Robben  
3 P.O. Box 4251  
4 Sonora, California 95370

5 F. McClure Wallace, Esq.  
6 510 West Plumb Lane  
7 Reno, Nevada 89509

Erin C. Plante  
Erin C. Plante

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1 Todd Robben  
2 In Pro per  
3 PO Box 4251  
4 Sonora, CA 95370  
5 Robben.ty@gmail.com  
6 (209)540-7713

**RECEIVED**

DEC - 8 2022

Douglas County  
District Court Clerk

FILED

2022 DEC -8 PM 3:48

BOBBIE R. WILLIAMS  
CLERK

BY *[Signature]* DEPUTY

7 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9  
10 TODD ROBBEN,  
11 Petitioner

CASE NO.: 2022-PB-00119

12  
13 Vs.

PETITIONER'S MOTION FOR A  
DECISION ON THE PLEADINGS;  
PETITIONER'S MOTION DECLINING  
ORAL ARGUMENT

14  
15 THE ESTATE OF THOMAS JOSEPH  
16 HARRIS; THOMAS J. HARRIS TRUST,  
17 Deceased,  
18 Respondent.

19  
20 Petitioner, Todd Robben, is in receipt of the November 30<sup>th</sup>, 2022 order  
21 setting a hearing for oral arguments on January 06, 2023 at 9:00am in this  
22 instant case.

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24  
25 This Petitioner nor the Respondent has requested oral arguments  
26 pursuant to Ninth Judicial District Court Rule (NJDCR) 6(e) "Ninth Judicial District  
27 Court Rule (NJDCR) 6(e) states that decisions on all motions will be rendered  
28

1 without oral argument unless oral argument is requested by the court or the  
2 parties. Moreover, District Court Rule 13(1) requires that all motions include a  
3 notice of the motion setting the matter on the court law and motion calendar. "  
4 Garrettson v. State, 967 P. 2d 428 - Nev: Supreme Court 1998.  
5

6 The Petitioner has made his best arguments on the pleadings and he is  
7 without counsel to present oral argument against the Respondent who is  
8 represented by counsel. The oral argument puts the Petitioner at a disadvantage  
9 since the court has not appointed counsel to the Petitioner pursuant to NRS  
10 136.200.  
11

12 With no tentative ruling this Petitioner is not clear on what if any issue  
13 needs to be narrowed down. The law and the facts are presenting in writing.  
14 Any issues with the Petitioner's witnesses or their affidavits can be resolved if the  
15 judge needs notarized affidavits.  
16

17 It appears the order allows for a telephonic hearing pursuant to SCR Rule  
18 IX which appears to address criminal remote telephonic hearings, not civil or  
19 probate.  
20

21 The Petitioner did request the Respondent to stipulate to a decision on the  
22 pleadings and they refused. At the hearing in the other case 2021 PB00034 the  
23 Respondent needed to judge to assist its losing argument with the judge  
24 interjecting that the Petitioner's proof/evidence was "hearsay". This was made by  
25 the judge, not the Respondent and thus the judge acted as a advocate amd  
26 lawyer for the Respondent and violated the Petitioner's due-process in doing so  
27  
28

1 since there was no prior argument asserted by the Respondent that the evidence  
2 was hearsay. In fact, the Respondent has conceded and not even argued that in  
3 this instant case knowing the Petitioner prevails on the merits.  
4

5 The Nevada Judicial Code of Conduct does state a judge must provide a  
6 reasonable accommodations for self-represented litigants. The Oral argument is  
7 causing a delay and driving up the costs for both parties with the Respondent  
8 paying lawyers fees and Petitioner having to take time and his two witnesses  
9 having to also take time to attend a hearing which can be avoided because  
10 everything is written in the pleadings. There is not bench or jury trial to decide  
11 facts so the hearing and oral argument are not needed. The Petitioner would  
12 only recite his pleadings as will the Respondent.  
13

14 **Nevada Judicial Code of Conduct Canon Rule 2.2.** Impartiality and  
15 Fairness. A judge shall uphold and apply the law, and shall perform all  
16 duties of judicial office fairly and impartially.

17 **COMMENT**

18 [1] To ensure impartiality and fairness to all parties, a judge must be  
19 objective and open-minded.

20 [2] Although each judge comes to the bench with a unique  
21 background and personal philosophy, a judge must interpret and apply the  
22 law without regard to whether the judge approves or disapproves of the  
law in question.

23 [3] When applying and interpreting the law, a judge sometimes may  
24 make good-faith errors of fact or law. Errors of this kind do not violate this  
Rule.

25 [4] It is not a violation of this Rule for a judge to make reasonable  
26 accommodations to ensure self-represented litigants the opportunity  
27 to have their matters fairly heard.  
28

1  
2  
3 **Rule 2.5. Competence, Diligence, and Cooperation.**

4 (A) A judge shall perform judicial and administrative duties  
5 competently and diligently.

6 (B) A judge shall cooperate with other judges and court officials in the  
7 administration of court business.

8 **COMMENT**

9 [1] Competence in the performance of judicial duties requires the legal  
10 knowledge, skill, thoroughness, and preparation reasonably necessary to  
11 perform a judge's responsibilities of judicial office.

12 [2] A judge should seek the necessary docket time, court staff,  
13 expertise, and resources to discharge all adjudicative and administrative  
14 responsibilities.

15 [3] Prompt disposition of the court's business requires a judge to  
16 devote adequate time to judicial duties, to be punctual in attending court  
17 and expeditious in determining matters under submission, and to take  
18 reasonable measures to ensure that court officials, litigants, and their  
19 lawyers cooperate with the judge to that end.

20 [4] In disposing of matters promptly and efficiently, a judge must  
21 demonstrate due regard for the rights of parties to be heard and to  
22 have issues resolved without unnecessary cost or delay. A judge  
23 should monitor and supervise cases in ways that reduce or eliminate  
24 dilatory practices, avoidable delays, and unnecessary costs.  
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Respectfully signed under penalty of perjury,

/s/ Todd Robben

December 08, 2022

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**CERTIFICATE OF SERVICE**

I, Stephen James Robben, declare under penalty of perjury under the law of the State of Nevada that the following is true and correct copy of the filed document. That on December 08, 2022, service of the document was made pursuant to NRCP 5(b) by depositing a email to: F. McClure Wallace, counsel for Respondent, mcclure@wallacemillsap.com

DATED December 08, 2022

Submitted By: /s/ Stephen James Robben



Wallace & Millar  
510 W Plumb Ln., Ste. A, Reno, Nevada / (775) 683-9599

Case No.: 22-PB-00119

Dept. No.: II

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DEC 15 2022

Douglas County  
District Court Clerk

FILED

2022 DEC 15 PM 4:13

BOBBIE R. WILLIAMS  
CLERK

BY  DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS

TODD ROBBEN,

Petitioner;

vs.

THE ESTATE OF THOMAS J.  
HARRIS and THE THOMAS J.  
HARRIS TRUST,

Respondents.

THE THOMAS J. HARRIS TRUST'S  
OBJECTION & RESPONSE TO  
TODD ROBBEN'S PETITION TO  
INVALIDATE THE TRUST

The Honorable Tara Flanagan, Trustee of the Thomas J. Harris Trust, respectfully files this Objection and Response to Petitioner Todd Robben's Verified Petition to Invalidate the Thomas J. Harris Will and Trust; Request for Appointment of Counsel Pursuant to NRS 136.200; Emergency Request for Stay of Final Distribution; and Peremptory Challenge to Judge Nathan Tod Young filed on or about July 20, 2022 (the "Petition") on behalf of the Thomas J. Harris Trust. This Objection and Response is filed pursuant to NRS 155.160. In objecting and responding to the Petition, the Trustee states and alleges the following:

1. Petitioner, Todd Robben ("Petitioner") first claims he is a creditor of the Trust. The Trust denies Petitioner is a creditor of the Trust and denies it has any monetary liability to Petitioner.

1       2. Petitioner claims he is an interested person in the Trust. The Trust denies  
2 Petitioner is an interested person in the Trust because he is not a prior trustee or  
3 beneficiary of any version of the Trust Instrument in dispute before the Court. See  
4 NRS 132.390(1)(d).

5       3. Petitioner claims the Trust is the product of undue influence perpetrated by  
6 Jeff D. Robben. The Trust denies any allegation that Jeff D. Robben unduly  
7 influenced the Settlers of the Trust.

8       4. The Trust admits Petitioner was the son of Olga Harris and stepson of Thomas  
9 J. Harris.

10       5. The Trustee lacks knowledge or information sufficient to form a belief about  
11 whether there is a prior Trust Instrument entitled the Thomas Joseph and Olga  
12 Harris Living Trust. Similarly, the Trustee lacks knowledge or information sufficient  
13 to form a belief about whether Petitioner was a beneficiary of the purported Thomas  
14 Joseph and Olga Harris Living Trust. However, the Trustee denies the Thomas  
15 Joseph and Olga Harris Living Trust is a prior version of the Thomas J. Harris Trust.

16       6. The Trustee objects to the Court taking judicial notice of Exhibit A to the  
17 Petition because the request does not comport with NRS 47.130-47.140.

18       7. Petitioner's request for a peremptory challenge against the Honorable Nathan  
19 Tod Young is moot as Judge Young no longer presides over this matter.

20       8. The Trustee denies Petitioner's allegation that Judge Young's orders are null  
21 and void. The Trustee further denies any statement regarding bias or impropriety  
22 alleged against Judge Young in any proceeding related to the Will or Trust of Thomas  
23 J. Harris.

24       9. The Trustee denies Petitioner has a right to appointment of counsel under NRS  
25 136.200 because NRS 136.200 applies to the probate of wills, while this matter relates  
26 to a contest to the validity of the Trust. Probate of the Thomas J. Harris Will was  
27 completed in a separate matter before the Court and, therefore, Petitioner's request  
28 for counsel in this Trust dispute is legally erroneous since NRS 136.200 only applies

1 to probate matters, not trust contests. Regardless, Petitioner is not entitled to  
2 appointment of counsel because he is not an interested person in the Will or the Trust  
3 of Thomas J. Harris.

4 10. The Trustee denies any assets were stolen from the Trust or the Estate and,  
5 therefore, Petitioner's request for an accounting of alleged stolen assets should be  
6 denied.

7 11. The Trustee denies the Trust Corpus is worth an excess of \$5,000,000.

8 12. The Trustee denies she, or her legal counsel, have committed theft or fraud  
9 from the Trust and asserts this statement is made in violation of NRCP 11, meriting  
10 sanctions against the Petitioner as deemed appropriate by the Court.

11 13. The Trustee objects to any stay of Trust mandated distributions to hold Trust  
12 funds in reserve for Petitioner because Petitioner has no beneficial interest in the  
13 Trust.

14 14. The Trustee denies Petitioner has a prima facie case of undue influence against  
15 Jeff Robben, who is now deceased.

16 15. The Trustee admits the Ninth Judicial District Court of the State of Nevada  
17 has jurisdiction to decide this matter.

18 16. The Trustee denies the Petitioner timely filed his Trust Contest.

19 17. The Trustee denies Petitioner is entitled to notice of any Trust or Estate  
20 proceeding because he is not an interested person, beneficiary or trustee of any  
21 version of the Trust or of the Estate.

22 18. The Trustee denies any transfer of the Settlor's or the Trust's assets were the  
23 product of fraud or theft. The Trustee re-iterates Petitioner has no standing to pursue  
24 said claims regardless because even if he prevailed, he would receive nothing from  
25 the Estate as he is not an intestate beneficiary of the Estate of Thomas J. Harris,  
26 rendering this entire proceeding nothing more than advisory without any benefit or  
27 damage inuring to Petitioner.  
28

1 19. The Trustee denies all of the libelous statements Petitioner makes against the  
2 Honorable Nathan Tod Young. The Trustee further posits all of the statements  
3 related to disqualification of Judge Young are moot as the Honorable Judge Young is  
4 not the presiding Judge over this matter.

5 20. The Trustee denies Petitioner is an interested person in the Trust. Specifically,  
6 the Petition alleges the Trust is invalid as a product of undue influence. NRS  
7 132.390(1)(d) defines who are interested persons in a trust contest, which are limited  
8 to prior beneficiaries or trustees of the Trust in dispute. Petitioner is not a prior  
9 beneficiary or trustee of the Trust he is seeking to invalidate and, therefore, is not an  
10 interested person with standing to proceed with a contest of the Trust.

11 21. The Trustee denies Petitioner is an interested person in the Estate because he  
12 is not a beneficiary of the Will, nor is he an intestate beneficiary of the Estate of  
13 Thomas J. Harris, which the Court has already determined in Case No. 2021-PB-  
14 00034. The Trustee further denies Petitioner is a beneficiary of a prior Will of  
15 Thomas J. Harris, an issue already determined by the Court in Case No. 2021 PB  
16 00034.

17 22. The Trustee denies Petitioner may seek Declaratory Relief under NRS 34.040  
18 related to the Trust or the Will of Thomas J. Harris.

19 23. The Trustee denies any stepchild of Thomas J. Harris would be an intestate  
20 beneficiary of his Estate. The Trustee denies Thomas J. Harris had a prior Will  
21 naming Petitioner as a beneficiary. The Trustee denies there was a prior version of  
22 the Thomas J. Harris Trust naming Petitioner as a beneficiary or trustee.

23 24. The Trustee denies Petitioner is entitled to an accounting of the Trust because  
24 he is not a beneficiary or interested person in the Trust.

25 25. The Trustee lacks knowledge or information sufficient to form a belief about  
26 all the statements made in the Petition related to the personal relationships of Jeff  
27 D. Robben with the Petitioner, his mother and Thomas J. Harris. However, the  
28

1 Trustee denies the Trust or Will of Thomas J. Harris are the product of undue  
2 influence perpetrated by Jeff D. Robben or any other person.

3 26. The Trustee lacks knowledge or information sufficient to form a belief about  
4 the statements made in the Petition related to the personal life, medical history and  
5 career of Jeff D. Robben.

6 27. The Trustee denies the Trust is a part of a conspiracy to defraud Petitioner  
7 from Trust or Estate Assets.

8 28. The Trustee denies any unlawful conduct alleged against her personally, or  
9 any violation of judicial ethics.

10 29. The Trustee denies NRS 136.240 may be employed in matters related to the  
11 Trust because that statute is limited in application to wills, not trusts.

12 30. The Trustee denies any statements of wrongdoing alleged in the prior Estate  
13 proceeding and further posits Petitioner is barred from making such allegations in  
14 this Case as all probate related issues alleged by Petitioner were litigated in a  
15 separate matter – 2021-PB-00034.

16 31. The Trustee denies Exhibit A to the Petition gives Petitioner standing as an  
17 interested person in the Trust because the Letter does not state Petitioner is a  
18 beneficiary of a prior version of the Thomas J. Harris Trust, rendering it irrelevant  
19 to whether Petitioner is an interested person in the Trust.

20 32. The Trustee denies all factual allegations in the Petition not specifically and  
21 expressly admitted herein. The Trustee denies and objects to all forms of relief  
22 requested in the Petition. The Trustee posits the Petition must be summarily  
23 adjudicated against Petitioner for reasons addressed separately in motion practice  
24 before the Court.

25 ///

26 ///

27 ///

28 ///

1       **WHEREFORE**, the Trustee requests the following relief from the Court:

- 2       a) For an order and/or judgment denying all forms of relief requested by  
3       Petitioner.
- 4       b) For an order and/or judgment dismissing, and ruling against, all causes of  
5       action or claims alleged by Petitioner in his Petition signed July 20, 2022.
- 6       c) For an order and/or judgment holding the Petitioner is not an interested person  
7       in the Trust.
- 8       d) For an order and/or judgment holding Petitioner lacks standing to bring any  
9       future claims against or related to the Trust to avoid further expenditure of  
10      Trust resources defending against vexatious claims filed by Petitioner who has  
11      no beneficial interest in the Trust.
- 12      e) For attorney's fees as allowed by statute, common law, equity, and/or the  
13      inherent powers of the Court.
- 14      f) For costs as allowed by statute, common law, equity and/or the inherent powers  
15      of the Court.
- 16      g) For any other relief the Court deems just and appropriate.

17  
18                   **AFFIRMATIVE DEFENSES**


- 19      1. Petitioner lacks standing to bring the claims, causes of action and requests for  
20      relief alleged in his July 20, 2022 Petition.
- 21      2. Petitioner is not an interested person or beneficiary of the Trust.
- 22      3. The Petition is barred by the applicable statute of limitations.
- 23      4. The Petition is barred by issue preclusion, claim preclusion, and/or res  
24      judicata.
- 25      5. The Petition is barred by estoppel.
- 26      6. The Petition is barred by the doctrine of unclean hands and/or laches.
- 27  
28

1 7. The Trust reserves the right to assert any additional affirmative defenses that  
2 arise as a result of the evidence presented in this matter, as well as the right  
3 to amend this Objection to assert said additional affirmative defenses.

4 **AFFIRMATION**

5 The undersigned affirms this document does not contain the social security  
6 number or legally private information of any person.

7  
8 DATED this 14th day of December 2022.

9  
10 By:   
11 F. McClure Wallace, Esq.  
12 Nevada State Bar No. 10264  
13 WALLACE & MILLSAP  
14 510 W. Plumb Lane, Suite A  
15 Reno, Nevada 89509  
16 Ph: (775) 683-9599  
17 mcclure@wallacemillsap.com  
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**CERTIFICATE OF SERVICE**

The undersigned certifies the foregoing Objection was served upon Petitioner Todd Robben via United States Mail at the address of P.O. Box 4251 Sonora, California 95370. The foregoing Objection was placed in the mail for service on the date shown below.

Dated this 14th day of December 2022.

By: 

Caroline Carter, Paralegal