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as Successor Trustee of the
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IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE
OF THOMAS JOSEPH HARRIS,
DECEASED,

Supreme Court Case No.
86096

District Court Case No.
2022-PB-00119

TODD ROBBEN,

Appellant,

vs.

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

Respondents.

_____/

REPLY IN SUPPORT OF RESPONDENTS' MOTION TO

DISMISS APPEAL

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

The Estate of Thomas J. Harris, by and through its Personal Representative, the Honorable Tara M. Flanagan (the "Estate"), and the Thomas J. Harris Trust, by and through its Successor Trustee, Ms. Flanagan, (the "Trust") jointly present this Reply in support of their previously filed Motion to Dismiss Todd Robben's Appeal pursuant to NRAP 3A(a), 4(a)(1), 14(f), and 27(a).

The Estate and Trust filed their Motion to Dismiss Mr. Robben's Appeal on March 22, 2023 (the "Motion"). The Motion seeks dismissal of Mr. Robben's Appeal on two separate jurisdictional grounds: 1) Mr. Robben has failed to properly and timely file a notice of appeal, and 2) Mr. Robben has no standing to bring an appeal before this Court because he is not an interested person to the Trust or Estate. On April 27, 2023, Mr. Robben filed his Amended Objections to Respondent's Motion to Dismiss Appeal (the "Objection"). The Respondents now reply.

II. LAW & ARGUMENT

a. MR. ROB BEN FAILED TO OPPOSE A BASIS FOR DISMISSAL

A failure to oppose a motion to dismiss is a concession to the merits of the motion. *See Forster v. Dingwell*, 126 Nev. 56, 66, 227 P.3d 1042,

1049 (2010). Here, Mr. Robben's Objection does not oppose one of the two grounds for dismissal presented in the Motion. Namely, Mr. Robben did not oppose or address that his Notice of Appeal was filed prior to the District Court entering its February 8, 2023 Order. As such, this Court may construe Mr. Robben's Objection as conceding the Respondents' Motion is meritorious, and on that basis alone grant the Respondents' Motion and dismiss Mr. Robben's Appeal. *Id.*; *see also* DCR 13(3).

b. MR. ROBZEN'S OBJECTION IS IMPROPER

Mr. Robben's Objection is substantively improper. Mr. Robben's Objection sets forth numerous arguments outside the limited scope of Respondents' Motion. Stated differently, Mr. Robben's Objection wrongfully makes arguments reserved for an opening brief, if such an opening brief were ever allowed. To be clear, Respondents object to, oppose, and deny all arguments set forth in Mr. Robben's Objection, and will respond to any such substantive arguments in a future responsive brief, if one is ever required.

c. MR. ROBZEN'S OBJECTION IS INCORRECT

As stated above, Respondents object and/or oppose all arguments made in Mr. Robben's Objection. In so doing, the Respondents specifically address limited portions of Mr. Robben's Objection.

First, Mr. Robben was not entitled to an appointment of counsel in this matter. NRS 136.200 states a Court *may* appoint Counsel in a matter where a will is offered for probate for an interested person who lives outside the state of Nevada. *See* NRS 136.200. In the underlying District Court Case no will was offered for probate, and Mr. Robben has been found (again) to not be an “interested person” to either the Estate or the Trust. Thus, NRS 136.200 is entirely inapplicable.

Next, Mr. Robben’s citation to *Lee v. GNLV* provides an incorrect recitation of the holding in that case. In *Lee* the Nevada Supreme Court made clear “a final judgment is one that disposes of all issues presented in the case, and leaves nothing for future consideration of the [district] court, except for post-judgment issues such as attorney’s fees and costs.” 116 Nev. 424, 996 P.2d 416 (2000). While the reason for Mr. Robben’s citation to *Lee v. GNLV* is unclear, the Respondents clarify the holding from that case through the quote above, and in doing so confirm the February 8, 2023 Order of the District Court is a final order. However, the oral pronouncement of the District Court at the January 6, 2023 hearing was not a final order. Mr. Robben filed his Notice of Appeal after the Court’s oral pronouncement, but before entry of the District Court’s

February 8, 2023 Order, making Mr. Robben's Notice of Appeal untimely and requiring dismissal of Mr. Robben's appeal. *See* NRAP 4(a)(1).¹

Finally, Mr. Robben argues he presented evidence to the District Court to show he was an interested person, that his purported evidence was admissible, and the Respondent conceded that fact. *See* Objection pg. 10, lns. 14-24. This statement is false, as the Respondents refuted any effort by Mr. Robben to improperly present inadmissible hearsay evidence to the District Court. Indeed, the basis of the Trust's Motion for Summary Judgment is that Mr. Robben did not present, and could not present, any admissible evidence in support of his Petition. After full briefing of the Trust's Motion, the District Court decisively agreed with the Trust's position in its February 8, 2023 final Order stating:

Once the Trust moved for summary judgment by pointing out an absence of evidence to support the Petitioner's claims, the burden of production shifted to Petitioner to refute the Motion for Summary Judgment with admissible evidence creating a genuine issue of fact regarding whether Petitioner is an interested person in the Trust. **Petitioner failed to produce any admissible evidence demonstrating he is an interested person in the Trust** as a current or prior beneficiary of the Trust; current, prior, or alternate trustee of the Trust; holder of a power of appointment, prior holder of a power of appointment, or heir of the Estate should the entire Trust be invalidated.

¹ *See also* *Zugel by Zugel v. Miller*, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983); *Rust v. Clark Cnty. Sch. Dist.*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987).

See **Exhibit 1**, pg. 8, ln. 24 – pg. 9, ln 4 (emphasis added).

Stated differently, Mr. Robben has no personal rights nor any right of property in the Trust or Estate which could be adversely or substantially affected by the District Court's Order. *See Hughes' Estate v. First Nat. Bank of Nevada*, 96 Nev. at 180. As such, Mr. Robben was not aggrieved by the District Court's Order and lacks standing to bring an appeal. NRAP 3A(a).

III. CONCLUSION

The Respondents respectfully request the Court dismiss Todd Robben's Appeal. The District Court determined Mr. Robben is not an interested person to either the Estate or Trust. As such, pursuant to NRAP 3A(a) he is not an aggrieved party and lacks standing to bring an appeal. And, even if Mr. Robben had standing to appeal the District Court's February 8, 2023 final Order, which he does not, Mr. Robben failed to file a proper and timely notice of appeal after entry of the District Court's February 8, 2023 Order in violation of NRAP 4(a)(1). Consequently, Mr. Robben has failed to divest the District Court of jurisdiction over this case. On these grounds, the Respondents request this Court enter an order dismissing Mr. Robben's appeal.

*** SIGNATURE PAGE ***

DATED this 3rd day of May 2023.

By: /s/ F. McClure Wallace.
F. McClure Wallace, Esq.
Patrick R. Millsap, Esq.
Attorneys for Tara M. Flanagan, as
Personal Representative for the
Estate of Thomas J. Harris, and
as Successor Trustee of the
Thomas J. Harris Trust

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am an employee of *WALLACE & MILLSAP*, that I am over the age of eighteen (18) years, and that I am not a party to, nor interested in this action. On this date, I caused to be served a true and correct copy of the foregoing document on all parties to this action by placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada postage paid, following the ordinary course of business practices as follows:

Todd Robben
P.O. Box 4251
Sonora, California 95370

The foregoing document was also served upon Todd Robben through the Nevada Supreme Court's e-filing system.

DATED this 3rd day of May 2023.

By: /s/ *Caroline Carter*.

Employee of Wallace & Millsap

LIST OF EXHIBITS

Exhibit 1: Order Granting Motion for Summary Judgment;
Motion to Dismiss; & Deeming Petitioner a Vexatious
Litigant

Exhibit 1

Exhibit 1

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Case No.: 22-PB-00119

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BOBBIE R. WILLIAMS
CLERK

F. SHOEMAKER
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.

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT; MOTION TO
DISMISS; & DEEMING PETITIONER
A VEXATIOUS LITIGANT**

Petitioner Todd Robben (the "Petitioner") initiated this case by filing his Petition to Invalidate the Will and Trust of Thomas J. Harris signed on July 20, 2022. Both the Estate of Thomas J. Harris (the "Estate") and The Thomas J. Harris Trust (the "Trust") filed written Objections to the Petition. In addition to objecting to the Petition, the Estate moved to dismiss the Petition (the "Motion to Dismiss") and the Trust moved for summary judgment against the Petition (the "Motion for Summary Judgment"). The Petitioner filed Oppositions to both the Trust's Motion for Summary Judgment and the Estate's Motion to Dismiss. In addition, the Petitioner attempted to supplement his Oppositions without leave of court in various filings, and also moved to strike both the Trust's Motion for Summary Judgment and the Estate's Motion to Dismiss. The Court considered all of the briefings, together with the Petition and the Objections thereto, and ordered oral argument on the Motion for Summary Judgment and Motion to Dismiss on January 6, 2023 commencing at 9 a.m.

1 In advance of the oral argument, Petitioner filed papers with the Court
2 requesting the Court decide the Motion for Summary Judgment and Motion to
3 Dismiss *without* oral argument. In other words, Petitioner effectively moved to
4 vacate the oral argument ordered by the Court on each Motion. The Court did not
5 vacate the hearing date, and required the Trust, the Estate, and the Petitioner to
6 appear for the hearing.

7 The oral argument commenced on January 6, 2023 at 9 a.m. as scheduled. The
8 Court allowed Petitioner to appear by Zoom pursuant to his own request filed with
9 the Court. The Trust and the Estate, by and through its Counsel F. McClure Wallace,
10 appeared in person at the oral argument. At the inception of the argument, the Court
11 reconfirmed Petitioner's request to decide the Motion for Summary Judgment and
12 Motion to Dismiss the Petition without oral argument. In addition to the Petitioner
13 requesting the Court decide the Motion for Summary Judgment and Motion to
14 Dismiss without oral argument, the Court confirmed the Estate and Trust had no
15 objection to determining both Motions without oral argument. Having personally
16 confirmed the Petitioner requested decision on each Motion absent oral argument,
17 and considering the papers and pleadings on file before the Court, the Court finds
18 good cause to **GRANT** the Trust's Motion for Summary Judgment and Estate's
19 Motion to Dismiss based on the findings and conclusions of law stated below.

20 **I. Petitioner's Motions to Strike the Motion for Summary Judgment and**
21 **Motion to Dismiss are DENIED.**

22 The Petitioner moved to strike both the Motion for Summary Judgment and
23 Motion to Dismiss the Petition based on alleged violations of D.C.R. 13 and the Rules
24 of Civil Procedure. More specifically, the Petitioner seemingly argues the Motion for
25 Summary Judgment and Motion to Dismiss should be stricken from the record
26 because the Motions do not contain a "notice of motion" as required by D.C.R. 13(1).
27 Petitioner's argument is wrong. D.C.R. 5 makes clear the Local Rules of the Ninth
28 Judicial District Court ("NJDCR") apply even when inconsistent with the D.C.R.

1 Therefore, NJDCR supersedes the D.C.R. when they contain inconsistent provisions.
2 NJDCR 6 contains no "notice of motion" requirement. In fact, NJDCR 6 states
3 motions shall be decided without oral argument unless oral argument is ordered by
4 the Court or requested by the Parties.

5 In this case, no Party requested oral argument. The Court ordered oral
6 argument on its own initiative. Therefore, the Court finds the Motion for Summary
7 Judgment and Motion to Dismiss were not required to contain a notice of motion
8 contemplated by D.C.R. 13 because NJDCR 6 states the Motions will be decided
9 without oral argument unless ordered by the Court. The Court ordered oral
10 argument, Petitioner received lawful notice of the oral argument ordered by the
11 Court, Petitioner filed briefs in regard to the oral argument, including requesting the
12 Court decide the Motions without oral argument, and then Petitioner appeared at the
13 oral argument. Therefore, the Court finds Petitioner had lawful notice of the oral
14 argument hearing scheduled on January 6, 2023. The Court finds the Motion for
15 Summary Judgment and Motion to Dismiss were not required to contain a "notice of
16 motion" or some type of notice of the hearing under NJDCR 6 since the Court ordered
17 oral argument on its own initiative after the Motions had been filed. Consequently,
18 Petitioner's Motions to Strike the Motion for Summary Judgment and Motion to
19 Dismiss are **DENIED**. Having determined the Motion for Summary Judgment and
20 Motion to Dismiss are properly before the Court, the Court addresses each Motion in
21 turn.

22 **II. The Estate's Motion to Dismiss the Petition is GRANTED.**

23 The Estate moved to dismiss the Petition to invalidate the Will of Thomas J.
24 Harris in this case. The Estate argues the Petitioner is not an interested person in
25 the Will and Estate under NRS 132.185 and, therefore, lacks standing to contest the
26 validity of the Will. Additionally, the Estate contends the Court previously
27 determined Petitioner was not an interested person in the Will and Estate in a prior
28

1 action, implicating the doctrine of claim preclusion. The Court finds the Estate's
2 arguments persuasive.

3 More specifically, the Estate of Thomas J. Harris was previously administered
4 before the Ninth Judicial District Court of the State of Nevada, In and For the County
5 of Douglas, as Case No. 2021 PB 00034 (the "Probate Case"). Petitioner appeared in
6 the Probate Case and made various allegations of misconduct and fraud in
7 administration of the Estate and formation of the Will. Petitioner therefore requested
8 the Court continue approval of the Estate's request for final distribution of the Estate
9 to permit Petitioner additional time to produce evidence substantiating his
10 allegations. The Estate opposed the request because Petitioner was not an interested
11 person in the Will or Estate with standing to litigate the validity of the Will or
12 administration of the Estate. The Court granted Petitioner a continuance to produce
13 evidence demonstrating he is an interested person in the Will and/or Estate.
14 Petitioner produced no admissible evidence demonstrating he is an interested person
15 in the Will or Estate in the Probate Case. Petitioner produced no admissible evidence
16 reflecting fraud, theft, or embezzlement from the Estate in the Probate Case.
17 Consequently, the Court in the Probate Case approved the Estate's final accounting
18 and request for final distribution of the Estate, and in so doing, determined Petitioner
19 was not an interested person in the Estate and/or Will. *See* Order filed in the Probate
20 Case on June 22, 2022. Petitioner appealed this finding to the Nevada Supreme
21 Court, who dismissed the Petitioner's appeal. Therefore, this Court finds the Probate
22 Court determined Petitioner is not an interested person in the Estate and/or Will,
23 thereby precluding Petitioner from contesting the Will. More specifically, the Court
24 finds the Petition is barred by the elements of both the doctrine of claim preclusion,
25 as well as issue preclusion. Thus, the Petition to Invalidate the Will is barred by the
26 doctrine of claim preclusion, or in the alternative, is barred by the doctrine of issue
27 preclusion.

1 Further, even if the Petitioner were an interested person in the Decedent's
2 Estate, which he is not, this Court did not oversee the Probate Case. As such, this
3 Court lacks subject matter jurisdiction over the Decedent's Will per NRS 137.080.

4 Therefore, the Motion to Dismiss the Petition to Invalidate the Will of Thomas
5 J. Harris is **GRANTED**.

6 **III. The Trust's Motion for Summary Judgment is GRANTED.**

7 The Petitioner, Todd Robben, has moved this Court to declare him an
8 "Interested Person" pursuant to NRS 132.185, and thereby standing to challenge the
9 Thomas J. Harris Trust. Petitioner contends that he has made a *prima facie* showing
10 of "undue influence" upon the testator and as a result, the Respondent Trustee has
11 the burden of rebutting the validity of the Trust provisions by clear and convincing
12 evidence. Petitioner cites to In re Estate of Bethurem, 129 Nev. 869, 871, (2013),
13 which states, "A rebuttable presumption of undue influence is raised if the testator
14 and the beneficiary shared a fiduciary relationship, but undue influence may also be
15 proved without raising this presumption." Petitioner also attempts to invoke, without
16 citing to, NRS 155.097, which provides in pertinent part:

- 17
- 18 1. Regardless of when a transfer instrument is made, to the extent
19 the court finds that a transfer was the product of fraud, duress or
20 undue influence, the transfer is void and each transferee who is
21 found responsible for the fraud, duress or undue influence shall
22 bear the costs of the proceedings, including, without limitation,
23 reasonable attorney's fees.
 - 24 2. Except as otherwise provided in subsection 4 and NRS 155.0975,
25 a transfer is presumed to be void if the transfer is to a transferee
26 who is:
 - 27 (a) The person who drafted the transfer instrument;
 - 28 (b) A caregiver of the transferor who is a dependent adult;
 - (c) A person who materially participated in formulating the
dispositive provisions of the transfer instrument or paid
for the drafting of the transfer instrument; or
 - (d) A person who is related to, affiliated with or subordinate
to any person described in paragraph (a), (b) or (c).
 3. The presumption created by this section is a presumption
concerning the burden of proof and may be rebutted by proving,

1 by clear and convincing evidence that the donative transferee was
2 not the product of fraud, duress or undue influence.

3 Petitioner has declared that he has successfully raised a rebuttable
4 presumption of the undue influence by citing Bethurem and the other categories of
5 those capable of actionable undue influence (NRS 155.097(2)(a)-(d)). He has failed to
6 demonstrate and asserts, "as a matter of law," that he is an interested person.
7 However, Petitioner has failed to demonstrate that the above-cited authority apply
8 to the facts of this case or statute; a legal issue cannot be raised by doing nothing
9 more than quoting a case statute, it must be supported by some admissible,
10 competent, and relevant evidence.

11 In Bethurem, supra, two stepsisters challenged a will, amended, removing
12 them as beneficiaries. They alleged that an aunt had, by undue influence, caused the
13 decedent to disfavor them and remove them from the will. The aunt became a
14 beneficiary. Other evidence showed that the aunt had admitted to being a caretaker,
15 that there was ill-will between the aunt and the stepsisters, and that the aunt
16 induced another to draft the amended will. Neither the probate master nor the trial
17 court shifted the burden of proof to the respondent to rebut by clear and convincing
18 evidence the presumption of undue influence.

19 After trial, the court found that undue influence caused the revision of the will
20 and reinstated the petitioners as beneficiaries. The Supreme Court reversed holding
21 that:

22 ...influence resulting merely from [a] family relationship is not by
23 itself unlawful, and there is no indication in the record that any
24 influence [which] may have [been] exercised prevented [the testator]
from making his own decisions regarding his will

25 Bethurem, 129 Nev. At 877.

26 The Supreme Court has also held that "[a] presumption of undue influence
27 arises when a fiduciary relationship exists and the fiduciary benefits from the
28 questioned transaction." Bethurem, at 874, quoting In re Jane tiffany Living Trust

1 2001. 124 Nev. 74, 78 (2008) (addressing undue influence in the context of an attorney
2 receiving an inter vivos transfer from a client). Thus, the shift in the burden of proof
3 contemplated by NRS 155.097(3) may occur when a challenger establishes the
4 existence of a fiduciary or confidential relationship, and some evidence, at least, of
5 undue influence.

6 In the instant case, the Petitioner has produced no evidence that any other
7 beneficiary of the Thomas Harris Trust was the decedent's caretaker, fiduciary,
8 drafter of the transfer instrument, or materially participated in formulating any
9 dispositive provisions of the transfer instrument. See 155.097(2). Petitioner has
10 submitted no evidence to this Court whatsoever that the testator was incompetent,
11 infirm, needed a caretaker, or any other condition that might make him susceptible
12 to undue influence. Indeed, there is no evidence in the entire record of any fiduciary
13 relationship, caretakers, infirmity, or incompetency. The Petitioner has stated in his
14 petition that he can produce two, and possibly three, witnesses (which includes
15 himself) to show that he was a beneficiary of the a previous will or trust, and that
16 there was animosity between himself and his brother (a deceased beneficiary to the
17 Harris Trust). For approximately fifteen months he has failed to produce any
18 evidence that he was a previous beneficiary of any will or trust. Petitioner has failed
19 to demonstrate the existence of any of the relationships described above between the
20 testator and a beneficiary of the Harris Trust, he has likewise failed to establish a
21 presumption of undue influence for the respondent to rebut.

22 As the Supreme Court stated in Bethurem at 876, "in the absence of a
23 presumption, a will contestant must establish the existence of undue influence by a
24 preponderance of proof." Petitioner has also failed to make such a showing. He has
25 failed to demonstrate that he was a beneficiary of any previous trust, and has failed
26 to produce any admissible evidence at all.

27 Accordingly, this Court finds that Petitioner, Todd Robben, is not an interested
28 person and has no standing to contest the Thomas J. Harris Trust. While the finding

1 that Petitioner has no standing to contest the Harris Trust may make a motion for
2 summary judgment moot, the Court will nevertheless address Respondent's motion.

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. In this case, Petitioner would bear the burden of
20 persuasion at trial to invalidate the Trust.

21 Analogous to the Will, Petitioner must be an interested person in the Trust to
22 contest its validity. *See* NRS 164.015. The Trust moved for summary judgment
23 against the Petition to Invalidate the Trust because Petitioner is not an interested
24 person in the Trust under NRS 132.185 and NRS 132.390(1)(d). Once the Trust
25 moved for summary judgment by pointing out an absence of evidence to support the
26 Petitioner's claims, the burden of production shifted to Petitioner to refute the Motion
27 for Summary Judgment with admissible evidence creating a genuine issue of fact
28 regarding whether Petitioner is an interested person in the Trust. Petitioner failed

1 to produce any admissible evidence demonstrating he is an interested person in the
2 Trust as a current or prior beneficiary of the Trust; current, prior, or alternate trustee
3 of the Trust; holder of a power of appointment, prior holder of a power of appointment,
4 or heir of the Estate should the entire Trust be invalidated.

5 In addition, the Petitioner made various allegations regarding undue
6 influence, fraud, theft, embezzlement and unlawful administration of the Trust.
7 Petitioner produced no evidence to substantiate any of these allegations related to
8 administration of the Trust. Consequently, the Court finds Petitioner's allegations
9 of undue influence, fraud, theft, embezzlement, and unlawful administration of the
10 Trust are devoid of evidence and without merit, further warranting summary
11 judgment against Petitioner's unsubstantiated allegations in the Petition and papers
12 filed before the Court. Hence, the Court finds Petitioner failed to meet his burden to
13 refute summary judgment and concludes the Petitioner is not an interested person in
14 the Trust with standing to contest the validity or administration of the Trust based
15 on evidentiarily devoid claims. As such, the Trust's Motion for Summary Judgment
16 against the Petition to Invalidate the Trust is **GRANTED**.

17 **IV. The Court finds Petitioner is a vexatious litigant pursuant to NRS**
18 **155.165.**

19 NRS 155.165 permits the Court to find Petitioner is a vexatious litigant if
20 Petitioner has filed petitions and motions without merit, or that were designed to
21 harass the Trustee. The Court may also consider whether the Petitioner filed
22 pleadings in a prior case that were without merit when determining if Petitioner is a
23 vexatious litigant. *Id.* In that regard, the Court finds the Petitioner made various
24 allegations in the Probate Case related to the Estate, the Will of Thomas J. Harris
25 and the Trust of Thomas J. Harris. Those allegations were unsubstantiated.
26 Moreover, the Probate Court determined Petitioner was not an interested person in
27 the Estate, and, therefore, lacked standing to litigate any allegations he made in the
28 Probate Case. Despite the Probate Court ruling Petitioner is not an interested person

1 in the Estate with standing to litigate his allegations related to the Will, which was
2 affirmed on appeal to the Nevada Supreme Court, Petitioner filed a Petition to
3 Invalidate the Will in this case in an apparent attempt to circumvent the Order of
4 the Probate Court. The Court finds this tactic vexatious.

5 Similarly, the Petitioner sought to invalidate the Trust in this case based on
6 allegations of undue influence. In addition, Petitioner made various claims of fraud,
7 theft, embezzlement and mismanagement of the Trust. Petitioner never
8 substantiated any of his allegations related to the Trust with any admissible
9 evidence. In fact, Petitioner could not produce evidence to show he is an interested
10 person in the Trust with standing to even levy the allegations he made related to the
11 Trust. Therefore, the Court finds the Petitioner's tactic of forcing the Trust to expend
12 significant resources responding to serial filings devoid of evidence, without
13 preliminarily being able to establish standing to litigate any aspect of the Trust, to
14 be vexatious.

15 In addition, Petitioner has filed various papers with the Court outside the
16 bounds of permissible procedure absent leave of court. Considering the rogue filings
17 in this case mounted against the backdrop of the Probate Court previously holding
18 Petitioner is not an interested person in the Estate, the Court finds Petitioner's serial
19 filings to be vexatious.

20 Out of procedural fairness to Mr. Robben, who is representing himself in proper
21 person, the Trust and Estate have not requested Mr. Robben pay any of its prior
22 attorney's fees incurred in responding to his filings prior to entry of this Order under
23 NRS 155.165. Therefore, the Court is not entering an award for attorney's fees and
24 costs incurred by the Trust or Estate in responding to Petitioner's prior filings in this
25 case pursuant to NRS 155.165.¹ However, the Court now holds, finds, and concludes
26 Petitioner is barred as a vexatious litigant from filing any claims, petitions, motions,
27

28 ¹ This finding does not preclude the Trust or Estate from moving for its fees or costs incurred in this
matter from its inception under a separate statute, including but not limited to NRS 18.010.

1 pleadings, complaints, or papers with the Court related to The Thomas J. Harris
2 Trust, the Trustee of the Trust, the Will of Thomas J. Harris, the Estate of Thomas
3 J. Harris, the Personal Representative of the Estate of Thomas J. Harris, and the
4 Personal Representative's and Trust's Legal Counsel. Should the Petitioner violate
5 this Order, the Court will award fees and sanctions against Petitioner consistent with
6 NRS 155.165, the common law, and the inherent powers of the Court to administer
7 the proceedings before it. The Petitioner's right to appeal this Order and its findings
8 is excluded from the Court's vexatious litigant findings in order to respect Petitioner's
9 right to due process of law in appealing this Order.

10 V. Petitioner's Requests for Relief in the Petition and related filings are
11 **DENIED**, and the Petition is dismissed with prejudice.

12 Having concluded Petitioner is not an interested person in the Trust, Estate,
13 or Will of Thomas J. Harris, the Petition is dismissed with prejudice and all claims
14 for relief in the Petition, or any related filings brought forth by Petitioner in this Case,
15 are **DENIED**.

16
17 **IT IS SO ORDERED.**

18
19 Dated this 8th day of February 2023.

20
21 

22 The Honorable Robert Estes
23
24
25
26
27
28

Copies served by mail on February 8th, 2023, addressed to:

Todd Robben
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Reno, Nevada 89509

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