

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Case No. 86096

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Elizabeth A. Brown
Clerk of Supreme Court

TODD ROBBEN,

Appellant,

vs.

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

Respondents.

RESPONDENTS' APPENDIX

Volume 8

Tara Flanagan, as Personal Representative of the Estate of Thomas J.
Harris and Trustee of the Thomas J. Harris Trust

By and through her Legal Counsel

Wallace & Millsap

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Respondents, the Estate of Thomas J. Harris and the Thomas J. Harris Trust, by and through Tara Flanagan, in her capacity as the Personal Representative of the Estate of Thomas J. Harris and Trustee of the Thomas J. Harris Trust by and through her Legal Counsel hereby submits her Appendix in compliance with Nevada Rule of Appellate Procedure 30.

TITLE	DATE	BATE	VOL.
Declaration of Trust Known as the Thomas J. Harris Trust, dated June 12, 2019	6/12/2019	RA 7-42	1
Docketing Statement	2/3/2023	RA 815-825	11
Emergency Stay Request; Emergency Verified Motion to Reconsider; Request for Calcification; Notice of Non Hearsay Proof of Thomas Joseph and Olga Harris Living Trust	6/22/2022	RA 148-212	2
Last Will & Testament of Thomas Joseph Harris	6/12/2019	RA 1-6	1
Letters Testamentary	4/22/2021	RA 60-61	1
Limited Opposition to Petitioner's Motion for a Decision on the Pleadings; Petitioner's Motion Declining Oral Argument filed by The Estate of Thomas J. Harris and The Thomas J. Harris Trust	12/15/2022	RA 615-620	9
Memorandum of Temporary Assignment	8/5/2022	RA 359	5
Minutes of Hearing	1/6/2023	RA 776	10
Motion to Dismiss filed by the Estate of Thomas J. Harris	10/6/2022	RA 367-459	6
Notice of Appeal	6/27/2022	RA 213-214	3
Notice of Appeal filed by Todd Robben	2/3/2023	RA 812-814	11
Notice of Entry of Order	7/15/2022	RA 256-262	3

Notice of Entry of Order	2/16/2023	RA 838-853	11
Notice of Hearing	4/15/2022	RA 102-105	1
Notice of Motion for Continuance and Motion for Continuance	5/23/2022	RA 138-139	2
Objection to 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; Peremptory Challenge to Judge Nathan Tod Young filed by The Estate of Thomas J. Harris	12/15/2022	RA 621-708	9
Opposition to Emergency Verified Motion to Reconsider; Request for Calcification (SIC); Notice of Non Hearsay Proof of the Thomas Joseph and Olga Harris Living Trust; Opposition to Emergency Stay Request	7/1/2022	RA 215-232	3
Opposition to Petitioner's Motion to Strike Respondent's Objection, Motion to Dismiss and Motion for Summary Judgment filed by The Estate of Thomas J. Harris and The Thomas J. Harris Trust	12/30/2022	RA 743-753	10
Order	7/13/2022	RA 253-255	3
Order Appointing Special Administrator	3/11/2021	RA 58-59	1
Order Appointing Successor Executor and Issuing Successor Letters Testamentary	7/27/2021	RA 98-101	1
Order Confirming Transfer to Department 1	7/26/2022	RA 357-358	5
Order Dismissing Appeal	7/8/2022	RA 251-252	3
Order Granting Motion for Summary Judgment; Motion to Dismiss; & Deeming Petitioner a Vexatious Litigant	2/8/2023	RA 826-837	11

Order Granting Petition to Confirm First and Final Accounting, Request for Final Distribution, and Request for Payment of Professional's Fees and Costs	6/22/2022	RA 140-147	2
Order Granting Respondents' Motion to Continue Hearing	9/27/2022	RA 364-366	5
Order Setting Hearing	9/6/2022	RA 360-361	5
Order Setting Hearing	11/30/2022	RA 607-608	9
Order Shortening Time	9/19/2022	RA 362-363	5
Order to Proceed in Forma Pauperis	7/26/2022	RA 355-356	5
Order Transferring Case to Department I	7/26/2022	RA 353-354	5
Petition for Appointment of Successor Executor and for Issuance of Successor Letters Testamentary	6/25/2021	RA 67-74	1
Petition to Confirm First and Final Accounting, Request for Final Distribution, and Request for Payment of Professional's Fees and Costs	4/15/2022	RA 106-137	1
Petitioner Todd Robben's Objection to Respondent's Motion to Dismiss	10/21/2022	RA 471-514	7
Petitioner Todd Robben's Verified Objection to Respondent's Motion for Summary Judgment	10/21/2022	RA 515-556	7
Petitioner, Todd Robben's Notice and Affidavits in Support of the Pre-Existing Olga and Thomas J. Harris Living Trust with Petitioner Named Beneficiary	11/2/2022	RA 580-584	8
Petitioner, Todd Robben's 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; Peremptory Challenge to Judge Nathan Tod Young filed by The Estate of Thomas J. Harris	7/26/2022	RA 263-352	4

Petitioner's First Amended Reply in Support of Motion to Strike Respondent's Objections, Motion to Dismiss and Motion for Summary Judgment	1/3/2023	RA 768-775	10
Petitioner's Motion for a Decision on the Pleadings; Petitioner's Motion Declining Oral Argument	12/8/2022	RA 609-614	9
Petitioner's Motion to Strike Respondent's Objections, Motion to Dismiss and Motion for Summary Judgment	12/23/2022	RA 717-725	10
Petitioner's Motion to Strike Respondent's Unlawful Surreply	11/7/2022	RA 591-595	8
Petitioner's Notice and Provisional Motion to Strike Respondent's Objections, Motion to Dismiss and Motion for Summary Judgment	1/3/2023	RA 754-767	10
Petitioner's Reply in Support of Emergency Stay Request & Emergency Verified Motion to Reconsider; Request for Clarification; Notice of Non Hearsay Proof of the Thomas Joseph and Olga Harris Living Trust	7/5/2022	RA 233-250	3
Petitioner's Reply in Support of Motion to Strike Respondents Unlawful Surreply	11/21/2022	RA 600-606	9
Petitioner's Verified Reply in Support of Motion for a Decision on the Pleadings; Petitioner's Motion Declining Oral Argument	12/23/2022	RA 726-742	10
Reply in Support of Motion to Dismiss	10/31/2022	RA 565-579	8
Request to Appear Remotely via Zoom for Court Appearance/Hearing	12/28/2022	RA 854-855	11
Resignation of Trustee and Acceptance by Successor Trustee of the Thomas J. Harris Trust dated June 12, 2019	5/17/2021	RA 62-66	1

Submission of Proposed Order Granting Motion for Summary Judgment; Motion to Dismiss; & Deeming Petitioner a Vexatious Litigant	1/10/2023	RA 800-811	11
The Thomas J. Harris Trust's Motion for Summary Judgment	10/6/2022	RA 460-470	7
The Thomas J. Harris Trust's Objection & Response to Todd Robben's Petition to Invalidate the Trust	12/15/2022	RA 709-716	10
The Thomas J. Harris Trust's Opposition to Motion to Strike	11/14/2022	RA 596-599	8
The Thomas J. Harris Trust's Reply Points & Authorities in Support of its Motion for Summary Judgment	10/31/2022	RA 557-564	8
The Thomas J. Harris Trust's Supplemental Brief to its Motion for Summary Judgment Addressing Fugitive Affidavits Filed by Petitioner Todd Robben	11/4/2022	RA 585-590	8
Thomas A. Harris's Response to Petition for Appointment of Successor Executor, Etc.	7/22/2021	RA 75-97	1
Transcript of January 6, 2023 Hearing	1/6/2023	RA 777-799	11
Verified Petition for Letters of Special Administration (NRS 140.010) and for Probate of Will and Issuance of Letters Testamentary (NRS 136.090)	3/10/2021	RA 43-57	1
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DOUGLAS A. WILLIAMS
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E.A. WILLIAMS
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Dept. No.: II

The undersigned affirms this document
does not contain the social security number
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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, 2022.¹

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
NRCPC 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

¹ 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

1 Petitioner proffer witness affidavits or declarations establishing he is a beneficiary of
2 a prior version of the Trust. Therefore, summary judgment is mandatory against
3 Petitioner because the Petition is devoid of any admissible evidence demonstrating
4 Petitioner is an interested person in the Trust with standing to contest it as required
5 by NRS 132.390(1)(d) and NRS 164.015.
6

7 **II. LAW & ARGUMENT**

8 When construing the summary judgment standard, the Nevada Supreme
9 Court adopted the United States Supreme Court's holdings in *Liberty Lobby*, *Celotex*,
10 and *Matsushita* dictating when summary judgment is required. *Wood v. Safeway*,
11 *Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In *Celotex*, the United States
12 Supreme Court held Rule 56 must be construed with due regard for the rights of
13 persons opposing claims and defenses with no factual basis. *Celotex Corp. v. Catrett*,
14 477 U.S. 317, 327, 106 S. Ct. 2548, 2555, 91 L. Ed. 2d 265 (1986). Consequently, Rule
15 56's principal purpose is to isolate and dispose of factually unsupported claims. *Id.*
16 at 323-324, 2553.

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

20 The Petition seeks to invalidate the Thomas J. Harris Trust, and then bring
21 related claims for an accounting, damages, etc. if the Trust is invalid. Therefore,
22 Petitioner must fundamentally establish he has standing as an "interested person"
23 in the Trust to proceed with his Trust contest and related claims. *See generally* NRS
24 164.015. In that regard, NRS 132.390(1)(d) states an interested person in a trust
25 contest is either a beneficiary or trustee of any version of the trust documents in
26 dispute. Consequently, the Trust filed a motion for summary judgment pointing out
27 there is an absence of evidence to show Petitioner is a beneficiary or trustee of any
28 version of the Trust Petitioner seeks to contest. *See Cuzze v. Univ. & Cmty. Coll. Sys.*

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

18 Instead, Petitioner alleges there are two to three witnesses who will testify he
19 was a beneficiary of the Settlers' prior Trust. However, no witness affidavits or
20 declarations are attached to the Opposition testifying Petitioner was a beneficiary of
21 a prior version of the Trust as required by NRCP 56(c). Similarly, no witness
22 affidavits or declarations were attached to the underlying Petition testifying
23 Petitioner was a beneficiary of a prior version of the Trust. Consequently, the
24 Opposition is nothing more than Petitioner's own speculation and conjecture, devoid
25 of any witness affidavits or declarations showing he is an interested person in the
26 Trust as a prior beneficiary or trustee. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 732,
27 121 P.3d 1026, 1031 (2005) (holding "[t]he nonmoving party is not entitled to build a
28 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

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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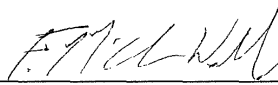
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1 **III. CONCLUSION AND REQUESTED RELIEF**

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 31st day of October 2022.

8
9 By: 
10 F. McClure Wallace, Esq.
11 Nevada State Bar No. 10264
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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 31st day of October, 2022.

By 
Caroline Carter, Paralegal

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

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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 ROBBER,

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.

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1 REPLY POINTS AND AUTHORITIES

2 INTRODUCTION / STATEMENT OF THE ISSUE

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

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

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

22 In objection to the Motion to Dismiss, Mr. Robben now presents a rambling
23 Objection containing arguments related to the Thomas J. Harris Trust, references
24 to Nevada trust law having no application to the Estate's underlying motion,
25 references to California law having no application to this matter, and fugitive
26 statements absent any legal or evidentiary support. As such, and as further
27 demonstrated below, Mr. Robben's Objection fails to provide any meaningful
28

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**.¹ 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 ¹ 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").² See generally NRS 30.040(1) and NRS 137.010(1). Mr. Robben

27
28 ² 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.³

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 ³ 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. 34.⁴ 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 ⁴ 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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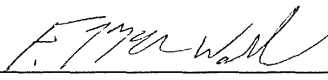
Wallace & Millsap
510 W Plumb Ln., Reno, Nevada / (775) 683-9599

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

4 **AFFIRMATION**

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

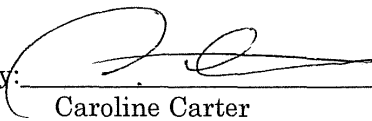
7 DATED this 31st day of October 2022.

8
9 By: 
10 F. McClure Wallace, Esq.
11 Nevada Bar No.: 10264
12 Wallace & Millsap
13 510 W Plumb Ln., Ste. A
14 Reno, Nevada 89509
15 (775) 683-9599
16 mcclure@wallacemillsap.com
17 Attorneys for Tara M. Flanagan
18 in her capacity as the
19 Personal Representative of the
20 Estate of Thomas Harris
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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

RECEIVED

NOV 02 2022

Douglas County
District Court Clerk

FILED

2022 NOV -2 PM 4: 55

BOBBIE R. WILLIAMS
CLERK

BY *AW* DEPUTY

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

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

8
9
10 TODD ROBBERN,
11 Petitioner

CASE NO.: 2022-PB-00119

12
13 Vs.

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

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

Related cases:

Ninth District Court Case No.:
2021-PB00034

Nevada Supreme Court Case No.:
84948

18
19
20 .Petitioner, Todd Robben, provides two affidavits that support the fact Todd
21 Robben was named a beneficiary in the Olga and Thomas J. Harris Living Trust.

22 The Petitioner's verified statements in his previous filings are evidence of the
23 existence of the Olga and Thomas J. Harris Living Trust and the witnesses including
24 Stephen James Robben, Mike Weston and the Petitioner. As to other witnesses, this
25 Petitioner has attempted to contact the former lead counsel, Abigail Stephenson
26 whom signed the letters in exhibit A in the petition. Petitioner is unable to contact
27 Abigail Stephenson and will request a summons or subpoena to question Abigail
28 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

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Respectfully signed under penalty of perjury,

A handwritten signature in black ink, appearing to be 'T.R.', with a horizontal line extending to the right.

/s/ Todd Robben

November 02, 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 November 02, 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 November 02, 2022

Submitted By: /s/ Stephen James Robben

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

RECEIVED

NOV 04 2022

Douglas County
District Court Clerk

FILED

2022 NOV -4 PM 1:09

BOBBIE W. WILLIAMS

C.A. WILLIAMS

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
SUPPLEMENTAL BRIEF TO ITS
MOTION FOR SUMMARY
JUDGMENT ADDRESSING
FUGITIVE AFFIDAVITS FILED BY
PETITIONER TODD ROBBEN

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

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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).

1 CONCLUSION AND REQUESTED RELIEF

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

7 DATED this 4th day of November 2022.


8
9 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 4th 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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NOV 07 2022

Douglas County
District Court Clerk

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BOBBIE R. WILLIAMS
CLERK

BY Ashe 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 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

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

4 MEMORANDUM OF POINTS & AUTHORITIES

6 I. THE COURT MUST STRIKE RESPONDENTS FRIVOLOUS FILING

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 1.030¹ 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 ¹ 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.

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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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 07, 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 07 day of November, 2022

Submitted By: /s/ Stephen James Robben

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

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1 Case No.: 22-PB-00119

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2 Dept. No.: II

Douglas County
District Court Clerk

BOBBIE R. WILLIAMS
CLERK

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

BY *A. Wall* 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"

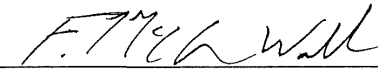
1 theory is not a theory at all, and most importantly is not a product of precedential
2 authority taken from Nevada's common law. As such, the Trust respectfully requests
3 the Court deny Petitioner's Motion to Strike the Trust's Supplemental Brief.

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 14th day of November 2022.

19
20 By: _____

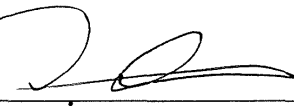

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CERTIFICATE OF SERVICE

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 14th day of November, 2022.

By: _____


Caroline Carter, Paralegal