

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 10

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

Case No.: 22-PB-00119

Dept. No.: II

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CLERK

E.A. WILLIAMS
DEPUTY

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

TODD ROBBEN,

Petitioner;

vs.

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

Respondents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ///

26 ///

27 ///

28 ///

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

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

17
18 **AFFIRMATIVE DEFENSES**

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

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

4 **AFFIRMATION**

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

7
8 DATED this 14th day of December 2022.

9
10 By: 

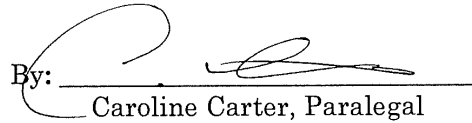
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CERTIFICATE OF SERVICE

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

Dated this 14th day of December 2022.

By: 
Caroline Carter, Paralegal

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

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District Court Clerk

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BOBBIE R. WILLIAMS
CLERK

[Signature] DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

TODD ROBBEN,
Petitioner

CASE NO.: 2022-PB-00119

Vs.

PETITIONER'S MOTION TO STRIKE
RESPONDENT'S OBJECTIONS,
MOTION TO DISMISS AND MOTION
FOR SUMMARY JUDGMENT

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

Petitioner, Todd Robben¹, moves to strike Respondent's objections and
motions to dismiss and motion for summary judgment.

MEMORANDUM OF POINTS AND AUTHORITIES

¹ 'however inartfully pleaded,' [are] held to 'less stringent standards than formal pleadings drafted by lawyers.'" Fed. Express Corp. v. Holowecki, 552 U.S. 389, 402 (2008).

1 This Petitioner nor the Respondent has requested oral arguments pursuant to
2 "Ninth Judicial District Court Rule (NJDCR) 6(e) states that decisions on all motions
3 will be rendered without oral argument unless oral argument is requested by the
4 court or the parties. Moreover, District Court Rule 13(1) requires that all motions
5 include a notice of the motion setting the matter on the court law and motion
6 calendar. " Garrettson v. State, 967 P. 2d 428 - Nev: Supreme Court 1998.
7

8 **The Respondents did not comply with DCR 13(1) or request a**
9 **hearing for its Motion to Dismiss and Motion for Summary Judgment, nor**
10 **did they provide notice to the Petitioner. The Court may strike the Motion**
11 **to Dismiss and Motion for Summary Judgment on its own motion for**
12 **failure to set a hearing. The**
13

14 NRCP Rule 15 Motions, issues of law: Oral hearings or submission on
15 briefs; notice of and compliance with decisions states:
16

17 If the court and the parties agree any issue of law and any motion of any
18 nature or kind may be considered in chambers at any time or place in the state;
19 or such question of law or motion may be submitted on briefs to such judge,
20 and the decision may be filed thereafter at any time. Any proceeding which
21 requires evidence, testimony, or fact finding must be heard in open court within
22 the district that the case is filed and where court is regularly held, except as
23 provided by:

24 1. NRS 1.050(4). The decision shall fix the time when the decision of the
25 court is to be complied with. In all such cases the party who is required to
26 act by such decision shall receive due written notice thereof from the
27 opposite party.

28 2. Time for complying with such decision shall commence to run from the
time when service is made in the manner required by N.R.C.P. for service
of pleadings in a case, but when the parties are present by their respective
attorneys when the decision is rendered no notice shall be required.

1 The Respondent responded in the Trust objections:

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

5 And in the Respondent responded in the Estate objections:

6 I, OBJECTION TO THE BEGINNING PORTION OF THE PETITION

7 The Petition begins by making broad, unsupported allegations regarding
8 the validity of the Decedent's Will, all of which are objected to and denied
9 by the Estate. See generally Petition, pgs. 2-5.

10 Namely, **the Estate** objects to any and all allegations contesting the
11 validity of the Will, which has already been conclusively determined to be
12 valid in the Estate Case. See Exhibits 1, 5 & 7. In as much, **the Estate**
13 denies and objects to any allegations of undue influence related to the
14 Decedent's Will or the Decedent's Estate, as well as to the application of
15 any statutory burden shifting based on wholly unsubstantiated allegations
16 unrelated to the Decedent's Will or the Decedent's Estate.

17 II. OBJECTION TO THE "INTRODUCTION" OF THE PETITION

18 The "Introduction" of the Petition does not specifically reference the
19 Decedent's Will or Estate. See generally Petition, pgs. 5-7. However, **the**
20 **Estate** maintains its general objection to the Petition, including the
21 "Introduction" section of the Petition in an abundance of caution.

22 By and through the "Introduction" section of the Petition, the Estate notes
23 Petitioner alleges his Petition is timely. **The Estate** denies and opposes
24 this statement, and identifies the Petition is not only untimely, but time-
25 barred, as presented in detail in **the Estate's** separately filed Motion to
26 Dismiss. See generally Estate's Motion to Dismiss; see also NRS
27 137.080.

28 The "Introduction" section of the Petition also references the Estate Case,
noting this Court's ability to review the proceedings in the Estate Case in
full wherein the Court ruled the Petitioner is not an "interested person in
the Estate, with no standing to make any allegations regarding the validity
of the Decedent's Will." See Exhibit 5. **The Estate** notes it has no
opposition to this Court accessing, considering, and reviewing the
proceedings in the Estate Case.

1 The "Estate" and the "Trust" are not interested "parties", interested
2 "persons", a "beneficiary" or the "Trustee" and therefore not allowed to file
3 objections in this instant cast and must be stricken from the record pursuant to
4
5 NRS 132.185, NRS 132.390 and NRS 155.160.

6
7 **NRS 132.185** "Interested person" defined. "Interested person" means
8 a person whose right or interest under an estate or trust may be materially
9 affected by a decision of a fiduciary or a decision of the court. The
10 fiduciary or court shall determine who is an interested person according to
the particular purposes of, and matter involved in, a proceeding.

11 **NRS 155.160** Responses and objections to proceedings.

12
13 1. An interested person may appear and make a response or
14 objection in writing at or before the hearing.

15 2. An interested person may appear and make a response or
16 objection orally at the hearing. The court may hear and determine the
17 response or objection at the hearing or grant a continuance to allow the
response or objection to be made in writing.

18 3. If the court is not in session at the time set for the hearing of any
19 matter concerning the settlement of the estate of a decedent, anyone
20 opposing the petition therein made may file objections thereto with the
clerk.

21
22 **NRS 132.390** Circumstances in which person is interested person.

23 1. For the purposes of this title, a person is an interested person with
24 respect to:

25 (a) A judicial proceeding, a notice of a proposed action or a
26 nonjudicial settlement, if the person has or claims to have an enforceable
27 right or interest that may be materially affected by the outcome of that
28 proceeding, proposed action or nonjudicial settlement. While living, a
settlor or a testator shall be deemed to have an enforceable right with

1 respect to any trust or will that he or she created. For the purposes of this
2 paragraph, a person may not claim to have a right or interest under an
3 estate or trust after the entry of an order of the court declaring the right or
interest invalid.

4 (b) An estate of a decedent, if the person:

5 (1) Is an heir, devisee, child, spouse, creditor, settlor or
6 beneficiary;

7 (2) Has a property right in or claim against the estate of a
8 decedent, including, without limitation, the Director of the Department of
9 Health and Human Services in any case in which money is owed to the
10 Department of Health and Human Services as a result of the payment of
benefits for Medicaid;

11 (3) Has priority for appointment as a personal representative; or

12 (4) Is any other fiduciary representing an interested person.

13 (c) A trust, if the person:

14 (1) Is a living settlor or, if a court has appointed a guardian of the
15 estate of the settlor, the guardian of the estate appointed by the court;

16 (2) Is the trustee, including, without limitation, each acting
17 cotrustee;

18 (3) Holds the presently exercisable right to remove or replace the
19 trustee or a cotrustee;

20 (4) Asserts the right to serve as the trustee or as a cotrustee;

21 (5) Is a current beneficiary or a remainder beneficiary of that trust;

22 (6) Holds a presently exercisable power of appointment that
23 permits the holder to designate or change the designation of a current
24 beneficiary or a remainder beneficiary of that trust;

25 (7) Holds a presently exercisable power that permits the holder to
26 designate, remove or otherwise change the designation of a person who,
pursuant to this paragraph, would be an interested person;

1 (8) Is a creditor of the settlor who has a claim which has been
2 accepted by the trustee or who has asserted the trustee's liability therefor
3 in a probate proceeding or in a civil action under subsection 8 or 9 of NRS
111.779; or

4 (9) Is a creditor of the trust who has given the trustee written
5 notice of its claim.

6 (d) A revocable trust that is the subject of a petition under NRS
7 164.015 relating to the validity of the trust or any trust-related document, if
8 the person, after the death of the settlor, under the terms of any version of
the trust documents in dispute, would be:

9 (1) A current beneficiary or a remainder beneficiary of that trust;
10 or

11 (2) A trustee or a successor trustee, including, without limitation,
12 a cotrustee.

13 (e) A will that, while the testator is still living, is the subject of a petition
14 under subsection 2 of NRS 30.040, if the person, after the death of the
testator, would be:

15 (1) A beneficiary of that will; or

16 (2) A fiduciary designated in or pursuant to the terms of that will.

17 2. For the purposes of this title, the following persons are not
18 interested persons:

19 (a) With respect to a motion, petition or proceeding, any person
20 holding or claiming an interest or right that is not affected by the motion,
21 petition or proceeding.

22 (b) The Director of the Department of Health and Human Services
23 after any money owed to the Department has been paid in full or with
24 respect to the estate or trust of a decedent who did not receive any
benefits from Medicaid.

25 (c) A vexatious litigant with regard to a motion, petition or proceeding
26 for which the vexatious litigant has been denied standing pursuant to NRS
155.165.

27 (d) As to the estate of a decedent:

1
2 (1) After a will has been admitted to probate, an heir, child or
3 spouse who is not a beneficiary of the will, except for the purposes of NRS
133.110, 133.160 and 137.080.

4 (2) A creditor whose claim has not been accepted by the personal
5 representative, if the enforcement of the claim of the creditor is barred
6 under the provisions of chapter 11 or 147 of NRS or any other applicable
statute of limitations.

7 (e) As to a trust:

8 (1) The guardian of the person of an interested person, unless
9 the guardian is expressly permitted to act for the interested person under
10 the terms of the trust instrument;

11 (2) A beneficiary or creditor whose right or claim is barred by any
12 applicable statute of limitations, including, without limitation, the statute of
13 limitations found in chapter 11 of NRS or NRS 164.021, 164.025 or
166.170;

14 (3) Any beneficiary of a revocable trust, except as expressly
15 provided in paragraph (d) of subsection 1; or

16 (4) Any disclaimant as to a disclaimed interest, except with
17 respect to the enforcement of the disclaimer.

18 3. As used in this section:

19 (a) "Current beneficiary" has the meaning ascribed to it in NRS
20 165.020.

21 (b) "Remainder beneficiary" has the meaning ascribed to it in NRS
22 165.020.

23 Respectfully signed under penalty of perjury,

24 

25 /s/ Todd Robben

26 December 23, 2022

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CERTIFICATE OF SERVICE

I, Stephen James Robben, declare under penalty of perjury under the law of the State of Nevada that the following is true and correct copy of the filed document. That on December 23, 2022, service of the document was made pursuant to NRCP 5(b) by depositing a email to: F. McClure Wallace, counsel for Respondent, mcclure@wallacemillsap.com

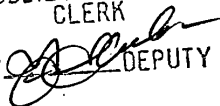
DATED December 23, 2022

Submitted By: /s/ Stephen James Robben

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

RECEIVED
DEC 23 2022
Douglas County
District Court Clerk

FILED
2022 DEC 23 PM 4:37
BOBBIE R. WILLIAMS
CLERK
BY  DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

TODD ROBBEN,
Petitioner

CASE NO.: 2022-PB-00119

Vs.

PETITIONER'S VERIFIED REPLY IN
SUPPORT OF MOTION FOR A
DECISION ON THE PLEADINGS;
PETITIONER'S MOTION DECLINING
ORAL ARGUMENT

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

Petitioner, Todd Robben¹, is in receipt of the November 30th, 2022 order
setting a hearing for oral arguments on January 06, 2023 at 9:00am in this
instant case and Respondent's Limited Opposition filed on December 13, 2022.

MEMORANDUM OF POINTS AND AUTHORITIES

¹ 'however inartfully pleaded,' [are] held to 'less stringent standards than formal
pleadings drafted by lawyers.'" Fed. Express Corp. v. Holowecki, 552 U.S. 389,
402 (2008).

539

1 This Petitioner nor the Respondent has requested oral arguments pursuant to
2 "Ninth Judicial District Court Rule (NJDCR) 6(e) states that decisions on all motions
3 will be rendered without oral argument unless oral argument is requested by the
4 court or the parties. Moreover, District Court Rule 13(1) requires that all motions
5 include a notice of the motion setting the matter on the court law and motion
6 calendar. " Garrettson v. State, 967 P. 2d 428 - Nev: Supreme Court 1998.

7
8 The Respondents did not comply with DCR 13(1) or request a hearing for its
9 Motion to Dismiss and Motion for Summary Judgment, nor did they provide notice to
10 the Petitioner. The Court may strike the Motion to Dismiss and Motion for Summary
11 Judgment on its own motion for failure to set a hearing. The Petitioner did not
12 request a hearing in his petition.

13
14 Under NRCP 8(f), "[a]ll pleadings shall be so construed as to do substantial
15 justice." See Chastain v. Clark Cnty. Sch. Dist., 109 Nev. 1172, 1178, 866 P.2d 286,
16 290 (1993).

17
18 NRCP Rule 12(c) Motion for Judgment on the Pleadings states "After the
19 pleadings are closed—but early enough not to delay trial—a party may move for
20 judgment on the pleadings." At this point the pleadings are closed unless ordered by
21 the court pursuant to NRCP 12 (a)(3)(A) or (B).

22
23 "Under Rule 12(c), "any party may move for judgment on the pleadings," and
24 under Rule 12(h)(2), the "defense of failure to state a claim upon which relief can be
25 granted . . . may be made . . . by motion for judgment on the pleadings" See
26 also Duff v. Lewis, 114 Nev. 564, 568 (1998) ("It is well established that a motion
27

1 under NRCP 12(c) is designed to provide a means of disposing of cases when
2 material facts are not in dispute and a judgment on the merits can be achieved by
3 focusing on the content of the pleadings.” (internal citations and quotations
4 omitted)).” Rogich v. Clark County School District, Dist. Court, D. Nevada 2021.

6 “A Rule 12(c) motion is designed to provide a means of disposing of cases
7 when material facts are not in dispute and a judgment on the merits can be achieved
8 by focusing on the content of the pleadings.[3] 5 C. Wright & A. Miller, Federal
9 Practice and Procedure § 1367 (1969). The motion for a judgment on the pleadings
10 has utility only when all material allegations of fact are admitted in the pleadings and
11 only questions of law remain. Id. See also Duhamel v. United States, 127 Ct.Cl. 679,
12 119 F. Supp. 192 (1954).” Bernard v. Rockhill Development Co., 734 P. 2d 1238 -
13 Nev: Supreme Court 1987.

16 There are no disputed facts because the Respondent has conceded to the facts
17 in the Petitioner’s petition and Petitioner’s oppositions to Respondents motion to
18 dismiss & motion for summary judgment.

19 The Respondent concedes to Petitioner’s purely legal arguments including
20 Barefoot v. Jennings, 456 P. 3d 447 - Cal: Supreme Court 2020 which legally
21 mandates that the petitioner is an interested party and beneficiary. The matters of
22 law as to other issues such as timeliness, jurisdiction, issue preclusion, etc. The
23 Respondent also concede to Petitioner’s Constitutional arguments which combined
24

1 with the facts – the totality & cumulatively² mandate the Petitioner's relief request
2 (prayer for relief). The Respondent get another-bite-at-the-apple in a hearing to
3 which is not identified as a hearing on the pending motions or the petition itself to
4 which the Petitioner did not request a hearing, or jury trial pursuant to NRS 137.020,
5 to this point and he reserves all rights to change his mind in the future.
6

7 The Respondent did not deny the *presumed undue influence* by Jeff D.
8 Robben, along with the other fraud described in the petition (missing safe deposit
9 box contents and the Minden, NV Pebble Beach house were transferred out of the
10 will or trust) and intrinsic/extrinsic fraud-upon-the-court³ which is the factual
11 *gravamen* of the case. Indeed this case is about MASSIVE FRAUD & THEFT
12 "undue influence ... is a species of fraud." *In re Estate of Peterson*, 77 Nev. 87, 111,
13 360 P.2d 259, 271 (1961).
14
15

16 The Petitioner provided admissible evidence including the existence of
17 presumed undue influence & undue influence, fraud, the existence of the previous
18 trust to which Petitioner was a beneficiary (and interested person) and at least three
19 witness to attest under penalty of perjury that Petitioner was , in fact, named in the
20 previous trust before the undue influence occurred. Said facts are in a verified
21

22
23 ² Nevada Judicial Code of Conduct Canon Rule 2.2 [4] It is not a violation of
24 this Rule for a judge to make reasonable accommodations to ensure self-
25 represented litigants the opportunity to have their matters fairly heard.

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

1 petition which acts as an affidavit to the facts since it is signed under penalty of
2 perjury by the Petitioner. The Respondent cannot overcome this on the pleadings or
3 any evidence proffered to the Court ...or even an offer of proof.
4

5 The Petitioner, and all other Beneficiaries, are being robbed and molested
6 of their inheritance and statutory rights and State and U.S. Constitutional Rights
7 to due-process and equal protection in front of the Petitioner's face. This is
8 very, very provocative.
9

10 The Respondent does not provide any proof or affidavits to support its
11 defense when they had the burden of proof.

12 NRCP Rule 15 Motions, issues of law: Oral hearings or submission on
13 briefs; notice of and compliance with decisions states:
14

15 If the court and the parties agree any issue of law and any motion of any
16 nature or kind may be considered in chambers at any time or place in the state;
17 or such question of law or motion may be submitted on briefs to such judge,
18 and the decision may be filed thereafter at any time. Any proceeding which
19 requires evidence, testimony, or fact finding must be heard in open court within
20 the district that the case is filed and where court is regularly held, except as
21 provided by:

22 1. NRS 1.050(4). The decision shall fix the time when the decision of the
23 court is to be complied with. In all such cases the party who is required to
24 act by such decision shall receive due written notice thereof from the
25 opposite party.

26 2. Time for complying with such decision shall commence to run from the
27 time when service is made in the manner required by N.R.C.P. for service
28 of pleadings in a case, but when the parties are present by their respective
attorneys when the decision is rendered no notice shall be required.

1 The Respondent responded in the Trust objections:

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

5 And in the Respondent responded in the Estate objections:

6 I, OBJECTION TO THE BEGINNING PORTION OF THE PETITION

7 The Petition begins by making broad, unsupported allegations regarding
8 the validity of the Decedent's Will, all of which are objected to and denied
9 by the Estate. See generally Petition, pgs. 2-5.

10 Namely, **the Estate** objects to any and all allegations contesting the
11 validity of the Will, which has already been conclusively determined to be
12 valid in the Estate Case. See Exhibits 1, 5 & 7. In as much, **the Estate**
13 denies and objects to any allegations of undue influence related to the
14 Decedent's Will or the Decedent's Estate, as well as to the application of
15 any statutory burden shifting based on wholly unsubstantiated allegations
16 unrelated to the Decedent's Will or the Decedent's Estate.

17 II. OBJECTION TO THE "INTRODUCTION" OF THE PETITION

18 The "Introduction" of the Petition does not specifically reference the
19 Decedent's Will or Estate. See generally Petition, pgs. 5-7. However, **the**
20 **Estate** maintains its general objection to the Petition, including the
21 "Introduction" section of the Petition in an abundance of caution.

22 By and through the "Introduction" section of the Petition, the Estate notes
23 Petitioner alleges his Petition is timely. **The Estate** denies and opposes
24 this statement, and identifies the Petition is not only untimely, but time-
25 barred, as presented in detail in **the Estate's** separately filed Motion to
26 Dismiss. See generally Estate's Motion to Dismiss; see also NRS
27 137.080.

28 The "Introduction" section of the Petition also references the Estate Case,
noting this Court's ability to review the proceedings in the Estate Case in
full wherein the Court ruled the Petitioner is not an "interested person in
the Estate, with no standing to make any allegations regarding the validity
of the Decedent's Will." See Exhibit 5. **The Estate** notes it has no
opposition to this Court accessing, considering, and reviewing the
proceedings in the Estate Case.

1 The "Estate" and the "Trust" are not interested "parties", interested
2 "persons", a "beneficiary" or the "Trustee" and therefore not allowed to file
3 objections in this instant cast and must be stricken from the record pursuant to
4 NRS 132.185, NRS 132.390 and NRS 155.160.
5

6
7 **NRS 132.185** "Interested person" defined. "Interested person" means
8 a person whose right or interest under an estate or trust may be materially
9 affected by a decision of a fiduciary or a decision of the court. The
10 fiduciary or court shall determine who is an interested person according to
the particular purposes of, and matter involved in, a proceeding.

11 **NRS 155.160** Responses and objections to proceedings.

12
13 1. An interested person may appear and make a response or
14 objection in writing at or before the hearing.

15 2. An interested person may appear and make a response or
16 objection orally at the hearing. The court may hear and determine the
17 response or objection at the hearing or grant a continuance to allow the
response or objection to be made in writing.

18 3. If the court is not in session at the time set for the hearing of any
19 matter concerning the settlement of the estate of a decedent, anyone
20 opposing the petition therein made may file objections thereto with the
clerk.

21
22 **NRS 132.390** Circumstances in which person is interested person.

23 1. For the purposes of this title, a person is an interested person with
24 respect to:

25 (a) A judicial proceeding, a notice of a proposed action or a
26 nonjudicial settlement, if the person has or claims to have an enforceable
27 right or interest that may be materially affected by the outcome of that
28 proceeding, proposed action or nonjudicial settlement. While living, a
settlor or a testator shall be deemed to have an enforceable right with

1 respect to any trust or will that he or she created. For the purposes of this
2 paragraph, a person may not claim to have a right or interest under an
3 estate or trust after the entry of an order of the court declaring the right or
interest invalid.

4 (b) An estate of a decedent, if the person:

5 (1) Is an heir, devisee, child, spouse, creditor, settlor or
6 beneficiary;

7 (2) Has a property right in or claim against the estate of a
8 decedent, including, without limitation, the Director of the Department of
9 Health and Human Services in any case in which money is owed to the
10 Department of Health and Human Services as a result of the payment of
benefits for Medicaid;

11 (3) Has priority for appointment as a personal representative; or

12 (4) Is any other fiduciary representing an interested person.

13 (c) A trust, if the person:

14 (1) Is a living settlor or, if a court has appointed a guardian of the
15 estate of the settlor, the guardian of the estate appointed by the court;

16 (2) Is the trustee, including, without limitation, each acting
17 cotrustee;

18 (3) Holds the presently exercisable right to remove or replace the
19 trustee or a cotrustee;

20 (4) Asserts the right to serve as the trustee or as a cotrustee;

21 (5) Is a current beneficiary or a remainder beneficiary of that trust;

22 (6) Holds a presently exercisable power of appointment that
23 permits the holder to designate or change the designation of a current
24 beneficiary or a remainder beneficiary of that trust;

25 (7) Holds a presently exercisable power that permits the holder to
26 designate, remove or otherwise change the designation of a person who,
pursuant to this paragraph, would be an interested person;

1 (8) Is a creditor of the settlor who has a claim which has been
2 accepted by the trustee or who has asserted the trustee's liability therefor
3 in a probate proceeding or in a civil action under subsection 8 or 9 of NRS
111.779; or

4 (9) Is a creditor of the trust who has given the trustee written
5 notice of its claim.

6 (d) A revocable trust that is the subject of a petition under NRS
7 164.015 relating to the validity of the trust or any trust-related document, if
8 the person, after the death of the settlor, under the terms of any version of
the trust documents in dispute, would be:

9 (1) A current beneficiary or a remainder beneficiary of that trust;
10 or

11 (2) A trustee or a successor trustee, including, without limitation,
12 a cotrustee.

13 (e) A will that, while the testator is still living, is the subject of a petition
14 under subsection 2 of NRS 30.040, if the person, after the death of the
testator, would be:

15 (1) A beneficiary of that will; or

16 (2) A fiduciary designated in or pursuant to the terms of that will.

17 2. For the purposes of this title, the following persons are not
18 interested persons:

19 (a) With respect to a motion, petition or proceeding, any person
20 holding or claiming an interest or right that is not affected by the motion,
21 petition or proceeding.

22 (b) The Director of the Department of Health and Human Services
23 after any money owed to the Department has been paid in full or with
24 respect to the estate or trust of a decedent who did not receive any
benefits from Medicaid.

25 (c) A vexatious litigant with regard to a motion, petition or proceeding
26 for which the vexatious litigant has been denied standing pursuant to NRS
155.165.

27 (d) As to the estate of a decedent:

1
2 (1) After a will has been admitted to probate, an heir, child or
3 spouse who is not a beneficiary of the will, except for the purposes of NRS
133.110, 133.160 and 137.080.

4 (2) A creditor whose claim has not been accepted by the personal
5 representative, if the enforcement of the claim of the creditor is barred
6 under the provisions of chapter 11 or 147 of NRS or any other applicable
statute of limitations.

7 (e) As to a trust:

8 (1) The guardian of the person of an interested person, unless
9 the guardian is expressly permitted to act for the interested person under
10 the terms of the trust instrument;

11 (2) A beneficiary or creditor whose right or claim is barred by any
12 applicable statute of limitations, including, without limitation, the statute of
13 limitations found in chapter 11 of NRS or NRS 164.021, 164.025 or
166.170;

14 (3) Any beneficiary of a revocable trust, except as expressly
15 provided in paragraph (d) of subsection 1; or

16 (4) Any disclaimant as to a disclaimed interest, except with
17 respect to the enforcement of the disclaimer.

18 3. As used in this section:

19 (a) "Current beneficiary" has the meaning ascribed to it in NRS
20 165.020.

21 (b) "Remainder beneficiary" has the meaning ascribed to it in NRS
22 165.020.

23
24 The Petitioner has an undisputed *prima facie* case of presumed undue
25 influence based on the undisputed facts that Jeff D. Robben, the brother of the
26 Petitioner, was 1: The caretaker of Thomas J. Harris; 2: The Financial advisor for
27 Thomas J. Harris; 3: Helped create the current Thomas J. Harris trust; 4. Had

1 “undue influence” and “presumed undue influence” of Thomas J. Harris; 5: Jeff D.
2 Robben influenced Thomas J. Harris to disinherit this Petitioner based on the
3 animus and vexation of Jeff D. Robben against his brother and allowed Jeff D.
4 Robben to gain financially.

5 “A rebuttable presumption of undue influence is raised if the testator and the
6 beneficiary shared a fiduciary relationship, but undue influence may also be proved
7 without raising this presumption.” *In re Estate of Bethurem*, 313 P. 3d 237, 241
8 (2013), at 329. “The essence of a fiduciary or confidential relationship is that the
9 parties do not deal on equal terms, since the person in whom trust and confidence is
10 reposed and who accepts that trust and confidence is in a superior position to exert
11 unique influence over the dependent party.” *Hoopes v. Hammargren*, 725 P. 2d
12 238, 242 (1986) quoting *Barbara A. v. John G.*, 145 Cal.App.3d 369, 193 Cal.Rptr.
13 422, 432 (1983).

14 “Once raised, a beneficiary may rebut such a presumption by clear and
15 convincing evidence.” *Bethurem, supra*, at 241. The highest standard of proof,
16 “beyond a reasonable doubt,” exists only in criminal litigation. In civil litigation, “clear
17 and convincing evidence” is the highest evidentiary standard. “Clear and convincing
18 evidence” is “evidence establishing every factual element to be highly probable, or
19 as evidence [which] must be so clear as to leave no substantial doubt.” *In re*
20 *Discipline of Drakulich*, 908 P. 2d 709, 715 (1995)(internal quotations and citations
21 omitted).

22 *In RE: Jane Tiffany Living Trust* 2001, 124 NEV. 74, 78, 177 P.3D 1060, 1062
23 (2008): “A presumption of undue influence arises when a fiduciary relationship exists
24 and the fiduciary benefits from the questioned transaction. Once raised, a
25 beneficiary may rebut such a presumption by clear and convincing evidence.”

26 Thus, the Respondent must meet a difficult, nearly impossible burden, after
27 the burden shift. The burden shift occurs when the contesting party establishes the
28

1 existence of a fiduciary of confidential relationship. The Respondent cannot
2 overcome the Petitioner's undisputed presumed undue influence and undue
3 influence claims and the Petitioner must prevail on the merits if the court allows the
4 Petitioner his due process as mandated by the Nevada and U.S. Constitutions.

5 The Petitioner's verified petition serves as an affidavit since it is signed under
6 penalty of perjury. The Petitioner asserted in his petition that Jeff D. Robben was the
7 fiduciary and caretaker of Thomas J. Harris which automatically creates presumed
8 undue influence. The Respondent does not deny presumed undue influence or even
9 deny Jeff D. Robben was the fiduciary and caretaker thus conceding to that fact.
10

11 The Petitioner asserts facts to also support undue influence which is different
12 than presumed undue influence in addition to the presumed undue influence. The
13 Petitioner states these facts in his verified petition under penalty of perjury. The
14 Respondent offers no proof or offer of proof to which a hearing is required. The
15 Respondent simply concedes but claims a right to an evidentiary hearing to which they
16 offer no proof or facts to defend itself on the pleadings.
17

18 If the Court still requires a hearing, and the Petitioner reserves all rights and
19 requests a tentative ruling or something to narrow the case down to any issue. The
20 Petitioner will attend via phone or Skype or Zoom. If the Court orders Petitioner's
21 witnesses affidavits to be verified by a Notary, the Petitioner can provide that or a
22 telephone conference call and/or Zoom.
23

24 The Petitioner is willing to have a hearing the fraud and essentially the Court
25 should issue an order to show cause to the Respondent's counsel, the Trustee and
26 former Trustees named in the petition to identify the location of the safe deposit box
27

1 contents described in the petition. A paper trail with all accounting must be reviewed
2 by the proper authority to determine how, who, why is there missing assets, stocks,
3 bonds, insurance, cash ,etc – there's also a undisputed house from Minden, NV on
4 Pebble Beach Ct. and other properties in Genoa, NV and perhaps more. Everything
5 must be explained as to why Scott Barton resigned and the previous law firm,
6 Blanchard, Krasner & French and its layers all withdrew. The lack of transparency has
7 been unacceptable.

8
9 "Silence can only be equated with fraud when there is a legal or moral
10 duty to speak, or when an inquiry left unanswered would be intentionally
11 misleading... We cannot condone this shocking conduct... If that is the
12 case we hope our message is clear. This sort of deception will not be
13 tolerated and if this is routine it should be corrected immediately" U.S. v.
Tweel, 550 F2d 997, 299-300

14 "Fraud: An intentional perversion of truth for the purpose of inducing
15 another in reliance upon it to part with some valuable thing belonging to
16 him or to surrender a legal right." Black's 5th, 594 (emphasis added.)
17 "Where a party desires to rescind upon the grounds of mistake or fraud he
must upon the discovery of the facts, at once announce his purpose, and
adhere to it." Grymes v Saunders, 93 US 55, 62.

18 "...If they proposed to rescind, their duty was to assert that right promptly,
19 unconditionally, and invasively," Richardson v. Lowe, 149 Fed Rep 625,
20 627-28. "Fraud vitiates the most solemn contracts, documents, and even
21 judgments." U.S. vs. Throckmorton, 98 U.S. 61. documents";
22 ("Constitutions")

23 This Petitioner has to assert all rights and front load all possible arguments in
24 this pleading. The plaintiff's civil rights pleading was 150 pages and described by a
25 federal judge as "inept". Nevertheless, it was held "Where a plaintiff pleads pro se in
26 a suit for protection of civil rights, the Court should endeavor to construe Plaintiff's
27 Pleadings without regard to technicalities." Picking v. Pennsylvania Railway, supra

1 "Pro Se parties have the right to Appeal, and submit their briefs on appeal even
2 though they may be in artfully drawn", see Vega v. Johnson, 149 F.3d 354 (5th Cir.
3 1998).

4
5 "Courts will go to particular pains to protect pro se litigants consequences of
6 technical errors if injustice would otherwise result." U. S. v. Sanchez, 88F.3d 1243 (D.C.
7 Cir. 1996). Moreover, "the court is under a duty to examine the complaint to determine if
8 the allegations provide for relief on any possible theory." Bonner v. Circuit Court of St.
9 Louis, 526 F.2d 1331, 1334 (8th Cir. 1975) quoting Bramlet v. Wilson, 495 F.2d 714,
10 716 (8th Cir. 1971).

11
12 The history of bias and prejudice against pro se litigants within the Courts is long.
13 Stephen Elias who had been with Nolo Press, the nation's leading publisher of self-help
14 law books, back in 1997, in an article Bias Against Pro Per Litigants . . . stated: "From
15 the moment they first contact the court system, most people who want to represent
16 themselves, without a lawyer, encounter tremendous resistance. Within the closed
17 universe of the courts, this bias is as pernicious as that based on race, ethnic origins or
18 sex." "People who cannot afford a lawyer are a rebuke to the organized bar's monopoly
19 . . . , because that monopoly is morally—if not legally—justified. . . the ABA has admitted
20 that 100 million Americans can't afford lawyers." ". . . the right to file a lawsuit pro se is
21 one of the most important rights under the constitution and laws." Elmore v.
22 McCammon (1986) 640 F. Supp. 905.

23
24
25 Justice Bradley, "It may be that it is the obnoxious thing in its mildest form; but
26 illegitimate and unconstitutional practices get their first footing in that way; namely, by
27

1 silent approaches and slight deviations from legal modes of procedure. This can only be
2 obviated by adhering to the rule that constitutional provisions for the security of persons
3 and property should be liberally construed. A close and literal construction deprives
4 them of half their efficacy, and leads to gradual depreciation of the right, as if it
5 consisted more in sound than in substance. It is the duty of the Courts to be watchful for
6 the Constitutional Rights of the Citizens, and against any stealthy encroachments
7 thereon. Their motto should be *Obsta Principiis*." Boyd v. United, 116 U.S. 616 at 635
8 (1885).

9
10
11 "It will be an evil day for American Liberty if the theory of a government outside
12 supreme law finds lodgement in our constitutional jurisprudence. No higher duty rests
13 upon this Court than to exert its full authority to prevent all violations of the principles of
14 the Constitution." Downs v. Bidwell, 182 U.S. 244 (1901).

15
16 "To protect the integrity of the litigation process, the court has the inherent power
17 to set aside a judgment for fraud on the court itself. (Aldrich v. San Fernando Valley
18 Lumber Co., *supra*, 170 Cal. App.3d 725, 735-736.) Although reversal does not
19 necessarily follow, such fraud may be found to include "fraud perpetrated by officers of
20 the court so that the judicial machinery cannot perform in the usual manner its impartial
21 task of adjudging cases that are presented for adjudication." (Alexander v. Robertson,
22 *supra*, 882 F.2d 421, 424, quoting 7 Moore & Lucas, Moore's Federal Practice (2d ed.
23 1978) [¶] 60.33, p. 515.)" Russell v. Dopp, 36 Cal. App. 4th 765 - Cal: Court of Appeal,
24 4th Appellate Dist., 2nd Div. 1995.

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Respectfully signed under penalty of perjury,

A handwritten signature in black ink, appearing to read 'T. Robben', with a stylized flourish at the end.

/s/ Todd Robben

December 23, 2022

1 **CERTIFICATE OF SERVICE**

2

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

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

5 on December 23, 2022, service of the document was made pursuant to NRCP 5(b) by

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

7 mcclure@wallacemillsap.com

8

9 DATED December 23, 2022

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11 Submitted By: /s/ Stephen James Robben

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Wallace & Millsap
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BOBBIE R. WILLIAMS
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BY *[Signature]* DEPUTY

Case No.: 22-PB-00119

Dept. No.: II

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

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

TODD ROBBEN,

Petitioner;

vs.

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

Respondents.

OPPOSITION TO PETITIONER'S
MOTION TO STRIKE
RESPONDENT'S OBJECTION,
MOTION TO DISMISS AND MOTION
FOR SUMMARY JUDGMENT

The Honorable Tara Flanagan, in her capacity as Successor Trustee of the Thomas J. Harris Trust dated June 19, 2019 (the "Trust"), and as the Court-appointed Successor Executor of the Estate of Thomas Joseph Harris (the "Estate"),¹ by and through her attorneys of record, Wallace & Millsap LLC, respectfully presents this Opposition to Petitioner's Motion to Strike Respondent's Objection, Motion to Dismiss and Motion for Summary Judgment (the "Motion"). This Opposition is based on the following Points & Authorities, any exhibits attached thereto, any oral argument this Court wishes to entertain, and the papers and pleadings on file before the Court of utility in deciding Petitioner's Motion.

¹ The Trust and the Estate may be collectively referred to herein as the "Respondents."

1 MEMORANDUM OF POINTS & AUTHORITIES

2 I. RELEVANT PROCEDURAL HISTORY

3 1. On or about July 20, 2022, Petitioner Todd Robben (the "Petitioner")
4 filed his 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, Related Case Number: 2021 PB00034 (the "Petition"). The
8 Court assigned this matter to the Honorable Robert Estes by and through
9 Department II of this Honorable Court. *See generally* Court Docket.

10 2. On October 6, 2022, the Estate filed its Motion to Dismiss the Petition.
11 The Estate's Motion to Dismiss the Petition has been fully briefed and has been
12 submitted to the Court for decision. *Id.*

13 3. On October 6, 2022, the Trust filed a separate Motion for Summary
14 Judgment. The Parties have fully briefed the Trust's Motion for Summary Judgment
15 and have submitted that Motion to the Court for decision. *Id.*²

16 4. Thereafter, on November 30, 2022, the Court issued an Order Setting
17 Hearing, wherein the Court scheduled oral argument for January 6, 2023 on the
18 Estate's Motion to Dismiss and the Trust's Motion for Summary Judgment. *Id.*

19 5. More recently, on December 8, 2022, Petitioner filed his Motion
20 requesting the Court rule on the briefing when deciding the Estate's Motion to
21 Dismiss and the Trust's Motion for Summary Judgment. *Id.* On December 15, 2022,
22 the Respondents filed their Limited Opposition to the Petitioner's Request for a
23 Decision on the Pleadings.

24 6. On December 15, 2022, each Respondent filed its individual Objection
25 to the Petitioner's initial Petition in this matter in accordance with NRS 155.160.
26 Those Objections timely denied all allegations, claims, and any causes of action set
27

28 ² The Estate's Motion to Dismiss and the Trust's Motion for Summary Judgment may be
collectively referred to as the "dispositive motions."

1 forth in the Petition. Still, in presenting their written objections, the Respondents
2 maintain the merit of their respective dispositive motions pending before this Court
3 for decision.

4 7. On December 23, 2022 the Petitioner filed his Reply to the Respondent's
5 Opposition to his Motion for a Decision on the Pleadings. Unfortunately, the
6 improper content of the Petitioner's Reply brief will necessitate a Sur-Reply by the
7 Respondents which will be filed in the immediate future.

8 8. On December 23, 2022, the Petitioner also served his Motion to Strike,
9 which is the subject of this paper and is opposed as set forth in detail below.

10 9. To date, the Court has not set an evidentiary hearing to consider the
11 Petition. *Id.* Similarly, the Petitioner has not noticed an evidentiary hearing to
12 consider his Petition or provided notice of any such evidentiary hearing.

13 **II. INTRODUCTION & FACTS RELEVANT TO THE MOTION**

14 Petitioner's Motion to Strike is an unlawful attempt to deny the Respondents
15 their statutory right to object to Petitioner's initial Petition in this matter, and to
16 bring meritorious dispositive motions seeking to timely and cost-effectively conclude
17 this matter. Motions to Strike are governed by Nevada Rule of Civil Procedure
18 ("NRCP") 12(f). However, the Petitioner's Motion to Strike does provides no analysis
19 of, or a single reference to, NRCP 12(f). Stated simply, the Petitioner's Motion to
20 Strike is a baseless document which unnecessarily required the Respondent's to incur
21 attorney's fees and costs. Still, out of respect for this Court and in an abundance of
22 caution, the Estate and Trust provide the Court additional grounds upon which the
23 Motion to Strike should be denied.

24 Procedurally speaking, the Court should deny the Motion because NRCP 12(f)
25 motions cannot be used to invalidate, contradict or supersede the rights of the
26 Respondents. Indeed, NRS 155.180 states the Rules of Civil Procedure may be
27 applied to estate matters only when they are not inconsistent with Title 12 of the
28 Nevada Revised Statutes. To strike the Respondents' Objections would be

1 inconsistent with the Trust's and the Estate's statutory right for the Court to hear
2 their respective objections to the Petition pursuant to NRS 155.160. As such, the
3 Petitioner's Motion to Strike is procedurally barred by NRS 155.160. Similarly, the
4 Motion is procedurally barred by the plain language of NRCP 12(f), because motions
5 to strike only apply to a "pleading." Neither of the Respondents' Objections filed
6 under NRS 155.160, nor their respective dispositive motions, are "pleadings" as
7 defined by the Nevada Rules of Civil Procedure.

8 Substantively, motions to strike are granted to eliminate spurious issues from
9 litigation. However, motions to strike are disfavored and should never be granted
10 when the material at issue bears on the litigation. The Respondents' Objections bear
11 directly on the issues in this litigation, serving as the statutorily prescribed document
12 by which the Respondents may object to and deny the allegations in the initial
13 Petition. *See* NRS 155.160 & 155.180. Likewise, the Estate's Motion to Dismiss and
14 the Trust's Motion for Summary Judgment are procedurally recognized motions
15 which identify the legal infirmities suffered by the Petition which render the initial
16 Petition unable to proceed. As such, the Petitioner's Motion to Strike should be
17 denied because the Respondents' Objections and dispositive motions have a direct
18 bearing on litigated issues before the Court.

19 **III. LAW & ARGUMENT**

20 NRCP 12(f) states "[t]he court may strike from a pleading an insufficient
21 defense or any redundant, immaterial, impertinent, or scandalous matter." The
22 Petitioner has unlawfully deployed his Motion to Strike to deprive the Respondents
23 of their statutory right to respond and object to the initial Petition in this case.
24 Therefore, the Respondents respectfully request the Court deny the Motion because
25 a) the Nevada Rules of Civil Procedure cannot be applied to contradict or supersede
26 the rights of interested persons in a matter filed under Title 12 of the Nevada Revised
27 Statutes; b) a motion to strike only applies to pleadings, and neither a NRS 155.160
28 objection and response, a motion to dismiss, nor a motion for summary judgment is a

1 pleading as defined by the Nevada Rules of Civil Procedure; and c) even if a motion
2 to strike was a procedurally permitted response to an objection or dispositive motion
3 filed in a probate matter, granting the Petitioner's Motion to Strike is inappropriate
4 because Respondents' Objections as well as their dispositive motions bear directly on
5 litigated issues before the Court.

6 **A. An NRCP 12(f) motion to strike cannot be employed to supersede**
7 **or contradict the statutory and procedural rights of the**
8 **Respondents in a probate matter proceeding under Title 12 of the**
9 **Nevada Revised Statutes.**

10 NRS 155.180 states "[e]xcept as otherwise specially provided in this title, all the
11 provisions of law and the Nevada Rules of Civil Procedure regulating proceedings in
12 civil cases apply in matters of probate, when appropriate, or may be applied as
13 auxiliary to the provisions of this title." (emphasis added). Thus, the language of
14 "except as otherwise specially provided in this title" clarifies the Nevada Rules of
15 Civil Procedure do not apply to probate matters when the Rules of Procedure conflict
16 with the statutory rights of interested persons under Title 12 of the Nevada Revised
17 Statutes. NRS 155.160 confers upon an interested person a right to object and
18 respond to petitions. Thus, the Executor cannot employ a Nevada Rule of Civil
19 Procedure, such as NRCP 12(f), to deprive the Respondents of their statutory right to
20 object to the initial Petition which commenced this matter.

21 In a related but separate analysis, NRS Chapter 155 does *not* prescribe specific
22 rules regarding the filing of dispositive motions by an interested person in response
23 to a petition brought under Title 12 or 13 of the Nevada Revised Statutes. Thus, per
24 NRS 155.180, the Nevada Rules of Civil Procedure related to the filing of dispositive
25 motions are applicable to this matter. As a result, the Estate's Motion to Dismiss
26 filed pursuant to NRCP 12(b), and the Trust's Motion for Summary Judgment filed
27 pursuant to NRCP 56, are procedurally proper filings brought in accordance with the
28 governing rules. Moreover, these dispositive motions are already fully briefed and

1 have been submitted to the Court for decision. Therefore, there is no procedural
2 ground upon which the Petitioner can seek to strike these meritorious dispositive
3 motions.

4 **B. The Petitioner's Motion to Strike is procedurally deficient,**
5 **requiring denial of the Motion, because an NRS 155.160**
6 **objection and response is a not a "pleading" to which NRCP 12(f)**
7 **applies.**

8 Assuming *arguendo* the Petitioner's Motion to Strike is not procedurally
9 barred by the qualifying language of NRS 155.180, the Motion is fatally flawed upon
10 review of NRCP 12(f)'s plain language. Specifically, the rules of statutory
11 interpretation apply to interpretation of the Rules of Civil Procedure. *See Logan v.*
12 *Abe*, 131 Nev. 260, 264, 350 P.3d 1139, 1141–42 (2015) (holding that "[b]ecause the
13 rules of statutory interpretation apply to Nevada's Rules of Civil Procedure, we
14 interpret unambiguous statutes, including rules of civil procedure, by their plain
15 meaning."). NRCP 12(f) unambiguously states it is limited to striking a "pleading."
16 NRCP 7(a) limits pleadings in a civil action to: a complaint, an answer to a complaint,
17 an answer to a counterclaim, an answer to a crossclaim, a third-party complaint, an
18 answer to a third-party complaint, and a reply to an answer. Thus, motions to strike
19 filed pursuant to NRCP 12(f) only apply to complaints, answers and replies to
20 answers filed under the Nevada Rules of Civil Procedure. In other words, NRCP 12(f)
21 does not state a party may file a motion to strike a statutory objection, and to conclude
22 otherwise would read language into the rule that does not exist in violation of the
23 rules of interpretation. *See Orion Portfolio Servs. 2 LLC v. Cty. of Clark ex rel. Univ.*
24 *Med. Ctr. of S. Nevada*, 126 Nev. 397, 402, 245 P.3d 527, 531 (2010) (holding "[w]hen
25 a statute is clear and unambiguous, this court gives effect to the plain and ordinary
26 meaning of the words and does not resort to the rules of construction.").

27 Similarly, per NRCP 7(a), neither the Estate's Motion to Dismiss nor the
28 Trust's Motion for Summary Judgment are "pleadings." Thus, NRCP 12(f) does not

1 allow the Petitioner to file a motion to strike the Respondents' dispositive motion
2 practice, necessitating denial of the Petitioner's Motion to Strike.

3 **C. Substantively, the Petitioner's Motion to Strike should be denied**
4 **because Respondents' filings are not immaterial or redundant**
5 **and, instead, address the merits of this matter.**

6 Under Rule 12(f), "[t]he court may strike from a pleading an insufficient
7 defense or any redundant, immaterial, impertinent, or scandalous matter."
8 *Roadhouse v. Las Vegas Metro. Police Dep't*, 290 F.R.D. 535, 543 (D. Nev. 2013).
9 "Motions to strike are generally regarded with disfavor...." *Id.* The function of a
10 motion to strike pursuant to Rule 12(f) is avoidance of the expenditure of time and
11 money that must arise from litigating spurious issues by dispensing with those issues
12 prior to trial. *Id.* Given their disfavored status, courts often require a showing of
13 prejudice by the moving party before granting a motion to strike. *Id.* Thus, a 12(f)
14 motion is a "drastic remedy" and, therefore, is generally disfavored by courts. *Nevada*
15 *Fair Hous. Ctr., Inc. v. Clark Cty.*, 565 F. Supp. 2d 1178, 1187 (D. Nev. 2008).

16 Motions to strike should not be granted unless it is clear the matter to be
17 stricken could have no possible bearing on the subject matter of the litigation.
18 *Cardinale v. La Petite Acad., Inc.*, 207 F. Supp. 2d 1158, 1161 (D. Nev. 2002).
19 Moreover, motions to strike are also disfavored because they are often used as
20 delaying tactics, and because of the limited importance of pleadings in civil practice.
21 *Id.* at 1162. When evaluating a motion to strike, the Court must view the challenged
22 pleading in the light most favorable to the [non-moving party]. *Id.*

23 Here, the Court should deny the Petitioner's Motion to Strike, because the
24 Respondents' Objections and dispositive motions bear directly on the subject matter
25 of the litigation. Like in *Cardinale* where the Court held a motion to strike cannot be
26 granted whenever the challenged material has a bearing on the subject matter of the
27 litigation; here, the Respondents' Objections serve as the statutorily directed filing
28 by which they are to respond to and present their denial of the allegations contained

1 in the Petitioner's initial Petition. Likewise, the Respondents' dispositive motions
2 present meritorious legal arguments demonstrating in detail mandatory reasons this
3 matter is properly dismissed with prejudice. Moreover, the Respondents' dispositive
4 motions are procedurally proper mechanisms by and through which the Respondents
5 can identify the legal infirmities of the initial Petition in an effort for avoid
6 unnecessary delay and expense being incurred by both the Estate and Trust, which
7 would enact prejudice upon their respective beneficiaries. Thus, the Court cannot
8 grant Petitioner's Motion to Strike because the Respondents' Objections and their
9 respective dispositive motions directly relate to the subject matter of the litigation
10 and do not violate NRCP 12(f).

11 **D. The Limited Content of the Petitioner's Motion to Strike is**
12 **Wrong.**

13 Finally, the Petitioner's Motion to Strike is comprised of only bare, lengthy
14 block citations. Still, attempting to identify its premise, the Motion to Strike appears
15 to have two limited arguments, both of which are flawed. First, Petitioner states the
16 Respondents did not set a required hearing on their dispositive motions. This
17 argument is wrong. The Respondents fully complied with the governing local rule
18 regarding the submission of motions, NJDCR 6(e), stating decisions on all motions
19 shall be rendered *without* oral argument unless otherwise ordered by the Court. *See*
20 NJDCR 6(e). The Respondents dispositive motions have been fully briefed, including
21 the filing of oppositions by the Petitioner, and are currently scheduled for oral
22 argument by order of this Court. *See* Court Docket. Thus, all procedural rules have
23 been fulfilled by the Respondents. In this regard, even if, *arguendo*, a hearing was to
24 be set, it has now been scheduled by the Court, with notice given to all parties. *See*
25 NJDCR 6(e)(1). As a result there has been no prejudice to the Petitioner from any
26 procedural process related to the Respondents filing dispositive motions. Notably,
27 the Petitioner's argument in this regard is contrary to his positions taken in separate
28 papers. Specifically, after the Court recently scheduled oral argument on the

1 Respondents' dispositive motions, the Petitioner filed a filed a motion requesting the
2 Court rule upon the dispositive motions on the papers, and without conducting a
3 hearing. *See* Petitioner's December 8, 2022, Motion for a Decision on the Pleadings.
4 The Petitioner cannot disingenuously make contrary arguments in separate papers
5 and expect this Court to not be wise to such inconsistent behavior.

6 Second, the Petitioner's Motion to Strike appears to assert the Trust and
7 Estate are not interested persons to this matter. This argument is nonsensical. First,
8 the Trust and Estate are the named Respondents to this matter. As such they are
9 parties to this case bearing the legal protections and allowances of both the Nevada
10 Rules of Civil Procedure and all applicable provisions of the Nevada Revised Statutes.
11 *See generally* NRCP; *see* NRS 137.080, NRS 164.010, NRS 164.015, and NRS 155.
12 Moreover, the Trust and Estate are indeed interested persons in this matter as they
13 have "an enforceable right or interest that may be materially affected by the outcome
14 of this proceeding." *See* NRS 132.390(1)(a). Moreover, Judge Flanagan, as the
15 appointed fiduciary of both the Trust and Estate and their acting legal representative
16 is an interested person in this matter, who has a protected right to appear by and
17 through the Trust and Estate for purposes of defending against the baseless
18 allegations made by the Petitioner. *See* NRS 132.390(b)(4) and NRS 132.390(c)(1).
19 To claim the named Respondents to this matter are not interested persons is absent
20 reason or awareness, and highlights the baseless nature of the Petitioner's Motion to
21 Strike.

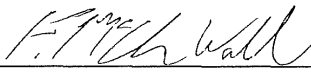
22 Third, as previously referenced, the Petitioner's Motion to Strike is comprised
23 entirely of "bare citations" to statutes, rules, and copied language from the
24 Respondent's Objections. *See generally* Motion to Strike. As such, the Motion to
25 Strike violates NJDCR 6(b) and further illuminates to the Court the baseless nature
26 of this entire proceeding, as only continually brought further into focus by the
27 Petitioner's repetitive filings lacking any basis in law or substance. Given the "bare"

1 presentation of the Motion to Strike, the Court may deny the Motion without
2 consideration. See NJDCR 6(b).

3 **IV. CONCLUSION & REQUESTED RELIEF**

4 Based on the foregoing facts, law, and argument; the Respondents respectfully
5 request the Court deny the Motion to Strike.

6
7 DATED this 30th day of December 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 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 30th day of December 2022.

By: 

Caroline Carter, Paralegal

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JAN - 3 2023

Douglas County
District Court Clerk

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2023 JAN -3 AM 10:41

BOBBIE R. WILLIAMS
CLERK

BY W. Williams DEPUTY

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

TODD ROBBEN,
Petitioner

CASE NO.: 2022-PB-00119

Vs.

PETITIONER'S NOTICE AND
PROVISIONAL MOTION TO STRIKE
RESPONDENT'S OBJECTIONS,
MOTION TO DISMISS AND MOTION
FOR SUMMARY JUDGMENT

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

No hearing requested

Petitioner, Todd Robben¹, gives notice and requests leave to file a
"provisional" or amended or supplemental motion to strike at the discretion of the
court. No hearing is requested since the court can decide on the
pleadings/motions.

¹ 'however inartfully pleaded,' [are] held to 'less stringent standards than formal pleadings drafted by lawyers.'" Fed. Express Corp. v. Holowecki, 552 U.S. 389, 402 (2008).

1 Petitioner's previously filed motion to strike and reply in support of said
2 motion is refilled to comply with the due-process requirements and understanding
3 new arguments are not allowed on a reply brief.
4

5 This motion to strike is not made pursuant to NRCP 12(f). See Maheu v. Eighth
6 Judicial Dist. Court, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973) (recognizing the
7 court's inherent power to "control the disposition of the causes on its docket with
8 economy of time and effort for itself, for counsel, and for litigants").
9

10 "Respondent arguing as the "Trust", and not the Trustee, the Trust is not an
11 interested party, or interested person and therefore lacked standing to file and/or
12 argue in this instant case and filed a fugitive filing(s)."
13

14 This filing also adds a point of authority that Respondent did not provide
15 the mandated notice pursuant to NRCP Rule §§ 6 and DCR §§ 13 .Motions: "All
16 motions and similar moving documents, unless made during a hearing or trial,
17 shall be in writing, and if requiring testimony, shall comply with the notice
18 requirements of(a) NRCP 6(c)."
19

20 The Respondents objections are pleadings pursuant to NRCP Rule §§ 8
21 since the objections answer the complaint/petition.
22

23 The Respondent is not made prejudice because they can still file any
24 opposition by seeking leave or at the January 06,2022 hearing – it there is even
25 a hearing to be had since the Respondent did not request a hearing (or provide
26 notice) pursuant to NRCP Rule §§ 6 and DCR §§ 13.
27
28

1
2
3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 This Petitioner nor the Respondent has requested oral arguments pursuant to
5 "Ninth Judicial District Court Rule (NJDCR) 6(e) states that decisions on all motions
6 will be rendered without oral argument unless oral argument is requested by the
7 court or the parties. Moreover, District Court Rule 13(1) requires that all motions
8 include a notice of the motion setting the matter on the court law and motion
9 calendar. " *Garrettson v. State*, 967 P. 2d 428 - Nev: Supreme Court 1998.
10

11 The Respondents did not comply with DCR 13(1) by providing proper
12 notice or request a hearing for its Motion to Dismiss and Motion for Summary
13 Judgment, nor did they provide notice to the Petitioner. The Court may strike
14 the Motion to Dismiss and Motion for Summary Judgment on its own motion for
15 failure to set a hearing.
16

17 NRCP Rule 15 Motions, issues of law: Oral hearings or submission on
18 briefs; notice of and compliance with decisions states:
19

20 If the court and the parties agree any issue of law and any motion of any
21 nature or kind may be considered in chambers at any time or place in the state;
22 or such question of law or motion may be submitted on briefs to such judge,
23 and the decision may be filed thereafter at any time. Any proceeding which
24 requires evidence, testimony, or fact finding must be heard in open court within
25 the district that the case is filed and where court is regularly held, except as
26 provided by:

27 1. NRS 1.050(4). The decision shall fix the time when the decision of the
28 court is to be complied with. In all such cases the party who is required to
act by such decision shall receive due written notice thereof from the
opposite party.

1 2. Time for complying with such decision shall commence to run from the
2 time when service is made in the manner required by N.R.C.P. for service
3 of pleadings in a case, but when the parties are present by their respective
4 attorneys when the decision is rendered no notice shall be required.

5 The Respondent responded in the Trust objections:

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

9 And in the Respondent responded in the Estate objections:

10 I, OBJECTION TO THE BEGINNING PORTION OF THE PETITION

11 The Petition begins by making broad, unsupported allegations regarding
12 the validity of the Decedent's Will, all of which are objected to and denied
13 by the Estate. See generally Petition, pgs. 2-5.

14 Namely, **the Estate** objects to any and all allegations contesting the
15 validity of the Will, which has already been conclusively determined to be
16 valid in the Estate Case. See Exhibits 1, 5 & 7. In as much, **the Estate**
17 denies and objects to any allegations of undue influence related to the
18 Decedent's Will or the Decedent's Estate, as well as to the application of
19 any statutory burden shifting based on wholly unsubstantiated allegations
20 unrelated to the Decedent's Will or the Decedent's Estate.

21 II. OBJECTION TO THE "INTRODUCTION" OF THE PETITION

22 The "Introduction" of the Petition does not specifically reference the
23 Decedent's Will or Estate. See generally Petition, pgs. 5-7. However, **the**
24 **Estate** maintains its general objection to the Petition, including the
25 "Introduction" section of the Petition in an abundance of caution.

26 By and through the "Introduction" section of the Petition, the Estate notes
27 Petitioner alleges his Petition is timely. **The Estate** denies and opposes
28 this statement, and identifies the Petition is not only untimely, but time-
barred, as presented in detail in **the Estate's** separately filed Motion to
Dismiss. See generally Estate's Motion to Dismiss; see also NRS
137.080.

The "Introduction" section of the Petition also references the Estate Case,
noting this Court's ability to review the proceedings in the Estate Case in
full wherein the Court ruled the Petitioner is not an "interested person in
the Estate, with no standing to make any allegations regarding the validity
of the Decedent's Will." See Exhibit 5. **The Estate** notes it has no

1 opposition to this Court accessing, considering, and reviewing the
2 proceedings in the Estate Case.

3
4
5 The "Estate" and the "Trust" are not interested "parties", interested
6 "persons", a "beneficiary" or the "Trustee" and therefore not allowed to argue in
7 the motions and objections in this instant cast and must be stricken from the
8 record pursuant to NRS 132.185, NRS 132.390 and NRS 155.160.
9

10
11 **NRS 132.185** "Interested person" defined. "Interested person" means
12 a person whose right or interest under an estate or trust may be materially
13 affected by a decision of a fiduciary or a decision of the court. The
14 fiduciary or court shall determine who is an interested person according to
the particular purposes of, and matter involved in, a proceeding.

15 **NRS 155.160** Responses and objections to proceedings.

16
17 1. An interested person may appear and make a response or
18 objection in writing at or before the hearing.

19 2. An interested person may appear and make a response or
20 objection orally at the hearing. The court may hear and determine the
21 response or objection at the hearing or grant a continuance to allow the
22 response or objection to be made in writing.

23 3. If the court is not in session at the time set for the hearing of any
24 matter concerning the settlement of the estate of a decedent, anyone
opposing the petition therein made may file objections thereto with the
clerk.

25 **NRS 132.390** Circumstances in which person is interested person.

26 1. For the purposes of this title, a person is an interested person with
27 respect to:
28

1
2 (a) A judicial proceeding, a notice of a proposed action or a
3 nonjudicial settlement, if the person has or claims to have an enforceable
4 right or interest that may be materially affected by the outcome of that
5 proceeding, proposed action or nonjudicial settlement. While living, a
6 settlor or a testator shall be deemed to have an enforceable right with
7 respect to any trust or will that he or she created. For the purposes of this
8 paragraph, a person may not claim to have a right or interest under an
9 estate or trust after the entry of an order of the court declaring the right or
10 interest invalid.

11 (b) An estate of a decedent, if the person:

12 (1) Is an heir, devisee, child, spouse, creditor, settlor or
13 beneficiary;

14 (2) Has a property right in or claim against the estate of a
15 decedent, including, without limitation, the Director of the Department of
16 Health and Human Services in any case in which money is owed to the
17 Department of Health and Human Services as a result of the payment of
18 benefits for Medicaid;

19 (3) Has priority for appointment as a personal representative; or

20 (4) Is any other fiduciary representing an interested person.

21 (c) A trust, if the person:

22 (1) Is a living settlor or, if a court has appointed a guardian of the
23 estate of the settlor, the guardian of the estate appointed by the court;

24 (2) Is the trustee, including, without limitation, each acting
25 cotrustee;

26 (3) Holds the presently exercisable right to remove or replace the
27 trustee or a cotrustee;

28 (4) Asserts the right to serve as the trustee or as a cotrustee;

(5) Is a current beneficiary or a remainder beneficiary of that trust;

(6) Holds a presently exercisable power of appointment that
permits the holder to designate or change the designation of a current
beneficiary or a remainder beneficiary of that trust;

1
2 (7) Holds a presently exercisable power that permits the holder to
3 designate, remove or otherwise change the designation of a person who,
pursuant to this paragraph, would be an interested person;

4 (8) Is a creditor of the settlor who has a claim which has been
5 accepted by the trustee or who has asserted the trustee's liability therefor
6 in a probate proceeding or in a civil action under subsection 8 or 9 of NRS
111.779; or

7 (9) Is a creditor of the trust who has given the trustee written
8 notice of its claim.

9 (d) A revocable trust that is the subject of a petition under NRS
10 164.015 relating to the validity of the trust or any trust-related document, if
11 the person, after the death of the settlor, under the terms of any version of
the trust documents in dispute, would be:

12 (1) A current beneficiary or a remainder beneficiary of that trust;
13 or

14 (2) A trustee or a successor trustee, including, without limitation,
15 a cotrustee.

16 (e) A will that, while the testator is still living, is the subject of a petition
17 under subsection 2 of NRS 30.040, if the person, after the death of the
testator, would be:

18 (1) A beneficiary of that will; or

19 (2) A fiduciary designated in or pursuant to the terms of that will.
20

21 2. For the purposes of this title, the following persons are not
interested persons:

22 (a) With respect to a motion, petition or proceeding, any person
23 holding or claiming an interest or right that is not affected by the motion,
24 petition or proceeding.

25 (b) The Director of the Department of Health and Human Services
26 after any money owed to the Department has been paid in full or with
27 respect to the estate or trust of a decedent who did not receive any
benefits from Medicaid.
28

1 (c) A vexatious litigant with regard to a motion, petition or proceeding
2 for which the vexatious litigant has been denied standing pursuant to NRS
3 155.165.

4 (d) As to the estate of a decedent:

5 (1) After a will has been admitted to probate, an heir, child or
6 spouse who is not a beneficiary of the will, except for the purposes of NRS
7 133.110, 133.160 and 137.080.

8 (2) A creditor whose claim has not been accepted by the personal
9 representative, if the enforcement of the claim of the creditor is barred
10 under the provisions of chapter 11 or 147 of NRS or any other applicable
11 statute of limitations.

12 (e) As to a trust:

13 (1) The guardian of the person of an interested person, unless
14 the guardian is expressly permitted to act for the interested person under
15 the terms of the trust instrument;

16 (2) A beneficiary or creditor whose right or claim is barred by any
17 applicable statute of limitations, including, without limitation, the statute of
18 limitations found in chapter 11 of NRS or NRS 164.021, 164.025 or
19 166.170;

20 (3) Any beneficiary of a revocable trust, except as expressly
21 provided in paragraph (d) of subsection 1; or

22 (4) Any disclaimant as to a disclaimed interest, except with
23 respect to the enforcement of the disclaimer.

24 3. As used in this section:

25 (a) "Current beneficiary" has the meaning ascribed to it in NRS
26 165.020.

27 (b) "Remainder beneficiary" has the meaning ascribed to it in NRS
28 165.020.

1 "Respondent arguing as the "Estate" or "Trust", and not the Trustee, the Trust
2 is not an interested party, an interested person or a beneficiary and therefore lacked
3 standing to file and/or argue in this instant case and filed a fugitive filing(s)."

4
5 In Dawes v. State, 881 P. 2d 670 - Nev: Supreme Court 1994 "Trial courts
6 have broad discretion in deciding whether terms within an instruction should be
7 further defined." See Pena v. Ludwig, 766 S.W.2d 298, 305 (Tex.Ct.App. 1989); 75B
8 Am.Jur.2d Trial § 1237 (1992). Words used in an instruction in their ordinary sense
9 and which are commonly understood require no further defining instructions. See
10 State v. Smith, 160 Ariz. 507, 774 P.2d 811 (1989) ("knowingly" need not be
11 defined); State v. Barnett, 142 Ariz. 592, 594-95, 691 P.2d 683, 685-86 (1984)
12 (failure to define "intentionally" not error); 75B Am. Jur.2d Trial § 1237 (collecting
13 numerous cases holding that "gross and willful misconduct," "knowingly,"
14 "corroboration," "deliberately" and "conspiracy" need no definition)." Id.

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16
17 "However, when a phrase has a technical legal meaning, that phrase should be
18 defined so that a jury is not misled or confused into applying the plain language as
19 commonly understood. See McBride v. Woods, 124 Colo. 384, 238 P.2d 183, 186
20 (1951) ("unavoidable accident"); see also 75B Am.Jur.2d Trial § 1237 (collecting
21 cases holding that some terms requiring definition include "premeditation and
22 deliberation" in first degree murder cases, "mental incapacity," and procedural
23 phrases)." Dawes v. State, supra.

24
25 "Perhaps this argument ...is merely semantic, but in law semantics are rarely
26 properly characterized as mere. If words mean things, and if we should mean the
27

1 words that we use" Youngblood v. GC Services Ltd. Partnership, 186 F. Supp. 2d
2 695 - Dist. Court, WD Texas 2002.

3 The Respondent did not comply with the District Court Rule DCR 13(1) and the
4 Respondent arguing as the "Estate" and/or "Trust", and not the Trustee, the Trust is
5 not an interested party, or interested person and therefore lacked standing to file
6 and/or argue in this instant case and filed a fugitive filing(s). The Estate and Trust
7 are not interests persons which have statutory or constitutional rights.
8

9 The amended filing also adds a point of authority that Respondent did not
10 provide the mandated notice pursuant to NRCP Rule 6 and DCR 13 .Motions:
11 "All motions and similar moving documents, unless made during a hearing or
12 trial, shall be in writing, and if requiring testimony, shall comply with the notice
13 requirements of NRCP 6(a)."
14

15 "Motions filed in the district court "shall contain a notice of motion. . . with due
16 proof of the service of the same." District Court Rule 13. Hamilton's inquiries did not
17 satisfy the requirements for a motion as they did not contain a notice of motion"
18 Hamilton v. State, Nev: Court of Appeals 2018.
19

20 Shall is mandatory - "This court has stated that in statutes, "may" is
21 permissive and "shall" is mandatory unless the statute demands a different
22 construction to carry out the clear intent of the legislature." Givens v. State, 99
23 Nev. 50, 54, 657 P.2d 97, 100 (1983). The "use of 'shall' is mandatory unless a
24 rule's construction demands a different interpretation to carry out the rule's
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1 purpose." Moseley v. Eighth Judicial Dist. Ct., 188 P. 3d 1136 - Nev: Supreme
2 Court 2008.

3 "The court is to strike "fugitive documents," which are those papers "not
4 allowed" by the Local or Federal Rules." See Reiger v. Nevens, No. 3:12-cv-00218-
5 MMD-VPC, 2014 WL 537613, at *3 (D. Nev. Feb. 14, 2014). Jones v. Skolnik, Dist.
6 Court, D. Nevada 2015 No. 3:10-cv-00162-LRH-VPC.

7
8 Respondent requests the court to ignore NRS 2.120 (Such rules shall not
9 abridge, enlarge or modify any substantive right and shall not be inconsistent with
10 the Constitution of the State of Nevada) and the enabling act of the Nevada [Chapter
11 40, Statutes of Nevada 1951; now NRS 2.120] - AN ACT relating to rules of civil
12 practice and procedure, and authorizing the supreme court to prescribe such rules
13 for all courts.
14

15 (Approved February 28, 1951)

16
17 NRS 2.120 Adoption of rules for government of courts and State Bar of
18 Nevada; adoption of rules for civil practice and procedure.

19 1. The Supreme Court may make rules not inconsistent with the
20 Constitution and laws of the State for its own government, the government
21 of the district courts, and the government of the State Bar of Nevada.
22 Such rules shall be published promptly upon adoption and take effect on a
date specified by the Supreme Court which in no event shall be less than
30 days after entry of an order adopting such rules.

23 2. The Supreme Court, by rules adopted and published from time to
24 time, shall regulate original and appellate civil practice and procedure,
25 including, without limitation, pleadings, motions, writs, notices and forms of
26 process, in judicial proceedings in all courts of the State, for the purpose
27 of simplifying the same and of promoting the speedy determination of
litigation upon its merits. **Such rules shall not abridge, enlarge or
28 modify any substantive right and shall not be inconsistent with the
Constitution of the State of Nevada.** Such rules shall be published

1 promptly upon adoption and take effect on a date specified by the
2 Supreme Court which in no event shall be less than 60 days after entry of
3 an order adopting such rules.

4 The Petitioner objects to the Respondents motions to strike and summary
5 judgment and both objections based on the above points and authorities. NRS
6 47.040(1)(a) requires a party who objects to the admission of evidence to make "a
7 timely objection or motion to strike..., stating the specific ground of objection." The
8 "failure to specifically object on the grounds urged on appeal preclude[s] appellate
9 consideration on the grounds not raised below." *Pantano v. State*, 122 Nev. 782, 795
10 n. 28, 138 P.3d 477, 486 n. 28 (2006). "This rule is more than a formality," since an
11 objection educates both the trial court and the opposing party, who is entitled to
12 revise course according to the objections made. 1 Stephen A. Saltzburg, Michael M.
13 Martin & Daniel J. Capra, Federal Rules of Evidence Manual § 103.02[9], at 103-18
14 (9th ed. 2006).
15

16
17 The Respondent, the Trustee or its lawyers have not even attempted to correct
18 their mistake by amending their pleadings, motions ,objections, etc. The Respondent
19 has conceded and therefore the Petitioner has prevailed in this action on the merits
20 and requests the relief requested in the petition.
21

22 RELIEF REQUEST

23 Because the Respondent has defaulted and not complied with the Rules
24 and Statutes to properly file its motions to dismiss and motion for summary
25 judgment along with Respondents objections which also do not comply the
26 Rules and Statutes – the Respondents filings must be stricken from the record
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and judgment entered in favor of the Petitioner and against the Respondent
declaring the Thomas J Harris Trust invalid and the Petitioner is the single
remaining beneficiary of the previous Thomas and Olga Harris Living Trust.

Respectfully signed under penalty of perjury,



/s/ Todd Robben

January 03, 2023

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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 January 03, 2023, 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 January 03, 2023

Submitted By: /s/ Stephen James Robben

RECEIVED

JAN - 3 2023

Douglas County
District Court Clerk

FILED

2023 JAN -3 AM 10:41

BOBBIE R. WILLIAMS
CLERK

BY W. Williams DEPUTY

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

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

TODD ROBBEN,
Petitioner

CASE NO.: 2022-PB-00119

Vs.

PETITIONER'S FIRST AMENDED
REPLY IN SUPPORT OF MOTION TO
STRIKE RESPONDENT'S
OBJECTIONS, MOTION TO DISMISS
AND MOTION FOR SUMMARY
JUDGMENT

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

Petitioner, Todd Robben¹, requests leave to file an amended reply in
support of his motion to strike at the discretion of the court and pursuant to
NRCF Rule §§15. The amended filing corrects a typo identifying FRCP Rule

¹ 'however inartfully pleaded,' [are] held to 'less stringent standards than formal
pleadings drafted by lawyers.'" Fed. Express Corp. v. Holowecki, 552 U.S. 389,
402 (2008).

1 12(f) and corrects a factual statement about the Trustee and/or Trust
2 filing/standing issue as an interested person or interested party.

3 "Respondent arguing as the "Trust", and not the Trustee, the Trust is not an
4 interested party, or interested person and therefore lacked standing to file and/or
5 argue in this instant case and filed a fugitive filing(s)."

6
7 The amended filing also adds a point of authority that Respondent did not
8 provide the mandated notice pursuant to NRCP Rule §§ 6 and DCR §§ 13
9 .Motions: "All motions and similar moving documents, unless made during a
10 hearing or trial, shall be in writing, and if requiring testimony, shall comply with
11 the notice requirements of(a) NRCP 6(c)."

12
13 The Respondents objections are pleadings pursuant to NRCP Rule §§ 8
14 since the objections answer the complaint/petition.

15
16 The Respondent is not made prejudice because they can still file any
17 opposition by seeking leave or at the January 06,2022 hearing – it there is even
18 a hearing to be had since the Respondent did not request a hearing (or provide
19 notice) pursuant to NRCP Rule §§ 6 and DCR §§ 13.

20
21 In an abundance of caution Petition will file a second motion to strike on
22 the factual issues and the lack of notice issue to allow the Respondent to file any
23 opposition.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 The amended filing corrects a typo identifying FRCP Rule 12(f) and
26 corrects a factual statement about the Trustee and/or Trust filing/standing issue
27

1 as an interested person or interested party. The word responding is changed to
2 arguing.

3 “Respondent arguing as the “Trust”, and not the Trustee, the Trust is not an
4 interested party, or interested person and therefore lacked standing to file and/or
5 argue in this instant case and filed a fugitive filing(s).”

6 In Dawes v. State, 881 P. 2d 670 - Nev: Supreme Court 1994 “Trial courts
7 have broad discretion in deciding whether terms within an instruction should be
8 further defined.” See Pena v. Ludwig, 766 S.W.2d 298, 305 (Tex.Ct.App. 1989); 75B
9 Am.Jur.2d Trial § 1237 (1992). Words used in an instruction in their ordinary sense
10 and which are commonly understood require no further defining instructions. See
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13 (failure to define “intentionally” not error); 75B Am. Jur.2d Trial § 1237 (collecting
14 numerous cases holding that “gross and willful misconduct,” “knowingly,”
15 “corroboration,” “deliberately” and “conspiracy” need no definition).” Id.

16 “However, when a phrase has a technical legal meaning, that phrase should be
17 defined so that a jury is not misled or confused into applying the plain language as
18 commonly understood. See McBride v. Woods, 124 Colo. 384, 238 P.2d 183, 186
19 (1951) (“unavoidable accident”); see also 75B Am.Jur.2d Trial § 1237 (collecting
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4 695 - Dist. Court, WD Texas 2002.

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6 The Respondent did not comply with the District Court Rule DCR 13(1) and the
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1 purpose." Moseley v. Eighth Judicial Dist. Ct., 188 P. 3d 1136 - Nev: Supreme
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5 MMD-VPC, 2014 WL 537613, at *3 (D. Nev. Feb. 14, 2014). Jones v. Skolnik, Dist.
6 Court, D. Nevada 2015 No. 3:10-cv-00162-LRH-VPC.

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10 the Constitution of the State of Nevada) and the enabling act of the Nevada [Chapter
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23 2. The Supreme Court, by rules adopted and published from time to
24 time, shall regulate original and appellate civil practice and procedure,
25 including, without limitation, pleadings, motions, writs, notices and forms of
26 process, in judicial proceedings in all courts of the State, for the purpose
of simplifying the same and of promoting the speedy determination of
litigation upon its merits. **Such rules shall not abridge, enlarge or
27 modify any substantive right and shall not be inconsistent with the
Constitution of the State of Nevada.** Such rules shall be published
28

1 promptly upon adoption and take effect on a date specified by the
2 Supreme Court which in no event shall be less than 60 days after entry of
3 an order adopting such rules.

4 The Nevada Rules of Civil Procedure (NRCP) 12(f) are analogous to their
5 Federal counterparts. While Federal Rule of Civil Procedure (FRCP) 12(f) provides
6 authority for the court to strike "redundant, immaterial, impertinent, or scandalous
7 matter" from a pleading, it does not authorize the court to strike material contained in
8 other documents filed with the court. See Fed. R. Civ. P. 12(f). Courts, however,
9 have inherent powers to control their dockets, see Ready Transp., Inc. v. AAR Mfg.,
10 Inc., 627 F.3d 402, 404 (9th Cir. 2010) (citations omitted), and to "achieve the
11 orderly and expeditious disposition of cases." Chambers v. Nasco, Inc., 501 U.S. 32,
12 43 (1991). "This includes the power to strike items from the docket as a sanction for
13 litigation conduct." Ready, 627 F.3d at 404 (citations omitted) (emphasis added); see
14 also Wallace v. U.S.A.A. Life General Agency, Inc., 862 F.Supp.2d 1062, 1068 (D.
15 Nev. 2012) (citing Ready, 627 F.3d at 404). "Such power is indispensable to the
16 court's ability to enforce its orders, manage its docket, and regulate insubordinate ...
17 conduct." Id. (citing Mazzeo v. Gibbons, No. 2:08-cv-01387-RLH-PAL, 2010 WL
18 3910072, at * 2 (D. Nev. Sept. 30, 2010)).

19 Nevada, like the federal court counterparts allow the court's inherent power to
20 "control the disposition of the causes on its docket with economy of time and effort
21 for itself, for counsel, and for litigants. See Maheu v. Eighth Judicial Dist. Court, 89
22 Nev. 214, 217, 510 P.2d 627, 629 (1973) (recognizing the court's inherent power to
23 "control the disposition of the causes on its docket with economy of time and effort
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the inherent authority to control its own docket and calendar)." Johnson v. State,
Nev. Court of Appeals 2019 No. 77886-CO.

NRS 47.040(1)(a) requires a party who objects to the admission of evidence to make "a timely objection or motion to strike...", stating the specific ground of objection." The "failure to specifically object on the grounds urged on appeal preclude[s] appellate consideration on the grounds not raised below." Pantano v. State, 122 Nev. 782, 795 n. 28, 138 P.3d 477, 486 n. 28 (2006). "This rule is more than a formality," since an objection educates both the trial court and the opposing party, who is entitled to revise course according to the objections made. 1 Stephen A. Saltzburg, Michael M. Martin & Daniel J. Capra, Federal Rules of Evidence Manual § 103.02[9], at 103-18 (9th ed. 2006).

The Respondent, the Trustee or its lawyers have not even attempted to correct their mistake by amending their pleadings, motions, objections, etc. The Respondent has conceded and therefore the Petitioner has prevailed in this action on the merits and requests the relief requested in the petition.

Respectfully signed under penalty of perjury,



/s/ Todd Robben

January 03, 2023

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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 January 03, 2023, 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 January 03, 2023

Submitted By: /s/ Stephen James Robben

CASE NO: 2022-PB-00119

DEPT NO. II

DATE: 01/06/2023

Todd Robben vs. The Estate of Thomas Joseph Harris; Thomas J. Harris Trust

JUDGE: Senior Judge Robert E. Estes

CLERK: Courtni Walker

COURT REPORTER: Not Reported

PETITIONER'S COUNSEL: Not Present

LAW CLERK: Not Present

BAILIFFS: Eric Lindsay/Jeff Schemenauer

OTHERS PRESENT:

The above-entitled matter was before the Court this being the time set for ORAL ARGUMENT. The petitioner was present in court (via Zoom) in proper person. The respondent was not present in court but was represented by counsel.

Mr. Robben offered no objection to the pending motions being decided by the Court without oral argument.

Mr. McClure concurred.

The Court finds as follows:

- * Mr. Robben is not an interested party or beneficiary in the probate matter;
- * The respondent's Motion to Dismiss is granted;
- * The respondent's Motion for Summary Judgment is granted;
- * All other pending filings submitted by the petitioner are dismissed.

Mr. McClure requested to have Mr. Robben deemed as a vexatious litigant.

The Court granted the request.

Mr. McClure will prepare the order.

