

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

**INDICATE FULL CAPTION:**

WESPAC; AND GREG CHRISTIAN,

Appellants,

vs.

GREGORY O. GARMONG,

Respondent.

No.

87411

Electronically Filed  
Oct 23 2023 02:18 PM

Elizabeth A. Brown

**DOCKETING STATEMENT  
CIVIL APPEALS**

State Supreme Court

**GENERAL INFORMATION**

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

**WARNING**

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District SECOND Department 6  
County Washoe Judge Lynne Simons  
District Ct. Case No. CV12-01271

**2. Attorney filing this docketing statement:**

Attorney Stephen S. Kent Telephone 775-467-2603

Firm Gordon Rees Scully Mansukhani, LLP

Address 1 E. Liberty Street, Suite 424  
Reno, NV 89501

Client(s) WESPAC and GREG CHRISTIAN

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Carl Hebert Telephone 775-772-5556

Firm Law Office of Carl Hebert

Address 2215 Stone View Drive  
Sparks, NV 89436

Client(s) Gregory O. Garmong

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |  |
|---|--|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:  |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction  |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim                                      |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute  |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input checked="" type="checkbox"/> Other (specify): <u>Judgment after Arbitration</u> |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:   |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification                |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): _____                            |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

In 2014 Mr. Garmong filed a Writ with the Nevada Supreme Court, appealing the order compelling arbitration, Case No. 65899. The writ was denied by order dated December 18, 2014.

On January 7, 2020, Mr. Garmong filed a Notice of Appeal to the Nevada Supreme Court appealing the District Court's arbitration confirmation order and attorney fee award in favor of defendants in Case No. 80376. The Court of Appeals affirmed the District Courts decisions on December 1, 2020.

On August 10, 2021, Mr. Garmong filed a Notice of Appeal of the District Court July 16, 2021, award of additional attorneys fees on appeal. This appeal was Case No. 8595000. The Court of Appeals affirmed the District Court on July 21, 2022.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

**8. Nature of the action.** Briefly describe the nature of the action and the result below:  
Please see attached Exhibit 1.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Appellants believe NRCP 37(a)(5) which allows recovery expenses for a motion to compel implicitly includes all fees related to that motion, not just the first motion pleading as ordered by the District Court and this order was an abuse of discretion.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

No.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Pursuant to NRAP 17(b)(7) Appeals of post judgment appeals in civil cases this case has presumptive Court of Appeals Jurisdiction.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 0 \_\_\_\_\_

Was it a bench or jury trial? N/A \_\_\_\_\_

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
No.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** August 10, 2023

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** September 14, 2023

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59          Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** October 4, 2023

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)(1)

### **SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |  |                                       |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1)                                   | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)                                   | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)                                   | <input type="checkbox"/> NRS 703.376  |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(8)</u> |                                       |

(b) Explain how each authority provides a basis for appeal from the judgment or order:  
Appellants appeal an order not granting all attorneys fees requested following a motion to compel pursuant to NRAP 3A(b)(8) which allows appeals of orders after final judgments.



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

WESPAC and GREG CHRISTIAN  
GREGORY O. GARMONG

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Please see Exhibit 2 attached hereto.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☐ Yes

☒ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

A motion for relief from order to compel answers to interrogatories and responses to requests for production and motion for attorneys fees and costs related to the second writ of execution and motion for sanctions for failure to respond to interrogatories and requests for production ordered by the Court are the only issues pending in the District Court.

(b) Specify the parties remaining below:

WESPAC and Greg Christian

Gregory O. Garmon

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)? **N/A**

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

**27. Attach file-stamped copies of the following documents:**

- é The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- é Any tolling motion(s) and order(s) resolving tolling motion(s)
- é Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- é Any other order challenged on appeal
- é Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

WESPAC and GREG CHRISTIAN

Name of appellant

October 23, 2023

Date

STEPHEN S. KENT

Name of counsel of record

Stephen S. Kent

Signature of counsel of record

State of Nevada, County of Washoe

State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 23d day of October, 2023, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Carl Hebert  
2215 Stone View Drive  
Sparks, Nevada 89436

Dated this 23d day of October, 2023

Stephen S. Kent

Signature

# **EXHIBIT 1**

# 8 – Nature of the action:

Mr. Garmong alleged in proper person that defendants Wespac and Greg Christian, who are financial advisors, mismanaged his investments.

Mr. Garmong filed his *Complaint* on May 9, 2012, alleging the following claims for relief:

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

*Complaint, generally.*

On September 19, 2012, Defendants filed a *Motion to Dismiss and Compel Arbitration*. On December 13, 2012, this Court<sup>1</sup> entered its *Order* granting Defendants' request to compel arbitration but denying the motion to dismiss. Mr. Garmong then filed his *Combined Motions for Leave to Rehear and for Rehearing of the Order of December 13, 2012 Compelling Arbitration* ("Reconsider Motion"). The *Reconsider Motion* was opposed by Defendants. Mr. Garmong did not file a reply and this case was stagnant for nearly a year until January 13, 2014, when the District Court entered its *Order to Proceed*. Mr. Garmong filed his reply on February 3, 2014. The *Reconsider Motion* was denied on April 2, 2014.

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<sup>1</sup> Judge Brent T. Adams originally presided over this proceeding in Department 6 before his retirement. Judge Lynne K. Simons was sworn in on January 5, 2015, and presides in Department 6.

Mr. Garmong then sought writ relief from the Nevada Supreme Court. ON December 18, 2014, the Nevada Supreme Court in Case No. 65899 entered its *Order Denying Petition for Writ of Mandamus or Prohibition*, entered its *Order Denying Rehearing* on March 18, 2015, and, subsequently, entered its *Order Denying En Banc Reconsideration* on May 1, 2015.

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

On June 8, 2016, Mr. Garmong filed his *Motion for a Court-Appointed Arbitrator* arguing the JAMS arbitrators were prejudiced against him. This matter was fully briefed; and, on July 12, 2016, the District Court entered its *Order re: Arbitration* requiring each party to submit the names of three arbitrators to the Court. The parties then stipulated to select one arbitrator, to reduce costs. *Stipulation to Select One Arbitrator*, October 17, 2016. Thereafter, the District Court entered its *Order Appointing Arbitrator* on October 31, 2016, appointing Michael G. Ornstil, Esq., as arbitrator. After it was determined Mr. Ornstil was unavailable, Mr. Garmong stipulated to the appointment of either retired Judge Phillip M. Pro (“Judge Pro”),<sup>2</sup> or Lawrence R. Mills. Esq.

On November 13, 2017, the District Court entered its *Order Granting Motion to Strike* which stayed the proceeding pending the outcome of the arbitration, and directed the parties to file an amended complaint and other responsive papers at the direction of Judge Pro. *Order Granting Motion to Strike*, p. 2. On February 21, 2017, the District Court entered its *Order Appointing Arbitrator*, appointing Judge Pro.

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<sup>2</sup> Mr. Garmong stipulated to Judge Pro despite previously moving to preclude a judge from serving as an arbitrator.

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

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

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

On July 22, 2018, without asking for leave of Court to lift the stay, Mr. Garmong filed *Plaintiff's Motion to Disqualify Arbitrator Pro, Vacate Order Denying Motion for Summary Judgment and Appoint New Arbitrator*. The District Court thereafter entered its *Order Denying Plaintiff's Motion to Disqualify Arbitrator Pro; Order Denying Motion to Vacate Order Denying Motion for Summary Judgment; Order Denying Motion to Appoint New Arbitrator* ("Arbitrator Order") on November 29, 2018.

Defendants Wespac and Greg Christian thereafter filed their *Motion for Limited Relief From Stay to File Motion for Attorney's Fees and Sanctions* ("Motion for Sanctions") requesting limited relief from this Court's order staying the proceeding pending the outcome of arbitration.

While the *Motion for Sanctions* was under consideration, Defendants filed their *Notice of Completion of Arbitration Hearing* on October 22, 2018. The District Court found, with completion of the arbitration, Defendants' *Motion for Sanctions* was moot. Additionally, the District Court took notice of Defendants' *Notice of Completion of Arbitration* and determined there were additional decisions to be rendered regarding the *Notice of Completion of Arbitration*.

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

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



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

On December 6, 2019, the District Court entered its *Order Denying Motion to Alter or Amend Judgment* ("AA Order") maintaining its prior rulings within the *ORM*. On January 7, 2020, Mr. Garmong filed a *Notice of Appeal* to the Nevada Supreme Court regarding this Court's *Arbitrator Order*, *ORM*, and *AA Order*. On December 9, 2019, *Defendants' Amended Motion for Attorney's Fees* was filed. Due to Mr. Garmong's pending appeal, the District Court entered its *Order Holding Issuance of Order on Defendants' Amended Motion for Attorney's Fees in Abeyance*. On December 1, 2020, the Nevada Court of Appeals issued its *Order of Affirmance* upholding the District Court's judgment in its entirety and noting Defendants may seek amended fees pursuant to the fee shifting provision in NRCP 68 which extends to fees incurred on and after appeal.

On February 18, 2021, Defendants filed Defendants' Second Amended Motion for *Attorney's Fees*. On February 22, 2021, the Nevada Court of Appeals entered its *Order Denying Rehearing* pursuant to NRAP 40(c). Next, the parties entered into a stipulation to extend the time for Mr. Garmong to file an opposition to *Defendants' Second Amended Motion for Attorney's Fees*. The stipulation was granted on March 1, 2021, by the District Court's *Order Extending Time for Plaintiff to File Points and Authorities in Opposition to the Defendants' Second Amended Motion for Fees*. On April 6, 2021, the Nevada Supreme Court entered its *Order*

*Denying Petition for Review*. On July 16, 2021, the District Court entered its *Order Granting Defendants' Second Amended Motion for Attorney's Fees; Order Confirming Arbitrator's Final Award* ("July 16, 2021, Order"), which confirmed Judge Pro's arbitration award of \$111,649.96, and awarded Defendants attorneys' fees in the amount of \$45,084.50. On August 10, 2021, Mr. Garmong filed a *Notice of Appeal*, appealing the *July 16, 2021, Order* to the Nevada Supreme Court.

On November 3, 2021, Defendants filed a *Substitution of Attorney* replacing Thomas C. Bradley, Esq. with Stephen S. Kent, Esq. as their counsel of record. Mr. Kent was retained to collect the judgment against Garmong. On April 4, 2022, Defendants filed their *Affidavit of Judgment* and *Judgment Lien Abstract of Judgment and Affidavit of Judgment* both naming Mr. Garmong as the judgment debtor. On May 10, 2022, Defendants filed a *Declaration of Service* of the writ of execution and garnishment on Fidelity Investments/Fidelity Brokerage Services, LLC on May 3, 2022, by the Washoe County Sheriff's Office.

On July 25, 2022, the Nevada Court of Appeals entered its Order of Affirmance affirming the *July 16, 2021, Order* in its entirety. On October 24, 2022, the Nevada Supreme Court entered its *Order Denying Rehearing* pursuant to NRAP 40(c). On January 17, 2023, the Nevada Supreme Court issued its *Remittitur*.

On January 24, 2023, Defendants filed their *Motion to Compel and Request for Expenses of Motion* ("*Motion to Compel*"), and on April 10, 2023, the District Court entered its *Order Granting Motion to Compel and Request for Expenses of Motion* ("*Order Granting*").

On April 10, 2023, the District Court granted the motion to compel answers to interrogatories and requests for production related to Mr. Garmong's assets and awarded the expenses of the motion.

On April 26, 2023, Defendants filed their motion for fees related to the motion to compel seeking \$4,878.25 in fees and \$13.25 in costs.

On August 10, 2023 the District court awarded fees of only \$2,835.00 because it believed NRCP 37(a)(5)(A) only allowed recovery of \$2,835.00 for fees for the first motion pleading only not the meeting and conferring, not the reading of the opposition, nor preparing a reply or the motion for fees and reply even though court rules require these for a motion to compel.

Appellants believe NRCP 37(a)(5) which allows recovery expenses for a motion to compel implicitly includes all fees related to that motion, not just the first motion pleading and this order limiting fees to the first motion pleading was an abuse of discretion.

It is this Order the Defendants appeal.

# **EXHIBIT 2**

## **#23 – Brief description**

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

After arbitration, the District Court affirmed the arbitration award including awarding attorneys fees against Garmong in favor of WESPAC and Greg Christian.

# Exhibit 3

# Exhibit 3

ORIGINAL

FILED

2012 MAY -9 AM 10:18

JUDY GORDON HASTINGS  
CLERK OF THE COURT

BY [Signature]  
DEPUTY

1 Code: 1425  
2 Gregory Garmong  
3 11 Dee Court  
4 Smith, NV 89430  
5 Tel No. 775-465-2981  
6 Plaintiff In Proper Person

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

11 GREGORY GARMONG, )  
12 )  
13 Plaintiff )  
14 )  
15 vs. )  
16 )  
17 WESPAC, GREG CHRISTIAN, )  
18 )  
19 and Does 1-10 )  
20 )  
21 Defendants )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

CV12 01271

Case No. \_\_\_\_\_

Dept. No. 6

COMPLAINT

CV12-01271 DC-950035035-057  
GREGORY GARMONG VS WESPAC ET AL  
District Court 05/09/2012 10:16 AM  
Washoe County \$1425  
CMORTFNC

1 COMES NOW Plaintiff, GREGORY GARMONG, appearing In Proper  
2 Person, as and for claims for relief against Defendants Wespac,  
3 Greg Christian ("Christian"), and Does 1-10 (collectively,  
4 "Defendants"), alleges as follows:

5 1. At all times relevant hereto, Plaintiff was a resident  
6 of Douglas County Nevada and Lyon County Nevada.

7 2. At all times relevant hereto, Defendants held  
8 themselves out to the public as investment advisors and  
9 investment managers performing fiduciary and other services for  
10 customers; Christian was affiliated with Wespac.

11 3. Does 1-10 are owners/shareholders and/or employees  
12 and/or are otherwise associated with Defendants whose identities  
13 are unknown to Plaintiff at this time. Plaintiff will ascertain  
14 the identities of Does 1-10 during discovery and will move to  
15 add these persons to the list of named Defendants.

16 4. At all times relevant hereto, Defendants did business  
17 in Washoe County, Nevada.

18 5. The Second Judicial District Court in and for Washoe  
19 County, Nevada is a proper venue for this action because of the  
20 place of business of Defendants.

21 6. The Second Judicial District Court in and for Washoe  
22 County, Nevada has subject matter jurisdiction of this matter  
23 because of the dollar amount of damages alleged.

24 7. At a time prior to 2007, Plaintiff entered a contract  
25 ("Contract") with Defendants and became a client of Defendants.  
26 Plaintiff entrusted a major portion of his life savings and  
27 retirement savings to Defendants to manage. The life savings  
28 and retirement savings were held in accounts at Schwab, and



1 Defendants had signature authority and control over these  
2 accounts for management purposes. Plaintiff had other accounts  
3 with Schwab with which Defendants had no involvement.

4 8. In late 2007 and early 2008, Defendant Christian  
5 solicited, urged, and begged Plaintiff to allow Defendants to  
6 take over the sole management of Plaintiff's accounts because of  
7 their investment expertise, leaving all discretionary actions to  
8 Defendants. Defendant Christian proposed that Plaintiff should  
9 not be involved in the active management of his life savings and  
10 retirement accounts, and that ultimate investment decisions  
11 should be made by Defendants. Plaintiff accepted the proposal.

12 9. In conjunction with Defendants taking over sole  
13 management of Plaintiff's accounts, Plaintiff informed  
14 Defendants that he had recently retired. Plaintiff further  
15 established general investment guidelines with Defendants that  
16 it was therefore important that his accounts be managed to  
17 conserve capital, and that Defendants' management should be  
18 within those guidelines. Plaintiff instructed the Defendants  
19 that it was preferable to sacrifice potential gains so as not to  
20 lose capital. When losses first appeared, Defendant Christian  
21 assured Plaintiff that Defendants were following their plan to  
22 manage Plaintiff's life savings and retirement accounts to  
23 conserve Plaintiff's capital, and that Defendants should be  
24 given the opportunity to allow their plan to work out.

25 10. Despite Defendants' assurances to Plaintiff that they  
26 would follow his investment guidelines and manage Plaintiff's  
27 life savings and retirement accounts to conserve capital,  
28 Defendants failed to do so. Defendants mismanaged Plaintiff's

1 life savings and retirement accounts, and caused the loss of and  
2 wasted a significant portion of Plaintiff's life savings and  
3 retirement accounts. When it became apparent in late 2008 that  
4 Defendants were not properly managing Plaintiff's life savings  
5 and retirement accounts within Plaintiff's guidelines and had  
6 misled Plaintiff, Plaintiff ended Defendants' management of  
7 Plaintiff's life savings and retirement accounts.

8  
9 FIRST CLAIM FOR RELIEF

10 (Breach of Contract)

11 11. Plaintiff incorporates the allegations of Para. 1-10.

12 12. Plaintiff fulfilled all of his obligations under the  
13 Contract.

14 13. The Defendants breached their obligations under the  
15 Contract, causing damage to Plaintiff.

16 14. Plaintiff was damaged in an amount in excess of  
17 \$10,000 of general damages and special damages.

18  
19 SECOND CLAIM FOR RELIEF

20 (Breach of Nevada Deceptive Trade Practices Act)

21 15. Plaintiff incorporates the allegations of Para. 1-10.

22 16. At all times relevant hereto, Plaintiff was at least  
23 60 years of age.

24 17. When the Defendants induced Plaintiff to enter the  
25 Contract, and thereafter, Defendants failed to disclose material  
26 information to Plaintiff. Specifically, Defendants did not  
27 disclose to Plaintiff that they would not follow his investment  
28 guidelines, would conceal the fact that they would not follow

1 his investment guidelines, and would concentrate their energies  
2 on obtaining and providing services to other clients to the  
3 exclusion of Plaintiff's interests. Had Plaintiff known this  
4 material information, he would not have entered the Contract.

5 18. Plaintiff was damaged as a result of the breach by  
6 Defendants of the Nevada Deceptive Trade Practices Act in an  
7 amount in excess of \$10,000.

8  
9 THIRD CLAIM FOR RELIEF

10 (Breach of Implied Covenant of Good Faith and Fair Dealing)

11 19. Plaintiff incorporates the allegations of Para. 1-10.

12 20. By failing to follow Plaintiff's investment guidelines  
13 and not properly managing Plaintiff's life savings and  
14 retirement accounts, Defendants breached their covenant of good  
15 faith and fair dealing implied under the Contract.

16 21. Plaintiff was damaged as a result of the breach by  
17 Defendants of the covenant of good faith and fair dealing in an  
18 amount in excess of \$10,000.

19  
20 FOURTH CLAIM FOR RELIEF

21 (Unjust Enrichment)

22 22. Plaintiff incorporates the allegations of Para. 1-10.

23 23. Plaintiff made payments to Defendants during their  
24 business relationship, which payments were accepted and retained  
25 by the Defendants.

26 24. Defendants failed to provide the services for which  
27 Plaintiff was paying Defendants. Defendants were unjustly  
28 enriched by the payments that Plaintiff made to them.

1        25. Plaintiff was damaged as a result of the unjust  
2 enrichment of Defendants in an amount in excess of \$10,000.

3  
4                    FIFTH CLAIM FOR RELIEF

5                    (Breach of Fiduciary Duty)

6        26. Plaintiff incorporates the allegations of Para. 1-10.

7        27. Defendants had a fiduciary duty to Plaintiff arising  
8 from their investment advisory and management relation to  
9 Plaintiff.

10       28. Defendants breached their fiduciary duty to Plaintiff  
11 by failing to exercise a fiduciary responsibility to their  
12 management of Plaintiff's life savings and retirement accounts  
13 and by deceiving Plaintiff as to their actions and inaction.

14       29. Plaintiff was damaged as a result of the Defendant's  
15 breach of their fiduciary duties in an amount in excess of  
16 \$10,000.

17  
18                    SIXTH CLAIM FOR RELIEF

19                    (Malpractice)

20       30. Plaintiff incorporates the allegations of Para. 1-10.

21       31. Defendants owed Plaintiff a duty of care as a result  
22 of their relationship. Defendants committed malpractice against  
23 Plaintiff in their mismanagement of his life savings and  
24 retirement accounts by breaching that duty, causing damage to  
25 Plaintiff.

26       32. Plaintiff was damaged as a result of the Defendant's  
27 malpractice in an amount in excess of \$10,000.



1 deem proper.

2

3

THIRD CLAIM FOR RELIEF

4

5

1. For general and special damages in excess of TEN THOUSAND DOLLARS (\$10,000) according to proof.

6

2. For punitive and exemplary damages.

7

3. For Plaintiff's costs of suit and attorney's fees.

8

9

4. For such other and further relief as the Court may deem proper.

10

11

FOURTH CLAIM FOR RELIEF

12

13

1. For general and special damages in excess of TEN THOUSAND DOLLARS (\$10,000) according to proof.

14

2. For punitive and exemplary damages.

15

3. For Plaintiff's costs of suit and attorney's fees.

16

17

4. For such other and further relief as the Court may deem proper.

18

19

FIFTH CLAIM FOR RELIEF

20

21

1. For general and special damages in excess of TEN THOUSAND DOLLARS (\$10,000) according to proof.

22

2. For punitive and exemplary damages.

23

3. For Plaintiff's costs of suit and attorney's fees.

24

25

4. For such other and further relief as the Court may deem proper.

26

27

SIXTH CLAIM FOR RELIEF

28

1. For general and special damages in excess of TEN

1 THOUSAND DOLLARS (\$10,000) according to proof.

2 2. For punitive and exemplary damages.

3 3. For Plaintiff's costs of suit and attorney's fees.

4 4. For such other and further relief as the Court may  
5 deem proper.

6  
7 SEVENTH CLAIM FOR RELIEF

8 1. For general and special damages in excess of TEN  
9 THOUSAND DOLLARS (\$10,000) according to proof.

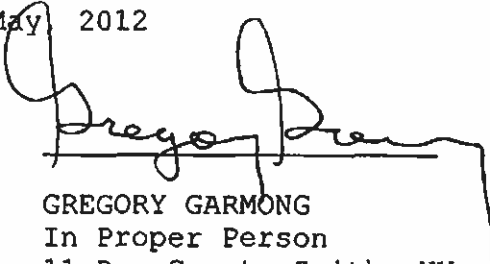
10 2. For punitive and exemplary damages.

11 3. For Plaintiff's costs of suit and attorney's fees.

12 4. For such other and further relief as the Court may  
13 deem proper.

14  
15 The undersigned hereby affirms that this document does not  
16 contain a social security number.

17  
18 Dated this 8th day of May, 2012

19  
20   
21 GREGORY GARMONG  
22 In Proper Person  
23 11 Dee Court, Smith, NV 89430  
24 775-465-2981 (voice)  
25  
26  
27  
28

# Exhibit 4

# Exhibit 4



1 CODE NO. 3025

2  
3  
4  
5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 GREGORY O. GARMONG,

Case No. CV12-01271

9 Plaintiff,

Dept. No. 6

10 vs.

11  
12 WESPAC; GREG CHRISTIAN;  
13 DOES 1-10, inclusive,

14 Defendants.

15 \_\_\_\_\_ /  
16 **ORDER GRANTING, IN PART, AND**  
17 **DENYING, IN PART, MOTION FOR FEES AND COSTS**

18 Before this Court is the *Motion for Fees and Costs Pursuant to Order Granting Motion*  
19 *to Compel ("Motion")* filed by Defendants WESPAC and GREG CHRISTIAN (collectively  
20 "Defendants" unless individually referenced), by and through their counsel of record,  
21 Stephen S. Kent, Esq. ("Mr. Kent")

22 Plaintiff GREGORY O. GARMONG ("Mr. Garmong"), filed his *Opposition to*  
23 *Defendants' Motion for Attorney's Fees ("Opposition")*, by and through his counsel of record,  
24 Carl M. Hebert, Esq.

25  
26 Defendants filed their *Reply in Support of Motion for Fees and Costs For Motion to*  
27 *Compel ("Reply")* and the matter was submitted to the Court for its consideration.

28 //

1    **I. PROCEDURAL BACKGROUND.**

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

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

14    *Complaint, generally.*

15        On September 19, 2012, Defendants filed their *Motion to Dismiss and Compel*  
16 *Arbitration*. On December 13, 2012, this Court<sup>1</sup> entered its *Order* granting Defendants'  
17 request to compel arbitration but denying the motion to dismiss. Mr. Garmong then filed his  
18 *Combined Motions for Leave to Rehear and for Rehearing of the Order of December 13,*  
19 *2012 Compelling Arbitration ("Reconsider Motion")*. The *Reconsider Motion* was opposed  
20 by Defendants. Mr. Garmong did not file a reply and this case was stagnant for nearly a  
21 year until January 13, 2014, when the Court entered its *Order to Proceed*. Mr. Garmong  
22 filed his reply on February 3, 2014. The *Reconsider Motion* was denied on April 2, 2014.  
23

24    //

25  
26  
27        <sup>1</sup> Judge Brent T. Adams originally presided over this proceeding in Department 6 before his  
28 retirement. Judge Lynne K. Simons was sworn in on January 5, 2015, and presides in Department 6.

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

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

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

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

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

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

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

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

18 On July 22, 2018, without asking for leave of Court to lift the stay, Mr. Garmong filed  
19 *Plaintiff's Motion to Disqualify Arbitrator Pro, Vacate Order Denying Motion for Summary*  
20 *Judgment and Appoint New Arbitrator*. The Court thereafter entered its *Order Denying*  
21 *Plaintiff's Motion to Disqualify Arbitrator Pro; Order Denying Motion to Vacate Order*  
22 *Denying Motion for Summary Judgment; Order Denying Motion to Appoint New Arbitrator*  
23 *("Arbitrator Order")* on November 29, 2018.  
24

25 //

26 //

27 //

28 //

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

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

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

28 //

1 (4) denying *Plaintiff's Motions to Vacate Arbitrator's Award of Denial of Plaintiff's Motion for*  
2 *Partial Summary Judgment and for the Court to Decide and Grant Plaintiff's Motion for*  
3 *Partial*  
4 *Summary Judgment*; and (5) granting *Defendants' Motion for an Order to File Exhibit as*  
5 *Confidential*. ORM, p. 15-16.

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

14 On December 6, 2019, this Court entered its *Order Denying Motion to Alter or Amend*  
15 *Judgment ("AA Order")* maintaining its prior rulings within the ORM. On January 7, 2020,  
16 Mr. Garmong filed his *Notice of Appeal* to the Nevada Supreme Court regarding this Court's  
17 *Arbitrator Order*, ORM, and AA Order. On December 9, 2019, *Defendants' Amended*  
18 *Motion for Attorney's Fees* was filed. Due to Mr. Garmong's pending appeal, this Court  
19 entered its *Order Holding Issuance of Order on Defendants' Amended Motion for Attorney's*  
20 *Fees in Abeyance*. On December 1, 2020, the Nevada Court of Appeals issued its *Order of*  
21 *Affirmance* upholding this Court's judgment in its entirety and noting Defendants may seek  
22 amended fees pursuant to the fee shifting provision in NRCP 68 which extends to fees  
23 incurred on and after appeal.

26 //

28 //

1           On February 18, 2021, Defendants filed *Defendants' Second Amended Motion for*  
2 *Attorney's Fees*. On February 22, 2021, the Nevada Court of Appeals entered its *Order*  
3 *Denying Rehearing* pursuant to NRAP 40(c). Next, the parties entered into a stipulation to  
4 extend the time for Mr. Garmong to file an opposition to *Defendants' Second Amended*  
5 *Motion for Attorney's Fees*. The stipulation was granted on March 1, 2021, by this Court's  
6 *Order Extending Time for Plaintiff to File Points and Authorities in Opposition to the*  
7 *Defendants' Second Amended Motion for Fees*. On April 6, 2021, the Nevada Supreme  
8 Court entered its *Order Denying Petition for Review*. On July 16, 2021, this Court entered  
9 its *Order Granting Defendants' Second Amended Motion for Attorney's Fees; Order*  
10 *Confirming Arbitrator's Final Award ("July 16, 2021, Order")*, which confirmed Judge Pro's  
11 arbitration award of \$111,649.96, and awarded Defendants attorneys' fees in the amount of  
12 \$45,084.50. On August 10, 2021, Mr. Garmong filed his *Notice of Appeal*, appealing the  
13 *July 16, 2021, Order* to the Nevada Supreme Court.  
14  
15  
16

17           On November 3, 2021, Defendants filed a *Substitution of Attorney* replacing Thomas  
18 C. Bradley, Esq. with Stephen S. Kent, Esq. as their counsel of record. On April 4, 2022,  
19 Defendants filed their *Affidavit of Judgment* and *Judgment Lien Abstract of Judgment and*  
20 *Affidavit of Judgment* both naming Mr. Garmong as the judgment debtor. On May 10, 2022,  
21 Defendants filed a *Declaration of Service* of the writ of execution and attachment on Fidelity  
22 Investments/Fidelity Brokerage Services, LLC on May 3, 2022, by the Washoe County  
23 Sheriff's Office.  
24

25 //

26 //

27 //

28 //

1 On July 25, 2022, the Nevada Court of Appeals entered its *Order of Affirmance*  
2 affirming the *July 16, 2021, Order* in its entirety. On October 24, 2022, the Nevada  
3 Supreme Court entered its *Order Denying Rehearing* pursuant to NRAP 40(c). On January  
4 17, 2023, the Nevada Supreme Court issued its *Remittitur*.  
5

6 On January 24, 2023, Defendants filed their *Motion to Compel and Request for*  
7 *Expenses of Motion ("Motion to Compel")*, and on April 10, 2023, the Court entered its *Order*  
8 *Granting Motion to Compel and Request for Expenses of Motion ("Order Granting")*.  
9

10 **A. MOTION FOR FEES AND COSTS.**

11 Defendants assert, pursuant to the Court's *Order Granting*, they are entitled to an  
12 award of fees and costs in the total amount of Four Thousand Eight Hundred Seventy-Eight  
13 Dollars and 25/100 (\$4,878.25). *Motion*, pp. 1-2. Defendants maintain their counsel of  
14 records spent 13.9 hours at a rate of Three Hundred Fifty Dollars (\$350) per hour on the  
15 *Motion to Compel* and incurred Thirteen Dollars and 25/100 (\$13.25) in costs. *Motion*, p. 1.  
16

17 **B. OPPOSITION TO MOTION.**

18 Mr. Garmong argues the discovery was completely unnecessary and unreasonable.  
19 He states Defendants had sufficient information in hand to fully execute on the judgment  
20 before serving the discovery and, in fact, did fully execute on two separate writs of  
21 execution. *Opposition*, p. 3. Mr. Garmong also argues defense counsel failed to analyze  
22 the factors in Brunzell v. Golden Gate Nat. Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).  
23 Mr. Garmong contends for this reason alone the Court should decline to award fees.  
24 *Opposition*, p. 4. Further, even if the Brunzell factors were addressed, Defendants derived  
25 no benefit from their counsel's services. *Id.*  
26  
27

28 //



1           **C.     REPLY IN SUPPORT OF MOTION.**

2           The *Reply* contends Mr. Garmong's objections to the discovery were waived when  
3 not timely made. *Reply*, p. 1. The *Reply* argues the Court already ordered Mr. Garmong to  
4 respond to the discovery and already awarded fees and costs, and only the amount of fees  
5 and costs is at issue. *Reply*, p. 2. The *Reply* avers Mr. Garmong's refusal to pay what he  
6 owes has necessitated Defendants' collection efforts. At the time of the discovery,  
7 Defendants did not know if Mr. Garmong still had his Fidelity accounts or if they had  
8 sufficient monies. *Id.* Finally, the *Reply* asserts the *Declaration of Stephen S. Kent*  
9 attached to the *Motion* as Ex. 1 ("*Declaration*") is consistent with Brunzell. *Id.*

10           **II.     APPLICABLE LAW AND ANALYSIS.**

11           **A.     Rule 37 of the Nevada Rules of Civil Procedure ("NRCP").**

12           NRCP 37 provides, in relevant part:

13           (a) (1) On notice to other parties and all affected persons, a party may move for an  
14 order compelling disclosure or discovery. The motion must include a certification that  
15 the movant has in good faith conferred or attempted to confer with the person or  
16 party failing to make disclosure or discovery in an effort to obtain it without court  
17 action.

18           ...  
19           (5) *Payment of Expenses.*

20           (A) If the motion is granted--or if the disclosure or requested discovery is  
21 provided after the motion was filed--the court must, after giving an opportunity  
22 to be heard, require the party or deponent whose conduct necessitated the  
23 motion, the party or attorney advising that conduct, or both to pay the movant's  
24 reasonable expenses incurred in making the motion, including attorney fees.

25           But the court must not order this payment if:

26           (i) the movant filed the motion before attempting in good faith to obtain the  
27 disclosure or discovery without court action;

28           (ii) the opposing party's nondisclosure, response, or objection was  
substantially justified; or

(iii) other circumstances make an award of expenses unjust.

NRCP 37.

//

1 In its *Order Granting*, the Court granted Defendants' *Motion to Compel*. The Court  
2 finds and determines Defendants made a good faith attempt to obtain the disclosure without  
3 Court action prior to filing their *Motion to Compel*. Mr. Garmong was provided an  
4 opportunity to be heard. Mr. Garmong's nondisclosure and objection are not substantially  
5 justified, and there are no other circumstances making an award of expenses unjustified.  
6

7 **B. AN AWARD OF ATTORNEY FEES IS SUPPORTED BY SUBSTANTIAL**  
8 **EVIDENCE.**

9 The Nevada Supreme Court reviews an award of attorney fees for an abuse of  
10 discretion and will affirm an award which is supported by substantial evidence. Logan v.  
11 Abe, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). Affidavits or other evidence meeting  
12 the factors in *Brunzell* constitute substantial evidence to support a request of attorneys'  
13 fees. Miller v. Wilfong, 121 Nev. 619, 623–24, 119 P.3d 727, 730 (2005). It has been held  
14 counsel's testimony regarding the nature and extent of the services performed constituted  
15 substantial evidence. Brunzell v. Golden Gate Nat'l. Bank, 85 Nev. 345, 349, 455 P.2d 31,  
16 33 (1969).  
17

18 In Nevada, "the method upon which a reasonable fee is determined is subject to the  
19 discretion of the court." Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 864, 124  
20 P.3d 530, 548 (2005). A court is not limited to one specific approach; rather, a court may  
21 analyze a request for fees pursuant to "any method rationally designed to calculate a  
22 reasonable amount, including those based on a 'lodestar' amount or a contingency fee." Id.  
23 "The lodestar approach involves multiplying 'the number of hours reasonably spent on a  
24 case by a reasonable hourly rate.'" Id.  
25

26 //  
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1        "[W]hichever method is chosen...the court must continue its analysis by considering  
2 the requested amount in light of the factors enumerated by this court in *Brunzell v. Golden*  
3 *Gate National Bank*." Shuette, 121 Nev. at 865. Express findings on each factor are not  
4 necessary. Instead, the district court need only demonstrate it considered the required  
5 factors, and the award is supported by substantial evidence. Logan, 131 Nev. at 266.

7        The factors set forth in Brunzell, are as follows:

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

13 Brunzell, 85 Nev. at 349.

14        A reviewing court will not substitute its judgment for a trial court in the absence of an  
15 abuse of discretion because "[t]he value to be placed on the services rendered by counsel  
16 lies in the exercise of sound discretion by the trier of facts." Id. at 350. However, a trial  
17 court's failure to analyze the Brunzell factors is an abuse of discretion. Gunderson v. D.R.  
18 Horton, Inc., 130 Nev. 67, 319 P.3d 606 (2014).

20                    1.        **The qualities of the advocate.**

21        Mr. Kent is an attorney licensed to practice law in the State of Nevada. Mr. Kent has  
22 been practicing law for Forty-Two (42) years. *Declaration*, p. 1.

24                    2.        **The character of the work to be done.**

25        From January 12, 2023, through April 10, 2023, Mr. Kent spent 8.1 hours preparing  
26 the *Motion to Compel*. *Declaration*, p. 2. Between April 24 and April 26, 2023, Mr. Kent  
27 spent 5.8 hours preparing the instant *Motion*. Id.  
28

1                   **3.     The work actually performed by the attorney.**

2           Mr. Kent spent the majority of the 13.9 hours preparing and revising the *Motion to*  
3 *Compel*, the declaration in support, and the *Reply in Support of the Motion to Compel*.  
4  
5 However, Mr. Kent also includes time spent preparing the instant *Motion and Declaration*.

6           Pursuant to NRCP 37(a)(5)(A), "If the motion is granted...the court must...require the  
7 party...whose conduct necessitated the motion...to pay the movant's reasonable **expenses**  
8 **incurred in making the motion**, including attorney fees." (Emphasis added.) The motion  
9 described in NRCP 37(a)(5)(A) is properly identified in NRCP 37(a)(1), which states:

10  
11           A party may move for an order compelling disclosure or discovery. The motion  
12 must include a certification that the movant has in good faith conferred or  
13 attempted to confer with the person or party failing to make disclosure or  
14 discovery in an effort to obtain it without court action.

14 NRCP 37.

15           Pursuant to NRCP 37, Defendants' *Motion to Compel* is the only motion for which  
16 attorneys' fees may be recovered. The instant *Motion* to recover fees is not the motion  
17 granted by the Court's *Order Granting*. Thus, any costs and fees incurred in making the  
18 instant *Motion* are not recoverable at this juncture.  
19

20                   **4.     The result.**

21           Mr. Kent's *Motion to Compel* successfully persuaded the Court to grant the *Motion to*  
22 *Compel* and award him attorneys' fees and costs.

23           The Court finds the attorneys' fees incurred between January 12, 2023, and April 10,  
24 2023, to be reasonable and actually incurred. However, Defendants are precluded from  
25 recovering their requested costs and fees incurred after April 10, 2023, at this juncture. The  
26 Court determines an award for attorneys' fees in the amount of Two Thousand Eight  
27 Hundred Thirty-Five Dollars and 00/100 (\$2,835.00) is appropriate in this matter.  
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**III. ORDER.**

Accordingly, and good cause appearing therefor,

**IT IS HEREBY ORDERED** the *Motion for Fees and Costs Pursuant to Order Granting Motion to Compel* is GRANTED, in part, and DENIED, in part.

1. Attorneys' fees incurred in preparing the *Motion to Compel* are GRANTED in the amount of Two Thousand Eight Hundred Thirty-Five Dollars and 00/100 (\$2,835.00);

2. Attorneys' fees and costs incurred after April 10, 2023, are DENIED.

Dated this 10th day of August, 2023.

  
DISTRICT JUDGE

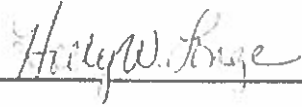
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;  
that on the 10th day of August, 2023, I electronically filed the foregoing with the Clerk  
of the Court system which will send a notice of electronic filing to the following:

STEPHEN KENT, ESQ.  
CARL HEBERT, ESQ.

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

  
\_\_\_\_\_

# Exhibit 5

# Exhibit 5

1 CODE NO. 3060  
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 GREGORY O. GARMONG,

Case No. CV12-01271

9 Plaintiff,

Dept. No. 6

10 vs.  
11

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

14 Defendants.  
15 \_\_\_\_\_ /

16 **ORDER GRANTING MOTION TO COMPEL**  
17 **AND REQUEST FOR EXPENSES OF MOTION**

18 Before this Court is the *Motion to Compel and Request for Expenses of Motion*  
19 (*"Motion"*) filed by Defendants WESPAC and GREG CHRISTIAN (collectively *"Defendants"*  
20 unless individually referenced), by and through their counsel of record, Stephen S. Kent,  
21 Esq.

22 Plaintiff GREGORY O. GARMONG (*"Mr. Garmong"*), filed his *Opposition to*  
23 *Defendants' Motion to Compel Discovery ("Opposition")*, by and through his counsel of  
24 record, Carl M. Hebert, Esq.  
25

26 Defendants filed their *Reply in Support of Motion to Compel ("Reply")* and the matter  
27 was submitted to the Court for its consideration.  
28

//



1 **I. PROCEDURAL BACKGROUND.**

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

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

14 *Complaint, generally.*  
15

16 On September 19, 2012, Defendants filed their *Motion to Dismiss and Compel*  
17 *Arbitration*. On December 13, 2012, this Court<sup>1</sup> entered its *Order* granting Defendants'  
18 request to compel arbitration but denying the motion to dismiss. Mr. Garmong then filed his  
19 *Combined Motions for Leave to Rehear and for Rehearing of the Order of December 13,*  
20 *2012 Compelling Arbitration ("Reconsider Motion")*. The *Reconsider Motion* was opposed  
21 by Defendants. Mr. Garmong did not file a reply and this case was stagnant for nearly a  
22 year until January 13, 2014, when the Court entered its *Order to Proceed*. Mr. Garmong  
23 filed his reply on February 3, 2014. The *Reconsider Motion* was denied on April 2, 2014.  
24

25 //

26  
27  
28 <sup>1</sup> Judge Brent T. Adams originally presided over this proceeding in Department 6 before his retirement. Judge Lynne K. Simons was sworn in on January 5, 2015, and presides in Department 6.

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

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

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

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

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

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

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

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

18 On July 22, 2018, without asking for leave of Court to lift the stay, Mr. Garmong filed  
19 *Plaintiff's Motion to Disqualify Arbitrator Pro, Vacate Order Denying Motion for Summary*  
20 *Judgment and Appoint New Arbitrator*. The Court thereafter entered its *Order Denying*  
21 *Plaintiff's Motion to Disqualify Arbitrator Pro; Order Denying Motion to Vacate Order*  
22 *Denying Motion for Summary Judgment; Order Denying Motion to Appoint New Arbitrator*  
23 *("Arbitrator Order")* on November 29, 2018.  
24

25 //

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28 //

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

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

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

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

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

11  
12 On December 6, 2019, this Court entered its *Order Denying Motion to Alter or Amend*  
13 *Judgment ("AA Order")* maintaining its prior rulings within the *ORM*. On January 7, 2020,  
14 Mr. Garmong filed his *Notice of Appeal* to the Nevada Supreme Court regarding this Court's  
15 *Arbitrator Order, ORM, and AA Order*. On December 9, 2019, *Defendants' Amended*  
16 *Motion for Attorney's Fees* was filed. Due to Mr. Garmong's pending appeal, this Court  
17 entered its *Order Holding Issuance of Order on Defendants' Amended Motion for Attorney's*  
18 *Fees in Abeyance*. On December 1, 2020, the Nevada Court of Appeals issued its *Order of*  
19 *Affirmance* upholding this Court's judgment in its entirety and noting Defendants may seek  
20 amended fees pursuant to the fee shifting provision in NRCP 68 which extends to fees  
21 incurred on and after appeal.

22  
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1           On February 18, 2021, Defendants filed *Defendants' Second Amended Motion for*  
2 *Attorney's Fees*. On February 22, 2021, the Nevada Court of Appeals entered its *Order*  
3 *Denying Rehearing* pursuant to NRAP 40(c). Next, the parties entered into a stipulation to  
4 extend the time for Mr. Garmong to file an opposition to *Defendants' Second Amended*  
5 *Motion for Attorney's Fees*. The stipulation was granted on March 1, 2021, by this Court's  
6 *Order Extending Time for Plaintiff to File Points and Authorities in Opposition to the*  
7 *Defendants' Second Amended Motion for Fees*. On April 6, 2021, the Nevada Supreme  
8 Court entered its *Order Denying Petition for Review*. On July 16, 2021, this Court entered  
9 its *Order Granting Defendants' Second Amended Motion for Attorney's Fees; Order*  
10 *Confirming Arbitrator's Final Award ("July 16, 2021, Order")*, which confirmed Judge Pro's  
11 arbitration award of \$111,649.96, and awarded Defendants attorney's fees in the amount of  
12 \$45,084.50. On August 10, 2021, Mr. Garmong filed his *Notice of Appeal*, appealing the  
13 *July 16, 2021, Order* to the Nevada Supreme Court.

14           On November 3, 2021, Defendants filed a *Substitution of Attorney* replacing Thomas  
15 C. Bradley, Esq. with Stephen S. Kent, Esq. as their counsel of record. On April 4, 2022,  
16 Defendants filed their *Affidavit of Judgment* and *Judgment Lien Abstract of Judgment and*  
17 *Affidavit of Judgment* both naming Mr. Garmong as the judgment debtor. On May 10, 2022,  
18 Defendants filed a *Declaration of Service* of the writ of execution and attachment on Fidelity  
19 Investments/Fidelity Brokerage Services, LLC on May 3, 2022, by the Washoe County  
20 Sheriff's Office.

21 //

22 //

23 //

1 On July 25, 2022, the Nevada Court of Appeals entered its *Order of Affirmance*  
2 affirming the *July 16, 2021, Order* in its entirety. On October 24, 2022, the Nevada  
3 Supreme Court entered its *Order Denying Rehearing* pursuant to NRAP 40(c). On January  
4 17, 2023, the Nevada Supreme Court issued its *Remittitur*.

5  
6 **A. MOTION TO COMPEL.**

7 Defendants made several requests of Mr. Garmong to respond to interrogatories and  
8 requests for production. Mr. Garmong failed to respond and the time to respond has  
9 expired. Defendants seek this discovery to gather information on Mr. Garmong's assets in  
10 order to satisfy the balance of the judgment. *Motion*, p. 2.

11  
12 **B. OPPOSITION TO MOTION TO COMPEL.**

13 Mr. Garmong contends Defendants executed on the judgment and received the total  
14 amount due. Defendants recovered One Hundred Seventy-Four Thousand Three Dollars  
15 and 36/100 (\$174,003.36), which included principal, interest, and attorneys' fees.  
16 *Opposition*, p. 1. Defendants have no reason to pursue post-judgment discovery. Further,  
17 a motion to compel is a discovery motion, and Defendants' *Motion* is defective pursuant to  
18 WDCR 12(6). *Opposition*, p. 2.

19  
20 **C. REPLY IN SUPPORT OF MOTION.**

21 Defendants assert Mr. Garmong has not satisfied the judgment, and is well aware he  
22 still owes Defendants money. *Reply*, p. 1. Defendants have made numerous requests of  
23 Mr. Garmong to provide information regarding his bank accounts, investment accounts, and  
24 other judgments, but received no response. *Reply*, p. 3. Mr. Garmong should be ordered to  
25 respond to Defendants' November 28, 2022, interrogatories, and should pay the expense of  
26 this *Motion*. *Reply*, p. 4.

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

2 Rule 37 of the Nevada Rules of Civil Procedure ("NRCP") provides, in relevant part:

3 (a) (1) On notice to other parties and all affected persons, a party may move for an  
4 order compelling disclosure or discovery. The motion must include a certification that  
5 the movant has in good faith conferred or attempted to confer with the person or  
6 party failing to make disclosure or discovery in an effort to obtain it without court  
7 action.

7 (2) A motion for an order to a party must be made in the court where the action  
8 is pending. A motion for an order to a nonparty must be made in the court  
9 where the discovery is or will be taken.

9 (3) (B) A party seeking discovery may move for an order compelling an  
10 answer, designation, production, or inspection. This motion may be made if:

10 ...  
11 (iii) a party fails to answer an interrogatory submitted under Rule 33; or  
12 (iv) a party fails to produce documents or fails to respond that inspection will  
13 be permitted--or fails to permit inspection--as requested under Rule 34.

12 ...  
13 (5) *Payment of Expenses.*

13 (A) If the motion is granted--or if the disclosure or requested discovery is  
14 provided after the motion was filed--the court must, after giving an opportunity  
15 to be heard, require the party or deponent whose conduct necessitated the  
16 motion, the party or attorney advising that conduct, or both to pay the movant's  
17 reasonable expenses incurred in making the motion, including attorney fees.  
18 But the court must not order this payment if:

17 (i) the movant filed the motion before attempting in good faith to obtain the  
18 disclosure or discovery without court action;

18 (ii) the opposing party's nondisclosure, response, or objection was  
19 substantially justified; or

19 (iii) other circumstances make an award of expenses unjust.

20 NRCP 37.

21  
22 NRCP 69(a)(2) governs obtaining discovery, and provides, "In aid of the judgment or  
23 execution, the judgment creditor...whose interest appears of record may obtain discovery  
24 from...the judgment debtor--as provided in these rules or by state law." Rule 12(6) of the  
25 Washoe District Court Rules ("WDCR") requires "All discovery motions shall include the  
26 certificate of moving counsel certifying that after consultation with opposing counsel, they  
27 have been unable to resolve the matter."  
28



1 As a threshold matter, the Court addresses Mr. Garmong's inaccurate assertion of  
2 having satisfied the judgment. Citing the *Affidavit of Stephen S. Kent* ("Affidavit"), Mr.  
3 Garmong asserts Mr. Kent stated, "I was able to recover on a writ of execution and  
4 attachment in the amount of \$174,003.36." *Opposition*, p. 2. While Mr. Garmong's  
5 representation of the quote is accurate, the quote itself is belied by the record.  
6

7 Attached to Defendants' December 2, 2022, *Application for Debtor's Exam* as Exhibit  
8 1 is a copy of the check referenced in the *Affidavit*. The amount of the check demonstrates  
9 the writ of execution, returned on June 22, 2022, recovered One Hundred Seventy  
10 Thousand Seven Hundred Fifteen Dollars and 79/100 (\$170,715.79). Accordingly, the  
11 judgment is not fully satisfied.  
12

13 Consequently, Defendants may seek discovery from Mr. Garmong pursuant to NRCP  
14 69(a)(2). Defendants have satisfied NRCP 37(a)(1) and (2), and have demonstrated Mr.  
15 Garmong has failed to respond pursuant to NRCP 37(3)(B). Further, the Court finds and  
16 determines Defendants' *Motion* complies with WDCR 12(6) and Mr. Garmong's *Opposition*  
17 provided him an opportunity to be heard on this issue pursuant to NRCP 37(5)(A).  
18

19 Attached to Defendants' *Motion* is the *Declaration of Stephen S. Kent* ("Declaration")  
20 ("Mr. Kent"). Mr. Kent asserts Mr. Garmong was served with interrogatories and requests  
21 for production on November 28, 2022. *Declaration*, ¶ 2. After receiving no response, Mr.  
22 Kent made several attempts to contact Mr. Garmong's counsel of record Carl M. Herbert,  
23 Esq. ("Mr. Herbert") regarding the interrogatories and requests for production. On January  
24 12, 2023, Mr. Kent called Mr. Herbert. After receiving no answer, Mr. Kent left a voice mail  
25 and sent an email. These efforts were repeated on January 23, 2023. Mr. Herbert failed to  
26 respond to any of Mr. Kent's communication attempts. *Declaration*, ¶¶ 3-5.  
27  
28

1 Also attached to Defendants' *Motion* as Exhibit 1 is the *Interrogatories to Plaintiff*  
2 containing six (6) Interrogatories. Attached to Defendants' *Motion* as Exhibit 2 is the  
3 *Requests for Production* containing six (6) requests for production. Both documents contain  
4 a certificate of service.  
5

6 **III. ORDER.**

7 Accordingly, and good cause appearing therefor,

8 **IT IS HEREBY ORDERED** the *Motion to Compel and Request for Expenses of*  
9 *Motion* is GRANTED.  
10

11 **IT IS FURTHER ORDERED:**

12 1. Mr. Garmong is ordered to respond or object, in accordance with NRCP 33 to  
13 Defendants' November 28, 2022, *Interrogatories to Plaintiff* and *Requests for Production*.

14 2. Pursuant to NRCP 37(5)(A), Plaintiff is ordered to pay Defendants'  
15 reasonable expenses incurred in making the instant *Motion*.  
16

17 Dated this 10th day of April, 2023.

18   
19 DISTRICT JUDGE  
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CARL HEBERT, ESQ.  
STEPHEN KENT, ESQ.

NONE

\_\_\_\_\_

# Exhibit 6

# Exhibit 6

1 2540  
2 STEPHEN S. KENT, ESQ.  
3 Nevada Bar No. 1251  
4 GORDON REES SCULLY  
5 MANSUKHANI, LLP  
6 1 East Liberty Street, Suite 424  
7 Reno, NV 89501  
8 Telephone: (775) 467-2609  
9 Facsimile: (775) 460-4901  
10 E-mail: [skent@grsm.com](mailto:skent@grsm.com)

11 *Attorneys for Defendants Wespac and Greg Christian*

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

14 GREGORY O. GARMONG,

15 Plaintiff,

16 vs.

17 WESPAC; GREG CHRISTIAN; DOES 1-  
18 10,inclusive,

19 Defendants.

CASE NO. CV12-01271

Dept. No. 6

20 **NOTICE OF ENTRY OF ORDER**

21 Please take notice that an Order Granting, In part, and Denying In Part, Motion for Fees  
22 and Costs was entered in the above-referenced case on August 10, 2023, a copy of which is  
23 attached as Exhibit 1.  
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**AFFIRMATION**

The undersigned hereby declares that the within document does not contain the Social Security Number of any person.

DATED this 14<sup>th</sup> day of September, 2023.

GORDON REES  
SCULLY MANSUKHANI LLP

By: /s/ Stephen S. Kent  
STEPHEN S. KENT, ESQ.  
Nevada Bar No. 1251  
1 East Liberty Street, Suite 424  
Reno, NV 89501  
Telephone: (775) 467-2603  
Facsimile: (775) 460-4901  
skent@grsm.com  
*Attorneys for Defendants Wespac and  
Greg Christian*

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**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify that I am an employee of Gordon Rees Scully Mansukhani and that on this date, I served a true and correct copy of the attached document(s) as follows:

- ☐ By placing the document(s) in a sealed envelope with first-class U.S. postage prepaid, and depositing it for mailing with the U.S. Postal Service in Reno, Nevada addressed to the person at the address listed below.
- ☒ By electronic service. By filing the document with the court's electronic filing system which serves counsel listed below electronically.
- ☐ By personally delivering the document(s) listed above, addressed to the person at the address as set forth below.
- ☐ By Federal Express.
- ☐ By facsimile.
- Carl Hebert, Esq.  
2215 Stone View Drive  
Sparks, NV 89436

DATED this 14<sup>th</sup> day of September, 2023.

/s/ Sam Baker  
Sam Baker

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**INDEX OF EXHIBITS**

**NO.    DESCRIPTION**

1.    Order Granting in part and denying in part, motion for fees and costs



FILED  
Electronically  
CV12-01271  
2023-09-14 09:10:46 AM  
Alicia L. Lerud  
Clerk of the Court  
Transaction # 9885705

# Exhibit 1

# Exhibit 1

1 CODE NO. 3025  
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 GREGORY O. GARMONG,

Case No. CV12-01271

9 Plaintiff,

Dept. No. 6

10 vs.  
11

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

14 Defendants.  
15

16 **ORDER GRANTING, IN PART, AND**  
17 **DENYING, IN PART, MOTION FOR FEES AND COSTS**

18 Before this Court is the *Motion for Fees and Costs Pursuant to Order Granting Motion*  
19 *to Compel ("Motion")* filed by Defendants WESPAC and GREG CHRISTIAN (collectively  
20 "Defendants" unless individually referenced), by and through their counsel of record,  
21 Stephen S. Kent, Esq. ("Mr. Kent")

22 Plaintiff GREGORY O. GARMONG ("Mr. Garmong"), filed his *Opposition to*  
23 *Defendants' Motion for Attorney's Fees ("Opposition")*, by and through his counsel of record,  
24 Carl M. Hebert, Esq.  
25

26 Defendants filed their *Reply in Support of Motion for Fees and Costs For Motion to*  
27 *Compel ("Reply")* and the matter was submitted to the Court for its consideration.  
28

//

1 **I. PROCEDURAL BACKGROUND.**

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

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

13  
14 *Complaint, generally.*

15  
16 On September 19, 2012, Defendants filed their *Motion to Dismiss and Compel*  
17 *Arbitration*. On December 13, 2012, this Court<sup>1</sup> entered its *Order* granting Defendants'  
18 request to compel arbitration but denying the motion to dismiss. Mr. Garmong then filed his  
19 *Combined Motions for Leave to Rehear and for Rehearing of the Order of December 13,*  
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22 year until January 13, 2014, when the Court entered its *Order to Proceed*. Mr. Garmong  
23 filed his reply on February 3, 2014. The *Reconsider Motion* was denied on April 2, 2014.

24  
25 //

26  
27  
28 <sup>1</sup> Judge Brent T. Adams originally presided over this proceeding in Department 6 before his retirement. Judge Lynne K. Simons was sworn in on January 5, 2015, and presides in Department 6.

1 Mr. Garmong then sought writ relief from the Nevada Supreme Court. On December  
2 18, 2014, the Nevada Supreme Court entered its *Order Denying Petition for Writ of*  
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11 On June 8, 2016, Mr. Garmong filed his *Motion for a Court-Appointed Arbitrator*  
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13 and, on July 12, 2016, this Court entered its *Order re: Arbitration* requiring each party to  
14 submit the names of three arbitrators to the Court. The parties then stipulated to select one  
15 arbitrator, to reduce costs. *Stipulation to Select One Arbitrator*, October 17, 2016.  
16 Thereafter, this Court entered its *Order Appointing Arbitrator* on October 31, 2016,  
17 appointing Michael G. Ornstil, Esq., as arbitrator. After it was determined Mr. Ornstil was  
18 unavailable, Mr. Garmong stipulated to the appointment of either retired Judge Phillip M. Pro  
19 ("Judge Pro"),<sup>2</sup> or Lawrence R. Mills. Esq.

20  
21  
22 On November 13, 2017, this Court entered its *Order Granting Motion to Strike* which  
23 stayed the proceeding pending the outcome of the arbitration, and directed the parties to file  
24 an amended complaint and other responsive papers at the direction of Judge Pro. *Order*  
25 *Granting Motion to Strike*, p. 2. On February 21, 2017, this Court entered its *Order*  
26 *Appointing Arbitrator*, appointing Judge Pro.

27  
28 <sup>2</sup> Mr. Garmong stipulated to Judge Pro despite previously moving to preclude a judge from serving  
as an arbitrator.

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

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

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

18 On July 22, 2018, without asking for leave of Court to lift the stay, Mr. Garmong filed  
19 *Plaintiff's Motion to Disqualify Arbitrator Pro, Vacate Order Denying Motion for Summary*  
20 *Judgment and Appoint New Arbitrator*. The Court thereafter entered its *Order Denying*  
21 *Plaintiff's Motion to Disqualify Arbitrator Pro; Order Denying Motion to Vacate Order*  
22 *Denying Motion for Summary Judgment; Order Denying Motion to Appoint New Arbitrator*  
23 *("Arbitrator Order")* on November 29, 2018.  
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1 Defendants thereafter filed their *Motion for Limited Relief From Stay to File Motion*  
2 *for Attorney's Fees and Sanctions* ("Motion for Sanctions") requesting limited relief from this  
3 Court's order staying the proceeding pending the outcome of arbitration. While the *Motion*  
4 *for Sanctions* was under consideration, Defendants filed their *Notice of Completion of*  
5 *Arbitration Hearing* on October 22, 2018. The Court found, with completion of the  
6 arbitration, Defendants' *Motion for Sanctions* was moot. Additionally, the Court took notice  
7 of Defendants' *Notice of Completion of Arbitration* and determined there were additional  
8 decisions to be rendered regarding the *Notice of Completion of Arbitration*.  
9

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

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

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1 (4) denying *Plaintiff's Motions to Vacate Arbitrator's Award of Denial of Plaintiff's Motion for*  
2 *Partial Summary Judgment and for the Court to Decide and Grant Plaintiff's Motion for*  
3 *Partial*  
4 *Summary Judgment*; and (5) granting *Defendants' Motion for an Order to File Exhibit as*  
5 *Confidential*. ORM, p. 15-16.

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

14 On December 6, 2019, this Court entered its *Order Denying Motion to Alter or Amend*  
15 *Judgment ("AA Order")* maintaining its prior rulings within the ORM. On January 7, 2020,  
16 Mr. Garmong filed his *Notice of Appeal* to the Nevada Supreme Court regarding this Court's  
17 *Arbitrator Order*, ORM, and AA Order. On December 9, 2019, *Defendants' Amended*  
18 *Motion for Attorney's Fees* was filed. Due to Mr. Garmong's pending appeal, this Court  
19 entered its *Order Holding Issuance of Order on Defendants' Amended Motion for Attorney's*  
20 *Fees in Abeyance*. On December 1, 2020, the Nevada Court of Appeals issued its *Order of*  
21 *Affirmance* upholding this Court's judgment in its entirety and noting Defendants may seek  
22 amended fees pursuant to the fee shifting provision in NRCP 68 which extends to fees  
23 incurred on and after appeal.

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1 On February 18, 2021, Defendants filed *Defendants' Second Amended Motion for*  
2 *Attorney's Fees*. On February 22, 2021, the Nevada Court of Appeals entered its *Order*  
3 *Denying Rehearing* pursuant to NRAP 40(c). Next, the parties entered into a stipulation to  
4 extend the time for Mr. Garmong to file an opposition to *Defendants' Second Amended*  
5 *Motion for Attorney's Fees*. The stipulation was granted on March 1, 2021, by this Court's  
6 *Order Extending Time for Plaintiff to File Points and Authorities in Opposition to the*  
7 *Defendants' Second Amended Motion for Fees*. On April 6, 2021, the Nevada Supreme  
8 Court entered its *Order Denying Petition for Review*. On July 16, 2021, this Court entered  
9 its *Order Granting Defendants' Second Amended Motion for Attorney's Fees; Order*  
10 *Confirming Arbitrator's Final Award ("July 16, 2021, Order")*, which confirmed Judge Pro's  
11 arbitration award of \$111,649.96, and awarded Defendants attorneys' fees in the amount of  
12 \$45,084.50. On August 10, 2021, Mr. Garmong filed his *Notice of Appeal*, appealing the  
13 *July 16, 2021, Order* to the Nevada Supreme Court.

14  
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16  
17 On November 3, 2021, Defendants filed a *Substitution of Attorney* replacing Thomas  
18 C. Bradley, Esq. with Stephen S. Kent, Esq. as their counsel of record. On April 4, 2022,  
19 Defendants filed their *Affidavit of Judgment* and *Judgment Lien Abstract of Judgment and*  
20 *Affidavit of Judgment* both naming Mr. Garmong as the judgment debtor. On May 10, 2022,  
21 Defendants filed a *Declaration of Service* of the writ of execution and attachment on Fidelity  
22 Investments/Fidelity Brokerage Services, LLC on May 3, 2022, by the Washoe County  
23 Sheriff's Office.

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1 On July 25, 2022, the Nevada Court of Appeals entered its *Order of Affirmance*  
2 affirming the *July 16, 2021, Order* in its entirety. On October 24, 2022, the Nevada  
3 Supreme Court entered its *Order Denying Rehearing* pursuant to NRAP 40(c). On January  
4 17, 2023, the Nevada Supreme Court issued its *Remittitur*.

5  
6 On January 24, 2023, Defendants filed their *Motion to Compel and Request for*  
7 *Expenses of Motion ("Motion to Compel")*, and on April 10, 2023, the Court entered its *Order*  
8 *Granting Motion to Compel and Request for Expenses of Motion ("Order Granting")*.

9  
10 **A. MOTION FOR FEES AND COSTS.**

11 Defendants assert, pursuant to the Court's *Order Granting*, they are entitled to an  
12 award of fees and costs in the total amount of Four Thousand Eight Hundred Seventy-Eight  
13 Dollars and 25/100 (\$4,878.25). *Motion*, pp. 1-2. Defendants maintain their counsel of  
14 records spent 13.9 hours at a rate of Three Hundred Fifty Dollars (\$350) per hour on the  
15 *Motion to Compel* and incurred Thirteen Dollars and 25/100 (\$13.25) in costs. *Motion*, p. 1.

16  
17 **B. OPPOSITION TO MOTION.**

18 Mr. Garmong argues the discovery was completely unnecessary and unreasonable.  
19 He states Defendants had sufficient information in hand to fully execute on the judgment  
20 before serving the discovery and, in fact, did fully execute on two separate writs of  
21 execution. *Opposition*, p. 3. Mr. Garmong also argues defense counsel failed to analyze  
22 the factors in Brunzell v. Golden Gate Nat. Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).  
23 Mr. Garmong contends for this reason alone the Court should decline to award fees.  
24 *Opposition*, p. 4. Further, even if the Brunzell factors were addressed, Defendants derived  
25 no benefit from their counsel's services. Id.

26  
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1           **C.     REPLY IN SUPPORT OF MOTION.**

2           The *Reply* contends Mr. Garmong's objections to the discovery were waived when  
3 not timely made. *Reply*, p. 1. The *Reply* argues the Court already ordered Mr. Garmong to  
4 respond to the discovery and already awarded fees and costs, and only the amount of fees  
5 and costs is at issue. *Reply*, p. 2. The *Reply* avers Mr. Garmong's refusal to pay what he  
6 owes has necessitated Defendants' collection efforts. At the time of the discovery,  
7 Defendants did not know if Mr. Garmong still had his Fidelity accounts or if they had  
8 sufficient monies. *Id.* Finally, the *Reply* asserts the *Declaration of Stephen S. Kent*  
9 attached to the *Motion* as Ex. 1 ("*Declaration*") is consistent with *Brunzell*. *Id.*

10  
11  
12       **II.     APPLICABLE LAW AND ANALYSIS.**

13           **A.     Rule 37 of the Nevada Rules of Civil Procedure ("NRCP").**

14           NRCP 37 provides, in relevant part:

15           (a) (1) On notice to other parties and all affected persons, a party may move for an  
16 order compelling disclosure or discovery. The motion must include a certification that  
17 the movant has in good faith conferred or attempted to confer with the person or  
18 party failing to make disclosure or discovery in an effort to obtain it without court  
19 action.

20           ...  
21           (5) *Payment of Expenses.*

22           (A) If the motion is granted--or if the disclosure or requested discovery is  
23 provided after the motion was filed--the court must, after giving an opportunity  
24 to be heard, require the party or deponent whose conduct necessitated the  
25 motion, the party or attorney advising that conduct, or both to pay the movant's  
26 reasonable expenses incurred in making the motion, including attorney fees.

27           But the court must not order this payment if:

28           (i) the movant filed the motion before attempting in good faith to obtain the  
disclosure or discovery without court action;

          (ii) the opposing party's nondisclosure, response, or objection was  
substantially justified; or

          (iii) other circumstances make an award of expenses unjust.

NRCP 37.

//

1 In its *Order Granting*, the Court granted Defendants' *Motion to Compel*. The Court  
2 finds and determines Defendants made a good faith attempt to obtain the disclosure without  
3 Court action prior to filing their *Motion to Compel*. Mr. Garmong was provided an  
4 opportunity to be heard. Mr. Garmong's nondisclosure and objection are not substantially  
5 justified, and there are no other circumstances making an award of expenses unjustified.  
6

7 **B. AN AWARD OF ATTORNEY FEES IS SUPPORTED BY SUBSTANTIAL**  
8 **EVIDENCE.**

9 The Nevada Supreme Court reviews an award of attorney fees for an abuse of  
10 discretion and will affirm an award which is supported by substantial evidence. Logan v.  
11 Abe, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). Affidavits or other evidence meeting  
12 the factors in *Brunzell* constitute substantial evidence to support a request of attorneys'  
13 fees. Miller v. Wilfong, 121 Nev. 619, 623–24, 119 P.3d 727, 730 (2005). It has been held  
14 counsel's testimony regarding the nature and extent of the services performed constituted  
15 substantial evidence. Brunzell v. Golden Gate Nat'l. Bank, 85 Nev. 345, 349, 455 P.2d 31,  
16 33 (1969).  
17

18 In Nevada, "the method upon which a reasonable fee is determined is subject to the  
19 discretion of the court." Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 864, 124  
20 P.3d 530, 548 (2005). A court is not limited to one specific approach; rather, a court may  
21 analyze a request for fees pursuant to "any method rationally designed to calculate a  
22 reasonable amount, including those based on a 'lodestar' amount or a contingency fee." Id.  
23 "The lodestar approach involves multiplying 'the number of hours reasonably spent on a  
24 case by a reasonable hourly rate.'" Id.  
25

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1 "[W]hichever method is chosen...the court must continue its analysis by considering  
2 the requested amount in light of the factors enumerated by this court in *Brunzell v. Golden*  
3 *Gate National Bank*." Shuette, 121 Nev. at 865. Express findings on each factor are not  
4 necessary. Instead, the district court need only demonstrate it considered the required  
5 factors, and the award is supported by substantial evidence. Logan, 131 Nev. at 266.

7 The factors set forth in Brunzell, are as follows:

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

13 Brunzell, 85 Nev. at 349.

14 A reviewing court will not substitute its judgment for a trial court in the absence of an  
15 abuse of discretion because "[t]he value to be placed on the services rendered by counsel  
16 lies in the exercise of sound discretion by the trier of facts." Id. at 350. However, a trial  
17 court's failure to analyze the Brunzell factors is an abuse of discretion. Gunderson v. D.R.  
18 Horton, Inc., 130 Nev. 67, 319 P.3d 606 (2014).

20 1. **The qualities of the advocate.**

21 Mr. Kent is an attorney licensed to practice law in the State of Nevada. Mr. Kent has  
22 been practicing law for Forty-Two (42) years. *Declaration*, p. 1.

24 2. **The character of the work to be done.**

25 From January 12, 2023, through April 10, 2023, Mr. Kent spent 8.1 hours preparing  
26 the *Motion to Compel*. *Declaration*, p. 2. Between April 24 and April 26, 2023, Mr. Kent  
27 spent 5.8 hours preparing the instant *Motion*. Id.  
28

1                   **3.     The work actually performed by the attorney.**

2           Mr. Kent spent the majority of the 13.9 hours preparing and revising the *Motion to*  
3 *Compel*, the declaration in support, and the *Reply in Support of the Motion to Compel*.  
4  
5 However, Mr. Kent also includes time spent preparing the instant *Motion and Declaration*.

6           Pursuant to NRCP 37(a)(5)(A), "If the motion is granted...the court must...require the  
7 party...whose conduct necessitated the motion...to pay the movant's reasonable **expenses**  
8 **incurred in making the motion**, including attorney fees." (Emphasis added.) The motion  
9 described in NRCP 37(a)(5)(A) is properly identified in NRCP 37(a)(1), which states:  
10

11           A party may move for an order compelling disclosure or discovery. The motion  
12 must include a certification that the movant has in good faith conferred or  
13 attempted to confer with the person or party failing to make disclosure or  
discovery in an effort to obtain it without court action.

14 NRCP 37.

15           Pursuant to NRCP 37, Defendants' *Motion to Compel* is the only motion for which  
16 attorneys' fees may be recovered. The instant *Motion* to recover fees is not the motion  
17 granted by the Court's *Order Granting*. Thus, any costs and fees incurred in making the  
18 instant *Motion* are not recoverable at this juncture.  
19

20                   **4.     The result.**

21           Mr. Kent's *Motion to Compel* successfully persuaded the Court to grant the *Motion to*  
22 *Compel* and award him attorneys' fees and costs.

23           The Court finds the attorneys' fees incurred between January 12, 2023, and April 10,  
24 2023, to be reasonable and actually incurred. However, Defendants are precluded from  
25 recovering their requested costs and fees incurred after April 10, 2023, at this juncture. The  
26 Court determines an award for attorneys' fees in the amount of Two Thousand Eight  
27 Hundred Thirty-Five Dollars and 00/100 (\$2,835.00) is appropriate in this matter.  
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STEPHEN KENT, ESQ.  
CARL HEBERT, ESQ.

Wiley W. Love