

1 **IN THE COURT OF APPEALS OF THE STATE OF NEVADA**

2
3 ROCHELLE MEZZANO,

4 Appellant,

5 vs.

6 JOHN TOWNLEY,

7 Respondent.

No. 87863-COA

**OPPOSITION TO MOTION TO
STAY**

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Elizabeth A. Brown
Clerk of Supreme Court

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9 Comes now, John Townley, through counsel, and opposes Ms. Mezzano's

10 untimely and self-created "emergency" Motion to Stay. After years of delays and

11 interference by Ms. Mezzano, during which Ms. Mezzano chose a litigation

12 strategy to create a procedural morass and delay substantive resolution at every

13 turn, Mr. Townley was finally able to take this matter to trial. There, Ms. Mezzano

14 declined to testify, and she offered no evidence. Now, Ms. Mezzano is attempting

15 to use this Court—as she attempted to use the United States District Court for the

16 District of Nevada—to create more delay. Ms. Mezzano is not likely to prevail on

17 her appeal. Mr. Townley is entitled to move on with his life and will suffer

18 irreparable and serious harm by further delay and restriction on his right to be free

19 of Ms. Mezzano's interference in his personal, professional, and financial life.

20 Ms. Mezzano's Motion to Stay should be denied.

1 This Opposition is made and based on the points and authorities herein, the
2 attachments hereto, the record on appeal, and any evidence and argument presented
3 in support of this Opposition at a hearing.

4 **POINTS AND AUTHORITIES IN OPPOSITION**

5 Mr. Townley originally filed for divorce in September 2019, (Complaint for
6 Divorce, filed Sept. 24, 2019), and this case proceeded to trial on November 2,
7 2023, (Findings of Fact, Conclusions of Law, Decree of Divorce, Judgment, & Or.
8 [hereinafter “Decree of Divorce”], filed Nov. 28, 2023, p. 1), after the trial court
9 graciously continued the matter in April 2023 because Ms. Mezzano’s ADA
10 Advocate was not present and then continued the matter again in July 2023 when
11 Ms. Mezzano filed a Notice of Filing of Federal Complaint and Notice of Removal
12 to Federal Court in the United States District Court, District of Nevada, case 3:23-
13 cv-00324-RJC-CSD, and attempted to remove the divorce action to federal court.
14 (Or. Continuing Trial, filed Apr. 28, 2023, and Or. After Trial, filed Aug. 2, 2023.)

15 The federal court, the Honorable Robert C. Jones, after conducting a
16 hearing, entered an Order Granting Dismissal on July 31, 2023, dismissing Ms.
17 Mezzano’s claims pursuant to Federal Rule of Civil Procedure 12(b)(6) (failure to
18 state a claim). The Honorable Judge Jones also held that Ms. Mezzano had “not
19 appropriately removed the action from state court,” that Ms. Mezzano had “not
20 removed the action,” that any attempt at removal would be untimely, and that any

1 attempt at removal would be barred by the domestic relations exemption. (Not. Of
2 Or. Granting Dismissal and Tik Tok Video Posted Re: to the July 6, 2023 Hrg., Ex.
3 1, pp. 25-26.) The Honorable Judge Jones later entered an Order, filed November
4 22, 2023, awarding attorney's fees and sanctions. (Exhibit "1".)

5 Then, on October 11, 2023, Ms. Mezzano, filed a Motion to Stay
6 Proceedings in the trial court. (Or. Denying Mot. to Stay Proceedings; Or. Setting
7 Status Hrg. & Trial, filed Oct. 17, 2023, p. 1, lines 20-23.) The trial court denied
8 her Motion on October 17, 2023. (Id.) Ms. Mezzano then filed a Petition for Writ
9 of Prohibition before this Court to prevent the November 2, 2023, trial.
10 (Emergency Pet. For Extraordinary Writ, S.C. Docket No. 87521, filed Oct. 31,
11 2023.) This Court denied that Petition on November 3, 2023. (Or. Denying Pet. For
12 Writ of Prohibition, S.C. Docket No. 87521.) This Court noted that "the operative
13 federal court order in this matter determined that petitioner failed to remove the
14 divorce action to federal court, such that the notice of removal does not deprive the
15 state court of jurisdiction." (Id. pp. 2-3.)

16 Ms. Mezzano appeared for trial on November 2, 2023. (Decree of Divorce,
17 p. 1.) At trial, she declined to offer any testimony and presented no evidence. (Id.)
18 Lack of participation was not a new strategy for Ms. Mezzano. Throughout the
19 case, she failed to respond to discovery, including failing to answer Requests for
20 Admission served under NRCP 36, (Or. Granting Pltf's Mot. for Summary

1 Judgment re: Character of Accts; Mot. for Dismissal of Claims; Mot. for Summary
2 Judgment, filed April 16, 2023, p. 5, lines 13-17); she failed to appear for her
3 deposition, (Id., p. 5, lines 9-12); she did not respond to Mr. Townley's Motion for
4 Summary Judgment or Motion for Sanctions, (Id., p. 4, lines 2-23); she did not file
5 a settlement conference statement, (Id., p. 1, lines 24-26); she never filed a trial
6 statement. Ms. Mezzano delayed filing a notice of appeal until the last possible
7 day. Ms. Mezzano then waited 27 more days to file a motion to stay in the trial
8 court and another 11 days to file before this Court.

9 **A. The Motion to Stay is Untimely.**

10 A party is required to first seek a stay or injunction pending appeal from the
11 trial court. NRAP 8(a)(2). "This requirement is grounded in the district court's
12 vastly greater familiarity with the facts and circumstances of the particular case."
13 *Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005). A limited
14 exception exists if the moving party proves "that moving first in the district court
15 would be impracticable." NRAP 8(a)(2)(A)(i). The exception is contrary to the
16 usual practice and sound policy. *See State ex rel. Pub. Serv. Comm'n v. First*
17 *Judicial Dist. Court*, 94 Nev. 42, 44 n.1, 574 P.2d 272, 273 (1978).

18 Ms. Mezzano is using her own delay as justification to avoid the requirement
19 she seek a stay under NRCP 62 in the trial court before proceeding in this Court.
20 She has no explanation for her failure to seek an "emergency" stay in the trial court

1 before proceeding in this Court. It is unreasonable for a litigant to sit on her rights
2 only to plead urgency at the last moment. This is not a situation where the Court
3 should invoke special procedures to excuse Ms. Mezzano's failure to first seek and
4 obtain a decision on a stay from the trial Court.

5 **B. NRAP 8 Procedural Requirements.**

6 A motion seeking a stay must include "(i) the reasons for granting the relief
7 requested and the facts relied on; (ii) originals or copies of affidavits or other
8 sworn statements supporting facts subject to dispute; and (iii) relevant parts of the
9 record." NRAP 8(a)(2)(B). Here, Ms. Mezzano's Motion includes no citations to
10 the record. The Motion is not supported by any statement by Ms. Mezzano, and the
11 declaration by her counsel cherry picks facts. The declaration fails to advise the
12 Court that Ms. Mezzano did not respond to Mr. Townley's request for admission
13 and, thereby, conclusively admitted the real property at 3120 Achilles Drive was
14 community property. (Perhaps Ms. Mezzano failed to respond because she knew
15 she had deeded the property to herself and Mr. Townley as joint tenants in 2003,
16 then to them as community property with right of survivorship in 2006, and then to
17 their trust in 2008. (Exhibit "2" – deeds.) The declaration also fails to advise the
18 Court that Ms. Mezzano declined to testify at trial and presented no evidence.

19 Ms. Mezzano's motion offers no explanation or analysis why relief should
20 be granted without posting a bond or other security. NRAP 8(a)(2)(E).

1 Ms. Mezzano's motion is insufficient to obtain a stay under NRAP 8.

2 **C. NRAP 8 Substantive Analysis.**

3 If a moving party demonstrates this Court should consider the merits of stay,
4 this Court considers: (1) whether the object of the appeal will be defeated if the
5 stay or injunction is denied; (2) whether the appellant will suffer irreparable or
6 serious injury if the stay or injunction is denied; (3) whether the respondent will
7 suffer irreparable or serious injury if the stay or injunction is granted; and (4)
8 whether the appellant is likely to prevail on the merits. NRAP 8(c).

9 **1. Object of the Appeal.**

10 Ms. Mezzano says she is appealing the distribution of assets and debts made
11 by the trial court. (Mot, p. 2, lines 16-17.) As Ms. Mezzano did not oppose Mr.
12 Townley's summary judgment motion or motion for sanctions, as she failed to
13 appear for her deposition and failed to respond to requests for admission, and as
14 she refused to testify at trial, offered no evidence, Mr. Townley submits the true
15 object of her appeal is to continue to litigation to delay final resolution and his
16 escape from an unwanted marriage.

17 **2. Injury to Appellant.**

18 Ms. Mezzano will not be meaningfully harmed by a lack of stay. She has
19 had four years to reasonably address this case and has failed to do so. She was
20 awarded the Yellow Stone properties she references in her Motion. (Decree of

1 Divorce, p. 6, lines 7-24.) There is no risk Mr. Townley will sell them, and the
2 equalizing amount poses no irrevocable harm. As for Ms. Mezzano's concern that
3 Mr. Townley may sell the real property at 3120 Achilles Drive, Ms. Mezzano had
4 an opportunity to propose a resolution of this case that awarded her the property
5 and compensatory assets to Mr. Townley. She failed to make a cogent argument or
6 demonstrate how she would compensate Mr. Townley for his interest.

7 **3. Injury to Respondent.**

8 Ms. Mezzano has subjected Mr. Townley to years of litigation to extract
9 himself from an unwanted marriage. She is trying to collect rents from and
10 maintain control over property awarded to Mr. Townley. She has not posted a bond
11 or even proposed how she will protect Mr. Townley from her interference, secure
12 him against loss by her illegal rental of his property or secure him against lost
13 opportunities. Any delay in Mr. Townley's final separation from Ms. Mezzano,
14 any impairment of Mr. Townley's ability to manage the property awarded to him,
15 and any further entertainment of Ms. Mezzano's quest to use the courts to tie Mr.
16 Townley to her is an unfair and unreasonable restriction on Mr. Townley's right to
17 move forward personally, professionally, and financially.

18 **4. Likelihood of Success of the Appeal.**

19 "A point not urged in the trial court, unless it goes to the jurisdiction of that
20 court, is deemed to have been waived and will not be considered on appeal." *Old*

1 *Aztec Mine v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Here, Ms.
2 Mezzano had an opportunity to make her arguments to the trial court. She had an
3 opportunity to oppose Mr. Townley's motion for summary judgment and motion to
4 dismiss. She had an opportunity to appear for her deposition, to produce
5 documents as required by the Nevada Rules of Civil Procedure and to answer
6 requests for admission. She had an opportunity to testify at trial and present
7 evidence and argument. Ms. Mezzano did not take those chances. She cannot raise
8 her claims now. Her claims are barred. She cannot prevail on appeal based on
9 barred claims.

10 **i. Ms. Mezzano's Claim re: Characterization of Accounts is**
11 **Barred.**

12 Ms. Mezzano suggests that she is likely to prevail because "presuming that
13 accounts belonged to a party simply because it was in one name only following the
14 default is insufficient to determine the character of the property." (Mot. p. 7, lines
15 16-18.) That is not what occurred. Mr. Townley brought a motion for summary
16 judgment, which Ms. Mezzano did not oppose. The Court granted Mr. Townley's
17 unopposed motion. As this Court held in *Schuck v. Signature Flight Support of*
18 *Nev., Inc.*, the failure to raise a point in response to summary judgment is a bar to
19 the defense on appeal. *See also* *Schuck v. Signature Flight Support of Nev., Inc.*,
20 126 Nev. 434, 436, 245 P.3d 542, 544 (2010). Ms. Mezzano's claims are barred.

1 **ii. Ms. Mezzano's Claim re: Characterization of the Achilles**
2 **Property is Barred.**

3 Ms. Mezzano suggests that she is likely to prevail because the
4 “characterization of 3120 Achilles Drive as Husband’s sole and separate property
5 in clearly erroneous.” (Motion p. 7, lines 19-20.) Mr. Townley is at a loss as to
6 what Ms. Mezzano is referencing. That property was conclusively determined to be
7 community property by Ms. Mezzano’s failure to respond to a request for
8 admission. (Decree p. 5, lines 8-14.) That conclusion followed long-established
9 Nevada law. *See Smith v. Emery*, 109 Nev. 737, 741, 856 P.2d 1386, 1390 (1993)
10 (“It is well settled that failure to respond to a request for admissions will result in
11 those matters being deemed conclusively established. [citation omitted.] This is so
12 even if the established matters are ultimately untrue.”) The property was ultimately
13 awarded to Mr. Townley as part of his share of the community estate. (Decree p.5,
14 lines 8-14.) Ms. Mezzano’s claims are barred.

15 **iii. Ms. Mezzano's Claim re: Characterization of the Yellow**
16 **Stone Properties is Barred.**

17 Ms. Mezzano suggests that she is likely to prevail on appeal because the
18 characterization of the Yellowstone “properties were determined based on a
19 discovery sanction, though there was evidence that clearly contradicted the
20 discovery sanction.” (Mot., p. 8, lines 14-16.) Again, Mr. Townley is at a loss. Not
 only did Ms. Mezzano not argue this point below, but the trial court did not

1 characterize Ms. Mezzano's interests in the properties based on a discovery
2 sanction. The trial court found Ms. Mezzano failed to present clear and convincing
3 evidence to overcome the presumption of community property for assets acquired
4 during marriage. (Decree of Divorce, p. 6, lines 7-24.) Ms. Mezzano's claims are
5 barred.


6 **iv. Ms. Mezzano's Claim re: Cash on Hand is Barred.**

7 Ms. Mezzano suggests the trial court "erroneously awarded cash she had on
8 hand to the community." (Mot. p. 8, lines 18-19.) She bases that contention on
9 evidence she did not present to the trial court, including a statement in a letter from
10 Mr. Townley's counsel to which she never responded or agreed. Ms. Mezzano
11 cannot rely on this point on appeal. Her claim is barred.

12 **CONCLUSION**

13 For the foregoing reasons, John Townley respectfully submits the Court
14 should deny Ms. Mezzano's Motion.

15 Dated this 8 day of Feb 2024.

16
17 
18 ALEXANDER C. MOREY
19 SILVERMAN KATTELMAN SPRINGGATE, CHTD.
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DECLARATION OF JOHN TOWNLEY

COMES NOW, JOHN TOWNLEY, who executes this within the State of Nevada: I declare under penalty of perjury that the following is true and correct:

1. I am the Respondent herein.
2. I make this declaration of my own personal knowledge, information and belief.
3. The statement of facts in the Opposition to Motion to Stay are hereby merged and incorporated into this declaration. I know the facts are true of my own knowledge, except those matters stated upon information and belief. As to those matters, I believe them to be true.

EXECUTED this 7TH day of February 2024.



John Townley

1 **CERTIFICATE OF SERVICE**

2
3 Pursuant to NRCP 5 (b), I hereby certify that I am an employee of Silverman,
4 Kattelman Springgate, Chtd, and on the date set forth below, I served a true copy of
5
6 the foregoing Opposition to Motion to Stay the party(ies) identified below by:

7 ☐ Placing an original or true copy thereof in a sealed envelope, postage
8 prepaid for collection and mailing in the United States Mail at Reno,
9 Nevada to
10

11 ☒ Electronically, using Supreme Court's Eflex system.
12

13 ☐ Email:
14

15 addressed to:

16 F. Peter James, Esq.
17 Law Offices of F. Peter James, Esq.
18 3821 West Charleston Blvd., Ste. 250
19 Las Vegas, NV 89102

20 Under NRS 239B.030 the undersigned affirms the preceding contains no
21 social security number.

22 Dated this 8 day of Feb 2024.
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EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROCHELLE MEZZANO, JAY V. SHORE,)
individually, and as next friend for Rochelle)
Mezzano,)

Plaintiffs,)

vs.)

SECOND JUDICIAL DISTRICT COURT OF)
THE STATE OF NEVADA, as a covered)
entity under the Americans with Disabilities)
Act, et al.,)

Defendants.

Case No. 3:23-cv-00324-RCJ-CSD

ORDER

This is a divorce case that has gone off the rails. In September 2019, non-party John Townley filed for divorce from his wife, Plaintiff Rochelle Mezzano. (Dkt. 35 at 2). Four years later, Plaintiffs Mezzano and Jay V. Shore filed this lawsuit pro se¹ alleging that “the 2nd District and all other Defendants are knowingly and willfully outside the scope of the ADA [Americans

¹ “Courts in this circuit have an obligation to give a liberal construction to the filings of pro se litigants,” which relieves pro se litigants “from the strict application of procedural rules and demands that courts not hold missing or inaccurate legal terminology or muddled draftsmanship against them.” *Blaisdell v. Frappiea*, 729 F.3d 1237, 1241 (9th Cir. 2013). Even so, “pro se litigants must comply with the Federal Rules of Civil Procedure.” *Bailey v. Suey*, 2014 WL 5342573, at *1 (D. Nev. Oct. 20, 2014), *aff’d*, 669 F. App’x 472 (9th Cir. 2016).

With Disabilities Act], and blatantly denying equal access on the basis of disability[.]” (Dkt. 1 at 30). The Court dismissed the case with prejudice on July 31, 2023, finding it to be “frivolous and brought in bad faith[.]” (Dkt. 33 at 2).

Now, pending before the Court, are Defendants’ Motion for Attorney’s Fees and Costs, (Dkt. 34), and Motion for Sanctions, (Dkt. 35).² For the following reasons, the Court grants the motions.

I. Factual Background

This action arises out of an ongoing divorce case pending in the Second Judicial District Court of Nevada (“SJDC”). (Dkt. 1). Mezzano and her husband John Townley are parties to the divorce action that has been pending for over four years. (*Id.* at 5) (citing *Townley v. Mezzano*, DV 19-01564 (Second Judicial District Court of Nevada)).³ On or about January 11, 2023, acting on behalf of Mezzano, Shore called Clerk of Court Alicia Lerud requesting the email or fax number for the ADA Coordinator. (*Id.* at 6).

On January 12, 2023, Shore sent a letter to Lerud and Judge Robb. (*Id.* at Ex. A). Within that letter, Shore explained that he is not an attorney but rather is acting as an ADA Advocate on behalf of Mezzano. (*Id.*). After disclaiming any legal acumen, Shore spent three pages of the

² Plaintiffs have not filed a response in opposition to either motion. Under this Court’s Local Rules, failure to file a response in opposition constitutes consent to the granting of the motion, except in the case of certain motions including motions for attorney’s fees. LR 7-2(d).

³ The Court takes judicial notice of the state court proceedings in *Townley v. Mezzano*, DV 19-01564 because they are referenced throughout the Complaint and because they form the basis for this lawsuit. *See United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (the court “may take judicial notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.” (internal quotations and citations omitted)).

1 letter criticizing Mezzano's counsel and criticizing Judge Robb's rulings in the divorce action. (*Id.*
2 at Ex. A pp 3-5). In the letter, Shore claimed that Mezzano is a qualified individual with a disability
3 and requested a number of accommodations. (*See Id.* at 5–6).

4 On January 12, 2023, Lerud replied by email acknowledging she had received the letter
5 and informing Shore that he had engaged in an improper ex parte communication to the court by
6 also sending the letter to Judge Robb. On January 13, 2023, former Assistant Clerk of Court
7 William Wright emailed Shore and Mezzano stating that he would be the primary point of contact
8 for Mezzano's ADA request and cautioned Shore about ex parte communications with Judge
9 Robb. (*Id.* at Ex. B). Wright also stated that if "[Shore] or Ms. Mezzano would like to make any
10 official filings before the Court, that you should certainly feel free to make those filing[s]." (*Id.* at
11 Ex. C).

12 On January 30, 2023, Wright emailed Shore and Mezzano stating that the requests could
13 not be accommodated by Court Administration because they sought to alter the court proceedings,
14 and therefore needed to be decided by Judge Robb. (*Id.* at 11). Wright further stated that: "[m]y
15 understanding is that Ms. Mezzano is currently represented by counsel in this matter. The requests
16 that you have made should be made by her counsel and filed with the Court to make appropriate
17 rulings and determinations." (*Id.* at 11–12).

18 On March 13, 2023, a settlement conference was held in the divorce proceedings. (*Id.* at
19 13-18). Judge Robb questioned Mezzano on why she did not file a Settlement Conference
20 Statement. (*Id.*). Mezzano stated that she did not have ADA access to the court and wanted her
21 ADA advocate to be present. (*Id.*). Judge Robb informed her that she needed to file a motion with
22 the Court and not send in ex parte requests, and that the settlement conference would proceed.

1 (*Id.*). On April 4, 2023, Judge Robb sent an email to Shore and Mezzano along with Court
2 Administration that stated:

3 “As I have said, multiple times, Ms. Mezzano needs to make a formal filing with
4 the Court in order for me to take action. The filing can be sealed, and subject to in
5 camera review, but I cannot act in a substantive way without a formal request.
6 Moreover, Ms. Mezzano requested, and I GRANTED her request to have her ADA
7 advocate present with her in Court. He was not present, despite her request, at the
8 last hearing.”

9 (*Id.* at Ex. E.).

10 On April 14, 2023, Judge Robb issued an Order Regarding Pre-Trial Procedure for the
11 April 17, 2023 divorce trial which stated in relevant part that: “Ms. Mezzano may have a support
12 person of her choosing present at trial as broadly contemplated by NRS 125.080.” (*Id.* at 20–26
13 & Ex. F). On April 17, 2023, Assistant Clerk of Court Emily Reed sent Shore an email which
14 stated that: “Last week, Judge Robb approved your virtual appearance as Ms. Mezzano’s advocate.
15 The trial is currently on hold and my understanding is that Ms. Mezzano has been trying to reach
16 you. I am reaching out to confirm your availability for this afternoon and Wednesday all day.
17 Please let me know at your earliest convenience.” (*Id.* at Ex. G).

18 Later that day, Shore responded that: “[i]f any reasonable person reads [the trial procedure
19 order] they would reasonably observe that there is no grant of right for me, as Ms. Mezzano’s
20 ADA advocate, to attend trial. I am not under Nevada Revised Statute 125.080. I am in capacity
21 under 42 USC §12203(b) and 28 CFR §35.134(b). Shore also complained that Judge Robb did
22 not copy him on the order directly and he only saw it because Mezzano provided him a copy.”
23 (*Id.*). Because of Shore’s failure to appear, the divorce trial was vacated and reset.

24 On April 28, 2023, Judge Robb issued a Notice of Ex Parte Hearing, which stated that: “An
ex parte hearing regarding A.D.A. issues has been scheduled in this matter for May 4, 2023 at 4:00

1 p.m. This hearing will be recorded on the Courts' JAVS system, which will be the official record
2 of the proceedings. No other recordings will be permitted." (*Id.* at Ex. I). Neither Mezzano nor
3 Shore attended the Ex Parte Hearing. (*Id.* at 27–28). On June 28, 2023, Judge Robb issued an
4 Order Regarding Trial which set the trial for July 6, 2023. (*Id.* at Ex. J). On the eve of trial, July
5 5, 2023, Mezzano filed a complaint in this Court, (*id.*), as well as a document in state court entitled
6 "Notice of Filing Federal Complaint and Notice of Removal to Federal Court" in her divorce
7 proceeding. *See Townley v. Mezzano*, DV 19-01564. In August 2023, the Court dismissed
8 Mezzano's complaint with prejudice "pursuant to Fed. R. Civ. P. 12(b)(1), based on *Younger*
9 abstention and/or *Rooker-Feldman* abstention doctrines and pursuant to Fed. R. Civ. P. 12(b)(6),
10 based on judicial immunity and failure to state a claim against Defendants." (Dkt. 33 at 26).

11 II. Legal Standard

12 Rule 11 of the Federal Rules of Civil Procedure "provides for the imposition of sanctions
13 when a filing is frivolous, legally unreasonable, or without factual foundation, or is brought for an
14 improper purpose." *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1177 (9th Cir. 1996); *see also*
15 Fed. R. Civ. P. 11; *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990). "The two
16 problems that Rule 11 addresses, therefore, are 'frivolous filings' and the use of judicial procedures
17 as a tool for 'harassment.'" *Hudson v. Moore Bus. Forms, Inc.*, 836 F.2d 1156, 1159 (9th Cir.
18 1987). "Sanctions are mandatory if the court concludes that Rule 11 has been violated." *Id.*

19 "An award of Rule 11 sanctions raises two competing concerns: the desire to avoid abusive
20 use of the judicial process and to avoid chilling zealous advocacy." *Id.* at 1159–60. Therefore,
21 when determining whether a complaint is frivolous or filed with an improper purpose, court apply
22 an objective standard of reasonableness, asking primarily whether the complaint "states an
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1 arguable claim—not whether the pleader is correct in his perception of the law.” *Id.* at 1159.
2 Accordingly, the subjective intent of the filer is irrelevant to the court’s objective analysis. *Id.*;
3 *see also Zaldivar v. City of Los Angeles*, 780 F.2d 823, 829 (9th Cir. 1986), *abrogated on other*
4 *grounds by Cooter*, 496 U.S. at 399–400.

5 Notably, Rule 11’s application “explicitly applies to parties not represented by attorneys.”
6 *Warren v. Guelker*, 29 F.3d 1386, 1390 (9th Cir. 1994) (explaining that courts cannot declines to
7 impose monetary sanctions “simply because plaintiff is proceeding *pro se*”). “The district court is
8 therefore not at liberty to exempt automatically such persons from the rule’s requirements.” *Id.*
9 Accordingly, when taking into consideration the context of the case, “[a] sanction imposed under
10 [Rule 11] must be limited to what suffices to deter repetition of the conduct or comparable conduct
11 by others similarly situated.” Fed. R. Civ. P. 11(c)(4).

12 The form of sanctions available under Rule 11 include “[r]easonable attorneys’ fees and
13 expenses,” which may be awarded by the court “when a claim is clearly frivolous, clearly
14 vexatious, or brought primarily for purposes of harassment.” *Simpson*, 77 F.3d at 1177 (citing 31
15 U.S.C. § 3730(d)(4)); *see also* Fed. R. Civ. P. 11(c)(4) (“The sanction may include nonmonetary
16 directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective
17 deterrence, an order directing payment to the movant of part or all of the reasonable attorney’s fees
18 and other expenses directly resulting from the violation.”).

19 **III. Analysis**

20 **A. Rule 11 Sanctions**

21 This Court has already decided that there is no legal basis for this case to proceed for
22 multiple reasons “pursuant to Fed. R. Civ. P. 12(b)(1), based on *Younger* abstention and/or *Rooker-*
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1 *Feldman* abstention doctrines and pursuant to Fed. R. Civ. P. 12(b)(6), based on judicial immunity
2 and failure to state a claim against Defendants.” (Dkt. 33 at 26). The Court need not reiterate the
3 reasons for its finding that this case was both “frivolous and brought in bad faith[.]” (*Id.* at 2).

4 Accordingly, Rule 11 sanctions are appropriate here under either Rule 11(b)(1), prohibiting
5 litigation “presented for any improper purpose,” or Rule 11(b)(2), requiring that a case’s “claims,
6 defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument
7 for extending, modifying, or reversing existing law or for establishing new law[.]” Fed. R. Civ. P.
8 11(b)(1)–(2).

9 **B. Attorney’s Fees**

10 District courts have “inherent power to levy sanctions, including attorneys’ fees, for willful
11 disobedience of a court order or when the losing party has acted in bad faith, vexatiously, wantonly,
12 or for oppressive reasons[.]” *Fink v. Gomez*, 239 F.3d 989, 991 (9th Cir. 2001) (cleaned up)
13 (quoting *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766 (1980)). “[S]anctions are available if
14 the court specifically finds bad faith or conduct tantamount to bad faith,” specifically
15 encompassing “a variety of types of willful actions, including recklessness when combined with
16 an additional factor such as frivolousness, harassment, or an improper purpose.” *Id.* at 994. As
17 the Court explained above, such a finding has already been made in this case. (*See* Dkt. 33 at 2).
18 Therefore, the Court must only determine the appropriate amount of attorney’s fees in this case.
19 *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (“Once a party has established that it is entitled to
20 an award of attorneys’ fees, it remains for the district court to determine what fee is reasonable.”).

21 The Supreme Court in *Hensley* established a “lodestar” calculation on which reasonable
22 attorneys’ fees are traditionally based. *Id.* “The most useful starting point for determining the
23
24

1 amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied
2 by a reasonable hourly rate.” *Hensley*, 461 U.S. at 433. In order to determine the value of the
3 legal services, or the lodestar, “[t]he party seeking an award of fees should submit evidence
4 supporting the hours worked and rates claimed.” *Id.* Notably, the district court may reduce the
5 award where appropriate and “also should exclude from this initial fee calculation hours that were
6 not ‘reasonably expended.’” *Id.* at 433–34.

7 “The product of reasonable hours times a reasonable rate does not end the inquiry. There
8 remain other considerations that may lead the district court to adjust the fee upward or downward,
9 including the important factor of the ‘results obtained.’” *Id.* at 434. For instance, “[w]here a
10 plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee.
11 Normally this will encompass all hours reasonably expended on the litigation, and indeed in some
12 cases of exceptional success an enhanced award may be justified.” *Id.* at 435. The second step of
13 the inquiry allows courts to “adjust the lodestar upward or downward using a ‘multiplier’⁴ based
14 on factors not subsumed in the initial calculation of the lodestar.” *Van Gerwen*, 214 F.3d at 1045.

15 “The lodestar amount is presumptively the reasonable fee amount, and thus a multiplier
16 may be used to adjust the lodestar amount upward or downward only in rare and exceptional cases,
17 supported by both specific evidence on the record and detailed findings by the lower courts that

18
19 ⁴ “Under *Hensley*, 11 factors are relevant to the determination of the amount of attorney's fees: (1)
20 the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill requisite to perform
21 the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case;
22 (5) the customary fee; (6) time limitations imposed by the client or the circumstances; (7) the amount
23 involved and the results obtained; (8) the experience, reputation and ability of the attorneys; (9) the
24 “undesirability” of the case; (10) the nature and length of the professional relationship with the client; and
(11) awards in similar cases.” *Van Gerwen*, 214 F.3d at 1045 n.2.

1 the lodestar amount is unreasonably low or unreasonably high.” *Id.* (cleaned up). Ultimately,
2 despite these considerations, “[t]here is no precise rule or formula for making these
3 determinations.” *Hensley*, 461 U.S. at 436. “The district court may attempt to identify specific
4 hours that should be eliminated, or it may simply reduce the award to account for the limited
5 success. The court necessarily has discretion in making this equitable judgment.” *Id.* at 436–37.
6 Importantly, “[a] request for attorney’s fees should not result in a second major litigation.” *Id.* at
7 437.

8 Defendants have provided evidence of counsel’s billing records in the form of “an
9 itemization and description of the work performed[.]” (Dkt. 34 at 8); (Dkt. 34-1); (Dkt. 34-4).
10 The total hours worked came out to 65.50 hours, (Dkt. 34-4 at 2), at a rate of \$400 per hour, (Dkt.
11 34-1 at 2). Finding that this rate is reflective of “the prevailing market rates” in this community,
12 *see Webb v. Ada County*, 285 F.3d 829, 840 n.6 (9th Cir. 2002), and that the hours were
13 “reasonably expended,” *see Hensley*, 461 U.S. at 435, the Court awards attorney’s fees to
14 Defendants in the amount of \$26,200.00.

CONCLUSION

IT IS HEREBY ORDERED that Defendants' Motion for Sanctions, (Dkt. 35), is **GRANTED**.

IT IS FURTHER ORDERED that Defendants' Motion for Attorney's Fees and Costs, (Dkt. 34), is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiffs shall pay Defendants \$26,200.00 in attorney fees and costs.

IT IS SO ORDERED.

Dated November 22, 2023.

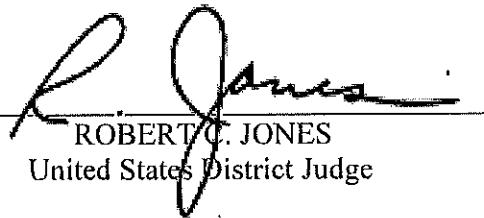

ROBERT C. JONES
United States District Judge

EXHIBIT 2

A.P.N # 003 502 03

R.P.T.T. \$.00

ESCROW NO. 031402154

Full Value

RECORDING REQUESTED BY:
STEWART TITLE COMPANY
WHEN RECORDED MAIL TO:
MAIL TAX STATEMENTS TO:

GRANTEE

3120 Achilles
Reno NV 89512

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That **ROCHELLE MEZZANO, A SINGLE WOMAN**

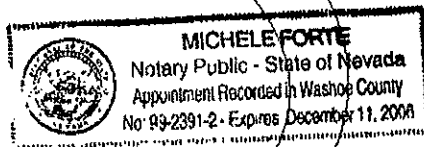
in consideration of \$10.00, the receipt of which is hereby acknowledged, does hereby Grant, Bargain Sell and Convey to **ROCHELLE MEZZANO AND JOHN M. TOWNLEY, WIFE AND HUSBAND AS JOINT TENANTS**

and to the heirs and assigns of such Grantee forever, all that real property situated in the County of **Washoe** State of Nevada, bounded and described as follows:
Lot 3 in Block D of UNIVERSITY HEIGHTS, a Cluster Subdivision, UNIT II, PHASE THREE, filed in the office of the County Recorder, Washoe County, State of Nevada, on September 22, 1981, Official Records of Washoe County, Nevada and amendment thereto recorded May 13, 1986, Document No. 1071007, Official Records of Washoe County, Nevada, Tract Map No. 2019.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and any reversions, remainders, rents, issues or profits thereof.

DATE: **March 20, 2003**

Rochelle Mezzano
ROCHELLE MEZZANO



STATE OF NEVADA }

COUNTY OF WASHOE } ss.

This instrument was acknowledged before me on Mar 20, 2003,
by, ROCHELLE MEZZANO

Signature *[Signature]*
Notary Public

DOC # 2827130

03/26/2003 04:51P Fee:14.00

BK1

Requested By
STEWART TITLE OF NORTHERN NEVADA
Washoe County Recorder
Kathryn L. Burke - Recorder
Pg 1 of 1 RPTT 0.00



APN: 003-502-03

RPTT \$0.00

WHEN RECORDED MAIL TO:

Name Rochelle Mezzano
Address 735 Aesop Ct.
City,State Reno, NV
Zip 89512

MAIL TAX STATEMENTS TO:

Name Same
Address
City,State
Zip
Order
No.



(SPACE ABOVE THIS LINE FOR RECORDERS USE)

GRANT, BARGAIN AND SALE DEED

THIS INDENTURE WITNESSETH: That

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Rochelle Mezzano and John M. Townley, wife and husband as joint tenants

do(es) hereby GRANT(s) BARGAIN SELL and CONVEY to

Rochelle D. Mezzano and John M. Townley, wife and husband, as community property with right of survivorship

and to the heirs and assigns of such Grantee forever, all the following real property situated in the City of Reno, County of Washoe State of Nevada bounded and described as follows:

See attached Exhibit A

TOGETHER with all tenements, hereditaments and appurtenances, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

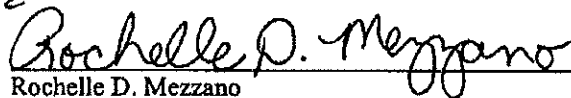
Dated: 08/24/2006



Grant, Bargain and Sale Deed – Page 2



John M. Townley



Rochelle D. Mezzano

STATE OF NEVADA

COUNTY OF Washoe

This instrument was acknowledged before me on

August 24, 2006,

by John M. Townley and Rochelle D. Mezzano.



Notary Public

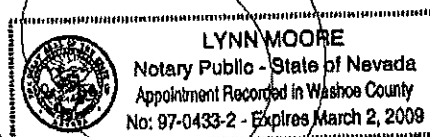




EXHIBIT "A"

Lot 3 in Block D of UNIVERSITY HEIGHTS, a Cluster Subdivision, UNIT II, PHASE THREE, filed in the office of the County Recorder, Washoe County, State of Nevada, on September 22, 1981, Official Records of Washoe County, Nevada and amendment thereto recorded May 13, 1986, Document No. 1071007, Official Records of Washoe County, Nevada, Tract Map No. 2019.

COPY

APN: 003-502-03

R.P.T.T. #7 = 0

WHEN RECORDED RETURN TO:

John E. Lewis, Attorney
625 Plumas St.
Reno, NV 89509

GRANTEE-Mail Tax Statements To:

Mezzano Townley Trust
735 Aesop Ct.
Reno, NV 89512

DOC # 3611802

01/16/2008 08:31:13 AM

Requested By

JOHN E LEWIS

Washoe County Recorder

Kathryn L. Burke - Recorder

Fee: \$15.00 RPTT: \$0.00

Page 1 of 2



Please complete Affirmation Statement below:

- ☒ I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons (Per NRS 239B.030)
- ☐ I the undersigned hereby affirm that this document submitted for recording contains the social security number of a person or persons as required by law: _____
(State specific law)

Rochelle D. Mezzano

Signature (Print name under signature)
ROCHELLE D. MEZZANO

Title

DEED

THIS INDENTURE made and entered into this 28th day of September, 2007,
by and between **ROCHELLE D. MEZZANO** and **JOHN M. TOWNLEY**, wife and
husband, as community property with right of survivorship, party of the first part, and
ROCHELLE D. MEZZANO and **JOHN M. TOWNLEY**, as Grantors and Trustees of the
MEZZANO TOWNLEY TRUST, dated September 28, 2007, party of the second part.

WITNESSETH:

That the party of the first part, without consideration to them paid by the party of
the second part, do by these presents grant, bargain, sell and convey unto the party of
the second part, and to its successors and assigns forever, all that certain real property
situate in the County of Washoe, State of Nevada, described as follows:

Lot 3 in Block D of UNIVERSITY HEIGHTS, a Cluster Subdivision, UNIT II, PHASE THREE, according to the map thereof, filed in the office of the County Recorder of Washoe County, State of Nevada, on September 22, 1981, Official Records of Washoe County, Nevada and amendment thereto recorded May 13, 1986, Document No. 1071007, Official Records of Washoe County, Nevada, Tract Map No. 2019.

TOGETHER with all and singular the tenements, hereditaments and appurtenances, including water rights and easements, if any, thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD the said presents, together with the appurtenances, unto the said party of the second part and to its successors and assigns forever.

IN WITNESS WHEREOF, the party of the first part have set their hands the day and year first above written.

Rochelle D. Mezzano
ROCHELLE D. MEZZANO

John M. Townley
JOHN M. TOWNLEY

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On this 28th day of September, 2007, personally appeared before me, a Notary Public, ROCHELLE D. MEZZANO and JOHN M. TOWNLEY, personally known to me to be the persons whose names are subscribed to the above instrument who acknowledged that they executed the above instrument.

Debra L. Hamilton
Notary Public

