

COMMISSION ON JUDICIAL SELECTION APPLICATION

EIGHTH JUDICIAL DISTRICT
DEPARTMENT 29

By

JACOB A. REYNOLDS



Personal Information

1.	Full Name	JACOB ALVIN REYNOLDS
2.	Have you ever used or been known by any other legal name (including a maiden name)? If so, state name and reason for the name change and years used.	NO
3.	How long have you been a continuous resident of Nevada?	16+ years
4.	City and county of residence	Las Vegas, Clark County
5.	Age	43

Employment History

6. Please start with your current employment or most recent employment, self-employment, and periods of unemployment for the last 20 years preceding the filing of this Application.

Current or Last Employer	Scholer & Sons, LLC
Phone	702-604-3422
Physical Address & Website	9960 W. Cheyenne Ave., Suite 130, Las Vegas, NV 89129 www.scholerandsons.com
Date(s) of Employment	May 2022 – Present
Supervisor's Name and Title	Eric Scholer, Owner
Your Title	Chief Legal Officer
Describe Your Key Duties	Manage all due diligence on international brokerage deals. Manage and perform legal advising duties for all intellectual property acquisition and negotiation. Handle management of employee hiring and termination. Take lead on federal and state litigation efforts. Manage all Spanish-language deals.
Reason for Leaving	Currently employed

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Previous Employer	Hutchison & Steffen, PLLC
Phone	702-385-2500
Address & Website	10080 W. Alta Dr., Suite 200, Las Vegas, NV 89145 www.hutchlegal.com
Date(s) of Employment	August 2008-May 2022
Supervisor's Name and Title	Mark Hutchison, Founding Partner
Your Title	Senior Counsel, Partner, Associate
Describe Your Key Duties	Address client needs as experienced partner at the firm, through my own work and through management of associates and other partners at the firm. Focus on intellectual property litigation, complex business litigation, and ethics commission appearances. Originate clients for the firm.
Reason for Leaving	Went in-house with client Scholer & Sons, LLC

Concurrent Employer	Switch, Ltd.
Phone	877-969-1851
Address & Website	7135 S Decatur Blvd, Las Vegas, NV 89118 www.switch.com
Date(s) of Employment	January 2021-December 2021
Supervisor's Name and Title	Sam Castor, VP of Policy and Lynnel Reyes, Associate General Counsel
Your Title	Lead Special Litigation Counsel
Describe Your Key Duties	<p>This job was literally created for me. I was assigned to work at Switch by Secondment Assignment from my firm Hutchison & Steffen. I was tasked with managing all the litigation efforts for what I understood to be the largest Anti-trust case in Nevada history (<i>see</i> "Switch case" described below). I managed the drafting and discovery efforts for essentially three law firms: Hutchison & Steffen, Shearman Sterling, and Switch's in-house legal team. This was needed to overcome the discovery quagmire that had threatened to lose the case rather than winning on the merits.</p> <p>The case involved over 40 fact witnesses, 15 expert witnesses, dozens of discovery motions leading up to trial plus numerous motions in limine, daubert motions, dispositive motions. I was the person in charge of coordinating the drafting of all motions, responses and replies. I was also responsible for coordinating the discovery efforts, reviewing the discovery and tagging it for essential information for trial, and litigation preparation.</p>
Reason for Leaving	We won the case so the job, and Secondment Assignment ended.

Previous Employer	Reynolds Consulting Group, LLC
Phone	Dissolved company
Address & Website	Dissolved company
Date(s) of Employment	May 2015 – August 2016
Supervisor's Name and Title	Self-Employed
Your Title	Owner
Describe Your Key Duties	I helped clients (candidates and initiative organizers) conduct necessary polling and field studies to determine what plans of action to take in the upcoming elections. I also helped build ground games and do fundraising.
Reason for Leaving	I went back to Hutchison & Steffen to work cases again. I never "left" the firm fully. This was an entity designed to take this type of work outside the firm.

Previous Employer	Chief Judge Roger L. Hunt U.S. District Court - Nevada
Phone	702-464-5530
Address & Website	333 South Las Vegas Blvd, Las Vegas, NV 89101 www.nvd.uscourts.gov
Date(s) of Employment	August 2006 – 2008
Supervisor's Name and Title	Chief Judge Roger L. Hunt
Your Title	Law Clerk
Describe Your Key Duties	<p>Read full briefing of assigned cases. Confirm whether cited authorities in briefs supported position for which it is cited. Identify concerns with briefing. Meet with Judge Hunt to discuss his impressions of the briefing and to share concerns if any. Prepare bench memos for hearing and orders for decisions. I similarly helped with Judge Hunt's cases when he sat on the U.S. Court of Appeals for the Ninth Circuit by designation.</p> <p>Escorted and handled jury needs during jury trials and sat in courtroom as clerk during trial, evidentiary hearings, sentencings, etc.</p> <p>Helped Judge Hunt revise the Model Ninth Circuit Jury Instructions as part of his work on a committee in the Circuit.</p>
Reason for Leaving	Two-year clerkship expired.

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Previous Employer	Professor Brett Scharffs
Phone	801-422-9025
Address & Website	530 JRCB, Provo, UT 84602 law.byu.edu
Date(s) of Employment	June 2006 – July 2006
Supervisor's Name and Title	Brett Scharffs, Professor
Your Title	Research Assistant
Describe Your Key Duties	I was a logic TA in undergrad. My job here was to find source material for Professor Scharffs' study of law and logic.
Reason for Leaving	Graduated, moved to Nevada to take the bar and begin my federal clerkship.

Previous Employer	Professor Richard Wilkins
Phone	Deceased
Address & Website	JRCB, Provo, UT 84602 law.byu.edu
Date(s) of Employment	January 2005 – June 2006
Supervisor's Name and Title	Richard Wilkins, Professor
Your Title	Research Assistant
Describe Your Key Duties	Supreme Court voting project -- Read all cases decided by the United States Supreme Court for each relevant term. Categorize case issues (criminal rights, first amendment, religious liberty, etc.) then identify votes on each issue in a classical (i.e. founders understanding) liberal/non-liberal vote for each Justice. Use statistical tools to identify how the votes compared to votes over time and recent trends. International Law Project – research and identify how certain legal trends at the U.N. and other international bodies had begun to affect judicial rulings in local jurisdictions.
Reason for Leaving	Graduated, moved to Nevada to take bar and begin clerkship.

Previous Employer	Research Pool/Contract work
Phone	801-422-4572
Address & Website	J. Reuben Clark Law School, Career Services Office, 375 JRCB, Provo, UT 84602. Law.byu.edu
Date(s) of Employment	September 2004 – April 2006
Supervisor's Name and Title	Beth Hansen, Career Services Coordinator
Your Title	Student
Describe Your Key Duties	Research and write memos for questions submitted by different small firms across the country. Questions ranged from basic

	contract issues, to immigration law, to collection against ERISA funds.
Reason for Leaving	Graduated from law school.

Previous Employer	Judge David Sam (U.S. District Court Salt Lake City)
Phone	801-524-6190
Address & Website	400 South Main Street, Salt Lake City, UT 84101
Date(s) of Employment	July 2004 – August 2004
Supervisor's Name and Title	David Sam/Mitzi Collins
Your Title	Legal Intern
Describe Your Key Duties	Research motions submitted to Court, prepare bench memos for Judge Sam's consideration.
Reason for Leaving	Summer internship completed.

Previous Employer	Judge Lloyd D. George
Phone	702-464-5500
Address & Website	333 South Las Vegas Blvd., Las Vegas, NV 89101 www.nvd.uscourts.gov
Date(s) of Employment	May 2004 – June 2004
Supervisor's Name and Title	Judge Lloyd George/Troy Healey (Law Clerk)
Your Title	Legal Intern
Describe Your Key Duties	Research and draft memos for Judge George's use on the bench. Draft orders based on approved memos. Help manage additional legal interns.
Reason for Leaving	Completed internship, worked on Judge David Sam internship.

Previous Employer	Clark Pest Control
Phone	888-395-0686
Address & Website	485 O'Neill Avenue, Belmont, CA 94002 www.clarkpest.com
Date(s) of Employment	May 2003 – August 2003
Supervisor's Name and Title	Eric Office Manager
Your Title	Summer Salesman
Describe Your Key Duties	Door-to-door salesperson for Clark Pest Control
Reason for Leaving	Started law school

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Previous Employer	Open Access Computer Labs/Office of Information Technology, Brigham Young University
Phone	801-592-5150
Address & Website	1388 University Avenue, Provo, UT 84602
Date(s) of Employment	August 2000 – May 2003
Supervisor's Name and Title	Scott Hunt, Manager
Your Title	Assistant Manager Customer Service
Describe Your Key Duties	In charge of connecting 1/3 of the freshmen class (approximately 1500 students) in the on-campus dormitories to the campus network. After a while I was promoted to also manage the largest on-campus open access lab (220+ computers), where I was responsible for keeping the computers connected, working, and making sure employees were trained to service student questions about software and the network. My final job at Open Access Labs was to be the Assistant Manager for Customer Service. I was responsible for 120+ employees' service for a dozen on-campus labs, a "secret shopper" model program to monitor customer service, identify and reward the employee of the month, promote online security in the Open Access Labs, and was involved in hiring 20+ new employees a year/semester as students graduated and moved on. I helped develop training curricula for employees to learn software, and I conducted the mandatory customer service training twice a semester.
Reason for Leaving	I wanted to do an outdoor job before going to law school. So I took a job with my younger brother selling pest control in Northern California.

Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.

Name and Address of School	Attended	Certificate or Degree	Reason for Leaving
Lakeridge Junior High School 951 South 400 W Orem, UT, 84058	1993-1994	None. Attended 9 th grade here.	In Utah, Jr. High has 7 th – 9 th grade. I completed 9 th grade so it was time to go to the High School.
Orem High School 175 S. 400 E. Orem, UT 84097	1994-1997	High School Diploma	Graduated

Brigham Young University D-155 ASB Provo, UT 84604 (Admissions office address)	1997-98; 2000-2003	Bachelors Degree Double Major Philosophy & Economics	Graduated
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8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

High School Activities:

President, National Honor Society – at the time the National Honor Society required its members to maintain a minimum 3.85 GPA unweighted with a rigorous class schedule containing multiple Honors and AP courses. The Society also required its members to attend at least 3 sponsored service projects, and a requirement to do 10 hours of service outside of those 3 sponsored projects. I was responsible in part to plan the required service projects.

Key Club, Liaison – I was the student club Liaison to the professional Kiwanis Club. We were sponsored by a local adult chapter of Kiwanis Club. My primary role was to keep the student and adult chapters connected with news, event dates, achievements, etc. To this day I try to be consistently involved in a community/youth support group.

Varsity Soccer team – starting goalie.

Wind Symphony/Acapella Choir/Marching Band/Pep Band – Involved in multiple musical classes and extra-curriculars.

Shakespeare School Play

University of Utah Summer Chemistry Camp; Brigham Young University Summer Computer Programming Camp – I was invited to these summer camps based on my successful performance in similar high school subjects and received college credit. Solving more difficult problems was more satisfying and rewarding. I have continued to serve on education related boards throughout my professional career to help youth in Nevada to succeed in education.

College Activities:

United Way – Big Brother program – The nature of the program was what you might expect, the adults were assigned to work with one “brother” or one “sister” at a time, so there were always as many adults at the activities as youth. We got together at least once a week to do an activity either at the United Way office, bowling alley, a water park, a regular park, etc. Our role was to provide a solid role model for the kids.

English as Second Language (ESL)/Habitat for Humanity International – Home building program in El Salvador: In January 2001 El Salvador suffered a devastating earthquake. Reportedly 944 people were killed, 5,565 injured, 108,261 houses destroyed — with another 169,692 houses damaged. My friend had served a mission in El Salvador. At the time of the earthquake we were working as volunteers teaching late night ESL classes to adult immigrants. Between us and one other ESL volunteer we started an effort to raise funds and get volunteers to help with the earthquake survivors. My role was to spearhead the fundraising efforts, organize the volunteers, and arrange for travel. We held local benefit concerts, approached corporations and wealthy individuals and successfully raised \$25,000 and got approximately 25 volunteers to travel to El Salvador to help with the rebuilding effort. Over two weeks our group constructed approximately 15. Everyone should serve meaningfully in some capacity in a third world country.

Merrill Men Marshmallow Matey Marathon Organizer for scholarships – As a freshman in college I lived in Merrill Hall. We took on an activity to raise awareness and scholarship money for the “Lighting the Way” campaign at our university. We successfully raised the money and brought attention to the scholarship campaign.

Sub for Santa – Each year while I was in college I participated in some form of a “Sub for Santa” program. Sometimes that took the form of “adopting” a family for Christmas and making sure that they had everything they needed or it was merely participating to make sure “a five year old boy has the following items: . . .” I continue this type of work yearly.

Ballroom Dance Team – BYU has one of the premier ball room dance team programs in the world. The touring team regularly wins the International Ballroom Dance Championships held in Blackpool, England. I was on the second level team for local performances.

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

J. Reuben Clark Law School

Brigham Young University
341 East Campus Drive
Provo, UT 84602

Degree: **Juris Doctor**

Graduation Date: May 2006

Rank: Top 50%, GPA average is “High Pass”

See attached letter from Professor Richard Wilkins (Attachment C)

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

Judge Lloyd D. George

Full time summer internship

U.S. District Court Las Vegas, NV

Researched and drafted memos and orders. Judge George uses career law clerks. I worked primarily with Judge George directly and his career clerk Troy Healey.

Employer: Judge Lloyd D. George

May 2004 – June 2004

Full time.

Judge David Sam

Full time summer internship

U.S. District Court Salt Lake City, UT

Researched and drafted bench memos for Court's use in ruling. Judge Sam uses career law clerks. I worked primarily with Judge David Sam and his career clerk Mitzi Collins.

Employer: Judge David Sam

July 2004 – August 2004

Full time.

Research Pool

Part-time work

J. Reuben Clark Law School – Provo, UT

This was something like a “rent-an-associate” program sponsored by the law school.

Practitioners from all over the country (primarily graduates from the law school) would submit research and writing jobs to the law school and would pay students \$15-\$20 an hour. I worked on a diverse group of cases including immigration cases, simple contract cases, and ERISA fund cases. It was one way to provide some income to students while also giving us exposure to a variety of cases.

Employer: Multiple law offices

September 2004 – April 2006

Part time.

Professor Richard Wilkins

Part time Research Assistant (see Attachment C)

J. Reuben Clark Law School – Provo, UT

Co-Authored multiple articles with Richard Wilkins and was footnoted as an assistant in others. Sadly, Professor Wilkins has since passed away but I am attaching a copy of his letter of recommendation that he wrote for me when I applied to work for a federal appellate clerkship, to begin after my federal district court clerkship. The letter describes the work I did for Professor Wilkins, and his respect for my work. He also addresses class rank addressed in Question 9 herein.

January 2005 – June 2006

Part time.

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, and extracurricular activities.

President Federalist Society –The Federalist Society National group had funds to help bring in speakers. I used our funding to co-sponsor events with other groups. As a result, several other campus groups grew and the students benefitted from a more diverse group of speakers than they were used to having. One group in particular that I worked with was the American Constitution Society (ACS) even though ACS was seen as the “opposite” of the Federalist Society. Through the society I also had the great educational opportunity to meet people like Justice Clarence Thomas from the United States Supreme Court, Judges Janice Rogers Brown and Thomas B. Griffith from the D.C. Circuit, and former Solicitor Ted Olson. These types of opportunities really enhanced my desire to become a Judge.

Public Law Journal – Executive Editor, Symposium Director – Beyond the typical work of being an Executive Editor for one of the school’s legal journals, I was asked to be the Symposium Director. My job was to bring in a diverse panel of presenters, which I am grateful we achieved and to help manage the production of that symposium into an edition of the Public Law Journal.

Inspiration School Program – On at least a monthly basis at risk children were brought to the law school and we would do homework and have lunch together. Sometimes there would be a presentation on different topics the kids were learning in school. This was simply a way to help inspire the youth that we worked with to think that college was a possibility for them and to learn how a college campus would look and feel. As part of this program we helped prepare the youth to participate in a mock trial as a witness, attorney, judge, or whatever they were assigned.

Youth Soccer Coach -- U13 girls – Undeniably my favorite extracurricular activity that I participated in during law school was volunteering to coach a girls U13 soccer team (under 13 years old). Once the girls saw their own improvement they really bought into the system, and the new drills. In the winter we took on the challenge of playing indoor soccer but in a U15 league, effectively playing against girls two years older than our team because it was the youngest division available. This was an enormous challenge that helped us to grow in understanding the game, foot speed, passing speed, relying on others to do their job, and so forth. We won the last game of the indoor season in a nail biter. It was one of the most rewarding things I have ever participated in to see how happy these young women were for having strived for a whole season, while losing, but continuing to get strong, continuing to get better, continuing to learn the system, and to eventually beat a team that by every physical measure was superior. In the spring outdoor season we were able to incorporate the lessons learned in indoor in our designated U13 league. We dominated in spring competition and actually won the regional championship in a blowout. Of all my trophies ever gained in my life, the trophy for this girls team is the one I have held onto most dearly.

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Law Practice

12. State the year you were admitted to the Nevada Bar.

2006

13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission.

None.

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations.

No

15. Estimate what percentage of your work over the last five years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 16-20 for the five years directly preceding your appointment or election to the bench.

90% Trial and 10% Appellate.

16. Estimate percentage of time spent on:

Legal Discipline	Percentage of Practice
Domestic/family	0
Juvenile matters	0
Trial court civil	85%
Appellate civil	0
Trial court criminal	0
Appellate criminal	0
Administrative litigation	15%
Other: Please describe	0

17. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials?

60% set for jury trials and 40% for non-jury trial.

18. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period.

As I understand this question it only pertains to cases that went through a full trial. If that is the question then I had one case that had essentially 3 mini-trials in front of Judge Gonzalez. The Desert Land case described herein.

I do not understand if or why this does not include cases concluded by summary judgment, settlement during trial, or any other scenario which I do consider litigation wins, and would certainly be due a “prevailing party” determination by the Court. But in the strictest sense of the question I have not concluded any jury trials through verdict at trial. I have settled cases during a jury trial (which my client would definitely term a victory) and I have held many “mini-trials” on evidence over multiple days that resolved issues for Courts. I am happy to discuss this further at the interview. I have also completed cases that were decided on motion practice as the parties agreed on the pertinent facts.

19. List courts and counties in any state where you have practiced in the past five years.

Nevada Supreme Court, State of Nevada

Second Judicial District Court, State of Nevada, Washoe County

Eighth Judicial District Court, State of Nevada, Clark County

United States District Court for the District of Nevada, Clark County

20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), complete the following tables:

Case 1 <i>Switch case.</i>
Case name and date: <i>V5 Technologies, LLC d/b/a Cobalt Data Centers v Switch, Ltd., Case No.: 2:17-cv-02349-KJD-VCF, United States District Court for the District of Nevada. Jury Trial began November 15, 2021, and case was settled during trial.</i>
Court and presiding judge and all counsel: Presiding Judge was Kent J Dawson, District Court Judge. Counsel for Plaintiffs: Local Counsel from Reid Rubinstein Bogatz: Scott Bogatz, Rory Reid, Kerry Kleiman; White & Case lawyers: Bryan Merryman, Catherine Simonsen, Celia McLaughlin, Claire A. DeLelle; Local Counsel for the Defendants: Mark A. Hutchison (Lead Trial counsel), Daniel H. Stewart, Piers R. Tueller, Shelby A. Dahl, Ramez A. Ghally, Cynthia Milanowski; From Switch, Ltd. in-house Counsel – Jacob Reynolds (Special Litigation Counsel and Trial Manager), Sam Castor, Lynnel Reyes, Anne-Marie Birk, Ariel Johnson, Mike Wheable; From Shearman Sterling: Todd Stenerson (Lead D.C. Counsel), Djordje Petkoski, Ryan Shores, Christopher Lavigne.
Importance of the case to you and the case’s impact on you:

My role in this case was *Lead Special Litigation Counsel*. As you see from the list of attorneys above this was a major litigation. To my knowledge it was the largest antitrust case in the history of Nevada. Valued at over \$400 million and against Nevada's most well-known homegrown technology company – Switch, Ltd. I was an attorney for Hutchison & Steffen at the time the case came to me but was given a *Secondment Assignment* to go in-house with Switch, Ltd. to manage this specific case.

The case involved over 40 potential fact witnesses that would be at trial, and approximately 15 expert witnesses. There were approximately 10,000 exhibits. There were many discovery motions, motions in limine for trial, and numerous daubert motions. It was a complex commercial antitrust litigation involving two of the largest law firms in the world, backing the trial expertise of two local Nevada law firms. I was the person responsible for coordinating all the efforts for the Defense which was essentially three law firms (Hutchison & Steffen, Shearman Sterling, and Switch's In-House team) to handle all aspects of the case. After a successful defense of the case Switch was sold months later for a reported \$11 Billion.

This case was the pinnacle of my litigation practice. First, the case was in a bad situation from poor handling of discovery. The discovery in the case had to be extended significantly as a result and put the defense on the wrong footing with the Court, it also put us in danger of serious discovery sanctions. I was entrusted with the responsibility of repairing the damage done and to get the case ready for trial. It was a demanding ordeal to take such a large scale case and turn it around to a successful win at trial, but frankly, that is what I have built my career doing. Second, there is no way the case would be successful without a great team. Building a great team around me, trusting them with tasks, and successfully coordinating the efforts was something I enjoyed very much. There were so many moving parts in a case this size, we needed experts in so many different areas, and from all over the country. Not just testifying experts but litigation experts.

Lastly, perhaps the most relevant to this application, was that me knowing how to actually present a case at trial, and knowing what plaintiff would *not* be able to present, helped focus our efforts and ultimately cost the plaintiff the case at the end of the day. Being able to rely on a seasoned Judge to make the correct decisions, as dictated by the facts and law, was imperative to success in this case. If we were unsure of the Judge's abilities to handle such demanding motion practice, or to make such critical rulings it would have prejudiced my clients' ability to pursue a case to trial. Plaintiff, despite being very competent at securing discovery and briefing, and having very intelligent attorneys, clearly did not know what would be allowed to come in at trial. For example, their time in discovery was spent discussing and receiving documents for which there were no authenticating witnesses, or discussing things in a deposition with a witness that was blatant hearsay, with the plan that they would get it in later... no such luck. As predicted, the Judge did not allow the Plaintiff to present the case the Plaintiff thought it had because the manner Plaintiff wanted to present the case violated very basic rules of evidence. For example, the Court disallowed and precluded almost all of the Plaintiff's opening statement's visual presentation to the jury because it included many exhibits that had not been stipulated into evidence and

had never been authenticated; several additional behaviors in violation of evidentiary rules and the Court's prior orders during the first day of trial resulted in the Court threatening opposing counsel (from California practicing *pro hac vice*) with sanctions. Not coincidentally, the case was settled later that day.

We proceeded with confidence in knowing the rules of evidence, knowing how cases can be presented at trial, knowing how to respect the Court and its rulings, and it ultimately carried the day in a long and demanding litigation against one of the largest law firms in the world. We could not have accomplished this work without confidence that the Judge would stand firm on the law and evidentiary rules.

Your role in the case: *Lead Special Litigation Counsel.*

Case 2 ***Piche*** case (including appeals and parallel state court actions).

Case name and date: **Primary case: *Home Gambling Network, Inc. et al. v. Chris Piche et al.*, Case No. 2:05-cv-0610-DAE-LRL, Summary Judgment entered September 30, 2013.**

Appeal of Primary Case: Sustained by appellate decision from United States Court of Appeals for the Federal Circuit entered June 9, 2014 Case No. 2014-1053;

Final order on attorney fees and costs award entered thereafter in Nevada District Court on April 16, 2015.

Other related cases: *In re Subpoena issued to Chris Beall for Deposition and Production of Documents*, United States District Court District of Northern District of California, Case No. 5:13-cv-80284.

***Chris Piche v. Mel Molnick*, and Related Actions, Case No. A519798, Eighth Judicial District Court of Nevada Dept. 15, Judge Abbi Silver presiding consolidated with *Inversiones VC Dos Mil S.A. dba Casinowebcam v. Mel Molnick et al.* and all related actions, Case No. A523461. Notice of Entry of Judgment November 8, 2010.**

Court and presiding judge and all counsel:

United States District Court for the District of Nevada: Judge David Ezra presiding with Judge Lawrence Leavitt as Magistrate, replaced by Judge Cam Ferenbach.

Eighth Judicial District Court of Nevada – *Chris Piche v. Mel Molnick*, and Related Actions, Case No. A519798, Eighth Judicial District Court of Nevada Dept. 15, Judge Abbi Silver presiding consolidated with *Inversiones VC Dos Mil S.A. dba Casinowebcam v. Mel Molnick et al.* and all related actions, Case No. A523461. Notice of Entry of Judgment November 8, 2010

United States District Court for the Northern District of California – Magistrate Judge Howard R Lloyd Presiding

United States Court of Appeals for the Federal Circuit – opinion entered June 9, 2014 Case No. 2014-1053; Judicial panel consisted of Chief Judge Prost, and Judges Bryson and Moore

Counsel for Plaintiffs: Local Counsel Craig Marquiz, Lead Counsel Sid Leach (Snell & Wilmer Phoenix office); counsel for Defendants Jacob A. Reynolds and Philip Kantor.

Importance of the case to you and the case's impact on you:

I substituted into the case in April 2009. This was a multi-million dollar complex litigation case involving several international clients and a local party plaintiff. The parties had been embroiled in several prior lawsuits, and the current federal lawsuit was already four years old with a substantial case history when I substituted in. When I took over the case I had been out of law school for less than three years and out of my federal clerkship for less than a year. Opposing Counsel representing the plaintiffs were two seasoned litigators, one a partner of a major regional firm and the other a successful solo practitioner who had previously worked at the large regional firm. To add to this, when I substituted into the case there was a ripe and pending motion for *dispositive discovery sanctions* against my clients based on alleged discovery violations dating back several years, and an order to produce additional documents and complete a deposition of the primary witness within 30 days despite not having documents from the former counsel. When I substituted in as counsel, there was no trial date, no effective discovery schedule in place, and an extreme amount of ill-will existed between the parties and attorneys. There were three total cases between the parties pending in Nevada courts (one federal, two state). It was the quintessential complex commercial litigation case that I had been trained to handle as a federal clerk and as an associate at a major Nevada firm.

My clients were a young, extremely successful entrepreneur/inventor (who owned several significant patents), and several of his international businesses. The reason I was chosen as lead counsel even though I was just an associate was actually *because*, like the client, I was young and deemed to be capable because of my experience for two years as a federal court clerk for Chief Judge Roger L. Hunt. The client required that I be the primary attorney for all the work from Hutchison & Steffen. Philip Kantor was associated into the case as well to help with his superior knowledge of patent law.

This case is important to me because it was so challenging. I felt I was thrown into the deepest waters, in the middle of a storm, and told to swim back to shore. However, the confidence of the client was that even though I was young I had the right experience and training to be successful in the job. He was right. It was a fantastic challenge for a young attorney. The state court cases were rushing to trial but I was able to file a successful motion for summary judgment in both cases that resolved the remaining claims in favor of my client, win an award on a promissory note, and dismiss the opposing parties' claims against my client as non-justiciable in state court. Despite this victory, Magistrate Judge

Leavitt issued a discovery sanctions order against my client in the federal case to award substantial attorney fees and costs. I successfully appealed the sanctions order to District Court Judge Ezra (a visiting Judge assigned to the case) who vacated the sanctions order in part and the rest was held in abeyance. Judge Ezra gave further instructions that rather than producing documents to satisfy the pending discovery concerns my clients were to produce our entire server of operations to satisfy the discovery demands. My clients produced the information as ordered. However, Plaintiffs eventually claimed that my clients had doctored the server and produced it in bad faith and renewed their motion for case dispositive discovery sanctions. Magistrate Judge Leavitt ordered an evidentiary hearing. I was lead counsel for the evidentiary hearing. I had to gather multiple international witnesses to testify at the hearing, to help prepare expert reports with experts from eastern Europe, and to give responsive reports with those same experts. I was responsible for all presentation of evidence and examination of witnesses. Months after the evidentiary hearing, Magistrate Judge Leavitt issued a written opinion recommending dispositive sanctions against my clients. We successfully appealed Magistrate Judge Leavitt's recommended sanction to Judge Ezra based on evidence that was not considered and a misapplication of the sanctions standard. The result was that the order from Magistrate Judge Leavitt was vacated and we were remanded with orders to have a new evidentiary hearing before Magistrate Judge Ferenbach because Magistrate Judge Leavitt had retired.

I was once again lead counsel for the second evidentiary hearing. In that hearing, it was successfully demonstrated that Plaintiffs had actually been able to access the data on the server the whole time and had made false representations about my clients' culpability. Magistrate Judge Ferenbach issued an order exonerating my clients of any wrongdoing and went further to find that any wrongdoing in regards to the database discovery laid with Plaintiffs and therefore no sanctions were merited against my clients.

Soon thereafter we filed a motion for summary judgment on all claims that was granted by the District Court, finding that evidence showed Plaintiffs had proceeded in the case with unclean hands and should have known from the beginning of the case that they had no legal or factual basis to pursue the case. The District Court also adopted Judge Ferenbach's order identifying Plaintiffs as the true source of concerns in discovery violations. It was thereafter my duty to defend the discovery orders and summary judgment order on appeal before the Federal Circuit in Washington D.C. The day before our oral argument the United States Supreme Court issued an opinion that touched on the issues in our case and it was an enjoyable challenge to wrestle with that new precedent in arguments before the Federal Circuit.

After the District Court was affirmed by the Federal Circuit the District Court also awarded approximately \$1.4 million in fees, costs, and damages to my clients against the Plaintiffs.

This case is important to me because I had the opportunity to succeed or fail, and the burden was primarily on me. I had a client that understood my age was not determinative of my ability to succeed. He had confidence in me based upon my training

and significant court experience as a law clerk. I was able to grow from a young associate, fresh off a federal clerkship, to a partner at one of Nevada's largest law firms, over the six years it took for the case to resolve. I spent many all-nighters working on the case. I took a case that had been languishing for four years in a discovery sanctions battle and had my clients on the ropes when I entered, with the evidence suggesting my clients were responsible for discovery malfeasance, and was able to dig in, work hard, and through diligent and clear presentation of the facts and law, turn the case around and essentially win three appeals of decisions in the case against seasoned partners at other law firms. I have friends who practice exclusively in patent litigation who have never written a brief, appeared, or been admitted to the Federal Circuit Bar. I therefore count my opportunity as a blessing to take this case all the way to the Federal Circuit with a successful result.

This was an extremely complex case with a lengthy and tortured case history involving multiple lawsuits between the parties in addition to two other state court cases pending at the time this case was filed. This case went from the lowest levels of the federal system to the U.S. Court of Appeals for the Federal Circuit. I was the lead counsel on all arguments, hearings, and evidentiary hearings before the courts at all levels of the process. I learned that being younger was not a liability as long as I pursued the case in the right way.

Your role in the case: Lead litigation and appellate counsel.

Case 3 – *Seaman case*

Case name and date: *Victoria Seaman et al. v. Meghan Smith et al.*, Case No. A-14-705308-W

Bench Trial occurred on October 16, 2014.

Court and presiding judge and all counsel:

Eighth Judicial District Court of Nevada, Department 27, Judge Nancy Allf Presiding.

Counsel Jacob A. Reynolds and Jeffrey R. Hall for Plaintiffs; Counsel Bradley Scott Schragger later substituted for Edgar Carranza for Defendant Meghan Smith; Counsel Kevin K. Benson Deputy Attorney General for nominal Defendant Ross Miller in his official capacity as Secretary of State; Counsel Mary-Anne Miller for nominal Defendant Joseph Gloria in his official capacity as Registrar of Voters for Clark County Nevada; Nevada Supreme Court Case Number¹ 6679.

Importance of the case to you and the case's impact on you:

I conducted all the depositions, trial examinations, and was the primary attorney for all the briefings and filings. This case involved Republican Assemblywoman Victoria Seaman's

¹ Note the trial court case was appealed twice. The first appeal was interlocutory and Victoria Seaman used attorney Jacob Hafter and I was not involved, nor was the other Plaintiff. For the second appeal I was the sole counsel involved and successfully represented both Plaintiffs on defending the Final Judgment.

legal challenge to disqualify Democrat Meghan Smith as a candidate in the 2014 election. This case was very important to my development as an attorney and is also critical to me wanting to become a Judge.

This case was important to me for three primary reasons: (1) It was my first case as lead trial counsel and we won by marshalling the facts and presenting those facts clearly and convincingly with the law; it was good attorney work; (2) Judge Allf was faced with a politically unpopular decision and did not shy away from making the decision despite its unpopularity; and (3) the case showed me that attorneys acting professionally can make it through seemingly very contentious lawsuits and still be friends after a hard fought result is achieved.

First, the case involved interpreting a statute that required any candidate for a state office in Nevada to “actually reside” in the district they wish to represent at least 30 days before the filing cutoff for that office. Through discovery we were able to show convincingly that Meghan Smith actually did not move into the new district until several weeks after the deadline to do so, and she knew that when she made her filing for office. We were victorious at trial and then sustained that victory on appeal. We handled many briefings on an expedited basis given the extreme time sensitivity of the election process and confirming the results.

Second, it was generally believed that Judge Allf and her husband had significant connections with people and groups in the Democrat party. Because of those connections, many people close to my clients (Republican candidate Victoria Seaman and the Clark County Republican Party), sought me out to make strong recommendations that we file a peremptory challenge against Judge Allf and get a “more favorable” Judge. These people were also pushing my clients hard on this point. The 2014 election was looking like it would be extremely close for the Republicans to take the Assembly for the first time in decades. The political rhetoric in this race was becoming particularly heated. However, despite a strong and consistent wave of objection from many voices, I refused to challenge Judge Allf as a strategy in the case to get “a more favorable Judge.” The reason was that I have had several cases in front of Judge Allf, as had several members of my firm. She has ruled against mine and my firm’s clients in several important matters. However, I knew from my own experience, and from others in my firm, that Judge Allf never let politics or personal bias unfairly affect a legal decision. Moreover, I also knew that she always acted intelligently, she did her best to fairly examine the facts, duly consider the law, and give substantiated and well-reasoned opinions. This was exactly what we needed in our case. I was grateful to have her as the Judge in the case because I felt the facts and the law were on our side. I also knew despite any connections to Democrat institutions, she would not allow that to unfairly influence her decision. I fear this is one of the drawbacks of having elected judges (i.e. that people examine connections to institutions rather than a person’s integrity and judicial capacity). Regardless of the system, I would strive to be a judge with that same reputation for fairness and consideration.

Third, and lastly, this case was obviously hotly contested given the strained political climate at the time. Opposing counsel at the beginning of the case was Bradley Schrage, but he was

<p>later replaced by Edgar Carranza. To this day I still count both these opposing counsel amongst my friends in the bar. Both sides fought hard for the best result for their clients. The case had become extremely personal between the clients and their families. However, it never became personal between counsel and I was so glad to have such a result. It was the model of how professional relationships could and should be maintained in hotly contested cases.</p>
<p>Your role in the case:</p> <p>Lead trial and litigation counsel.</p>

<p>Case 4 – <i>Desert Land</i> case.</p>
<p>Case name and date: <i>Sher Development, LLC et al., v. Desert Land Loan Acquisition, LLC, et al., Case No. A-16-743298-B.</i></p> <p>Case ended in late 2018 – early 2019 for our substantive participation in state court. Action continued in bankruptcy court for some time thereafter.</p>
<p>Court and presiding judge and all counsel:</p> <p>Eighth Judicial District Court of Nevada, Department 11, Judge Elizabeth Gonzalez</p> <p>Counsel Michael Feder & Joel Schwarz (Plaintiffs), Mark A. Hutchison, Jacob A. Reynolds, Rob Stewart (Defendants).</p>
<p>Importance of the case to you and the case’s impact on you:</p> <p>This was yet another complex commercial litigation involving multiple appeals to the Nevada Supreme Court and a parallel bankruptcy litigation, but this summary only focuses on the above mentioned case in Nevada district court.</p> <p>I was co-lead counsel with Mark Hutchison. This case was decided in essentially three multi-day mini bench trials, that were classified as evidentiary hearings. However, each resulted in findings of fact and conclusions of law being entered by the Court. The case essentially moved along in phases to its determination. My role was to handle the dozens of depositions, briefing, and pre-trial motions, I also took lead for the expert witnesses on both sides and preparing the briefing on the fact witnesses.</p> <p>The case involved a property that had been used as collateral for a multi-beneficiary loan pursuant to NRS 645B. The complexity arose because over 400 individuals, entities, and trusts were involved on one side of the loan. The law required over 51% of the lending interests to be in accord before taking action. Many commercial properties were collateral for 645B loans before the economic crash in 2010-11 timeframe. I represented the Defendants in trying to resolve this outstanding debt with the lenders.</p>

<p>The case means a lot to me because I was able to work side by side and long hours with Mark Hutchison, one of the state’s pre-eminent trial attorneys and to learn from him about presenting the case at trial. I was able to maintain a harmonious relationship with opposing counsel and was also able to learn from them about zealous advocacy. Every time we won a portion of the case opposing counsel would challenge that holding again and again and kept us vigilant. It was a “steel sharpens steel” type of experience that was both grueling but very instructive and demanding.</p>
<p>Your role in the case:</p> <p>Trial counsel – handled all experts at trial and discovery of fact witnesses.</p>

<p>Case 5 - Old Man Power case</p>
<p>Case name and date: <i>Old Man Power, LLC et al. v. Bobby Shomer et al.</i>, Case No. A553007</p>
<p>Court and presiding judge and all counsel:</p> <p>Eighth Judicial District Court of Nevada, Department 13, Judge Mark Denton presiding.</p> <p>Counsel Glenn F. Meier for Plaintiffs, David W. Fassett for Defendant Bobby Shomer, and Joseph “Sid” Kistler and Jacob A. Reynolds for Defendants, Counterclaimants, and Third-Party Plaintiffs Larry C. Turner and Ashanti Partners, LLC.</p>
<p>Importance of the case to you and the case’s impact on you:</p> <p>This case involved a joint real estate venture that began just before the recession in approximately 2007. When the economy went south, the Plaintiffs sued my clients for fraud and business torts. My clients countersued and also claimed defamation.</p> <p>The importance of this case to me was it was my first full trial in a position at counsel table. My law firm had parachuted into this case to handle the trial and post-trial motion practice. My role was to be second chair at trial to our Senior Partner Joseph “Sid” Kistler. It was a pleasure to work with Sid on this case. Sid was a master at dissecting a person’s testimony. Sid did the cross-examination of the plaintiff. Not only did he get the plaintiff to admit the economic melt-down of 2007-2010 was historic, and would have likely meant failure of the real property investment in any scenario, but by the end of the cross examination the plaintiff was crying on the stand as he saw his case crumbling.</p> <p>My role was to cross-examine several key witnesses and direct on others. I was also responsible for the logistics of trial—i.e. making sure exhibits were prepared, subpoenas were served on witnesses, and that out of state witnesses could arrive in time for testimony. As I would go through other trials and consult other trial teams, all these skills were critical to a trial running smoothly.</p>

The trial did run smoothly for us. Our clients won on all claims and even won on the counterclaim for defamation. Based on the significance of the victory, the plaintiffs entered settlement talks rather than pursuing other litigious remedies of the attorney fees and outstanding claims between the parties. It was sad to see my clients dragged to trial on a case that had little merit. However, the system had to respect the evidence presented by Plaintiffs and the most favorable interpretation of that evidence. I felt I was able to learn from a master litigator how to handle a trial, how to highlight key evidence, prepare for each day of trial, how to handle motion practice during trial, and how to work with clients during trial.

This experience has had an important positive effect on my career because I feel since then I have always practiced with an eye for going to trial and getting a final resolution. I enjoy trial. It has been my experience that many attorneys practice with an eye for settling a case, or bogging the case down in discovery battles, rather than going to trial. This change in goals, in my experience, substantially alters the manner attorneys conduct discovery, settlement negotiations, and motion practice.

Your role in the case:

Trial Counsel.

21. Do you now serve, or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.

No

22. Describe any pro bono or public interest work as an attorney.

J. Reuben Clark Law Society -- My primary efforts with *pro bono* work through my career has been working with community leaders such as former Judge Stephen Dahl and former Speaker Barbara Buckley at the Legal Aid Center of Southern Nevada. In my various capacities in the J. Reuben Clark Law Society I would host large CLE events and would work with Judge Dahl and Speaker Buckley to have at least a one hour presentation for the participants to learn how they could get involved with *pro bono* work through the Legal Aid Center of Southern Nevada. Sometimes these CLEs would have 60 people and sometimes they would have more than 200 people. But I felt it was an important component to push *pro bono* work within the J. Reuben Clark Society.

I regularly do pro bono work and also contribute financially to pro bono efforts. These cases range from helping people in prison who's rights have been abused or helping small business owners, independent contractors take on wealthy individuals who do not want to pay their bills, or helping women escape abusive or otherwise harassing situations from ex-boyfriends or spouses.

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

J. Reuben Clark Law Society – Las Vegas Chapter

2012-2015 Regional CLE Coordinator
 2010 -2012 Chair
 2006-2010 Liaison to International Organization/Board Member

Inns of Court – Howard D. McKibben

2006—2010 Associate

24. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past five years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge?

Yes. I am in compliance with the continuing legal education requirements applicable to me as a lawyer.

Course Name	Course Date
2022 District Conference - The Business of Law	5/17/2022
Creating Cohesion and Happiness in a High-Stress Profession	9/8/2022
Criminal Law Lite for the Non-Criminal Lawyer	9/8/2022
Summary Judgment - Best Practices	9/8/2022
When Zealous Advocacy Crosses the Line	9/8/2022
How to Build a Successful Law Firm	9/9/2022
2021 State and Federal Supreme Court Updates	9/9/2022
Constitutional Reflections: A Recurrence to Fundamental Principles & Forming a More Perfect #2	10/1/2021
Constitutional Reflections: A Recurrence to Fundamental Principals & Forming a More Perfect #1	9/1/2021
Do You Really Understand the Attorney-Client Privilege?	8/18/2021
2021 State and Federal Supreme Court Updates	6/17/2021
Persuasive Storytelling with David Mann	6/17/2021
Aftermath of the Nevada Eviction Moratorium	12/1/2020
The Brain Disease of Addiction	11/1/2020
Criminal Law Lite for the Non-Criminal Lawyer	10/21/2020
U.S. Supreme Court Update	7/21/2020
Tips from Sherlock Holmes (& His Creator) on How to Become a Better Advocate	7/9/2020
Persuasive Story Vitality In & Out of the Courtroom	7/7/2020
J. Reuben Clark CLE 2020	3/6/2020
Making the Courts Great Again: President Trump's Transformation of the Federal Judiciary	1/17/2020

The Judges Speak: Civil Court Litigation Do's & Don'ts	10/18/2019
Trust Accounts: Why Do I Keep Hearing About Them?	10/1/2019
Today's Connected World: Building a Smart Story from Smartphone Discovery	9/11/2019
Mediation Preparedness & Advocacy	6/7/2019
2019 U.S. District Court Conference	5/16/2019
Business Partnerships & Breakdowns	3/15/2019
Judicial Disqualifications: Federal-State Distinctions (March NV Lawyer Article)	3/1/2019
Supreme Court Judges Candidate Forum	9/28/2018
Substance Abuse & Mental Health in the Law Firm: Translating What We Know into Action-2018 Annual	7/14/2018
U.S. Supreme Court Update	7/14/2018
The Reptile & Black Letter Law (2018 Annual Meeting)	7/13/2018
Identifying & Handling Attorney Stressors: The Path to Health & Well-Being in the Legal Profess	7/1/2018
The Lives of the Constitution: Ten Exceptional Minds that Shaped America's Supreme Law	4/20/2018
J. Reuben Clark Society CLE 2018	3/2/2018
Understanding Human Trafficking: Legal Requirements & Lessons Learned from the Field(2018	3/1/2018
I Have to Sign What, Just to Work Out?! The Enforceability of Fitness Club Waivers (NV Lawyer)	1/1/2018
Sports Law-The Intersection of Entertainment and Sports	1/1/2018
Using Interpreters: Practical Tips and Ethical Considerations	1/1/2018
Trust Account Best Practices	1/1/2018
Effects of the Separation of Powers Doctrine on Criminal Law (November NV Lawyer Article)	1/1/2018

25. Do you have Professional Liability Insurance or do you work for a governmental agency?

I am currently a Chief Legal Officer, employed in-house so I do not need or have Professional Liability Insurance.

Business & Occupational Experience

26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

Yes. Political consulting through Reynolds Consulting Group LLC. May 2015 – August 2016.

27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:

- a. the nature of the business
- b. the nature of your duties
- c. the extent of your involvement in the administration or management of the business
- d. the terms of your service
- e. the percentage of your ownership

Nevada Succeeds - Treasurer – Nevada Succeeds was a 501(c)(3) organization dedicated to bringing business principles of goal setting and accountability to Nevada’s education system. It was a bi-partisan group of community leaders including former Governor Bob Miller as its Chairman. As the Treasurer I simply monitored the expenses and fundraising of the organization. I also participated regularly in the decisionmaking of the Board with other community leaders. I served at the pleasure of the Chairman Governor Bob Miller and the President Brent Husson. I had no ownership in the organization.

Keystone Corporation – A not for profit organization of local business leaders that focuses on Nevada issues and attempts to keep Nevada a business friendly state. I served on the Board of Directors, helped with decisionmaking of the board, but I have no ownership in the organization.

Nevada Can Do Better – A domestic non-profit corporation. I served as secretary for this not-for-profit group that was dedicated to improving education in Nevada. I did not participate in any decisionmaking of this organization, I simply helped with paperwork. The corporation was dissolved in early 2015. I never had ownership in the organization.

Reynolds Consulting Group LLC – this was my political consulting business. I help individuals or organizations do their due diligence to understand how they can best move forward with political decisions or understand the ramifications of new laws on their business. I was 100% owner of the business but it was dissolved years ago.

28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership.

The Stafford & Shelly Smith Nevada Trust— I serve as the “Qualified Person Trustee.” My role is to make decisions with trust assets when the designated “Distribution Trustee” is unable to perform his or her function based on conflict, incapacity, or disqualification, etc. I will serve as long as I am a Nevada Resident or until removed by appropriate vote of other individuals designated in the Trust. I am also responsible for filing taxes on the trust. I receive information for the Trust at 8544 Verde Park Circle, Las Vegas, NV 89129. I have no ownership.

Civic Professional & Community Involvement

29. Have you ever held an elective or appointive public office in this or any other state?

Yes

Have you been a candidate for such an office?

Yes

If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

Candidate - District Court Judge Eighth Judicial District Department 21 – I ran for office as District Court Judge in 2020 and lost by two points.

Clark County School District Bond Oversight Committee – I sat on the Clark County School District Bond Oversight Committee as an appointee of Trustee Patrice Tew. I was reappointed by her political challenger Lola Brooks and served in leadership until I ran for District Court Judge in 2020. The Committee is subject to Nevada’s Open Meeting Law requirements. It is not an elected office, and is only an advisory board for the Board of Trustees of Clark County School District. I served for several years including positions as the first-vice chair, and acting chair.

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

I have participated in significant activities but these activities are already more fully explained in other portions of this form, so I defer to those sections rather than restating them here. (see e.g. question 27 above).

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

None.

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

School Constitution Lecture Series – Guest lecturer to many Fifth Grade Classes; panel participant with Supreme Court Justices for Constitution Day celebrations.

Habitat for Humanity International – Group Leader for El Salvador House-Building Trip. Built 15 homes in two weeks.

Missionary, two years in Salta, Argentina Mission – The Church of Jesus Christ of Latter-day Saints – Though my service was voluntary I included this in my “Employment History” section because it was my life’s focus for two years. I therefore refer the reader to that section for more information. I served as a branch president, district leader, zone leader (2x), and trainer (3x).

Early Morning Seminary Teacher, Centennial Seminary – 3 years.

Bishopric, 2nd Counselor (2x) – Served once in Downtown and once in the Northwest.

Bishop – Church of Jesus Christ of Latter-day Saints – 2021- present, Lone Mountain area.

Nevada Succeeds – Treasurer. Dedicated to a bi-partisan and business oriented vision of achieving results in education.

J. Reuben Clark Law Society – Las Vegas Metropolitan Area Chapter President.

33. List honors, prizes, awards, or other forms of recognition.

Martindale Hubbell AV Rating

Martindale.com Client Distinction Award – 2015

(Martindale Hubbell Award: Recognized for Excellence in “Quality of Service, Overall Value, Responsiveness, and Communication Ability”)

Mountain States Super Lawyers - *Rising Star* 2016

2019, 2018, 2017, 2016, 2015, 2010

Legal Elite – Nevada Business Magazine – **Southern Nevada Top Attorney**

2017, 2015, 2014, 2013, 2011

Legal Elite – Nevada Business Magazine – **Best Up & Coming Attorneys**

2011

Faculty Award for Meritorious Achievement and Distinguished Service 2006

Law School Award

34. Have you at any time in the last 12 months belonged to, or do you currently belong to, any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

No

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

Jacob Reynolds, Comment, *The Rule of Law and the Origins of the Bill of Attainder Clause*, 18 ST. THOMAS L. REV. 177 (2005).

RICHARD G. WILKINS & JACOB REYNOLDS, *International Law and the Right to Life*, in LIFE AND LEARNING XV: THE PROCEEDINGS OF THE FIFTEENTH ANNUAL UNIVERSITY FACULTY FOR LIFE CONFERENCE (2006); (reprint 4 AVE MARIA L. REV. 123 (Winter 2006)).

Richard G. Wilkins, Scott Worthington, Jacob Reynolds & John Nielsen, *Supreme Court Voting Behavior: 2004 Term, 32 HASTINGS CONST. L. Q. 909 (Summer 2005).*

Richard G. Wilkins, Scott Worthington, Lorianne Updike & Jacob Reynolds, *Supreme Court Voting Behavior: 2003 Term, 32 HASTINGS CONST. L. Q. 769 (Spring 2005).*

36. During the past ten years, have you been registered to vote?

Yes

Have you voted in the general elections held in those years?

Yes

37. List vocational interests and hobbies.

Teaching youth, coaching soccer, marksmanship, editing, reading, cooking

Conduct

38. Have you read the Nevada Code of Judicial Conduct and are you able to comply if appointed?

Yes

39. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges, and dispositions.

No

40. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to the corresponding question in the confidential section.

No

41. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.

No

42. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.

No

43. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.

No

44. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?

No

45. Are you aware of anything that may require you to recuse or disqualify yourself from hearing a case if you are appointed to serve as a member of the judiciary? If so, please describe the circumstances where you may be required to recuse or disqualify yourself.

Beyond Rule 2.11 of the Nevada Code of Judicial Conduct, I currently serve as a Bishop (unpaid/volunteer basis) in my congregation. If a member of the congregation were involved in a case (as a party, lawyer or otherwise) I would consider that grounds to disqualify me from a case.

Other

46. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

Nevada Commission on Judicial Selection: Submission was September 2016 for Department 29 vacancy in the Eighth Judicial District Court. I was not nominated to the Governor for consideration.

Nevada Commission on Judicial Selection: Submission was June 2019 for Department 8 vacancy in the Eighth Judicial District Court. I was not nominated to the Governor for consideration.

47. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what education, experience, personality or character traits you possess, or have acquired, that you feel qualify you as a district court judge. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

See Attachment B. Personal statement.

48. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

See Attachment C. Letter from Professor Richard Wilkins, now deceased. The letter is attached in response and as further explanation to question nine (concerning class rank) and question 10 (work performed while in law school).

49. Attach a sample of no more than ten pages of your original writing in the form of a decision, “points and authorities,” or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

See Attachment D. Writing sample from *Sher Development, LLC et al., v. Desert Land Loan Acquisition, LLC, et al.*, Case No. A-16-743298-B, Eighth Judicial District Court of Nevada (*see Desert Land* case discussed above).

Jacob Reynolds Personal Statement, Application for Department 29

Growing up I lived on four continents. My father was a professor and was a visiting faculty member at Harvard University, University of Edinburgh, and the Hebrew University in Israel. He always came back to Brigham Young University. It was a wonderful way to grow up and learn that there are many different ways to understand the world. I was also able to see a side of humanity that I never really encountered in the United States until after September 11.

In Scotland our elementary school had to close for a day because of a bomb threat from the Irish Republican Army. I was only in first grade but it was a very real encounter with terrorism. In Israel violent protests/demonstrations, and threats of terrorism were a common occurrence. The city bus that took my siblings and me to school would frequently have armed military personnel onboard. I remember instances where we had to stop our bus en route to school so the military could detonate suspicious packages in the road.

As an adult I served a mission for my church in Argentina. While there I saw the depressing effect of abuses through political, corporate, and religious systems that made people believe they had no legal recourse. People would work for weeks without pay, doing hard labor at construction sites, solely so they would have a job “when money came in.” Argentina had a state sponsored religion, meaning people were not able to hold certain appointed positions in the government if they were not members of the state sponsored religion. I worked with people who lived in sprawling neighborhoods of mud huts and houses made of cement block, a short 15-minute cab ride from where the politicians lived on lavish estates. The political corruption was well known. When I left Argentina in August 2000 the exchange rate between the Argentine peso and the United States dollar was roughly 1:1. Today the exchange rate is \$1 to 176.79 Argentine pesos. The political corruption has had a devastating affect on the economy.

These experiences in foreign countries taught me to appreciate the uniqueness of the United States amongst even democratic “free” nations. We have no religious test to hold office. Corporations cannot routinely make workers work for free on the promise of payment “if money comes in.” Politicians who take bribes and steal money from the government go to jail. We live in relative safety rather than constant fear of terror threats to our lives and the lives of our families. I recognize these blessings and do not take them for granted. As a Judge I believe it is important to have an understanding of the real reasons we need to get the decisions right. I understand the realities of what the world becomes without the rule of law.

Personal experience and reputation will serve me well as a judge. I have numerous awards and recognitions. I have achieved Martindale Hubbell’s AV rating and also its Client Distinction award. The Nevada Business Legal Elite and the Mountain State Lawyer top lawyer lists are also compiled from attorney votes throughout the community. My recognition as one of Nevada’s top attorneys for many years indicates the level of respect I have amongst my peers. Further, I ran for Judge previously and received substantial support from attorneys and leaders on both sides of the political aisle. Former governors, former U.S. Senators, mayors, sitting state representatives, etc. from all points along the political spectrum endorsed me. I was the only candidate with such broad support. I won the primary and lost by two points in the general election as a non-incumbent.

Throughout my life I have demonstrated my desire to serve in my community. In law school I received the Faculty Award for Meritorious Achievement and Distinguished Service for my work serving in the community and for building bridges within multiple divided communities across political, socioeconomic, and other societal dividing lines. As a Judge I would continue my work to improve the communities in which I serve.

I am also the beneficiary of substantial experience being mentored by great judges who have similarly honored the call to public service. I have worked with three different judges as a clerk or intern – Judge Lloyd D. George and Judge Roger L. Hunt in Las Vegas, and Judge David Sam in Salt Lake City. I consider it a blessing to have been trained by some of the best judges our system has to offer and I plan to use that experience to serve as honorably as those who have trained me. I have also benefited from being trained by some of the best litigators our system has to offer and I have put that training to good use to serve as trial counsel on some of the largest and most complex litigations in Nevada courts (*see* cases identified in application).

In regard to my qualifications relevant to civil matters (including family law) and criminal processes, I do not routinely practice in family or criminal law. However, I come from a family of 11 children, have four children, and over 100 first cousins. Through this family chain I am acquainted with the legal system's effect on families through divorce, corporate lawsuits, criminal prosecutions, etc. I have taken time to visit friends and to attend church services in prison. I have participated in many sentencings as a judicial clerk. I believe the time in my life I have dedicated to serving people opens me to an understanding of the broad spectrum presented by the human condition and the legal system's connection to real people. As such, I know I cannot promise that I will always get answers right in sentencing, domestic issues, or any civil issue for that matter. But I assure the Commission that the matter of human dignity will not be sacrificed in the legal process if I am a judge. I will respect all who come to court to have their grievances and defenses heard, as I would want to be respected. I will neither shy away from hard decisions, nor from the work required to be well prepared for arguments, hearings, or trials. I plan to honor the office I hold as judge and earn the continued respect of members of the bar.



معهد الدوحة الدولي للدراسات الأسرية والتنمية
**Doha International Institute for
Family Studies & Development**
Member of Qatar Foundation

20 August 2007

The Honorable Jay S. Bybee
Lloyd D. George Bldg.
U.S. Courthouse
333 Las Vegas Blvd. South, Suite 7080
Las Vegas, NV 89101

Re: Application of Jacob Reynolds

Dear Judge Bybee:

Jacob Reynolds has applied for a clerkship position in your chambers and has asked me to write a letter of recommendation. I am delighted to do so.

Mr. Reynolds served as my research assistant for over a year. I hired him based on his classroom performance my Structures of the Constitution course, taken the second semester of his first year. In the classroom, Mr. Reynolds was a stand-out performer by any measure. He participated appropriately in classroom discussions, meaning he was neither silent and unengaged, nor did he try to dominate discussions; he participated when he had something to say – and what he said was always relevant and on-point and many times exceptionally insightful. He demonstrated an unusual ability to understand how constitutional law has been profoundly influenced by (often unarticulated) social, legal and political concerns. Mr. Reynolds also grasped the underpinnings and consequences of the sometimes obscure philosophical and ethical value judgments that animate various (and divergent) methods and techniques of constitutional interpretation. This skill is much needed in today's legal profession.

Mr. Reynolds received a 3.3 in my class – which is actually a rather good grade; above the “median” of the class (meaning that, compared with all others in the class, more received lower rather than higher grades). Still, I was surprised because I did not think that his performance on the exam reflected Mr. Reynolds' true abilities. As a result, I requested him (initially on something of a “trial” basis), to serve as a research assistant. He quickly proved that my intuition was quite correct: Mr. Reynolds is a truly outstanding legal analyst, researcher and (when not under the artificial time constraints imposed by a three-hour exam) an exceptionally fine writer.

I have published a yearly review of the voting behavior of the Supreme Court for over 15 years; most recently in *Hastings Constitutional Law Quarterly*. Writing this article is a task that requires precise analysis of the questions addressed by the Supreme Court, attention to sometimes seemingly “insignificant” differences that divide the votes of the various Justices, and the ability to describe rather arcane statistical results in a manner that is scrupulously accurate, but that also does not put the reader into a coma within the first five pages. Mr. Reynolds, of all of the assistants who have assisted me for the past 18 years, is a true “stand out” – perhaps the best ever (although such judgments are sometimes influenced by the fact that recall less about the performance of assistants 18 years ago). But, even assuming that my current association with Mr. Reynolds influences my comparative evaluation of his performance, I can confidently state that – in the 25 years I have taught at the law school – Mr. Reynolds is without question among the top five research assistants I have had the pleasure to work with.

His research is thorough and meticulous. His written work is clear, accurate and readily understood. In addition, his written work demonstrates unusual attention to detail and nuance; writing skills rarely seen in the best law students. He completes assigned tasks on time and without “cutting corners” (such as failing to review important source documents prior to submission of a draft, or – as many students do – pointing out “issues” that “will be checked out later”). Mr. Reynolds’ timely completion of tasks, without leaving loose ends that can later fray the entire fabric of an article, is a personal trait I highly value.

In addition to assisting me with my annual statistical survey of Supreme Court voting behavior, Mr. Reynolds has provided unusual assistance with two other major articles I have written; one involving an analysis of emerging international norms related to human dignity and the value of human life, the second dealing with some important structural changes governing the creation of international legal norms. Both of these assignments required him to master difficult (and often obscure) legal concepts, many of which are unknown by most American lawyers. Mr. Reynolds displayed the same high levels of ability described above to these tasks.

I am not aware of Mr. Reynolds’ precise class standing, but I would be quite surprised if he is not in (or very near) the top third of his class. This performance is more impressive than it might seem (especially if you compare Mr. Reynolds with students graduating in the top 10% from other schools). A little-known fact is that entering classes at BYU have exceptionally high credentials; usually ranking among the top 15 admitted classes in the nation. Accordingly, Mr. Reynolds is “competing for grades” within one of the most highly qualified (and accomplished) pools of law students in the nation. Moreover, as noted above, I am convinced that Mr. Reynolds’ true abilities are simply not measured accurately within the context of a timed essay examination. When given the time to bring his considerable skills to bear on a matter, his performance is among the best I have seen.

Finally, I really enjoy working with Mr. Reynolds. He has a quick sense of humor; we can laugh even when going over the details of computer-assisted, nine-dimensional “frontier analysis” of the voting behavior on the Supreme Court. He does not take himself too seriously, and he has always displayed mature and measured judgment (and behavior) while

working with me, interacting with his fellow students, or socializing at major law school functions.

I have no hesitation in giving Mr. Reynolds my highest recommendation. If you would like to speak with me about any aspect of this letter, or request additional details, please contact me. I am currently on leave from Brigham Young University, serving as the Managing Director of the Doha International Institute for Family Studies and Development in Doha, Qatar. I can most easily be reached by e-mail at rwilkins@qf.org.qa. My cell phone number is + 974-512-9223.

With best wishes,

A handwritten signature in black ink, reading "Richard G. Wilkins". The signature is written in a cursive style with a large, prominent initial "R".

Richard G. Wilkins
Robert W. Barker Professor of Law
Brigham Young University (On Leave) and
Managing Director
Doha International Institute for Family Studies and Development

BRIEF

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13 *Attorneys for Defendants except for Desert Land, LLC,*

DISTRICT COURT

CLARK COUNTY, NEVADA

14 SHER DEVELOPMENT, LLC, a Nevada
15 limited liability company; THE PAUL L.
16 GARCELL AND PAMELA HERTZ
17 REVOCABLE FAMILY TRUST, Paul
18 Garcell and Pamela Hertz, Trustees; THE
19 JOSEPH D. EYSTAD AND MARY ANN
20 ARMINIO REVOCABLE TRUST DATED
21 09/03/03, MaryAnn Arminio and Joseph D.
22 Eystad, Trustees; THE FRANK ARMINIO
23 AND MARY ARMINIO REVOCABLE
24 LIVING TRUST, Mary Arminio, Trustee;
25 ANGELO JOHN ARMINIO, an individual;
26 PAULA M. ARMINIO, an individual;
27 ANDREA DEANEAN GLENN, an
28 individual; LINDA JEAN LUND, an
individual; THE DONDERO SURVIVOR'S
TRUST, Alan G. Dondero, Trustee; TERRY
L. BELL IRREVOCABLE TRUST, Terry L.
Bell, Trustee; and THE NEWBY 1984
TRUST, Jill M. Colquitt and Donald E.
Newby, Trustees,

Plaintiffs,

v.

CASE NO. A-16-743298-B
DEPT. NO. XI

HEARING BRIEF

DATE: May 17, 2019

TIME: 8:30 a.m.

1 DESERT LAND LOAN ACQUISITION, LLC,
2 a Nevada limited liability company; DESERT
3 LAND, LLC, a Nevada limited liability
4 company; HOWARD BULLOCH, an
5 individual; DAVID GAFFIN, an individual;
6 THE HOWARD AND CHRISTI BULLOCH
7 FAMILY TRUST DATED 09/14/1995; THE
8 HOWARD BULLOCH SEPARATE FAMILY
9 TRUST DATED 03/28/2003; THE CHRISTI
10 BULLOCH SEPARATE PROPERTY TRUST
11 DATED 03/28/2003; THE BULLOCH
12 HERITAGE TRUST; THE GULF STREAM
13 IRREVOCABLE TRUST DATED
14 06/30/2000; COMPASS INVESTMENTS,
15 LLC, a Nevada limited liability company;
16 DOE INDIVIDUALS AND ROE ENTITIES
17 I through X,

18 Defendants

19 AND ALL RELATED ACTIONS

20 **Points and Authorities**

21 The above-captioned case involved parties to a secured interest in a loan governed by
22 NRS 645B relating to a 3.11-acre parcel owned by Desert Land, LLC. This hearing results from
23 the Plaintiffs' Motion based on alleged "newly discovered" evidence concerning a 38-acre
24 assemblage, not the 3.11-acre parcel at issue in this case. Based on the Court's *Huneycutt* order
25 the Nevada Supreme Court gave this Court 60 days, to "allow" it to hold a hearing and
26 determine *whether* it was going to change its final judgment in this case and *if* the Court decides
27 to modify its judgments that the appeals will be vacated.

28 This hearing results from the Plaintiffs presenting documents to the Court almost one full
year after trial that were never produced in this case, but were available at time of trial. The
documents were first produced to Plaintiffs in a bankruptcy involving defendant Desert Land.
Plaintiffs claimed these documents constitute newly discovered evidence that would likely
change the Court's Judgment had they been produced previously. Plaintiffs argue that the
documents are relevant because they show that Defendants knew the 3.11 acre parcel at issue in
this case was worth more when considered as part of the 38-acre assemblage, and therefore a

1 higher price should have been negotiated with Desert Land to payoff the loan. If the Court
2 agrees with all these statements Plaintiffs request that the Judgment be modified to reflect that
3 the Third Proposed Modification was not fair.

4 Plaintiffs made their Motion on December 26, 2018, to request “Relief from Judgment”
5 on the legal grounds that the documents reflect “newly discovered evidence” which amounts to
6 a conclusion that Defendants’ committed a *fraud upon the Court*. The legal standard to succeed
7 on requesting such relief is very high. Even Plaintiffs admit that the standard under Nevada
8 Supreme Court precedent is incredibly high:

9 The most widely accepted definition of “fraud upon the
10 court,” which has been adopted by the by the [sic] Nevada Supreme
11 Court “embrace[s] *only* that species of fraud which does, or attempts
12 to, subvert the integrity of the court itself, or is a fraud perpetrated
13 by officers of the court so that the judicial machiner cannot perform
in the usual manner its impartial task of adjudging cases. *NC-DSH,*
Inc., 125 Nev. at 654.

14 (See Pls.’ Mot. 20:23-27, filed Dec. 26, 2018) (emphasis added) (citing *Adams v. Fallini*, 132
15 Nev. Adv. Op. 81, 386 P.3d 621, 625 (2016). (Plaintiffs’ Motion is attached hereto as **Exhibit**
16 **F** and hereinafter is cited as “(Mot. ____:____)”).

17 This case does not come close to that “species of fraud” recognized by the Nevada
18 Supreme Court. Nothing the Plaintiffs present reflects upon “the integrity of the court itself.”
19 The entirety of the evidence is an unequivocal and mean-spirited attack on the integrity of Mr.
20 Bulloch. But there is no allegation or assertion that the Court’s integrity has been challenged in
21 any way. Nor is there even an allegation that any “officers of the court” perpetrated any act so
22 that the Court could not perform its task impartially. This distinction is important, because
23 claiming there was “fraud upon the Court,” is supposed to be an extremely unique occurrence
24 and extremely high bar. The Nevada Supreme Court has held that “cases which require the
25 granting of a new trial on the ground of newly discovered evidence are unusual and exceptional.
26 Applications for such relief and looked on with distrust and disfavor, and must be granted with
27 caution; and the newly discovered evidence is regarded with suspicion.” *Bramlette v. Titus*, 70
28 Nev. 305, 312, 267 P.2d 620, 623 (1954).

1 There was no fraud on the Court.

2 The evidence will show this entire hearing results from *Plaintiffs'* failure to exercise
3 reasonable diligence in conducting discovery and *Plaintiffs'* failure to follow the court's
4 instructions to use their experts to give opinion about the value of the 38-acre parcel. Plaintiffs
5 cannot show one iota of *fraud on the court* that reflects on the integrity of the Court itself.

6 **1. None of the Plaintiffs' evidence is newly discovered.**

7 "Evidence qualifies as newly discovered if 'it could not have been discovered and
8 produced for trial even with the exercise of reasonable diligence.'" *Benito-Victoria v. State*, 128
9 Nev. 883, 381 P.3d 594 (2012) (quoting *Callier v. Warden*, 111 Nev. 976, 988, 901 P.2d 619,
10 626 (1995)). *None* of the Defendants' evidence can qualify as *newly discovered evidence* as a
11 matter of law.

12 **A. Plaintiffs failed to exercise reasonable diligence.**

13 The Court will remember that due to Plaintiffs' overly-aggressive tactics in discovery, the
14 Defendants successfully moved the Court for a protective order. *See* Order Granting in Part and
15 Denying in Part Defendants' Motion for Protective Order and Quashing Order, January 9, 2017
16 (attached as **Exhibit A**). As specifically stated in the protective order:

- 17 1. Defendants shall fully respond to and produce all documents
18 in their possession, custody, and/or control responsive to the
19 First Sets of Interrogatories and First Sets of Request for
20 Production served by Plaintiffs on or about November 15,
21 2016, with the limited exception that Defendants *shall not*
22 *be required to produce: . . . ; and (2) any appraisals for the*
23 *38-acre assemblage owned by Desert Land.*

24 *See Exhibit A* at ¶ 1 (emphasis added).

25 It is hard to imagine how the Court could have been any more clear, and more on point,
26 than stating that Defendants were "not required to produce . . . any appraisals for the 38-acre
27 assemblage." Further, based on the Court's statements at the hearing, the Defendants openly
28 took the position that the Court was not going to allow any discovery of any documents relating
to the 38-acre assemblage because the Plaintiffs would have access to their own experts who

1 could provide any evidence needed for the Trial on the valuation of the 3 acre parcel or the 38-
2 acre assemblage.

3 Attached hereto as **Exhibit E** is the transcript of the Hearing on Defendants’ motion for
4 protective order. As the hearing progressed, Plaintiffs stated they understood that the Court felt
5 the discovery requests were overbroad, but felt they were still entitled to something. *See*
6 **Exhibit E**, Tr. Hr’g Dec. 20, 2016 at 16:5-11. The remainder of the hearing counsel and the
7 Court hashed out exactly what documents would be produced. When it came back to any
8 discussion of the documents relating to the 38-acres though the Court was very direct:

9 MR. FEDER: Yes. One other area, Your Honor. We asked for
10 the neighboring land, the 38 acres, we asked for that appraisal.

11 THE COURT: Nope.

12 The Court thereafter instructed:

13 THE COURT: You’re going to have expert testimony related to
14 the valuation of the land; right?

15 MR. FEDER: Correct, Your Honor.

16 THE COURT: Your experts are going to gather *all of the*
17 *information related to that...*

18 *See Exhibit E*, Hr’g Tr. Dec. 20, 2016 at 20:24-21:13 (emphasis added).

19 Defendants thereafter took a consistent approach in objecting in writing and at
20 depositions to any attempts to discover information about the 38-acre assemblage. For example,
21 by Plaintiffs’ own admission in their June Motion for Reconsideration of the Judgment, when
22 Plaintiffs submitted subsequent discovery requests for an appraisal of the 38-acre assemblage,
23 Defendants objected on the basis that this was simply an attempt to circumvent the Court’s
24 protective order, and Defendants’ objection to the discovery request stated expressly that
25 Defendants would not produce that information *because* of the Court’s protective order:
26 “Moreover, the court has stated that discovery related to the “assemblage” is not permitted.”
27 (*See* Pls.’ Mot. for Reconsideration at 9:6-8, filed June 4 2018) (admitting Defendants objected
28 on these very specific grounds).

1 Further, it was made very clear at a deposition in this case, that Defendants' counsel was
2 not going to allow any discovery regarding the 38-acre assemblage based upon the Court's
3 statements at the hearing on the motion for protective order, and the order itself. Plaintiff
4 counsel's response to this objection, was to state on the record, that Plaintiffs would move to
5 compel the production of the documents related to the 38-acre assemblage:

6 Q [MR. FEDER]. What other documents do you store there besides
7 the Cantor Fitzgerald documents?

8 A [MR. GAFFIN]. Old company file documents.

9 MR. FEDER: To let you know, we are going to demand those
10 documents.

11 MR. REYNOLDS (Defendants' counsel): And we'll object, because
12 the Court already ruled they are not discoverable.

13 MR. FEDER: I don't believe the Court ruled that way, so we are
14 going to --

15 MR. REYNOLDS: Okay. **On the record, what is your**
16 **understanding of the record on the 38-acre parcel? Are you**
17 **entitled to any documents relating to --**

18 MR. FEDER: We're not entitled to an appraisal on there.

19 MR. REYNOLDS: Right.

20 MR. FEDER: We're entitled to all information relating to financing.

21 MR. REYNOLDS: Of what?

22 MR. FEDER: We're entitled to all information related to financing.

23 MR. REYNOLDS: Of what?

24 MR. FEDER: That's all I'm saying.

25 MR. REYNOLDS: All right. We'll --

26 MR. FEDER: **The only thing the Court said we couldn't have is**
27 **an appraisal on the 38 acres.**

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MR. REYNOLDS: **You can make a motion.**

MR. FEDER: **We will.**

See Deposition Transcript of David Gaffin, Feb. 10, 2017, Volume 1, at 68:16-69:18 (emphasis added) (attached as **Exhibit B**).

There can be no honest dispute that Plaintiffs understood at this moment, Feb. 10, 2017, that Defendants had documents that related to the 38-acre assemblage that they were withholding based upon their understanding of the record supporting the Court’s protective order. There can also be no honest dispute that the Defendants stated on the record that they would move to compel the production of these documents. There can also be no honest dispute that this was made clear *more than one year before trial in this case*. Lastly, there can also be no honest dispute that Plaintiffs *never* filed a motion to compel these documents for the year prior to trial, nor in the more than *four months* between when the Court entered its Findings of Fact and Conclusions of law (entered March 30, 2018) and the Court’s Judgment (entered August 7, 2018).

“Evidence qualifies as newly discovered if ‘it could not have been discovered and produced for trial even with the exercise of reasonable diligence.’” *Benito-Victoria v. State*, 128 Nev. 883, 381 P.3d 594 (2012) (quoting *Callier v. Warden*, 111 Nev. 976, 988, 901 P.2d 619, 626 (1995)). Failing to file a motion to compel documents that you know exist, despite a statement on the record that you would do so, and despite having more than a year before trial to do so, must preclude a finding that Plaintiffs acted with reasonable diligence. As a matter of law, this Court *cannot* find that the documents produced in the bankruptcy matter constitute newly discovered evidence.

There can also be no dispute that Defendants remained consistent about this objection throughout discovery. Notably, Plaintiffs entire request leading to this May 17 hearing rests on their assertion that Defendants’ failure to produce documents relevant to the 38-acre assemblage in response to the lengthy “Request for Production No. 11 of the RFPs” constituted fraud upon the Court. The lengthy request is quoted in the Plaintiffs’ December motion for relief. (*See*

1 Mot. 6:20-7:2.) Plaintiffs then quote, but for some reason do not otherwise address in the
2 entirety of their Motion, the Defendants’ *direct* response regarding communications and offers
3 concerning the 38-acre assemblage:

4 Objection, this request is compound; is vague and
5 ambiguous with respect to the phrase, “all Documents and
6 Communications relating to the Property,” “inquiries . . . about the
7 Property,” “offers . . . to purchase or sell the Property,” “proposals .
8 . . . to purchase or sell the Property,” “communications . . . regarding
9 a potential purchase of sale of the property,”; and is overly broad
10 and unduly burdensome with respect to the request for “all
11 Documents and Communications relating to the property.”
12 ***Moreover, the Court has stated that discovery related to the
“assemblage” is not permitted.*** Subject to and without waiving
these objections it is state as follows: *see* DLLA 0089430009069,
DLLA 009434-009438 and the appraisal reports of Tim Morse and
Scott Krueger already produced in this litigation. The right to
supplement this answer as warranted is reserved.

13 (Mot. 7:5-12) (emphasis added).

14 This objection was made to late-served discovery in this case on the eve of trial. But
15 Plaintiffs’ already knew Defendants’ position on producing documents relating to the 38-acre
16 parcel for *more than a year*. Plaintiffs statement that they would file a motion to compel to get
17 a ruling on Defendants’ objection was also a year old at this point.

18 Despite Plaintiffs’ absolute failure to address the discovery objection, it is clear that every
19 single document that Plaintiffs now complain was not produced falls directly within
20 Defendants’ objection to the request based on the Court’s precluding discovery as to the
21 ***assemblage***. In fact, Plaintiff grouped the documents that were discovered in the bankruptcy
22 matter into a coherent list for this Court. By Plaintiffs’ own description of the documents, each
23 document directly falls under Defendants’ discovery objection that “discovery related to the
24 ***“assemblage”*** is not permitted”:

- 25
- 26 a. A February 17, 2016 letter of intent from Nevada Blue
27 Entertainment, LLC (“Nevada Blue”), offering to purchase the
28 Assemblage, inclusive of the Propoerty, for \$435,000,000.

1 b. Email communications between, *inter alia*, Bulloch and
2 Gaffin and Nevada Blue continuing through at least August 2018,
3 including an April 10, 2017 email indicating that Desert Land was
4 providing Nevada Blue an “updated Purchase Agreement with the
5 changes that we discussed.” [Nevada Blue’s offer was for the
6 Assemblage per point “a.”]

7 c. A December 16, 2016 letter of intent from Exec-West
8 Properties, LLC, offering to purchase the Assemblage, inclusive of
9 the Property, for \$500,000,000.00;

10 d. A March 23, 2017 letter of intent from iCore Global, LLC,
11 offering to purchase the Assemblage, inclusive of the Property, for
12 \$400,00,000.00;

13 e. A July 18, 2017 **mutually-signed letter of intent** between
14 Centauri and Desert Land to sell the entire Assemblage for
15 \$462,000,000.00;

16 f. Email communications between, *inter alia*, Bulloch and
17 Gaffin and Centauri starting in May 2017 and continuing through the
18 time of trial in this matter; [Once again, per point “e” these
19 communications were about the Assemblage.]

20 g. An October 26, 2017 appraisal by Keith Harper valuing the
21 entire Assemblage, inclusive of the Property, at \$460,000,000; and

22 h. A December 20, 2017 **mutually-signed letter of intent**
23 between Centauri and Desert Land to sell the entire Assemblage for
24 \$462,000,000.

25 (See Mot. 16:24-17:16) (bold emphasis in original, underline emphasis added) (citations and
26 footnotes omitted). These are the Plaintiffs own characterizations of the alleged “newly
27 discovered evidence.”

28 Plaintiffs may contend *now* – *i.e.*, two-years after this discussion at Gaffin’s deposition,
nearly one year *after* the objection was made to the specific discovery request at issue, and
months after the judgment was entered – that Defendants’ interpretation of the protective order
was somehow erroneous. But that does not explain why Plaintiffs made **no attempt** to address
Defendants’ discovery objections with the Court prior to the end of trial, or in the months after
trial before the judgment was entered. That is to say, Plaintiffs *did not* exercise any modicum of

1 “reasonable diligence” to discover these documents and therefore they cannot be considered
2 *newly discovered* evidence as a matter of law. *See Benito-Victoria v. State*, 128 Nev. 883, 381
3 P.3d 594 (2012)

4 More than that, Plaintiffs allege that Defendants’ failure to willingly produce these
5 documents constitutes a fraud upon the court!

6 It truly takes a certain level of arrogance and audacity to claim that Plaintiffs’ own failure
7 to bring a motion to compel, or to challenge Defendants’ direct and clear discovery objection, as
8 Plaintiffs expressly stated on the record they would do, constitutes *fraud* upon the Court by
9 Defendants. It is hard to see how Plaintiffs’ failure to do what they said they were going to do,
10 merits a vacatur or should serve as the basis for any modification of the judgment.

11 **2. The evidence is not admissible for showing the value of the land.**

12 This hearing comes about because Plaintiffs believe that non-binding discussions, and draft
13 agreements to purchase the land, without any purchase, or without any escrow payments,
14 constitute evidence of the land’s value.

15 The Court has received no evidence about the character or background of any of the people
16 on the other side of the discussions presented in Plaintiffs’ alleged “newly discovered evidence.”
17 The Court does not know if they are experts, scam artists, bona fide purchasers, pranksters, etc.
18 What the Court does know is that *none* of these alleged “offers” actually resulted in the purchase
19 of the land. *None*. For this reason, the Nevada Supreme Court has warned district courts about
20 considering this kind of evidence: “On the other hand, cases which require the granting of a new
21 trial on the ground of newly discovered evidence are unusual and exceptional. Applications for
22 such relief and looked on with distrust and disfavor, and must be granted with caution; and the
23 newly discovered evidence is regarded with suspicion.” *Bramlette v. Titus*, 70 Nev. 305, 312,
24 267 P.2d 620, 623 (1954).

25 Not only should the Court reject the newly discovered evidence for its lack of evidentiary
26 value, but the Court should also not now reward Plaintiffs for absolutely failing to follow the
27 Court’s instruction on this point. Specifically the Court told Plaintiffs, in no uncertain terms, that

28