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

9 LAW FIRM OF LAUB & LAUB,

10 Plaintiff,

11 vs.
12

13 REMSA AMBULANCE;
14 ET AL.,

15 Defendants.
16

CASE NO.: CV08-02149

DEPT. NO.: 9

17 RAQUEL MORA, REAL PARTY IN INTEREST
18

19 AMENDED ORDER REGARDING DISTRIBUTION OF FUNDS
20

21 I. BACKGROUND

22 On or about July 3, 2007, Raquel Mora (Sanchez) was seriously injured in a motor vehicle
23 accident. On July 7, 2007, Ms. Mora signed a Contingent Fee Agreement with Laub and Laub to
24 pursue her claim against the tortfeasors, Kathy Rich and Curtis Wood. It provided for a fee of
25 33 1/3% if "settled without initiation of a lawsuit or request for binding arbitration or mediation",
26 and 40% "if a lawsuit arbitration/binding arbitration or mediation is initiated". The fee increased to
27 50% if an appeal occurred.
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1 Ms. Mora's past medical bills were approximately \$71,902.25. The insurance policy issued
2 by State Farm and covering the tortfeasors had limits of \$50,000.00 per person and \$100,000.00 per
3 occurrence. Thus, the coverage for Ms. Mora's claim was limited to \$50,000.00.

4 Laub and Laub was able to obtain payment of the \$50,000.00 without litigation and/or
5 apparent difficulty because of clear liability and excess damages. It appears that Ms. Mora's claim
6 was paid by State Farm based upon informal discussion.

7 Because the medical bills exceeded the insurance limits, Laub and Laub then interpled the
8 \$50,000.00 into Court and allegedly gave notice to the medical providers who claimed a right to
9 payment. The only providers who answered were Renown, Remittance (an agency of Renown),
10 South Virginia Walk-In Clinic, Radiology Consultants, LLC, and Northern Nevada Emergency
11 Physicians. The amount which each claimed was:

12	Renown:	\$30,140.50
13	Remittance:	9,871.75
14	South Virginia Walk-In Clinic:	1,947.00
15	Radiology Consultants, LLC:	807.00
16	No. Nevada E.R. Physicians:	2,183.00 ¹

17 Defaults were entered against 10 other claimants by Laub and Laub on June 27, 2009. The
18 total amount claimed to be owed to those medical providers who appeared and remain in this action
19 is \$42,766.25.

20 In addition, Laub and Laub claims its legal fees plus costs. In the Complaint in Interpleader
21 filed August 4, 2008, Laub and Laub claimed attorney fees of \$16,666.57 and costs of \$213.04. This
22 was obviously based on a 33 1/3% contingency and costs incurred to obtain the \$50,000.00 from the
23 insurer.

24 In its Motion to Release Funds filed May 13, 2009, Laub and Laub claimed an increased 40%
25 contingency fee of \$20,000.00 plus costs of \$992.41. An itemized costs schedule was attached but it
26 did not explain the purpose for the costs, nor did it elaborate what costs were incurred in actually
27

28 ¹ No. Nev. E.R. Physicians chose not to participate and obtained a dismissal.

1 collecting the \$50,000.00 from the insurer and how the additional costs above the \$213.04 were
2 generated. These additional costs would appear to have been incurred after Laub and Laub received
3 the \$50,000.00 which it interplead in 2008 and are related solely to the interpleader action.

4 The total amount being claimed by those parties remaining in the case, including Laub and
5 Laub's 40% fee and \$992.41 in costs is \$63,758.66, or \$13,758.66 in excess of the coverage of
6 \$50,000.00.

7 The total amount of Ms. Mora's past medical bills, including the providers who did not
8 answer, exceeds \$70,000.00. She also needs future care, including the replacement of her two front
9 teeth. The prospective costs for the future care is unknown but would be expected to be significant.

11 **II. LEGAL ISSUES**

12 **A. STATUTORY BASIS AMOUNTS CLAIMED BY RENOWN AND LAUB AND**

13 **LAUB**

14 Pursuant to the Hospital Lien Statute, NRS 108.590, Renown claims the right to \$30,140.50.²
15 Laub and Laub claim costs and fees of \$20,992.41. Pursuant to NRS 108.600 and Michel v. Dist.
16 Ct., 117 Nev. 145, 17 P.3d 1003 (2001), Laub and Laub claims its attorney's fee (lien) takes priority
17 over the hospital lien. Laub and Laub also relies on the provisions of Chapter 18 of NRS in support
18 of the claim to priority and entitlement.

19 Were these two statutory claims allowed in their entirety, neither Ms. Mora nor the other
20 remaining claimants South Virginia Walk-In Clinic, Radiology Consultants, LLC and Remittance
21 would receive a cent.

22 **B. ATTORNEY'S FEES AND COSTS**

23 **1. THE 40% FEE AND \$992.41 IN COSTS**

24 The Court notes that Laub and Laub initially sought a 33 1/3% fee and costs of \$213.04 in its
25 Complaint for Interpleader. Its request for 40% and \$992.41 made a year later is based upon the
26 filing of the very Complaint for Interpleader in which it claimed the 33 1/3% fee and \$213.04 in
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² Apparently, Renown sent a notice of its lien to State Farm before the \$50,000.00 was paid to Laub and Laub.

1 costs. Laub and Laub relies upon the Fee Agreement that is quoted above and provides for an
2 increase to 40% if a lawsuit or request for arbitration on mediation is filed. (Exhibit "A" hereto).

3 The Agreement clearly refers to litigation against the tortfeasors or at least is ambiguous.
4 Laub and Laub's lawyer, Nicholus Palmer, conceded at a July 15, 2009 hearing that Laub and Laub
5 drafted the Agreement.³ Any ambiguity is, therefore, construed against Laub and Laub and in favor
6 of Ms. Mora.

7 A contract is ambiguous when it is subject to more than one reasonable
8 interpretation. Any ambiguity, moreover, should be construed against the
9 drafter.

10 Anvui, L.L.C., v. G.L. Dragon, L.L.C., 123 Nev. 25, 26, 163 P.3d 405 (2009).

11 At a minimum, Laub and Laub's fee cannot exceed 33 1/3%. Likewise, their costs cannot
12 exceed the \$213.04 which they had expended as of the filing of the Complaint for Interpleader
13 because by then Laub and Laub had already obtained the settlement of \$50,000.00 which was the
14 subject matter of the Fee Agreement.

15 The Court is further concerned about the manner in which Laub and Laub appears to have
16 put its interests ahead of Ms. Mora's in attempting to obtain its fees and costs. In the Interpleader
17 action, Laub and Laub showed Ms. Mora as the Real Party in Interest. It did the same in the Motion
18 to Release Attorney's Fees in which it increased its fee request to 40% and its costs to \$992.41 based
19 on the terms of its Fee Agreement which clearly allow for such an increase only in pursuit of the
20 claim against the tortfeasor and not in a Interpleader which seeks only to confer a monetary benefit
21 upon Laub and Laub, and would give Ms. Mora nothing. The Certificate of Service on both the
22 Complaint in Intervention or the Motion to Release Attorney's Fees which asks for the 40% shows
23 no service on Ms. Mora.
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28 ³ Ms. Mora is Spanish speaking and requires an interpreter. Laub and Laub presented no evidence that the Agreement was read to her in Spanish or that she had the aid of an interpreter when she signed it.

1 In addition, nowhere in the Motion to Release Fees does Laub and Laub raise any issue
2 which might arguably serve to reduce the Renown lien or otherwise benefit its client monetarily.
3 (e.g., the "Common Fund Doctrine" or the "reasonableness" of the charges). Neither does it make
4 any such attempt in its Reply to the Opposition to its Motion to Release Fees, which was also not
5 served on its client, the "Real Party in Interest". The only time these issues were addressed was after
6 the Court called them to Laub and Laub's attention.
7

8 The Court finds the conduct of Laub and Laub to have been in blatant disregard of its client's
9 rights and in a direct conflict of interest thereto. It is generally recognized that:
10

11 [a]. lawyer's improper conduct can reduce or eliminate the fee that the
12 lawyer may reasonably charge [.] Restatement (Second) of the
Law Governing Lawyers, § 37, p. 271 (2000).

13 A lawyer engaging in clear and serious violation
14 of duty to a client may be required to forfeit some
15 or all of the lawyer's compensation for the matter.
16 Considerations relevant to the question of forfeiture
17 include [(1)] the gravity and timing of the violation,
18 [(2)] its willfulness, [(3)] its effects on the value
19 of the lawyer's work for the client, [(4)] any other
threatened or actual harm to the client, and
[(5)] the adequacy of other remedies.
Restatement, § 37, p. 270.

20 In re: SRC Holding Corp., 352 B.R. 103 (D. Minn. 2006) articulates the rules the Court
21 believes to be applicable here:

22 Section 49 of the Restatement (Third) of Law Governing Lawyers provides that a
23 lawyer is civilly liable to the client if the lawyer breaches a fiduciary duty to the client
24 set forth in § 16(3). RESTATEMENT (THIRD) OF LAW GOVERNING
25 LAWYERS §§ 16(3), 49. These duties include the duty to inform the client under §
26 20 of the Restatement and the duties to avoid impermissible conflicting interest. Id.;
27 RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS, § 20(1). In Rice,
the Minnesota Supreme Court said, "[t]his court has repeatedly stated that an attorney
(or any fiduciary) who breaches his duty to his client forfeits his rights to
28 compensation". Rice, 320 N.W. 2d at 411; see also, In re. Kiernat, 338 B.R. 809, 814
(D. Minn. 2006) (under Minnesota law, a violation of fiduciary duty can result in the
forfeiture of compensation otherwise due to the fiduciary)(citing Bolander v.

1 Bolander, 703 N.W. 2d 529 (Minn. Ct. App. 2005)). When a fiduciary engages in
2 "actual fraud or bad faith towards the trust or its beneficiaries in the matter of his
3 employer, he is not entitled to any pay for his services". Gilchrist v. Perl, 387 N.W.
2d 412, 414 (Minn. 2986). As recognized in In re Estate of Lee's:

4 It is. . . well settled that an attorney of law who is unfaithful in
5 the performance of his duties forfeits his right to compensation.
6 An attorney is an officer of the court, sworn to aid in the
7 administration of justice and to act with strict fidelity to both
8 the clients and the courts. Unquestioned fidelity to their real
interests is the duty of every attorney to his clients. When a
breach of faith occurs, the attorney's right to compensation
is gone.

9 In re Lee's, 9 N.W. 2d 245, 251 (1943). In Rice, the court said:

10 . . . the law has traditionally been unyielding in its assessment
11 of penalties when a fiduciary or trustee, or agent has breached
12 any of his obligations. The underlying policy is a strong one.
13 It recognizes that insuring absolute fidelity to the principal's
14 or beneficiary's interests is fundamental to establishing the
trust necessary to the proper functioning of these relationships.

15 Rice, 320 N.W. 2d at 411. "Minnesota law is clear that the
16 penalty for the breach of fiduciary duty is the loss of the right
17 to any compensation based on that duty." Kiernat, 338 B.R.
at 816.

18 Laub and Laub clearly had a conflict of interest with Ms. Mora when it sought to improperly
19 increase its fee to 40% while allegedly acting as her lawyer in her status as Real Party in Interest.
20 See, SCR 1.7(a)(2). As previously mentioned, Laub and Laub also did not raise any issues that might
21 reasonably have reduced the amounts Ms. Mora might be required to pay for the Renown lien such
22 as the "Common Fund Doctrine", or whether the amount charged was "reasonable" as required by
23 NRS 108.590. Hospitals have been held to have the burden of "proving that is charge was not more
24 than a reasonable and regular rate. . ." Dallas County Hospital District v. Perrin, 694 S.W.2d 257,
25 260 (Tex. App.1985).
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1 Instead of doing anything to benefit Ms. Mora, Laub and Laub simply sought to increase its
2 fees in direct conflict with the law and its clients' interests while purporting to represent her. The
3 Court finds this conduct to have been in breach of Laub and Laub's fiduciary obligations to Ms.
4 Mora and justifies the Court in allowing no fees or costs be paid to Laub and Laub by Ms. Mora.
5 This does not mean that the fees and costs should not be assessed. They simply go to the client.
6

7 In reaching this conclusion, the Court is mindful that Laub and Laub has a reported history of
8 conduct wherein it disregarded clients' rights in preference to its own. It is appropriate to consider
9 prior conduct in deciding the extent of sanctions which will be adequate in a particular case and to
10 deter future conduct. In re. Porcheddu, 338 B.R. 229 (S.D. Tex. 2006).⁴
11

12 13 **C. COMMON FUND DOCTRINE**

14 While one would expect that Renown would argue that the enactment of NRS 108.590
15 abrogated the Common Fund Doctrine, there is a reasonable argument to the contrary. In Michel,
16 supra, the Court specifically noted the Common Fund Doctrine but declined to address it. This case
17 was decided after the enactment of NRS 108.590.
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19 Moreover, in Turnbow v. State of Nevada Dept. of Human Resources, 109 Nev. 493, 853
20 P.2d 97 (1993), the Court held that the Legislature pre-empted the Common Fund Doctrine as it
21 applies to Medicare Liens by enacting NRS 422.293. Clearly, the Legislature is aware of the
22 Common Fund Doctrine and knows how to pre-empt it and chose not to do so regarding Hospital
23 Liens.
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27 ⁴ The Laub firm and/or its partners have been formally disciplined in 2002 when Joe Laub was suspended for six (6)
28 months for multiple violations of client's rights in several cases, including failure to attempt to reduce medical bills
(Savtain case) misleading cost and disbursement statement (Id.). See, In re Discipline of Joe Laub, No. 863222 (Jan. 2,
2002). He was again disciplined in 2007 for disregarding client rights and the lawyer's obligation to properly represent,
and communicate with, a client. See, In re Discipline of Joe Laub, No. 49211 (Mar. 5, 2008).

Nevertheless, Laub and Laub failed to raise this issue on behalf of its client as well as the issue of "reasonableness" of Renown's charges for which reason the Court declines to consider those arguments in distributing the \$50,000.00 on deposit with the Clerk of the Court. The client may choose to pursue these matters with Laub and Laub.

III. CONCLUSION

Based on the foregoing, the Court finds that Laub and Laub has forfeited its claim for costs and fees but that their client is entitled to collect them pursuant to NRS 108.600. The parties are entitled to compensation from the \$50,000.00 interpled with the Court as follows:

Ms. Mora:	\$16,879.71 (costs and fees)
Renown:	\$ 30,140.50 (lien amount)
So. Virginia Walk-In Clinic:	\$ 1,949.00
Radiology Consultants, LLC:	\$ 807.00

The remaining \$223.79 may be paid to Remittance. The Clerk of the Court is ordered to make disbursements accordingly.

DATED this 24th day of July, 2009.

Robert H. Leary
District Judge

Contingency Agreement

Page 2 of 3

- (d) CLIENT IS LIABLE FOR ALL EXPENSES REGARDLESS OF THE OUTCOME OF THE MATTER. IN THE EVENT OF A LOSS, CLIENT MAY BE HELD LIABLE FOR THE ATTORNEY'S FEES INCURRED BY THE OPPOSING PARTY, AND WILL BE LIABLE FOR THE COSTS INCURRED BY THE OPPOSING PARTY, AS REQUIRED BY LAW.
- (e) IF CLIENT BRINGS A LAWSUIT OR OTHER PROCEEDING SOLELY TO HARRASS OR TO COERCE A SETTLEMENT FROM THE OPPOSING PARTY, CLIENT MAY BE SUBJECT TO LIABILITY FOR MALICIOUS PROSECUTION OR ABUSE OF PROCESS.

Attorneys may receive all or part of their fee either in a lump sum and/or paid periodically. If the attorney and client agree that all or part of the fees are to be paid on a periodic basis, the fees will be paid on an agreed upon schedule incorporated into the settlement documents. Once the fees are scheduled, the payments cannot be changed.

Attorney is hereby given a lien on the said claim or cause of action, on any sum recovered by way of settlement, and on any judgment that may be recovered thereon, for the sum and share hereinbefore mentioned, as an Attorney's fee; and it is further agreed that Attorney shall have all general, possessory, or retaining liens, and all special or charging liens known to the common law.

Client agrees that Client will make no settlement except in the presence of Attorney and with Attorney's approval, and should Client do so in violation of this agreement Client agrees to pay Attorney the sum, and share, as previously indicated.

It is agreed that Attorney has made no guarantees regarding the successful termination of said cause of action, and all expressions relative thereto are matters of Attorney's opinion only. Attorney accepts said retainer on the conditions hereinbefore enumerated. Contingency fee arrangements are not set by law but are negotiable between Attorney and Client.

The parties hereto agree that any dispute relating to Attorney's fees under this agreement shall be submitted to binding arbitration before the State Bar of Nevada Fee Dispute Committee. Any other dispute (other than attorney's fees) between the parties hereto arising out of or relating to this agreement or attorney's professional services rendered to or for client, shall be resolved by confidential binding arbitration before the American Arbitration Association in Reno, Nevada, in accordance with the Commercial Rules of the American Arbitration Association prevailing at the time of the arbitration.

The Attorney fee is first disbursed from the gross recovery. Then all costs including court reporter fees, investigation, deposition costs, medical costs, court costs, and other costs are disbursed from the Client's recovery. The balance of said proceeds shall be paid to the Client, as a net recovery.

It is also agreed that if Client should decide to retain the services of another attorney for this case, The Law Firm of Laub & Laub reserves the right to enforce a lien on Client's personal injury case for the following services:

Contingency Agreement
Page 3 of 3

Attorney's time at a rate of \$300.00 per hour or reasonable and equitable value of services rendered, whichever is greater. If there is an outstanding offer or settlement, The Law Firm of Laub & Laub is entitled to 33 1/3% of that amount. If in litigation, it is 40% of that amount. Paralegal/Legal Assistant/Legal Secretary/Case Manager time at a rate of \$75.00 per hour. Administrative Fee in the fixed amount of \$120.00 for costs including, but not limited to, photocopy, long distance telephone calls, facsimile transmission, postage, etc. Additionally and separately, any other costs or advanced fees, including but not limited to, filing fees, medical & billing reports, expert reports, investigation fees, etc., shall be billed in the incurred amount.

The Law Firm of Laub & Laub reserves the right to withdraw at any time upon giving reasonable notice to Client. Client has the right to withdraw claim or to substitute attorneys at any time. If either of the foregoing occurs, The Law Firm of Laub & Laub shall be entitled to, and Client agrees to pay, reasonable Attorney's fees for legal services rendered as described in the paragraph immediately above. It is understood that on termination of this agreement Client agrees to repay any and all costs incurred or advanced by Attorney on Client's behalf.

The parties hereto have read, understand, and agree to the foregoing terms and conditions.

IN WITNESS WHEREOF the parties have set their hands the date first mentioned above.

* CLIENT: Raguel Santos DATE: 07-29-07

LAW FIRM OF LAUB & LAUB, A Professional Corporation

BY: [Signature]

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THIS CONTINGENCY FEE AGREEMENT

CLIENT: Raguel Santos

DATED: 07-29-07

Revised 11-26-2003

Mora, Raquel
NVR-5859-3 07/03/2007

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COSTS PRINT SCREEN

Date	Description	Amount	Payment	Adjustment	Check No.	Balance	Status
07/03/2007	administrative fee	120.00	0.00	0.00		120.00	N/A
07/03/2007	photos	30.00	0.00	0.00		150.00	N/A
08/14/2007	SDS	10.43	0.00	0.00	37818	160.43	N/A
08/22/2007	SDS	52.61	0.00	0.00	37839	213.04	N/A
05/23/2008	Sierra Legal Duplicating Inc.	5.37	0.00	0.00	38331	218.41	N/A
05/23/2008	Second Judicial District Court	141.00	0.00	0.00	38332	359.41	N/A
08/25/2008	Void (Voided 09/03/2008)	0.00	0.00	0.00	38498	359.41	N/A
08/27/2008	Sparks Justice Court	33.00	0.00	0.00	39015	392.41	N/A
09/03/2008	to void check 38498	0.00	0.00	-33.00		359.41	N/A
09/04/2008	Nevada Judicial Services	633.00	0.00	0.00	39023	992.41	N/A
	Totals	1025.41	0.00	-33.00		992.41	



LAW FIRM OF
LAUB & LAUB

A Professional Corporation

PERSONAL INJURY
WORKERS COMPENSATION
CRIMINAL DEFENSE
BANKRUPTCY

CONTINGENCY FEE AGREEMENT

THIS AGREEMENT, made this 9th day of July, 2007, by and between Rachael Nicole Sanchez hereinafter known as "Client," and **THE LAW FIRM OF LAUB & LAUB**, A Professional Corporation hereinafter known as "Attorney."

Client retains Attorney to represent Client as attorney of record in a cause of action against Althrich & Curtis Inc. regarding MVA / 7/3/2007 and empowers Attorney to effect a compromise in said matter, or to institute such legal action as may be advisable in Attorney's judgment, and agrees to pay Attorney for legal services rendered on a contingent fee basis. If no amount is recovered, no fee shall be payable by Client to Attorney. Costs and necessary disbursements are to be advanced by Attorney. An Administrative Fee will be charged to each Client in the amount of \$120.00 for costs including, but not limited to, photocopy, long distance telephone calls, facsimile transmission, postage, etc. In addition, if it is necessary for Attorney to take photographs of the accident scene, vehicle damage, or bodily injury, a one-time fee of \$30.00 will be charged for the photography services. If such costs and disbursements are advanced by Attorney, they shall be repayable to the Attorney by Client upon demand at any time by Attorney to Client.

Client understands and agrees that The Law Firm of Laub & Laub, in its sole and exclusive discretion, may from time to time assign particular attorneys, whether designated as employees, independent contractors or outside counsel, to handle or review Client's file under the confidential attorney-client privilege existing between Client and The Law Firm of Laub & Laub.

PURSUANT TO NEVADA SUPREME COURT RULE 155(3), THE CLIENT IS ADVISED THAT:

- (a) THE CONTINGENT FEE PAYABLE TO ATTORNEY SHALL BE 33.33 % OF THE GROSS SUM RECOVERED IF THE MATTER IS SETTLED WITHOUT INITIATION OF A LAWSUIT OR REQUEST FOR BINDING ARBITRATION OR MEDIATION.
- (b) CONTINGENT FEE PERCENTAGE SHALL INCREASE TO 40 % IF A LAWSUIT, ARBITRATION/BINDING ARBITRATION, OR MEDIATION IS INITIATED. THE CONTINGENT FEE PERCENTAGE SHALL INCREASE TO 50 % IF THE MATTER IS SUBJECT TO APPEAL.
- (c) LITIGATION AND OTHER EXPENSES INCURRED SHALL BE DEDUCTED FROM ANY RECOVERY, AND SHALL BE DEDUCTED AFTER THE CONTINGENT FEE IS CALCULATED.

☐ 3148 8th Ave Blvd.
South Lake Tahoe

☐ 711 S. Carson St., Suite 2
Carson City

☐ 10368 Donner Pass Rd.
Truckee

☒ 430 E. Plumb Lane
Reno

EX "A"

Copy of original document on file with the Clerk of Court -- Second Judicial District Court, County of Washoe, State of Nevada

Copy of original document on file with the Clerk of Court -- Second Judicial District Court, County of Washoe, State of Nevada

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CERTIFICATE OF SERVICE BY MAILING

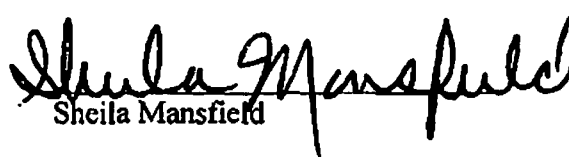
Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 20 day of July, 2009, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Nicholus C. Palmer, Esq.
Law Firm of Laub & Laub
630 E. Plumb Lane
Reno, Nevada 89502

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Sheila Mansfield