

CLERK OF THE COURT

1 **MSTA**  
2 **BOGGESS & HARKER**  
3 D. Brian Boggess, Esq.,  
4 Nevada State Bar Number 4537  
5 5550 Painted Mirage Road, Suite 255  
6 Las Vegas, Nevada 89149  
7 (702) 233-5040  
8 (f) (702)233-2209  
9 (e) [bboggess@boggessharker.com](mailto:bboggess@boggessharker.com)  
10 Attorneys for Defendant

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 JARED E. SHAFER; an individual;  
10 SOLOMON DWIGGINS & FREER, LTD., a  
11 Nevada professional limited partnership;  
12 ALAN D. FREER, an individual; ROBERT  
13 D. SIMPSON; an individual; PATIENCE  
14 BRISTOL; an individual; AMY DEITTRICK,  
15 an individual; PROFESSIONAL  
16 FIDUCIARY SERVICES OF NEVADA,  
17 INC., a Nevada corporation; AVID  
18 BUSINESS SERVICES OF NEVADA, INC.,  
19 a Nevada corporation; SHAWN KING, an  
20 individual; GAMETT & KING, a Nevada  
21 corporation;

Plaintiff,

vs.

22 REBECCA SCHULTZ, an individual; and  
23 DOES I through 20, inclusive;

Defendants.

CASE NO. A-12-671427-C  
DEPT. NO. XXXI

**MOTION TO SET ASIDE DEFAULT**

Date of Hearing: \_\_\_\_\_  
Time of Hearing: \_\_\_\_\_

22 COMES NOW the Defendant, REBECCA SCHULTZ, by and through her attorneys, D. Brian  
23 Boggess, Esq. and Boggess & Harker, pursuant to NRCP 55(c), 60(b) and 11, and hereby moves this  
24 Honorable Court for its Order setting aside the Default against Rebecca Schultz entered on or about  
25 February 27, 2013.

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**BOGGESS & HARKER**  
5550 Painted Mirage Road, Suite 255  
Las Vegas, Nevada 89149  
(702) 233-5040 - Fax 233-2209

1 This Motion is made and based upon the papers and pleadings on file herein, the points and  
2 authorities, exhibits and affidavits attached hereto, and such oral argument as the Court may entertain  
3 at any hearings on this matter.

4 DATED this 1<sup>st</sup> day of July, 2013.

5 BOGGESS & HARKER

6 By: D. B. Bogges

7 D. Brian Bogges, Esq.  
8 Nevada Bar # 004537  
9 5550 Painted Mirage Road, Suite 255  
10 Las Vegas, Nevada 89149  
11 Attorneys for Defendant

12 **NOTICE OF MOTION**

13 TO: ALL PARTIES

14 PLEASE TAKE NOTICE that the Defendants will bring the foregoing Motion on for hearing  
15 before the above-entitled Court on the 6 day of August, 2013, at 9:00 A.M. of said  
16 day, or as soon thereafter as counsel can be heard.

17 **POINTS AND AUTHORITIES**

18 **I.**

19 **Statement of Facts**

20 This case involves Plaintiffs' unsubstantiated attempt to bully the Defendant for defamatory  
21 statements allegedly made by Defendant on public forums, blogs and newspaper articles.

22 Guadalupe Mena Olvera is a now 93 year old Veteran who served in the United States Army  
23 from August 15, 1941 through October 4, 1945. He also served in the United States Air Force between  
24 August 29, 1946 and August 28, 1949. Mr. Olvera is not a party to this litigation, but his guardianship  
25 proceedings lie at the heart of the instant action.

26 The Plaintiff, Rebecca Schultz, is Mr. Olvera's only child. Ms. Schultz has never been a resident  
27 of Nevada.

28 On November 2, 2009, Mr. Olvera's wife and guardian, Carmela Olvera, died in Las Vegas.  
When Mr. Olvera disappeared following Mrs. Olvera's death, his daughter, Rebecca Schultz, contacted

1 various Clark County agencies to seek help. She was ultimately referred by the Guardianship  
2 Commissioner's Office to Plaintiff Jared Shafer, who agreed to assist Ms. Schultz in serving as  
3 "temporary" guardian. Assured by Mr. Shafer that his involvement was "temporary", Ms. Schultz  
4 retained Elyse M. Tyrell, Esq., and paid Ms. Tyrell to prepare the documentation making Mr. Shafer the  
5 temporary guardian over Mr. Olvera. She did not know that Ms. Tyrell represented Mr. Shafer as well.

6 Between his appointment on December 2, 2009 and the date of termination of his guardianship,  
7 April 25, 2013, Mr. Shafer had caused at least \$300,000.00 to be charged to and paid out of Mr. Olvera's  
8 estate. In March, 2010, when it became apparent that Mr. Shafer had no intention of honoring the  
9 "temporary" nature of his assistance to Ms. Schultz or Mr. Olvera, Ms. Schultz and her Co-Petitioner  
10 in Case No. G 28163 retained Counsel and commenced proceedings to remove Mr. Shafer as guardian.

11 The guardianship proceedings became quite rancorous, as Ms. Schultz was fighting for the life  
12 and freedom of her father. At one point, Mr. Olvera expressed a desire to move from Nevada to be with  
13 his daughter, and Ms. Schultz risked her own safety to honor her father's wishes.

14 Shortly thereafter, Mr. Shafer sought a bench warrant to be issued for Ms. Schultz, precluding  
15 her ability to travel to Nevada. Plaintiffs filed their Complaint November 2, 2012, while the bench  
16 warrant was allegedly pending, and thereafter claimed to this Court that they had served the Complaint  
17 upon the Defendant. In fact, the Complaint has never been served upon the Defendant, who only learned  
18 of the action against her when a Las Vegas reporter conducted a search, learned of the instant action and  
19 notified Ms. Schultz.

20 The Plaintiffs have filed an Affidavit of Service, signed by Susan Randolph, a process server  
21 with a business address in Capitola, California. The Affidavit claims that the Summons and Complaint  
22 were served upon Rebecca Schultz on January 21, 2013 at [REDACTED] California. As set  
23 forth in the attached Affidavit of Rebecca Schultz, no such service was ever attempted or completed.

24 Notwithstanding Ms. Schultz' prior appearance and contesting every element of Mr. Shafer's  
25 guardianship of Mr. Olvera, the Plaintiffs made no attempt to serve Ms. Schultz with a notice of intent  
26 to take default, as required by NRCP 55. Default was entered against Ms. Schultz on February 27, 2013.

27 This Motion to Set Aside Default now follows.

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**II.**

**Argument**

A. Nevada Law Favors Resolving Cases on the Merits.

Defendants first note the well-settled and oft-repeated bedrock principle of Nevada jurisprudence that Nevada courts favor resolving cases on their merits rather than through procedural technicalities. *Hotel Last Frontier v. Frontier*, 79 Nev. 150, 155, 380 P.2d 293 (1963); *see also Hansen v. Universal Health Services, Inc.*, 112 Nev. 1245, 1248; 924 P.2d. 1345 (1996); *Price v. Dunn*, 106 Nev. 100, 105, 787 P.2d 785, 787 (1990).

In *Hotel Last Frontier v. Frontier*, the Nevada Supreme Court reversed the denial of a lessor's motion to set aside a default judgment that had been granted. *Hotel Last Frontier v. Frontier*, 79 Nev. 150, 155, 380 P.2d 293 (1963). The court reasoned that because there was no bad faith, and because the lessor had a meritorious defense, the default judgment should be overturned. In doing so, the Court explicitly acknowledged a "basic underlying policy to have each case decided upon its merits," holding that "in the normal course of events, justice is best served by such a policy." *Id.*

Accordingly, absent this Court granting the instant Motion, Defendant would be denied her chance at justice due to a procedural technicality, and she would lose any and all opportunity to have the case tried on the merits. Justice is best served by determining actions on their merits.

B. Good Cause Exists to Set Aside the Default.

Setting aside a default is justified upon a showing a good cause pursuant to NRCPP 55(c). Here, good cause exists to set aside the Default. The Defendant in this matter was never served with process, as set forth in her Affidavit attached hereto. Further, she intends to proceed with a defense in this case, and this Motion is but the first manifestation of that intent.

First, notice of entry of intent to take Defendant's default was required under these circumstances. If a defendant has entered an appearance, the plaintiff must give the defendant notice of the plaintiff's intention to take a default. *See Lindblom v. Prime Hospitality Corp.*, 120 Nev. 372, 375, 90 P.3d 1283, 1285 (2005); *see also Ogawa v. Ogawa*, 125 Nev. \_\_\_, 221 P.3d 699, 706-07 (2009); *Rowland v. Lepire*, 95 Nev. 639, 600 P.2d 237 (1979) (setting aside entry of default and default

1 judgment when notice of intent to take default was not given). What determines an “appearance” is the  
2 tricky part.

3 A judgment entered without notice when required under NRCP 55(b)(2) is void and subject to  
4 a motion to set aside. *See Christy v. Carlisle*, 94 Nev. 651, 654, 584 P.2d 687, 689 (1978).

5 In *Lindblom*, the Nevada Supreme Court held that pre-litigation settlement negotiations between  
6 the parties constitutes an appearance in the action that requires compliance with NRCP 55(b)(2).  
7 *Lindblom*, 120 Nev. at 375, 90 P.3d at 1285. The Court held that NRCP 55(b)(2) requires three days’  
8 written notice of hearings on applications for default judgments “when pre-suit interactions evince a  
9 clear intent to appear and defend.” *Id.* Here, there are several years worth of “pre-suit interactions”  
10 evincing Ms. Schultz’s clear intent to resist and defend against Plaintiff’s actions. These are mostly in  
11 Case No. G 28163, but they evidence Ms. Schultz’s desire and intention to appear and defend. She  
12 should have been given notice of the intent to take default.

13 Further, the Defendant has moved promptly to seek the requested relief. Defendant learned of  
14 the Default in March, 2013, after default had been entered. Defendant has moved expeditiously to retain  
15 Nevada counsel and set aside the Default.

16 Accordingly, Defendant seek this Court’s order setting aside the Default and staying the entry  
17 of any Judgment by Default, allowing the Defendant to file her response to the Complaint, and allowing  
18 the matter to be considered on the merits.

19 **III.**

20 **Conclusion**

21 For the reasons set forth above, Defendant requests that this Court grant the relief requested  
22 herein.

23 DATED this 1st day of July, 2013.

24 BOGGESS & HARKER

25 By: 

26 D. Brian Boggess, Esq.  
27 Nevada Bar # 004537  
28 5550 Painted Mirage Road, Suite 255  
Las Vegas, Nevada 89149  
Attorneys for Defendant

1 CERTIFICATE OF SERVICE

2 I hereby declare and state:

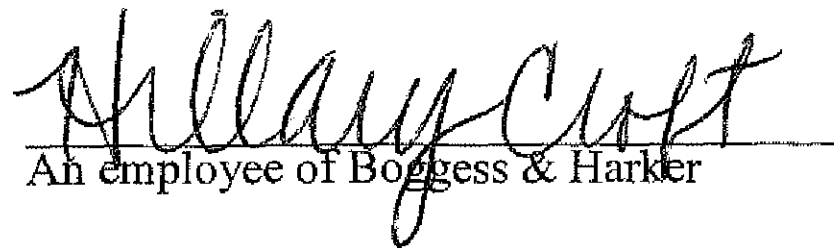
3 I am over the age of eighteen years, employed by Boggess & Harker, in the City of Las Vegas,  
4 County of Clark, State of Nevada, and not a party to the within action. My business address is 5550  
5 Painted Mirage Road, Suite 255, Las Vegas, Nevada 89149.

6 On July 1, 2013, I served the **MOTION TO SET ASIDE DEFAULT** by U.S. Mail to the  
7 following addressed:

8 **MARK A. SOLOMON, ESQ.**  
9 **ROSS E. EVANS, ESQ.**  
10 **SOLOMON DWIGGINS & FREER, LTD.**  
11 **9060 WEST CHEYENNE AVENUE**  
12 **LAS VEGAS, NEVADA 89129**  
13 **Attorneys for Plaintiffs**

14 I am readily familiar with the Firm's practice for collection and processing of correspondence  
15 for mailing with the United States Postal Service. The envelope above was sealed and will be deposited  
16 today with the United States Postal Service in the ordinary course of business.

17 I declare under penalty of perjury that the foregoing is true and correct. Executed on July 1,  
18 2013, at Las Vegas, Nevada.

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An employee of Boggess & Harker

**BOGCESS & HARKER**  
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Las Vegas, Nevada 89149  
(702) 233-5040 - Fax 233-2209



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Las Vegas, Nevada 89149  
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**AFFIDAVIT OF REBECCA SCHULTZ**

1  
2 STATE OF CALIFORNIA            )  
3 COUNTY OF SANTA CRUZ        ): SS.  
  )

4 REBECCA SCHULTZ, being first duly sworn now deposes and says that:

5 1. I am a resident of Santa Cruz County, California and I have personal knowledge of the information  
6 and factual assertions contained within this affidavit. I am prepared to testify truthfully if called upon  
7 to do so.

8 2. Guadalupe Mena Olvera is a now 93 year old Veteran who served in the United States Army from  
9 August 15, 1941 through October 4, 1945. He also served in the United States Air Force between  
10 August 29, 1946 and August 28, 1949. Mr. Olvera is not a party to this litigation, but his guardianship  
11 proceedings lie at the heart of the instant action.

12 3. I am Mr. Olvera's only child. I have never been a resident of Nevada, but have been a resident of  
13 California [REDACTED]

14 4. On November 2, 2009, my mother, Mr. Olvera's wife and guardian of person, Carmela Olvera,  
15 died in Henderson.

16 5. When my father disappeared following my mother's death, I contacted various Clark County  
17 agencies to seek help. I was ultimately referred to Plaintiff Jared Shafer, who agreed to assist me in  
18 serving as "temporary" guardian. Assured by Mr. Shafer that his involvement was "temporary", I  
19 retained Elyse M. Tyrell, Esq., and paid Ms. Tyrell to prepare the documentation making Mr. Shafer the  
20 temporary guardian over my father. I did not know at the time that Ms. Tyrell was actually one of Mr.  
21 Shafer's attorneys.

22 6. Between his appointment on December 2, 2009 and termination of his guardianship on April 25,  
23 2013, Mr. Shafer had caused at least \$300,000.00 to be charged to and paid out of my father's estate.

24 7. In March, 2010, when it became apparent that Mr. Shafer had no intention of honoring the  
25 "temporary" nature of his assistance to my and my father, I retained Counsel and commenced  
26 proceedings to remove Mr. Shafer as guardian.

27 8. The guardianship proceedings became quite rancorous, as I felt I was fighting for the life and  
28 freedom of her father.

1 9. At one point, my father expressed a desire in open court to move from Nevada to be with me, I  
2 risked my own safety to honor my father's wishes.

3 10. Shortly thereafter, Mr. Shafer sought a bench warrant to be issued for me, precluding my ability  
4 to travel to Nevada.

5 11. Plaintiffs filed their Complaint November 2, 2012, while the bench warrant was allegedly  
6 pending, and thereafter claimed to this Court that they had served the Complaint upon me. In fact, the  
7 Complaint has never been served upon me

8 12. I only learned of the action against me when I was notified by a Las Vegas reporter. I confirmed  
9 the filings by searching the Court's online records.

10 13. The Plaintiffs have filed an Affidavit of Service, signed by Susan Randolph, a process server with  
11 a business address in Capitola, California. The Affidavit claims that the Summons and Complaint were  
12 served upon Rebecca Schultz on January 21, 2013 at [REDACTED] California. No such service  
13 was ever attempted or completed.

14 14. January 21, 2013 was Monday, a holiday (Martin Luther King Day). My husband, father and I  
15 left home in the late morning to run errands and take my father for a drive. We didn't get back till late  
16 in the day, as it was nearly dark.

17 15. No one was left at the house while we were gone, as only the three of us reside there. Our gate  
18 is always locked, whether we are home or not, and a person has to get through the gate to get to the front  
19 door and knock.

20 16. No one purporting to serve papers has ever approached me, my husband or my father at any time  
21 on the property when we were outside. No one attempted to serve any papers upon any of us on January  
22 21, or any time before or since.

23 17. We never heard anyone yelling to get us to open the door and the gate. Also, I have a dog in the  
24 yard. He never barked at anyone coming around during those weeks leading up or following the  
25 "service" of the Summons and Complaint. If my dog had barked at a stranger, I would have opened the  
26 door. But it did not happen..

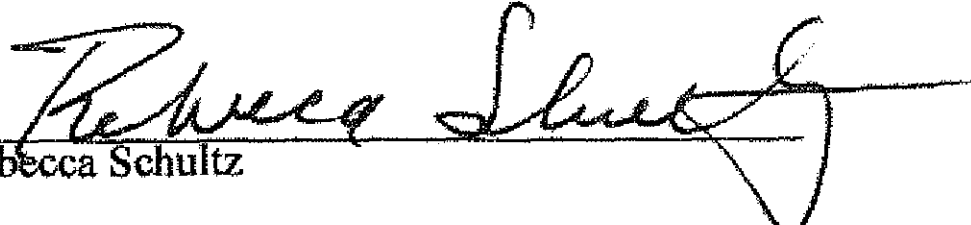
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Further your affiant saith naught.

  
Rebecca Schultz

Subscribed and Sworn before me  
this 27<sup>th</sup> day of June, 2013.

PLEASE SEE ATTACHED  
NOTARY CERTIFICATE

\_\_\_\_\_  
Notary Public

**BOGESS & HARKER**  
6550 Painted Mirage Road, Suite 255  
Las Vegas, Nevada 89149  
(702) 233-5040 - Fax 233-2209

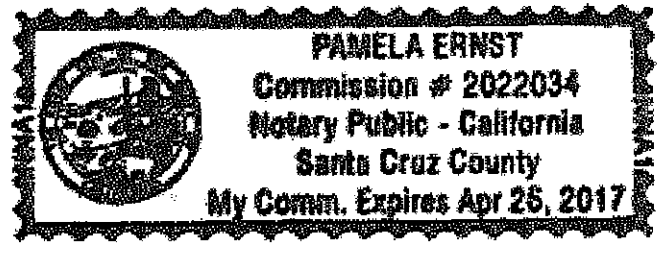
**CALIFORNIA JURAT WITH AFFIANT STATEMENT**  
**GOVERNMENT CODE § 8202**

- See Attached Document (Notary to cross out lines 1-6 below)  
 See Statement Below (Lines 1-6 to be completed only by document signer[s], not Notary)

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*Signature of Document Signer No. 1*                      *Signature of Document Signer No. 2 (if any)*

State of California  
County of Santa Cruz

Subscribed and sworn to (or affirmed) before me  
on this 27<sup>th</sup> day of June, 2013.  
by                      Date                      Month                      Year  
(1) Kathleen Shuey  
(2) \_\_\_\_\_  
*Name(s) of Signer(s)*



Place Notary Seal Above

proved to me on the basis of satisfactory evidence  
to be the person(s) who appeared before me.  
Signature [Signature]  
*Signature of Notary Public*

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Further Description of Any Attached Document**

Title or Type of Document: Affidavit

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_