

1 CODE 3785
LUKE A. BUSBY, ESQ
Nevada Bar No. 10319
2 LUKE ANDREW BUSBY, LTD.
316 California Ave. # 82
3 Reno, Nevada 89509
O: 775-453-0112
4 luke@lukeandrewbusbyltd.com

5 Elizabeth C. Wang*
LOEVY & LOEVY
2060 Broadway, Suite 460
6 Boulder, Colorado 80302
O: 720-328-5642
7 elizabethw@loevy.com

8 David B. Owens*
LOEVY & LOEVY
9 311 N. Aberdeen St.
Chicago, Illinois 60607
10 O: 312-243-5900
david@loevy.com
11 *motions to associate granted

12 *Attorneys for the Petitioner*

13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
14 IN AND FOR THE COUNTY OF WASHOE

15 IN THE MATTER OF THE WRONGFUL)
CONVICTION OF CATHY WOODS, A/K/A)
16 ANITA CARTER.) Case No. CV19-02376
17)
18) Dept. No. 9

19 **PETITIONER'S REPLY BRIEF IN SUPPORT OF**
20 **MOTION FOR PROTECTIVE ORDER**

21 Petitioner, Cathy Woods, a/k/a Anita Carter, through her counsel, hereby respectfully
22 files this Reply Brief in support of her Motion for Protective Order pursuant to NRCPP 26(c), for
23 the reasons that follow:
24
25

1 This Motion is made and based upon all the pleadings and records on file for this
2 proceeding together with every exhibit that is mentioned herein or attached hereto (each of which
3 is incorporated by this reference as though it were set forth here in haec verba), if any there be,
4 as well as the points and authorities set forth directly hereinafter.

5 MEMORANDUM OF POINTS AND AUTHORITIES

6 Introduction

7 The State of Nevada’s position on this motion is offensive. Indeed, the State position—
8 that it is “entitled” to demand a medical vulnerable immunocompromised 70-year old exoneree
9 travel to the State for a repeat deposition during a public health crisis—is unbecoming for an
10 entity with an obligation to ensure the public interest is served, especially after declaring that it
11 aims to “protect the health and safety of persons in this state.” NEVADA UNITED ROADMAP TO
12 RECOVERY at 4 (April 30, 2020). But that is reality. During the midst of a global pandemic, the
13 State of Nevada believes that that Ms. Woods must literally risk her life so that the State can
14 force Ms. Woods to travel to Nevada to sit for a repeat deposition for a “few” hours. The position
15 is particularly egregious given the nature of the proceedings—which concern Ms. Woods’s
16 wrongful conviction for more than 35 years—but also Ms. Woods the compelling evidence of
17 Ms. Woods’s particular mental and physical health issues. A protective order is warranted.
18

19 Additional Factual Background

20 The motion’s discussion of Ms. Woods’s medical condition and the COVID-19 risks and
21 burdens she faces are incorporated here by reference. Five facts, however, warrant brief
22 expansion.

23 First, as counsel informed the Court during the hearing held on the motion to expedite
24 and motion to stay, and as reflected in the JCCR and in the lengthy conversations between
25

1 counsel, the State of Nevada knew very well that Petitioner objected to the deposition as noticed.
2 The State’s insinuation that it somehow lacked “notice” that Ms. Woods was not going to attend,
3 and was not going to attend *in Nevada*, defies credulity.

4 Second, the State’s brief rests on a number of distractions, including about the timing of
5 the filing of the motion for a protective order. As explained, Ms. Woods’s counsel had believed
6 the motion was filed on June 11, 2020, a week before the proposed deposition, when she
7 submitted it electronically, but did not learn until June 16, 2020, that the submission had not
8 been approved yet and that the State had not received electronic notice on June 11. Ms. Woods’s
9 counsel immediately resolved the issue on June 16, 2020, when she discovered it. Ms. Woods’s
10 counsel emailed a copy of the motion and exhibits to counsel for the State, the clerk’s office
11 resolving the filing issue, and Ms. Woods’s counsel filed an amended certificate of service.
12 Either way, the motion for protective order was filed before the noticed deposition (on June 17,
13 2020) and, given the issues discussed in the JCCR (and at the parties’ telephonic meet-and-
14 confers) no reasonable person would have thought that Ms. Woods was going to appear for a
15 deposition—let alone one in Nevada—on June 17th.

16 Third, the State’s response contains a bombshell: a demand that Ms. Woods travel to
17 *Nevada* for the deposition. When the dispute about Ms. Woods’s deposition arose—which was
18 long ago—the parties were discussing whether an in-person deposition would need to occur in
19 Seattle or entirely remotely. That was the nature of the dispute when the parties had a telephonic
20 meet-and-confer about the deposition. That is why Ms. Woods’s motion explains why traveling
21 to Seattle would cause her great risk, instead of addressing why traveling to Nevada would cause
22 her great risk. (If Ms. Woods’s counsel knew that the State was demanding that she travel to
23 her great risk. (If Ms. Woods’s counsel knew that the State was demanding that she travel to
24
25

1 Nevada, she would have obtained a letter from Ms. Woods’s physician, Dr. William Gunderson,
2 that specifically addressed *that* risk, as opposed to the risk of traveling to Seattle.)

3 The State has now backtracked. Now, the State believes the deposition should occur in
4 Nevada. *See* Response at 10. All of the issues outlined in the original motion—including the
5 health risks to Ms. Woods—would be absolutely magnified if Ms. Woods were ordered not only
6 to attempt the journey to Seattle, but then board a plane to Nevada, check into a hotel, and then
7 sit for a deposition, stay at a hotel a second night, and return to Seattle the following day and
8 attempt to make it back to her home hours away. Thus, the State is completely incorrect when it
9 states that “the only substantive change in circumstances since the filing of this case is the
10 COVID-19 pandemic, which equally burdens both parties.” Response at 8.¹ The “changed
11 circumstances” are not only the COVID-19 pandemic, a global pandemic sufficient on its own to
12 justify granting the motion, but also the State’s request for the deposition proceed in Nevada.

13 Fourth, the State’s efforts to minimize the extent of Ms. Woods’s medical issues are
14 reckless and exhibit indifference to Ms. Woods’s condition. The State claims that Ms. Woods
15 has not shown “serious injury,” and suggest that Ms. Woods has advanced “[b]road allegations
16 of possible harm.” Response at 9. This statement is untrue and cruel. Ms. Woods suffers from
17 multiple, severe physical and mental health issues. They are not speculative or abstract—they are
18 real and verified by her physician, Dr. Gunderson. Ms. Woods suffers from a severe respiratory
19

20 ¹ The State’s attempt to equate Ms. Woods’s severe mental and health conditions with that of the State’s
21 counsel is so disturbing it warrants little mention. The difficulties and risks associated with travel for Ms.
22 Woods—who suffers from severe schizophrenia, lives in an assisted living facility, is 70 years old, suffers
23 from COPD, and spent 25 years wrongfully incarcerated with access only to low-quality healthcare—are
24 an extremely far cry from the State having an attorney “disabled under the ADA” due to a car accident
25 but who is a decade younger than Ms. Woods, who can still not only live independently but also practice
law, and who can freely travel (and, in fact, *offered to do so when the parties met and conferred*). To say
the COVID-19 pandemic “equally burdens” both parties belies the State’s claim that the State is
“sympathetic to Ms. Woods’s health issues.” Response at 10. The opposite appears to be true: the State
now demands that Ms. Woods—from whom it already took more than 35 years—risk her life, be
traumatized, and upend her safe quarantined life, all to the detriment of her health issues.

1 illness, Chronic Obstructive Pulmonary Disease (COPD), a “chronic inflammatory lung disease
2 that causes obstructed airflow from the lungs,” symptoms of which “include breathing difficulty,
3 cough, mucus (sputum) production and wheezing.” Mayo Clinic, COPD Overview,
4 <https://www.mayoclinic.org/diseases-conditions/copd/symptoms-causes/syc-20353679>. For Ms.
5 Woods, her COPD means that she requires oxygen, and has a tendency to get COPD
6 exacerbations “quite frequently,” which can be easily triggered by travel and exposure to
7 common “respiratory viruses, as well as environmental allergens” beyond those she is used to.
8 Ex. 6. Woods’ doctor wrote that sentence *before* the COVID-19 epidemic; and it would be
9 difficult for Ms. Woods to travel in the best of circumstances. *Id.*

10 Ms. Woods has also pointed to a “serious injury”: hospitalization and death. Ms. Woods’s
11 difficulties associated with COPD are exponentially magnified due to the COVID-19 pandemic,
12 as well as Ms. Woods’s age. Indeed, in the evidence submitted to the Court, Ms. Woods pointed
13 to the CDC’s findings concerning *Morbidity and Mortality Weekly Report* from June 15, 2020,
14 showing that “COVID-19 leads to severe outcomes in older adults and those with underlying
15 health conditions.” Ex. 10 at 1. Individuals with such underlying conditions, including chronic
16 lung disease, had hospitalizations that were “six times higher and deaths 12 times higher” than
17 those without such conditions (the rate was 19.5% with underlying conditions versus 1.6% for
18 those without such conditions). *Id.* at 2 (emphasis added). Furthermore, “[p]revalence of reported
19 severe outcomes increased with age; the percentages of hospitalizations, ICU admissions, and
20 deaths were highest among persons aged ≥ 70 years, regardless of underlying conditions.” Thus,
21 “severe outcomes were more commonly reported among persons who were older and those with
22 underlying health conditions.” *Id.* at 5. The only studies of the impact of COPD and COVID-19
23 have confirmed what the CDC reports indicate: “COVID-19 infection was associated with
24
25

1 substantial severity and mortality rates in COPD,” Jaber S. Alqahtani et al, Prevalence, Severity
2 and Mortality associated with COPD and Smoking in patients with COVID-19: A Rapid
3 Systematic Review and Meta-Analysis, PLOS ONE, at 2 (May 11, 2020), available at
4 <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0233147>. Indeed, the study
5 reports that some studies show a mortality rate for COPD patients at even 60%! *Id.* at 8. As a
6 result of their “increased risk of severe outcomes if they became infected with COVID-19, it is
7 recommended that patients and clinicians establish effective plans for ensuring prevention, such
8 as tele-medicine,” rather than in-person treatment to ensure they are not exposed. *Id.* at 9.

9 Fifth, beyond presenting a grave risk to Ms. Woods’s life, the State’s new request—that
10 Ms. Woods be forced to travel to Nevada—further implicates Ms. Woods’s mental health and
11 vulnerabilities. Tellingly, when a dispute like this arose in Ms. Woods’s federal civil rights
12 case—and before the rise of COVID-19—Ms. Woods filed a motion for protective order to
13 prevent her from being forced to travel to Nevada for a deposition. *See* Ex. 11, Motion for
14 Protective Order. That motion was supported by evidence from Dr. Gunderson, already
15 submitted here, Ms. Woods’s mental health providers at the time, as well as her home care
16 specialist. *See* Ex. 6 (Gunderson Letter from 1/24/2019); Ex. 12 (Clingaman Letter), and Ex. 13
17 (Todd Nasman Letter). As these documents uniformly make clear: it would be detrimental and
18 harmful to Ms. Woods to require her to travel to Nevada for a deposition, particularly to be
19 questioned about her wrongful conviction. Ms. Woods’s age now having attained 70-years-old,
20 and the COVID pandemic arriving in the interim, these issues are only more paramount and
21 compelling now. Tellingly, even then, and based upon the medical evidence, the federal court did
22 not require Ms. Woods to travel to Nevada. Ex. 14, Minute Entry.

ARGUMENT

I. Legal Standard

As previously explained, this is a special proceeding under CR 81. The State has again ignored this important fact. The entire framing of this case must be through the lens of a remedial statute and the unique sort of remedial statute at issue. *See Int'l Game Tech., Inc. v. Second Judicial Dist. Court ex rel. Cty. of Washoe*, 124 Nev. 193, 201 (2008) (remedial statutes “should be liberally construed to effectuate the intended benefit”). For example, Ms. Woods did not choose a particular forum and could not have brought this action in Washington State. Instead, via NRS 41.900, the Legislature waived Nevada’s sovereign immunity and a wrongful conviction claim must proceed in this forum. NRS 41.920.

Moreover, the State has ignored myriad authorities providing that, in “the absence of special circumstances, ‘a party seeking discovery must go where the desired witnesses are normally located.’ This rule applies even when the deponent is a defendant in the action.” *Clairmont v. Genuity, Inc.*, 2004 WL 2287781, at *1 (W.D. Wash. Mar. 26, 2004) (quoting *United States v. \$160,066.98 from Bank of America*, 202 F.R.D. 624, 627 (S.D. Cal. 2001) (quoting *Farquhar v. Shelden*, 116 F.R.D. 70, 72 (E.D. Mich. 1987)), and citing *Metrex Research Corp. v. United States*, 151 F.R.D. 122, 125 (D. Colo. 1993)).

When disputes location arise, the “general rule” that “the location of a deposition is determined by the residence or place of business of the deponent, not on the location of the court where the case is pending.” *McArthur v. Rock Woodfired Pizza & Spirits*, 318 F.R.D. 136, 139 (W.D. Wash. 2016). In short, “[a]lthough a court has wide discretion in determining the location of a deposition, the presumption is that, in the absence of exceptional circumstances, the deposition will take place where the deponent resides,” even when the deponent is a party.

1 *Shinde v. Nithyananda*, 2015 WL 12778434, at *2 (C.D. Cal. May 21, 2015). (citing *Berry v.*
2 *Baca*, 2002 WL 1777412, at *3 (C.D. Cal. July 29, 2002) (citing *General Leasing Co. v.*
3 *Lawrence Photo–Graphic Supply, Inc.*, 84 F.R.D. 130, 131 (W.D. Mo. 1979) (“In the absence of
4 exceptional or unusual circumstances, when a deponent resides at a substantial distance from the
5 deposing party's residence, the deposing party should be required to take the deposition at a
6 location in the vicinity in which the deponent resides, even if the deponent is a party.” (internal
7 citation and quotation marks omitted)); *see also Metrex Research Corp. v. United States*, 151
8 F.R.D. 122, 125 (D. Colo. 1993) (“In the absence of exceptional or unusual circumstances, when
9 a deponent resides at a substantial distance from the deposing party's residence, the deposing
10 party should be required to take the deposition at a location in the vicinity in which the deponent
11 resides, even if the deponent is a party.” (citing *General Leasing Co. v. Lawrence PhotoGraphic*
12 *Supply, Inc.*, 84 F.R.D. 130, 131 (W.D. Mo.1979), and *Moore v. Pyrotech Corp.*, 137 F.R.D. 356
13 (D. Kan. 1991)); *e.g. McArthur*, 318 F.R.D. at 139 (holding that a party wishing to depose
14 another party who had moved from Washington to California was required to do so in California
15 or in a location amenable to the other party, or take the deposition by telephone).

16
17 **II. The Circumstances DEMAND a Protective Order to Preserve the Health and**
18 **Life of Ms. Woods, an Extremely Vulnerable Person Who Has Already Endured**
19 **More than Three Decades of Wrongful Incarceration**

20 **A. Good Cause Abundantly Exists Here**

21 The original motion illustrated good cause for a remote deposition, rather than an in-
22 person deposition in Seattle, several hours’ drive from where Ms. Woods now resides. In
23 response, a callous disregard to Ms. Woods’s condition and ultimately her life, the State has
24 upped the ante: it now demands Ms. Woods travel to Reno. A protective order is needed, and
25 absolutely warranted.

1 As explained in the original motion, and incorporated here, to travel to *Seattle* would
2 expose Ms. Woods—who is elderly and immunocompromised—to serious COVID-19 risks. She
3 would be required to travel from an island to Seattle, which takes hours, and then be exposed to
4 hotel stays (which, inherently, involve an unknown risk and many travelers). Ms. Woods’s being
5 70 years old and having COPD only makes matters worse. *See generally* Ex. 4. Dr. William
6 Gunderson well explained these issues: “Traveling to Seattle would increase her risk of exposure
7 to Covid-19 severely, and if she was to develop an infection from Covid-19, she would be at
8 high risk of severe complications, including death.” Ex. 5 (6/8/20 Gunderson Letter).

9 In short, requiring Ms. Woods to leave her assisted living facility and travel to Seattle for
10 an in-person deposition would increase her risk of exposure to COVID-19—a disease which has
11 now killed over 127,322 people in the United States and sickened over 2.6 million—and her risk
12 of serious illness and death.² All of these risks would be greatly exacerbated if Ms. Woods were
13 forced to travel to Nevada, spend time in more hotels, and then travel back. For Nevada, quite
14 contrary to rushing inside to a closed space for hours straight off an airplane, “The Health
15 District and the Governor's Office are advising that anyone who has traveled out of state or by
16 airline should self-isolate and monitor symptoms for a period of 14 days following their return in
17 order to take precautions to prevent the spread of COVID-19 in Washoe County.”³

18 Indeed, the CDC continues to urge people not to travel, particularly if they are at an
19 increased risk of severe illness, as Ms. Woods undoubtedly is. CDC, Considerations for
20 Travelers—Coronavirus in the US (Updated June 28, 2020),
21 <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html>. The CDC further
22 asks folks to consider whether cases are rising in the area where they might travel. *Id.* Here,

24 ² See <https://coronavirus.jhu.edu/map.html> (last accessed 6/30/20).

25 ³ https://www.washoecounty.us/health/programs-and-services/communicable-diseases-and-epidemiology/educational_materials/COVID-19.php

1 Nevada’s numbers are *rising*. See CDC, Trends in Number of COVID-19 Cases in the US
2 Reported to CDC, by State/Territory (updated June 30, 2020, 6:03 P.M, EDT).

3 <https://www.cdc.gov/covid-data-tracker/index.html#trends>.

4 Finally, it is worth noting two things that the State has not addressed—and cannot
5 dispute. First, is that one health issue related to Ms. Woods’s having paranoid schizophrenia
6 means that she lives in an assisted living facility. Ex. 7 (Perrollaz Letter). If she were to leave her
7 facility and return, she would be quarantined in her room for at least 14 days after her return.
8 This would pose an undue hardship on her, because “her severe mental health issues *put her at*
9 *risk of decompensation* if she is forced to quarantine in her room for 14 days after she returns
10 from traveling off island for any possible deposition.” Ex. 5 (emphasis added). Second, an in-
11 person deposition is particularly likely to increase the risk of COVID-19 transmission. Ex. 8
12 (PNAS article explaining “there is a substantial probability that normal speaking causes airborne
13 virus transmission in closed environments”).

14 **B. While An In-Person Deposition In Nevada Would Impose A Particularly**
15 **Undue Hardship, But A Remote Deposition Would Not Burden The State**

16 The State’s argument that it is “entitled” to a deposition *in-person*, as opposed to
17 conducting one remotely, is baseless. This court conducts hearings and other matters through
18 virtual means routinely. See Administrative Order 2020-08 (May 19, 2020). This is simply the
19 way things work during a global pandemic particularly given the fact that, in the United States,
20 the spread of the virus is going up, rather than down. Nevada Rule of Civil Procedure 30(b)(4)
21 expressly allows the court to order depositions to be conducted remotely, and there is no reason
22 to deviate from the practice of this own court to pack people into a small room just because the
23 State has decided it does not really care about Ms. Woods’s serious medical issues or the
24 prospect that, after 35 years of wrongful incarceration and declaring that Ms. Woods has been
25

1 “exonerated,” she might die as a consequence of seeking compensation under a statute that was
2 enacted with her in mind.

3 Tellingly, all of the State’s purported “reasons” for needing an in-person deposition are
4 faulty and, even if they were valid, would not outweigh the severe risks present here. For
5 example, without explaining how or why their *own* investigation was not sufficient, the State
6 claims that Ms. Woods is the “only person” with ultimate knowledge on the topics at issue in this
7 case, including her innocence. Not so. The State did an extensive re-investigation after the DNA
8 from the Mitchell homicide “hit” to a serial killer, Rodney Halbower, and before the Washoe
9 County proclaimed that Ms. Woods was exonerated. In this re-investigation, the State
10 interviewed not only Ms. Woods, but also Rodney Halbower, and numerous other witnesses.
11 Moreover, Ms. Woods has already been subjected to a lengthy deposition about these topics.

12 The State claims: (1) it can “listen carefully and evaluate witness responses,” because
13 non-verbal cues can be more difficult to detect in remote depositions”; (2) that the “benefit of
14 spontaneity” inherent in an in-person deposition” allows “greater flexibility”; (3) that it is
15 difficult to use exhibits in a remote deposition; and (4) there is a greater risk of “logistical
16 issues.” Tellingly, the State has not offered any evidence to support its speculation on the topics
17 above. Indeed, there is nothing about being remote that would preclude the State from “listening
18 carefully,” being “spontaneous,” or attempting to assess credibility. *See* Ex. 15, Declaration of
19 David B. Owens, ¶2. Ms. Woods’s counsel has conducted a dozen depositions via Zoom since
20 the beginning of the pandemic and attests the issues identified by the State are speculative. *Id.*
21 While Zoom is not perfect, it is effective. *Id.* Nor are exhibits difficult to maintain, *id.* ¶ 3.
22 Instead, there are some benefits and ease—including reduced costs and greater flexibility—
23
24
25

1 concerning exhibits in a remote deposition. *Id.* In the end, logistical issues will not—like this
2 Court’s own hearings—likely be of a nature that would hinder progress. *Id.* ¶4.

3 More important: all of these things are small beans compared with the prospect that
4 attending a deposition in Nevada may very well likely kill Ms. Woods or result in her
5 hospitalization. To argue about being “spontaneous” or needing to “listen carefully” is a cruel
6 metric to use to compare against the life and well-being of an already extremely vulnerable
7 person, and who has already been extremely traumatized by, among other things, more than three
8 decades of wrongful imprisonment.

9 Finally, the State’s claims are belied not only by the experience of counsel but by
10 experience of other courts more generally. This Court conducts hearings remotely with
11 regularity. And, courts around the country have encouraged—and ordered—remote depositions
12 in light of the pandemic. *See, e.g., Highlander Holdings, Inc. v. Fellner*, 2020 WL 3498174, at
13 *9 (S.D. Cal. June 29, 2020) (“As an initial matter, in light of the COVID-19 public health crisis,
14 the Court has been strongly encouraging litigants in all of its cases to take depositions remotely.
15 Other courts have done the same.” (citing *Sinceno v. Riverside Church in the City of N.Y.*, 2020
16 U.S. Dist. LEXIS 47859, at *1 (S.D.N.Y. Mar. 18, 2020) (approving all depositions being taken
17 by “telephone, videoconference, or other remote means” in view of the COVID-19 pandemic);
18 *Pearlstein v. Blackberry Ltd.*, 2020 U.S. Dist. LEXIS 47032, at *2-3 (S.D.N.Y. Mar. 16, 2020)
19 (same); *Thomas v. Wallace, Rush, Schmidt, Inc.*, 2020 U.S. Dist. LEXIS 46925, at *6 (M.D. La.
20 Mar. 18, 2020) (same); *De Lench v. Archie*, 2020 U.S. Dist. LEXIS 58049, at *6 (D. Mass. Apr.
21 2, 2020) (“In light of the current coronavirus pandemic, the Court encourages the parties to avail
22 themselves of video technology for meetings, depositions, and other communication and
23 interactions arising in the discovery process.”)).
24
25

1 In short, this Court should find, as numerous others have, that Ms. Woods’s “concerns
2 over exposure to Covid-19 are sufficient grounds to have their depositions taken by “telephone
3 or other remote means”” and that the State has “not shown sufficient prejudice that would justify
4 forcing the witnesses to participate in in-person depositions.” *Lundquist v. First Nat’l Ins. Co. of*
5 *Am.*, 2020 WL 3266225, at *2 (W.D. Wash. June 17, 2020); *see also Yoon v. Lee*, 2020 WL
6 2946053, at *5 (C.D. Cal. June 3, 2020) (“Nevertheless, in light of the current global pandemic
7 involving the Coronavirus Disease 2019 (“COVID-19”), it appears somewhat unreasonable for
8 Defendants to continue to insist on Plaintiff traveling to Los Angeles to appear for a deposition,
9 particularly in light of other possible alternatives to an “in-person” deposition such as a remote
10 deposition by videoconference.”); *Saps, LLCs v. Ezcare Clinic Inc.*, 2020 WL 1923146, at *2
11 (E.D. La., Apr. 21, 2020) ([T]he “court will not require parties to appear in person with one
12 another in the midst of the present pandemic.”). Indeed, if the State is concerned about
13 “credibility” the resolution is that the deposition “should occur by videoconference,” which Ms.
14 Woods’s has already offered. *Lundquist*, 2020 WL 3266225, at *2.

15 **III. The Virtual Deposition Should Be Limited to Two Hours**

16 The State acknowledges that it has agreed to limit its questioning to avoid repeating those
17 already asked at Ms. Woods’s April 18, 2019 deposition. Response at 9. The State has also
18 agreed to “limit the deposition to a “few” hours. *Id.* As to timing, Petitioner’s request on the
19 current motion was specific: that the deposition be limited to 2 hours. The State having not
20 advanced a counter argument, or providing any need for more than 2 hours, this Court should
21 find the State has waived any opposition to this length limit and order that this specific length be
22 imposed. *See Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 65, 412 P.3d 56, 60 (2018) (failure
23 to respond to an argument constitutes waiver of an issue (citing *Bates v. Chronister*, 100 Nev.
24
25

1 675, 682, 691 P.2d 865, 870 (1984) (treating the failure to respond to the opposing
2 party's arguments as a confession of error).

3 **CONCLUSION**

4 WHEREFORE, Plaintiff Cathy Woods, a/k/a Anita Carter, respectfully requests that the
5 Court grant this motion for protective order, as described herein.

6 **AFFIRMATION**

7 (Pursuant to N.R.S. 239B.030)

8 The undersigned does hereby affirm that the preceding document does not contain the
9 social security number of any person.

10 Respectfully submitted this 30th day of June, 2020.

11 Submitted by:

12 /s/ Elizabeth C. Wang
13 Elizabeth C. Wang*
14 LOEVY & LOEVY
15 2060 Broadway, Suite 460
16 Boulder, Colorado 80302
17 O: 720-328-5642
18 elizabethw@loevy.com

19 David B. Owens*
20 LOEVY & LOEVY
21 311 N. Aberdeen St.
22 Chicago, Illinois 60607
23 O: 312-243-5900
24 david@loevy.com
25 *motions to associate granted

LUKE A. BUSBY, ESQ
Nevada Bar No. 10319
LUKE ANDREW BUSBY, LTD.
316 California Ave. #82
Reno, Nevada 89509
O: 775-453-0112
luke@lukeandrewbusbyltd.com

Attorneys for the Petitioner

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the date shown below, I caused service to be completed of a true and correct copy of the foregoing pleading by:

- personally delivering;
- delivery via Reno/Carson Messenger Service;
- sending via Federal Express (or other overnight delivery service);
- depositing for mailing in the U.S. mail, with sufficient postage affixed thereto; or,
- delivery via electronic means (fax, eflex, NEF, etc.) to:

AARON D. FORD
 Attorney General
 HEATHER D. PROCTER
 Chief Deputy Attorney General
 SHERYL SERREZE
 Deputy Attorney General
 State of Nevada
 Office of the Attorney General
 100 North Carson Street
 Carson City, Nevada 89701-4717
 Phone: (775) 684-1271
 Fax: (775) 684-1108
 HProcter@ag.nv.gov
Attorneys for Respondent

DATED this 30th day of June, 2020.

/s/ Elizabeth C. Wang
 Elizabeth C. Wang*
 LOEVY & LOEVY
 2060 Broadway, Suite 460
 Boulder, Colorado 80302
 O: 720-328-5642
elizabethw@loevy.com

LIST OF EXHIBITS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- Exhibit 11: Motion for Protective Order (in federal case)
- Exhibit 12: Letter from Daniel O. Clingaman and Janet A. Clingaman
- Exhibit 13: Letter from Todd E. Nasman (April 2, 2018)
- Exhibit 14: Minute Entry
- Exhibit 15: Declaration of David B. Owens (June 30, 2020)