

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0671

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ALLEN MUNRO & LINDA MUNRO

Plaintiffs and Appellees,

v.

JOHN MUNRO

Defendant and Appellant.

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**APPELLEES' ANSWER BRIEF**

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On Appeal from the Montana Thirteenth Judicial District Court,  
Yellowstone County, the Honorable Mary Jane Knisely, Presiding

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CLARK R. RAMSEY  
RAMSEY LAW, PLLC  
2722 3<sup>rd</sup> Ave. North  
Ste. 320  
Billings, MT 59101  
406-272-2437  
Clark@ramlawmt.com  
*Attorney for Plaintiffs/Appellees*

JOHN D. MUNRO  
509 Hillcrest Dr.  
Worland, WY 82401  
johnd7591@yahoo.com  
*Pro Se/Appellant*

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## I. STATEMENT OF THE CASE

This is a case for breach of contract, fraud, and constructive fraud. Appellees (hereinafter “Allen”) and Appellant (hereinafter “John”) are brothers. In the summer of 2017 John approached Allen asking Allen for money and John promised that he would pay Allen back a predetermined amount beyond what Allen loaned him. John determined the money to be repaid to Allen. On July 5, 2018 John wrote Allen a personal check for \$64,875.00 and wrote “loan” in the memo line. When Allen presented the check for payment it was declined. After making demands for reasonable assurances that the debt would be paid, Allen filed this action.

During the time John was pro se he filed a number of motions, answers, responses, and other pleadings in this matter as a pro se litigant, including a relatively intelligent and articulate *Answer to Summons*, and multiple motions to dismiss. *Trial Court Dkt #s 3, 9, and 29*. On a number of occasions the Trial Court ruled in John’s favor including granting his motion for a Subpoena Duces Tecum, Denying Plaintiffs’ motion for sanctions and attorney’s fees, and denying part of Plaintiff’s’ *Motion in Limine*. *Trial Court Dkt #s 66, 65, and 64*.

John again proceeded pro se in initially litigating his *Motion to Vacate Final Judgment*. *Trial Court Dkt # 123*. John also drafted and filed a relatively intelligent and articulate *Brief in Support of Motion to Vacate Final Judgment*. *Trial Court*

*Dkt # 125*. Prior to filing a reply brief, John retained Attorney Michael Doggett, and subsequently filed a reply brief through counsel. *Trial Dkts #s 132 & 135*. The District Court “deemed denied” John’s Motion. John timely appealed the denial.

## II. STATEMENT OF FACTS

John claimed to have invested “in excess of one million (\$1,000,000) of his own money” in the scheme he lured Allen into. *Trial Court Dkt. # 3*, pg. 6, ¶ 16. At trial, John greatly contradicted this statement, and his finances, and claimed he only invested “close to half a million dollars.” *Trial Transcript Day One*, pg. 154. In fact, on redirect by his trial counsel, John claimed his investment was a little less than half a million dollars. *Trial Transcript Day Two*, pg 110. John somehow convinced the United States District Court in CR-00023-SPW that he was owed over seven hundred thousand dollars (\$700,000.00) by defendant Richard Brooks. Appellant’s *Supplemental Appendix*, pg. 64, ¶6. John presented no information in his District Court *Motion to Vacate Final Judgment*, or in his appeal to this Court as to how he invested over two hundred thousand dollars (\$200,000.00) more than the amount he testified to investing at trial.

John raised the issue of usurious contract in his Trial Brief and proposed jury instructions, and again in the conference the Trial Court held with counsel on day one of trial prior to presenting the case to the jury. *Trial Court Dkt. #93* and *Trial Transcript Day One* pg. 3 - 7. Nearly two (2) years before trial, the Trial Court

granted Plaintiffs' *Motion in Limine* to bar defendant from raising any new defenses not properly raised to that point, which necessarily included the defense of usury. *Trial Court Dkt # 54 and 64*, pg. However, John withdrew his defense of usury and proposed instruction at the conclusion of trial. *Trial Transcript Day Two*, pg. 193. The Trial Court correctly recollected that there was not "any evidence in this case that your interest rate was illegal." *Id.* at pg. 198-199. Moreover, this exact same issue, citing the exact same case law was already raised on John's first appeal.

At the onset of trial, at which undersigned was counsel for Appellees, Appellees continuously advanced the theory that John was the sole conduit of the fraudulent scheme and that he alone was responsible for the damages. *Trial Transcript Day One*, pgs. 63-65. So too from the beginning of trial, John advanced the theory that he was the victim of a fraudulent scheme himself, and that the FBI was involved. *Id.* at pgs. 67-71. In fact, during opening statements, John's counsel told the jury that he had just moments before been notified by the FBI that indictments were coming down against Richard Brooks. *Id.* at pg. 68, ln 11-14. During trial, John's counsel indicated to the Court that he intended to call a person alleged to be an FBI Agent by the name of Shawn Shrader, and that this supposed Agent would be appearing by ZOOM. *Trial Transcript Day Two*, pg. 104. Ultimately, John's counsel withdrew this person as a witness, even though the

Court was willing to allow his ZOOM appearance over Allen’s objection and without having previously disclosed the witness. *Id* at pg. 105. Defense witness Lynette Myrstol (hereinafter Myrstol), and John’s counsel referenced Richard Brooks and the FBI so many times at trial, one could randomly select a page of the trial transcripts and find a reference. See *Trial Transcript Day One*, pgs. 155-157, 159-161, 168 and *Trial Transcript Day Two*, pgs. 6, 7, 24-29, 31-32, 35-37, 41, 56-57, 104, 105, 110. 125-128, 136-137

The Court allowed the admission of a letter purportedly from the FBI to Allen identifying Allen as a “possible victim” in a crime. *Trial Transcript Day One*, at pgs. 142-143. On redirect, Allen affirmed that he did not believe that the letter purportedly from the FBI was authentic. *Id.* at 144. John and Myrstol were both allowed to introduce evidence of their contact with the FBI, as well as the alleged victim notification letters they received from the FBI. *Trial Transcript Day One*, pg. 32 and *Trial Transcript Day Two*, pg. 125. Myrstol was even permitted to tell the jury that the FBI had identified six (6) to nine (9) other people as “victims” of the scheme. *Trial Transcript Day Two*, pgs. 145-147. Notably, no other victims aside from John and Myrstol appear in any of the documents John presented the District Court in his *Motion to Vacate Final Judgment*, or in the additional documents he provided this Court in his *Supplemental Appendix*.

Evidence entered at trial proved John was at least a co-conspirator of the scheme and that he directly made statements to Allen to induce him into providing John money directly and John made at least twenty (20) separate statements designed to continue to string Allen along with assurances of repayment. *Id.* at pgs. 56, 58, 64-66, 82-83. John's own exhibit A, pointed to him being Richard Brooks and he was permitted to rebut that assertion many times, including opportunities undersigned provided him to rebut it under cross-exam. *Id.* at 62-63, 68, 71, 108-109, 84, 168. John was allowed on re-direct to rebut the assertion that he was Richard Brooks. *Id.* at pg. 106. Myrstol was also allowed to present evidence that Richard Brooks was a real person and that he had even been served a summons by law enforcement on behalf of Myrstol. *Id.* at pgs. 136-137.

The jury was provided with ample evidence to consider the truth related to Richard Brooks and John Munro. The jury, after hearing all of the evidence and a great deal about the FBI, and that John and many others were the victims of Richard Brooks, found in favor of Allen and awarded him damages.

John's *Motion to Vacate Final Judgment* was filed several months beyond the one-year statute of limitations, more than sixty (60) days tolled following the conclusion of all briefing on the motion in district court, and months later, the District Court issued an order deeming John's motion denied.

### III. STANDARD OF REVIEW

This Court review's "a district court's ruling on a motion for relief from judgment depending on the "nature of the final judgment, order, or proceeding from which relief is sought and the specific basis of the Rule 60(b) motion." *Essex Ins. Co. v. Moose's Saloon, Inc.*, 2007 MT 202, ¶ 16, 338 Mont. 423, 166 P.3d 451. That review is generally limited to abuse of discretion. *Id.* Conclusions of law in a district court's ruling on a Rule 60(b) motion is reviewed de novo. *Id.*

While John contends that this Court should set aside judgment, ultimately what he asks this Court to do is to set aside the jury's verdict. This Court,

on review is simply to determine whether the verdict is supported by substantial credible evidence, which is defined as evidence that a reasonable mind might accept as adequate to support a conclusion. In making this determination, we must view the evidence in the light most favorable to the prevailing party. Moreover, as we have held, the prevailing party is entitled to any reasonable inference that can be drawn from the facts. As it is the jury's function to determine the weight and credibility of the evidence, this Court has held that evidence will be considered substantial even if we view it as inherently weak and conflicting and somewhat less than a preponderance; however, it must consist of more than a mere scintilla of evidence and it must rise above the level of trifling or frivolous.

*Seltzer v. Morton*, 2007 MT 62, ¶ 94, 336 Mont. 225, 257-58, 154 P.3d 561, 587-88

(internal citations omitted).

#### IV. SUMMARY OF THE ARGUMENT

The District Court properly “deemed denied” John’s Motion to Vacate Final Judgment pursuant to Rules 60(c)(1), 59(f), and 59(e), Mont. R. Civ. P., because the requisite 60 days had lapsed long before the Court issued its order deeming John’s Motion denied, and because John’s motion was expressly time barred by Rule 60(c)(1). In fact, the *Green* decision is incorrectly interpreted and applied by John. *Green* works in Allen’s favor because the *Green* Court expressly upheld that Rule 59 and 60 are mandatory and should be strictly enforced, and it found that the District Court erred in granting a motion to set aside default judgment expressly because the motion had been “deemed denied” at the expiration of 60 days. *Green v. Gerber*, 2013 MT 35, ¶¶ 25, 27, 369 Mont. 20, 303 P.3d 729 (internal citations omitted). Nothing in John’s cited case law holds otherwise. John’s assertion that the Court denied his motion because it believed it lacked jurisdiction simply denies the facts. John’s recourse was “to appeal the denial in order to preserve the issue as to whether the . . . judgment should be set aside.” *Id.* at 27 (internal citation omitted).

John failed to properly raise certain defenses at issue now, and he was properly barred from doing so. Upon Allen’s *Motion in Limine* to bar John from raising any new defenses, the District Court properly granted that motion and barred John from raising any new defenses consistent with M. R. Civ. P.12(b) and M.R.Civ. P.

8(c)(1). This Court has upheld Rule 8(c)'s prohibition on new defenses not properly raised. *Petaja v. Mont. Pub. Emples.' Ass'n (MPEA)*, 2016 MT 143, ¶ 23, 383 Mont. 516, 521, 373 P.3d 40, 44 (internal citations omitted). The Trial Court still allowed John the opportunity to raise the issue of the alleged interest rate with the jury. Moreover, John voluntarily withdrew his proposed jury instruction on usury at the conclusion of trial. *Trial Transcript Day Two*, pg.193. One cannot object and simultaneously voluntarily withdraw their defense and objection. This Court has held that a pro se litigant failing to properly raise a defense under Rule 8(c) will be upheld as a waiver of that defense. *Neil Consultants, Inc. v. Lindeman*, 2006 MT 80, ¶ 8, 331 Mont. 514, 515, 134 P.3d 43, 44 (internal citations omitted).

John raised the issue of usury at trial and on his first appeal in *Munro v. Munro*, DA-23-0131. While a non-cite opinion, this Court has already extensively analyzed and denied John's claim that the contract was void because of a usurious interest rate. *Munro v. Munro*, 2023 MT 254N, ¶¶ 12, 13. As such, John's renewed appeal on the same issue is barred by the doctrine of *res judicata*, and for all the same reasons it was already denied by this Court.

Lastly, John raises what is essentially a claim of "new evidence" entitling him to the judgment being vacated, and a new trial. In review of the trial transcripts and the exhibits John presented in support, none of his evidence is new beyond the unlearned's view. At best his "new evidence" is simply additional collateral and

cumulative information he extensively presented to the jury in various ways. Moreover, none of John's "new evidence" establishes what he claims it does.

John's argument that being named as a victim of a crime in a federal case committed by Richard Brooks, and Richard Brooks being ordered to pay John over \$700,000 in restitution, entitles him to the judgment being vacated and a new trial fails. This "new evidence" does not, as a matter of law, entitle John to have the judgment against him vacated, nor does it establish the basis for a new trial. While this evidence might be different than the evidence John had available to him at trial, it presents no new theory or fact that John did not extensively allege at trial. Quite literally, John and Myrstol alleged dozens of times at trial that they were the victims of Richard Brooks, that the FBI was investigating them, and that an indictment in federal court was looming on day one of trial. The fact that John failed to prosecute his case in a way that benefited him in the way he would prefer, does not entitle him to the requested relief.

John should be declared a vexatious litigant statewide because he meets all five of the *Stokes* factors. *Stokes v. First Am. Title Co. of Mont., Inc.*, 2017 MT 275, ¶ 4, 389 Mont. 245, 406 P.3d 439 (internal citations omitted). John has made demonstrably false allegations, in a sworn affidavit, of federal criminal investigations into Allen and undersigned, has accused his own attorney of lying before this Court, causing John to become pro se, and this Court's Clerk to wrangle

the issue, has intentionally misled this Court as to the facts presented at trial, has a history of other harassing conduct, is attempting now to relitigate issues this Court already denied in a previous appeal, has no good faith basis for believing he will prevail in the present appeal or the underlying pleadings, and no other sanctions will suffice.

## **V. ARGUMENT**

### **A. THE DISTRICT COURT PROPERLY DEEMED DENIED APPELLANT’S MOTION TO VACATE FINAL JUDGEMENT.**

At the onset, John’s argument’s fail because all of his cited precedent involves setting aside a default judgment. This matter involves a jury verdict and the entry of judgment for Plaintiff, which correctly reflected that verdict and award of damages to Plaintiff. John argues that the District Court was not without jurisdiction to rule on his *Motion to Vacate Final Judgment*, but this argument fails on the facts. Nowhere in the District Court’s *Order* dated October 22, 2024, did the District Court ever mention jurisdiction, much less a lack thereof. The District Court simply “deemed denied,” John’s motion by operation of Rule 60(a)(1) and Rule 59(f), Mont. R. Civ. P.. The Court also expressly denied the motion by “application of Rule 60(c)(1).” *Id.* at pg. 2, ln 19.

Rule 60(c)(1) expressly provides,

“A motion under Rule 60(b) must be made within a reasonable time – and for reasons (1), (2), and (3) no more than a year after the entry of judgment or order or the date of the proceeding. Motions provided by Rule 60(b) must

be determined within the times provided by Rule 59 in the case of motions for new trials and amendment of judgment, and if the court shall fail to rule on the motion within the time frames set forth in Rule 59(f), the motion must be deemed denied.

Because the District Court did not specify which provision of Rule 60(c)(1) it was applying, it follows that the District Court applied all of it and found John's Rule 60(b) untimely under the first provision, and that the motion must be "deemed denied" because the time for the District Court to rule had lapsed under Rule 59(f).

Even if John had timely filed the motion at issue, the District Court properly "deemed denied" John's *Motion to Vacate Final Judgment* pursuant to Rules 60(c)(1), 59(f), and 59(e), Mont. R. Civ. P., because the requisite 60 days had lapsed long before the Court issued its order deeming John's Motion denied. In fact, the *Green* decision is incorrectly interpreted and applied by John. *Green* works in Allen's favor because the *Green* Court expressly upheld that Rule 59 and 60 are mandatory and should be strictly enforced, and it found that the District Court in that case erred in granting a motion to set aside default judgment expressly because the motion had been "deemed denied" at the expiration of 60 days. *Green v. Gerber*, 2013 MT 35, ¶¶ 25, 27. (internal citations omitted). Nothing in John's cited case law holds otherwise. John's assertion that the Court denied his motion because it believed it lacked jurisdiction simply denies the facts. John's recourse was "to appeal the denial in order to preserve the issue as to

whether the . . . judgment should be set aside.” *Id.* at ¶ 27 (internal citation omitted). John did timely appeal the denial of his motion and asked this Court to consider on its own, or to order the District Court to consider the merits of his *Motion to Vacate Final Judgment*, which Allen will address in his argument *Infra*.

**B. THE DISTRICT COURT GRANTED PLAINTIFFS’ MOTION TO BAR DEFENDANT FROM RAISING ANY NEW DEFENSES. THE DISTRICT COURT STILL ALLOWED DEFENDANT THE OPPORTUNITY TO RAISE THE DEFENSE OF ILLEGALITY, BUT THE DEFENDANT NEVER RAISED THAT ISSUE AT TRIAL. DEFENDANT’S ARGUMENT IS BARRED BY RES JUDICATA.**

Mont. Code Ann. § 31-1-107 provides that “parties may agree in writing to the payment of any rate of interest that does not exceed the greater of 15% or an amount that is 6 percentage points per year above the prime rate . . .” In *Felska v. Goulding*, 245 Mont. 188, 193, 800 P.2d 161, 164 (1990), appellants in that case argued that a writing was not necessary, but this Court disagreed, finding that, “a writing is necessary for the parties to agree to a rate of interest.” The only writing ever introduced in this case was the check written by John to Allen for \$64,875.00, and it did not mention anything about the interest rate. The jury determined that John promised to pay Allen \$64,875.00.

M. R. Civ. P. 8(c)(1) requires that “in responding to a pleading, a party must affirmatively state any avoidance or affirmative defense including, but not limited to. . .” That list specifically includes “illegality” and that list is expressly **not** exhaustive. Appellant now argues that the interest rate was “illegal” and, therefore,

void. This Court cannot reach the question of voidness because Defendant never pled the defense of illegality. “The failure to affirmatively plead a defense set forth in Rule 8(c) results in a waiver of that defense.” *Petaja v. Mont. Pub. Emples.’ Ass’n (MPEA)*, 2016 MT 143, ¶ 23, 383 Mont. 516, 521, 373 P.3d 40, 44 (internal citations omitted). John raised no such defense in his responsive pleading. In *Petaja* this Court declined to address an issue not properly raised before the District Court. *Id.* It is well settled common law “that issues raised for the first time on appeal will not be reviewed.” *In re Transfer Terr. from Poplar Elem. Sch. Dist. No. 9 to Froid Elem. Sch. Dist. No. 65*, 2015 MT 278, ¶ 18, 381 Mont. 145, 151, 364 P.3d 1222, 1227 (internal citation omitted).

On March 22, 2021, more than two weeks after John’s trial counsel, Mr. Bracken entered his notice of appearance, and almost two (2) years before trial, the Trial Court granted Plaintiffs’ motion to bar defendant from raising any new defenses not properly raised to that point. *Trial Court Dkt # 64*, pg. 4. Despite this, the Court still granted the Defendant the opportunity to present issue with any alleged interest rate with the jury, which Defendant never presented. Moreover, John voluntarily withdrew his proposed jury instruction no. 2 on usury at the conclusion of evidence. *Trial Transcript Day Two*, pg. 193. While there was discussion about the interest rate at trial, the Trial Court correctly recollected that there was not “any evidence in this case that your interest rate was illegal.” *Id.* at

pg. 198-199. The Trial Court's comment on this in no way impacted Defendant's withdrawal of his instruction because that comment came long after he voluntarily withdrew it. This Court held in *Geiger* and its progeny that failure to object to jury instructions at trial waives the right to object on appeal. *Geiger v. Sherrodd, Inc.*, 262 Mont. 505, 509, 866 P.2d 1106, 1108 (1993). It follows that voluntarily withdrawing one's own instruction is a waiver of its reassertion on appeal. Perhaps more so, given that withdrawing an instruction is an affirmative act, and not merely the omission of failing to object.

Appellant should not be granted a review of a defense he never properly raised under M.R. Civ. P. 8(c), and was barred from raising under the Trial Court's Order. *Trial Court Dkt # 64*, pg. 4. Moreover, whatever issue he may have raised with a usurious contract, he voluntarily withdrew his jury instruction on it. While Defendant submitted his *Answer* to the Complaint pro se, this Court held that "while pro se litigants may be given a certain amount of latitude, that latitude cannot be so wide as to prejudice the other party, and it is reasonable to expect pro se litigants to adhere to procedural rules." *Neil Consultants, Inc. v. Lindeman*, 2006 MT 80, ¶ 8. (internal citations omitted). The *Neil* Court so stated this upon agreeing with the District Court that the Defendant in that case failed to properly state a legal defense under M.R.Civ.P. 8.. Even if this was not the controlling law for pro se litigants, John had the assistance of counsel for nearly two years prior to

trial and never made any attempt to remedy his noncompliance with Rule 8 or Rule 12.

John centers his entire usury argument around “more recent precedent established by this Court” citing *Felska. Opening Brief of Appellant*, DA-24-0671, pg. 6, ¶ 3. This same issue, with John citing *Felska* in his previous appeal (DA-23-0131), has already been addressed and denied by this Court in *Munro v. Munro*, 2023 MT 254N, ¶¶ 12, 13. In fact, John essentially recycled the same words from his Opening Brief in DA-23-0131, which also cited *Felska*, “[u]nder precedent more recently established by this Court, a contract with a usurious rate of interest is void...[and] unlawful....” *Opening Brief of Appellant, Munro v. Munro*, DA-23-0131, pg. 7, ¶ 2. *Res judicata* applies if five elements have been satisfied: (1) the parties or their privies are the same; (2) the subject matter of the present and past actions is the same; (3) the issues are the same and relate to the same subject matter; (4) the capacities of the persons are the same in reference to the subject matter and to the issues between them; and (5) a final judgment has been entered on the merits in the first action.” *Adams v. Two Rivers Apartments, LLLP*, 2019 MT 157, ¶ 8, 396 Mont. 315, 444 P.3d 415 (citing *Bugli v. Ravalli Cty.*, 2018 MT 177, ¶ 9, 392 Mont. 131, 422 P.3d 131). Here, all five (5) elements are met. (1) The parties are the same; (2) the subject matter is the same usury issue citing the same case law and statutory authority; (3) the usury issue is the same and relate to the same subject matter; (4)

the capacity of the persons are the same and relate the same subject matter of usury; and (5) a final judgment was entered by this Court on the merits in *Munro v. Munro*, 2023 MT 254N.

**C. THE DISTRICT COURT DID NOT ERR IN REFUSING TO ENTERTAIN THE MERITS OF APPELLANT’S MOTION BECAUSE IT WAS WHOLLY WITHOUT MERIT AND WAS NOT NEW EVIDENCE.**

John argues that the Court erred in failing to rule on the merits of his Rule 60(b)(6) motion. As a threshold matter, “[r]elief under [Rule 60(b)(6)] is appropriate only in extraordinary circumstances which go beyond those covered by the first five subsections of the rule.” *Essex Ins. Co. v. Moose’s Saloon, Inc.*, 2007 MT 202, ¶ 21, 338 Mont. 423, 166 P.3d 451. “Thus, before a party will be allowed to modify a final judgment under Rule 60(b)(6), he must first show that none of the other five reasons in Rule 60(b) apply” *In re Marriage of Waters*, 223 Mont. 183, 187, 724 P.2d 726, 729 (1986). John made no showing that the first five (5) reasons under Rule 60(b) did not apply, and in fact, all of his arguments fall squarely within the first three (3). As a matter of law, John’s *Motion to Vacate Final Judgment* and corresponding pleadings failed to meet the basic requirement and nullified any argument warranting consideration.

As alleged in Allen’s *Partial Answer to Defendant’s Rule 60 Motion to Vacate Final Judgment*, John’s *Motion to Vacate Final Judgment* blatantly attempts to skirt the one (1) year statute of limitations of Rule 60(c)(1) for Rule 60 motions based on

§§(b)(1),(2), and (3). *Trial Court Dkt. # 127*. John’s allegations that undersigned essentially committed misconduct by presenting to the jury that John was Richard Brooks, and that the FBI’s involvement was possibly fake, falls squarely within Rule 60(b)(3), which expressly defines the grounds for relief as “fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party.” Rule 60(b)(3), Mont. R. Civ. P. Moreover, Rule 60(c)(1) expressly bars a motion under Rule 60(b)(3) after one year from entry of the judgment or the date of the proceeding. The jury trial in this matter concluded on December 8, 2022 when it rendered its verdict. *Trial Court Dkt. # 108*. The District Court issued its Judgment for Plaintiff on December 22, 2022. *Id* at # 112. Notice of Entry of Judgment was filed on January 26, 2023. *Id* at 115. At best, John was barred by Rule 60(c)(1)’s statute of limitations from filing any Rule 60(b)(1), (2), or (3) motions after January 26, 2024. John filed his *Motion to Vacate Final Judgment* on March 8, 2024, several months after the statute of limitations had run.

“It is not the intent of Rule 60(b)(6) to be a substitute for appeal.” *Lussy v. Dye*. 215 Mont. 91, 93, 695 P.2d 465, 466(1985). By raising several of the same issues he already raised on appeal the first time, notably the issue of usury, John is not only trying to substitute appeal, he is trying to substitute this Court’s final order on his first appeal for the District Court’s ruling on his motion to vacate. Moreover, a motion pursuant to Rule 60(b)(6) must demand “more than a request for a rehearing

or a request that the District Court change its mind.” *Lussy*, 215 Mont. at 93, 695 P.2d at 466. It must be shown that something prevented a full presentation of the cause or an accurate determination on the merits and that for reasons of fairness and equity redress is justified. *Id*; accord *In re Marriage of Markegard*, 2006 MT 111, ¶ 16, 332 Mont. 187, 136 P.3d 532. A Rule 60(b)(6) motion requires the movant demonstrate (1) extraordinary circumstances; (2) the movant acted to set aside the judgment within a reasonable period of time; and (3) the movant was blameless. *In re Paternity of C.T.E.-H.*, 2004 MT 307, ¶ 45, 323 Mont. 498, 101 P.3d 254 (citing *Bahm v. Southworth*, 2000 MT 244, ¶ 14, 301 Mont. 434, 10 P.3d 99). There are no extraordinary circumstances here, and John is not blameless as argued *infra*.

A district court must consider four factors when a motion seeking relief from judgment is based on new evidence. (1) The alleged “newly discovered evidence came to a party’s knowledge after the trial; (2) it was not a want of diligence which precluded its earlier discovery; (3) the materiality of the evidence is so great it would probably produce a different result on retrial; and (4) the alleged “new evidence” is not merely cumulative, and not tending to impeach or discredit witnesses in the case. *Fjelstad v. State ex rel. Dep’t of Highways*, 267 Mont. 211, 220-21, 883 P.2d 106, 111-12 (1994). John’s arguments must fail on all four prongs, particularly the third and fourth.

Accepting *arguendo* John's claim that these new documents from the United States Federal District Court are true and accurate, this still does not grant him relief under any provision or Rule 60(b), including §§(6). First, John essentially asks for a new trial to present evidence that is merely collateral and cumulative to the mountain of evidence he already presented to the jury, which is prohibited by *Lussy*, and the fourth prong of *Fjelstad*. Further, John's Motion attempts to do precisely what the *Lussy* Court barred, substitute appeal, and attempt to relitigate the same issues. *Trial Court Dkt #s* 123, 125, and 127.

Turning to the issue of Richard Brooks and his dealings with the United States District Court in Montana, none of these arguments are persuasive either. John presents a fraud on this Court in attempting to convince this Court that undersigned presented to a jury that Richard Brooks was John Munro, knowing that this was untrue, and that undersigned invented this fiction out of thin air. The fact is, John himself, through his own Exhibit A admitted at trial, introduced the evidence that gave rise to the idea that he was Richard Brooks. *Trial Transcript Day One*, pg. 168. Defense's Exhibit A was bank deposit receipts with handwritten annotations. On cross-exam, undersigned's immediate line of questions to John was directly related to the authenticity of the deposit receipts. *Trial Transcript Day Two*, pg. 46-48. There, undersigned questioned the information therein:

Mr. Ramsey: Sir, how did you come to be in possession of documents that bear no one's name and no one's account

number except for someone allegedly named Richard Brooks?

*Trial Transcript Day Two* 48, ln 17. Then, for the first time, based on Exhibit A, undersigned asked John, “Okay, because in fact, you are Richard Brooks; isn’t that true?” *Id.* at pg. 49, ln. 4-5. John denied that allegation directly, saying, “no, I am not Richard Brooks.” *Id.* at ln 6. Undersigned then continued his line of questioning calling into question the authenticity of John’s claims of victimhood at the hands of Richard Brooks and the involvement of the FBI. *Id.* at 49.

Throughout trial, John was given every opportunity to present evidence that Richard Brooks was real, that the FBI really was involved, and that he and Myrstol were victims of Richard Brooks. A search of the transcripts reveals that the FBI was mentioned over seventy (70) times across two days of trial, most, if not all of which, were in the presence of the jury. Similarly, Richard Brooks, aka Rick Brooks, was mentioned over eighty (80) times across two days of trial. Perhaps most stunning of all, John withdrew a witness alleged to be an FBI agent on the case, even though the Court was going to allow him to appear by ZOOM over Allen’s objection, and notwithstanding the fact that he had never been disclosed as a witness. *Trial Transcript Day Two*, pg. 104-105. On this fact alone, none of the evidence John presents now is “new” and John’s arguments on prongs one and two of the *Fjelstad* test because John already knew about the supposed Richard Brooks prosecution at

the time of trial, and at best, his lack of diligence led to John failing to call the FBI witness who could have established the same facts he asserts as new now.

Certainly, assuming Agent Shrader was a bonified FBI Agent, he could have presented all of the same evidence John now asserts as “new evidence” to this Court. Even absent Agent Shrader testifying, the jury was still permitted to hear that this Agent Shrader existed. As a matter of record, John never subpoenaed an Agent Schrader, or any other person from the FBI. The District Court record reveals that John issued no subpoenas and never asked the Court to issue any either.

Assuming *arguendo* that John and Richard Brooks are two distinctly different human beings, John admitted at trial that he directly participated in the scheme, that Allen never had direct contact with Richard Brooks, that all money Allen provided flowed through John, and that John provided Allen over 20 separate excuses to pacify Allen’s concern about being repaid. *Trial Transcript Day Two*, pgs. 56, 58, 64, 65, 66, 82, 83. Even on cross-exam, undersigned provided John the opportunity again to present any evidence that he was the victim of Richard Brooks. *Id.* at pgs. 68, 71, 108, 109. In essence, the jury received evidence that regardless of the question of physical identity and names, John Munro and Richard Brooks were one in the same, in other words, co-conspirators. Undersigned’s assertion that John Munro was Richard Brooks was clearly to suggest to the jury, based on all of the evidence, that John was at least a co-conspirators. One could only arrive at a different

conclusion without reviewing John's own Exhibit A, and all of John's testimony regarding his direct involvement in the scheme.

John's new evidence runs afoul of the fourth prong of *Fjelstad* because its sole purpose would be cumulative, and to impeach or discredit what was extensively litigated at trial. Indeed, even if the evidence was for another purpose, it would fail on the third prong of *Fjelstad* because the materiality of it would be no different than what was already presented at trial, including several documents purporting to be from the FBI, and a great deal of testimony about the FBI, and that John and Myrstol were victims of Richard Brooks. Thus, this new evidence would have no chance of producing a different result.

In presenting closing arguments to the jury, undersigned showed the jury Defense's Exhibit A and pointed the jury to a new fact within it he hadn't noticed before, which was that the deposit receipts therein showed the available balance of the Richard Brooks' account, and on that basis, and others, undersigned again asserted that John Munro was Richard Brooks. *Trial Transcript Day Three*, pg. 36, ln 14 – pg. 37, ln. 22. This assertion, again based on the evidence, suggested that no one other than Richard Brooks himself, or a co-conspirator of Richard Brooks, namely John Munro, would have access to the account balance and it was each juror's opportunity and duty to rely on their own experience with what such evidence amounted to.

The fact that the federal government believes John to be a victim, and that a jury believed him to be at least a co-conspirator with Richard Brooks in the same scam, is not in conflict. The burden of proof in a criminal case is beyond a reasonable doubt. The burden of proof in John Munro's civil trial is by a preponderance of the evidence, more probably true than not true. In fact, the jury was instructed on that very fact, and that in arriving at their decision had to consider "all the evidence, whether produced by the plaintiff or defendant." *Trial Court Dkt # 107*, given instruction # 11a. As a matter of law, "[t]he court must defer to the jury's constitutionally sanctioned decisional role, and it is not the court's role to repeat the jury's tasks and retry a case or reweigh the evidence." *In the Matter of L.A.*, 2013 MT 327, ¶ 11, 372 Mont. 368, 313 P.3d 115.

The jury based its verdict on substantial credible evidence. This Court has already determined that so long as there was substantial evidence, the jury's verdict will stand, and that this Court views that evidence in the light most favorable to the prevailing party. *Seltzer v. Morton*, 2007 MT 62, ¶ 94, 336 Mont. 225, 257-58, 154 P.3d 561, 587-88 (internal citations omitted). No other conclusion can be reached in this case when one reviews all of the evidence presented to the jury in the required light.

**D. ALLEN REQUESTS AN ORDER DECLARING JOHN A VEXATIOUS LITIGANT ON A STATEWIDE BASIS.**

Given all of the foregoing, and the reasons *infra*, Allen requests that this Court consider declaring Appellant/Defendant John Munro a vexatious litigant statewide, or to at least to admonish John that he is dangerously close to the crossing that line.

Every person is guaranteed access to the courts as a matter of Constitutional right. Mont. Const. art. II, § 16. However, that right is not absolute and may be limited where a balance must be struck between the right and “protecting other parties from unnecessary expense of litigating” against a vexatious litigant and “protecting the courts from unnecessary expenditure of judicial recourses.” *Stokes v. First Am. Title Co. of Mont., Inc.*, 2018 MT 275 ¶¶ 3, 13 (citing *Peterson v. Great Falls Sch. Dist. No. 1 & A*, 237 Mont. 376, 380, 773 P.2d 316, 318 (1989)). Every court in the United States has the power to “provide for the orderly conduct of proceedings before it,” § 3-1-111(3), MCA, and the “discretion to meet the circumstances causes by vexatious litigants.” *Illinois v. Allen*, 397 U.S. 337, 343, 90 S. Ct. 1057, 1061 (1970); accord *State v. Hartsoe*, 2011 MT 188, ¶ 25, 361 Mont. 305, 258 P.3d 428. The Montana Supreme Court has supervisory control over all other courts under the Montana Constitution. Mont. Const. art. VII § 2, and the Montana Rules of Appellate Procedure afford this Court discretion to grant this request to declare John a vexatious litigant by ordering the requested “penalty as the supreme court deems proper under the circumstances.” M. R. App. P. 19(5).

“This Court may sanction a litigant, including the imposition of a pre-filing order, for vexatious litigation conduct. *McCann v. McCann*, 2018 MT 207 ¶ 38, 392. 385, 425 P.3d 682; *see, Stokes*, ¶ 4.

This Court uses a five-factor test to consider whether a pre-filing order is warranted:

(1) The litigant’s history of litigation and, in particular, whether it has entailed vexatious, harassing, or duplicative lawsuits; (2) the litigant’s motive in pursuing the litigation; e.g., whether the litigant has an objective good faith expectation of prevailing; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and court personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties.

*McCann*, ¶ 38 (citing *Stokes*, ¶ 4, and *Motta v. Granite Cty. Comm’rs*, 2013 MT 172, ¶ 20, 370 Mont. 469, 304 P.3d 720).

Under the first factor, John’s history of harassing Allen and his counsel and making slanderous statements that amount to not only professional misconduct, but criminal allegations, including fictitious ongoing federal criminal investigations of Allen and undersigned, is the basis upon which John comes before this Court now. Moreover, this is not the first time he has made a baseless ad hominem attack on Allen’s counsel. The *Affidavit* accompanying John’s *Motion to Vacate Final Judgment* underlying this appeal contains this claim from John:

Upon information and belief, U.S. Attorney Zeno Baucus has disclosed to me that Plaintiff Allen Munro and his attorney Clark Ramsey are under investigation for perjury based on the statements made at trial in this matter.

*Trial Court Dkt. # 124.* John made the same claim in his *Brief in Support of Motion to Vacate Final Judgment. Trial Court Dkt. # 125.* Such a statement is not only believed to be false, its demonstrably false because even if someone perjured themselves in a State court, the federal government would have no jurisdictional hook. This is to say nothing of the fact that no FBI agent ever appeared in the flesh or by video, no one ever presented undersigned with any certifiable documentation, a badge. An official identification, or anything else that would have led Allen or undersigned to believe anything about the FBI's involvement. It is common knowledge that scheme's routinely impersonate law enforcement officers, including the FBI. No learned person would accept that the FBI was really on the phone, or that the FBI issued letters with their logo in black and white. This is in addition to all the reasons cited *supra* and at trial that Richard Brooks and John Munro were co-conspirators. John took a similar approach pre-trial with Allen's previous counsel, Joshua Kotter, and directly accused Mr. Kotter of being a fraudster and a liar. *Trial Court Dkt. # 42, pgs. 3-5.* Moreover, John has raised identical arguments in his first appeal and his second appeal now.

Under the second factor, John had no good faith reason to believe that he would prevail in any of his recycled arguments now before this Court. He had no reason to believe that he would prevail in the District Court on his motion either.

Indeed, John's underlying motion was so baseless, the District Court saw no reason to rule on the merits.

Under the third factor, John has been represented at various stages throughout these proceedings. The underlying motion, affidavit, and brief were filed pro se. Attorney Doggett appeared to file John's reply brief in the underlying filings, and this appeal. John is pro se now, against the explicit advice of this Court's Clerk, after he accused Attorney Doggett of not believing "in facts and truths..." essentially calling his own attorney a liar.

Under the fourth factor, John has caused extensive unnecessary expense on Allen, and an unnecessary burden on the courts and court personnel. His claim that undersigned was under a federal criminal investigation caused undersigned to temporarily withdraw from this matter, to file only a partial response to John's underlying pleadings, and for Allen to hire alternative counsel Adrian Gosch to fully respond to the underlying appeal. See *Trial Court Dkt. #s 127, 130, 131*. The foregoing being in addition to Allen having to pay attorneys to respond to duplicative arguments in District Court this Court already denied, and to respond to this appeal.

Finally, under the fifth factor, no other sanction would be adequate to protect Allen, his counsel, and the courts from a continuation of the foregoing conduct, which John has repeated to varying degrees multiple times. Falsely alleging an

ongoing federal criminal investigation against Allen and undersigned is a clear indication that no sanction, law, rule, or order will be effective in tamping down John's outrageous tactics and in protecting Allen from continued unnecessary costs, or in protecting the courts from duplicative filings, and misconduct allegations against John's own counsel.

## **VI. Conclusion**

The District Court properly "deemed denied" John's *Motion to Vacate Final Judgment*, both because the 60 days had lapsed without the Court making a ruling, and because John's motion was time barred pursuant to Rule 60(c)(1). This Court already denied John's first appeal on the same issue of usuary, with John citing the same law and facts. John's new evidence is nothing new and was extensively litigated before the jury. The District Court's order deeming John's Motion denied should be affirmed.

RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of September, 2025.

/s/ CLARK R. RAMSEY  
Attorney for Appellees

## **CERTIFICATE OF COMPLIANCE**

Pursuant to M.R. App. P. 11(4)(e), I certify that this Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word is 7,786 words, excluding caption, certificate of service compliance, and certificate of service.

*/s/* CLARK R. RAMSEY

## **CERTIFICATE OF SERVICE**

I, Clark Ryan Ramsey, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 09-02-2025:

John D. Munro (Appellant)  
509 Hillcrest Drive  
Worland WY 82401  
Service Method: Conventional

Electronically Signed By: Clark Ryan Ramsey  
Dated: 09-02-2025