

FILED

DEC 18 2013

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
Tracie K. Lindeman
DEPUTY CLERK

INDICATE FULL CAPTION:

ANGELA DeCHAMBEAU and JEAN-PAUL
DeCHAMBEAU, both Individually and as
SPECIAL ADMINISTRATORS of the
ESTATE of NEIL DeCHAMBEAU,
APPELLANTS

VS

STEPHEN C. BALKENBUSH, ESQ., THORNDALE,
ARMSTRONG, DELK, BALKENBUSH and
EISINGER, A Nevada Professional
Corporation, And DOES (through X, inclusive),
RESPONDENTS

No. 64463

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

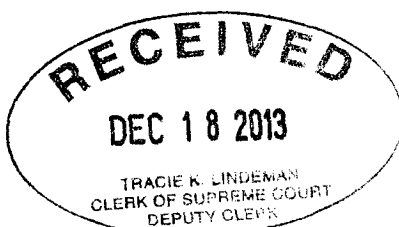
All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.



13-38540

Revised 9/30/11

1. Judicial District Second Judicial Court NV Department 7

County Washoe

Judge Patrick Flanagan

District Ct. Case No. CV12-000571

2. Attorney filing this docketing statement:

Attorney Charles R. Kozak, Esq.

Telephone (775) 322-1239

Firm Charles R. Kozak, Attorney at Law, LLC

Address 3100 Mill Street, Suite 115
Reno, NV 89502

Client(s) Angela DeChambeau and Jean-Paul DeChambeau

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Margo Piscevich

Telephone (775) 329-0958

Firm Piscevich & Fenner

Address 499 West Plumb Lane, Suite 201
Reno, NV 89509

Client(s) Stephen C. Balkenbush, Esq., Thorndal, Armstrong, Delk, Balkenbush and Eisinger,
a Nevada Professional Corporation, and DOES 1 through X, inclusive

Attorney Mark J. Lenz

Telephone (775) 329-0958

Firm Piscevich & Fenner

Address 499 West Plumb Lane, Suite 201
Reno, NV 89509

Client(s) Stephen C. Balkenbush, Esq., Thorndal, Armstrong, Delk, Balkenbush and Eisinger,
a Nevada Professional Corporation, and DOES 1 through X, inclusive.
(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

This instant malpractice case arose as a result of a medical malpractice case: Angela DeChambeau et al, Plaintiffs vs. David Smith, M.D. et al, Defendants; Case CV07-02028; filed in the Second Judicial District Court of Nevada in and for the County of Washoe, Department 4. This case was dismissed with prejudice by Plaintiffs' counsel on May 5, 2010. As a result of the circumstances under which this related case was dismissed, the instant action for legal malpractice was filed.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This action is for legal malpractice by Plaintiffs' former counsel who dismissed Plaintiffs' medical malpractice action on May 5, 2010.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The principal issue on appeal is whether a genuine dispute as to a material fact existed as to whether Defendants, Stephen C. Balkenbush et al failed to perform legal services that met the acceptable standards of practice for attorneys handling medical malpractice cases in Nevada.

A second issue is whether the trial court correctly entered a Judgment for Defendants as to costs and interests following the court's granting Defendants' motion for Summary Judgment.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from 10/17/2013

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served 10/18/2013

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed 11/14/2014

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The Order granting Summary Judgment constitutes a final judgment as to all issues and all parties. Likewise, the Order Granting Costs and Interest constitutes a final judgment as to all parties.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Angela DeChambeau and Jean-Paul DeChambeau, both Individually and as Special Administrators of the Estate of Neil DeChambeau, Plaintiffs.

Stephen C. Balkenbush, Esq., Thorndal, Armstrong, Delk, Balkenbush and Eisinger, A Nevada Professional Corporation, Defendants.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiffs: Legal malpractice

Defendants: No claims

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

The Order for Summary Judgment was granted on behalf of all Defendants against all Plaintiffs and the Court ordered "Plaintiffs' claims as set forth in their Complaint are DISMISSED, with prejudice".

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Angela and Jean-Paul DeChambeau
Name of appellant

Charles R. Kozak
Name of counsel of record

December 17, 2013
Date

Charles R. Kozak
Signature of counsel of record

Nevada, Washoe
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 17th day of December, 2013, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Margo Piscevich
Mark J. Lenz
Piscevich & Fenner
499 West Plumb Lane, Suite 201
Reno, NV 89509

Dated this 17th day of December, 2013

Margaret V. Adams
Signature

SECTION 26 FILE-STAMPED DOCUMENTS

DOCUMENTS

DATE FILED

- | | | |
|----|--|-------------------|
| 1. | Original Complaint (never amended). | March 6, 2012 |
| 2. | Order Granting Motion for Summary Judgment | October 17, 2013 |
| 3. | Notice of Entry of Order | October 18, 2013 |
| 4. | Order | November 26, 2013 |
| 5. | Notice of Entry of Order | November 26, 2013 |
| 6. | Judgment | December 6, 2013 |
| 7. | Notice of Entry of Judgment | December 9, 2013 |

1 CHARLES R. KOZAK, ESQ.
2 Nevada State Bar No. 11179
3 1225 Tarleton Way
4 Reno, NV 89523
5 (775) 622-0711
6 Kozak131@charter.net
7 Attorney for the Plaintiff

8 **IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA**
9 **IN AND FOR THE COUNTY OF WASHOE**

10 ANGELA DECHAMBEAU and
11 JEAN-PAUL DECHAMBEAU, both
12 Individually and as SPECIAL
13 ADMINISTRATORS of the ESTATE
14 of NEIL DECHAMBEAU,

Case No.

Dept. No.

15 Plaintiff,

16 Vs.

17 STEPHEN C. BALKENBUSH, ESQ.,
18 THORNDAL, ARMSTRONG, DELK,
19 BALKENBUSH and EISINGER,
20 A Nevada Professional Corporation,
21 & DOES I through X, inclusive,

22 Defendants.

23 **COMPLAINT**

24 **COME NOW** Plaintiffs, ANGELA DECHAMBEAU and JEAN-PAUL
25 DECHAMBEAU both individually and as SPECIAL ADMINISTRATORS of the ESTATE of
26 NEIL DECHAMBEAU, by and through their attorney, CHARLES R. KOZAK, ESQ., and for
27 their COMPLAINT against the Defendants, STEPHEN C. BALKENBUSH, ESQ.,
28 THORNDAL, ARMSTRONG, DELK, BALKENBUSH and EISINGER, a Nevada Professional

1 Corporation, and DOES I – X, hereby allege as follows:

2 **PARTIES**

3
4 1. Plaintiff, ANGELA DECHAMBEAU, at all material times hereto was a competent, adult
5 resident of Reno, Nevada including at the time of the incidents set forth in this Complaint. At
6 all material times hereto, said Plaintiff was the wife and/or widow of NEIL DeCHAMBEAU.

7 2. Plaintiff, JEAN-PAUL DECHAMBEAU, at all material times hereto was a competent,
8 adult resident of Reno, Nevada including at the time of the incidents set forth in this Complaint.
9 At all material times hereto, said Plaintiff was the son and/or survivor of NEIL DeCHAMBEAU.

10 3. On September 8, 2006, NEIL DeCHAMBEAU, the husband of Plaintiff, ANGELA
11 DECHAMBEAU and the father of Plaintiff, JEAN-PAUL DECHAMBEAU, died while
12 undergoing a procedure on his heart at Washoe Medical Center in Reno, Nevada.

13
14 4. On or about December 26, 2006 Plaintiffs, ANGELA DECHAMBLEAU and JEAN-
15 PAUL DECHAMBEAU, were appointed Special Administrators of the Estate of NEIL
16 DeCHAMBEAU

17
18 5. Defendant, STEPHEN C. BALKENBUSH, ESQ. (hereinafter "BALKENBUSH"), at all
19 material times hereto was a competent, adult resident of Reno, Nevada, licensed to practice law
20 in the State of Nevada.

21
22 6. Defendant, THORNDAL, ARMSTRONG, DELK, BALKENBUSH and EISINGER
23 (hereinafter "THORNDAL LAW FIRM" or "TADBE"), at all material times hereto was and is a
24 Reno, Nevada law firm and resident with offices located at 6590 South McCarran Blvd., Suite B,
25 Reno, Nevada 89509. THORNDAL LAW FIRM members and employees at all material times
26 hereto were and continue to be engaged in the practice of law in Reno, Washoe County, Nevada.

27
28 7. Defendants, JOHN DOES I – X, are individuals who reside in Nevada and who may have

1 aided and abetted other defendants in the actions which form the basis for the Plaintiffs' various
2 complaints as set forth herein below and thereby may be liable to Plaintiffs as discovery may
3 reveal. Upon their true identities becoming known by Plaintiffs, Plaintiffs' counsel will move the
4 Court to have them added as Named Defendants.
5

6 **FIRST CAUSE OF ACTION**
7 **(Legal Malpractice)**

8 8. On or about September 5, 2007, Defendants filed a medical malpractice lawsuit on behalf
9 of the Plaintiffs, alleging that DAVID SMITH, M.D., BERNDT, CHANEY-ROBERTS,
10 DAVEE, GANCHAN, ICHINO, JUNEAU, NOBLE, SEHER, SWACKHAMER, THOMPSON,
11 WILLIAMSON and ZEBRACK, LTD., a Nevada Professional Corporation, DAVID KANG,
12 M.D., RINEHART, LTD., a Nevada Professional Corporation and DOES 1 – 10 caused the
13 wrongful death of NEIL DeCHAMBEAU on September 8, 2006 through medical professional
14 negligence.
15

16 9. Defendant, BALKENBUSH was the lead attorney among the Defendants named herein.
17 As such he retained two medical experts, Cardiologist FRED MORADY, M.D. and
18 Anesthesiologist WILLIAM MEZZEI, M.D. Both of these experts provided sworn expert
19 witness reports in which they stated that Cardiologist, DAVID SMITH, M.D. and
20 Anesthesiologist DAVID KANG, M.D. had failed to meet the standard of care in treating NEIL
21 DeCHAMBEAU and thereby caused the death of NEIL DeCHAMBEAU in the operating room
22 on September 7, 2006.
23

24 10. As set forth in paragraphs 20 through 31 of Defendants' medical malpractice lawsuit filed
25 on behalf of Plaintiffs, the defendants hereto alleged the following facts, with their signature to
26 said lawsuit verifying the truth thereof:
27
28

20. On September 7, 2006, Neil DeChambeau was [sic] 57 year old male in good physical health who was admitted to Washoe Medical Center to undergo an atrial fibrillation ablation procedure to address a previously diagnosed paroxysmal atrial fibrillation.
21. On the morning of September 7, 2006, Neil DeChambeau was brought to the cath lab at Washoe Medical Center where David Kang, M.D. Induced anesthesia. Neil DeChambeau was intubated and anesthesia was maintained throughout the atrial fibrillation ablation procedure.
22. At or about 12:39 p.m., Neil DeChambeau suddenly developed cardiac arrest. In response to the cardiac arrest cardio pulmonary resuscitation was instituted on Neil DeChambeau and multiple doses of vasoactive drugs were administered as chest compressions were performed.
23. At or about 1:00 p.m., an echo-cardiogram of the heart showed a cardiac tamponade.
24. At or about 1:00 p.m., a pericardiocentesis was performed and approximately 300 ccs of blood were removed from Neil DeChambeau's pericardial sac.
25. David Smith, M.D. failed to timely diagnose that Neil DeChambeau experienced a cardiac tamponade.
26. David Smith, M.D. failed to timely perform a pericardiocentesis procedure on Neil DeChambeau.
27. David Kang, M.D. failed to timely diagnose that Neil DeChambeau experienced a cardiac tamponade.
28. David Kang, M.D. failed to timely recommend to David Smith, M.D. that he perform a pericardiocentesis [sic] on Neil DeChambeau.
29. David Kang, M.D. failed to timely perform a pericardiocentesis [sic] on Neil DeChambeau.
30. The conduct of David Smith, M.D. set forth in paragraphs 25 and 26 fell below the standard of care owed by David Smith, M.D. to Neil DeChambeau and caused Neil DeChambeau to suffer irreversible brain damage and death.
31. The conduct of David Kang, M.D. set forth in paragraphs 27, 28, and 29 fell below the standard of care owed by David Kang, M.D. to Neil DeChambeau and caused Neil DeChambeau to suffer irreversible brain damage and death.
11. Trial of the above described medical malpractice suit was eventually set for July 12,

1 2010.

2 12. In June 2010, Plaintiffs were informed by BALKENBUSH that their case had been
3 dismissed against all of the Defendants.
4

5 13. In actuality, BALKENBUSH had stipulated to a dismissal with prejudice of their
6 Complaint on May 5, 2010 **without ever informing Plaintiffs he was doing this and without**
7 **ever obtaining their permission or authority to do so before he did.**

8 14. BALKENBUSH'S stated reason for dismissing Plaintiffs' case was that as a result of a
9 review of an EPS tape recorded during the operation, DR. MORADY, one of Plaintiffs' experts,
10 had reversed his opinion as to the negligence of DR. DAVID SMITH. BALKENBUSH never
11 provided Plaintiffs with any written communication from DR. MORADY to him in which DR.
12 MORADY explained his alleged reversal of his original opinion of DR. SMITH'S malpractice.
13 In fact no such opinion exists in any written form.
14

15 15. No reason was given to Plaintiffs by BALKENBUSH for the dismissal of the case
16 against DR. KANG. They were simply told that the case against DR. KANG had been dismissed
17 with prejudice as well a month or so after BALKENBUSH had done so without Plaintiffs'
18 knowledge or permission.
19

20 16. At no time did BALKENBUSH conduct any written discovery of any Defendants in the
21 case, other than to request production of the medical records of the various Defendants.
22

23 17. The critical issue in the medical malpractice case was the timing of DR. SMITH'S
24 reaction to NEIL DeCHAMBEAU going into cardiac arrest during the scheduled six (6) hour
25 cardiac ablation procedure. Instead, the procedure lasted over nine (9) hours.
26

27 18. At no time during the pendency of the medical malpractice case from its filing date of
28 September 5, 2007 until BALKENBUSH dismissed it on May 5, 2010 without Plaintiffs'

1 knowledge or permission, did BALKENBUSH take the depositions of DR. SMITH, DR. KANG,
2 DR. KROLLI (a resident physician who was present with DR. SMITH and DR. KANG during
3 the procedures performed on NEIL DeCHAMBEAU on September 7, 2010), or the thoracic
4 surgeon who was called in to consult after the patient had suffered cardiac arrest due to a hole
5 being punched in the decedent's heart during the ablation procedure. These physicians were all
6 present in the operating room and witnessed each other's actions, omissions and malfeasance
7 which caused the premature death of NEIL DeCHAMBEAU.
8
9

10 19. In order to meet the acceptable standard of care for physicians, DR. SMITH and/or DR.
11 KANG should have immediately performed the procedure known as "pericardiocentesis"
12 immediately after becoming aware that the patient had gone into cardiac arrest. Instead, both
13 DR. SMITH and DR. KANG violated the standard of care by waiting until an echocardiogram
14 could be ordered and performed, after a useless ten (10) minutes of CPR were administered. By
15 the time the futile CPR measures had been performed (they did absolutely no good as the CPR
16 only acted to push the blood out of the heart through the tamponade) and then the
17 echocardiogram ordered and performed, the patient's brain had been deprived of oxygen for at
18 least ten (10) minutes, resulting in irreversible brain damage.
19
20

21 20. The Defendants provided an EPS tape allegedly recorded during the operation to
22 BALKENBUSH. Defendants claimed this tape contradicted the written medical records and
23 proved that DR. SMITH had acted in accordance with the acceptable standards of practice when
24 responding to the cardiac arrest of NEIL DeCHAMBEAU. Other than DR. SMITH'S Counsel's
25 representations as to the authenticity of the EPS tape, BALKENBUSH made no attempt to verify
26 its authenticity or even explore the spoliation of evidence issues attendant with the isolated
27 appearance of the EPS tape long after the other medical records had been produced by the
28

1 Defendants. BALKENBUSH made no attempts through discovery to verify that the tape was
2 authentic or was in fact made during NEIL DeCHAMBEAU'S operation. BALKENBUSH also
3 failed to have the tape examined and tested by a properly credentialed expert to determine if the
4 tape had been tampered with or altered in any way. BALKENBUSH failed to use any discovery
5 tools whatsoever to determine whether the tape, if genuine, in any way exonerated DR. SMITH
6 and DR. KANG from medical malpractice in the operating room.
7

8
9 21. DR. SMITH'S own records of the events leading up to and causing the premature death
10 of NEIL DeCHAMBEAU, transcribed on September 8, 2006 specifically state:

11 At the end of the ablation, the patient had evidence of hemodynamic compromise
12 with hypotension and some bradycardia. Stat echocardiogram was performed,
13 which showed a fairly large pericardial effusion. CPR was also performed for
approximately 10 minutes.

14 Later in DR. SMITH'S transcription he repeats:

15 Please note that there was approximately 5 to 10 minutes of CPR.

16 22. A simple reading of the records in DR. SMITH'S own words immediately after the
17 operation confirms the opinions of DR. MORADY and DR. MESSEI, Plaintiffs' experts, that
18 DR. SMITH and DR. KANG, in delaying the pericardiocentesis until after futile CPR was
19 performed and then the echocardiogram ordered and performed instead of immediately doing the
20 pericardiocentesis, caused the needless death of NEIL DeCHAMBEAU on September 8, 2007.
21

22 23. This delay was medical malpractice and BALKENBUSH dismissed the case with no
23 sworn evidence to the contrary, without taking any Depositions, asking any Interrogatories,
24 making any Requests for Admissions and without giving Plaintiffs the chance to pursue their
25 Causes of Action with other counsel competent to handle a medical malpractice case as he,
26 without their permission, dismissed their case with prejudice.
27
28

1 24. The Defendants breached their duty to the Plaintiffs and failed to perform legal services
2 that met the acceptable standard of practice for attorneys handling medical malpractice cases in
3 the following respects:
4

5 A. Defendants failed to keep the Plaintiffs informed of the status of their case.

6 B. Defendants dismissed Plaintiffs case without consulting with Plaintiffs and obtaining
7 their consent before entering into an agreement with opposing counsel and dismissing Plaintiffs
8 case with prejudice.
9

10 C. Defendants failed to provide legal services reasonably required to investigate the
11 merits of Plaintiffs' case. In a wrongful death case involving medical malpractice, failure to
12 take depositions of the treating physicians and other physicians who were present in the
13 operating room where the fatal injury occurred violates the acceptable legal standard of care for
14 attorneys handling such cases. Furthermore, Defendants were negligent in not asking
15 Interrogatories, failing to make any Requests for Admissions or using any or the normal
16 discovery tools expected of litigation attorneys handling a medical malpractice case.
17

18 D. Defendants failed to provide Plaintiffs with the opportunity to obtain new counsel
19 who could have substituted in on the case and verified the reasonableness of DR. MORADY'S
20 claimed change of opinion approximately five (5) months prior to Trial or obtained another
21 expert cardiologist.
22

23 E. Defendants failed to properly investigate the authenticity of the EPS tape and to
24 allow the Plaintiffs to obtain a second opinion from qualified technical and/or medical experts
25 as to the significance of the EPS tape to the ultimate issues in the case. Defendants also failed
26 to investigate the spoliation of evidence issues attendant with a tape which had not been
27 produced with the other medical records, including whether the tape was even from the
28

1 operation on NEIL DeCHAMBEAU on September 7, 2006 or whether the tape had been
2 tampered with or altered in any manner.

3
4 F. Defendants' actions and omissions were so egregious, wanton, willful, reckless and in
5 such complete disregard of Plaintiffs' rights that they are thereby liable for punitive or
6 exemplary damages.

7 **WHEREFORE**, Plaintiffs, ANGELA DECHAMBEAU and JEAN-PAUL
8 DECHAMBEAU, pray for the following relief against the Defendants and each of them for:

9
10 1. General damages, including damages for pain and suffering and disfigurement of the
11 decedent in an amount to be proven at trial.

12 2. Special damages, pecuniary damages for grief, loss of probable support,
13 companionship, love and affection in an amount to be proven at trial.

14 3. Punitive or exemplary damages.

15 4. All costs and expenses of this action, prejudgment interest and attorneys fees.

16 5. Such other and further relief as the Court deems equitable in the premises.

17
18 **WHEREFORE**, the Special Administrators of the Estate of Neil DeChambeau,
19 ANGELA DECHAMBEAU and JEAN-PAUL DECHAMBEAU, pray for relief on behalf of
20 said Estate against the Defendants and each of them for:

21
22 1. Special damages including medical expenses which the decedent incurred or sustained
23 before his death and for his funeral expenses.

24 2. Punitive or exemplary damages.

25 3. All costs and expenses of this action, prejudgment interest and attorneys fees.

26
27 \\\

28 \\\

1 4. Such other and further relief as the Court deems equitable in the premises.

2 Pursuant to NRS 239B.030 the undersigned certifies no Social Security numbers are contained in this document.

3 Dated this 5th day of March, 2012.

4
5
6 /s/ Charles R. Kozak
7 CHARLES R. KOZAK, ESQ.
8 Nevada State Bar No. 11179
9 1225 Tarleton Way
10 Reno, NV 89523
11 (775) 622-0711
12 Kozak131@charter.net
13 Attorney for the Plaintiff
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VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

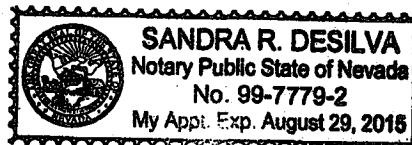
ANGELA DeCHAMBEAU, under penalties of perjury being first duly sworn, deposes and says: That she is a Plaintiff in the above-entitled action, and has read the Complaint and Jury Demand, that the same is true of her own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters she believes it to be true.

Angela DeChambeau
ANGELA DeCHAMBEAU

SUBSCRIBED and SWORN to before me

this 2nd day of March, 2012.

Sandra R. Desilva
NOTARY PUBLIC

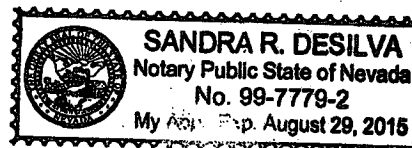


ACKNOWLEDGMENT

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On this 2nd day of March, 2012, personally appeared before me, ANGELA DeCHAMBEAU, proven to me to be the person whose name is subscribed to the above instrument, and who acknowledged to me that she executed the foregoing Complaint and Jury Demand.

Sandra R. Desilva
NOTARY PUBLIC



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VERIFICATION

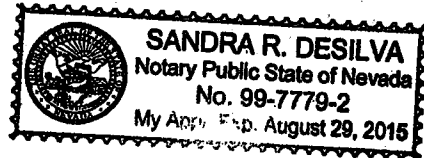
STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

JEAN-PAUL DeCHAMBEAU, under penalties of perjury being first duly sworn,
deposes and says: That he is a Plaintiff in the above-entitled action, and has read the Complaint
and Jury Demand, that the same is true of his own knowledge, except for those matters therein
contained stated upon information and belief, and as to those matters he believes it to be true.

SUBSCRIBED and SWORN to before me
this 2nd day of March, 2012.


JEAN-PAUL DeCHAMBEAU


NOTARY PUBLIC

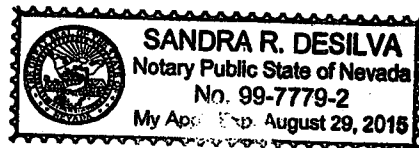


ACKNOWLEDGMENT

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On this 2nd day of March, 2012, personally appeared before me, JEAN-PAUL
DeCHAMBEAU, proven to me to be the person whose name is subscribed to the above
instrument, and who acknowledged to me that he executed the foregoing Complaint and Jury
Demand.


NOTARY PUBLIC



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

ANGELA DECHAMBEAU and
JEAN-PAUL DECHAMBEAU, both
Individually and as SPECIAL
ADMINISTRATORS of the ESTATE
Of NEIL DECHAMBEAU,

Case No. CV12-00571

Dept. No. 7

Plaintiffs,

vs.

STEPHEN C. BALKENBUSH, ESQ.,
THORNDAL, ARMSTRONG, DELK,
BALKENBUSH and EISINGER,
A Nevada Professional Corporation,
And DOES I through X, inclusive,

Defendants.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Defendants Stephen C. Balkenbush, Esq., and Thorndal, Armstrong, Delk, Balkenbush
and Eisinger, having moved the Court pursuant to NRCP 56 for an Order granting summary
judgment in Defendants' favor, the Court being familiar with the briefing on file, and having
heard the arguments of counsel, being fully advised in the premises, finds, concludes and orders
as follows:

1 **Findings of Fact.**

2 The Court finds that the material facts in this case are as follows:

3 In this legal malpractice action, Plaintiffs allege that Mr. Balkenbush failed to exercise
4 the legal skills necessary to their purported medical malpractice claim against Dr. David Smith
5 and others. Plaintiffs' claim for medical malpractice against Dr. Smith arose out of a heart
6 procedure known as cardiac ablation. During the procedure, (an atrial fibrillation ablation), there
7 was a complication involving a pericardial tamponade. During Dr. Smith's efforts to deal with
8 the complication, Plaintiffs' decedent "coded," i.e. went into cardiac arrest, suffered an anoxic
9 brain injury and died.

11 On September 5, 2007, Plaintiffs' then-counsel, Mr. Balkenbush, filed a medical
12 malpractice lawsuit against Dr. Smith and others. Attached to the underlying Complaint was the
13 Affidavit of Dr. Fred Morady dated August 29, 2007. Plaintiffs had agreed that Mr. Balkenbush
14 would seek to retain the most preeminent expert in the country on cardiac ablation, and that the
15 case would "rise or fall" on the expert's opinion. Plaintiffs and Mr. Balkenbush hired Dr.
16 Morady to fill that role.

18 Dr. Morady reviewed the medical records provided to him, and based on that review,
19 initially opined that Dr. Smith's conduct fell below the standard of care. Dr. Morady advised
20 Mr. Balkenbush that he needed to review the "Prucka" recording, also called the "EPS data"
21 noting "there [had] to be one." Mr. Balkenbush was unable to obtain the EPS tape until March,
22 2010, but upon receipt, Mr. Balkenbush provided it to Dr. Morady for review. After Dr. Morady
23 reviewed it, he told Mr. Balkenbush that he had "changed his opinion," and that he no longer
24 believed that there was any malpractice in the action by Dr. Smith.

26 Mr. Balkenbush advised Plaintiffs of Dr. Morady's change of opinion, and offered to
27 have them speak directly and confidentially to Dr. Morady, which they declined. Plaintiffs
28

1 agreed to dismiss their case, and Mr. Balkenbush filed the appropriate dismissal. Subsequently,
2 Plaintiffs brought this action alleging legal malpractice against Mr. Balkenbush.

3 At the close of discovery, Defendants moved for summary judgment on the ground there
4 was no genuine dispute as to any material issue of fact, and Defendants were entitled to
5 judgment as a matter of law. Specifically, Defendants challenged the existence of any evidence
6 that would support a conclusion that had Mr. Balkenbush done something different it would have
7 resulted in a different outcome. Defendants also challenged Plaintiffs' ability to prove by a
8 preponderance of evidence that they would have prevailed in their underlying medical
9 malpractice action.
10

11 **Standard of Review**

12

13 Summary judgment may be granted where there are no genuine issues of material fact
14 and the movant is entitled to judgment as a matter of law. NRCP 56. This Court must view the
15 evidence and any reasonable inferences drawn from it in a light most favorable to the non-
16 moving party. *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005). In *Wood*, however,
17 the Nevada Supreme Court made it clear that the "slightest doubt" standard ... is an incorrect
18 statement of the law and should no longer be used when analyzing motions for summary
19 judgment." *Id.* The nonmoving party must "do more than simply show that there is some
20 metaphysical doubt" as to the operative facts in order to avoid summary judgment being entered
21 in the moving party's favor." *Id.* The non-moving party is not permitted to build its case on "the
22 gossamer threads of whimsy, speculation or conjecture." *Pegasus v. Reno Newspapers, Inc.*, 118
23 Nev. 706, 713-14, 57 P.3d 82 (2002). In addition, the mere existence of some alleged factual
24 dispute between the parties will not defeat an otherwise properly supported motion for summary
25 judgment – there must be some genuine issue of material fact. The showing of such a genuine
26 issue for trial is predicated upon the existence of a legal theory which remains viable under the
27 asserted version of the facts and which would entitle the party opposing the motion, assuming
28 that version to be true, to a judgment as a matter of law. *Wood, supra.*

1 **Conclusions of Law**

2 Based upon the briefs, evidence and argument presented to the Court, and on the
3 arguments and presentments of counsel at hearing on September 24, 2013, the Court makes the
4 following conclusions of law and/or application of the facts thereto:

5 Turning first to the underlying medical malpractice claim, the parties agreed that the
6 pivotal issue of fact, or rather, the pivotal set of facts at issue revolved around the administration
7 of pericardiocentesis by Dr. Smith sometime between 12:36 pm and 12:54 pm. Plaintiffs'
8 medical expert concedes that the procedure was properly performed, but disputes the timing.
9 However, while there may have been a dispute in the medical malpractice action, that factual
10 dispute is both speculative and immaterial in light of the failure of Plaintiffs to demonstrate
11 causation in the legal malpractice case.
12

13 In order to prevail in a legal malpractice action, Plaintiffs must allege and prove (1) an
14 attorney-client relationship; (2) the duty to use the skill, prudence and diligence ordinary lawyers
15 possess in exercising and performing similar tasks; (3) a breach of that duty; (4) proximate
16 cause; and (5) damages. *Mainor v. Nault*, 120 Nev. 750, 101 P.3d 308 (2004).
17

18 The Court finds that the first two elements are not disputed. Mr. Balkenbush was
19 Plaintiffs' former counsel, and there was no evidence that Mr. Balkenbush lacked any necessary
20 skill, prudence or diligence. In addition, as noted above, Mr. Balkenbush communicated
21 appropriately and timely with his clients. However, Plaintiffs failed to establish the fourth
22 element, proximate cause.
23

24 Plaintiffs' expert, Gerald Gillock, could not point to any action or inaction on the part of
25 Mr. Balkenbush which caused damages to Plaintiffs. While Mr. Gillock was critical of Mr.
26 Balkenbush' discovery, including not obtaining the EPS data sooner, he was unable to suggest
27 how a different course of conduct by Mr. Balkenbush would have changed the outcome. The
28

1 Court notes that even if Mr. Balkenbush had obtained the EPS data sooner, that would only have
2 allowed Dr. Morady to retract his earlier opinion sooner; and the suggestion that Mr. Balkenbush
3 would have had time to hire a different expert does not make the outcome any less speculative.
4 Mr. Balkenbush would have been left with a turncoat witness who would have gutted his case
5 like a trout if he were called as a witness by the defense. Mr. Balkenbush would then have
6 occupied the unenviable position of struggling to rehabilitate his former expert. The likelihood
7 of a favorable outcome under that scenario is ephemeral at best; and no Plaintiffs' expert testified
8 that the outcome would have been any different. Mr. Gillock nowhere asserted that the alleged
9 failure to engage in formal written discovery caused anything.

11 Finally, although Plaintiffs included in their Complaint a claim for punitive damages,
12 Plaintiffs appear to have abandoned that claim. In response to Defendants' Motion for
13 Summary Judgment, Plaintiffs' offered no evidence or argument supporting such claim,
14 and the Court therefore finds it must be dismissed.

16 ORDER

17 The Court having found and concluded as set forth above, therefore orders Defendants'
18 Motion for Summary Judgment shall be, and hereby is **GRANTED**; and Plaintiffs' claims as set
19 forth in their Complaint are **DISMISSED**, with prejudice.

20 Dated this 17 day of OCTOBER, 2013

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23 Patrick F. Flanagan
DISTRICT JUDGE
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1 2540
2 MARGO PISCEVICH
3 Nevada State Bar No. 0917
4 MARK J. LENZ
5 Nevada State Bar No. 4672
6 PISCEVICH & FENNER
7 499 West Plumb Lane, Suite 201
8 Reno, Nevada 89509
9 775-329-0958
10 Attorneys for Defendants

11
12
13 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

14 **IN AND FOR THE COUNTY OF WASHOE**

15 ANGELA DECHAMBEAU and
16 JEAN-PAUL DECHAMBEAU, both
17 Individually and as SPECIAL
18 ADMINISTRATORS of the ESTATE
19 Of NEIL DECHAMBEAU,

20 Plaintiffs,

21 vs.

22 STEPHEN C. BALKENBUSH, ESQ.,
23 THORNDAL, ARMSTRONG, DELK,
24 BALKENBUSH and EISINGER,
25 A Nevada Professional Corporation,
26 And DOES I through X, inclusive,

27 Defendants.
28

Case No. CV12-00571

Dept. No. 7

29 **NOTICE OF ENTRY OF ORDER**

30 TO: All parties and their counsel of record:

1 YOU WILL PLEASE TAKE NOTICE that on the 17th day of October, 2013, the
2 above-entitled Court entered its Order Granting Motion for Summary Judgment, a true
3 and correct copy of which is attached hereto.
4

5 **AFFIRMATION**

6 The undersigned does hereby affirm that the preceding document **DOES NOT** contain
7 the Social Security number of any person.

8 DATED this 18th day of October, 2013.
9

10 PISCEVICH & FENNER

11 By: 

12 MARGO PISCEVICH

13 Attorneys for Defendants
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ANGELA DECHAMBEAU and
JEAN-PAUL DECHAMBEAU, both
Individually and as SPECIAL
ADMINISTRATORS of the ESTATE
Of NEIL DECHAMBEAU,

Case No. CV12-00571

Dept. No. 7

Plaintiffs,

vs.

STEPHEN C. BALKENBUSH, ESQ.,
THORNDAL, ARMSTRONG, DELK,
BALKENBUSH and EISINGER,
A Nevada Professional Corporation,
And DOES I through X, inclusive,

Defendants.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Defendants Stephen C. Balkenbush, Esq., and Thorndal, Armstrong, Delk, Balkenbush and Eisinger, having moved the Court pursuant to NRCP 56 for an Order granting summary judgment in Defendants' favor, the Court being familiar with the briefing on file, and having heard the arguments of counsel, being fully advised in the premises, finds, concludes and orders as follows:

1 **Findings of Fact.**

2 The Court finds that the material facts in this case are as follows:

3 In this legal malpractice action, Plaintiffs allege that Mr. Balkenbush failed to exercise
4 the legal skills necessary to their purported medical malpractice claim against Dr. David Smith
5 and others. Plaintiffs' claim for medical malpractice against Dr. Smith arose out of a heart
6 procedure known as cardiac ablation. During the procedure, (an atrial fibrillation ablation), there
7 was a complication involving a pericardial tamponade. During Dr. Smith's efforts to deal with
8 the complication, Plaintiffs' decedent "coded," i.e. went into cardiac arrest, suffered an anoxic
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11 On September 5, 2007, Plaintiffs' then-counsel, Mr. Balkenbush, filed a medical
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4 was no genuine dispute as to any material issue of fact, and Defendants were entitled to
5 judgment as a matter of law. Specifically, Defendants challenged the existence of any evidence
6 that would support a conclusion that had Mr. Balkenbush done something different it would have
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9 malpractice action.
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11 **Standard of Review**

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28 that version to be true, to a judgment as a matter of law. *Wood, supra.*

1 Conclusions of Law

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18 The Court finds that the first two elements are not disputed. Mr. Balkenbush was
19 Plaintiffs' former counsel, and there was no evidence that Mr. Balkenbush lacked any necessary
20 skill, prudence or diligence. In addition, as noted above, Mr. Balkenbush communicated
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24 Plaintiffs' expert, Gerald Gillock, could not point to any action or inaction on the part of
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27 how a different course of conduct by Mr. Balkenbush would have changed the outcome. The
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1 Court notes that even if Mr. Balkenbush had obtained the EPS data sooner, that would only have
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3 would have had time to hire a different expert does not make the outcome any less speculative.
4 Mr. Balkenbush would have been left with a turncoat witness who would have gutted his case
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7 of a favorable outcome under that scenario is ephemeral at best; and no Plaintiffs' expert testified
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9 failure to engage in formal written discovery caused anything.
10

11 Finally, although Plaintiffs included in their Complaint a claim for punitive damages,
12 Plaintiffs appear to have abandoned that claim. In response to Defendants' Motion for
13 Summary Judgment, Plaintiffs' offered no evidence or argument supporting such claim,
14 and the Court therefore finds it must be dismissed.
15

16 ORDER

17 The Court having found and concluded as set forth above, therefore orders Defendants'
18 Motion for Summary Judgment shall be, and hereby is **GRANTED**; and Plaintiffs' claims as set
19 forth in their Complaint are **DISMISSED**, with prejudice.
20

21 Dated this 17 day of OCTOBER, 2013

22
23 Patrick Flanagan
24 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of PISCEVICH & FENNER, and that on this date I caused to be served a true and correct copy of the document described herein by the method indicated below, addressed to the following:

Document Served:

NOTICE OF ENTRY OF ORDER

Person(s) Served:

Charles R. Kozak
3100 Mill Street, Suite 115
Reno, NV 89502

Hand Deliver

X

U.S. Mail

Overnight Mail

Facsimile (775)

Electronic Filing

DATED this 18th day of October, 2013.


Beverly Chambers

Piscevich & Fenner
499 West Plumb Lane, Suite 201
Reno, NV 89509 775.329.0958

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

ANGLEA DECHAMBEAU, et al.,

Plaintiffs,

Case No. CV12-00571

vs.

Dept. No. 7

STEPHEN C. BALKENBUSH, ESQ., et al.,

Defendants.

ORDER

On October 17, 2013, an *Order Granting Motion for Summary Judgment* was entered in the above entitled matter. On October 18, 2013, Defendants, STEPHEN C. BALKENBUSH, and THORNDAL, ARMSTRONG, DELK, BALKENBUSH AND EISINGER (hereafter Defendants), filed it *Verified Memorandum of Costs*. On October 24, 2013, Plaintiffs, ANGELA DeCHAMBEAU, JEAN-PAUL DeCHAMBEAU, individually and as SPECIAL ADMINISTRATORS OF THE ESTATE OF NEIL DeCHAMBEAU (hereafter Plaintiffs), filed its *Motion to Retax and Settle Costs*. On October 29, 2013, Defendants filed their *Opposition to Plaintiffs' Motion to Retax and Settle Costs* and submitted the matter for decision.

Defendants seeks recovery of \$50,895.40¹ in costs pursuant to NRS 18.005. This court has reviewed the invoices filed in support of the requests for cost reimbursement.

¹ This includes the newly revised request for postage reimbursement. See, Opp. To Mtn to Retax, Ex. 5.

1 This court finds the costs expended by the Defendant in this matter to be both
2 reasonable and necessary. Therefore, Defendant is hereby awarded costs in the amount
3 of \$50,895.40.

4 DATED this 24 day of November, 2013.

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6 Patrick Flanagan
7 PATRICK FLANAGAN
8 District Judge
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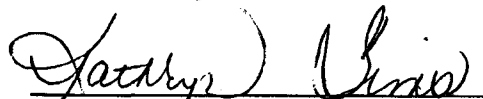
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2
3 **CERTIFICATE OF SERVICE**

4 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
5 Judicial District Court of the State of Nevada, County of Washoe; that on this 21st
6 day of November, 2013, I electronically filed the following with the Clerk of the Court by
7 using the ECF system which will send a notice of electronic filing to the following:

8 Charles R. Kozak, Esq. for Anglea Dechambeau, et al.; and

9 Margo Pischevich, Esq. for Stephen C. Balkenbush, Esq.

10 I deposited in the Washoe County mailing system for postage and mailing with
11 the United States Postal Service in Reno, Nevada, a true copy of the attached document
12 addressed to:

13 
14 Judicial Assistant

FILED

Electronically

11-26-2013:03:23:47 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 4163290

1 2540
2 MARGO PISCEVICH
3 Nevada State Bar No. 0917
4 MARK J. LENZ
5 Nevada State Bar No. 4672
6 PISCEVICH & FENNER
7 499 West Plumb Lane, Suite 201
8 Reno, Nevada 89509
9 775-329-0958
10 Attorneys for Defendants
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

12 ANGELA DECHAMBEAU and
13 JEAN-PAUL DECHAMBEAU, both
14 Individually and as SPECIAL
15 ADMINISTRATORS of the ESTATE
16 Of NEIL DECHAMBEAU,

16 Plaintiffs,

17 vs.

18 STEPHEN C. BALKENBUSH, ESQ.,
19 THORNDAL, ARMSTRONG, DELK,
20 BALKENBUSH and EISINGER,
21 A Nevada Professional Corporation,
22 And DOES I through X, inclusive,

22 Defendants.

Case No. CV12-00571

Dept. No. 7

NOTICE OF ENTRY OF ORDER

TO: All parties and their counsel of record:

Piscevich & Fenner
499 West Plumb Lane, Suite 201
Reno, NV 89509 775.329.0958

1 YOU WILL PLEASE TAKE NOTICE that on the 26th day of November, 2013,
2 the above-entitled Court entered its Order, a true and correct copy of which is attached
3 hereto.
4

5 **AFFIRMATION**

6 The undersigned does hereby affirm that the preceding document **DOES NOT** contain
7 the Social Security number of any person.

8 DATED this 26th day of November, 2013.
9

10 PISCEVICH & FENNER

11 By: Margo Piscevich
12 MARGO PISCEVICH
13 Attorneys for Defendants
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ANGLEA DECHAMBEAU, et al.,

Plaintiffs,

Case No. CV12-00571

vs.

Dept. No. 7

STEPHEN C. BALKENBUSH, ESQ., et al.,

Defendants.

ORDER

On October 17, 2013, an *Order Granting Motion for Summary Judgment* was entered in the above entitled matter. On October 18, 2013, Defendants, STEPHEN C. BALKENBUSH, and THORNDAL, ARMSTRONG, DELK, BALKENBUSH AND EISINGER (hereafter Defendants), filed it *Verified Memorandum of Costs*. On October 24, 2013, Plaintiffs, ANGELA DeCHAMBEAU, JEAN-PAUL DeCHAMBEAU, individually and as SPECIAL ADMINISTRATORS OF THE ESTATE OF NEIL DeCHAMBEAU (hereafter Plaintiffs), filed its *Motion to Retax and Settle Costs*. On October 29, 2013, Defendants filed their *Opposition to Plaintiffs' Motion to Retax and Settle Costs* and submitted the matter for decision.

Defendants seeks recovery of \$50,895.40¹ in costs pursuant to NRS 18.005. This court has reviewed the invoices filed in support of the requests for cost reimbursement.

¹ This includes the newly revised request for postage reimbursement. See, Opp. To Mtn to Retax, Ex. 5.

1 This court finds the costs expended by the Defendant in this matter to be both
2 reasonable and necessary. Therefore, Defendant is hereby awarded costs in the amount
3 of \$50,895.40.

4 DATED this 26 day of November, 2013.

5
6 Patrick Flanagan
7 PATRICK FLANAGAN
8 District Judge
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of PISCEVICH & FENNER, and that on this date I caused to be served a true and correct copy of the document described herein by the method indicated below, addressed to the following:

Document Served:

NOTICE OF ENTRY OF ORDER

Person(s) Served:

Charles R. Kozak
3100 Mill Street, Suite 115
Reno, NV 89502

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DATED this 26th day of November, 2013.


Beverly Chambers

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7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

8 **IN AND FOR THE COUNTY OF WASHOE**

9
10 ANGELA DECHAMBEAU and
11 JEAN-PAUL DECHAMBEAU, both
12 Individually and as SPECIAL
13 ADMINISTRATORS of the ESTATE
14 Of NEIL DECHAMBEAU,

15 Plaintiffs,

16 vs.

17 STEPHEN C. BALKENBUSH, ESQ.,
18 THORNDAL, ARMSTRONG, DELK,
19 BALKENBUSH and EISINGER,
20 A Nevada Professional Corporation,
21 And DOES I through X, inclusive,

22 Defendants.

Case No. CV12-00571

Dept. No. 7

23 **JUDGMENT**

24 Pursuant to this Court's Order filed on November 26, 2013, and good cause appearing,

25 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that judgment is entered
26 in favor of Defendants STEPHEN C. BALKENBUSH, ESQ. and THORNDAL, ARMSTRONG,
27 DELK, BALKENBUSH and EISINGER and against Plaintiffs, ANGELA DECHAMBEAU and
28 JEAN-PAUL DECHAMBEAU, both Individually and as Special Administrators of the Estate of

Piscevich & Fenner
499 West Plumb Lane, Suite 201
Reno, NV 89509 775.329.0958

1 NEIL DECHAMBEAU in the amount of Fifty Thousand Eight Hundred Ninety-Five and
2 40/100ths Dollars (\$50,895.40), plus interest as allowed by law.

3 DATED this 6 day of DECEMBER, 2013.
4

5 Patrick Flanagan
6 DISTRICT JUDGE
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1 2535
2 MARGO PISCEVICH
3 Nevada State Bar No. 0917
4 MARK J. LENZ
5 Nevada State Bar No. 4672
6 PISCEVICH & FENNER
7 499 West Plumb Lane, Suite 201
8 Reno, Nevada 89509
9 775-329-0958
10 Attorneys for Defendants

11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

12 **IN AND FOR THE COUNTY OF WASHOE**

11 ANGELA DECHAMBEAU and
12 JEAN-PAUL DECHAMBEAU, both
13 Individually and as SPECIAL
14 ADMINISTRATORS of the ESTATE
15 Of NEIL DECHAMBEAU,

Case No. CV12-00571

Dept. No. 7

14 Plaintiffs,

15 vs.

16
17 STEPHEN C. BALKENBUSH, ESQ.,
18 THORNDAL, ARMSTRONG, DELK,
19 BALKENBUSH and EISINGER,
20 A Nevada Professional Corporation,
21 And DOES I through X, inclusive,

22 Defendants.

23 **NOTICE OF ENTRY OF JUDGMENT**

24 TO: All parties and their counsel of record:

25 YOU WILL PLEASE TAKE NOTICE that on the 6th day of December, 2013, the
26 above-entitled Court entered its Judgment, a true and correct copy of which is attached
27 hereto.
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AFFIRMATION

The undersigned does hereby affirm that the preceding document **DOES NOT** contain
the Social Security number of any person.

DATED this 9th day of December, 2013.

PISCEVICH & FENNER

By: 
MARGO PISCEVICH
Attorneys for Defendants

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ANGELA DECHAMBEAU and
JEAN-PAUL DECHAMBEAU, both
Individually and as SPECIAL
ADMINISTRATORS of the ESTATE
Of NEIL DECHAMBEAU,

Case No. CV12-00571

Dept. No. 7

Plaintiffs,

vs.

STEPHEN C. BALKENBUSH, ESQ.,
THORNDAL, ARMSTRONG, DELK,
BALKENBUSH and EISINGER,
A Nevada Professional Corporation,
And DOES I through X, inclusive,

Defendants.

JUDGMENT

Pursuant to this Court's Order filed on November 26, 2013, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered
in favor of Defendants STEPHEN C. BALKENBUSH, ESQ. and THORNDAL, ARMSTRONG,
DELK, BALKENBUSH and EISINGER and against Plaintiffs, ANGELA DECHAMBEAU and
JEAN-PAUL DECHAMBEAU, both Individually and as Special Administrators of the Estate of

1 NEIL DECHAMBEAU in the amount of Fifty Thousand Eight Hundred Ninety-Five and
2 40/100ths Dollars (\$50,895.40), plus interest as allowed by law.

3 DATED this 6 day of DECEMBER, 2013.
4

5 Patrick Flanagan
6 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of PISCEVICH & FENNER, and that on this date I caused to be served a true and correct copy of the document described herein by the method indicated below, addressed to the following:

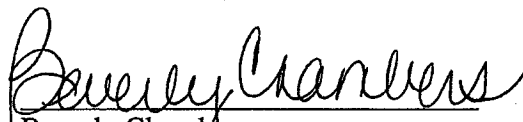
Document Served: NOTICE OF ENTRY OF JUDGMENT

Person(s) Served:

Charles R. Kozak
3100 Mill Street, Suite 115
Reno, NV 89502

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<input checked="" type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Facsimile (775)
<input checked="" type="checkbox"/>	Electronic Filing

DATED this 9th day of December, 2013.


Beverly Chambers

Piscevich & Fenner
499 West Plumb Lane, Suite 201
Reno, NV 89509 775.329.0958

1 CODE \$1425
2 CHARLES R. KOZAK, ESQ.
3 Nevada State Bar No. 11179
4 3100 Mill Street Suite
5 Reno, Nevada 89502
6 (775) 322-1239
7 chuck@kozaklawfirm.com
8 Attorney for Plaintiffs

Draft #6

9
10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11
12 **IN AND FOR THE COUNTY OF WASHOE**
13

14 JESS C. ARNDELL and LESLIE J. MARTIN,

Case No.

15 Plaintiffs,

Dept. No.

16 vs.

17 LAKESIDE MORTGAGE COMPANY;
18 KAFOURY, ARMSTRONG, FERGUSON
19 AND GARDNER, a Professional Corporation;
20 MOGUL 41 LOTS, LLC; WESTERN
21 TITLE COMPANY, LLC; and DOES
22 1 through 100, inclusive,

23 Defendants.
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COMPLAINT FOR DAMAGES AND QUIET TITLE

29 **COME NOW** the Plaintiffs, JESS C. ARNDELL and LESLIE J. MARTIN, by and
30 through their Attorney of Record, CHARLES R. KOZAK, ESQ., and for their Complaint against
31 LAKESIDE MORTGAGE COMPANY; KAFOURY, ARMSTRONG, FERGUSON AND
32 GARDNER, a Professional Corporation; MOGUL 41 LOTS, LLC; WESTERN TITLE and
33 DOES 1 through 100 inclusive, state as follows:

I. PARTIES - PLAINTIFFS

1. Plaintiff, JESS C. ARNDELL ("ARNDELL"), at all material times herein was, and still is, a resident of the State of California. ARNDELL is the owner of Jess Arndell Construction Company, Inc., a Nevada Corporation ("JACC") with a principal place of business in Washoe County, Nevada. ARNDELL is also the assignee of all rights of The Delmer D. Dinehart Family living Trust ("DINEHART TRUST"), Paul C. Bichler, Emerine M. Bichler and The 1996 Paul C. Bichler and Emerine M. Bichler Revocable Trust dated June 13, 1996 (collectively the "BICHLERS") as to any and all rights the aforesaid individuals and Trusts ever had and/or still have in property known as the Sunset Bluffs and legally described in **Exhibit 1**, the DINEHART TRUST Quit Claim Deed and **Exhibit 2**, the BICHLERS' Quit Claim Deed. These exhibits are incorporated by reference as if set forth in full herein.

2. Plaintiff, LESLIE J. MARTIN (“MARTIN”), at all material times herein was, and still is, a resident of Winnemucca, Humboldt County, Nevada. MARTIN was one of 74 LENDERS as further described herein below on the Sunset Bluffs project

II. PARTIES - DEFENDANTS

3. Defendant, LAKESIDE MORTGAGE COMPANY (“LAKESIDE”), at all material times herein was, and still is a Nevada corporation with a principal place of business in Reno, Washoe County, Nevada. Its registered agent is Kirk Gardner who is located at 6140 Plumas Street, Reno, Nevada 89509 which is the same Reno Nevada address as that of Defendant, Lakeside Mortgage Company.

4. Defendant, KAFOURY, ARMSTRONG, FERGUSON AND GARDNER ("KAFOURY"), at all material times herein was, and still is a Nevada corporation with a principal place of business in Reno, Washoe County, Nevada. Its registered agent is Todd N. Ferguson who is located at 6140 Plumas Street, Reno, Nevada 89509 which is the same Reno

1 Nevada address as that of Defendant, KAFOURY.

2 5. Defendant, MOGUL 41 LOTS, LLC, ("MOGUL 41") at all material times since the
3 filing of its Articles of Organization on July 24, 2009, was and still is a Nevada limited-liability
4 company. Its registered agent is James T. Johnson who is located at 4330 Schindler Road,
5 Fallon, Nevada 89406.
6

7 6. Defendant, WESTERN TITLE COMPANY, LLC ("WESTERN"), at all material
8 times herein was, and still is a Nevada limited-liability company with a principal place of
9 business in Reno, Washoe County, Nevada. Its registered agent is Bryan R. Willis who is
10 located at 5390 Kietzke Lane, Suite 101, Reno, Nevada 89511 which is the same Reno Nevada
11 address as that of Defendant, WESTERN.
12

13 7. The true names or capacities of Defendants, DOES 1 through 100, whether
14 individual, corporate, associate, business entity of any kind or otherwise, are unknown to
15 Plaintiffs, which therefore make claims against said Defendants and by such fictitious names.
16 Plaintiffs are informed and believe and allege that each of the Defendants designated as a DOE is
17 responsible in some manner for the events and occurrences herein alleged and therefore caused
18 injuries and damages to Plaintiffs as alleged below. Upon determining the true identities of any
19 such DOE Defendants, Plaintiffs will ask leave of Court to amend this Complaint further to
20 insert the true names and capacities of said Defendants when the same have been ascertained and
21 to add said Defendants as Defendants to this Complaint, together with the proper charges and
22 allegations.
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27 **III. JURISDICTION AND VENUE**

28 8. The damages sought in this case exceed Ten Thousand Dollars (\$10,000.00) and
therefore, The Second Judicial District Court of the State of Nevada in and for the County of

1 Washoe has jurisdiction of this case.

2 9. Defendants, LAKESIDE, KAFOURY, WESTERN and FATICO all maintain
3 principal places of business in Washoe County so that venue is also proper in Washoe County.
4

5 IV. GENERAL STATEMENT OF FACTS

6 10. On June 6, 2005 a DEED OF TRUST WITH ASSIGNMENT OF RENTS was filed
7 naming HINSON DEVELOPMENT, LLC ("HINSON DEV.") as trustor, WESTERN as trustee,
8 and the DINEHART TRUST as beneficiary.

9 11. On June 8, 2004 JOHN HINSON ("J. HINSON"), the sole owner of HINSON
10 DEV., procured a deed to the 91 acres located in Mogul, Washoe County, Nevada and known as
11 Sunset Bluffs (see Exhibits 1 and 2 for the full legal description) through his development
12 company, HINSON DEV. The grantors were the BICHLERS.
13

14 12. On July 29, 2005 a deed of trust was recorded on the Sunset Bluffs property naming
15 the DINEHART TRUST as beneficiary and HINSON DEV. as trustor.
16

17 13. On September 12, 2005 the deed filed on June 8, 2004 and July 28, 2005 from
18 BICHLERS to HINSON was re recorded.

19 14. On September 12, 2005 a deed of trust naming BICHLERS as beneficiary and
20 HINSON as trustor was rerecorded.
21

22 15. On September 12, 2005 a deed from DINHART TRUST to HINSON, was
23 rerecorded.

24 16. On October 5, 2005 a SHORT FORM DEED OF TRUST AND ASSIGNMENT
25 OF RENTS between SUNSET BLUFFS, LLC ("SUNSET") as trustor, TITLE SERVICES AND
26 ESCROW ("TSEC") as trustee and 25 lenders led by Evelyn Regan securing a promissory note
27 (the "REGAN NOTE") in the amount of Two Million Dollars (\$2,000,000).
28

1 17. On October 31, 2005, a SHORT FORM DEED OF TRUST AND ASSIGNMENT
2 OF RENTS naming SUNSET as trustor, TSEC as trustee and BICHLERS and the DINEHART
3 TRUST as beneficiaries securing a promissory note in the amount of One Million, Six Hundred
4 Fifty Thousand Dollars (\$1,650,000).
5

6 18. On October 31, 2005, a MODIFICATION OF DEED OF TRUST naming SUNSET
7 as trustor, BICHLERS and the DINEHART TRUST as beneficiaries and TSEC as trustee,
8 granting a partial release to 15.7 acres of Sunset Bluffs to the trustor, SUNSET.
9

10 19. On November 2, 2005, a deed of trust securing a promissory note in the amount of
11 Two Million Dollars (\$2,000,000) naming SUNSET as the trustor and Evelyn Regan as
12 beneficiary was filed.
13

14 20. On November 2, 2005, a deed of trust securing a promissory note in the amount of
15 One Million, Six Hundred Fifty Thousand Dollars \$1,650,000 naming BICHLERS as
16 beneficiaries and SUNSET as trustor was filed.

17 21. On November 2, 2005 A SUBSTITUTION OF TRUSTEE AND DEED OF
18 RECONVEYANCE naming the DINEHART TRUST as successor trustee to replace
19 WESTERN was filed. The DINEHART TRUST as the successor trustee reconveyed to
20 HINSON DE. and/or J. HINSON the deed of trust since the promissory note to the DINEHART
21 TRUST, Secured by the deed of trust, haD been fully paid.
22

23 22. On April 11, 2006 a SHORT FORM DEED OF TRUST AND ASSIGNMENT OF
24 RENTS was filed naming SUNSET as trustor, the 74 lenders ("74 LENDERS") who were
25 funding the Sunset Bluffs Development through KAFOURY as beneficiaries and TSEC as
26 trustee. The 74 LENDERS as beneficiaries agreed to partial release of lots on 15.7 acres for One
27 Hundred Eighty Thousand Dollars (\$180,000) per lot to be paid at the time each lot sold.
28

1 23. On April 20, 2006, a SUBORDINATION AGREEMENT was filed naming
2 SUNSET as owner, BICHLERS and the DINEHART TRUST present owners and holders of
3 deed of trust and note, as beneficiaries, subordinate to "some other or later security instrument".
4 This document was executed April 10, 2006.
5

6 24. On July 17, 2008 a NOTICE OF DEFAULT AND ELECTION TO SELL was filed
7 by WESTERN as substituted trustee for TSEC.

8 25. On October 31 A NOTICE OF TRUSTEE'S SALE was filed with the sale set for
9 November 25, 2008.
10

11 26. On December 17, 2008 a TRUSTEE'S DEED to the 74 LENDERS was filed by
12 WESTERN.

13 27.. On March 2, 2009 a QUITCLAIM DEED from the 74 LENDERS to MOGUL 41
14 LOTS, LLC ("MOGUL 41") was recorded.
15

16 28. On April 7, 2006, LAKESIDE and HINSON DEV. entered into a Mortgage Loan
17 Agreement whereby LAKESIDE agreed to fund a loan in the amount of Six Million, Nine
18 Hundred Thousand Dollars (\$6,900,000) for the development of the Sun Bluffs project.

19 29. On April 11, 2006 BICHLERS and the DINEHART TRUST executed a
20 subordination agreement in favor of 74 LENDERS for whom LAKESIDE was acting as agent.
21 This subordination was to a loan by the 74 LENDERS for Six Million, Nine Hundred Thousand
22 Dollars (\$6,900,000) to SUNSET.
23

24 30. The proceeds of said loan were to be used by HINSON DEV. to pay off the deed of
25 trust which secured the Two Million Dollar (\$2,000,000) loan HINSON DEV. obtained from the
26 25 lenders (the REGAN NOTE).
27

28 31. J. HINSON and/or HINSON DEV. along with LAKESIDE represented to the 74

1 LENDERS that there were sufficient funds available from the Six Million, Nine Hundred
2 Thousand Dollar (\$6,900,000) loan to pay off the REGAN NOTE and secure clear title and a
3 first deed of trust to the Sunset Bluffs property.
4

5 32. BICHLERS and the DINEHART TRUST had signed a modification to the
6 subordination agreement on April 10, 2006 that provided only 15.27 seven acres of the 91 acres
7 was to be subordinated to the 74 LENDERS deed of trust filed April 11, 2006.

8 33. While said 15.27 acres of Sunset Bluffs property was to contain the 41 lots
9 HINSON/DEV. was planning to develop on Sunset Bluffs' 91 acres, no licensed surveyor
10 determined where the 41 lots were actually to be located on the 15.27 acres.
11

12 34. From the document that was recorded on the April 10, 2006, the modification to the
13 subordination agreement, it is impossible to identify the 41 lots.

14 35. Furthermore, when the subdivision map was filed on October 7, 2006, a new
15 subordination agreement was neither executed nor signed by the BICHLERS and the
16 DINEHART TRUST even though the legal description of the subject acreage was vague and
17 ambiguous.
18

19 36. The servicing of the 74 LENDERS' Six Million, Nine Hundred Thousand Dollar
20 (\$6,900,000) loan was assigned to TSEC.
21

22 37. LAKESIDE, as agent for the 74 LENDERS collected checks and money orders for
23 deposit in the TSEC escrow account.

24 38. However, only Five Million, One Hundred Twenty-eight Thousand Dollars
25 (\$5,128,000) was collected from the 49 new lenders¹ and deposited into the TSEC escrow
26 account.
27

28 ¹ The total of 74 lenders results from the 25 lenders on the REGAN NOTE being counted as contributors to the Six Million, Nine Hundred Thousand Dollar (\$6,900,000), even though not all of them put any money into the escrowed funds for the Six Million, Nine Hundred Thousand Dollar (\$6,900,000) loan.

1 39. Nevertheless, the HUD Settlement Statement for closing of escrow on the Six
2 Million, Nine Hundred Thousand Dollar (\$6,900,000) loan states as follows:

3 1) loan origination fees	\$138,000
4 2) interest payment (6)	\$189,000
5 3) Colonial Bank (infrastructure)	\$3,300,000
6 4) Settlement closing fees	\$3,000
7 5) Document title service and escrow	\$400
8 6) Delivery fee	\$50
9 7) Title insurance	\$6,555
10 8) Endorsement 101.3	\$655
11 9) Inspection fee	\$65
12 10) Recording fee	\$139
13 11) DINEHART	\$200,000
14 12) BICHLER	\$250,000
15 13) Geri Carbone	<u>\$64,000</u>
16 Total settlement charges	\$4,153,320.14

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20 40. In addition, there was a check written from this escrow account to J. HINSON in the
21 amount of Seven Hundred Thirty-Seven Thousand, Five Hundred Thirteen Dollars and Nineteen
22 Cents (\$737,513.19). There were no escrow instructions authorizing this payment or notice to
23 anyone of the 74 LENDERS that this was to occur.
24

25 41. The final HUD statement report on line 104 notes a payoff to KAFOURY in the
26 amount of Two Million, Nine Thousand, One Hundred Sixty-Six Dollars and Sixty-Seven Cents
27 (\$2,009,166.67). Again, there were no escrow instructions authorizing this payment. Indeed,
28

1 there was only Three Hundred Eighty-Five Thousand Dollars (\$385,000) in escrow after all
2 authorized payments and the Seven Hundred Thirty-Seven Thousand, Five Hundred Thirteen
3 Dollar and Nineteen Cent (\$737,513.19) check was sent to J. HINSON.
4

5 42. Not disclosed to the 74 LENDERS, was the fact that J. HINSON had written a check
6 for \$170,000 to the IRS for back taxes he owed out of funds in escrow obtained from the Regan
7 loan. Since this escrow account was overdrawn as of April 15, 2006 by approximately \$200,000
8 due to J. HINSON'S and/or HINSON DEV.'S previous withdrawals, J. HINSON was desperate
9 for funds to cover his Federal Income Taxes. No notice of this overdraft was sent to the 74
10 LENDERS or BICHLERS or the DINEHART TRUST.
11

12 43. TSEC recorded a deed of full reconveyance to SUNSET for the REGAN NOTE on
13 June 8, 2006. No additional money was deposited in the TSEC escrow account after April 20,
14 2006.
15

16 44. At the April 20, 2006 closing of escrow, TSEC recorded: Document #3377002, a
17 SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS; Document #3377003 a
18 MODIFICATION OF DEED OF TRUST; and Document #3377004, a SUBORDINATION
19 AGREEMENT.
20

21 45. All of these documents were defective because they are vague and lacked sufficient
22 property descriptions to comply with NRS 11.2075. These documents, given how filed, clearly
23 under NRS 11.2075 provide BICHLERS and the DINEHART TRUST the right to rescind their
24 subordination agreements.
25

26 46. J. HINSON, personally, was a client of KAFOURY during all material times hereto.
27 At the same time, KAFOURY also did the accounting for both HINSON DEV. and SUNSET.
28

47. KAFOURY was the alter ego of LAKESIDE and therefore was also an agent for the

1 74 LENDERS.

2 48. LAKESIDE and its alter ego, KAFOURY, brokered the Two Million Dollar
3 (\$2,000,000) REGAN loan to SUNSET with funds acquired from 25 of their clients.
4

5 49. On information and belief, LAKESIDE and KAFOURY knew by virtue of being J.
6 HINSON'S accountant that over One Million, Two Hundred Fifty-Four Thousand Dollars
7 (\$1,254,000) of the Two Million Dollar (\$2,000,000) loan secured by the Regan deed of trust
8 went into J. HINSON'S personal account prior to the Six Million, Nine Hundred Thousand
9 Dollar (\$6,900,000) loan closing on April 20, 2006..
10

11 50. In addition, KAFOURY and LAKESIDE knew HINSON was committed to making
12 monthly payments totaling Sixty-Four Thousand Dollars (\$64,000) in interest alone to the 74
13 LENDERS and Seven Thousand Dollars (\$7,000) per month to BICHLERS and the DINEHART
14 TRUST on their promissory notes.
15

16 51. Therefore, LAKESIDE and KAFOURY both knew that as of April 20, 2006, that
17 there were insufficient funds with which to complete the Sunset Bluffs project.
18

19 52. Furthermore, LAKESIDE and KOFOURY both knew that J. HINSON and HINSON
20 DEV., jointly and severally, lacked the financial ability to ever repay the Six Million, Nine
21 Hundred Thousand Dollar (\$6,900,000) loan for completion of the Sunset Bluffs project.
22

23 53. In order to induce the 74 LENDERS to loan the funds necessary for HINSON DEV.
24 to go forward with the Sunset Bluffs project, on October 17, 2005, LAKESIDE distributed a
25 Real Estate Finance Proposal ("Proposal") to the 74 LENDERS.

26 54. At the end of the Proposal there is reference to "JOHN HINSON" as a guarantor,
27 "whose September 30th CPA prepared financial statement reflects a new net worth of
28 \$6,010,000." This "CPA prepared financial statement, of course, was prepared by J. HIMSON'S

1 accountant, KAFOURY.

2 55. Included under assets in this Proposal is "Proprietorship interest in Sunset Bluffs,
3 LLC [SUNSET] valued at \$2,259,383".

4 56. SUNSET actually had a negative equity of Two Hundred and Thirty-Nine Dollars
5 (\$239) as of December 31, 2005 according to the accounting records maintained by KAFOURY.

6 57. In fact, instead of J. HINSON having invested in SUNSET, he disbursed One
7 Million, Four Thousand, Seven Hundred Twenty-One Dollars (\$1,004,721) to himself from
8 SUNSET from November 2, 2005 to December 31, 2005 out of the REGAN Two Million Dollar
9 (\$2,000,000) loan proceeds without the REGAN NOTE holders ever being informed.
10 LAKESIDE, KAFOURY and other Defendant's exercising even a modicum of due diligence
11 should have been aware of such transgressions by J. HINSON.

12 58. There is a note receivable from J. HINSON, personally, dated December 31, 2005 in
13 the amount of Five Hundred Four Thousand, Seven Hundred Twenty-One Dollars (\$504,721),
14 which means he owed SUNSET this amount.

15 59. J. HINSON then, clearly, had no money invested in SUNSET. Yet, the financial
16 compilation prepared by KAFOURY purports to show that J. HINSON had a "proprietorship
17 interest" in SUNSET in the amount of Two Million, Two Hundred Fifty-Nine Thousand, Three
18 Hundred Eighty-Three Dollars (\$2,259,383) as of December 31, 2005.

19 60. KAFOURY and LAKESIDE also represented to potential SB loan investors that they
20 had an appraisal on the Sunset Bluff's property in the amount of Six Million Five Hundred
21 Thousand Dollars (\$6,500,000.00) with infrastructure, and over Ten Million Dollars
22 (\$10,000,000.00) with the houses completed on the 41 pads.

23 61. This appraisal relied on inappropriate comparables such as Arrow Creek and
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1 Montreux and as such, the appraisal done by WILLIAM G. KIMMEL & ASSOCIATES was
2 clearly inflated and misleading in order to persuade the KAFOURY clients to invest their funds
3 in an extremely high risk venture, without disclosing the true risk, and that the project was
4 underfunded from its inception.
5

6 62. In addition, J. HINSON and/or HINSON DEV. withdrew very substantial amounts
7 of money from SUNSET'S Colonial Bank Account, in which Three Million, Three
8 Hundred Thousand Dollars (\$3,300,000) of the Five Million, One Hundred Twenty-Eight
9 Thousand Dollars (\$5,128,000) contributed by the 49 new lenders out of the total 74
10 LENDERS' One Hundred Twenty-Eight Thousand Dollars (\$5,128,000) was deposited. This
11 money was set aside for the exclusive purpose of funding the infrastructure construction.
12

13 63. For example, J. HINSON and/or HINSON DEV. Withdrew _____ get
14 from Richard _____ [on what date], which was not questioned by
15 KAFOURY, who maintained the accounting records.
16

17 64. Also, J. HINSON and/or HINSON DEV. were reimbursed by SUNSET in the sum
18 of Six Hundred Eighty-Five Thousand Dollars (\$685,000) for water rights on December 31,
19 2006.
20

21 65. Plaintiffs believe that this sum was significantly higher than what J. HINSON and/or
22 HINSON DEV. paid for them or what their fair market value was at the time J. HINSON and/or
23 HINSON DEV. transferred them to SUNSET.

24 66. It is also believed by Plaintiffs that these water rights were never disclosed in the
25 bankruptcy proceedings of J. HINSON, HINSON DEV. or SUNSET and said proceedings must
26 be reopened for a proper distribution of these rights.
27

28 67. KAFOURY and LAKESIDE knew that based on J. HINSON'S and/or HINSON

1 DEV.'S financial statements at the time of the April 20, 2006 loan, it was impossible for J.
2 HINSON or HINSON DEV. to pay Sixty-Four Thousand Dollars (\$64,000) per month interest to
3 the 74 LENDERS, Seven Thousand Dollars (\$7,000) per month to the BICHLERS and
4 DINHART TRUST and finish the project with only Three Million, Three Hundred Thousand
5 Dollars (\$3,300,000) available to complete the infrastructure.
6

7 68. In May, 2006 HINSON DEV., J. HINSON and SUNSET defaulted on payments to
8 the Plaintiffs who were part of the 74 LENDERS and in fact, all of the 74 LENDERS due them
9 pursuant to the terms of the subordination agreement.
10

11 69. In addition, LAKESIDE, as agent for the 74 LENDERS, agreed to accept interest
12 only payments from SUNSET and HINSON and/or J. HINSON pursuant to the promissory
13 note secured by the deed of trust signed in May, 2006.
14

15 70. BICHLERS and the DINEHART TRUST were never notified and consequently
16 never consented to this change in terms.

17 71. At this point BICHLERS and the DINEHART TRUST each had a right to rescind
18 their subordination agreements but could not because they had not received any notice from
19 TSEC or LAKESIDE of the default.
20

21 72. On December 8, 2007, SUNSET, HINSON DEV. and J. HINSON all filed for
22 bankruptcy.
23

24 73. On February 22, 2008, the Bankruptcy trustee abandoned the Sunset Bluffs real
25 estate at the request of LAKESIDE as agent for the 74 LENDERS subject to JACC'S mechanic's
26 lien.
27

28 74. The abandonment was done without the bankruptcy trustee separating the water
rights from the real estate as LAKESIDE, acting as the agent for the 74 LENDERS, never

1 informed the bankruptcy trustee that the water rights even existed and were severable from the
2 abandoned real estate.

3
4 75. Lakeside omitted to inform the bankruptcy trustee of the water rights associated with
5 the Sunset Bluffs property despite the fact that LAKESIDE was fully aware that J. HINSON and/
6 or HINSON DEV. Had been paid Six Hundred, Eighty-Five Thousand Dollars (\$685,000) on
7 December 31, 2006 for these water rights.

8
9 76. LAKESIDE, without naming BICHLERS and the DINEHART TRUST as a secured
10 creditors of the Sunset Bluffs property, foreclosed on the property and took a trustee's deed from
11 WESTERN after purportedly paying \$100,000 to WESTERN at the public sale on November 25,
12 2008.

13
14 77. However, on information and belief, no actual money changed hands between
15 LAKESIDE and WESTERN.

16
17 78. WESTERN knew or should have known that the bankruptcy Court lifted the stay to
18 foreclose on the Sunset Bluffs property subject to JACC'S Mechanic's
19 Lien.

20
21 79. A title search by WESTERN would have revealed that there was a Lis Pendens
22 notice and Mechanic's Lien filed by JACC before the Bankruptcy Court ever lifted the stay to
23 foreclose on the Sunset Bluffs property.

24
25 80. Said Lis Pendens and Mechanic's Lien needed to be resolved before foreclosure
26 could be completed.

27
28 81. To accomplish a successful foreclosure WESTERN needed to pay the lien in full, or
bond the lien, neither of which occurred.

82. A total of \$100,000 was bid at the foreclosure auction but none of this amount was

1 paid to the Mechanic's Lien holder, JACC.

2
3
4 **V. CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION - FRAUD**
6 **(Against all Defendants)**

7 83. Plaintiffs incorporate by reference paragraphs 1 through 82 of this Complaint as if
8 set forth in full herein.

9 84. Defendants, KAFOURY, LAKESIDE knew that the Sunset Bluffs ("SB") loan in
10 which they induced various Plaintiffs to invest was not a viable loan in which Plaintiffs had any
11 chance of recouping their investment.

12 85. These Defendants caused false information to be published about the loan and J.
13 HINSON'S financial condition in order to obtain investments by various Plaintiffs in this loan.

14 86. These Defendants knew the information they were publishing in order to induce the
15 various Plaintiffs to invest in the SB loan was false.

16 87. KAFOURY and LAKESIDE had the requisite intent to commit fraud against the
17 investors as at closing said Defendants were to receive and did receive One Hundred Thirty-
18 Eight Thousand Dollars (\$138,000) for an origination fee.

19 88. The origination fee charged on the SB loan was especially fraudulent in that
20 LAKESIDE had already received Forty Thousand Dollars (\$40,000) as an origination fee on the
21 Two Million Dollar (\$2,000,000) REGAN NOTE which was rolled over and became part of the
22 Six Million, Nine Hundred Thousand Dollar (\$6,900,000) SB loan, even though, in truth, the
23 SB loan was essentially only Five Million, Two Hundred Seventy-Five Thousand Dollars
24 \$5,275,000 in cash.

25 89. The deception of Defendants LAKESIDE and KAFOURY is further evidenced by
26
27
28

1 their above described violations of the Nevada Good Funds law as they closed a loan for Six
2 Million, Nine Hundred Thousand Dollars (\$6,900,000) even though they knew they only had
3 cash on hand of Five Million, Two Hundred Thirty-Five Thousand Dollars at the fraudulent
4 closing of the SB loan.
5

6 90. KAFOURY failed to inform any of the Plaintiff investors that only Five Million,
7 Two Hundred Seventy-Five Thousand Dollars (\$5,275,000) was ever deposited in this escrow
8 account in cash.
9

10 91. BICHLERS and the DINEHART TRUST were also victimized because Defendants
11 KAFOURY, LAKESIDE and any other Defendant co-conspirators knew that the Sunset Bluffs
12 project could not be completed given the financial condition SUNSET and/or HINSON DEV.
13 were in on April 20, 2006 with only Five Million, Two Hundred Seventy-Five Thousand Dollars
14 (\$5,275,000) in cash.
15

16 92. ARNDELL is the assignee of the rights of BICHLERS and the DINEHART TRUST
17 to the PROPERTY and as such holds the beneficial interest to their Deed of Trust and therefore
18 in that capacity is a real party in interest as to this case and has also been defrauded by
19 KAFOURY, LAKESIDE and any other Defendant co-conspirators.
20

21 93. JACC was defrauded and damaged by KAFOURY, LAKESIDE and the other
22 Defendant co-conspirators and would never have contracted to be the general contractor for the
23 infrastructure on the Sunset Bluffs project had it been aware of the fraud perpetrated by
24 KAFOURY, LAKESIDE and any other Defendant co-conspirators.
25

26 94. ARNDELL is the assignee of all rights and causes of action of JACC and therefore
27 in that capacity is a real party in interest as to this case and has also been defrauded by
28 KAFOURY, LAKESIDE and any other Defendant co-conspirators.

1 95. As set forth in the Statements of Facts, Defendants, MOGUL 41 and WESTERN
2 participated in the defrauding of BICHLERS and the DINEHART TRUST by conspiring to
3 ensure that title to the PROPERTY got transferred to MOGUL 41 without BICHLERS and the
4 DINEHART TRUST ever being informed of the valuable Sunset Bluffs water rights.
5

6 96. Furthermore, WESTERN defrauded BICHLERS and the DINEHART TRUST by
7 not informing them of the foreclosure sale of the Sunset Bluffs property.
8

9 97. WESTERN was also a co-conspirator of LAKESIDE to defraud in a sham public
10 sale of the PROPERTY on November 25, 2008 whereby WESTERN purportedly received One
11 Hundred Thousand Dollars (\$100,000) for its interest in the PROPERTY, which payment should
12 either have gone to BICHLERS and the DINEHART TRUST as secured creditors or to JACC as
13 a result of its Mechanic's Lien on the PROPERTY.
14

15 98. Plaintiffs, on information and belief, do not believe any money actually changed
16 hands between LAKESIDE AND WESTERN at said "public sale" and prospective buyers were
17 not informed of the Six Hundred, Eighty-five Thousand Dollars (\$685,000) in water rights
18 attendant to the property.
19

20 99. All of the Plaintiffs believed and relied on any and all representations made by the
21 various Defendants in perpetrating the above described fraud or in conspiring with various
22 Defendants to enable these Defendants to carry out their fraudulent schemes.
23

24 100. All of the Plaintiffs suffered substantial damages as a result of the fraud and
25 conspiracy to commit fraud as set forth above.
26

27 101. The action of all Defendants in committing the fraud against the various Plaintiffs
28 as set forth herein was in wanton and willful disregard of the rights of the Plaintiffs and therefore
Defendants, LAKESIDE, KAFOURY, MOGUL 41, WESTERN and the DOE Defendants are

1 liable to Plaintiffs for punitive or exemplary damages.

2 **WHEREFORE**, Plaintiffs and each of them, by and through their attorney of
3 record, CHARLES R. KOZAK, ESQ., pray for judgment jointly and severally against
4 Defendants, LAKESIDE, KAFOURY, MOGUL 41, WESTERN and the DOE Defendants as
5 follows:
6

- 7 1. For compensatory damages in a sum in excess of Ten Thousand Dollars
8 (\$10,000);
9
- 10 2. For punitive or exemplary damages as permitted under law;
- 11 3. For interest as allowed by law until all damages are fully paid;
- 12 4. For an award of reasonable attorney's fees and the costs of suit incurred herein;
13 and
- 14 5. For such other and further relief as the Court deems just, equitable and reasonable
15 in the premises.
16

17 **SECOND CAUSE OF ACTION – ACCOUNTING**
18 **(Against Defendants Kafoury and Lakdeside)**
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