

CLERK OF THE COURT

Electronically Filed
Jul 20 2015 02:06 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

1 NOAS
2 Office of the General Counsel
3 Clark County School District
4 DANIEL L. O'BRIEN, ESQ.
5 Nevada Bar No. 0983
6 CARLOS L. McDADE, ESQ.
7 Nevada Bar No. 11205
8 5100 W. Sahara Avenue
9 Las Vegas, NV 89146
10 (702) 799-5373
11 Attorneys for Defendant

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 MAKANI KAI PAYO,

15 Plaintiff,

16 v.

17 CLARK COUNTY SCHOOL DISTRICT,

18 Defendant.

Case No. A-12-668833-C
Dept. No. XV

NOTICE OF APPEAL

19 TO: Plaintiff Makani Kai Payo and Robert O. Kurth, Esq., his
20 attorney.

21 NOTICE OF APPEAL

22 Pursuant to NRAP 3(c):

23 (A) Party taking this appeal:

24 Defendant, Clark County School District.

25 (B) Judgment, order or part thereof being appealed:

26 (1) the Judgment Upon Jury Verdict entered in the
27 above-captioned case on June 16, 2015;

28 (2) the portion of the Order Regarding Damages Post-
Jury Verdict entered on June 16, 2015, which holds
that a minor, after reaching the age of majority,
may recover medical expenses incurred by his
parents during the minor's infancy;

- 1 (3) the May 19, 2015, Order denying the District's
- 2 motion for summary judgment and permitting the
- 3 issue of duty to be submitted to the jury;
- 4 (4) the April 10, 2015, Order refusing to strike
- 5 Plaintiff's untimely damages calculation;
- 6 (5) the August 21, 2013, Order Granting in Part and
- 7 Denying in Part Defendant's Motion to Dismiss, to
- 8 the extent the Court denied the motion to strike
- 9 the claim for past special damages which were
- 10 incurred by Plaintiff's parents while he was a
- 11 minor;
- 12 (6) the refusal of the Court to give a jury
- 13 instruction offered by the District on the issue
- 14 of whether Plaintiff was entitled to recover past
- 15 medical expenses incurred by his parents while he
- 16 was a minor;
- 17 (7) the refusal of the court to give a jury
- 18 instruction offered by Defendant on the inherent
- 19 risk doctrine; and
- 20 (8) the giving by the Court of Jury Instruction No.
- 21 34, to the extent permitting the jury to award
- 22 past medical expenses incurred by Plaintiff's
- 23 parents while Plaintiff was a minor.

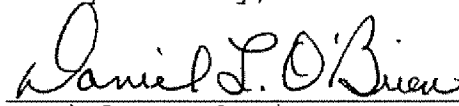
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1 C. Name of Court to which appeal is taken:

2 Supreme Court of the State of Nevada, pursuant to NRAP
3 17(a)(13) [matter raising as a principal issue a question of
4 first impression involving common law] and NRAP 17(a)(14) [matter
5 raising as a principal issue an issue upon which there is an
6 inconsistency in interpretation of the published decisions of the
7 Supreme Court]. Cf: NRAP 17(2) [appeals from a judgment,
8 exclusive of interest, attorneys fees and costs, of \$250,000 or
9 less in a tort case].

10 Respectfully submitted this 15th day of July, 2015.

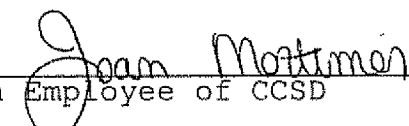
11 By:

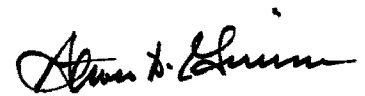

Daniel L. O'Brien
Nevada Bar No. 983
Office of General Counsel
Clark County School District
5100 West Sahara Avenue
Las Vegas, NV 89146
Counsel for District

12
13
14
15
16
17 **CERTIFICATE OF SERVICE**

18 I HEREBY CERTIFY that on the 15th day of July, 2015, I served
19 a true and correct copy of the foregoing NOTICE OF APPEAL via
20 electronic filing and electronic service through the EFP Vendor
21 System to all registered parties pursuant to the order for
22 electronic filing and service.

23 Robert O. Kurth, Jr.
24 Kurth Law Office
3420 North Buffalo Drive
Las Vegas, NV 89129
25 Kurthlawoffice@gmail.com
Attorney for Plaintiff
26

27 
28 An Employee of CCSD



CLERK OF THE COURT

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12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 MAKANI KAI PAYO,

15 Plaintiff,

16 v.

17 CLARK COUNTY SCHOOL DISTRICT,

18 Defendant.

Case No. A-12-668833-C
Dept. No. XV

CASE APPEAL STATEMENT

19 TO: Plaintiff Makani Kai Payo and Robert O. Kurth, Esq., his
20 attorney.

CASE APPEAL STATEMENT

21 Pursuant to NRAP 3(f)(3), Defendant Clark County School
22 District respectfully submits for consideration its Case Appeal
23 Statement in the above-referenced matter:

24 (A) District Court Case Number and Caption:

25 Case No. A-12-668833-C; Makani Kai Payo v. Clark County
26 School District.

27 (B) Name of Judge who entered the orders or judgment being
28 appealed:

(1) *Honorable Judge Joseph Hardy, Jr.*

- 06/16/15 Judgment Upon Jury Verdict;

- 06/16/15 Order Regarding Damages Post-Jury
Verdict;

- 1 - 05/19/15 Order denying District's motion for
2 summary judgment and permitting the issue of duty
3 to be submitted to the jury;
4 - Jury Instructions given, and not given, as identified
5 in the Notice of Appeal.
6 (2) **Honorable Richard F. Scotti.**
7 - 04/10/15 Order refusing to strike Plaintiff's damages
8 calculation;
9 (3) **Honorable Valorie J. Vega.**
10 - 08/21/13 Order Granting in Part and Denying in Part
11 Defendant's Motion to Dismiss.
12 (C) **Name of each appellant and name and address of counsel for**
13 **each appellant:**
14 (1) The Clark County School District, a political subdivision
15 of the State of Nevada, is the Appellant.
16 (2) Daniel L. O'Brien and the Office of General Counsel for
17 the Clark County School District, located at 5100 West
18 Sahara Avenue, Las Vegas, Nevada, 89146, are the
19 attorneys representing the Appellant.
20 (D) **Name of each respondent and the name and address of appellate**
21 **counsel, in known, or if not, name and address of trial**
22 **counsel:**
23 (1) Makani Kai Payo is the Respondent.
24 (2) Robert O. Kurth, Jr., whose office is located at 3420
25 North Buffalo Drive, Las Vegas, NV 89129, was trial
26 counsel for Respondent.
27 (E) **All attorneys identified herein are licensed to practice law**
28 **in Nevada.**
29 (1) Appellant's counsel's Nevada Bar number is 983.
30 (2) Respondent's counsel's Nevada Bar number is 4659.
31 (F) **Whether Appellant was represented by appointed counsel in the**
32 **district court; whether Appellant is represented by appointed**
33 **counsel on appeal:**
34 (1) No.
35 (2) No.

1 (G) Whether the district court granted Appellant leave to proceed
2 in forma pauperis:

3 No.

4 (H) Date the proceedings commenced in the district court:

5 Plaintiff's Complaint was filed on September 21, 2012.

6 (I) Brief description of the nature of the action and result in
7 district court, including the type of judgment or order being
8 appealed and the relief granted by the district court:

9 (1) The matter before the District Court was a negligence
10 action brought against the Clark County School District
11 by Plaintiff Makani Payo who, on May 12, 2004, was an
12 eleven year old student who was injured while
13 participating in a Floor Hockey unit in his Physical
14 Education class at Woodbury Middle School. Makani
15 alleged that another student accidentally struck him in
16 the face near his eye with a hockey stick while they were
17 both trying to hit the puck with their hockey sticks.
18 Plaintiff alleged that the District breached a duty to
19 provide unspecified "safety equipment" for the protection
20 of players.

21 (2) The case was tried before a jury which, on June 2, 2015,
22 entered an award in favor of Plaintiff and against the
23 District as follows:

24 (A) Past Medical and related expenses: \$48,288.06

25 (B) Future medical and related expenses: 10,000.00

26 (C) Past pain, suffering, disability,
27 and loss of enjoyment of life: 2,000.00

28 (D) Future pain, suffering, disability,
and loss of enjoyment of life: - 0 -

(3) In an Order, dated June 16, 2015, the Court subsequently
reduced the total judgment to \$50,000 pursuant to the
version of NRS 41.035 in effect at the time of the
accident.

The Court also specifically ruled that Plaintiff, who was
a minor at the time of the injury, was entitled to
recover past medical expenses incurred by his parents
while he was a minor.

(4) Also on June 16, 2015, the Court entered a separate
judgment on the jury verdict in the amount of \$50,000.

1 (J) This case has NOT been the subject of a previous appeal or
2 writ proceeding before any Nevada appellate Court.


3 (K) This case does NOT involve child custody or visitation.

4 (L) Whether this case involves the possibility of settlement:

5 Although settlement is not inconceivable, in Appellant's view
6 the probability that this case can be settled appears unlikely.

7 Respectfully submitted this 15th day of July, 2015.

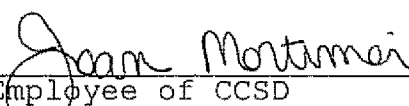
8 By:


Daniel L. O'Brien
Nevada Bar No. 983
Office of General Counsel
Clark County School District
5100 West Sahara Avenue
Las Vegas, NV 89146
Counsel for District

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14 **CERTIFICATE OF SERVICE**

15 I HEREBY CERTIFY that on the 15th day of July, 2015, I served
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17 via electronic filing and electronic service through the EFP
18 Vendor System to all registered parties pursuant to the order for
19 electronic filing and service.

20 Robert O. Kurth, Jr.
21 Kurth Law Office
22 3420 North Buffalo Drive
23 Las Vegas, NV 89129
24 Kurthlawoffice@gmail.com
25 Attorney for Plaintiff

26
27 
28 An Employee of CCSD

DEPARTMENT 15
CASE SUMMARY
CASE NO. A-12-668833-C

Makani Payo, Plaintiff(s)
vs.
Clark County School District, Defendant(s)

§
§
§
§
§

Location: **Department 15**
Judicial Officer: **Hardy, Joe**
Filed on: **09/21/2012**
Case Number History:
Cross-Reference Case Number: **A668833**

CASE INFORMATION

Statistical Closures
03/08/2013 Involuntary (Statutory) Dismissal

Case Type: **Negligence - Other Negligence**
Case Flags: **Appealed to Supreme Court**
Jury Demand Filed
Arbitration Exemption Granted

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-12-668833-C
Court	Department 15
Date Assigned	05/04/2015
Judicial Officer	Hardy, Joe

PARTY INFORMATION

Plaintiff **Payo, Makani Kai**

Lead Attorneys
Kurth, Robert O.
Retained
702-438-5810(W)

Defendant **Clark County School District**

O'Brien, Daniel Louis
Retained
7027995373(W)

Doe Clark County School District Employees I-V


Murch, Patrick J.
Retained
7028734100(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX


09/21/2012

 **Complaint**
Filed By: Plaintiff Payo, Makani Kai
Complaint


09/21/2012

Case Opened


02/13/2013

 **Demand for Security of Costs**
Filed By: Defendant Clark County School District
Demand for Security of Costs and Charges


03/08/2013

 **Order to Statistically Close Case**
Civil Order to Statistically Close Case

03/11/2013

 **Summons**
Filed by: Plaintiff Payo, Makani Kai
Summons - Clark County School District

03/18/2013













 **Motion to Dismiss**

DEPARTMENT 15
CASE SUMMARY
CASE NO. A-12-668833-C

04/10/2013	 Filed By: Defendant Clark County School District <i>CCSD's Motion to Dismiss</i>
04/12/2013	 Notice of Filing Cost Bond Filed By: Plaintiff Payo, Makani Kai <i>Notice if Filing Non-Resident Cost Bond</i>
04/19/2013	 Opposition to Motion Filed By: Plaintiff Payo, Makani Kai <i>Opposition to Motion to Dismiss</i>
04/30/2013	 Reply to Opposition Filed by: Defendant Clark County School District <i>Defendant's Reply to Opposition to Motion to Dismiss</i>
05/01/2013	Response Filed by: Plaintiff Payo, Makani Kai <i>Response to Reply to Opposition to Motion to Dismiss</i>
05/01/2013	 Motion to Dismiss (3:00 AM) (Judicial Officer: Vega, Valorie J.) 05/01/2013, 05/08/2013 Events: 03/18/2013 Motion to Dismiss <i>CCSD's Motion to Dismiss</i>
05/31/2013	 Order Granting Motion Filed By: Plaintiff Payo, Makani Kai <i>Order Granting Plaintiff's Motion to Strike Response to Reply to Opposition and Denying Defendant's Motion to Dismiss</i>
06/03/2013	 Notice of Entry of Order Filed By: Defendant Clark County School District <i>Notice of Entry of Order</i>
06/10/2013	 Motion to Dismiss Filed By: Defendant Clark County School District <i>Notice of Motion and Motion to Dismiss</i>
07/01/2013	 Opposition to Motion to Dismiss Filed By: Plaintiff Payo, Makani Kai <i>Opposition to Motion to Dismiss</i>
07/10/2013	 Reply to Opposition Filed by: Defendant Clark County School District <i>Reply to Opposition to Motion to Dismiss</i>
07/15/2013	 Motion to Dismiss (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>Notice of Motion and Motion to Dismiss</i>
08/21/2013	 Order Granting Filed By: Defendant Clark County School District <i>Order Granting in Part and Denying in Part Defendant's Motion to Dismiss</i>
08/21/2013	Order of Dismissal Without Prejudice (Judicial Officer: Vega, Valorie J.) Debtors: Makani Kai Payo (Plaintiff) Creditors: Clark County School District (Defendant)

DEPARTMENT 15
CASE SUMMARY
CASE NO. A-12-668833-C

Judgment: 08/21/2013, Docketed: 08/28/2013
Comment: Certain Causes














08/21/2013	Order of Dismissal (Judicial Officer: Vega, Valorie J.) Debtors: Makani Kai Payo (Plaintiff) Creditors: Clark County School District (Defendant) Judgment: 08/21/2013, Docketed: 08/28/2013 Comment: Certain Claims
08/22/2013	 Notice of Entry of Order Filed By: Defendant Clark County School District <i>Notice of Entry of Order Granting in Part and Denying in Part Defendant's Motion to Dismiss</i>
10/14/2013	 Amended Complaint Filed By: Plaintiff Payo, Makani Kai <i>First Amended Complaint</i>
12/10/2013	 Answer to Amended Complaint Filed By: Defendant Clark County School District <i>Clark County School District's Answer to Plaintiff's First Amended Complaint</i>
02/07/2014	 Commissioners Decision on Request for Exemption - Granted <i>Commissioner's Decision on Request for Exemption</i>
03/05/2014	 Certificate of Mailing Filed By: Defendant Clark County School District <i>Certificate Of Mailing</i>
03/05/2014	 Motion to Dismiss Filed By: Defendant Clark County School District <i>Notice of Motion and Motion To Dismiss</i>
03/07/2014	 Notice of Early Case Conference Filed By: Plaintiff Payo, Makani Kai <i>Notice of 16.1 Case Conference</i>
03/24/2014	 Opposition to Motion to Dismiss Filed By: Plaintiff Payo, Makani Kai <i>Opposition to Motion to Dismiss</i>
03/28/2014	 Reply to Opposition Filed by: Defendant Clark County School District <i>Reply to Opposition to Motion to Dismiss</i>
04/07/2014	 Motion to Dismiss (9:00 AM) (Judicial Officer: Vega, Valorie J.) <i>Notice of Motion and Motion To Dismiss</i>
04/17/2014	 Amended Notice of Early Case Conference <i>First Amended Notice of 16.1 Case Conference</i>
05/13/2014	 Order Denying Motion Filed By: Plaintiff Payo, Makani Kai <i>Order</i>

DEPARTMENT 15
CASE SUMMARY
CASE NO. A-12-668833-C

05/19/2014	 Notice of Entry of Order Filed By: Plaintiff Payo, Makani Kai <i>Notice of Entry of Order</i>
07/21/2014	 Joint Case Conference Report Filed By: Plaintiff Payo, Makani Kai <i>Joint Case Conference Report</i>
07/23/2014	 Certificate of Service Filed by: Plaintiff Payo, Makani Kai <i>Certificate of Service</i>
08/06/2014	 Scheduling Order <i>Scheduling Order</i>
08/25/2014	 Demand for Jury Trial Filed By: Plaintiff Payo, Makani Kai <i>Demand for Jury Trial</i>
09/03/2014	 At Request of Court (3:00 AM) (Judicial Officer: Vega, Valorie J.) <i>Status Check Re:Reopening the Case</i>
09/18/2014	 Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call <i>Order Setting Civil Jury Trial, Pre-Trial Conference and Calendar Call</i>
01/05/2015	Judicial Elections 2014 - Case Reassignment <i>District Court Judicial Officer Reassignment 2014</i>
01/28/2015	 Motion to Strike Filed By: Defendant Clark County School District <i>Notice of Motion and Motion to Strike Plaintiff's Damages Calculation or, in the Alternative, Motion in Limine</i>
02/13/2015	 Motion to Continue Trial Filed By: Plaintiff Payo, Makani Kai <i>Plaintiff's Motion to Continue/Extend Discovery and Trial</i>
02/13/2015	 Opposition to Motion Filed By: Plaintiff Payo, Makani Kai <i>Plaintiff's Opposition to Defendant's Motion to Strike Plaintiff's Damages Calculation and Motion in Limine</i>
02/23/2015	 Reply to Opposition Filed by: Defendant Clark County School District <i>Clark County School District's Reply to Plaintiff's Opposition to Motion to Strike Plaintiff's Damages Calculations or, in the alternative, Motion in Limine</i>
02/24/2015	 Opposition to Motion Filed By: Defendant Clark County School District <i>Clark County School District's Opposition to Plaintiff's Motion to Continue/Extend Discovery and Trial</i>
03/02/2015	 Stipulation and Order Filed by: Plaintiff Payo, Makani Kai

DEPARTMENT 15
CASE SUMMARY
CASE NO. A-12-668833-C














Stipulation and Order to Amend Plaintiff's First Amended Complaint

03/03/2015	 Motion to Strike (3:00 AM) (Judicial Officer: Scotti, Richard F) <i>Notice of Motion and Motion to Strike Plaintiff's Damages Calculation or, in the Alternative, Motion in Limine</i>
03/05/2015	 Amended Complaint Filed By: Plaintiff Payo, Makani Kai <i>Second Amended Complaint</i>
03/06/2015	 Reply to Opposition Filed by: Plaintiff Payo, Makani Kai <i>Reply to Opposition to Motion to Continue/Extend Discovery and Trial</i>
03/10/2015	 Answer to Amended Complaint Filed By: Defendant Clark County School District <i>Clark County School District's Answer to Plaintiff's Second Amended Complaint</i>
03/18/2015	 Motion to Extend Discovery (9:00 AM) (Judicial Officer: Bulla, Bonnie) <i>Plt's Motion to Extend Discovery</i>
04/08/2015	 Response Filed by: Defendant Clark County School District <i>Clark County School District's Responses to Plaintiff's Subpoena Duces Tecum</i>
04/08/2015	 Motion for Summary Judgment Filed By: Defendant Clark County School District <i>Notice of Motion and Motion for Summary Judgment</i>
04/09/2015	 Notice of Hearing <i>Notice of Hearing</i>
04/10/2015	 Order Filed By: Defendant Clark County School District <i>Order Granting In Part and Denying in Part Defendant's Motion to Strike Plaintiff's Damages Calculation or, in the Alternative, Motion in Limine</i>
04/14/2015	 Notice of Entry of Order Filed By: Defendant Clark County School District <i>Notice of Entry of Order</i>
04/17/2015	Status Check: Status of Case (9:30 AM) (Judicial Officer: Bulla, Bonnie) <i>Status Check: Status of Case / Trial Date</i>
04/17/2015	Status Check: Compliance (9:30 AM) (Judicial Officer: Bulla, Bonnie)
04/17/2015	 All Pending Motions (9:30 AM) (Judicial Officer: Bulla, Bonnie) <i>Status Check: Status of Case / Trial Date Status Check: Compliance</i>
04/27/2015	 Opposition and Countermotion Filed By: Plaintiff Payo, Makani Kai <i>Opposition to Motion for Summary Judgment, and Counter-Motion for Summary Judgment</i>
04/28/2015	 Initial Appearance Fee Disclosure











DEPARTMENT 15
CASE SUMMARY
CASE NO. A-12-668833-C

	Filed By: Plaintiff Payo, Makani Kai <i>Initial Appearance Fee Disclosures</i>
05/04/2015	Case Reassigned to Department 15 <i>Case reassigned from Judge Richard F Scotti Dept 2</i>
05/05/2015	 Reply to Opposition Filed by: Defendant Clark County School District <i>Reply to Opposition to Motion for Summary Judgment and Opposition to Countermotion for Summary Judgment</i>
05/08/2015	 Pre-trial Memorandum Filed by: Plaintiff Payo, Makani Kai <i>Plaintiff's Pre- Trial Memorandum</i>
05/08/2015	 Status Check: Compliance (11:00 AM) (Judicial Officer: Bulla, Bonnie)
05/11/2015	Motion for Summary Judgment (9:00 AM) (Judicial Officer: Hardy, Joe) <i>Deft's Motion and Motion for Summary Judgment</i>
05/11/2015	Opposition and Countermotion (9:00 AM) (Judicial Officer: Hardy, Joe) <i>Plaintiff's Opposition to Motion for Summary Judgment, and Counter-Motion for Summary Judgment</i>
05/11/2015	 All Pending Motions (9:00 AM) (Judicial Officer: Hardy, Joe) <i>Defendant's Motion and Notice of Motion for Summary Judgment and Plaintiff's Opposition to Motion for Summary Judgment, and Counter-Motion for Summary Judgment</i>
05/13/2015	 Calendar Call (8:30 AM) (Judicial Officer: Hardy, Joe) <i>Calendar Call</i>
05/13/2015	 Errata Filed By: Defendant Clark County School District <i>Errata to Clark County School District's Pre-Trial Memorandum</i>
05/18/2015	CANCELED Jury Trial (10:30 AM) (Judicial Officer: Hardy, Joe) <i>Vacated - per Judge</i>
05/19/2015	 Order Filed By: Plaintiff Payo, Makani Kai <i>Order</i>
05/19/2015	 Discovery Commissioners Report and Recommendations Filed By: Plaintiff Payo, Makani Kai <i>Discovery Commissioner's Report and Recommendations</i>
05/20/2015	 Notice of Entry of Order Filed By: Plaintiff Payo, Makani Kai <i>Notice of Entry of Order</i>
05/22/2015	 Joint Pre-Trial Memorandum Filed By: Plaintiff Payo, Makani Kai <i>Joint Pre-Trial Memorandum</i>
05/22/2015	 Subpoena

DEPARTMENT 15
CASE SUMMARY
CASE NO. A-12-668833-C

	Filed by: Plaintiff Payo, Makani Kai <i>Subpoena</i>
05/26/2015	 Trial Memorandum Filed by: Defendant Clark County School District <i>Clark County School District's Trial Brief</i>
05/26/2015	 Trial Memorandum Filed by: Plaintiff Payo, Makani Kai <i>Plaintiff's Trial Brief</i>
05/27/2015	 Subpoena Filed by: Plaintiff Payo, Makani Kai <i>Subpoena</i>
05/27/2015	 Jury Trial - FIRM (10:30 AM) (Judicial Officer: Hardy, Joe) 05/27/2015-05/29/2015, 06/01/2015-06/02/2015 <i>Jury Trial - Firm</i>
05/27/2015	 Jury List
05/28/2015	 Trial Brief Filed By: Defendant Clark County School District <i>Clark County School District's Trial Brief on the Issue of the Amount of the Statutory Cap on Damages Applicable to Plaintiff;s Case under NRS 41.035</i>
05/28/2015	 Points and Authorities Filed by: Defendant Clark County School District
05/29/2015	 Notice of Service Party: Plaintiff Payo, Makani Kai <i>Notice of Service</i>
05/29/2015	 Brief Filed By: Plaintiff Payo, Makani Kai <i>Plaintiff's Trial Brief Re:The Statutory Cap On Damages Per NRS 41.035</i>
06/01/2015	 Trial Brief Filed By: Defendant Clark County School District <i>Clark County School District's Trial Brief on the Issue of Whether an Adverse Inference Jury Instruction is Appropriate in this Case Under NRS 47.250 (3)</i>
06/02/2015	 Proposed Verdict Forms Not Used at Trial <i>Proposed Verdict Form Returned Unsigned</i>
06/02/2015	 Verdict
06/02/2015	 Jury Instructions
06/02/2015	Verdict (Judicial Officer: Hardy, Joe) Debtors: Clark County School District (Defendant), Doe Clark County School District Employees I-V (Defendant) Creditors: Makani Kai Payo (Plaintiff) Judgment: 06/02/2015, Docketed: 06/09/2015

DEPARTMENT 15
CASE SUMMARY
CASE NO. A-12-668833-C

	Total Judgment: 60,288.06
06/16/2015	 Order <i>Order Regarding Damages Post-Jury Verdict</i>
06/16/2015	 Judgment Upon Jury Verdict <i>Judgment Upon Jury Verdict</i>
06/16/2015	Judgment Upon the Verdict (Judicial Officer: Hardy, Joe) Debtors: Clark County School District (Defendant) Creditors: Makani Kai Payo (Plaintiff) Judgment: 06/16/2015, Docketed: 06/24/2015 Total Judgment: 50,000.00
06/17/2015	 Notice of Entry of Judgment Filed By: Plaintiff Payo, Makani Kai <i>Notice of Entry of Judgement</i>
06/17/2015	 Notice of Entry of Order Filed By: Plaintiff Payo, Makani Kai <i>Notice of Entry of Order</i>
07/01/2015	 Memorandum of Costs and Disbursements Filed By: Plaintiff Payo, Makani Kai <i>Memorandum of Costs</i>
07/01/2015	 Motion for Attorney Fees and Costs Filed By: Plaintiff Payo, Makani Kai <i>Plaintiff's Motion for Attorney's Fees and Costs</i>
07/08/2015	 Motion to Retax Filed By: Defendant Clark County School District <i>Notice of Motion and Clark County School District's Motion to Retax and Settle Costs</i>
07/10/2015	 Errata Filed By: Defendant Clark County School District <i>Errata to Clark County School District's Motion to Retax and Settle Costs</i>
07/10/2015	 Opposition to Motion Filed By: Defendant Clark County School District <i>Clark County School District's Opposition to Plaintiff's Motion for Attorney's Fees and Costs</i>
07/15/2015	 Notice of Appeal Filed By: Defendant Clark County School District <i>Notice of Appeal</i>
07/15/2015	 Case Appeal Statement Filed By: Defendant Clark County School District <i>Case Appeal Statement</i>
08/03/2015	Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer: Hardy, Joe) <i>Plaintiff's Motion for Attorney's Fees and Costs</i>
08/10/2015	Motion to Retax (9:00 AM) (Judicial Officer: Hardy, Joe) <i>Notice of Motion and Clark County School District's Motion to Retax and Settle Costs</i>

DEPARTMENT 15
CASE SUMMARY
CASE NO. A-12-668833-C

DATE	FINANCIAL INFORMATION
	Plaintiff Payo, Makani Kai
	Total Charges 470.00
	Total Payments and Credits 470.00
	Balance Due as of 7/17/2015 0.00
	Plaintiff Payo, Makani Kai
	Security Cost Bond Balance as of 7/17/2015 500.00

CIVIL COVER SHEET

A- 12- 668833- C

County, Nevada

Case No. _____
(Assigned by Clerk's Office)

I I

I. Party Information

Plaintiff(s) (name/address/phone): MAKANI KAI PAYO

Attorney (name/address/phone):

ROBERT O. KURTH, JR.

3420 North Buffalo Drive

Las Vegas, NV 89129 / (702) 438-5810

Defendant(s) (name/address/phone):

CLARK COUNTY SCHOOL DISTRICT

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input checked="" type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	Other Civil Filing Types <input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	
	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters	

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

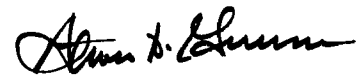
September 21, 2012

Date

/s/Robert O. Kurth, Jr.

Signature of initiating party or representative

1 JUJV



CLERK OF THE COURT

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5 MAKANI PAYO,

6 Plaintiff,

7 vs.

8 CLARK COUNTY SCHOOL DISTRICT,

9 Defendant.

Case No.: A-12-668833-C
Dept No.: XV

JUDGMENT UPON JURY VERDICT

10
11 This action came on for trial before the Court, Honorable Joe Hardy, District Judge,
12 presiding and a jury on May 27, 2015 through June 2, 2015. The issues having been duly
13 tried; the jury having duly rendered its verdict on June 2, 2015; and the Court having filed its
14 Order Regarding Damages Post-Jury Verdict; the Court enters this judgment pursuant to
15 NRCP 54.

16 IT IS ORDERED AND ADJUDGED that Judgment on the jury verdict is entered in
17 favor of Plaintiff Makani Kai Payo ("Payo") against Defendant Clark County School District
18 in the total amount of FIFTY THOUSAND DOLLARS (\$50,000.00).

19 Within ten (10) days after entry of this Judgment, Payo shall serve written notice of entry
20 of this Judgment together with a copy of this Judgment upon CCSD and shall file the notice of
21 entry with the clerk of the court.

22 IT IS SO ORDERED

23 DATED this 16th day of June, 2015.

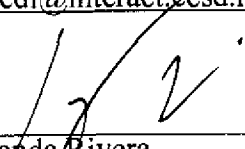
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27 JOE HARDY
DISTRICT COURT JUDGE
DEPARTMENT XV

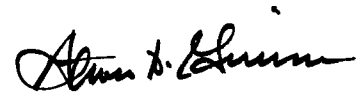
CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this document was electronically served, mailed or placed in the attorney's folder on the first floor of the Regional Justice Center as follows:

Robert Kurth, Esq.
Daniel O'Brien, Esq.

robertk@robertkurth.com
obriedl@interact.ecsd.net


Amanda Rivera
Judicial Executive Assistant



CLERK OF THE COURT

1 **NJUD**
2 ROBERT O. KURTH, JR.
3 Nevada Bar No. 4659
4 **KURTH LAW OFFICE**
5 3420 North Buffalo Drive
6 Las Vegas, NV 89129
7 Tel: (702) 438-5810
8 Fax: (702) 459-1585
9 E-mail: kurthlawoffice@gmail.com
10 Attorney for Plaintiff

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

10 MAKANI PAYO,

11 Plaintiff,

12 vs.

13 CLARK COUNTY SCHOOL DISTRICT,

14 Defendant.

Case No. A-12-668833-C
Dept. XV

16 **NOTICE OF ENTRY OF JUDGEMENT**

18 PLEASE TAKE NOTICE that a JUDGEMENT UPON JURY VERDICT was entered in the
19 above-referenced matter on or about the 16th day of June, 2015, and was filed on the 16th day of June,
20 2015; a copy of which is attached hereto.

21 DATED this 17th day of June, 2015.

22 Respectfully submitted by:
23 **KURTH LAW OFFICE**

24 /s/Robert O. Kurth, Jr.
25 ROBERT O. KURTH, JR.
26 Nevada Bar No. 4659
27 Attorney for the Plaintiff

28 ///

///

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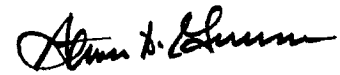
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CERTIFICATE OF SERVICE/MAILING

I HEREBY CERTIFY that on the 17th day of June, 2015, I electronically served a true and correct copy of the foregoing **NOTICE OF ENTRY OF JUDGEMENT** via Electronic Service in accordance with EDCR 8.05, and I deposited a true and correct copy of the foregoing in a sealed envelope in the U.S. Mail, first class, postage prepaid, and addressed as follows:

DANIEL O'BRIEN, ESQ.
Office of General Counsel
Clark County School District
5100 W. Sahara Avenue
Las Vegas, NV 89146
E-serve: obriedl@interact.ccsd.net
Attorneys for Defendant

/s/Maritsa Lopez
An employee of **KURTH LAW OFFICE.**



CLERK OF THE COURT

1 JUJV

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5 MAKANI PAYO,

6 Plaintiff,

7 vs.

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9 Defendant.

Case No.: A-12-668833-C
Dept No.: XV

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19 Within ten (10) days after entry of this Judgment, Payo shall serve written notice of entry
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23 DATED this 16th day of June, 2015.

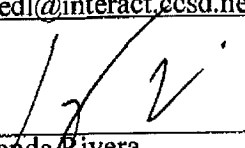
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JOE HARDY
DISTRICT COURT JUDGE
DEPARTMENT XV
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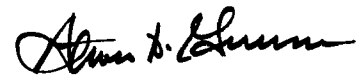
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Robert Kurth, Esq.
Daniel O'Brien, Esq.

robertk@robertkurth.com
obriedl@interact.ecsd.net


Amanda Rivera
Judicial Executive Assistant



CLERK OF THE COURT

1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5 MAKANI PAYO,

6 Plaintiff,

7 vs.

8 CLARK COUNTY SCHOOL DISTRICT,

9 Defendant.

Case No.: A-12-668833-C
Dept No.: XV

**ORDER REGARDING DAMAGES
POST-JURY VERDICT**

10
11 This case was tried before a jury which resulted in a verdict being awarded in favor of
12 Plaintiff Makani Payo ("Payo") and against Defendant Clark County School District
13 ("CCSD") in a total amount of \$60,288.06 on June 2, 2015. Prior to and during trial, the
14 parties filed and served briefs relating to issues with damages and have submitted those briefs
15 to the Court for consideration and ruling. This Order constitutes the Court's ruling and
16 decision on those issues.

17 **I. Plaintiff May Recover Medical Expenses Incurred By His Parents While**
18 **Plaintiff Was a Minor**

19 The Court hereby rules that Payo may recover medical expenses incurred by his parents
20 while Payo was a minor.

21 As the parties are aware, the undersigned was assigned this case on the eve of trial.
22 Prior to that assignment, various issues had been briefed and orders entered by the Court.
23 Notably, such briefs included CCSD's Motion to Strike Plaintiff's Damages Calculation or, in
24 the Alternative, Motion in Limine filed herein on January 28, 2015. In that motion, CCSD
25 argued, among other things, that Payo "lists medical expenses which were incurred while he
26 was a minor and which he is not entitled to as a matter of law." Motion to Strike at 6:14-16.
27 CCSD requested that Payo be precluded "from presenting as damages medical expenses
28 incurred by his parents while he was a minor." Motion to Strike at 1:27-28. CCSD further

1 requested “[a]n order precluding Plaintiff from putting on any evidence or making any
2 argument at trial regarding alleged past or future special damages.” Motion to Strike at 9:1-3.

3 In opposition, Payo argued, among other things, that he “is entitled to medical expenses
4 he incurred as a minor child and which were paid by his parents when he incurred such as a
5 minor child.” Opposition, filed on February 13, 2015, at 6:12-13. Payo went on to request
6 that the Court “allow this case to proceed on the merits . . . rather than on the technicalities of
7 not having the parents named as parties to the suit. In the alternative, the Plaintiff PAYO is
8 requesting that this Court allow PAYO to amend his Complaint to include his parents as
9 parties if necessary.” Opposition at 8:8-13.

10 In reply, CCSD devoted three pages to the argument that “Plaintiff is not entitled to
11 recover medical expenses incurred while he was a minor.” Reply, filed on February 23, 2015.

12 In ruling on the issues raised, rather than strike or disallow the medical expenses
13 incurred by Payo’s parents while he was a minor, this Court ruled Payo “may not seek
14 recovery of special damages beyond those identified in the January 22, 2015, letter wherein
15 Plaintiff listed past medical expenses” and “Plaintiff’s medical expenses are capped at
16 \$50,000.00.” Order, filed on April 10, 2015. As demonstrated at trial, the January 22, 2015
17 letter included various medical expenses incurred by Payo’s parents while he was a minor. In
18 other words, prior to the commencement of trial this Court ruled then that Payo could seek
19 recovery of special damages, including the medical expenses incurred by his parents while he
20 was a minor. Notably, neither party sought reconsideration of the April 10, 2015 Order and
21 the Court sees no reason to reconsider its prior order at this time.

22 Further, the Nevada case law relied upon by CCSD in an attempt to exclude Payo’s
23 medical damages clearly uses the discretionary “may” rather than the mandatory “shall”
24 regarding potential limiting of damages. *Walker v. Burkham*, 63 Nev. 75, 83, 165 P.2d 161,
25 164 (1946); *Hogle v. Hall*, 112 Nev. 599, 916 P.2d 814 (1996). The use of “may” indicates a
26 grant of discretion to the district court in determining whether to limit the incurred damages.
27 In this case, the Court determines to exercise its discretion to permit Payo to seek and obtain
28 an award of damages for the medical expenses incurred by his parents while he was a minor.

1 Finally, the ultimate policy behind any division of medical expenses between the minor
2 child and the parents is simply to prevent a double recovery. *See Estate of DeSela v. Prescott*
3 *Unified School Distr. No. 1*, 249 P.3d 767 (Ariz. 2011); *Garay v. Overholtzer*, 631 A.2d 429
4 (Md. Ct. App. 1993). The clear trend is “hold that the right to recover pre-majority medical
5 expenses belongs to both the injured minor and the parents, but double recovery is not
6 permitted.” *Estate of DeSela*, 249 P.3d at 770 (various citations omitted). Payo’s parents
7 have not asserted any claims to the medical expenses, nor could they at this juncture due to
8 statute of limitation issues. Additionally, Payo’s mother attended the trial and testified as a
9 witness on her son’s behalf, thereby impliedly waiving any right to claim the damages for
10 herself.

11 Thus, this Court determines that Payo was permitted to recover medical expenses
12 incurred by his parents while Payo was a minor and the Court will not disturb the jury’s
13 verdict awarding the past medical and related expenses to him in the amount of \$48,288.06.

14 **II. Plaintiff’s Damages Are Limited to \$50,000 Under the Applicable Version of**
15 **NRS 41.035**

16 The Court hereby rules that Payo’s damages are limited to \$50,000.00 under the
17 applicable version of NRS 41.035.¹

18 At least by 1965, if not sooner, the State of Nevada waived its sovereign immunity. *See*
19 *NRS 41.031*. That waiver likewise applies to political subdivisions of the state such as
20 Defendant Clark County School District. *Id.* The waiver, however, is not absolute. For
21 decades, NRS 41.035 has provided a cap on “damages in an action sounding in tort brought
22 under NRS 41.031.” Throughout that time, the amount of the cap has increased with various
23 amounts being in effect at various times. For example, on May 12, 2004, the date of this
24 case’s accident, the statute provided for a \$50,000.00 cap. On September 21, 2012, the date

25
26 ¹ The \$50,000.00 cap applies to prejudgment interest, but does not apply to post-judgment
27 interest, nor does it limit CCSD’s potential liability for attorney fees and costs. *Arnesano v.*
28 *State ex rel. Dept. of Transp.*, 113 Nev. 815, 821-822, 942 P.2d 139, 143-144 (1997). Thus,
should Payo believe he has a basis for attorney fees and costs, he may file the appropriate
motion and/or memorandum for the Court’s consideration.

1 the complaint was filed, the cap was \$100,000.00. CCSD argues the \$50,000 cap applies to
2 reduce the jury verdict and Payo argues the \$100,000 cap applies.

3 The statute and its various iterations are ambiguous as to when the various caps take
4 effect. However, the Nevada Supreme Court discussed the applicable determination date in
5 *Las Vegas Metropolitan Police Dep't v. Yeghiazarian*, 129 Nev. Adv. Op. 81, 312 P.3d 503
6 (2013). There, the Court stated, "The version of NRS 41.035(1) that was in effect at the time
7 of the accident provided that awards for damages in tort actions filed against state entities
8 'may not exceed the sum of \$50,000.00.'" *Id.*, 312 P.3d at 509 (emphasis added). Although
9 that statement is *dicta*, it indicates the applicable cap for any claim filed under NRS 41.031 is
10 the version "in effect at the time of the accident," rather than at the time the complaint is filed.

11 For additional confirmation, the factual and procedural background of *Yeghiazarian* is
12 helpful. *Yeghiazarian* involved an accident that occurred on July 4, 2007, when the cap was
13 \$50,000. See Complaint, filed in Case No. A-09-594543-C. The complaint, however, was
14 filed on July 2, 2009, when the cap was \$75,000. *Id.* Under those circumstances it is
15 reasonable to believe that the Nevada Supreme Court intended to guide the trial courts that the
16 applicable date is when the accident occurred, not when the complaint was filed. The
17 legislative history goes so far as to explicitly state that the increase from \$50,000 to \$75,000
18 applies "to a cause of action that accrues on or after October 1, 2007," and the increase from
19 \$75,000 to \$100,000 applies "to a cause of action that accrues on or after October 1, 2011."
20 Laws 2007, c. 512, § 5.5 eff. July 1, 2007. A cause of action for negligence accrues when the
21 accident occurs and injury is sustained. *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18
22 (1990). Here, Payo's causes of action accrued on May 12, 2004, the date of the accident, and
23 thus the applicable cap is \$50,000.00.

24 Finding that the \$50,000 cap applies does not, however, end the inquiry. In his Second
25 Amended Complaint, Payo asserted two causes of action—one for negligence, the other for
26 negligent supervision. Payo argues that because he pleaded and proved two causes of action
27 at trial, he is entitled to \$50,000 for each cause of action and the jury's verdict of \$60,288.06
28 falls below the total \$100,000 cap. The Court disagrees.

1 The language of NRS 41.035 on this issue appears unambiguous to the Court in that it
2 refers to a single cap on “[a]n award for damages in an action sounding in tort.” To this
3 Court, the reference to “an action” would appear to encompass all tort claims asserted in an
4 action. See NRCP 2 (“There shall be one form of action to be known as ‘civil action.’”). In
5 the seminal case of *State v. Webster*, 88 Nev. 690, 504 P.2d 1316 (1972), however, the
6 Nevada Supreme Court clarified, “Although joined in one complaint, an action for wrongful
7 death and an action for personal injuries suffered by the plaintiff in the same accident are
8 separate, distinct and independent. They rest on different facts, and may be separately
9 maintained.” *Id.*, 88 Nev. at 695. Consequently, one cap applied to the plaintiff’s personal
10 injury claim and a separate cap applied to the plaintiff’s wrongful death claim. *Id.*

11 Post-*Webster*, the Nevada Supreme Court has interpreted “an action” to mean “a claim.”
12 See, e.g., *State ex rel. Dep’t of Transp. v. Hill*, 114 Nev. 810, 818, 963 P.2d 480 (1998) (in a
13 case with a claim for personal injuries and a claim for negligent infliction of emotional
14 distress, holding, “each claim could be separately maintained, and each claim was subject to
15 its own \$50,000.00 statutory cap”), abrogated on other grounds by *Grotts v. Zahner*, 115 Nev.
16 339, 989 P.2d 415 (1999); *County of Clark ex rel. Univ. Med. Ctr. v. Upchurch*, 114 Nev. 749,
17 759, 961 P.2d 754 (1998) (stating NRS 41.035 allows “plaintiffs to recover damages on a per
18 person per claim basis”). In the *Upchurch* case, the Nevada Supreme Court limited recovery
19 as follows: “NRS 41.035 allows one statutory limitation for each cause of action, regardless of
20 the number of actors.”

21 Although it was subsequently withdrawn based on a stipulation of the parties, the case of
22 *State, Dept. of Human Resources v. Jimenez*, 113 Nev. 356, 935 P.2d 274 (1997), op.
23 withdrawn in 113 Nev. 735, 941 P.2d 969 (1997), is instructive. There, the Nevada Supreme
24 Court upheld awards of \$50,000 each for nine instances of sexual assault, but reversed the
25 award of \$50,000 for negligent supervision because that award “to permit further recovery on
26 the basis of negligent supervision is tantamount to awarding the victim an improper double
27 recovery.” *Id.*, 113 Nev. at 373, 935 P.2d at 284. The withdrawal of the opinion, however,

28

1 leaves this Court without a binding decision directly on point. Nevertheless, the Court must
2 rule on the issue.

3 Here, Payo's damages as a result of negligence or negligent supervision by CCSD are
4 the same damages regardless of the claim asserted. Both claims are essentially for negligence.
5 Thus, the claims asserted in this case differ substantially from the distinct claims of personal
6 injury and wrongful death or personal injury and negligent infliction of emotional distress set
7 forth in the *Webster* and *Hill* cases. Additionally, the jury verdict simply awards amounts of
8 damages and makes no distinction between the two causes of action. Alternatively, to the
9 extent needed to support the Court's ruling that a single \$50,000.00 cap applies, and based on
10 the evidence presented at trial, the Court would find that Payo failed to prove a sufficient issue
11 for the jury regarding his claim for negligent supervision and that CCSD is entitled to
12 judgment as a matter of law on that claim. In Nevada, negligent supervision is a claim against
13 an employer for failing to properly supervise its own employee and is not based on an
14 employee's alleged failure to properly supervise a plaintiff. *See Rockwell v. Sun Harbor*
15 *Budget Suites*, 112 Nev. 1217, 1226, 925 P.2d 1175, 1181 (1996). Payo's claim is based on
16 alleged failure by CCSD to properly "supervise, warn or safely protect PAYO from injury"
17 (First Amended Comp. at ¶¶ 27-35), and thus CCSD would be entitled to judgment as a matter
18 of law on the claim.

19 Consequently, the Court finds and rules that one cap applies to limit the jury verdict to
20 \$50,000.00.

21 **III. Conclusion and Order**

22 IT IS HEREBY ORDERED that Payo is entitled to recover medical and related
23 expenses incurred by his parents while he was a minor.

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1 IT IS FURTHER ORDERED that Payo's damages are reduced from the \$60,288.06 in
2 the Verdict to \$50,000.00. The Court will issue a separate judgment.

3 DATED this 16th day of June, 2015.

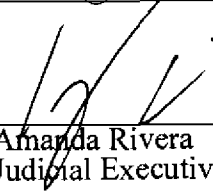
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CERTIFICATE OF SERVICE

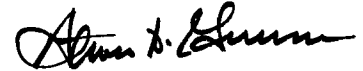
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Daniel O'Brien, Esq.

robertk@robertkurth.com
obriedl@interact.ccsd.net


Amanda Rivera
Judicial Executive Assistant

1 **NEO**
2 **ROBERT O. KURTH, JR.**
3 Nevada Bar No. 4659
4 **KURTH LAW OFFICE**
5 3420 North Buffalo Drive
6 Las Vegas, NV 89129
7 Tel: (702) 438-5810
8 Fax: (702) 459-1585
9 E-mail: kurthlawoffice@gmail.com
10 Attorney for Plaintiff



CLERK OF THE COURT

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9
10 **MAKANI PAYO,**

11 Plaintiff,

12 vs.

13 **CLARK COUNTY SCHOOL DISTRICT,**

14 Defendant.

Case No. A-12-668833-C
Dept. XV

15
16 **NOTICE OF ENTRY OF ORDER**

17
18 PLEASE TAKE NOTICE that an ORDER REGARDING DAMAGES POST-JURY
19 VERDICT was entered in the above-referenced matter on or about the 16th day of June, 2015, and was
20 filed on the 16th day of June, 2015; a copy of which is attached hereto.

21 DATED this 17th day of June, 2015.

22 Respectfully submitted by:
23 **KURTH LAW OFFICE**

24 /s/Robert O. Kurth, Jr.
25 **ROBERT O. KURTH, JR.**
26 Nevada Bar No. 4659
27 Attorney for the Plaintiff

28 ///

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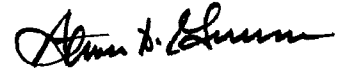
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DANIEL O'BRIEN, ESQ.
Office of General Counsel
Clark County School District
5100 W. Sahara Avenue
Las Vegas, NV 89146
E-serve: obriedl@interact.ccsd.net
Attorneys for Defendant

/s/Maritsa Lopez
An employee of **KURTH LAW OFFICE.**



CLERK OF THE COURT

1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5 **MAKANI PAYO,**

6 **Plaintiff,**

7 **vs.**

8 **CLARK COUNTY SCHOOL DISTRICT,**

9 **Defendant.**

Case No.: A-12-668833-C

Dept No.: XV

**ORDER REGARDING DAMAGES
POST-JURY VERDICT**

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12 Plaintiff Makani Payo ("Payo") and against Defendant Clark County School District
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16 decision on those issues.

17 **I. Plaintiff May Recover Medical Expenses Incurred By His Parents While**
18 **Plaintiff Was a Minor**

19 The Court hereby rules that Payo may recover medical expenses incurred by his parents
20 while Payo was a minor.

21 As the parties are aware, the undersigned was assigned this case on the eve of trial.
22 Prior to that assignment, various issues had been briefed and orders entered by the Court.
23 Notably, such briefs included CCSD's Motion to Strike Plaintiff's Damages Calculation or, in
24 the Alternative, Motion in Limine filed herein on January 28, 2015. In that motion, CCSD
25 argued, among other things, that Payo "lists medical expenses which were incurred while he
26 was a minor and which he is not entitled to as a matter of law." Motion to Strike at 6:14-16.
27 CCSD requested that Payo be precluded "from presenting as damages medical expenses
28 incurred by his parents while he was a minor." Motion to Strike at 1:27-28. CCSD further

1 requested "[a]n order precluding Plaintiff from putting on any evidence or making any
2 argument at trial regarding alleged past or future special damages." Motion to Strike at 9:1-3.

3 In opposition, Payo argued, among other things, that he "is entitled to medical expenses
4 he incurred as a minor child and which were paid by his parents when he incurred such as a
5 minor child." Opposition, filed on February 13, 2015, at 6:12-13. Payo went on to request
6 that the Court "allow this case to proceed on the merits . . . rather than on the technicalities of
7 not having the parents named as parties to the suit. In the alternative, the Plaintiff PAYO is
8 requesting that this Court allow PAYO to amend his Complaint to include his parents as
9 parties if necessary." Opposition at 8:8-13.

10 In reply, CCSD devoted three pages to the argument that "Plaintiff is not entitled to
11 recover medical expenses incurred while he was a minor." Reply, filed on February 23, 2015.

12 In ruling on the issues raised, rather than strike or disallow the medical expenses
13 incurred by Payo's parents while he was a minor, this Court ruled Payo "may not seek
14 recovery of special damages beyond those identified in the January 22, 2015, letter wherein
15 Plaintiff listed past medical expenses" and "Plaintiff's medical expenses are capped at
16 \$50,000.00." Order, filed on April 10, 2015. As demonstrated at trial, the January 22, 2015
17 letter included various medical expenses incurred by Payo's parents while he was a minor. In
18 other words, prior to the commencement of trial this Court ruled then that Payo could seek
19 recovery of special damages, including the medical expenses incurred by his parents while he
20 was a minor. Notably, neither party sought reconsideration of the April 10, 2015 Order and
21 the Court sees no reason to reconsider its prior order at this time.

22 Further, the Nevada case law relied upon by CCSD in an attempt to exclude Payo's
23 medical damages clearly uses the discretionary "may" rather than the mandatory "shall"
24 regarding potential limiting of damages. *Walker v. Burkham*, 63 Nev. 75, 83, 165 P.2d 161,
25 164 (1946); *Hogle v. Hall*, 112 Nev. 599, 916 P.2d 814 (1996). The use of "may" indicates a
26 grant of discretion to the district court in determining whether to limit the incurred damages.
27 In this case, the Court determines to exercise its discretion to permit Payo to seek and obtain
28 an award of damages for the medical expenses incurred by his parents while he was a minor.

1 Finally, the ultimate policy behind any division of medical expenses between the minor
2 child and the parents is simply to prevent a double recovery. See *Estate of DeSela v. Prescott*
3 *Unified School Distr. No. 1*, 249 P.3d 767 (Ariz. 2011); *Garay v. Overholtzer*, 631 A.2d 429
4 (Md. Ct. App. 1993). The clear trend is “hold that the right to recover pre-majority medical
5 expenses belongs to both the injured minor and the parents, but double recovery is not
6 permitted.” *Estate of DeSela*, 249 P.3d at 770 (various citations omitted). Payo’s parents
7 have not asserted any claims to the medical expenses, nor could they at this juncture due to
8 statute of limitation issues. Additionally, Payo’s mother attended the trial and testified as a
9 witness on her son’s behalf, thereby impliedly waiving any right to claim the damages for
10 herself.

11 Thus, this Court determines that Payo was permitted to recover medical expenses
12 incurred by his parents while Payo was a minor and the Court will not disturb the jury’s
13 verdict awarding the past medical and related expenses to him in the amount of \$48,288.06.

14 **II. Plaintiff’s Damages Are Limited to \$50,000 Under the Applicable Version of**
15 **NRS 41.035**

16 The Court hereby rules that Payo’s damages are limited to \$50,000.00 under the
17 applicable version of NRS 41.035.¹

18 At least by 1965, if not sooner, the State of Nevada waived its sovereign immunity. See
19 NRS 41.031. That waiver likewise applies to political subdivisions of the state such as
20 Defendant Clark County School District. *Id.* The waiver, however, is not absolute. For
21 decades, NRS 41.035 has provided a cap on “damages in an action sounding in tort brought
22 under NRS 41.031.” Throughout that time, the amount of the cap has increased with various
23 amounts being in effect at various times. For example, on May 12, 2004, the date of this
24 case’s accident, the statute provided for a \$50,000.00 cap. On September 21, 2012, the date
25

26 ¹ The \$50,000.00 cap applies to prejudgment interest, but does not apply to post-judgment
27 interest, nor does it limit CCSD’s potential liability for attorney fees and costs. *Arnesano v.*
28 *State ex rel. Dept. of Transp.*, 113 Nev. 815, 821-822, 942 P.2d 139, 143-144 (1997). Thus,
should Payo believe he has a basis for attorney fees and costs, he may file the appropriate
motion and/or memorandum for the Court’s consideration.

1 the complaint was filed, the cap was \$100,000.00. CCSD argues the \$50,000 cap applies to
2 reduce the jury verdict and Payo argues the \$100,000 cap applies.

3 The statute and its various iterations are ambiguous as to when the various caps take
4 effect. However, the Nevada Supreme Court discussed the applicable determination date in
5 *Las Vegas Metropolitan Police Dep't v. Yeghiazarian*, 129 Nev. Adv. Op. 81, 312 P.3d 503
6 (2013). There, the Court stated, "The version of NRS 41.035(1) that was in effect at the time
7 of the accident provided that awards for damages in tort actions filed against state entities
8 'may not exceed the sum of \$50,000.00.'" *Id.*, 312 P.3d at 509 (emphasis added). Although
9 that statement is *dicta*, it indicates the applicable cap for any claim filed under NRS 41.031 is
10 the version "in effect at the time of the accident," rather than at the time the complaint is filed.

11 For additional confirmation, the factual and procedural background of *Yeghiazarian* is
12 helpful. *Yeghiazarian* involved an accident that occurred on July 4, 2007, when the cap was
13 \$50,000. *See* Complaint, filed in Case No. A-09-594543-C. The complaint, however, was
14 filed on July 2, 2009, when the cap was \$75,000. *Id.* Under those circumstances it is
15 reasonable to believe that the Nevada Supreme Court intended to guide the trial courts that the
16 applicable date is when the accident occurred, not when the complaint was filed. The
17 legislative history goes so far as to explicitly state that the increase from \$50,000 to \$75,000
18 applies "to a cause of action that accrues on or after October 1, 2007," and the increase from
19 \$75,000 to \$100,000 applies "to a cause of action that accrues on or after October 1, 2011."
20 Laws 2007, c. 512, § 5.5 eff. July 1, 2007. A cause of action for negligence accrues when the
21 accident occurs and injury is sustained. *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18
22 (1990). Here, Payo's causes of action accrued on May 12, 2004, the date of the accident, and
23 thus the applicable cap is \$50,000.00.

24 Finding that the \$50,000 cap applies does not, however, end the inquiry. In his Second
25 Amended Complaint, Payo asserted two causes of action—one for negligence, the other for
26 negligent supervision. Payo argues that because he pleaded and proved two causes of action
27 at trial, he is entitled to \$50,000 for each cause of action and the jury's verdict of \$60,288.06
28 falls below the total \$100,000 cap. The Court disagrees.

1 The language of NRS 41.035 on this issue appears unambiguous to the Court in that it
2 refers to a single cap on "[a]n award for damages in an action sounding in tort." To this
3 Court, the reference to "an action" would appear to encompass all tort claims asserted in an
4 action. See NRCP 2 ("There shall be one form of action to be known as 'civil action.'"). In
5 the seminal case of *State v. Webster*, 88 Nev. 690, 504 P.2d 1316 (1972), however, the
6 Nevada Supreme Court clarified, "Although joined in one complaint, an action for wrongful
7 death and an action for personal injuries suffered by the plaintiff in the same accident are
8 separate, distinct and independent. They rest on different facts, and may be separately
9 maintained." *Id.*, 88 Nev. at 695. Consequently, one cap applied to the plaintiff's personal
10 injury claim and a separate cap applied to the plaintiff's wrongful death claim. *Id.*

11 Post-*Webster*, the Nevada Supreme Court has interpreted "an action" to mean "a claim."
12 See, e.g., *State ex rel. Dep't of Transp. v. Hill*, 114 Nev. 810, 818, 963 P.2d 480 (1998) (in a
13 case with a claim for personal injuries and a claim for negligent infliction of emotional
14 distress, holding, "each claim could be separately maintained, and each claim was subject to
15 its own \$50,000.00 statutory cap"), abrogated on other grounds by *Grotts v. Zahner*, 115 Nev.
16 339, 989 P.2d 415 (1999); *County of Clark ex rel. Univ. Med. Ctr. v. Upchurch*, 114 Nev. 749,
17 759, 961 P.2d 754 (1998) (stating NRS 41.035 allows "plaintiffs to recover damages on a per
18 person per claim basis"). In the *Upchurch* case, the Nevada Supreme Court limited recovery
19 as follows: "NRS 41.035 allows one statutory limitation for each cause of action, regardless of
20 the number of actors."

21 Although it was subsequently withdrawn based on a stipulation of the parties, the case of
22 *State, Dept. of Human Resources v. Jimenez*, 113 Nev. 356, 935 P.2d 274 (1997), op.
23 withdrawn in 113 Nev. 735, 941 P.2d 969 (1997), is instructive. There, the Nevada Supreme
24 Court upheld awards of \$50,000 each for nine instances of sexual assault, but reversed the
25 award of \$50,000 for negligent supervision because that award "to permit further recovery on
26 the basis of negligent supervision is tantamount to awarding the victim an improper double
27 recovery." *Id.*, 113 Nev. at 373, 935 P.2d at 284. The withdrawal of the opinion, however,
28

1 leaves this Court without a binding decision directly on point. Nevertheless, the Court must
2 rule on the issue.

3 Here, Payo's damages as a result of negligence or negligent supervision by CCSD are
4 the same damages regardless of the claim asserted. Both claims are essentially for negligence.
5 Thus, the claims asserted in this case differ substantially from the distinct claims of personal
6 injury and wrongful death or personal injury and negligent infliction of emotional distress set
7 forth in the *Webster* and *Hill* cases. Additionally, the jury verdict simply awards amounts of
8 damages and makes no distinction between the two causes of action. Alternatively, to the
9 extent needed to support the Court's ruling that a single \$50,000.00 cap applies, and based on
10 the evidence presented at trial, the Court would find that Payo failed to prove a sufficient issue
11 for the jury regarding his claim for negligent supervision and that CCSD is entitled to
12 judgment as a matter of law on that claim. In Nevada, negligent supervision is a claim against
13 an employer for failing to properly supervise its own employee and is not based on an
14 employee's alleged failure to properly supervise a plaintiff. See *Rockwell v. Sun Harbor*
15 *Budget Suites*, 112 Nev. 1217, 1226, 925 P.2d 1175, 1181 (1996). Payo's claim is based on
16 alleged failure by CCSD to properly "supervise, warn or safely protect PAYO from injury"
17 (First Amended Comp. at ¶¶ 27-35), and thus CCSD would be entitled to judgment as a matter
18 of law on the claim.

19 Consequently, the Court finds and rules that one cap applies to limit the jury verdict to
20 \$50,000.00.

21 **III. Conclusion and Order**

22 IT IS HEREBY ORDERED that Payo is entitled to recover medical and related
23 expenses incurred by his parents while he was a minor.

24 ///

25 ///

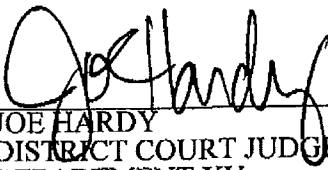
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1 IT IS FURTHER ORDERED that Payo's damages are reduced from the \$60,288.06 in
2 the Verdict to \$50,000.00. The Court will issue a separate judgment.

3 DATED this 16th day of June, 2015.

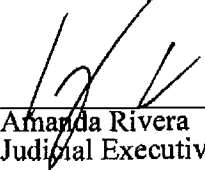
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6 JOE HARDY
7 DISTRICT COURT JUDGE
8 DEPARTMENT XV
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was electronically served, mailed or placed in the attorney's folder on the first floor of the Regional Justice Center as follows:

Robert Kurth, Esq.
Daniel O'Brien, Esq.

robertk@robertkurth.com
obriedl@interact.ccsd.net


Amanda Rivera
Judicial Executive Assistant


CLERK OF THE COURT

ORDR
ROBERT O. KURTH, JR.
Nevada Bar No. 4659
KURTH LAW OFFICE
3420 North Buffalo Drive
Las Vegas, NV 89129
Tel: (702) 438-5810
Fax: (702) 459-1585
E-mail: kurthlawoffice@gmail.com
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

MAKANI KAI PAYO,

Plaintiff,

vs.

CLARK COUNTY SCHOOL DISTRICT;
DOE CLARK COUNTY SCHOOL DISTRICT
EMPLOYEES I-V; DOES I-V and ROE
COMPANIES I-V, inclusive,

Defendants.

Case No. A-12-668833-C
Dept. XV

KURTH LAW OFFICE
3420 North Buffalo Drive
Las Vegas, NV 89129
(702) 438-5810

ORDER

THIS MATTER having come before this Court on May 11, 2015, for the hearing of the Defendant's CLARK COUNTY SCHOOL DISTRICT's ("CCSD"), Motion and Notice of Motion for Summary Judgment and the Plaintiff's, MAKANI KAI PAYO's ("MAKANI") Opposition to Motion for Summary Judgment and Counter-Motion for Summary Judgment. The Plaintiff MAKANI appeared through his counsel, Robert O. Kurth, Jr., of the KURTH LAW OFFICE, and the Defendant CCSD appeared through their attorney, Daniel Louis O'Brien, Esq. The Court having reviewed the pleadings and papers on file herein, together with argument, and it appearing to the satisfaction of the Court, and good cause appearing therefor:

The **COURT FINDS** it to be undisputed that the Defendant, Clark County School District ("CCSD"), has a general duty to exercise due care. Additionally, the Defendant CCSD knew risks of injury were inherent in the sport of field hockey.

The **COURT FURTHER FINDS** that the question of duty is not reliant on the Plaintiff's testimony; whether or not duty exists is a question of law. Therefore genuine questions of material fact exist as to: 1. - duty; 2. - whether CCSD exercised reasonable care in allowing an eleven year old student to play field hockey in Physical Education (P.E.) without providing him with any safety equipment; 3. - whether CCSD's treatment of the eleven year old student and advice given to the Plaintiff MAKANI were reasonable; and 4. - whether additional training, supervision or equipment could have prevented the injury to the Plaintiff MAKANI.

NOW THEREFORE, IT IS HEREBY ORDERED that the Defendant's CCSD's Motion for Summary Judgment as to the first cause of action – Negligence, and as to the second cause of action - Negligent Supervision, is DENIED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that the Plaintiff's Opposition and Counter-Motion for Summary Judgment is also DENIED WITHOUT PREJUDICE as the COURT FINDS that no concise statement setting forth each fact material to the disposition of the motion that Plaintiff's claims is or is not genuinely in issue as required by NRCP 56 (c).

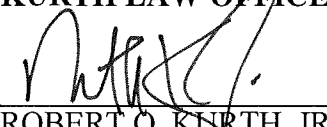
IT IS FURTHER ORDERED that the Court directed Mr. Kurth, Esq. to prepare the Order and submit to Mr. O'Brien, Esq. for his review and signature prior to submitting to the Court for signature.

DATED and DONE this 15th day of May, 2015.


IT IS SO ORDERED.

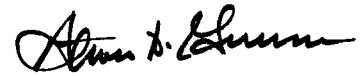

DISTRICT COURT JUDGE

Respectfully Submitted By:
KURTH LAW OFFICE


ROBERT O. KURTH, JR.
Nevada Bar No. 4659
Attorney for Plaintiff MAKANI

APPROVED BY:

As to Form only

DANIEL LOUIS O'BRIEN, ESQ.
Nevada Bar No. 983
Attorney for Defendant CCSD



CLERK OF THE COURT

1 **NEOJ**
2 ROBERT O. KURTH, JR.
3 Nevada Bar No. 4659
4 **KURTH LAW OFFICE**
5 3420 North Buffalo Drive
6 Las Vegas, NV 89129
7 Tel: (702) 438-5810
8 Fax: (702) 459-1585
9 E-mail: kurthlawoffice@gmail.com
10 Attorney for Plaintiffs

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

10 MAKANI KAI PAYO,

11 Plaintiff,

12 vs.

Case No. A-12-668833-C
Dept. XV

13 CLARK COUNTY SCHOOL DISTRICT;
14 DOE CLARK COUNTY SCHOOL
DISTRICT EMPLOYEES I-V; DOES I-V
and ROE COMPANIES I-V, inclusive,
Defendants.

16 **NOTICE OF ENTRY OF ORDER**

18 PLEASE TAKE NOTICE that an ORDER was entered in the above-referenced matter
19 on or about the 15th day of May, 2015, and was filed on the 20th day of May, 2015; a copy of which
20 is attached hereto.

21 DATED this 20th day of May, 2015.

22 Respectfully submitted by:
23 **KURTH LAW OFFICE**

24 /s/Robert O. Kurth, Jr.
25 ROBERT O. KURTH, JR.
26 Nevada Bar No. 4659
27 Attorney for the Plaintiffs

28 ///

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CERTIFICATE OF SERVICE/MAILING

I HEREBY CERTIFY that on the 20th day of May, 2015, I electronically served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** via Electronic Service in accordance with EDCR 8.05, and I deposited a true and correct copy of the foregoing in a sealed envelope in the U.S. Mail, first class, postage prepaid, and addressed as follows:

Daniel L. O'Brien, Esq.
Clark County School District
Office of the General Counsel
5100 W. Sahara Ave.
Las Vegas, NV 89146
Attorney for Defendants

/s/Maritsa Lopez
An employee of **KURTH LAW OFFICE.**


CLERK OF THE COURT

1 **ORDR**
2 ROBERT O. KURTH, JR.
3 Nevada Bar No. 4659
4 **KURTH LAW OFFICE**
5 3420 North Buffalo Drive
6 Las Vegas, NV 89129
7 Tel: (702) 438-5810
8 Fax: (702) 459-1585
9 E-mail: kurthlawoffice@gmail.com
10 Attorney for Plaintiff

11
12 **DISTRICT COURT**
13
14 **CLARK COUNTY, NEVADA**

15 MAKANI KAI PAYO,

16 Plaintiff,

17 vs.

18 CLARK COUNTY SCHOOL DISTRICT;
19 DOE CLARK COUNTY SCHOOL DISTRICT
20 EMPLOYEES I-V; DOES I-V and ROE
21 COMPANIES I-V, inclusive,

22 Defendants.

Case No. A-12-668833-C
Dept. XV

23 **ORDER**

24 **THIS MATTER** having come before this Court on May 11, 2015, for the hearing of
25 the Defendant's CLARK COUNTY SCHOOL DISTRICT's ("CCSD"), Motion and Notice of
26 Motion for Summary Judgment and the Plaintiff's, MAKANI KAI PAYO's ("MAKANI")
27 Opposition to Motion for Summary Judgment and Counter-Motion for Summary Judgment. The
28 Plaintiff MAKANI appeared through his counsel, Robert O. Kurth, Jr., of the KURTH LAW
OFFICE, and the Defendant CCSD appeared through their attorney, Daniel Louis O'Brien, Esq.
The Court having reviewed the pleadings and papers on file herein, together with argument, and it
appearing to the satisfaction of the Court, and good cause appearing therefor:

The **COURT FINDS** it to be undisputed that the Defendant, Clark County School
District ("CCSD"), has a general duty to exercise due care. Additionally, the Defendant CCSD
knew risks of injury were inherent in the sport of field hockey.

KURTH LAW OFFICE
3420 North Buffalo Drive
Las Vegas, NV 89129
(702) 438-5810

1 The **COURT FURTHER FINDS** that the question of duty is not reliant on the
2 Plaintiff's testimony; whether or not duty exists is a question of law. Therefore genuine questions
3 of material fact exist as to: 1. - duty; 2. - whether CCSD exercised reasonable care in allowing an
4 eleven year old student to play field hockey in Physical Education (P.E.) without providing him
5 with any safety equipment; 3. - whether CCSD's treatment of the eleven year old student and advice
6 given to the Plaintiff MAKANI were reasonable; and 4. - whether additional training, supervision or
equipment could have prevented the injury to the Plaintiff MAKANI.

7 **NOW THEREFORE, IT IS HEREBY ORDERED** that the Defendant's CCSD's
8 Motion for Summary Judgment as to the first cause of action - Negligence, and as to the second
9 cause of action - Negligent Supervision, is **DENIED WITHOUT PREJUDICE**.

10 **IT IS FURTHER ORDERED** that the Plaintiff's Opposition and Counter-Motion
11 for Summary Judgment is also **DENIED WITHOUT PREJUDICE** as the COURT FINDS that no
12 concise statement setting forth each fact material to the disposition of the motion that Plaintiff's
claims is or is not genuinely in issue as required by NRCP 56 (c).

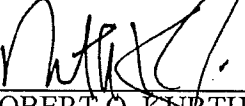
13 **IT IS FURTHER ORDERED** that the Court directed Mr. Kurth, Esq. to prepare the
14 Order and submit to Mr. O'Brien, Esq. for his review and signature prior to submitting to the Court
15 for signature.

16 DATED and DONE this 15th day of May, 2015.


17 **IT IS SO ORDERED.**

18 
19 **DISTRICT COURT JUDGE**
20 MB

20 Respectfully Submitted By:
21 **KURTH LAW OFFICE**

22 
23 **ROBERT O. KURTH, JR.**
Nevada Bar No. 4659
Attorney for Plaintiff MAKANI

24 **APPROVED BY:** *As to form only*

25 
26 **DANIEL LOUIS O'BRIEN, ESQ.**
27 Nevada Bar No. 983
Attorney for Defendant CCSD
28


CLERK OF THE COURT

OGM
Office of the General Counsel
Clark County School District
DANIEL L. O'BRIEN, ESQ.
Nevada Bar No. 0983
CARLOS L. McDADE, ESQ.
Nevada Bar No. 11205
5100 W. Sahara Avenue
Las Vegas, NV 89146
(702) 799-5373
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

MAKANI KAI PAYO,

Plaintiff,

v.

CLARK COUNTY SCHOOL DISTRICT; DOE
CLARK COUNTY SCHOOL DISTRICT
EMPLOYEES I-V; DOES I-V and ROE
COMPANIES I-V, inclusive,

Defendants.

Case No. A-12-668833-C
Dept. No. II

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO STRIKE
PLAINTIFF'S DAMAGES
CALCULATION OR, IN THE
ALTERNATIVE, MOTION IN
LIMINE**

TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S
MOTION TO STRIKE PLAINTIFF'S DAMAGES CALCULATION OR, IN THE
ALTERNATIVE, MOTION IN LIMINE**

This matter came on regularly before the Court, in Chambers,
on the third day of March, 2015, for consideration of Defendant's
January 28, 2015, Motion to Strike Plaintiff's Damages
Calculation or, in the Alternative, Motion in Limine. The Court,
having considered the Defendant's Motion, Plaintiff's Opposition
and Defendant's Reply, hereby GRANTS IN PART and DENIES IN PART
Defendant's Motion, as follows:

1. Defendant's motion to strike Plaintiff's untimely
damages calculation is hereby DENIED.

2. Defendant's motion in limine is hereby GRANTED IN PART.

Plaintiff may not seek recovery of special damages

beyond those identified in the January 22, 2015, letter

wherein Plaintiff listed past medical Expenses.

3. Defendant's motion in limine is hereby GRANTED IN PART.

Plaintiff may not seek recovery of wage loss.

4. Defendant's motion in limine is hereby GRANTED IN PART.

Plaintiff's medical expenses are capped at \$50,000.00.

IT IS SO ORDERED this 7th day of April, 2015.

By:

Hon. Richard F. Scotti *RFS*
District Court Judge
Eighth Judicial District Court
Department 2
Clark County, Nevada

Submitted by:

Daniel L. O'Brien

Daniel L. O'Brien
Nevada Bar No. 983
Counsel for District


CLERK OF THE COURT

1 **NEOJ**
2 Office of the General Counsel
3 Clark County School District
4 DANIEL L. O'BRIEN, ESQ.
5 Nevada Bar No. 983
6 CARLOS L. McDADE, ESQ.
7 Nevada Bar No. 11205
8 5100 W. Sahara Avenue
9 Las Vegas, NV 89146
10 (702) 799-5373
11 Attorneys for Defendant

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 MAKANI KAI PAO,

10 Plaintiff,

11 v.

12 CLARK COUNTY SCHOOL DISTRICT; DOE
13 CLARK COUNTY SCHOOL DISTRICT
14 EMPLOYEES I-V; DOES I-V AND ROE
15 COMPANIES I-V, inclusive,

16 Defendants.

Case No. A-12-668833-C
Dept. No. II

NOTICE OF ENTRY OF ORDER

17
18 NOTICE is hereby give that an Order Granting In Part and
19 Denying In Part Defendant's Motion to Strike Plaintiff's Damages
20 Calculation or, in the Alternative, Motion in Limine was entered
21 on the 10th day of April, 2015, regarding the above-entitled
22 matter, a copy of which is attached hereto as Exhibit "A".

23 Respectfully submitted this 14th day of April, 2015.

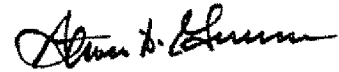
24 /s/ Daniel L. O'Brien
25 DANIEL L. O'BRIEN, ESQ.
26 Nevada Bar No. 983
27 Clark County School District
28 5100 W. Sahara Avenue
Las Vegas, NV 89146
Attorneys for District

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Robert O. Kurth, Jr.
Kurth Law Office
3420 North Buffalo Drive
Las Vegas, NV 89129
Kurthlawoffice@gmail.com
Attorney for Plaintiffs

2

EXHIBIT A



CLERK OF THE COURT

OGM
Office of the General Counsel
Clark County School District
DANIEL L. O'BRIEN, ESQ.
Nevada Bar No. 0983
CARLOS L. McDADE, ESQ.
Nevada Bar No. 11205
5100 W. Sahara Avenue
Las Vegas, NV 89146
(702) 799-5373
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

MAKANI KAI PAYO,

Plaintiff,

v.

CLARK COUNTY SCHOOL DISTRICT; DOE
CLARK COUNTY SCHOOL DISTRICT
EMPLOYEES I-V; DOES I-V and ROE
COMPANIES I-V, inclusive,

Defendants.

Case No. A-12-668833-C
Dept. No. II

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO STRIKE
PLAINTIFF'S DAMAGES
CALCULATION OR, IN THE
ALTERNATIVE, MOTION IN
LIMINE

TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S
MOTION TO STRIKE PLAINTIFF'S DAMAGES CALCULATION OR, IN THE
ALTERNATIVE, MOTION IN LIMINE

This matter came on regularly before the Court, in Chambers,
on the third day of March, 2015, for consideration of Defendant's
January 28, 2015, Motion to Strike Plaintiff's Damages
Calculation or, in the Alternative, Motion in Limine. The Court,
having considered the Defendant's Motion, Plaintiff's Opposition
and Defendant's Reply, hereby GRANTS IN PART and DENIES IN PART
Defendant's Motion, as follows:

1. Defendant's motion to strike Plaintiff's untimely
damages calculation is hereby DENIED.


1 2. Defendant's motion in limine is hereby GRANTED IN PART.
2 Plaintiff may not seek recovery of special damages
3 beyond those identified in the January 22, 2015, letter
4 wherein Plaintiff listed past medical Expenses.

5 3. Defendant's motion in limine is hereby GRANTED IN PART.
6 Plaintiff may not seek recovery of wage loss.

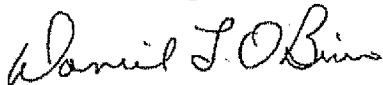
7 4. Defendant's motion in limine is hereby GRANTED IN PART.
8 Plaintiff's medical expenses are capped at \$50,000.00.

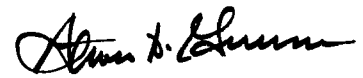
9 IT IS SO ORDERED this 7th day of April, 2015.

10
11 By: 

Hon. Richard F. Scotti 
District Court Judge
Eighth Judicial District Court
Department 2
Clark County, Nevada

12
13
14
15 Submitted by:

16 
17 Daniel L. O'Brien
18 Nevada Bar No. 983
19 Counsel for District
20
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CLERK OF THE COURT

1 ORDR
Office of the General Counsel
2 Clark County School District
DANIEL L. O'BRIEN, ESQ.
3 Nevada Bar No. 983
CARLOS L. McDADE, ESQ.
4 Nevada Bar No. 11205
5100 W. Sahara Avenue
5 Las Vegas, NV 89146
(702) 799-5373
6 Attorneys for Defendant

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 MAKANI KAI PAYO,
10 Plaintiff,

11 v.

12 CLARK COUNTY SCHOOL DISTRICT; DOE
13 CLARK COUNTY SCHOOL DISTRICT
EMPLOYEES I-V; DOES I-V and ROE
14 COMPANIES I-V, inclusive,
15 Defendants.

Case No. A-12-668833-C
Dept. No. II

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO DISMISS

17 ORDER GRANTING IN PART AND DENYING IN PART
18 DEFENDANT'S MOTION TO DISMISS


19 This matter came on regularly before this Court on July 15,
20 2013 by way of Defendant's June 10, 2013, Notice of Motion and
21 Motion to Dismiss Plaintiff's complaint for the failure to state
22 a claim upon which relief can be granted. Appearing on behalf of
23 the School District was Daniel L. O'Brien. Representing
24 Plaintiff was Robert O. Kurth, Jr., Esq. After considering the
25 motion, the Opposition and the Reply briefs, together with
26 argument of counsel, and Good Cause appearing, it is hereby
27 ORDERED that Defendant's Motion is hereby Granted in Part and
28 Denied in Part, as follows:

1. Defendant's Motion to Dismiss is Granted in part:
Plaintiff's Second Cause of Action, Negligent
Infliction of Emotional Distress, is hereby Dismissed,
without prejudice;
2. Defendant's Motion to Dismiss is Granted in part:
Plaintiff's Third Cause of Action, Negligence Per Se,
is hereby Dismissed, without prejudice;
3. Defendant's Motion to Dismiss is Granted in part:
Plaintiff's claims for punitive or exemplary damages
are hereby Dismissed pursuant to NRS 41.035;
4. Defendant's Motion to Dismiss is Denied in part:
Defendant has not demonstrated sufficient prejudice,
thus the case will not be dismissed on the grounds of
laches;
5. Defendant's Motion to Dismiss is Denied in part: The
Coverdell Act does not apply to the allegations set
forth in Plaintiff's Complaint, thus Plaintiff's case
will not be dismissed upon the grounds that the
Coverdell Act provides immunity in this case.
6. Defendant's Motion to Dismiss is Denied in part: The
Court finds that the student who injured Plaintiff and
his parents are not indispensable parties to this
action, thus Plaintiff's case will not be dismissed for
failure to join an indispensable party.
7. Defendant's Motion to Dismiss on the grounds of
assumption of the risk, for the failure of Plaintiff to
identify any recoverable special damages, and the
Defendant's request for declaratory relief as to the

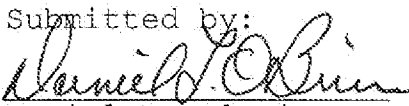
1 number of statutory caps on damages, and the maximum
2 amount thereof which is applicable in this case are
3 hereby denied. *

4 Plaintiff shall have twenty (20) days from notice of entry
5 of this Order in which to file an amended complaint incorporating
6 the foregoing rulings. Defendant shall have ten (10) days from
7 receipt of the proposed amended complaint to answer or otherwise
8 plead in this case.

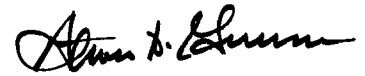
9 IT IS SO ORDERED this ^{14th} day of ^{August} ~~April~~, 2013.

10
11 
12 Hon. Valerie J. Vega
District Court Judge
Department II
DAS

13 Submitted by:

14 
15 Daniel L. O'Brien
16 Nevada Bar No. 983
Counsel for District

17 * The rulings are pursuant to NRC 12(6)(5),
18 Simpson v. Mars, 113 Nev. 188 (1997),
19 Vacation Village v. Hitachi America, 110 Nev. 481 (1994),
20 The Coverdell Act, NRS § 41.0305, and
21 NRS 386.010 (2)
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CLERK OF THE COURT

NOE
Office of the General Counsel
Clark County School District
DANIEL L. O'BRIEN, ESQ.
Nevada Bar No. 983
CARLOS L. McDADE, ESQ.
Nevada Bar No. 11205
5100 W. Sahara Avenue
Las Vegas, NV 89146
(702) 799-5373
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

MAKANI KAI PAYO,

Plaintiff,

v.

CLARK COUNTY SCHOOL DISTRICT; DOE
CLARK COUNTY SCHOOL DISTRICT
EMPLOYEES I-V; DOES I-V and ROE
COMPANIES I-V, inclusive,

Defendants.

Case No. A-12-668833-C
Dept. No. II

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO DISMISS**

NOTICE OF ENTRY OF ORDER

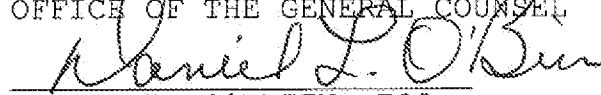
TO: ALL PARTIES AND THEIR ATTORNEYS:

NOTICE is hereby given that an Order was entered on the 21ST
day of August, 2013, a copy of which is attached hereto as Exhibit
"A" regarding the above-entitled matter.

DATED this 21ST day of August, 2013.

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

By:


DANIEL L. O'BRIEN, ESQ.

Nevada Bar No. 983

5100 West Sahara Avenue

Las Vegas, NV 89146

Attorney for Defendant, CLARK COUNTY
SCHOOL DISTRICT

1
2 CERTIFICATE OF MAILING

3 I HEREBY CERTIFY that on the 22nd day of August, 2013, I
4 served the parties hereto with the foregoing NOTICE OF ENTRY OF
5 ORDER by depositing a true and correct copy hereof in the United
6 States mail at Las Vegas, Nevada, postage fully prepaid, addressed
7 as follows:

8 Robert O. Kurth, jr.
9 Kurth Law Office
10 3420 North Buffalo Drive
11 Las Vegas, NV 89129
12 Attorney for Plaintiff

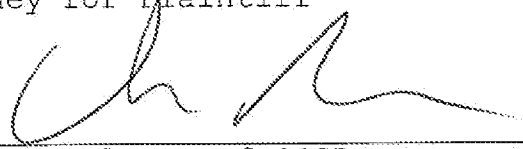
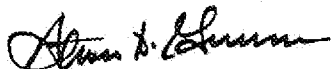
13 
14 _____
15 An Employee of CCSD
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EXHIBIT A


CLERK OF THE COURT

1 ORDR
2 Office of the General Counsel
3 Clark County School District
4 DANIEL L. O'BRIEN, ESQ.
5 Nevada Bar No. 983
6 CARLOS L. McDADE, ESQ.
7 Nevada Bar No. 11205
8 5100 W. Sahara Avenue
9 Las Vegas, NV 89146
10 (702) 799-5373
11 Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

9 MAKANI KAI PAYO,

10 Plaintiff,

11 v.

12 CLARK COUNTY SCHOOL DISTRICT; DOE
13 CLARK COUNTY SCHOOL DISTRICT
14 EMPLOYEES I-V; DOES I-V and ROE
15 COMPANIES I-V, inclusive,

16 Defendants.

Case No. A-12-668833-C
Dept. No. II

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO DISMISS

ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANT'S MOTION TO DISMISS


19 This matter came on regularly before this Court on July 15,
20 2013 by way of Defendant's June 10, 2013, Notice of Motion and
21 Motion to Dismiss Plaintiff's complaint for the failure to state
22 a claim upon which relief can be granted. Appearing on behalf of
23 the School District was Daniel L. O'Brien. Representing
24 Plaintiff was Robert O. Kurth, Jr., Esq. After considering the
25 motion, the Opposition and the Reply briefs, together with
26 argument of counsel, and Good Cause appearing, it is hereby
27 ORDERED that Defendant's Motion is hereby Granted in Part and
28 Denied in Part, as follows:

1. Defendant's Motion to Dismiss is Granted in part:
Plaintiff's Second Cause of Action, Negligent
Infliction of Emotional Distress, is hereby Dismissed,
without prejudice;
2. Defendant's Motion to Dismiss is Granted in part:
Plaintiff's Third Cause of Action, Negligence Per Se,
is hereby Dismissed, without prejudice;
3. Defendant's Motion to Dismiss is Granted in part:
Plaintiff's claims for punitive or exemplary damages
are hereby Dismissed pursuant to NRS 41.035;
4. Defendant's Motion to Dismiss is Denied in part:
Defendant has not demonstrated sufficient prejudice,
thus the case will not be dismissed on the grounds of
laches;
5. Defendant's Motion to Dismiss is Denied in part: The
Coverdell Act does not apply to the allegations set
forth in Plaintiff's Complaint, thus Plaintiff's case
will not be dismissed upon the grounds that the
Coverdell Act provides immunity in this case.
6. Defendant's Motion to Dismiss is Denied in part: The
Court finds that the student who injured Plaintiff and
his parents are not indispensable parties to this
action, thus Plaintiff's case will not be dismissed for
failure to join an indispensable party.
7. Defendant's Motion to Dismiss on the grounds of
assumption of the risk, for the failure of Plaintiff to
identify any recoverable special damages, and the
Defendant's request for declaratory relief as to the

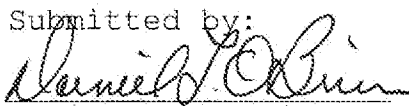
1 number of statutory caps on damages, and the maximum
2 amount thereof which is applicable in this case are
3 hereby denied. *

4 Plaintiff shall have twenty (20) days from notice of entry
5 of this Order in which to file an amended complaint incorporating
6 the foregoing rulings. Defendant shall have ten (10) days from
7 receipt of the proposed amended complaint to answer or otherwise
8 plead in this case.

9 IT IS SO ORDERED this ^{14th} day of ^{August} ~~April~~, 2013.

10
11 
12 Hon. Valerie J. Vega
District Court Judge
Department II

13 Submitted by:

14 
15 Daniel L. O'Brien
16 Nevada Bar No. 983
Counsel for District

17 * The rulings are pursuant to NRC 12(6)(5),
18 Simpson v. Mars, 113 Nev. 188 (1997),
19 Vacation Village v. Hitachi America, 110 Nev. 481 (1994),
20 The Coverdell Act, NRS § 41.0305, and
21 NRS 386.010 (2)
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

May 01, 2013

A-12-668833-C	Makani Payo, Plaintiff(s)
	vs.
	Clark County School District, Defendant(s)

May 01, 2013	3:00 AM	Motion to Dismiss
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HEARD BY: Vega, Valorie J.	COURTROOM: RJC Courtroom 16B
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COURT CLERK: Nora Pena

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, matter CONTINUED as should be on the oral calendar.

5/08/13 9:00 AM CCSD'S MOTION TO DISMISS

CLERK'S NOTE: Copy of minutes placed in counsels attorney folder, Robert Kurth (Kurth Law) and Daniel Louis O'Brien (Counsel for CCSD)./np

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

May 08, 2013

A-12-668833-C Makani Payo, Plaintiff(s)
vs.
Clark County School District, Defendant(s)

May 08, 2013 9:00 AM Motion to Dismiss

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT: Kurth, Robert O. Attorney
O'Brien, Daniel Louis Attorney

JOURNAL ENTRIES

- Via telephonic call to Mr. Kurth's Law Office, Judge left a message concerning the motion set for today at 9:00 a.m. and noted counsel has not arrived but Mr. O'Brien is present.
COURT ORDERED, matter set for 5/13th at 9:30 a.m. for Mr. Kurth to be present and clerk to place a copy of the minute order in his folder.

Mr. Kurth present. FURTHER ORDERED, 5/13th date VACATED. Argument by Mr. O'Brien to strike Plaintiff's response to reply to opposition as it's a fugitive document. Court advised leave was not authorized. COURT ORDERED, Oral motion to Strike Response to Reply to Opposition GRANTED. Argument by Mr. O'Brien for failure to post a bond untimely for security of costs. Mr. Kurth advised he posted it in time for the opposition which was filed and asked to be allowed to proceed with discovery. Response by Mr. O'Brien that he could have pursued it eight years ago and Plaintiff has not shown to follow the rules. Court stated her findings, and ORDERED, CCSD's motion to Dismiss DENIED pursuant to NRCp 12(b)(5), NRS 18.130 and Borders Elec. Co. v. Quirk, 97 Nev. 205 (1981). Mr. Kurth to prepare the order and pass it to Mr. O'Brien prior to submission to the Court.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

July 15, 2013

A-12-668833-C Makani Payo, Plaintiff(s)
vs.
Clark County School District, Defendant(s)

July 15, 2013 9:00 AM Motion to Dismiss

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Dania Batiste

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT: Kurth, Robert O. Attorney
O'Brien, Daniel Louis Attorney

JOURNAL ENTRIES

- Argument by Mr. O'Brien, stating the Coverdale Act provides that a teacher can not be held in negligence while trying to maintain order; and under Rule 19, Defendant moves to dismiss because Plaintiff failed to join an indispensable party. Opposition by Mr. Kurth, stating the Coverdale Act was never intended to give the school district immunity; further, the district should have investigated, had more supervisors, and provided more protection. Further arguments by counsel. Noting Plaintiff met the statute of limitations, COURT ORDERED, Motion GRANTED IN PART and DENIED IN PART as follows: GRANTED IN PART as to punitive damages, pursuant to NRS 41.0305 and NRS 386.010(2); GRANTED WITHOUT PREJUDICE as to the causes of action where negligence inflicted emotional distress; DENIED, as Defendant did not meet its burden on the causes of action, pursuant to NRCP 12(b)(5).

Court directed Mr. O'Brien to prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

April 07, 2014

A-12-668833-C Makani Payo, Plaintiff(s)
vs.
Clark County School District, Defendant(s)

April 07, 2014 9:00 AM Motion to Dismiss

HEARD BY: Vega, Valorie J. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER: Lisa Lizotte

REPORTER:

PARTIES

PRESENT: Kurth, Robert O. Attorney
 O'Brien, Daniel Louis Attorney

JOURNAL ENTRIES

- Following arguments by counsel, COURT ORDERED, motion to Dismiss DENIED pursuant to NRCP 12(b)(5), Simpson v. Mars, Inc., 113 Nev. 188 (1997), Vacation Village v. Hitachi America, 110 Nev. 481 (1994) and ORDERED, Mr. Kurth to reschedule the early case conference within 30 days of today's date and as to sanctions, Mr. Kurth to prepare the order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

September 03, 2014

A-12-668833-C Makani Payo, Plaintiff(s)
vs.
Clark County School District, Defendant(s)

September 03, 2014 3:00 AM

At Request of Court

HEARD BY: Vega, Valorie J.

COURTROOM: RJC Courtroom 16B

COURT CLERK: Nora Pena

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- This Court does hereby sua sponte ORDERED, VACATE its Order to Statistically Close Case filed 3/08/13 due to non-compliance with NRCP 4 and NRS 18.130. On 4/3/13 the Security Cost Bond was paid and entered into Odyssey in compliance with NRS 18.130 curing that deficiency. On 3/11/13 Plaintiff's Counsel filed the Summons and Affidavit of Service showing service was actually earlier effected on Deft. CCSD on 1/14/13 which was in compliance with NRCP 4. Therefore, the case is hereby, ORDERED, Returned to Open status. Clerk to copy counsels' attorney folders.

CLERK'S NOTE: Copy of minutes placed the attorney folders of Robert Kurth (Kurth Law) and Daniel Louis O'Brien (CCSD - Sr. Asst Gen Cnsl).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

March 03, 2015

A-12-668833-C	Makani Payo, Plaintiff(s)
	vs.
	Clark County School District, Defendant(s)

March 03, 2015	3:00 AM	Motion to Strike
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HEARD BY: Scotti, Richard F	COURTROOM: Phoenix Building Courtroom - 11th Floor
------------------------------------	--

COURT CLERK: Phyllis Irby

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT ORDERED, Defendant's motion to strike plaintiff's January 22, 2015 damage calculator is DENIED. Defendant's motion in limine is granted in part and denied in part, as follows: Plaintiff may not seek special damages beyond those identified in the January 22, 2015 letter. As such: Plaintiff may not present a claim for wage loss; the claim for medical expenses is capped at wage loss; the claim for medical expenses is capped at \$50,000.00. Defendant may renew its motion in limine as to the claim for future medical expenses if documentary support has not been timely disclosed and resulting prejudice is shown. Defendant's counsel to prepare the order.

CLERK'S NOTE: A copy of this minute order shall be place in the Attorneys bin for: Robert O. Kurth, Daniel Louis O'Brien (CCSD-Sr Asst Gen Cnsl)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence**COURT MINUTES****March 18, 2015**

A-12-668833-C Makani Payo, Plaintiff(s)
 vs.
 Clark County School District, Defendant(s)

March 18, 2015	9:00 AM	Motion to Extend Discovery	Pltf's Motion to Extend Discovery
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HEARD BY: Bulla, Bonnie**COURTROOM:** RJC Level 5 Hearing Room**COURT CLERK:** Jennifer Lott**RECORDER:** Sandra Pruchnic**REPORTER:****PARTIES**

PRESENT:	Kurth, Robert O.	Attorney
	Murch, Patrick J.	Attorney

JOURNAL ENTRIES

- 2.34 insufficient. The District Court Judge Denied Deft's Motion to Strike but limited Pltf's damages to medical expenses of \$50,000, and no wage loss. Colloquy re: deposing a Teacher in Minnesota and taking Deft's 30(b)(6) deposition. Commissioner suggested a telephonic deposition. Argument by Mr. Kurth; Pltf needs additional treatment, Pltf works on a cruise line out of Hawaii, but lived in California for many years.

COMMISSIONER RECOMMENDED a telephonic or video deposition for the Teacher in Minnesota, or go to Minnesota, but Commissioner will not require parties go to Minnesota. Mr. Kurth explained he is a sole practitioner, and his employee's medical emergency affected Trial preparation.

COMMISSIONER RECOMMENDED, Motion to Extend Discovery is GRANTED IN PART; discovery extended to 4/17/15 to complete Teacher and 30(b)(6) depositions; FILE dispositive motions by 4/8/15; Motion to Continue Trial is DENIED WITHOUT PREJUDICE. If counsel want a Mandatory Settlement Conference, contact Commissioner by conference call, but the Trial date will be moved. COMMISSIONER RECOMMENDED, Status Check SET.

Mr. Kurth to prepare the Report and Recommendations, and Mr. Murch to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Mr. Kurth to appear at status check hearing to report on the Report and Recommendations.

4/17/15 9:30 a.m. Status Check: Status of Case / Trial date . SC: Compliance

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

April 17, 2015

A-12-668833-C Makani Payo, Plaintiff(s)
vs.
Clark County School District, Defendant(s)

April 17, 2015 9:30 AM All Pending Motions

HEARD BY: Bulla, Bonnie **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Jennifer Lott

RECORDER: Francesca Haak

REPORTER:

PARTIES

PRESENT: Kurth, Robert O. Attorney
 O'Brien, Daniel Louis Attorney

JOURNAL ENTRIES

- Status Check: Status of Case / Trial Date Status Check: Compliance

Colloquy re: the First Aid Safety Assistant will be deposed this afternoon, and Mr. Kurth's attempts to schedule the Teacher's deposition (Nebraska). Arguments by counsel. COMMISSIONER RECOMMENDED, discovery cutoff EXTENDED to 4/30/15 to depose the Teacher in Nebraska; noticed REDUCED to five business days, but everyone must be available; take a telephonic deposition if necessary; 5/18/15 Trial date STANDS.

Mr. Kurth to prepare the Report and Recommendations, and Mr. O'Brien to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Mr. Kurth to appear at status check hearing to report on the Report and Recommendations.

5/8/15 11:00 a.m. Status Check: Compliance

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

May 08, 2015

A-12-668833-C Makani Payo, Plaintiff(s)
vs.
Clark County School District, Defendant(s)

May 08, 2015 11:00 AM Status Check: Compliance

HEARD BY: Bulla, Bonnie **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Jennifer Lott

RECORDER: Francesca Haak

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COMMISSIONER RECOMMENDED, matter continued 30 days due to Mr. Kurth's medical emergency.

6/5/15 11:00 a.m. Status Check: Compliance

CLERK'S NOTE: On 5-12-15, a copy of this minute order was placed in the attorney folder(s) of:

Robert Kurth

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

May 11, 2015

A-12-668833-C	Makani Payo, Plaintiff(s)
	vs.
	Clark County School District, Defendant(s)

May 11, 2015

9:00 AM

All Pending Motions

HEARD BY: Hardy, Joe

COURTROOM: Phoenix Building Courtroom -
11th Floor

COURT CLERK: Jennifer Kimmel

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT:	Kurth, Robert O.	Attorney
	O'Brien, Daniel Louis	Attorney

JOURNAL ENTRIES

- DEFENDANT'S MOTION AND NOTICE OF MOTION FOR SUMMARY JUDGMENT...
PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, AND COUNTER-
MOTION FOR SUMMARY JUDGMENT

Argument by counsel regarding Deft's Motion for Summary Judgment. COURT FINDS, it to be undisputed that Clark County School District (CCSD) has a general duty to exercise due care. Additionally CCSD knew risks of injury were inherent in the sport of field hockey. COURT further FINDS, the question of duty is not reliant on the Pltf's testimony, whether or not duty exists is a question of law. Therefore genuine questions of material fact exist as to; 1- duty; 2- whether CCSD exercised reasonable care in allowing an eleven year old student to play field hockey in Physical Education (P.E.) without providing him with any safety equipment; 3- whether CCSD's treatment of the eleven year old student and advice given to Pltf. were reasonable and ; 4- whether additional training, supervision or equipment could have prevented the injury. Accordingly, COURT ORDERED, Deft's Motion for Summary Judgment as to the first cause of action - Negligence and as to the second cause of action - Negligent Supervision is DENIED WITHOUT PREJUDICE.

COURT FURTHER ORDERED, Pltf's Opposition and Counter-Motion for Summary Judgment is also DENIED WITHOUT PREJUDICE as the COURT FINDS, no concise statement setting forth each fact material to the disposition of the motion that Pltf's claims is or is not genuinely in issue as required by NRCP 56 (c).

Court directed Mr. Kurth, Esq. to prepare the Order and submit to Mr. O'Brien, Esq. for his review and signature prior to submitting to the Court for signature.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

May 13, 2015

A-12-668833-C Makani Payo, Plaintiff(s)
vs.
Clark County School District, Defendant(s)

May 13, 2015 8:30 AM Calendar Call

HEARD BY: Hardy, Joe **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Jennifer Kimmel

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT: Kurth, Robert O. Attorney
 O'Brien, Daniel Louis Attorney

JOURNAL ENTRIES

- Both sides announced ready however no EDCR 2.67 Conference has been held. Additionally counsel believe matter will take about 3 days to complete. Mr. O'Brien, Esq. advised the Court of an Out of State witness and indicated he requests scheduling the witness be accommodated. Mr. Kurth, Esq. advised he will cooperate with scheduling of this witness. Following discussion regarding scheduling COURT ORDERED, Trial dates set FIRM.

COURT FURTHER ORDERED, Counsel to complete the EDCR 2.67 meeting on or before 5/20/15 and then submit a Joint Pre Trial Memorandum on or before 5/21/15.

5/27/15 10:30 A.M. JURY TRIAL//5/28/15 10:30 A.M. JURY TRIAL//5/29/15 9:00 A.M. JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

May 27, 2015

A-12-668833-C Makani Payo, Plaintiff(s)
vs.
Clark County School District, Defendant(s)

May 27, 2015 10:30 AM Jury Trial - FIRM

HEARD BY: Hardy, Joe

COURTROOM: Phoenix Building Courtroom -
11th Floor

COURT CLERK: Jennifer Kimmel

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT: Kurth, Robert O. Attorney
O'Brien, Daniel Louis Attorney
Payo, Makani Kai Plaintiff

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Court and counsel discussed voir dire questions and general trial guidelines.

Argument regarding the Pltf's notes made on a menu, which was also referred to as a journal. Court stated its inclinations to not allow this document to be used in any manner, by the Pltf., given it was not produced in discovery. COURT stated, if this journal was a work product, as indicated by Mr. Kurth, it would have been put into a privilege log. Court stated additional inclination to allow Clark County School District (CCSD) to use this journal in any way they choose. COURT stated its inclination to allow Mr. Kurth to conduct re-direct if this issue comes up during cross examination. COURT FURTHER ORDERED, counsel to file brief addressing this issue, as soon as possible.

Discussion regarding the CAP amount for damages. COURT FURTHER ORDERED, the Court will reserve its ruling on this issue pending receipt of briefs from both sides.

Argument regarding the Inherent Risk Doctrine. Court stated its inclinations to DENY this

WITHOUT PREJUDICE based on the reasons set forth in the prior Order that denied summary judgment. Court stated it is the jury who will determine if CCSD provided reasonable care by either providing or not providing safety equipment.

Argument regarding Mr. Kurth's request to limit testimony of CCDC concerning going to the State and testifying about curriculum document, given this document was not disclosed in discovery.

Overtime costs for Staff, was explained to counsel, who subsequently agreed to share the cost of same.

Exhibits were offered and admitted into evidence, (see worksheets).

PROSPECTIVE JURY PANEL PRESENT: Voir dire oath administered. Introductions by Mr. Kurth and Mr. O'Brien, who each named their witnesses. Voir dire commenced. Eight jurors and two alternates selected and sworn. Both sides INVOKED the EXCLUSIONARY RULE which shall be lifted as to the Plaintiff's mother and Ms. Eileen Wheelan, as a Representative for Clark County School District (CCSD).

COURT admonished and excused Jury for evening recess and ORDERED, matter CONTINUED.

CONTINUED TO: 5/28/15 10:30 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

May 28, 2015

A-12-668833-C Makani Payo, Plaintiff(s)
vs.
Clark County School District, Defendant(s)

May 28, 2015 10:30 AM Jury Trial - FIRM

HEARD BY: Hardy, Joe

COURTROOM: Phoenix Building Courtroom - 11th Floor

COURT CLERK: Jennifer Kimmel

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT: Kurth, Robert O. Attorney
O'Brien, Daniel Louis Attorney
Payo, Makani Kai Plaintiff

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Deft s brief on The Issue of the Number of Statutory Caps on Damages Available Under NRS 41.035 was FILED IN OPEN COURT.

Mr. O'Brien advised the top line of exhibit 15 is objectionable. Argument ensued. COURT ORDERED, exhibit 15 stands as admitted with no objection, however the School District shall retain the right to argue that the all or some of the summary of bills were not incurred and they have not conceded liability. Court stated it appreciates the summary because it makes everyone's job easier.

Mr. Kurth disclosed his daughter works at Woodbury Middle School, however it was not during the time of this incident.

Court clarified as follow up regarding Pltfs notes on the menu (journal) that Mr. Kurth may conduct re-direct examination if the issue is brought up on cross by Deft s counsel. Therefore COURT ORDERED, prior ruling stands and if Deft s counsel opens the door it could/would make re-direct appropriate, subject to scope and objections.

JURY PRESENT: Counsel STIPULATED to the presence of the jury. Exclusionary rule in place. Testimony and exhibits presented, (see worksheets). Court admonished and excused Jury for afternoon recess.

OUTSIDE THE PRESENCE OF THE JURY: Discussion regarding exhibit 17, to which the Defense had an objection and withdrew same.

JURY PRESENT: Counsel STIPULATED to the presence of the jury. Testimony and exhibits resumed, (see worksheets). Deposition of Makani Payo was FILED and PUBLISHED in OPEN COURT. Court admonished and excused the jury for evening recess and ORDERED, matter CONTINUED.

OUTSIDE THE PRESENCE OF THE JURY: Court and counsel discussed Jury Instructions. Counsel are directed to provide their agreed upon and not agreed upon instructions to the Court tomorrow.

CONTINUED TO: 5/29/15 9:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

May 29, 2015

A-12-668833-C Makani Payo, Plaintiff(s)
vs.
Clark County School District, Defendant(s)

May 29, 2015 9:00 AM Jury Trial - FIRM

HEARD BY: Hardy, Joe

COURTROOM: Phoenix Building Courtroom - 11th Floor

COURT CLERK: Jennifer Kimmel

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT: Kurth, Robert O. Attorney
O'Brien, Daniel Louis Attorney
Payo, Makani Kai Plaintiff

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Court and counsel discussed Jury Instructions. Court queried Mr. O'Brien regarding his preference for sanction for Mr. Kurth's late arrival. Mr. O'Brien requested apology. Mr. Kurth apologized to the Court, Mr. O'Brien, Ms. Wheelan and his clients, who arrived on time.

JURY PRESENT: Counsel STIPULATED to the presence of the jury. Exclusionary rule in place. Testimony and exhibits presented, (see worksheets). Court admonished and excused Jury for lunch recess.

OUTSIDE THE PRESENCE OF THE JURY: Court and counsel discussed scheduling of witnesses. Both sides were expecting Dr. Carr however he has not responded to the subpoena, therefore Pltf. will reserve the right to call him should he come in for the Defense and the Court will consider an Order to Show Cause should counsel pursue same. PLTF. RESTED. Mr. Kurth moved for a directed verdict. COURT ORDERED, request is DENIED.

JURY PRESENT: Testimony and exhibits resumed, (see worksheets). Court admonished and excused Jury for evening recess and FURTHER ORDERED, matter CONTINUED.

OUTSIDE THE PRESENCE OF THE JURY: Court and counsel discussed Jury Instructions.

CONTINUED TO: 6/1/15 10:30 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

June 02, 2015

A-12-668833-C Makani Payo, Plaintiff(s)
vs.
Clark County School District, Defendant(s)

June 02, 2015 10:30 AM Jury Trial - FIRM

HEARD BY: Hardy, Joe **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Jennifer Kimmel

RECORDER: Matt Yarbrough

REPORTER:

PARTIES

PRESENT: Kurth, Robert O. Attorney
 O'Brien, Daniel Louis Attorney
 Payo, Makani Kai Plaintiff

JOURNAL ENTRIES

- JURY DELIBERATING.

OUTSIDE THE PRESENCE OF THE JURY: Upon receiving a question from the deliberating Jury, Court Staff contacted counsel to have them return and discuss the answer to that question. Prior to returning the question, with its answer, to the Jury, the Jury had reached a verdict.

JURY PRESENT, without alternates. At the hour of 2:56 p.m., the Jury returned with a verdict for the Plaintiff as follows. Past medical and related expenses: \$48,288.06, Future medical and related expenses: \$10,000.00, Past pain, suffering, disability, and Loss of enjoyment of life: \$2,000.00, Future pain, suffering, disability, and Loss of enjoyment of life: 0, for a total judgment \$60,288.06.

Court thanked and excused the jury.

OUTSIDE THE PRESENCE OF THE JURY: Court and counsel discussed filing of post trial motions and Pltf. will file a Motion for Attorney s fees and costs.

		OFFERED		ADMITTED		DATE
		DATE	OBJ	DATE	OBJ	DATE
1	Woodbury Middle School Health Office log 4/6/2005 - Bates # 000021-000022	5/27	x	No	x	5/27
2	Student Injury Accident Report - Bates # CCSD 000039	"	"	"	"	"
3	FASA's written statement of Waleska Morton 2/16/05 - Bates # CCSD000024	"	"	"	"	"
4	Medical records from Nevada Institute of Ophthalmology - Bates # 000018-000092	"	"	"	"	"
5	Medical records from Retina Consultants of Nevada - Bates # 000093-000114	"	"	"	"	"
6	Medical records from University Medical Center (UMC) - Bates # 000115-000264	"	"	"	"	"
7	Medical records from Dr. Tyree Carr, Date of Service 1/21/15- Bates # 000291-000293	"	"	"	"	"
8	Woodbury's Hockey Unit introduction and floor hockey rules - Bates # CCSD 000030-000037	5/29	X	obj/or	X	5/29
9	Deft. CCSD's Responses to Pltf's First Set of Interrogatories	5/27	x	No	x	5/27
10	Deft. CCSD's Responses to Pltf's First Set of Requests for Admissions	"	"	"	"	"
11	Pltf's Answers to Deft. CCSD's Interrogatories	"	"	"	"	"
12	Pltf's Answers to Deft. CCSD's Requests for Production of Documents	"	"	"	"	"
13	DEPOSITION (NOT AN EXHIBIT)					
14	DEPOSITION (NOT AN EXHIBIT)					
15	Medical Billing summary of Damages (Version 2)	5/27	X	No	X	5/27
15 a	Medical Billing summary of Damages (Version 1) - WITHDRAWN					
16	Claim Form against Clark County School District form - Bates # 000295-000297					
17	Letter dated 12/29/05 to CCSD with claim form - Bates # 000295-000297	5/28	X	No	X	5/28
18	Floor Hockey rules produced by Deft. - CCSD 000025-000029	5/29	X	obj/or	X	5/29
19	Vitreous Hemorrhage Conditions information produced by Deft. - CCSD 000012-000013	"	X	obj/or	X	"
20	Billing record from Southwest Ambulance - Bates # 000267					
21	Billing record from UMC - Bates # 000009-000016					
22	Billing record from Summit Anesthesia Consultants - Bates # 000017					
23	Billing record from Medschool Associates South - Bates # 000267					
24	Billing record from EPMG - Bates # 000268					
25	Billing record from Nevada Institute of Ophthalmology - Bates # 000269-000280					
26	Billing records from Retina consultants of Nevada - Bates # 000281-000289					
27	Billing record from Tenaya Surgical Center - Bates # 000290					
28	Updated billing record from Tenaya Surgical Center - Bates # 000294					
29	Letter dated 12/15/04 to CCSD from Mr. Kurth - Bates # CCSD 000040	5/29	X	No	X	5/29
30						
31						
32						

Court's Exhibit List

CASE # A668833

[illegible]

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; JUDGMENT ON JURY VERDICT; NOTICE OF ENTRY OF JUDGMENT; ORDER REGARDING DAMAGES POST-JURY VERDICT; NOTICE OF ENTRY OF ORDER; ORDER; NOTICE OF ENTRY OF ORDER; ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S DAMAGES CALCULATION OR, IN THE ALTERNATIVE, MOTION IN LIMINE; NOTICE OF ENTRY OF ORDER; ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS; NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS; DISTRICT COURT MINUTES; EXHIBITS LIST

MAKANI KAI PAYO,

Plaintiff(s),

vs.

CLARK COUNTY SCHOOL DISTRICT; DOE
CLARK COUNTY SCHOOL DISTRICT
EMPLOYEES,

Defendant(s),

Case No: A668833

Dept No: XV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 17 day of July 2015.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

