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Respondents.

Docket 68471 Document 2016-05103

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1 **COMP**

2 KRISTIAN LAVIGNE, ESQ.

3 Nevada Bar No.11629

4 **THE LAW OFFICE OF KRISTIAN LAVIGNE AND ASSOCIATES, P.C.**

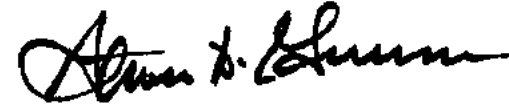
5 5265 S. Durango Dr. Suite 1

6 Las Vegas, NV 89113

7 Attorneys for Plaintiff

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



CLERK OF THE COURT

10 CHRISTIAN CERVANTES-LOPEZ,

11 an individual,

12 MARIA AVARCA, an individual,

13 Plaintiffs,

14 vs.

15 EVANGELINA ORTEGA, an individual;

16 MIRIAM PIZARRO-ORTEGA, an individual;

17 DOES I through V, inclusive;

18 and ROE CORPORATIONS I

19 through V, inclusive

20 Defendant.

CASE NO.:  
DEPT. NO.:

A- 12- 667141- C

XXIII

21 **COMPLAINT**

22 Plaintiffs, CHRISTIAN CERVANTES-LOPEZ and MARIA AVARCA, by and through  
23 their attorney, KRISTIAN LAVIGNE, ESQ., of THE LAW OFFICE OF KRISTIAN LAVIGNE  
24 AND ASSOCIATES and for their causes of action against Defendants, and each of them, alleges  
25 as follows:

26 **GENERAL ALLEGATIONS**

- 27 1. That Plaintiff, CHRISTIAN CERVANTES-LOPEZ, is and was at all times  
28 mentioned herein a resident of Clark County, Nevada.
2. That Plaintiff, MARIA AVARCA, is and was at all times mentioned herein a  
resident of Clark County, Nevada
3. That Defendant, EVANGELINA ORTEGA upon information and belief, is and  
was at all times mentioned herein, a resident of Clark County, Nevada.

4. That Defendant, MIRIAM PIZARRO-ORTEGA, upon information and belief, is and was at all times mentioned herein, a resident of Clark County, Nevada.

5. That the incidents, transactions and occurrences that comprise the basis of this lawsuit took place in Clark County, Nevada.

6. That venue is proper in the Eighth Judicial District Court, Clark County, Nevada.

7. That at all times relevant herein, Defendants designated as DOES I through V and ROE CORPORATIONS I through V, in their true capacities, whether individual, corporate, associate or otherwise of the Defendants named herein are unknown to Plaintiff who, therefore, sues said Defendants by said fictitious names; Plaintiff is informed and believes and thereon alleges that each of the Defendants designated a DOES I through V and ROE CORPORATIONS I through V are responsible in some manner for the events and happenings referred to herein, and caused damages proximately to Plaintiff as herein alleges, and Plaintiff will ask leave of this court to amend this Complaint to insert the true names and capacities of DOES I through V and ROE CORPORATIONS I through V, when the same have been ascertained and to join such Defendants in this action.

**FIRST CAUSE OF ACTION**

**(Negligence)**

8. On or about November 12, 2011, Plaintiffs CHRISTIAN CERVANTES-LOPEZ and MARIA AVARCA were traveling in a 2001 Chevrolet Impala and were heading Westbound on Lake Mead Blvd near Statz. Then suddenly and without warning a vehicle driven by MIRIAM PIZARRO-ORTEGA and owned by EVANGELINA ORTEGA, made an improper left turn causing a violent collision with the Plaintiff's vehicle. As a result of Defendants, and each of them, negligent and wanton acts, the Plaintiffs and each of them, suffered severe injuries including but not limited to their necks, backs, heads and shoulders.

9. Defendant MIRIAM PIZARRO-ORTEGA was operating the vehicle in a negligent, careless, reckless and wanton manner causing a collision between his vehicle and the Plaintiffs' vehicle. Defendant EVANGELINA ORTEGA was the registered owner of the

1 negligent vehicle and is therefore responsible for the Plaintiff's injuries. That by reason of the  
2 Defendants, and each of them, negligent acts and as a direct and proximate result thereof,  
3 Plaintiffs sustained great pain of body and mind, and mental stress and anxiety, all or some of  
4 which conditions may be permanent and disabling in nature, all to Plaintiffs' damage in an  
5 amount in excess of \$10,000.00.

6 10. That by reason of the Defendants' negligent acts and as a direct and proximate  
7 result thereof, Plaintiffs have incurred expenses for medical care and treatment and expenses  
8 incidental thereto, all to Plaintiffs' damage, the present amount of which is unknown; such  
9 expenses will continue in the future, all to Plaintiffs' damage in a presently unascertainable  
10 amount. In this regard, Plaintiffs pray for leave of Court to insert all said damages hearing when  
11 the same have been fully ascertained.

12 11. That by reason of Defendants' negligent acts and as a direct and proximate result  
13 thereof, Plaintiffs, who were well and able-bodied individuals; as a direct and proximate result of  
14 the negligence, carelessness, recklessness and wantonness of said Defendants, and each of them,  
15 has been absent from employment which has resulted in a loss of earning capacity, all to  
16 Plaintiffs' damage in an amount unknown at the present time. When the amount of said damages  
17 is ascertained, Plaintiffs will make known said damages to this Court and to all Defendants.

18 12. That as a rather direct and proximate result of the negligence and carelessness of  
19 Defendant, Plaintiffs have been caused to retain KRISTIAN LAVIGNE, ESQ. of THE LAW  
20 OFFICE OF KRISTIAN LAVIGNE AND ASSOCIATES, in order to prosecute this matter and is  
21 entitled to reasonable attorney's fees and costs of suit herein.  
22

23 //

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1 WHEREFORE, Plaintiffs reserve the right to amend this Complaint at the time of trial to  
2 include all items of damages not yet ascertained, prays for judgment against the Defendants, and  
3 each of the, as follows:

- 4 1. For general damages in excess of \$10,000.00;
- 5 2. For special damages in excess of \$10,000.00;
- 6 3. For punitive damages in excess of \$10,000.00;
- 7 4. For reasonable attorney's fees and costs of suit herein; and
- 8 5. For such other and further relief as the Court deems proper.

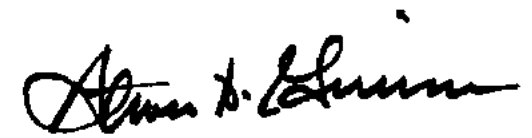
9 DATED this 20 day of August, 2012.

10 LAW OFFICE OF KRISTIAN LAVIGNE, P.C.

11   
12

13 KRISTIAN LAVIGNE, ESQ.  
14 Nevada Bar No.11629  
15 5265 S. Durango Dr. Suite 1  
16 Las Vegas, NV 89113  
17 Attorneys for Plaintiff  
18 702-379-4413  
19  
20  
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CLERK OF THE COURT

1 ANS  
2 STEPHEN H. ROGERS, ESQ.  
3 Nevada Bar No. 5755  
4 ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
5 300 South Fourth Street, Suite 710  
6 Las Vegas, Nevada 89101  
7 Phone (702) 383-3400  
8 Fax (702) 384-1460  
9 Attorneys for Defendants

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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

CHRISTIAN CERVANTES-LOPEZ,  
an individual; MARIA AVARCA, an individual,  
Plaintiffs,

vs.

EVANGELINA ORTEGA, an individual;  
MIRIAM PIZARRO-ORTEGA, an individual;  
DOES I through V, inclusive; and  
ROE CORPORATIONS I through V, inclusive,  
Defendants.

CASE NO.: A-12-667141-C

DEPT. NO.: XXIII

**ANSWER TO COMPLAINT**

COME NOW Defendants, EVANGELINA ORTEGA and MIRIAM PIZARRO-ORTEGA,  
by and through their attorneys, ROGERS, MASTRANGELO, CARVALHO & MITCHELL, and for  
their answer to Plaintiffs' Complaint on file herein, admit, deny and allege as follows:

**ANSWER TO GENERAL ALLEGATIONS**

1. Answering Paragraphs 1 and 2, Defendants neither admit nor deny the allegations  
contained therein for want of sufficient information with which to form a belief as to the truth or  
falsity of the matters asserted, Plaintiffs being left to their proof.

2. Answering Paragraph 3, Defendants deny the allegations contained therein

3. Answering Paragraph 4, Defendants admit the allegations contained therein.

///

1           4.       Answering Paragraphs 5 and 6, Defendants state that some of the allegations contained  
2 therein constitute conclusions of law that require no answer; however, to the extent that an answer  
3 is required, Defendants admit the allegations contained therein.

4           5.       Answering Paragraph 7, Defendants state that some of the allegations contained  
5 therein constitute conclusions of law that require no answer; however, to the extent that an answer  
6 is required, Defendants neither admit nor deny the allegations contained therein for want of  
7 sufficient information with which to form a belief as to the truth or falsity of the matters asserted,  
8 Plaintiffs being left to their proof.

9                               **ANSWER TO FIRST CAUSE OF ACTION**

10          6.       Answering Paragraphs 8, 9, 10 and 11, Defendants state that the allegations contained  
11 therein constitute legal and medical conclusions and thus require no answer; however, to the extent  
12 that they contain allegations of fact, Defendants neither admit nor deny the allegations contained  
13 therein for want of sufficient information with which to form a belief as to the truth or falsity of the  
14 matters asserted, Plaintiffs being left to their proof.

15          7.       Answering Paragraph 12, Defendants state that the allegations contained therein  
16 constitute conclusions of law that require no answer; however, to the extent that an answer is  
17 required, Defendants deny the allegations contained therein.

18                               **AFFIRMATIVE DEFENSES**

19                               **FIRST AFFIRMATIVE DEFENSE**

20               That Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

21                               **SECOND AFFIRMATIVE DEFENSE**

22               That other persons or entities over whom Defendants had no control may have been  
23 negligent, which negligence caused or contributed to Plaintiffs' alleged damages, thereby barring  
24 recovery in whole or in part from the Defendants as provided by law.

25                               **THIRD AFFIRMATIVE DEFENSE**

26               That the damages allegedly suffered by Plaintiffs may have been caused solely by the  
27 superseding, intervening acts and conduct of Plaintiffs and/or other persons or parties, which  
28 intervened between Defendants' alleged acts and Plaintiffs' claimed damages, thereby barring

1 recovery in whole or in part from Defendants.

2 FOURTH AFFIRMATIVE DEFENSE

3 That the accident alleged in the Complaint, and the alleged damages and injuries, if any, to  
4 Plaintiffs, may have been proximately caused or contributed to by the Plaintiffs' own negligence  
5 and that such negligence may have been greater than the Defendants' alleged negligence.

6 FIFTH AFFIRMATIVE DEFENSE

7 That the Plaintiffs' claims may be barred in whole or in part by the absence of any breach  
8 of any duty owed by Defendants.

9 SIXTH AFFIRMATIVE DEFENSE

10 That the Plaintiffs may have assumed or incurred the risk of injury, thereby barring recovery  
11 in whole or in part from Defendants.

12 SEVENTH AFFIRMATIVE DEFENSE

13 That the Plaintiffs' claims may be barred in whole or in part by a failure to mitigate  
14 damages.

15 EIGHTH AFFIRMATIVE DEFENSE

16 That Defendants are entitled to a set-off or credit in the amount of any settlement or  
17 compromise heretofore or hereafter reached by Plaintiffs with any other person or entity for any  
18 of Plaintiffs' alleged damages.

19 NINTH AFFIRMATIVE DEFENSE

20 That Plaintiffs' claims may be barred due to the expiration of the applicable statute of  
21 limitations.

22 TENTH AFFIRMATIVE DEFENSE

23 Pursuant to NRCP Rule 11, as amended, all possible affirmative defenses may not have  
24 been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the  
25 filing of Defendants' Answer, and therefore, Defendants reserve the right to amend this Answer  
26 to allege additional affirmative defenses if subsequent investigation warrants.

27 ///

28 ///

WHEREFORE, the Defendants pray that Plaintiffs takes nothing by reason of their Complaint on file herein; that these Defendants be dismissed with her costs incurred and reasonable attorneys fees; and, for such other and further relief as the Court may deem just and proper in the premises.

DATED this 28<sup>th</sup> day of December, 2012.

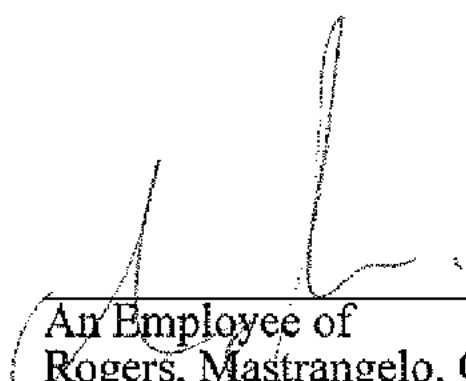
ROGERS, MASTRANGELO, CARVALHO &  
MITCHELL

**STEPHEN H. ROGERS, ESQ.**  
Nevada Bar No. 5755  
300 South Fourth Street, Suite 710  
Las Vegas, Nevada 89101  
Attorney for Defendants

**CERTIFICATE OF SERVICE**

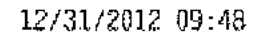
Pursuant to NRCP 5(a), and EDCR 7.26(a), I hereby certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 8<sup>th</sup> day of December, 2012, a true and correct copy of the foregoing **ANSWER TO COMPLAINT** was served via Facsimile and First Class, U.S. Mail, postage prepaid, addressed as follows, upon the following counsel of record:

Kristian Lavigne, Esq.  
The Law Office of Kristian Lavigne & Assoc., P.C.  
5265 South Durango Drive, Suite 1  
Las Vegas, Nevada 89113  
Telephone: (702) 379-4413  
Telephone: (702) 845-8728  
Facsimile: (702) 310-6690  
*Attorneys for Plaintiffs*

  
An Employee of  
Rogers, Mastrangelo, Carvalho & Mitchell

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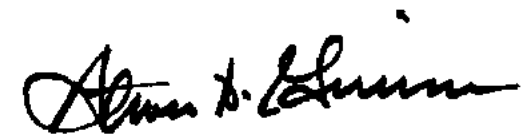
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DEPT. NO.: XXIII

**00010**



CLERK OF THE COURT

AANS  
STEPHEN H. ROGERS, ESQ.  
Nevada Bar No. 5755  
ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
300 South Fourth Street, Suite 710  
Las Vegas, Nevada 89101  
Phone (702) 383-3400  
Fax (702) 384-1460  
Attorneys for Defendants

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

CHRISTIAN CERVANTES-LOPEZ,  
an individual; MARIA AVARCA, an individual,

Plaintiffs,

vs.

EVANGELINA ORTEGA, an individual;  
MIRIAM PIZARRO-ORTEGA, an individual;  
DOES I through V, inclusive; and  
ROE CORPORATIONS I through V, inclusive,

Defendants.

CASE NO.: A-12-667141-C

DEPT. NO.: XXIII

**AMENDED ANSWER TO COMPLAINT**

COME NOW Defendants, EVANGELINA ORTEGA and MIRIAM PIZARRO-ORTEGA,  
by and through their attorneys, ROGERS, MASTRANGELO, CARVALHO & MITCHELL, and for  
their answer to Plaintiffs' Complaint on file herein, admit, deny and allege as follows:

**ANSWER TO GENERAL ALLEGATIONS**

1. Answering Paragraphs 1 and 2, Defendants neither admit nor deny the allegations  
contained therein for want of sufficient information with which to form a belief as to the truth or  
falsity of the matters asserted, Plaintiffs being left to their proof.

2. Answering Paragraph 3, Defendants deny the allegations contained therein

3. Answering Paragraph 4, Defendant denies that she is now a resident of Clark  
County, Nevada, but admits that she was at the time of the subject incident.

1           4.       Answering Paragraphs 5 and 6, Defendants state that some of the allegations contained  
2 therein constitute conclusions of law that require no answer; however, to the extent that an answer  
3 is required, Defendants admit the allegations contained therein.

4           5.       Answering Paragraph 7, Defendants state that some of the allegations contained  
5 therein constitute conclusions of law that require no answer; however, to the extent that an answer  
6 is required, Defendants neither admit nor deny the allegations contained therein for want of  
7 sufficient information with which to form a belief as to the truth or falsity of the matters asserted,  
8 Plaintiffs being left to their proof.

9                                   **ANSWER TO FIRST CAUSE OF ACTION**

10          6.       Answering Paragraphs 8, 9, 10 and 11, Defendants state that the allegations contained  
11 therein constitute legal and medical conclusions and thus require no answer; however, to the extent  
12 that they contain allegations of fact, Defendant Miriam Pizarro-Ortega Defendant admits breach of  
13 duty (liability for negligence) and neither admits nor denies the remaining allegations contained  
14 therein for want of sufficient information with which to form a belief as to the truth or falsity of the  
15 matters asserted, Plaintiffs being left to their proof. Defendant Evangelina Ortega admits that she  
16 was the registered owner of the vehicle, and neither admits nor denies the remaining allegations  
17 contained therein for want of sufficient information with which to form a belief as to the truth or  
18 falsity of the matters asserted, Plaintiffs being left to their proof.

19          7.       Answering Paragraph 12, Defendants state that the allegations contained therein  
20 constitute conclusions of law that require no answer; however, to the extent that an answer is  
21 required, Defendants deny the allegations contained therein.

22                                   **AFFIRMATIVE DEFENSES**

23                                   **FIRST AFFIRMATIVE DEFENSE**

24           That Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

25                                   **SECOND AFFIRMATIVE DEFENSE**

26           That other persons or entities over whom Defendants had no control may have been  
27 negligent, which negligence caused or contributed to Plaintiffs' alleged damages, thereby barring  
28 recovery in whole or in part from the Defendants as provided by law.



1                                    THIRD AFFIRMATIVE DEFENSE

2            That the damages allegedly suffered by Plaintiffs may have been caused solely by the  
3    superseding, intervening acts and conduct of Plaintiffs and/or other persons or parties, which  
4    intervened between Defendants' alleged acts and Plaintiffs' claimed damages, thereby barring  
5    recovery in whole or in part from Defendants.

6                                    FOURTH AFFIRMATIVE DEFENSE

7            That the accident alleged in the Complaint, and the alleged damages and injuries, if any, to  
8    Plaintiffs, may have been proximately caused or contributed to by the Plaintiffs' own negligence  
9    and that such negligence may have been greater than the Defendants' alleged negligence.

10                                  FIFTH AFFIRMATIVE DEFENSE

11           That the Plaintiffs' claims may be barred in whole or in part by the absence of any breach  
12    of any duty owed by Defendants.

13                                  SIXTH AFFIRMATIVE DEFENSE

14           That the Plaintiffs may have assumed or incurred the risk of injury, thereby barring recovery  
15    in whole or in part from Defendants.

16                                  SEVENTH AFFIRMATIVE DEFENSE

17           That the Plaintiffs' claims may be barred in whole or in part by a failure to mitigate  
18    damages.

19                                  EIGHTH AFFIRMATIVE DEFENSE

20           That Defendants are entitled to a set-off or credit in the amount of any settlement or  
21    compromise heretofore or hereafter reached by Plaintiffs with any other person or entity for any  
22    of Plaintiffs' alleged damages.

23                                  NINTH AFFIRMATIVE DEFENSE

24           That Plaintiffs' claims may be barred due to the expiration of the applicable statute of  
25    limitations.

26                                  TENTH AFFIRMATIVE DEFENSE

27           Pursuant to NRCP Rule 11, as amended, all possible affirmative defenses may not have  
28    been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the

1 filing of Defendants' Answer, and therefore, Defendants reserve the right to amend this Answer  
2 to allege additional affirmative defenses if subsequent investigation warrants.

3 WHEREFORE, the Defendants pray that Plaintiffs takes nothing by reason of their  
4 Complaint on file herein; that these Defendants be dismissed with her costs incurred and reasonable  
5 attorneys fees; and, for such other and further relief as the Court may deem just and proper in the  
6 premises.

7 DATED this 24<sup>th</sup> day of January, 2013.

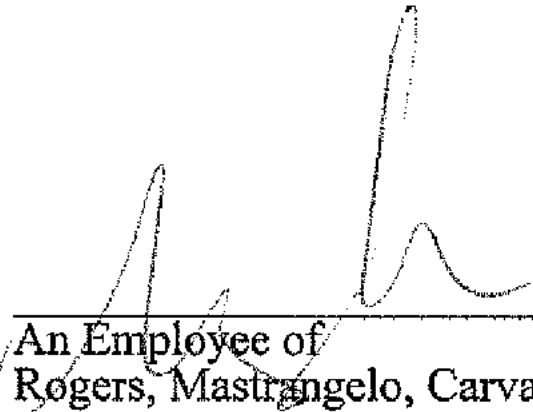
8 ROGERS, MASTRANGELO, CARVALHO &  
9 MITCHELL

10  
11 STEPHEN H. ROGERS, ESQ.  
12 Nevada Bar No. 5755  
13 300 South Fourth Street, Suite 710  
14 Las Vegas, Nevada 89101  
15 Attorney for Defendants  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(a), and EDCR 7.26(a), I hereby certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 24<sup>th</sup> day of January, 2013, a true and correct copy of the foregoing **AMENDED ANSWER TO COMPLAINT** was served via Facsimile and First Class, U.S. Mail, postage prepaid, addressed as follows, upon the following counsel of record:

Kristian Lavigne, Esq.  
The Law Office of Kristian Lavigne & Assoc., P.C.  
5265 South Durango Drive, Suite 1  
Las Vegas, Nevada 89113  
Telephone: (702) 379-4413  
Telephone: (702) 845-8728  
Facsimile: (702) 310-6690  
*Attorneys for Plaintiffs*

  
An Employee of  
Rogers, Mastrangelo, Carvalho & Mitchell

M:\Rogers\Ortega adv. Cervantes-Lopez\Pleadings\Amended Answer.wpd

ORIGINAL

CLERK OF THE COURT

1 **RPT**  
2 DANIEL S. SIMON, ESQ.  
3 Nevada Bar No. 4750  
4 SIMON LAW  
5 810 South Casino Center Blvd.  
6 Las Vegas, Nevada 89101  
7 Telephone(702) 364-1650  
8 and  
9 KRISTIAN LAVIGNE, ESQ.  
10 Nevada Bar #11629  
11 The Law Office of Kristian Lavigne and Associates, P.C.  
12 5265 S. Durango Dr. Suite 1  
13 Las Vegas, Nevada 89113  
14 Telephone (702) 845-8728  
15  
16 Attorneys for Plaintiffs

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

11 CHRISTIAN CERVANTES-LOPEZ,  
12 an individual,  
13 MARIA AVARCA, an individual  
14  
15 Plaintiffs,

16 vs.

17 EVANGELINA ORTEGA, an individual;  
18 MIRIAM PIZARRO-ORTEGA, an individual  
19 DOES I through V; inclusive  
20 and ROE CORPORATIONS I through V,  
21 inclusive

22 Defendants.

Case No.: A667141  
Dept. No.: XXIII

**JOINT CASE CONFERENCE REPORT**

**DISCOVERY PLANNING/DISPUTE**

**CONFERENCE REQUESTED:**

YES \_\_\_\_\_ NO X\_\_\_\_\_

**SETTLEMENT CONFERENCE**

**REQUESTED:**

YES \_\_\_\_\_ NO X\_\_\_\_\_

26 If yes, list five dates that parties are available to attend a Settlement Conference (provide dates  
27 that are at least 90 days after the filing of the Case Conference Report - all Settlement Conferences  
28 will be set at 10:30 a.m., Tuesdays through Fridays):

SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

I.

**PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT**

- A. DATE OF FILING OF COMPLAINT: August 20, 2012  
B. DATE OF FILING OF ANSWER: December 31, 2012  
C. DATE THAT EARLY CASE CONFERENCE WAS HELD AND WHO

ATTENDED: The Early Case Conference was held on March 20, 2013 between Kristian Lavigne, Esq., attorney for Plaintiffs, and Stephen Rogers, Esq., attorney for Defendants.

II.

**A BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND EACH**

**CLAIM FOR RELIEF OR DEFENSE: [16.1 (c) (1)]**

- A. Description of the action:

Plaintiff alleges that on or about November 20, 2011, Plaintiffs Christian Cervantes-Lopez and Maria Avarca were traveling westbound on lake Mead Blvd., when suddenly without warning Defendant Miriam Pizaro-Ortega operating a motor vehicle owned by Evangelina Ortega made an improper left turn causing a violent collision with Plaintiffs vehicle.

- B. Claims for relief:

Plaintiff seeks relief for past and future medical expenses, lost wages, past and future pain, suffering, anxiety, permanent disability and general damages, and an award for attorney's fees, costs, and pre-judgment interest and such other relief as the Court deems just and proper.

- C. Defenses:

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

That Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

That other persons or entities over whom Defendants had no control may have been negligent, which negligence caused or contributed to Plaintiffs' alleged damages, thereby barring recovery in whole or in part from the Defendants as provided by law.

//

1                   **THIRD AFFIRMATIVE DEFENSE**

2           That the damages allegedly suffered by Plaintiffs may have been caused solely by the  
3 superseding, intervening acts and conduct of Plaintiffs and/or other persons or parties, which  
4 intervened between Defendants' alleged acts and Plaintiffs claimed damages, thereby barring  
5 recovery in whole or in part from Defendants.

6                   **FOURTH AFFIRMATIVE DEFENSE**

7           That the accident alleged in the Complaint, and the alleged damages and injuries, if any, to  
8 Plaintiffs, may have been proximately caused or contributed to by the Plaintiffs' own negligence  
9 and that such negligence may have been greater than the Defendants' alleged negligence.

10                  **FIFTH AFFIRMATIVE DEFENSE**

11           That the Plaintiff claims may be barred in whole or in part by the absence of any breach  
12 of any duty owed by Defendants.

13                  **SIXTH AFFIRMATIVE DEFENSE**

14           That the Plaintiffs may have assumed or incurred the risk of injury, thereby barring recovery  
15 in whole or in part from Defendants.

16                  **SEVENTH AFFIRMATIVE DEFENSE**

17           That the Plaintiffs' claims may be barred in whole or in part by a failure to mitigate  
18 damages.

19                  **EIGHTH AFFIRMATIVE DEFENSE**

20           That Defendants are entitled to a set-off or credit in the amount of any settlement or  
21 compromise heretofore or hereafter reached by Plaintiffs with any other person or entity for any  
22 of Plaintiffs alleged damages.

23                  **NINTH AFFIRMATIVE DEFENSE**

24           That Plaintiffs' claims may be barred due to the expiration of the applicable statute of  
25 limitations.

26                  **TENTH AFFIRMATIVE DEFENSE**

27           Pursuant to NRCP Rule 11, as amended, all possible affirmative defenses may not have  
28 been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the

III.

**LIST OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS IN THE POSSESSION, CUSTODY OR CONTROL OF EACH PARTY WHICH WERE IDENTIFIED OR PROVIDED AT THE EARLY CASE CONFERENCE OR AS A RESULT THEREOF: [16.1 (a) (1) (B) and 16.1 (c) (4)]**

**PLAINTIFF CHRISTIAN CERVANTES-LOPEZ:**

1. Complaint and
2. Traffic Accident Report;
3. Medical records and billing from University Medical Center in the amount of \$3,814.45;
4. Medical billing from Neck and Back Clinics in the amount of \$7,865.00;
5. Medical billing from Las Vegas Radiology in the amount of \$60.00;
6. Medical records and billing from Primary Care Consultants in the amount of \$1,960.00; and
7. Medical records and billing from Advanced Diagnostic Imaging Center in the amount of \$1,550.00.
8. Medical records and billing from Dr. Coppel/ Nevada Comprehensive Pain in the amount of \$15,970.00.
9. Medical records and billing from Dr. Coppel! Pharmacy in the amount of \$240.00.

**PLAINTIFF MARIA AVARCA:**

1. Complaint; and
2. Traffic Accident Report;
3. Medical records and billing from University Medical Center in the amount of \$7,948.14;
4. Medical records and billing from North Las Vegas Fire Department! EMS in the amount of \$988.30.
5. Medical records and billing from Desert Radiologists in the amount of \$442.03.

6. Medical billing from Neck and Back Clinics in the amount of \$7,310.00;
7. Medical billing from Las Vegas Radiology in the amount of \$240.00;
8. Medical records and billing from Primary Care Consultants in the amount of \$1,388.00;
9. Pharmacy billing from Advanced Diagnostic Imaging Center in the amount of \$1,550.00.
10. Pharmacy billing from Dr. Coppel/ Nevada Comprehensive Pain in the amount of \$8,550.00.

**DEFENDANTS EVANGELINA ORTEGA and MIRIAM PIZARRO-ORTEGA:**

1. Defendant's Answer to Plaintiff's Complaint, Bates No.'s A 001-005;
2. Defendant's Amended Answer to Plaintiffs Complaint, Bates No.'s B 001-005;
3. State of Nevada Traffic Accident Report No. NLVPD-1 11112021048, Bates Na's C 00 1-008;
4. Plaintiff's vehicle damage estimate, Bates No.'s D 001-009;
5. Plaintiff's vehicle salvage title, Bates No.'s E 001;
6. Color photographs of ADAM SERRANO-SANTANA (driver) and RICO SERRANO-CORTEZ's (owner) vehicle, Bates No.'s F 001-047;
7. ADAM SERRANO-SANTANA (driver) and RICO SERRANO-CORTEZ's (owner) vehicle damage estimate, Bates No.'s G 001-006;
8. Color photographs of Plaintiffs vehicle, Bates No.'s H 001-017-;
9. Defendant's State Farm Auto Insurance Declaration page, Bates No.'s 1001-002;
10. Defendant's State Farm Auto Insurance policy, Bates No.'s J 001-043; and

**IV.**

**LIST OF PERSONS IDENTIFIED BY EACH PARTY AS LIKELY TO HAVE INFORMATION DISCOVERABLE UNDER RULE 26 (b), INCLUDING IMPEACHMENT OR REBUTTAL WITNESSES: [16.1 (a) (1) (A) and 16.1 (c) (3)]**

**PLAINTIFF CHRISTIAN CERVANTES-LOPEZ and MARIA AVARCA:**

1. CHRISTIAN CERVANTES-LOPEZ, Plaintiff  
c/o THE LAW OFFICE OF KRISTIAN LAVIGNE AND ASSOCIATES, P.C.  
KRISTIAN LAVIGNIE, ESQ.  
5265 S. Durango Dr. Suite 1  
Las Vegas, NV 89113

Plaintiff will testify regarding the facts of the accident, injuries, treatment rendered and



1 prognosis thereof

2 2. MARIA AVARCA, Plaintiff  
3 c/o THE LAW OFFICE OF KRISTIAN LAVIGNE AND ASSOCIATES, P.C.  
4 KRISTIAN LAVIGNE, ESQ.  
5 5265 S. Durango Dr. Suite 1  
6 Las Vegas, NV 89113

7 Plaintiff will testify regarding the facts of the accident, injuries, treatment rendered and  
8 prognosis thereof

9 3. EVANGELINA ORTEGA, Defendant  
10 c/o STEPHEN ROGERS, ESQ.  
11 300 South Fourth Street  
12 Las Vegas, NV 89101

13 Defendant is expected to testify regarding the facts and circumstances of the accident.

14 4. MIRIAM PIZARR.O-ORTEGA , Defendant  
15 c/o STEPHEN ROGERS, ESQ.  
16 300 South Fourth Street  
17 Las Vegas, NV 89101

18 Defendant is expected to testify regarding the facts and circumstances of the accident.

19 5. Officer S. Arrendale, ID# 1550  
20 North Las Vegas Police Department  
21 1301 ELakeMeadBlvd  
22 North Las Vegas, NV 89030

23 Witness is expected to testify regarding the facts and circumstances of the accident and  
24 his investigation thereof.

25 Witness will testify regarding their layperson knowledge of the accident, injuries,  
26 treatment rendered and pre- post-accident injuries and any other fact related in any way to this  
27 accident.

28 6. Representatives from Plaintiff's medical providers:

University Medical Center and/or  
John D. Mccourt and/or  
any other treating physicians and/or  
Person Most Knowledgeable and/or  
Custodian of Records  
1800 W. Charleston Blvd.  
Las Vegas, NV 89102  
(702)383-2000

The Neck and Back Clinics and/or  
Marilyn Adair, D.C. and/or  
any other treating physicians and/or

- 1 Person Most Knowledgeable and/or  
Custodian of Records
- 2 P.O. Box 38653
- 3 Las Vegas, NV 89113-6853
- 4 (702) 644-3333
- 5 Las Vegas Radiology and/or
- 6 Lawrence Bogle, M.D. and/or
- 7 Person Most Knowledgeable and/or
- 8 Custodian of Records
- 9 7500 Smoke Ranch Road, suite 100
- 10 Las Vegas Nevada 89128
- 11 (702)-254-5004
- 12 Primary Care Consultants and/or
- 13 D. Rodriguez, PA-C and/or
- 14 any other treating physicians and/or
- 15 Person Most Knowledgeable and/or
- 16 Custodian of Records
- 17 P.O. Box 778195
- 18 Henderson, NV 89077-8915
- 19 (702)-492-7208
- 20 Advantage Diagnostic Imaging and/or
- 21 Keith M. Lewis, M.D. and/or
- 22 any other treating physicians and/or
- 23 Person Most Knowledgeable and/or
- 24 Custodian of Records
- 25 2980 S. Jones Bld. #E
- 26 (702)-362-6652
- 27 Nevada Comprehensive Pain
- 28 and/or Alain Coppel M.D. and/or
- Any other treating physicians and/or
- Person Most Knowledgeable and/or
- Custodian of Records
- 2820 W Charleston Blvd, Suite 7
- Las Vegas, NV 89102
- (702)-476-9999

Any and all knowledgeable persons will testify as to the authenticity of the medical records and bills, and the reasonableness of the charges thereby of Plaintiff.

Additionally, all medical providers will testify in expert capacity as to the injuries, and treatment, prognosis, the necessity of that treatment, and the causation for which that care and treatment was rendered.

7. Any and all witnesses identified by any other party.

8. Rebuttal witnesses as necessary to refute any claims or allegations made

1 by any other party.

2 **DEFENDANTS EVANGELINA ORTEGA and MIRIAM PIZARRO-ORTEGA:**

3 1. CHRISTIAN CERVANTES-LOPEZ  
4 c/o Kristian Lavigne, Esq.  
5 The Law Office of Kristian Lavigne & Assoc., P.C.  
6 5265 South Durango Drive, Suite I  
7 Las Vegas, Nevada 89113

8 Plaintiff is expected to testify as to the facts and circumstances surrounding the subject  
9 incident.

10 2. MARIA AVARCA  
11 c/o Kristian Lavigne, Esq.  
12 The Law Office of Kristian Lavigne & Assoc., P.C.  
13 5265 South Durango Drive, Suite I  
14 Las Vegas, Nevada 89113

15 Plaintiff is expected to testify as to the facts and circumstances surrounding the subject  
16 incident.

17 3. EVANGELINA ORTEGA  
18 c/o Stephen H. Rogers, Esq.  
19 ROGERS, MASTRANGELO, CARVALMO & MITCHELL  
20 300 S. Fourth Street, Suite 710  
21 Las Vegas, NV 89101

22 Defendant is expected to testify as to the facts and circumstances surrounding the subject  
23 incident.

24 4. MIRIAM PIZARRO-ORTEGA  
25 c/o Stephen H. Rogers, Esq.  
26 ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
27 300 S. Fourth Street, Suite 710  
28 Las Vegas, NV 89101

Defendant is expected to testify as to the facts and circumstances surrounding the subject  
incident.

5. MARIA CERVANTES-LOPEZ  
8 E Tonopah #A  
North Las Vegas, NV. 89030

This witness is expected to testify as to the facts and circumstances surrounding the  
subject incident.

6. ADAM SERRANO-SANTANA  
2558 Statz st., Apt C  
North Las Vegas, NV. 89030

This witness is expected to testify as to the facts and circumstances surrounding the  
subject incident.

7. RICO SERRANO-CORTEZ

1077 Griffith Ave  
Las Vegas, NV. 89104

This witness is expected to testify as to the facts and circumstances surrounding the subject incident.

8. OFFICER S. ARRENDALE, ID #1550  
NORTH LAS VEGAS POLICE DEPARTMENT  
301 East Lake Mead Blvd.  
North Las Vegas, NV 89030

Officer Arrendale may testify regarding the facts of his investigation of the circumstances surrounding the subject incident.

Defendant also identifies all of Plaintiff's health care providers after the subject incident, and, as relevant, prior to same.

Defendant also names as witnesses all of Plaintiff's past and current employers.

Defendant also names as witnesses all witnesses designated by all parties.

The following witness(es)' testimony is expected to be presented by deposition transcript, pursuant to N.R.C.P. 16.1(a)(3)(B): None at this time.

Defendant reserves the right to call any and all other witnesses who may have relevant knowledge of the facts and circumstances surrounding the subject incident.

Defendant reserves the right to name an accident reconstructionist.

Defendant reserves the right to name an Independent Medical Examination doctor.

Defendant reserves the right to supplement his list of witnesses as new witnesses become known, including expert witnesses and as Plaintiff's testimony at trial may make necessary.

V.

**DISCOVERY PLAN [16.1(b) (2) and 16.1(c) (2)]**

A. What changes, if any, should be made in the timing, form or requirements for disclosures under 16.1(a):

1. N/A
2. N/A

When disclosures under 16.1(a) (1) were made or will be made:

1. Plaintiffs' disclosures: August 2013
2. Defendant's disclosures: April 5, 2013

B. Subjects on which discovery may be needed:

1. Plaintiffs' view: Plaintiff seeks discovery concerning liability and punitive

1 damages. Then expert disclosures and depositions will have to be completed and rebuttal experts,  
2 if necessary. Given the amount of experts in this case, this will be quite time consuming and  
3 additional time is needed.

4 2. Defendant's view: Defendant seeks usual and customary discovery to  
5 properly defend this case.

6 C. Should discovery be conducted in phases or limited to or focused upon particular  
7 issues?

- 8 1. Plaintiffs' view: No.  
9 2. Defendant's view: No.

10 D. What changes, if any, should be made in limitations on discovery imposed under  
11 these rules and what, if any, other limitations should be imposed?

- 12 1. Plaintiffs' view: None.  
13 2. Defendant's view: None.

14 E. What, if any, other orders should be entered by court under Rule 26(c) or Rule  
15 16(b) and (c)):

- 16 1. Plaintiffs' view: None.  
17 2. Defendant's view: None.

18 F. Estimated time for trial:

- 19 1. Plaintiffs' view: 3-5 days.  
20 2. Defendant's view: 3-5 days, unless Plaintiffs continue to treat.

## 21 VI.

### 22 DISCOVERY AND MOTION DATES (16.1 (c) (5) - (8))

23 A. Dates agreed by the parties:

- 24 1. Close of discovery: June 20, 2014  
25 2. Final date to file motions to amend pleadings or add parties (without a  
26 further court order) March 20, 2014  
27 3. Final dates for expert disclosures:  
28 I. initial disclosure: March 20, 2014  
ii. rebuttal disclosures: April 21, 2014  
4. Final date to file dispositive motions:  
July 21, 2014

29 B. In the event the parties do not agree on dates, the following section must be  
30 completed:

31 Not applicable.

1 Failure to agree on the calendar dates in this subdivision shall result in a discovery  
2 planning conference.

3 VII.

4 JURY DEMAND [16.1(c) (10)]

5 A jury demand has been filed: Yes.

6 VIII.

7 INITIAL DISCLOSURES/OBJECTIONS [16.1(a) (1)]

8 If a party objects during the Early Case Conference that initial disclosures are not  
9 appropriate in the circumstances of this case, those objections must be stated herein. The Court  
10 shall determine what disclosures, if any, are to be made and shall set the time for such disclosure.

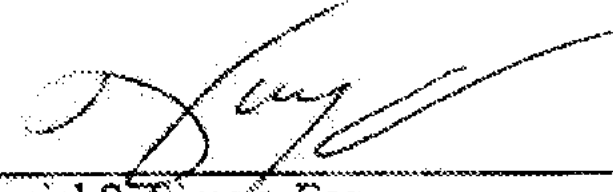
11 This report is signed in accordance with rule 26(g) (1) of the Nevada Rules of Civil  
12 Procedure. Each signature constitutes a certification that to the best of the signer's knowledge,  
13 information and belief, formed after a reasonable inquiry, the disclosures made by the signer are  
14 complete and correct as of this time.

15 IX.


16 STIPULATIONS

17 None at this time.

18 Dated: 9-20-13

19  
20   
21 Daniel S. Simon, Esq.  
22 Nevada Bar #4750  
23 810 South Casino Center Blvd.  
24 Las Vegas, Nevada 89101  
25 Attorney for Plaintiffs

18 Dated: 9/26/13

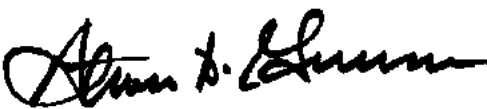
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21 Stephen Rogers, Esq.  
22 Nevada Bar #5755  
23 300 S. Fourth Street, Suite 710  
24 Las Vegas, NV 89101  
25 Attorney for Defendants

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DISTRICT COURT  
CLARK COUNTY, NEVADA

  
CLERK OF THE COURT

CHRISTIAN CERVANTES-LOPEZ, an  
individual, MARIA AVARCA, an  
individual,

Plaintiffs,

v.

CASE NO. A667141  
DEPT NO. XXIII

EVANGELINA ORTEGA, an  
individual; MIRIAM PIZARRO-  
ORTEGA, an individual; DOES I  
through V, inclusive; and ROE  
CORPORATIONS I through V,  
inclusive,

Defendants.

**SCHEDULING ORDER**

(Discovery/Dispositive Motions/Motions to Amend or Add Parties)

NATURE OF ACTION: **Personal injury - vehicle accident**

DATE OF FILING JOINT CASE CONFERENCE REPORT(S): **10/2/13**

TIME REQUIRED FOR TRIAL: **3-5 days**

DATES FOR SETTLEMENT CONFERENCE: **None Requested**

Counsel for Plaintiffs:

**Kristian LaVigne, Esq., The Law Office of Kristian  
LaVigne and Associates AND Daniel S. Simon, Esq. (co-  
counsel)**

Counsel for Defendants:

**Stephen H. Rogers, Esq., Rogers, Mastrangelo, Carvalho &  
Mitchell**

Counsel representing all parties have been heard and  
after consideration by the Discovery Commissioner,

IT IS HEREBY ORDERED:

**DISCOVERY  
COMMISSIONER**

EIGHTH JUDICIAL  
DISTRICT COURT

RECEIVED  
OCT 08 2013  
CLERK OF THE COURT

1           1.    all parties shall complete discovery on or before  
2           6/20/14.

3           2.    all parties shall file motions to amend pleadings or  
4           add parties on or before 3/20/14.

5           3.    all parties shall make initial expert disclosures  
6           pursuant to N.R.C.P. 16.1(a)(2) on or before 3/20/14.

7           4.    all parties shall make rebuttal expert disclosures  
8           pursuant to N.R.C.P. 16.1(a)(2) on or before 4/21/14.

9           5.    all parties shall file dispositive motions on or  
10          before 7/21/14.

11          Certain dates from your case conference report(s) may  
12          have been changed to bring them into compliance with N.R.C.P.  
13          16.1.

14          Within 60 days from the date of this Scheduling Order,  
15          the Court shall notify counsel for the parties as to the date  
16          of trial, as well as any further pretrial requirements in  
17          addition to those set forth above.

18          Unless otherwise directed by the court, all pretrial  
19          disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at  
20          least 30 days before trial.

21          Motions for extensions of discovery shall be made to the  
22          Discovery Commissioner in strict accordance with E.D.C.R.  
23          2.35. Discovery is completed on the day responses are due or  
24          the day a deposition begins.

25          . . .


26  
27  
28  
**DISCOVERY  
COMMISSIONER**

EIGHTH JUDICIAL  
DISTRICT COURT



1 Unless otherwise ordered, all discovery disputes (except  
2 disputes presented at a pre-trial conference or at trial) must  
3 first be heard by the Discovery Commissioner.

4 Dated this 7 day of October, 2013.

6  
7   
8 DISCOVERY COMMISSIONER

9 CERTIFICATE OF SERVICE

10 I hereby certify that on the date filed, I placed a copy  
11 of the foregoing DISCOVERY SCHEDULING ORDER in the folder(s)  
in the Clerk's office or mailed as follows:

12 Kristian LaVigne, Esq.  
13 Daniel S. Simon, Esq.  
14 Stephen H. Rogers, Esq.

15   
16 COMMISSIONER DESIGNEE  
17  
18  
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DISCOVERY  
COMMISSIONER

EIGHTH JUDICIAL  
DISTRICT COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

  
CLERK OF THE COURT

CHRISTIAN CERVANTES-LOPEZ  
Plaintiff(s),

vs.

CASE NO. A667141  
DEPT NO. 23

EVANGELINA ORTEGA,

Defendant(s),

**ORDER SETTING CIVIL JURY TRIAL**

IT IS HEREBY ORDERED THAT:

A. The above entitled case is set to be tried for three to five days to begin on **Monday, November 10, 2014 at 1:00 pm.**

B. A Calendar Call will be held on **Tuesday, October 28, 2014 at 11:00 a.m.**

Trial Counsel (and any party in proper person) must appear. *Trial Counsel* must appear at the calendar call and bring the following:

- (1) Typed exhibit lists and exhibits;
- (2) Original, certified, unopened depositions;
- (3) List of equipment needed for trial;

C. The Pre-trial Memorandum must be filed no later than **October 24, 2014**, with a courtesy copy delivered to chambers. EDCR 2.67 must be complied with.

D. All discovery deadlines, deadlines for filing dispositive motions and motions to amend the pleadings or add parties are controlled by the previously issued Scheduling Order and/or any amendments or subsequent orders.

E. All motions in limine must be in writing and set for a hearing no later than 45 days prior to Trial. All pretrial motions shall be heard and decided no later than 15 days before the

STEFANY A. MILEY  
DISTRICT JUDGE

DEPARTMENT TWENTY THREE  
LAS VEGAS NV 89101-2408

00030

1 date scheduled for trial.

2 F. Stipulations to continue a trial date will not be considered by the Court. Pursuant to  
3 EDCR 2.35, a motion to continue trial due to any discovery issues or deadlines must be made  
4 before the Discovery Commissioner.

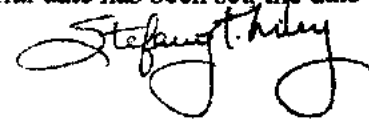
5 G. Orders shortening time will not be signed except in extreme emergencies.

6 ***AN UPCOMING TRIAL DATE IS NOT AN EXTREME EMERGENCY***

7  
8 Failure of the designated trial attorney or any party appearing in proper person to appear  
9 for any court appearances or to comply with this Order shall result in any of the following:  
10 (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation of trial  
11 date; and/or any other appropriate remedy or sanction.

12 Counsel must advise the Court immediately when the case settles or is otherwise  
13 resolved prior to trial. A stipulation which terminates a case by dismissal shall indicate  
14 whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial.

15  
16 DATED: October 14, 2013.

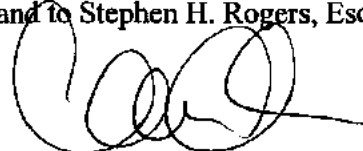


17  
18 HONORABLE STEFANY A. MILEY  
19 DISTRICT COURT JUDGE

20  
21 **CERTIFICATE OF FACSIMILE**

22 On the 14th day of October, 2013 a copy of the foregoing Order Setting Civil Jury Trial was  
23 faxed to Kristian Lavigne, Esq. at (702) 364-1655 and to Stephen H. Rogers, Esq. at  
24 (702) 384-1460.

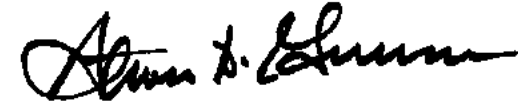
25 By:



26 Carmen Alper  
27 Judicial Executive Assistant  
28

STEFANY A. MILEY  
DISTRICT JUDGE

DEPARTMENT TWENTY THREE  
LAS VEGAS NV 89101-2408



CLERK OF THE COURT

PTD  
DANIEL S. SIMON, ESQ.  
Nevada Bar #004750  
BENJAMIN J. MILLER, ESQ.  
Nevada Bar #010406  
SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
Telephone (702) 364-1650  
Fax (702) 364-1655  
[dan@simonlawlv.com](mailto:dan@simonlawlv.com)  
Attorneys for Plaintiffs

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CHRISTIAN CERVANTES-LOPEZ,  
an individual,  
MARIA AVARCA, an individual

Plaintiffs,

vs.

EVANGELINA ORTEGA, an individual;  
MIRIAM PIZARRO-ORTEGA, an individual  
DOES I through V; inclusive  
and ROE CORPORATIONS I through V,  
inclusive

Defendants.

Case No.: A667141  
Dept. No.: XXIII

**PLAINTIFFS' PRE-TRIAL DISCLOSURES**

COMES NOW Plaintiffs, by and through their attorneys, SIMON LAW, and hereby serves  
the following Pre-Trial Disclosure Statement:

**I.**

**PLAINTIFFS' WITNESSES PURSUANT TO N.R.C.P. 16.1 (a)(3)(A)**

1. Christian Cervantes-Lopez  
c/o Simon Law  
810 S. Casino Center Blvd.  
Las Vegas, NV 89101

Is expected to testify regarding the facts and circumstances surrounding the November 20,  
2011.

///

SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

2. Maria Avarca  
c/o Simon Law  
810 S. Casino Center Blvd.  
Las Vegas, NV 89101

Is expected to testify regarding the facts and circumstances surrounding the November 20, 2011.

3. Evangelina Ortega  
c/o Stephen Rogers, Esq., and Kade Baird, Esq.  
Rogers, Masterangelo, Carvalho & Mitchell  
300 S. Fourth Street, Suite 710  
Las Vegas, NV 89101

Is expected to testify regarding the facts and circumstances surrounding the November 20, 2011.

4. Miriam Pizarro-Ortega  
c/o Stephen Rogers, Esq., and Kade Baird, Esq.  
Rogers, Masterangelo, Carvalho & Mitchell  
300 S. Fourth Street, Suite 710  
Las Vegas, NV 89101

Is expected to testify regarding the facts and circumstances surrounding the November 20, 2011.

5. Person Most Knowledgeable and/or Custodian of Records for  
University Medical Center  
John D. McCourt, M.D.  
1800 W. Charleston Blvd.  
Las Vegas, NV 89102

Is expected to testify as a medical expert regarding the physical and mental condition and medical treatment rendered to Plaintiffs **CHRISTIAN CERVANTES-LOPEZ** and **MARIA AVARCA**, including that the diagnosis and prognosis as a result of the incident in question, that such treatment was necessitated by said incident and was reasonable and necessary for the injuries sustained, the permanent disability, pain, suffering, anxiety, loss of enjoyment of life and physical and mental restrictions resulting therefrom, and his inability to be gainfully employed, as well as the necessity and cost for future medical treatment. That the medical billings were reasonable, necessary and related to the subject incident. The custodian of records is expected to testify regarding all records and billings generated for **CHRISTIAN CERVANTES-LOPEZ** and **MARIA AVARCA** for treatment rendered as a result of the incident in question. This expert is expected to testify consistent with the medical records related to the treatment of the Plaintiffs for the subject incident, and any medical records for other incidents, before or after the subject incident having relevance to this action. The facts and opinions to which the expert is expected to testify include any and all facts and opinions in the said medical records and medical history of Plaintiffs and that the medical treatment the Plaintiffs received were reasonable, necessary, and caused by the incident set forth in the Complaint, and any facts and opinions that would rebut any opinions rendered by any witness disclosed by any party in this action that contradict the same. This expert will also interpret radiographic findings, physical therapy treatment, work restrictions, job duties, permanent impairments, inability to perform normal daily living activities, recreational activities,

1 hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the  
2 damages Plaintiffs have sustained as a result of this case.

- 3 6. Person Most Knowledgeable and/or Custodian of Records for  
4 The Neck and Back Clinics  
5 Marilyn Adair, D.C.  
6 P.O. Box 38653  
7 Las Vegas, NV 89113-6853  
8 (702) 644-3333

9 Is expected to testify as a medical expert regarding the physical and mental condition and  
10 medical treatment rendered to Plaintiffs **CHRISTIAN CERVANTES-LOPEZ** and **MARIA**  
11 **AVARCA**, including that the diagnosis and prognosis as a result of the incident in question,  
12 that such treatment was necessitated by said incident and was reasonable and necessary for  
13 the injuries sustained, the permanent disability, pain, suffering, anxiety, loss of enjoyment of  
14 life and physical and mental restrictions resulting therefrom, and his in ability to be gainfully  
15 employed, as well as the necessity and cost for future medical treatment. That the medical  
16 billings were reasonable, necessary and related to the subject incident. The custodian of  
17 records is expected to testify regarding all records and billings generated for **CHRISTIAN**  
18 **CERVANTES-LOPEZ** and **MARIA AVARCA** for treatment rendered as a result of the  
19 incident in question. This expert is expected to testify consistent with the medical records  
20 related to the treatment of the Plaintiffs for the subject incident, and any medical records for  
21 other incidents, before or after the subject incident having relevance to this action. The facts  
22 and opinions to which the expert is expected to testify include any and all facts and opinions  
23 in the said medical records and medical history of Plaintiffs and that the medical treatment  
24 the Plaintiffs received were reasonable, necessary, and caused by the incident set forth in the  
25 Complaint, and any facts and opinions that would rebut any opinions rendered by any witness  
26 disclosed by any party in this action that contradict the same. This expert will also interpret  
27 radiographic findings, physical therapy treatment, work restrictions, job duties, permanent  
28 impairments, inability to perform normal daily living activities, recreational activities,  
hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the  
damages Plaintiffs have sustained as a result of this case.

7. Person Most Knowledgeable and/or Custodian of Records for  
Las Vegas Radiology  
Lawrence Bogle, M.D.  
7500 Smoke Ranch Road, Suite 100  
Las Vegas, NV 89128  
(702) 254-5004

Is expected to testify as a medical expert regarding the physical and mental condition and  
medical treatment rendered to Plaintiffs **CHRISTIAN CERVANTES-LOPEZ** and **MARIA**  
**AVARCA**, including that the diagnosis and prognosis as a result of the incident in question,  
that such treatment was necessitated by said incident and was reasonable and necessary for  
the injuries sustained, the permanent disability, pain, suffering, anxiety, loss of enjoyment of  
life and physical and mental restrictions resulting therefrom, and his in ability to be gainfully  
employed, as well as the necessity and cost for future medical treatment. That the medical  
billings were reasonable, necessary and related to the subject incident. The custodian of  
records is expected to testify regarding all records and billings generated for **CHRISTIAN**  
**CERVANTES-LOPEZ** and **MARIA AVARCA** for treatment rendered as a result of the  
incident in question. This expert is expected to testify consistent with the medical records  
related to the treatment of the Plaintiffs for the subject incident, and any medical records for  
other incidents, before or after the subject incident having relevance to this action. The facts  
and opinions to which the expert is expected to testify include any and all facts and opinions  
in the said medical records and medical history of Plaintiffs and that the medical treatment

1 the Plaintiffs received were reasonable, necessary, and caused by the incident set forth in the  
2 Complaint, and any facts and opinions that would rebut any opinions rendered by any witness  
3 disclosed by any party in this action that contradict the same. This expert will also interpret  
4 radiographic findings, physical therapy treatment, work restrictions, job duties, permanent  
5 impairments, inability to perform normal daily living activities, recreational activities,  
6 hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the  
7 damages Plaintiffs have sustained as a result of this case.

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8. Person Most Knowledgeable and/or Custodian of Records for  
Primary Care Consultants  
D. Rodriguez, PA-C  
P.O. Box 778195  
Henderson, NV 89077-8915  
(702) 492-7208

Is expected to testify as a medical expert regarding the physical and mental condition and  
medical treatment rendered to Plaintiffs **CHRISTIAN CERVANTES-LOPEZ** and **MARIA**  
**AVARCA**, including that the diagnosis and prognosis as a result of the incident in question,  
that such treatment was necessitated by said incident and was reasonable and necessary for  
the injuries sustained, the permanent disability, pain, suffering, anxiety, loss of enjoyment of  
life and physical and mental restrictions resulting therefrom, and his in ability to be gainfully  
employed, as well as the necessity and cost for future medical treatment. That the medical  
billings were reasonable, necessary and related to the subject incident. The custodian of  
records is expected to testify regarding all records and billings generated for **CHRISTIAN**  
**CERVANTES-LOPEZ** and **MARIA AVARCA** for treatment rendered as a result of the  
incident in question. This expert is expected to testify consistent with the medical records  
related to the treatment of the Plaintiffs for the subject incident, and any medical records for  
other incidents, before or after the subject incident having relevance to this action. The facts  
and opinions to which the expert is expected to testify include any and all facts and opinions  
in the said medical records and medical history of Plaintiffs and that the medical treatment  
the Plaintiffs received were reasonable, necessary, and caused by the incident set forth in the  
Complaint, and any facts and opinions that would rebut any opinions rendered by any witness  
disclosed by any party in this action that contradict the same. This expert will also interpret  
radiographic findings, physical therapy treatment, work restrictions, job duties, permanent  
impairments, inability to perform normal daily living activities, recreational activities,  
hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the  
damages Plaintiffs have sustained as a result of this case.

9. Person Most Knowledgeable and/or Custodian of Records for  
Centennial Medical Group  
Centennial Pain Relief Network  
Centennial Surgery Center  
David Lanzkowsky, M.D.  
4454 N. Decatur Blvd.  
Las Vegas, NV 89130  
(702) 839-1203

Is expected to testify as a medical expert regarding the physical and mental condition and  
medical treatment rendered to Plaintiffs **CHRISTIAN CERVANTES-LOPEZ** and **MARIA**  
**AVARCA**, including that the diagnosis and prognosis as a result of the incident in question,  
that such treatment was necessitated by said incident and was reasonable and necessary for  
the injuries sustained, the permanent disability, pain, suffering, anxiety, loss of enjoyment of  
life and physical and mental restrictions resulting therefrom, and his in ability to be gainfully  
employed, as well as the necessity and cost for future medical treatment. That the medical  
billings were reasonable, necessary and related to the subject incident. The custodian of

records is expected to testify regarding all records and billings generated for **CHRISTIAN CERVANTES-LOPEZ** and **MARIA AVARCA** for treatment rendered as a result of the incident in question. This expert is expected to testify consistent with the medical records related to the treatment of the Plaintiffs for the subject incident, and any medical records for other incidents, before or after the subject incident having relevance to this action. The facts and opinions to which the expert is expected to testify include any and all facts and opinions in the said medical records and medical history of Plaintiffs and that the medical treatment the Plaintiffs received were reasonable, necessary, and caused by the incident set forth in the Complaint, and any facts and opinions that would rebut any opinions rendered by any witness disclosed by any party in this action that contradict the same. This expert will also interpret radiographic findings, physical therapy treatment, work restrictions, job duties, permanent impairments, inability to perform normal daily living activities, recreational activities, hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the damages Plaintiffs have sustained as a result of this case.

10. Person Most Knowledgeable and/or Custodian of Records for  
Advantage Diagnostic Imaging  
Keith M. Lewis, M.D.  
2980 S. Jones Blvd., #E  
Las Vegas, NV 89146  
(702) 362-6652

Is expected to testify as a medical expert regarding the physical and mental condition and medical treatment rendered to Plaintiffs **CHRISTIAN CERVANTES-LOPEZ** and **MARIA AVARCA**, including that the diagnosis and prognosis as a result of the incident in question, that such treatment was necessitated by said incident and was reasonable and necessary for the injuries sustained, the permanent disability, pain, suffering, anxiety, loss of enjoyment of life and physical and mental restrictions resulting therefrom, and his inability to be gainfully employed, as well as the necessity and cost for future medical treatment. That the medical billings were reasonable, necessary and related to the subject incident. The custodian of records is expected to testify regarding all records and billings generated for **CHRISTIAN CERVANTES-LOPEZ** and **MARIA AVARCA** for treatment rendered as a result of the incident in question. This expert is expected to testify consistent with the medical records related to the treatment of the Plaintiffs for the subject incident, and any medical records for other incidents, before or after the subject incident having relevance to this action. The facts and opinions to which the expert is expected to testify include any and all facts and opinions in the said medical records and medical history of Plaintiffs and that the medical treatment the Plaintiffs received were reasonable, necessary, and caused by the incident set forth in the Complaint, and any facts and opinions that would rebut any opinions rendered by any witness disclosed by any party in this action that contradict the same. This expert will also interpret radiographic findings, physical therapy treatment, work restrictions, job duties, permanent impairments, inability to perform normal daily living activities, recreational activities, hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the damages Plaintiffs have sustained as a result of this case.

11. Person Most Knowledgeable and/or Custodian of Records for  
Western Regional Center for Brain and Spine  
Stuart Kaplan, M.D.  
3061 S. Maryland Pkwy., #200  
Las Vegas, NV 89109  
(702) 737-1948

Is expected to testify as a medical expert regarding the physical and mental condition and medical treatment rendered Plaintiff **CHRISTIAN CERVANTES-LOPEZ** including that the diagnosis and prognosis as a result of the incident in question, that such treatment was



1 necessitated by said incident and was reasonable and necessary for the injuries sustained, the  
2 permanent disability, pain, suffering, anxiety, loss of enjoyment of life and physical and  
3 mental restrictions resulting therefrom, and his in ability to be gainfully employed, as well as  
4 the necessity and cost for future medical treatment. That the medical billings were reasonable,  
5 necessary and related to the subject incident. The custodian of records is expected to testify  
6 regarding all records and billings generated for **CHRISTIAN CERVANTES-LOPEZ** for  
7 treatment rendered as a result of the incident in question. This expert is expected to testify  
8 consistent with the medical records related to the treatment of the Plaintiff for the subject  
9 incident, and any medical records for other incidents, before or after the subject incident  
10 having relevance to this action. The facts and opinions to which the expert is expected to  
11 testify include any and all facts and opinions in the said medical records and medical history  
12 of Plaintiff and that the medical treatment the Plaintiff received was reasonable, necessary,  
13 and caused by the incident set forth in the Complaint, and any facts and opinions that would  
14 rebut any opinions rendered by any witness disclosed by any party in this action that  
15 contradict the same. This expert will also interpret radiographic findings, physical therapy  
16 treatment, work restrictions, job duties, permanent impairments, inability to perform normal  
17 daily living activities, recreational activities, hobbies, pain, suffering, emotional distress,  
18 mentally and physically as it relates to the damages Plaintiff(s) have sustained as a result of  
19 this case.

12. Person Most Knowledgeable and/or Custodian of Records for  
NEVADA COMPREHENSIVE PAIN CENTER  
Alain Coppel, M.D.  
2820 W Charleston Blvd., Suite 7  
Las Vegas, NV 89102  
(702) 476-9999

Is expected to testify as a medical expert regarding the physical and mental condition and  
medical treatment rendered to Plaintiffs **CHRISTIAN CERVANTES-LOPEZ** and **MARIA**  
**AVARCA**, including that the diagnosis and prognosis as a result of the incident in question,  
that such treatment was necessitated by said incident and was reasonable and necessary for  
the injuries sustained, the permanent disability, pain, suffering, anxiety, loss of enjoyment of  
life and physical and mental restrictions resulting therefrom, and his in ability to be gainfully  
employed, as well as the necessity and cost for future medical treatment. That the medical  
billings were reasonable, necessary and related to the subject incident. The custodian of  
records is expected to testify regarding all records and billings generated for **CHRISTIAN**  
**CERVANTES-LOPEZ** and **MARIA AVARCA** for treatment rendered as a result of the  
incident in question. This expert is expected to testify consistent with the medical records  
related to the treatment of the Plaintiffs for the subject incident, and any medical records for  
other incidents, before or after the subject incident having relevance to this action. The facts  
and opinions to which the expert is expected to testify include any and all facts and opinions  
in the said medical records and medical history of Plaintiffs and that the medical treatment  
the Plaintiffs received were reasonable, necessary, and caused by the incident set forth in the  
Complaint, and any facts and opinions that would rebut any opinions rendered by any witness  
disclosed by any party in this action that contradict the same. This expert will also interpret  
radiographic findings, physical therapy treatment, work restrictions, job duties, permanent  
impairments, inability to perform normal daily living activities, recreational activities,  
hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the  
damages Plaintiffs have sustained as a result of this case.

13. Person Most Knowledgeable and/or Custodian of Records  
North Las Vegas Fire Department/EMS  
4040 Losee Road  
North Las Vegas, Nevada 89030  
(702) 633-1102

1 Is expected to testify as a medical expert regarding the physical and mental condition and  
2 medical treatment rendered Plaintiff MARIA AVARCA including that the diagnosis and  
3 prognosis as a result of the incident in question, that such treatment was necessitated by said  
4 incident and was reasonable and necessary for the injuries sustained, the permanent disability,  
5 pain, suffering, anxiety, loss of enjoyment of life and physical and mental restrictions  
6 resulting therefrom, and his inability to be gainfully employed, as well as the necessity and  
7 cost for future medical treatment. That the medical billings were reasonable, necessary and  
8 related to the subject incident. The custodian of records is expected to testify regarding all  
9 records and billings generated for MARIA AVARCA for treatment rendered as a result of  
10 the incident in question. This expert is expected to testify consistent with the medical records  
11 related to the treatment of the Plaintiff for the subject incident, and any medical records for  
12 other incidents, before or after the subject incident having relevance to this action. The facts  
13 and opinions to which the expert is expected to testify include any and all facts and opinions  
14 in the said medical records and medical history of Plaintiff and that the medical treatment the  
15 Plaintiff received was reasonable, necessary, and caused by the incident set forth in the  
16 Complaint, and any facts and opinions that would rebut any opinions rendered by any witness  
17 disclosed by any party in this action that contradict the same. This expert will also interpret  
18 radiographic findings, physical therapy treatment, work restrictions, job duties, permanent  
19 impairments, inability to perform normal daily living activities, recreational activities,  
20 hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the  
21 damages Plaintiff(s) have sustained as a result of this case.

22 Plaintiffs may call the Custodian of Records of all treating physicians to testify as to the  
23 completeness and accuracy of records, medical records and bills generated in the normal course of  
24 business. Plaintiffs may also call any Custodian of Record necessary to lay the proper foundation for  
25 any item of evidence.

26 Plaintiffs reserve the right to call any witness named by Defendant. Plaintiff reserves the right  
27 to call any witness as may be necessary for the purpose of impeachment. Plaintiff may call any and  
28 all witnesses called in rebuttal to testimony given by Defendant's witnesses.

Plaintiffs reserve the right to object to any of Defendant's witnesses at the time of trial.  
Plaintiff has not yet subpoenaed any witnesses but reserve the right to do so should it be deemed  
necessary to ensure the appearance of any witness.

## II.

### PLAINTIFFS' EXHIBITS PURSUANT TO N.R.C.P. 16.1 (a)(3)(B)

1. Summary of Medical Specials for MARIA ABARCA.
2. Summary of Medical Specials for CHRISTIAN CERVANTES-LOPEZ.
3. Medical and billing records from Las Vegas Radiology for Plaintiffs.
4. Medical and billing records from Centennial Medical Group/Centennial Pain Relief Network/Centennial Surgery Center for Plaintiffs.

- 1 5. Medical and billing records from Advantage Diagnostic Imaging for Plaintiffs.
- 2 6. Medical and billing records from Western Regional Center for Brain and Spine/Stuart
- 3 Kaplan, M.D. for Plaintiff Christian Cervantes-Lopez.
- 4 7. Medical and billing records from Nevada Comprehensive Pain Center/Alain Coppel,
- 5 M.D. for Plaintiffs.
- 6 8. Medical and billing records from Primary Care Consultants for Plaintiffs.
- 7 9. Medical and billing records from the Neck and Back Clinics/Marilyn Adair, D.C. for
- 8 Plaintiffs.
- 9 10. Medical and billing records from University Medical Center for Plaintiffs.
- 10 11. Plaintiffs' vehicle damage estimate.
- 11 12. Color photographs of Plaintiffs' vehicle.
- 12 13. Defendants' vehicle damage estimate.
- 13 14. Color photographs of Defendants' vehicle.
- 14 15. CV, rate sheet and list of cases from David Lanzkowsky, M.D.
- 15 16. CV, rate sheet and list of cases from Alain Coppel, M.D.
- 16 17. CV, rate sheet and list of case from Stuart Kaplan, M.D.

17 Plaintiffs may use any and all writings, published works, journals, treatises, medical texts,  
18 affidavits, films, drawings, graphs, charts, photographs, reports, computer tapes, computer discs, and  
19 other data compilations, and other medical reference materials which Plaintiff and/or Plaintiffs'  
20 experts use in support of Plaintiffs' allegations.

21 Deposition transcripts will be used as needed for rebuttal or impeachment. Deposition  
22 transcripts may also be used for direct examination if the witness is unable to testify at the time of  
23 trial.

24 Plaintiffs may also use the Parties' responses to discovery as necessary.

25 Plaintiffs reserve the right to object to the admission of Defendants' exhibits at the time of  
26 trial.

27 Plaintiffs reserve the right to use any and all other exhibits needed for rebuttal or  
28 impeachment.

///

1 Plaintiffs may offer documents produced by Plaintiffs and Defendants in which experts have  
2 reviewed and formed an opinion based on each document, including but not limited to reports,  
3 pleadings, correspondence, notes, as well as medical records and billing.

4 **III.**

5 **PLAINTIFF'S OBJECTIONS TO DEFENDANT'S EXHIBITS**

6 **PURSUANT TO NRCP 16.1 (a)(3)(c)**

7 At this time, Plaintiffs object to the following of Defendants' Exhibits:

- 8 1. Please refer to Plaintiffs' Objections to Defendants' Pre-Trial Disclosures, filed  
9 separately.

10 Plaintiffs reserve all objections to any item of evidence offered by the defense and specifically  
11 object to any item of evidence previously excluded by the Court.

12 **IV.**

13 **PLAINTIFFS WILL PRESENT THE FOLLOWING DEPOSITIONS AT TRIAL**

14 **PURSUANT TO N.R.C.P. 16.1 (a)(3)(B)**

15 Plaintiffs do not anticipate presenting testimony by deposition at this time.

16 **V.**

17 **PLAINTIFFS' DEMONSTRATIVE EXHIBITS**

18 Plaintiffs may offer, at trial, certain exhibits for demonstrative purposes including but not  
19 limited to, the following:

- 20 a. Video, story boards and/or power point images, blow ups and or transparencies of  
exhibits.  
21 b. Diagrams and/or models of the human body, specifically related to Plaintiff's  
injuries.  
22 c. Photographs and videos of surgical procedures and other diagnostic tests.  
23 d. Actual diagnostic studies.  
24 e. Samples of tools used in surgical procedures.  
25 f. Diagrams, drawings, pictures, photos, film, video, DVD and CD ROM of various  
26 parts of the human body, diagnostic tests and surgical procedures.

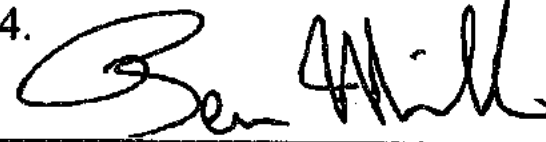
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SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

g. PowerPoint images/drawing/diagrams/animations/story boards, of the parties involved, and the description of the events giving rise to all of Plaintiff's claims.

Dated this 10 day of October, 2014.



DANIEL S. SIMON, ESQ.  
Nevada Bar #004750  
BENJAMIN J. MILLER, ESQ.  
Nevada Bar #010406  
Attorney for Plaintiffs

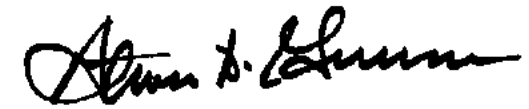
**CERTIFICATE OF E-SERVICE**

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 10 day of October, 2014, I served the foregoing **PLAINTIFFS' PRE-TRIAL DISCLOSURES** on the following parties by electronic transmission through the Wiznet system:

Stephen Rogers, Esq.  
Kade Baird, Esq.  
Rogers, Masterangelo, Carvalho & Mitchell  
300 S. Fourth Street, Suite 710  
Las Vegas, NV 89101  
(702) 383-3400  
Fax (702) 384-1460  
Attorneys for Defendants



An Employee of SIMON LAW



CLERK OF THE COURT

**OBJ**  
STEPHEN H. ROGERS, ESQ.  
Nevada Bar No. 5755  
R. KADE BAIRD, ESQ.  
Nevada Bar No. 8362  
ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
300 South Fourth Street, Suite 710  
Las Vegas, Nevada 89101  
Phone (702) 383-3400  
Fax (702) 384-1460  
Attorneys for Defendants

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

CHRISTIAN CERVANTES-LOPEZ,  
an individual; MARIA AVARCA, an individual,  
  
Plaintiffs,

vs.

EVANGELINA ORTEGA, an individual;  
MIRIAM PIZARRO-ORTEGA, an individual;  
DOES I through V, inclusive; and  
ROE CORPORATIONS I through V, inclusive,  
  
Defendants.

CASE NO.: A-12-667141-C

DEPT. NO.: XXIII

**DEFENDANTS' OBJECTIONS TO PLAINTIFF'S PRE-TRIAL DISCLOSURES**  
**FILED OCTOBER 10, 2014**

Defendants, Evangelina Ortega and Mirian Pizarro-Ortega, by and through their counsel of record, the law firm of Rogers, Mastrangelo, Carvalho & Mitchell, submit their Objections to Plaintiff's Pre-Trial Disclosures dated October 10, 2014 as follows:

1. In regards to Plaintiffs' Exhibit 1, Defendants' object to these documents to the extent that they contain inadmissible hearsay, privacy information and for foundational reasons.
2. In regards to Plaintiffs' Exhibit 2, Defendants' object to these documents to the extent that they contain inadmissible hearsay, privacy information and for foundational reasons.
3. In regards to Plaintiffs' Exhibit 3, Defendants' object to these documents to the extent that they contain inadmissible hearsay, privacy information and for foundational reasons.

1           4.       In regards to Plaintiffs' Exhibit 4, Defendants' object to these documents to the extent  
2 that they contain inadmissible hearsay, privacy information and for foundational reasons.

3           5.       In regards to Plaintiffs' Exhibit 5, Defendants' object to these documents to the extent  
4 that they contain inadmissible hearsay, privacy information and for foundational reasons.

5           6.       In regards to Plaintiffs' Exhibit 6, Defendants' object to these documents to the extent  
6 that they contain inadmissible hearsay, privacy information and for foundational reasons.

7           7.       In regards to Plaintiffs' Exhibit 7, Defendants' object to these documents to the extent  
8 that they contain inadmissible hearsay, privacy information and for foundational reasons.

9           8.       In regards to Plaintiffs' Exhibit 8, Defendants' object to these documents to the extent  
10 that they contain inadmissible hearsay, privacy information and for foundational reasons.

11          9.       In regards to Plaintiffs' Exhibit 9, Defendants' object to these documents to the extent  
12 that they contain inadmissible hearsay, privacy information and for foundational reasons.

13          10.      In regards to Plaintiffs' Exhibit 10, Defendants' object to these documents to the extent  
14 that they contain inadmissible hearsay, privacy information and for foundational reasons.

15          11.      In regards to Plaintiffs' Exhibit 11, Defendants' object to these documents for lack of  
16 foundation, containing inadmissible hearsay and as irrelevant.

17          12.      In regards to Plaintiffs' Exhibit 12, Defendants' object to these documents for lack of  
18 foundation, containing inadmissible hearsay, irrelevant and unduly prejudicial.

19          13.      In regards to Plaintiffs' Exhibit 13, Defendants' object to these documents for lack of  
20 foundation, containing inadmissible hearsay and as irrelevant.

21          14.      In regards to Plaintiffs' Exhibit 14, Defendants' object to these documents for lack  
22 of foundation, containing inadmissible hearsay, irrelevant and unduly prejudicial.

23          15.      In regards to Plaintiffs' Exhibit 15, Defendants' object to these documents as  
24 inadmissible hearsay, lack of foundation, irrelevant and as litigation documents excluded by the  
25 Nevada Evidence Rules.

26          16.      In regards to Plaintiffs' Exhibit 16, Defendants' object to these documents as  
27 inadmissible hearsay, lack of foundation, irrelevant and as litigation documents excluded by the  
28



1 Nevada Evidence Rules.

2 17. In regards to Plaintiffs' Exhibit 17, Defendants' object to these documents as  
3 inadmissible hearsay, lack of foundation, irrelevant and as litigation documents excluded by the  
4 Nevada Evidence Rules.

5 18. In regards to Plaintiffs' Witnesses, Defendants' object to the expected testimony of  
6 the Person Most Knowledgeable and/or Custodian of Records for University Medical Center - Dr.  
7 John McCourt, MD as vague, overbroad, exceeds scope of records and treatment provided and lacks  
8 foundation for designated testimony.

9 19. In regards to Plaintiffs' Witnesses, Defendants' object to the expected testimony of  
10 the Person Most Knowledgeable and/or Custodian of Records for The Neck and Back Clinics - Dr.  
11 Marilyn Adair, D.C. as vague, overbroad, exceeds scope of records and treatment provided and lacks  
12 foundation for designated testimony.

13 20. In regards to Plaintiffs' Witnesses, Defendants' object to the expected testimony of  
14 the Person Most Knowledgeable and/or Custodian of Records for Las Vegas Radiology - Dr.  
15 Lawrence Bogle, MD as vague, overbroad, exceeds scope of records and treatment provided and lacks  
16 foundation for designated testimony.

17 21. In regards to Plaintiffs' Witnesses, Defendants' object to the expected testimony of  
18 the Person Most Knowledgeable and/or Custodian of Records for Primary Care Consultants - D.  
19 Rodriguez, PA-C as vague, overbroad, exceeds scope of records and treatment provided and lacks  
20 foundation for designated testimony.

21 22. In regards to Plaintiffs' Witnesses, Defendants' object to the expected testimony of  
22 the Person Most Knowledgeable and/or Custodian of Records for Centennial Medical Group,  
23 Centennial Pain Relief Network, Centennial Surgery Center - Dr. David Lanzkowsky, MD as vague,  
24 overbroad, exceeds scope of records and treatment provided and lacks foundation for designated  
25 testimony.

26 23. In regards to Plaintiffs' Witnesses, Defendants' object to the expected testimony of  
27 the Person Most Knowledgeable and/or Custodian of Records for Advantage Diagnostic Imaging -  
28



1 Dr. Keith M. Lewis, MD as vague, overbroad, exceeds scope of records and treatment provided and  
2 lacks foundation for designated testimony.

3 24. In regards to Plaintiffs' Witnesses, Defendants' object to the expected testimony of  
4 the Person Most Knowledgeable and/or Custodian of Records for Western Regional Center for brain  
5 and Spine - Dr. Stuart Kaplan, MD as vague, overbroad, exceeds scope of records and treatment  
6 provided and lacks foundation for designated testimony.

7 25. In regards to Plaintiffs' Witnesses, Defendants' object to the expected testimony of  
8 the Person Most Knowledgeable and/or Custodian of Records for Nevada Comprehensive Pain Center  
9 - Dr. Alain Coppel, MD as vague, overbroad, exceeds scope of records and treatment provided and  
10 lacks foundation for designated testimony.

11 26. In regards to Plaintiffs' Witnesses, Defendants' object to the expected testimony of  
12 the Person Most Knowledgeable and/or Custodian of Records for North Las Vegas Fire  
13 Department/EMS as vague, overbroad, exceeds scope of records and treatment provided and lacks  
14 foundation for designated testimony.

15 **Reservations:**

16 Defendant objects to any and all medical records and other documents which contain  
17 information containing insurance related terms.

18 Defendants reserves the right to object during trial to any document's authenticity, foundation,  
19 relevance, materiality, and for hearsay reasons, as well as for any other reason set forth within the  
20 statutory Rules of Evidence in Nevada.

21 ...

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23 ...

24 ...

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26 ...

27 ...

28

1 Defendant reserves the right to supplement these objections upon review of Plaintiff's  
2 proposed exhibits.

3 DATED this 28<sup>th</sup> day of October, 2014.

4 ROGERS, MASTRANGELO, CARVALHO &  
5 MITCHELL

6  
7 STEPHEN H. ROGERS, ESQ.

Nevada Bar No. 5755

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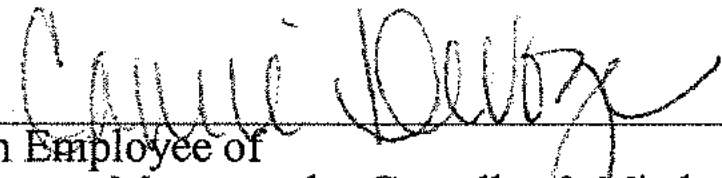
Las Vegas, Nevada 89101

10 Attorney for Defendants  
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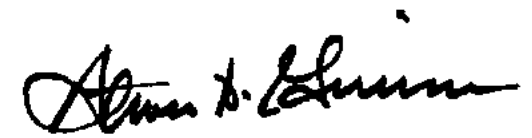
**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(a), and EDCR 7.26(a), I hereby certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 20<sup>th</sup> day of October, 2014, a true and correct copy of the foregoing **DEFENDANTS' OBJECTIONS TO PLAINTIFF'S PRE-TRIAL DISCLOSURES FILED OCTOBER 10, 2014** was served via Electronic Service, upon the following counsel of record:

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M:\Kade\Ortega adv. Cervantes-Lopez\Pleadings\Objection to Plaintiff's Pre-Trial Disclosures.wpd



CLERK OF THE COURT

TRAN

**EIGHTH JUDICIAL DISTRICT COURT  
CIVIL/CRIMINAL DIVISION  
CLARK COUNTY, NEVADA**

CHRISTIAN CERVANTES-LOPEZ,  
MARIA AVARCA,

Plaintiffs,

vs.

EVANGELINA ORTEGA,  
MIRIAM PIZARRO-ORTEGA,

Defendants.

CASE NO. A-12-667141

DEPT. NO. XXIII

BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

TUESDAY, OCTOBER 14, 2014

**TRANSCRIPT RE:**  
DEFENDANTS' MOTIONS IN LIMINE NO. 1 THROUGH 9  
PLAINTIFFS' MOTIONS IN LIMINE NO. 1 THROUGH 9

**APPEARANCES:**

For the Plaintiffs:

BENJAMIN J. MILLER, ESQ.

For the Defendants:

R. KADE BAIRD, ESQ.

RECORDED BY: Maria Garibay, Court Recorder

1 LAS VEGAS, NEVADA

TUESDAY, OCTOBER 14, 2014

2 **PROCEEDINGS**

3 (PROCEEDINGS BEGAN AT 9:41 A.M.

4 THE COURT: All right. Sorry you had to wait that extra thirty seconds.

5 THE MARSHAL: A667141, Cervantes-Lopez, Christian versus Ortega,  
6 Evangelina.

7 MR. MILLER: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. MILLER: Ben Miller from Danny Simon's office on behalf of the  
10 plaintiffs.

11 MR. BAIRD: Kade Baird for the defendants.

12 THE COURT: All right. Good morning, everyone.

13 So this is defendants' motions in limine, the omnibus motion in limine  
14 and the oppositions to the motions in limine. Okay, let's just go one by one.

15 MR. BAIRD: Okay.

16 THE COURT: Okay. So the first one I have defendants asking for a motion  
17 in limine is to preclude plaintiff from, number one, eliciting the same testimony from  
18 more than one witness, including but not limited to expert opinions, as it would be  
19 duplicative evidence impermissible pursuant to 48.035, subsection 2.

20 MR. BAIRD: Yes. And, Your Honor, this is admittedly somewhat generic,  
21 but because we want to not waste time when we're scheduling witnesses, even  
22 though we don't know exactly what each person is going to say, it's just a simple  
23 they shouldn't put up twenty witnesses that say the exact same thing. Their  
24 argument in response is just that, you know, all their doctors need to testify about

1 their bills and causation, and that's fine if they're talking about something that's  
2 specific to that witness. But to just say, well, here's an avalanche of witnesses  
3 on one particular point, that's going to make the jury feel like it's the quantity of  
4 witnesses, not the quality of the testimony that's important.

5 THE COURT: Okay.

6 MR. BIARD: And it leads to error. That's all.

7 MR. MILLER: Simply, Your Honor, the request is over-broad. I mean, he's  
8 trying to shut down every possible witness when we really don't know what's going  
9 to be cumulative. In terms of the witnesses we have, each physician provided  
10 specific treatment to these plaintiffs. If we need to call them and have them to  
11 testify to the treatment they provided, so be it. That's not going to be cumulative  
12 or somehow overlapping or be the same testimony regarding each physician's  
13 treatment that they provided. That's the only way I see that going. I don't even  
14 know where else it would be going in terms of potentially cumulative testimony.

15 THE COURT: Okay. Anything else?

16 MR. BAIRD: No. I mean, I think just a general order. I know it sounds over-  
17 broad, but there's a lot of witnesses that are listed and we don't know who's going to  
18 testify. And if this motion is granted, it doesn't keep them from testifying to material  
19 things that aren't duplicative. It just gives the party an order to follow that helps  
20 make this trial go in a more streamlined fashion.

21 THE COURT: And perhaps this would be a better issue to bring up as we get  
22 closer to trial and both sides start hammering down who they're really going to call  
23 as witnesses. At this point it's going to be denied. Obviously the plaintiff is going  
24 to have -- they're going to have to get their medical testimony in through the various

1 doctors who treated the plaintiff. And if they have any percipient witnesses to the  
2 accident, those witnesses would have to testify. And my experience is usually you  
3 don't have a multitude of witnesses who all say all the same thing. So -- and we  
4 can always readdress this at the time of trial.

5 MR. BAIRD: Sure.

6 THE COURT: The next one is defendants are requesting the Court to  
7 preclude plaintiff from offering multiple doctors who offer the same testimony,  
8 as it would be cumulative evidence. That's basically the same as the first one.

9 MR. BAIRD: That's the same. Yeah.

10 THE COURT: All right. So that's going to be denied as well for the same  
11 reasons.

12 The next one, to prohibit -- to preclude plaintiff from prohibiting  
13 defendant from asserting that plaintiffs are seeking an excessive amount of money  
14 for damages. Now, this one kind of comes down to phraseology.

15 MR. BAIRD: Yes, Your Honor. You know, basically if plaintiffs are allowed  
16 to keep defendants from making that argument, what they're allowed then to do  
17 is make the jury play a percentage game instead of weigh the evidence.

18 THE COURT: Well, let me ask this, because this one -- this motion in limine  
19 comes up a lot. To me there's a difference between getting up and saying, hey, the  
20 jury is asking for more than they reasonably expect you to give versus an argument  
21 as to you disagreeing as to the value of the case, which I think is fair game. Do you  
22 see the distinction?

23 MR. BAIRD: Right. But, see, the implication in their argument is that it is  
24 acceptable for them to ask for something that is completely divorced from reality

1 and hope that the jury will ignore the facts and offer a verdict on sympathy. And if  
2 this motion isn't granted, then the defendant has nothing they can do to counter that  
3 position, that argument that would be presented by the plaintiff.

4 THE COURT: But aren't you going to have an expert that comes in and --  
5 usually they come in and totally disagree with the plaintiff's value of the case.

6 MR. BAIRD: Sure. Well, I mean, not the value of the case --

7 THE COURT: And you can obviously argue that in closing.

8 MR. BAIRD: Sure. The value of the case, though, there's not going to be  
9 any expert who is going to testify to general damages, you know, And so that is  
10 solely going to be the province of argument at the end of the trial. And that's our  
11 concern is they are allowed to make an argument and then they can preclude us  
12 from responding to that argument. It's true we will have evidence, we will have  
13 experts who will testify about the special damages issues and perhaps a little bit  
14 about whether they are in the amount of pain they claim to be. But they're not  
15 going to present an expert on -- specifically on general damages.

16 And so at closing argument they can get up and say, ladies and  
17 gentlemen, fifteen million dollars, and then we're not allowed to say this is obviously  
18 a tactic, you know, this is an argument, this isn't evidence. If we're precluded from  
19 saying that, then the jury can say, well, let's give them ten percent out of sympathy.  
20 I mean, that's what it encourages is the jury to render a verdict based on sympathy  
21 instead of evaluating the evidence. Our argument encourages the jury to look at  
22 the evidence; theirs does not.

23 THE COURT: So, okay, how exactly would you bring it up? I mean, because  
24 people get up there and they argue damages and they argue, look, there's no way



1 that's not too much, the request for pain and suffering is not too great because  
2 obviously look at them, they're walking fine and --

3 MR. BAIRD: Right.

4 THE COURT: -- I'm just making things up; the accident wasn't significant,  
5 look at the pictures. But -- and I think that's fair game, obviously, because the jury  
6 gets to make the ultimate decision. But my concern is always when you get into that  
7 very specific argument of plaintiff is going to ask you to give a million dollars and  
8 they really only expect you're going to give seven hundred dollars, I think that's a  
9 little bit inappropriate. I think that you can get up there and argue what you believe  
10 the value to be based upon the expert testimony and the evidence that's presented  
11 and everything else that comes out in the case.

12 MR. BAIRD: I guess, you know, the most important thing to me, Your Honor,  
13 is if I can -- if we can get up and say, ladies and gentlemen, we want you to consider  
14 whether what they have asked, in light of the evidence that's been presented, is  
15 really what they want, you know. And that's not saying they're asking too much.  
16 We're just saying we want you to look at is this just an argument or is this -- are  
17 they asking you to make a verdict based on the evidence? And I think that's not  
18 very far off from what you just enunciated.

19 THE COURT: Okay. By the plaintiff?

20 MR. MILLER: I think it's extremely far off from what you just said, Your  
21 Honor. I think you're on point, Your Honor. I think what defense is trying to do is  
22 actually kind of negate one of our motions in limine in here about coming in and  
23 arguing at some point that plaintiffs only really want this much money, even though  
24 they're asking for this much money. Instead of arguing -- arguments are supposed

1 to be based on the evidence presented at trial. That's the whole point. And I think,  
2 Judge, you've already touched on that. They can argue the value of the damages.  
3 Absolutely. And they have experts that are going to do so. No problem there. But  
4 then to come in and say, well, plaintiffs don't even believe that, because that's really  
5 what it boils down to, plaintiffs don't believe that. They're just putting up some large  
6 numbers so in reality you get to this. That argument is improper and not based  
7 upon the evidence. It can't be presented. It's simply an attempt to prejudice the  
8 jury and make them think that plaintiffs don't even think the medical bills and the  
9 damages they're going to present are credible, and that's completely improper and  
10 incorrect.

11 And so what you have here is some attempt to introduce improper  
12 argument. It's not even evidentiary based, what this request is. It doesn't even --  
13 it really shouldn't even fall under the province of this type of motion here. But that's  
14 what they want to do. They want to say we want to be able to come in and argue  
15 that we think plaintiff is really only wanting this much money. In reality at closing  
16 plaintiffs are going to ask for a certain amount. That's what they intend to ask for,  
17 that's what they want. What the jury decides is up to the jury. But they shouldn't  
18 be able to come in and just say they don't even believe that number; that number  
19 is nuts.

20 THE COURT: Okay. Anything else?

21 MR. BAIRD: Just the only issue is when they get to ask any number they  
22 want for general damages, for total damages, that's never based on any evidence.  
23 They're not going to put up an expert on general damages. So I don't know why  
24 we are then precluded from making a similar argument that's just contrary.

1 THE COURT: You know, I'm not going to allow it the way you've presented  
2 it to me as you'd want to ask, so the motion will be denied. However, I do allow you  
3 to argue the evidence as presented in the case, and it sounds like one of the issues  
4 which evidence will be presented upon is the value of the case, and I think that's fair  
5 game to argue, and anything in the case that comes out that's related to the value  
6 of this case. So it's going to be denied, but I will allow what I've indicated.

7 The next one is the fourth one. Defendant wants the Court to preclude  
8 plaintiff from making any comments about defendant's insurance coverage, as it's  
9 impermissible under 48.135. And also they brought up the issue of plaintiff's  
10 medical liens.

11 MR. BAIRD: Right. Plaintiff -- the only opposition plaintiff offers is they think  
12 that liens should be covered under the Proctor v. Castelletti, you know, per se  
13 exclusion of collateral sources. The fact is Proctor v. Castelletti does not have the  
14 word liens in it. Liens are not a collateral source. Liens are the plaintiff themselves  
15 paying this, or I guess defendants paying following a judgment or a settlement.  
16 So there is not a second payer at issue in a lien. However, what we do have are  
17 all of the witnesses that will be testifying about damages and most of them have  
18 a financial interest in this case. They are more likely to get paid when the plaintiffs  
19 recover or can pressure a settlement out of my clients. This isn't collateral source,  
20 this is having an interest, this is bias. This goes to credibility and the weight of the  
21 testimony that will be offered by their witnesses.

22 THE COURT: Okay.

23 MR. MILLER: Simply, Your Honor, the minute you start talking about liens,  
24 which has nothing to do with the treatment provided, it introduces the concept of

1 insurance to the jury. The jury starts sitting there, well, if there's liens, why wasn't  
2 there insurance or was there insurance? Why didn't insurance pay? That's  
3 immediately what starts getting introduced. They want to say, well, we just want to  
4 attack the credibility of the physicians and talk about liens. The simple fact is if you  
5 start diving into all of this it easily goes into the insurance, which is impermissible  
6 before the jury.

7           Simply, it's not relevant to the facts of this case. The facts are was the  
8 treatment and the bills and everything charged related and reasonable? Plaintiff  
9 obviously is going to present testimony that it was. Defense can cross on that.  
10 They have defense experts who can then present testimony to rebut that. They  
11 have the full ability to litigate that without diving into this whole lien issue. It doesn't  
12 need to be done in front of the jury.

13           THE COURT: Okay. Anything else on this issue?

14           MR. BAIRD: Your Honor, I think in every jury trial I've done there has been  
15 a jury instruction telling the jury not to consider insurance, whether it exists or could  
16 apply for either party in the case. So the word insurance will be at the trial. So as  
17 long as the evidence, A) doesn't mention insurance, doesn't ask the jury to think  
18 about insurance and in fact is not an actual collateral source, there's no reason that  
19 it can't be discussed at trial, especially when it goes to the material fact of -- issue  
20 of are these witnesses biased, do they have an interest, can they be believed?

21           THE COURT: Okay. There's kind of two parts to this request, so let me  
22 address one. Obviously you can't bring up any discussion of insurance. I think  
23 that is clearly precluded under the collateral source rule.

24           As far as the medical liens, I'm going to give a qualifier. If you've

1 appeared before me years ago, I've changed my position on this issue, to be very  
2 frank with you. I am not going to allow discussion on the medical liens for the  
3 following reason. I don't know that I agree that it's a collateral source; however, I do  
4 think it's extremely prejudicial to the plaintiff. When I've looked at those liens -- you  
5 know, I know the argument is always made during the course of the trial that the  
6 doctor has assented to say whatever because that's how they get paid in the case.  
7 Most of those liens don't even provide that. Although they indicate that the doctor  
8 will be paid out of the proceeds from any settlement or verdict, you know, if there is  
9 in fact one, a lot of those liens also say that the patient is ultimately responsible for  
10 those medical bills should there not be a sufficient settlement or judgment or any  
11 settlement judgment whatsoever. So I just think it is highly prejudicial and it seems  
12 to put a bad taste in people's mouths that the doctors would have a motivation to lie.  
13 And quiet simply, I think that the doctors are entitled to get paid. So I'm not going  
14 to allow it as far as prejudicial.

15 Let me make sure. Did I cover all your motions in limine, defense  
16 counsel? I believe that I did.

17 MR. BAIRD: On motion one. Yes, Your Honor.

18 THE COURT: Okay. Yeah, you have a few. Okay. So I have defendant's  
19 motion in limine number two, to prevent plaintiff from introducing future damages  
20 at trial, and plaintiff's opposition.

21 MR. BAIRD: Yes, Your Honor. Plaintiff has not disclosed any calculation of  
22 future damages. There have been vague references to medical care that may be  
23 required in the future.

24 THE COURT: Um-hm.

1 MR. BAIRD: But there has been no calculation disclosed, there has been  
2 no expert disclosed who can discuss future damages and costs. And as such, they  
3 have not disclosed this issue properly and so they should not be allowed to present  
4 it to the jury. In their opposition they say, well, our doctors can do it. And if you  
5 look at the disclosure of their doctors, who they also call their expert witnesses,  
6 they have designated those doctors to testify as experts on everything; to interpret  
7 radiographs, to determine disability, to talk about ability to work, to talk about their  
8 mental condition. It's way, way, way too broad.

9 But the fact is, as an example, this is an economist's report that  
10 I got in another case. It's 90 pages long. And there is a section there where this  
11 economist has to address another economist in determining how much something  
12 will cost in the future, what that will be worth --

13 THE COURT: That's not in this case?

14 MR. BAIRD: No, no, no.

15 THE COURT: Okay.

16 MR. BAIRD: And then how much that would be worth in today's dollars. It  
17 takes an actual expert to do this, not just a doctor who will say whatever he feels like  
18 saying. The C.V.'s provided by the plaintiff do not demonstrate that these doctors  
19 have any expertise in anything beyond medical care in their chosen fields and  
20 specialties, not with respect to how to value medical care in the future, how to  
21 determine the cost of a medical procedure in the future, or how to turn that into an  
22 amount that can be billed to a party today. And so to allow them to testify on future  
23 damages is giving them a license to speculate and is an ambush to us because  
24 even though we've requested via interrogatories information regarding future care,

1 we still don't know anything. They don't know how much they're going to ask for.  
2 Nobody knows, and we're less than thirty days before trial.

3 THE COURT: Okay. Let me ask you how you're anticipating -- Okay,  
4 obviously we all know that there was a case in June, the exact name escapes my  
5 mind but we're all familiar with it, where it talked about --

6 MR. BAIRD: The F.H. Rodriguez case.

7 THE COURT: Yes, which talked about what a treating physician can testify  
8 to without an expert report versus what an expert can. So what exactly are you  
9 anticipating having your treating physicians testify to?

10 MR. MILLER: The Palms case has been amended recently, Your Honor.

11 THE COURT: Um-hm.

12 MR. MILLER: Okay. So --

13 THE COURT: Not too long ago, a couple weeks, right?

14 MR. MILLER: Like a week or two at most. Right.

15 THE COURT: Yeah.

16 MR. MILLER: So I think that basically has moved us back to how everybody  
17 was interpreting 16.1(a)(2)(B) prior to that Palms case coming down. All these  
18 physicians have been disclosed as non-retained experts. They've deposed every  
19 one of them. They have all their information. They know exactly what these  
20 physicians are going to testify to, including future care.

21 And I understand where defense is coming from and I think when  
22 I saw this motion maybe I interpreted it as being a little over-broad when you say  
23 future damages. If he's talking about future medical care, I can understand the  
24 intent of the motion because while back in 2011 one of the physicians, a surgeon,

1 did recommend a surgery for my plaintiff Cervantes-Lopez, he elected not to  
2 undergo that surgery. It's still an option, but the whole point is whether or not the  
3 plaintiff is actually going to undergo it.

4 THE COURT: But was that a surgery that would be -- okay, because here's  
5 the way I read the amendment and read the cases, is I think they were really --  
6 I think it was Dr. Schifini who was involved in the case. But, you know, Dr. Schifini  
7 testified to a multitude of things. He testified basically on all the medical issues  
8 involved in the case and future care and treatment, etcetera. And they said no, you  
9 can't do that without an expert report. And I think that's pretty consistent with what  
10 they've always said.

11 But, you know, it's one thing if you have, say, a chiropractor who says  
12 you know what, I've treated this patient, it's my medical opinion that this individual  
13 is going to require chiropractic treatments two times a week for the next six months,  
14 okay. I think that is within their ability to testify to. But it would be totally different  
15 if that same chiropractor said also the individual is going to need a discogram and  
16 a fusion and everything else. I think quite clearly that's beyond what you can do  
17 without an expert report.

18 So my question is, that doctor who talked about surgery, it's that doctor  
19 that saw the patient, isn't it?

20 MR. MILLER: Right. He was a treating physician.

21 THE COURT: Okay.

22 MR. MILLER: All of these were treating physicians. We have no --

23 THE COURT: So you see what I'm saying?

24 MR. MILLER: Yeah.



1 THE COURT: They can testify regarding their future care and treatment.

2 They just can't opine to the totality of the case --

3 MR. MILLER: Right.

4 THE COURT: -- and what other doctors could, should be doing.

5 MR. MILLER: Right. And I don't foresee that at all, Your Honor, in this case.

6 THE COURT: Okay.

7 MR. MILLER: None of these physicians -- I mean, the physicians have in the  
8 course and scope of the treatment -- for example, Doctor -- the pain management  
9 physicians, Dr. Lanzkowsky, Dr. Coppel, they've reviewed and overseen prior care  
10 in terms of, you know, chiropractic care, you know, internal medicine or, you know,  
11 medications provided. They've overseen that care. But you're right, Your Honor,  
12 you're not going to have some chiropractor come in and say, oh, we need all this  
13 type of future care from some unrelated specialty. That's not going to be this case.  
14 The only future care, if any, is going to be recommended by the specific provider  
15 who has advised that during the course of the treatment.

16 THE COURT: Okay. Is that what you were going at, sir?

17 MR. BAIRD: It's close. But my concern is that, like I said at the beginning,  
18 this surgery that is not scheduled, that is not set for any fixed date. So for them to  
19 go to the jury and say we want you to pay us for a surgery that will occur, we don't  
20 know when, that will cost we don't know how much, and so we're going to guess  
21 and just assume it would cost whatever it costs now.

22 THE COURT: Well, aren't you going to need someone to introduce that  
23 testimony, like the doctor who is going to perform the surgery who did the  
24 evaluation?

1 MR. BAIRD: Right. But when it comes time for the jury to assign a value  
2 to that, that's my problem. They can say that there will be future care required.  
3 I guess I don't have a big problem with them saying, well, they're probably going  
4 to need future care. But for them to get up in closing argument and say doctor so-  
5 and-so testified to you that this surgery will cost eighty thousand dollars, that is pure  
6 speculation because for things that happen in the future the costs change, and then  
7 the amount of money you pay now to pay for something in the future is different and  
8 you need an economist to turn that number into something that is a today number.

9 For example, it's just like an annuity, right, or when you're saving for  
10 retirement. A hundred thousand dollars in the bank now will turn into something  
11 much bigger in thirty years. And so you need an expert to say with anything more  
12 than speculation here's what that money should be or will be, and so today you  
13 pay this much for that, because my clients would pay the hundred thousand for the  
14 multi-million dollar thing in the future today, but these doctors will get up and they  
15 won't say, you know, it's pennies on the dollar if you pay it today. They will say the  
16 grand total after however long. We don't know how long because it's not scheduled.  
17 However long, you know, interest bearing on this amount that would eventually pay  
18 for the surgery. It's an economic issue to put a number on a future medical special  
19 and there's no expert in this case who can do it.

20 THE COURT: Oh, I'd agree with you. From what you're telling me, I don't  
21 think any of those doctors are able to give testimony on net present value unless  
22 they have a dual degree as, you know, an accountant or something else.

23 But is that what you're going to do?

24 MR. MILLER: Well, I guess I see it a little bit differently. If -- first off, the only

1 thing that we're seeking is present day value. It's only going to grow in costs. So  
2 I think it's fair to request the present day value if the surgeon or doctor is willing to  
3 say that this person needs this now, to a reasonable degree of medical probability.  
4 I'm not going to seek some future --

5 THE COURT: Well, I think it would have to be present day value --

6 MR. MILLER: Exactly.

7 THE COURT: -- absent an economist.

8 MR. MILLER: Right. And that's -- I don't see us doing anything else other  
9 than that, Your Honor.

10 THE COURT: Okay. Anything else, counsel?

11 MR. BAIRD: No, Your Honor.

12 THE COURT: Somehow I think you guys are actually saying the same thing,  
13 that obviously if you're going to do a net present value you'd have to have an  
14 economist or someone who is qualified to testify in that area. But it sounds like  
15 you're going to ask for present value. Obviously it sounds like you have a grounds  
16 for cross-examination if individuals haven't even scheduled or undergone the  
17 surgery. But that again is subject to cross-examination, so.

18 MR. BAIRD: But just to be clear, Your Honor, present value is much less  
19 than what it would cost in the future.

20 THE COURT: Absolutely.

21 MR. BAIRD: And they don't know what it will cost in the future. When we  
22 say --

23 THE COURT: But they're not going to testify to that. Is that what you're  
24 concerned --

1 MR. BAIRD: Well, it sounds like -- I think we're using present value in  
2 different ways. I think he's saying present value in what the doctors would charge  
3 if they were to walk into the O.R. today and perform the surgery.

4 THE COURT: Yes.

5 MR. MILLER: Yes.

6 MR. BAIRD: And that's not how you do it. You have to find out what the  
7 procedure would cost in the future and then you run your calculations to find out  
8 how much you would pay today. You would basically deposit an amount. But when  
9 the time comes for the surgery in the future, it would have grown to the amount of  
10 the future care.

11 MR. MILLER: I think he's --

12 MR. BAIRD: And that is how it's done.

13 THE COURT: Is this an individual who is going to require surgeries  
14 throughout the future?

15 MR. MILLER: No, Your Honor.

16 MR. BAIRD: I mean, they haven't really disclosed anything but that, yes,  
17 he was recommended for surgery at one point.

18 THE COURT: I understand where you're going with it and I think it's  
19 legitimate. It sounds like from the -- and we can always readdress it at trial as the  
20 evidence comes out. It sounds like, based on what I hear from the plaintiff saying  
21 as far as how they're going to present their case and their damages, it's not a case  
22 where there's going to be, you know, surgeries that will be on-going through future  
23 years. If that were the case, I think you're absolutely correct. Certainly a doctor  
24 is not qualified to testify to net present value just with a medical degree. But I think

1 they can get up and testify what the cost of a surgery is that they have recommended  
2 to an individual. And certainly I will allow you to go in cross-examination on whether  
3 they have, had not, whatever, scheduled that surgery. I think that's fair game.

4 MR. BAIRD: Okay.

5 THE COURT: Okay. So I guess technically it would be -- well, plaintiff is not  
6 introducing future damages at trial. I'll just deny it, but I think that, again, we can  
7 revisit it.

8 MR. BAIRD: Okay.

9 THE COURT: I think we're on the same page.

10 MR. BAIRD: Okay.

11 THE COURT: Okay. So the next one I have is defendant's motion in limine  
12 number three, to preclude plaintiff from recovery of excessive medical bills, and the  
13 plaintiff's opposition thereto. So you want to argue the amounts actually paid. Are  
14 you talking about the amounts actually paid like when an insurance company pays  
15 and they pay according to their contract rate? What is it you want to argue exactly?

16 MR. BAIRD: Well, based on their opposition the motion kind of took on  
17 two faces.

18 THE COURT: Okay.

19 MR. BAIRD: So, yes, the first issue is how can they claim damages that  
20 aren't or never will be actually incurred? And that's -- I think that's the basis of tort  
21 law, right? You're supposed to be made whole. You're not supposed to -- it's not  
22 supposed to be a windfall. Now, the second issue is they don't have anybody who  
23 actually has a foundation to testify about what any of this should cost. I mean, their  
24 best case scenario here would really be being allowed to testify as to what was paid

1 and claim that was reasonable because otherwise -- and I've quoted the testimony  
2 of these doctors in my reply, which I apologize was late. But all of the doctors say,  
3 well, we charge what we charge and they generally either inherited it from another  
4 doctor, or I think it was Dr. Kaplan even said there is no way to know what other  
5 doctors charge, so how can I ever know where my fees sit with relation to other  
6 doctors in the area? The fact is that's not true. We've hired an expert who has  
7 access to a database that anybody can access and she has said, okay, here's what  
8 people charge in this area. The 85th percentile is the upward limit of reasonable.  
9 And so --

10 THE COURT: This is kind of a different argument than what was in the  
11 briefs.

12 MR. BAIRD: Well --

13 THE COURT: Or the way I interpret it in the briefs. I know where you're  
14 going because I've had this argument brought up before, because there's nurses  
15 that come in and testify on the CPT code and the range and where certain doctors  
16 fall in the range of charges. And it really wasn't brought up much in the brief, but  
17 here's the thing. My concern with that is always when you start to, like, voir dire this  
18 individual outside the presence of the jury, a lot of times they really have no real  
19 experience. You know, they have a very limited information. They learn a little  
20 bit about CPT codes, they learn a little bit about what codes to attach to what  
21 procedures. They just -- I don't know, they just --

22 MR. BAIRD: There aren't --

23 THE COURT: -- don't seem to have enough information to testify. I don't  
24 know who you were expecting to call.

1 MR. BAIRD: Right. It's Tami Rockholt, who has been doing this for twenty  
2 years. And there's --

3 THE COURT: Is she a nurse?

4 MR. BAIRD: She is a registered nurse. But she is someone who is actually  
5 hired by doctors to help determine reasonable fees, you know, prospectively, where  
6 the treatment hasn't even happened yet. Now, yes, part of her analysis involves  
7 looking at CPT codes and comparing them with the records to see if what was billed  
8 was actually what was described by the doctor. But then the other aspect of it is  
9 determining what's a reasonable cost. And none of the doctors have a foundation  
10 for saying their fees, their charges for medical procedures are reasonable. They  
11 don't have any foundation. They have arbitrarily as a rule set their fees or they have  
12 arbitrarily inherited somebody else's fee schedule and they just continue with it and  
13 periodically raise it. But the doctors generally have all testified we don't know what  
14 other people are charging. One doctor said that one other doctor had told him his  
15 fees were sometimes too high and sometimes too low. And on that foundation none  
16 of these doctors really have any expertise or ability to say -- do anything more than  
17 speculation that my charges are reasonable.

18 Now, when you factor that in with the first -- what my motion is on first  
19 blush, which is why should the plaintiff be allowed to claim the charged amount  
20 versus the paid amount, nobody the plaintiff will present has a foundation to testify  
21 why one is better than the other, so why not just use equity and say, look, the  
22 plaintiff is here to be made whole, the only damages they actually suffered are what  
23 was paid as far as special damages? Amounts charged that were not paid, that's  
24 not a damage. They didn't suffer that damage.

1 THE COURT: I think that this is actually -- okay, I'll be frank with you. I read  
2 the motion in limine different and I did wonder exactly how you were going to get  
3 that testimony into evidence if it was allowed. This is really -- well, since it's your  
4 expert it would be your motion. I mean, I think it's more an issue as to the  
5 qualifications of that individual. I think I know who you're talking about, just from  
6 prior cases, but I'm not for sure on that one. But I think it would be more of an  
7 argument on the qualifications of that individual to give the testimony that they  
8 expect to give.

9 MR. BAIRD: Okay. I mean, she has been qualified. I just had a --

10 THE COURT: Well, that onus would be on the plaintiff if they think she is  
11 unqualified.

12 MR. BAIRD: Right.

13 THE COURT: Because, you know, again, I remember some stuff about her,  
14 but it's probably been a year, if it's the same person, that I've looked at her C.V.  
15 and everything else, so I just don't recall a lot.

16 MR. BAIRD: Okay.

17 THE COURT: Okay?

18 MR. BAIRD: But we don't have to look at her, is my point. If we look at the  
19 doctors, again, their C.V.'s don't talk about a lot of training on how to bill and how  
20 to determine what's reasonable, and most of them don't even do it. They say, well,  
21 I have a billing person and they just do it all.

22 THE COURT: They do.

23 MR. BAIRD: And so plaintiff is going to present to the jury as reasonable  
24 and customary medical bills something that nobody really knows how he arrived at



1 the number. I mean, that's just speculation and that's all it is, and nobody has  
2 demonstrated a foundation beyond just guessing. And that's why when it comes  
3 time, you know, I have a strong argument to say they don't get to present any  
4 specials at all because nobody has a foundation that plaintiff has designated to  
5 actually testify on these. But at the very least we should go with what's been paid  
6 because those are the actual damages suffered. And it's not speculative, we know  
7 it was paid at the very least, and they haven't suffered the damages that were  
8 charged because they didn't pay that amount.

9 THE COURT: Okay. Counsel?

10 MR. MILLER: A couple things, Your Honor. One, he's asking you to make  
11 a general ruling on the foundation of every physician that's going to testify in this  
12 case. That alone makes this an over-broad motion and I'd say it's not been properly  
13 briefed. Also in that regard, in their depositions each of them have said I know  
14 these charges, I know what my office charges, it's reasonable. And it's up to this  
15 Court and then the jury to determine whether or not they agree. They can present  
16 evidence if they want and it's admissible to try and counter that and say that these  
17 charges aren't reasonable. Fair enough. That's an evidentiary basis. They have  
18 the right to do that. But to come in and try and say, well, we don't like their  
19 foundation, even though all these physicians have testified to it, that's fine, that's  
20 their argument. That doesn't mean it's not admissible and can't be heard in this  
21 courtroom, especially at this stage in a motion in limine hearing.

22 On top of that, I don't understand his argument at all about paid versus  
23 charged, other than I think he's diving into what seems like a collateral source issue  
24 to me. How do we present to this jury what's been paid by the plaintiff versus what's

1 been charged? The simple fact is, and it's in Proctor/Castelletti, we don't allow it.  
2 It's what's charged. And then they can argue whether or not that's reasonable or  
3 related to this accident and then the jury -- it's within their rights as the finder of  
4 fact to determine whether or not they agree with what's been charged and what  
5 the value of the case is in relation to that.

6 THE COURT: Okay. Anything else?

7 MR. BAIRD: I'm going to be very succinct. For his doctors to testify on the  
8 reasonableness of their costs, they should be subjected to the Hallmark standard,  
9 and they haven't been. And when you apply the Hallmark standard to what they've  
10 testified, and I've quoted, you know, not all of their testimony but what I think is the  
11 pertinent aspect of their testimony, they don't meet the Hallmark standard to offer  
12 an opinion on what their bills cost, whether they're reasonable or not. And that  
13 standard will be applied to my expert. Why shouldn't it be applied to theirs?

14 MR. MILLER: There's a distinct difference. Their expert is coming in as  
15 somebody who doesn't treat within any of these specialties; as an outside retained  
16 expert hired by the defense to say these bills aren't reasonable.

17 MR. BAIRD: There's no --

18 MR. MILLER: On top of that, Your Honor, he's taking the Hallmark standard  
19 and over -- he's extending it beyond its reach. If he did that, none of us would be  
20 able to ever talk about what we bill. Lawyers wouldn't be able to talk about -- I never  
21 had a class in law school about billing. I don't think counsel did either. So, what,  
22 I can't say that my billing or his billing, his reasonable hours are reasonable? He  
23 can't testify to that? He doesn't have the expertise? Of course he does. It's in his  
24 profession. No different with these doctors.

1 MR. BAIRD: The difference is lawyers often know what other lawyers charge  
2 because we talk, we see each other's motions for fees and costs. We know what  
3 they charge. These doctors all say we don't know what anyone else charges. So  
4 they're in a little box, charging what they charge --

5 THE COURT: But they're going to testify -- Hold on, now. I don't want to  
6 mix treating physicians testifying regarding what they're charging versus experts  
7 testifying what other individuals are charging. We kind of keep blending the lines  
8 in this argument, so I want to make sure I'm very clear. So are you talking about  
9 treating physicians or are you talking about expert opinions? Because I think the  
10 Hallmark standard certainly applies to experts. But I do think if the appropriate  
11 foundation is laid, and obviously you'd have to lay the foundation before you could  
12 elicit the testimony, that a treating physician, if the foundation is laid, can testify  
13 regarding the medical bills for his or her own office and procedures. Certainly they  
14 can't testify as to another doctor's bills and procedures.

15 MR. BAIRD: No, my position is they can't testify about their own because,  
16 Your Honor, they have -- their whole basis for saying it's reasonable is because they  
17 say it's reasonable. Can a lay person, does a lay person have -- just an everyday  
18 person know what a reasonable medical charge is? No. You need an expert. So  
19 it's expert testimony. And the fact is these doctors' opinions on whether their fees  
20 are reasonable is not based on anything scientific, it's not reproduceable. You can't  
21 apply a methodology to it. Their methodology is I'm a doctor, and that's where it  
22 ends. And that is not appropriate when you're going to present a jury expert  
23 testimony, especially with doctors. They're highly respected. And to give them this  
24 sort of ability to speculate to a jury is highly prejudicial to a defendant.

1 THE COURT: Okay. I will allow a treating physician to testify regarding  
2 his or her bills, so long as the appropriate foundation is laid prior to the testimony.  
3 As far as the issue on the CPT, that ball is in plaintiff's court. I mean, defense has  
4 disclosed the individual apparently as an expert, and if plaintiff doesn't agree with it  
5 then the plaintiff can do what he deems appropriate as far as the filing of a motion.

6 MR. BAIRD: So that sounds denied, Your Honor?

7 THE COURT: It sounds denied.

8 MR. BAIRD: Okay.

9 THE COURT: It is denied.

10 All right. So, defendant's motion in limine number four to limit the  
11 testimony of plaintiff's treating physicians and the opposition. I think that we're kind  
12 of going over the same thing over and over again.

13 MR. BAIRD: Right. It's very similar. Like I said in the beginning, their  
14 doctors have all been designated as experts from everything to the mental condition  
15 of the patients to their future medical care, future costs; things that doctors aren't  
16 qualified to do. They should be limited pursuant to the recent FCH1 Palms v.  
17 Rodriguez case. Contrary to what he says, and I attached both of the cases,  
18 the amendment I don't think substantially changes the court's opinion on limiting  
19 doctors' testimony. The plaintiff's argument is, if you look at the drafter's note for  
20 the 2000--

21 THE COURT: (Speaking to the law clerk) Can you go grab the case off my  
22 desk, please?

23 MR. BAIRD: If you look at the drafter's note for the 2012 modification or  
24 amendment to 16.1, what they quoted makes it look like doctors have the unfettered

1 ability to testify about anything that is conceivably within the realm of a treating  
2 doctor. But when you look at the entire note and then you also look at the Palms  
3 case, the FCH1 case, it is clear that a doctor can do this if they have a foundation  
4 and if it's disclosed. And these doctors don't have a foundation. They aren't  
5 biomechanical people, they aren't economists, and there's so many things they  
6 don't know about. And so we just -- I just want an order that says doctors won't  
7 offer expert testimony that hasn't either been properly disclosed via a report where  
8 it's not just something that's in their records, or the foundation can be laid that  
9 they're actually an expert in that area.

10 THE COURT: Okay. Counsel, do you want to address it? I'm just going to  
11 look at the case right now.

12 MR. MILLER: Yeah, I think we've already gone over it, Your Honor. I guess  
13 I'm not clear still as to what they're trying to limit and I just think it's unclear. I think  
14 if it's reasonable falling in -- One, we've disclosed them properly under the rule,  
15 including what they're going to testify to, causation, prognosis, diagnosis, treatment,  
16 and the condition of the plaintiff during that -- plaintiffs during that course of  
17 treatment from these physicians, Your Honor. I think that's all fair game in regards  
18 to it, including costs of that treatment. I guess I'm not really seeing where else --  
19 why he's trying to drag this in or think we're going to dive into what should be an  
20 economist's testimony or something in that regard. And so I guess I just feel like the  
21 motion, once again, is kind of vague and over-broad, and really this is something  
22 that should be determined at trial with each physician testifying.

23 THE COURT: Okay. I think that -- I think we've gone over this ad nauseam.  
24 I think that the Rodriguez case is clear that a doctor can testify regarding opinions

1 that were formed during the course of the treatment, that doctor's treatment. And,  
2 you know, obviously as part of the opinions formed, the questions are always asked  
3 during a trial of this nature of a little bit of what the doctor looked at in forming those  
4 opinions. So obviously you have to go into some history because you've got to  
5 see what the doctor considered to get from Point A to Point Z. And I think that is  
6 appropriate pursuant to the *Rodriguez* case.

7 Again, I think there's a clear distinction between an expert who testifies  
8 regarding other doctors and other specialties and on the totality of the case versus  
9 a treating physician who is testifying regarding his or her own opinions and the basis  
10 for his or her own opinions and care and treatment.

11 Okay. So let me see how the motion in limine is phrased. I don't know  
12 the best way to rule on this, quite frankly. I mean, it could be either granted or  
13 denied, quite simply. I mean, we'll just say it's going to be granted because, again,  
14 you know, plaintiff I believe understands the distinction between treating physician,  
15 expert opinions and will be limited in the testimony of their witnesses based upon  
16 those restrictions. Am I being clear enough?

17 MR. MILLER: I think so, Your Honor.

18 MR. BAIRD: I think so, Your Honor.

19 THE COURT: Okay. Okay. Sometimes it sounds better in my head. I just  
20 need to make sure that you guys understand it because that's ultimately what's  
21 important.

22 All right, the next one. Defendant's motion in limine number five,  
23 enforcing the abolition of the treating physician rule, and the plaintiff's opposition  
24 thereto. Okay.

1 MR. BAIRD: Your Honor, this is pretty simple. You know, the case law is  
2 unambiguous. There shouldn't be any special emphasis -- the jury should not be  
3 allowed to give special emphasis to treating doctors. And that's the law. There's  
4 case law on that issue. We have retained an expert. He's also -- I believe he's  
5 examined these plaintiffs. So the plaintiff shouldn't be allowed to get up and say,  
6 look, these are treating doctors, not just an expert. They're all doctors and you  
7 don't get to say that one is better than the other just because they happen to be  
8 the doctor that the plaintiffs went to on their own or by referral. It's just they're  
9 all doctors and the jury has to weigh their opinions based on the content and  
10 the substance of their opinions, and there should not be by implication or direct  
11 statement an attempt to enforce the now abolished physician's rule, saying that the  
12 treating physicians get a special consideration or value as far as credibility goes.

13 THE COURT: So how much are you asking to limit? Because the question  
14 they always ask, both sides always ask, is did you actually ever examine the patient  
15 on your own? And that's usually a subject of cross-examination and argument.

16 MR. BAIRD: Right. I'm not saying they can't -- I'm not asking to not -- that  
17 no one be allowed to ask that question. I'm just saying in closing arguments no party  
18 should be able to get up and say that's just an expert, this is a treating physician.  
19 Things of that nature are what I think should be excluded from trial because that's  
20 improper. It's purely prejudicial and it has no basis in the law.

21 THE COURT: Okay.

22 MR. MILLER: Your Honor, the simple fact is this rule does not apply to  
23 this case. Treating physician rule is regarding treating physicians and the quality  
24 presented to each physician, who has a Hippocratic oath to that patient. Dr. Duke

1 has none of that. He's specifically retained as an expert by the defense to look at  
2 this patient. He's not a treater. He's not somebody who has a Hippocratic oath  
3 to this patient to give them the best care. He's not giving them care. He's not the  
4 same. That's why this rule has no applicability whatsoever to this case. It would  
5 be one thing for me to say or come in and try and say that one of my treating  
6 physicians should have more deference than another treating physician that the  
7 plaintiffs were referred to or sought treatment with. That make sense when the  
8 treating physician rule should come into play. That's when it gets -- that's when  
9 it applies. But that isn't the case here. There's none of that. All you have is the  
10 defense hiring their expert and now trying to mis-apply this rule to prevent plaintiffs  
11 from cross-examining the defense expert on the fact that he's been retained by  
12 the defense.

13 THE COURT: Okay.

14 MR. BAIRD: Like I said, I'm not seeking to limit cross-examination, Your  
15 Honor. I just -- I'm saying that the Nevada Supreme Court has expressly said that  
16 treating physicians are not special. They have said that doctors who just review  
17 records are doctors too. I mean, those are their words: We reject the treating  
18 physician rule and determine that it has no applicability in this state.

19 So they should not be able to argue these doctors had a Hippocratic  
20 oath and as such they do a better job than an expert, they're better than an expert,  
21 because that's what the supreme court is talking about. It does have applicability  
22 in this case because they are obviously intending to do exactly what the supreme  
23 court has said you cannot. They can criticize an expert based on the content of his  
24 opinions, the foundation of those opinions, but to use the simple fact that Dr. Duke



1 is not a treating physician, that is contrary to Nevada law.

2 THE COURT: Okay.

3 MR. MILLER: Can I comment, Your Honor?

4 THE COURT: Of course you can.

5 MR. MILLER: Briefly. No, that's not what that case says. That case  
6 concerns the fact that the plaintiff in that case was referred to another treating --  
7 another physician outside of the expert retention of defense or plaintiff's legal  
8 casework. It was another -- it was basically a second opinion, is what happened.  
9 And that physician issued some opinions while treating that party. It has nothing  
10 to do with the specific legal expert retention that we're talking here. That's the  
11 difference.

12 THE COURT: Okay. And I'm just thinking how I want to articulate my ruling.  
13 I think that case was clear in that you don't get -- you don't get a presumption you  
14 get to present to the jury that they get to give more weight to certain individuals'  
15 testimony because they're treating physicians versus perhaps an expert. However,  
16 certainly you can argue factors that would go to the weight the jury ultimately  
17 decides to give to the different individuals. I mean, I think it's fair game to ask --  
18 you know, bring out that the expert hasn't treated the plaintiff and a variety of other  
19 things. I think that goes to the weight their testimony will be given by the jury.

20 Are you following me?

21 MR. BAIRD: I think so.

22 THE COURT: I mean, because in that case they basically got up and argued,  
23 look, you know, they get more weight simply because they're treating physicians.  
24 I mean, the jury is ultimately going to make determinations from everything else that's

1 brought up in the case as to the weight they're going to give each of the individuals.  
2 And I think -- and I'm not articulating myself, I can tell from your faces, as clearly as  
3 I would like. I would allow plaintiff to ask the questions of the treating physician and  
4 argue at the time of closing that the expert has not treated the individual. I think that  
5 anything that goes to the bias, the weight of the testimony, I think that's fair game.

6 MR. BAIRD: My only -- my only confusion there, Your Honor, is what material  
7 fact does the lack of treating a plaintiff go to? It doesn't go to any material fact,  
8 so it's something that is purely prejudicial. It doesn't affect a doctor's ability to  
9 determine a diagnosis or causation.

10 THE COURT: But I don't think diagnoses are that simple. I think that a lot of  
11 doctors get up on the stand and as a component of just pure complaints -- I mean,  
12 there's obviously observations and opinions they derive simply by touch and  
13 examining the patient themselves. I mean, that's just part of what a doctor does.

14 MR. BAIRD: Okay. Well, and I think my doctor examined these people,  
15 so that's what I'm --

16 THE COURT: Didn't yours do an independent medical examination?

17 MR. BAIRD: That's what I'm saying. He did an IME. So for them to say,  
18 well, he's not a treater, that's what I'm saying. That is pure prejudice. That's not  
19 a substantive difference.

20 MR. MILLER: It is a substantive difference. He's been hired. It's different  
21 from the supreme court case. The supreme court case was somebody was just  
22 referred to another physician who was asked to do a second opinion and review all  
23 the treatment. This person has been specifically hired by the defense, which, you  
24 know, frankly maybe ties into my other motions in limine regarding Dr. Duke, but.

1 THE COURT: Well, do you not -- I mean, I think it's fair for them to ask  
2 who are you hired by, how much are you going to get paid? That comes up.

3 MR. BAIRD: Sure.

4 THE COURT: You're going to ask the same thing of their doctors and  
5 experts.

6 MR. BAIRD: Yeah, I'm only saying -- I'm just saying it's unfair for them to  
7 say the treating doctors are special and you need to consider them differently than  
8 an expert. That was really the only thing I was asking.

9 THE COURT: I don't think that argument is appropriate, but I think there's  
10 things you can argue as far as bringing up in closing as far as why the jury should  
11 give more weight or less weight to certain individuals.

12 MR. MILLER: Okay. And that's -- okay, because that's what I was unclear.  
13 As long as -- I want to be able to argue to the jury what weight should be given to  
14 any testimony from any witness.

15 THE COURT: Yeah, I think you get to argue that based upon the evidence  
16 that's presented.

17 MR. MILLER: Okay.

18 THE COURT: Isn't that -- I mean, what exactly do you want to say?

19 MR. MILLER: I don't know. I haven't drafted my closing yet. I hopefully will  
20 be more eloquent than saying the treaters are more special. I'll put it that way.

21 THE COURT: Well, I don't think you can really say that.

22 MR. MILLER: But I think, Your Honor, I mean, I think you've touched on it.  
23 I do want to be able to discuss the fact that Dr. Duke is not a -- he's not somebody  
24 who has treated and overseen the course of care for these plaintiffs. He's somebody

1 who was specifically hired by the defense to create an opinion.

2 THE COURT: And I would allow that. And you know what, I would allow  
3 the defense expert to ask the same questions of your expert, bring out how much  
4 they're paid --

5 MR. MILLER: Sure.

6 THE COURT: -- and the fact that you hired them.

7 MR. MILLER: Absolutely.

8 THE COURT: I think that's fair game.

9 MR. MILLER: I agree, Your Honor.

10 THE COURT: I think it goes to bias, prejudice and everything else.

11 Okay. So this one we can say denied. I don't --

12 MR. BAIRD: It sounds denied.

13 THE COURT: It sounds denied?

14 MR. MILLER: I think it's denied.

15 THE COURT: Some of these are not as simple as a simple grant or deny --

16 MR. BAIRD: Yeah.

17 THE COURT: -- because they kind of depend on the phraseology.

18 All right. The next one, defendant's motion in limine number six, to  
19 prevent plaintiff from arguing responsibility avoidance, and plaintiff's opposition to  
20 motion in limine number six.

21 MR. BAIRD: I have run into in a number of cases a plaintiff wanting to make  
22 the argument to the jury that we are here because the defendants would not accept  
23 responsibility. The implication being that it is -- it is the defendant has done  
24 something wrong by allowing the case to go to trial. In this case I expect that one

1 of the defenses we will be dropping is liability. So when we go to trial, we will be  
2 arguing just causation and damages, Your Honor.

3 THE COURT: Okay.

4 MR. BAIRD: And for him to argue that my clients, in exercising their  
5 constitutional right to have a jury decide whether the plaintiffs were injured or not,  
6 to imply or to state in any way to the jury that this is something that is wrong, that's  
7 unfair. That's unfairly prejudicial. And there is no element of plaintiffs' case called  
8 responsibility or duty to take responsibility, okay. We will end up acknowledging  
9 that we breached a duty, and then the only question will be were they injured and  
10 to what extent is that valued. So if they get up and say plaintiffs (sic) have refused  
11 to take responsibility and now we've had to go through this whole trial, that doesn't  
12 go to any element of their case. That's pure prejudice and purely asking the jury  
13 to become impassioned and then render a verdict based on that passion.

14 THE COURT: Okay.

15 MR. MILLER: How is it pure prejudice when they haven't conceded liability,  
16 Your Honor? He says it now. There's no stipulation. There's no concession.  
17 There's nothing. Liability is still on the table as far as plaintiffs are aware. Until  
18 I have that, I think I'm fully entitled to argue based on the evidence presented at  
19 trial that these people have contested liability. That sure sounds like avoiding  
20 responsibility if they contest liability. I think that's fair game as argument. Defense  
21 clearly can counter that.

22 MR. BAIRD: No, there is -- there is no responsibility, Your Honor, until there's  
23 a judgment. That's the whole point. Now, I am confident that I will be formally  
24 accepting liability. It occurred to me just the other day that we haven't done that yet.

1 But even if we were arguing liability, you don't get to say that my clients are avoiding  
2 responsibility, because that is a moral statement. You see, they're saying that my  
3 clients have been immoral. They're doing something wrong by making the plaintiff  
4 prove their case according to the law. That is unfair prejudice and that's all we're  
5 asking. They can say that they're at fault. They can say that they have been  
6 damaged. But they don't get to say or imply that my clients are bad actors because  
7 we're at trial.

8 THE COURT: Okay. I agree with you, defense counsel. I'm going to grant  
9 your motion in limine. I think there's a multiple -- multitude of reasons why cases  
10 may not resolve absent going to trial and I think that both parties have a right to  
11 go to trial and have it tried before a jury if they can't reach a resolution.

12 The next one, defendant's motion in limine number seven, to preclude  
13 questions regarding verdict amounts during voir dire, and plaintiff's opposition  
14 thereto.

15 MR. BAIRD: This one is very simple. Typically the response to this argument  
16 is that they need to determine whether a jury is going to be biased against certain  
17 dollar amounts.

18 THE COURT: Um-hm.

19 MR. BAIRD: I don't think you need to tell the jury numbers to find out if they  
20 are biased or prejudiced. When you're asking them you can say would you be  
21 opposed to giving a large verdict if the evidence warranted it? You don't have to  
22 condition the jury to big verdicts in order to determine whether they're biased. The  
23 only purpose of those questions -- if you ask the question that I just recommended,  
24 the only reason to ask anything else is to condition the jury to try and get them to

1 accept the idea of these larger verdicts before they've even heard the evidence.

2 THE COURT: Okay.

3 MR. MILLER: I don't think that was the scope of their motion. I think they  
4 wanted nothing regarding -- at least when I first read the initial motion is they don't  
5 want anything talking about verdict amounts. And now my understanding is counsel  
6 is saying we can, you know, investigate with the jury whether or not there's any  
7 bias regarding providing a large verdict amount. I don't know what a large verdict  
8 amount might be to each individual juror, but I sure as heck want to find out whether  
9 or not there's any bias there. There's clearly -- in this day and age there's prejudice  
10 towards plaintiff's personal injury suits by a lot of people in society. I think it's fair  
11 for this Court and for the counsels to investigate whether or not that bias is going to  
12 improperly be injected into this from one of these jurors.

13 THE COURT: So what do you want to ask?

14 MR. MILLER: I want to be able to ask whether or not they're comfortable  
15 to give a large verdict, potentially. I mean, based on the medical bills alone, it's  
16 probably going to be a six figure verdict. I don't know if that's large or not to some  
17 of these jurors. I don't want to give specific numbers. I have no intention of giving  
18 a specific number.

19 THE COURT: Okay. That was my concern.

20 MR. MILLER: Right. I don't want to do that, Your Honor.

21 MR. BAIRD: My only argument is against specific numbers, so it sounds  
22 like we --

23 THE COURT: I think you guys actually agree.

24 MR. BAIRD: Yeah.

1 MR. MILLER: That's fine.

2 THE COURT: And that would have been my ruling anyway. I mean,  
3 obviously I think it goes to finding an appropriate jury as far as inquiry of whether  
4 or not they can consider a large verdict amount if the evidence demonstrates it  
5 at the time of trial. However, you always have to be careful not to ask for specific  
6 amounts --

7 MR. MILLER: Right.

8 THE COURT: -- because it's kind of a tentative, you know, verdict. So we'll  
9 just say that's granted.

10 MR. BAIRD: Okay.

11 THE COURT: Okay. The next one, defendant's motion in limine number  
12 eight, to exclude evidence of damages not presented under a computation of  
13 damages, and the plaintiff's opposition thereto.

14 MR. BAIRD: This one is really simple. This is just saying under the rules of  
15 discovery they are obligated to produce all the calculations for all of their damages  
16 timely during discovery. Anything that has not been properly disclosed should be  
17 excluded. And it's sort of a prospective ruling because I don't know what they're  
18 going to try and ask at trial.

19 THE COURT: They said they provided it.

20 MR. BAIRD: Pardon?

21 THE COURT: They said they provided it in their opposition.

22 MR. BAIRD: Yeah. I'm not saying there has never been any sort of a  
23 calculation. Whatever they've -- what they have produced during discovery I think  
24 is all they should be -- is what they should be limited to as far as special damages.



1 THE COURT: Okay. Counsel?

2 MR. MILLER: I don't disagree, Your Honor. When I first saw the motion  
3 it implied to me that we had never produced it. So I think that's fine.

4 THE COURT: So it would be granted and the parties agree that they only  
5 get to present evidence that was presented during the course of discovery.

6 MR. BAIRD: Right. And so these recent ones, and I think there was a  
7 production just a few days ago, anything that's new from there should be excluded.  
8 The bills that were attached were from 2012. And so if that wasn't already included  
9 in the prior calculation, that should be excluded.

10 MR. MILLER: That's not correct, Your Honor. We have a duty -- we are  
11 able to supplement thirty days before trial, up to thirty days before trial. These were  
12 supplemented. On top of that --

13 THE COURT: You can supplement up until the cut-off.

14 MR. MILLER: Right. No, you can -- No, 16.1 allows you to supplement bills  
15 and records that are up to thirty days before trial.

16 THE COURT: I agree with you; up until the thirty days.

17 MR. MILLER: Right -- which we've done.

18 MR. BAIRD: Except that we had a couple years of discovery, and unless I'm  
19 confused on it, because I attached it. What they -- where's my supplement here?  
20 Their most recent production included bills from 2012. Did that exhibit not make it  
21 on? So, yeah, if there was new treatment, you know, I understand the rules. But  
22 for them to produce something that was from 2012 after discovery, that's what I'm  
23 saying should be excluded. And that's what I -- I thought I printed that out because  
24 that surprised me.

1 MR. MILLER: The point of 16.1, Your Honor, is whether -- to prevent  
2 prejudice or trial by ambush. They've deposed all these physicians. They knew  
3 exactly what the charges were. They were discussed in each deposition. On top  
4 of that, they've subpoenaed all these records as well. They have the exact same  
5 information we have.

6 MR. BAIRD: I printed out the wrong thing. I just -- As a matter of law, Your  
7 Honor, whatever it is, if they've produced -- if they late produced records from 2012  
8 after the discovery, it's 2014. So if they didn't get around to producing 2012 medical  
9 records and bills, as a matter of law -- I mean, that's just black and white law, it  
10 should be excluded. And we can work out whether that's the case at the 2.67, but  
11 I think that there's no basis on which you could rule otherwise.

12 MR. MILLER: I completely disagree. I think you have discretion under 16.1  
13 to do this. They've been properly submitted.

14 THE COURT: So is the only real issue that the 2012 bills were presented  
15 in 2014?

16 MR. BAIRD: Right. After the close of discovery. I mean, if they had produced  
17 them --

18 THE COURT: Why were they so late?

19 MR. MILLER: Your Honor, we didn't have this case from the initial start. I  
20 don't know why. And it's not that these -- there's a big difference between bills and  
21 records not being supplemented and a calculation of the summary. That's the only  
22 thing we've produced in the last -- you know, before the cut-off of the thirty days  
23 was an updated summary of the medical specials. From my understanding, the bills  
24 themselves and everything they've had.

1 THE COURT: So were the -- the doctors that were included in the  
2 calculation, those doctors, the ones who rendered treatment in 2012, were those  
3 previously identified?

4 MR. MILLER: Yes, Your Honor.

5 THE COURT: Made available?

6 MR. MILLER: Yes. They've all been deposed by defense. All their records  
7 have been subpoenaed by the defense.

8 THE COURT: Okay. Anything else?

9 MR. BAIRD: No. No, nothing else.

10 THE COURT: I'm going to deny it. I mean, again, I think you have up to the  
11 thirty days. I think it should have been done sooner, but it sounds like the defense  
12 did have information regarding the identity of those individuals and was able to  
13 during the course of discovery conduct any discovery necessary on those different  
14 medical providers.

15 Defendant's motion in limine number nine, to prohibit improper jury  
16 questionnaire and/or voir dire, and plaintiff's opposition.

17 MR. BAIRD: This one is -- I think that this one is pretty much rendered moot  
18 by your other one, because in talking with plaintiff's counsel before he said he's not  
19 anticipating days of voir dire and no one has proposed a jury questionnaire. And  
20 so, you know, in general we -- the motion is to exclude questioning that is simply  
21 profiling -- creating a profile of the jurors that doesn't actually relate to the simple  
22 issue of are they going to be an unbiased, unprejudiced juror.

23 THE COURT: Okay.

24 MR. MILLER: I don't disagree.

1 THE COURT: I'm sure you agree not to present improper jury questions.

2 All right. So --

3 MR. MILLER: I have no need to know their favorite movie, Your Honor.

4 THE COURT: Okay. So we'll grant this.

5 MR. BAIRD: Okay.

6 THE COURT: All right, let's see. It looks like we have defendant's motions in  
7 limine number -- I'm sorry, the plaintiffs' motions in limine number one through nine  
8 and the defendant's oppositions to some of them.

9 MR. BAIRD: All but five and six.

10 THE COURT: Yeah. So five and six will be granted, as there is no opposition  
11 by the defense. All right. So let's just start with one. Inference of secondary gain  
12 motive.

13 MR. MILLER: This is something I'm seeing more and more introduced by  
14 defendants, Your Honor. The simple fact is there's no evidence or foundation to  
15 try and introduce this theory of secondary gain or malingering. There's none. Dr.  
16 Duke, their one retained expert, while he tried to interject the theory of secondary  
17 gain and the fact that these parties have hired attorneys and filed a lawsuit, which  
18 is later on in this motion, he even agreed that he has no evidence to show that they  
19 were malingering, being dishonest; any of that nature. He just basically -- Dr. Duke  
20 basically just wants to interject the fact that any plaintiff must have secondary  
21 gain because they're a plaintiff. That's really what it boils down to and it's pure  
22 speculation. It's not founded upon evidence of these specific plaintiffs in their  
23 treatment in this case.

24 THE COURT: Okay. Counsel?

1 MR. BAIRD: I think all of plaintiffs' doctors have agreed that patients involved  
2 in litigation present the possibility that they are also motivated by secondary gain.  
3 The existence of a lawsuit where you are asking for money is by definition secondary  
4 gain, if they're going to doctors in preparation for this lawsuit. So there is evidence  
5 of secondary gain. I have not heard anybody utter, other than plaintiff, utter the  
6 word malingerer in this case, and I don't think any expert that I have retained plans  
7 on calling them malingerers. But it is an objective fact that the plaintiffs in this case  
8 are actually after money as well and that goes to bias. And we've cited case law  
9 that says you can examine on this issue, on issues that go to a witness' bias, and  
10 this definitely goes to that. And his doctors agree it is very much a possibility. And  
11 it is something the jury needs to consider when they're evaluating the patient's  
12 complaints because nobody is going to testify that they can tell a patient's pain by  
13 anything other than the patient telling them how much pain they're in. And so it's  
14 vital that this be allowed.

15 MR. MILLER: A couple notes on that. One, Your Honor, regarding a  
16 patient's pain, that can be corroborated by physical examinations, which it has  
17 been by the treating physicians in this case. On top of that, in terms of the plaintiffs'  
18 physicians talking about secondary gain, that was a general concept that basically  
19 every patient can potentially have secondary gain. If I'm injured and I want to get  
20 treatment, maybe it's because I want to be able to work. That's secondary gain.  
21 There's positive and negative factors that can be attributed. What they want to do  
22 here is take this into -- punish the plaintiffs, frankly, for being plaintiffs and using the  
23 system they're afforded, which is our legal system that has determined that the one  
24 way to make them whole from their injuries is money. That's it. There's no other

1 remedy. You can't go back in time, can't -- there's nothing else. There's no magic  
2 pill or anything that rewinds these plaintiffs to prior to this accident.

3 Basically what Dr. Duke wants to do is say they're plaintiffs, so clearly  
4 they're biased, they want money. That's speculation. One, it's completely outside  
5 of his expertise. It has nothing to do with a medical basis. And then two, it's highly  
6 prejudicial to the jury to get up there and say, well, these people are plaintiffs, they  
7 want money; how dare they? It's improper. It's not based on any of the evidence  
8 of the case, other than the fact that they had to file a lawsuit.

9 THE COURT: Okay.

10 MR. BAIRD: Your Honor, there is one other thing. I mean, Dr. Duke makes  
11 the comments about medical legal reports because he has observed in his years of  
12 experience that doctors who are treating patients involved in litigation do a different  
13 kind of medical report. I mean, all of these things are special and unique to litigation  
14 and the jury should be able to be made aware that these doctors and these patients  
15 are doing things differently with litigation than they do when you're just out to get  
16 better, when you just are going to the doctor only to get better. And the jury -- just  
17 because we say it doesn't mean the jury is going to buy it. It could backfire. But  
18 it goes to bias and it goes to the weight of the testimony of all these witnesses, and  
19 to preclude us from doing this would be very prejudicial to the defendants.

20 THE COURT: I'm going to grant it.

21 The next one is reference to prior untreated medical conditions. Is  
22 there any evidence that the plaintiff has prior injuries or treatment?

23 MR. BAIRD: Right. The only -- and I think the plaintiffs agree that we can  
24 talk about it, was I think Ms. Avarca had pre-existing abdominal pain and that's

1 discussed in the records. And he said that he's okay with us talking about that.  
2 And this might bleed over into another motion, but we have -- we don't have any  
3 intention of getting up there and arguing that the plaintiffs were hurting and hurting  
4 and hurting and just not getting treatment. That's not something that we have  
5 lined up.

6 THE COURT: Okay.

7 MR. MILLER: I think that's fine.

8 THE COURT: I'm going to deny it. I mean, I think that if the evidence is  
9 there, individuals can testify regarding prior treatment, complaints, etcetera, you  
10 know, as long as it's the same body parts --

11 MR. BAIRD: Right.

12 THE COURT: -- that are at issue in this case.

13 We've already done this one. Reference to treatment on a lien or  
14 collateral source. I've already indicated I will not allow that testimony.

15 The next one, argument that plaintiffs are asking for excess damages.  
16 I think that we've already discussed this, so I'm just going to -- The way it's phrased  
17 is the argument of defendants saying to the jury that plaintiffs are asking for more  
18 than they reasonably anticipate receiving, and I've already said that is not acceptable  
19 and I denied that. Or actually for the motion that would be granted the way it's  
20 phrased by plaintiff.

21 Number seven, argument that plaintiffs were injured in a separate  
22 event.

23 MR. MILLER: It's a little similar to I think number two, Your Honor, about the  
24 pre-existing injuries.

1 THE COURT: I was going to deny that one for the same reasons. You can --  
2 if the evidence is there, you can talk about prior injuries, accidents, etcetera, that are  
3 to the same body parts or same complaints.

4 The next one, comments about prior conditions.

5 MR. BAIRD: That's sort of the same thing. We don't have any prior conditions  
6 other than the abdominal issue.

7 THE COURT: Okay. So that will be denied. You can talk about, again, prior  
8 conditions so long as the evidence exists.

9 The next one is a motion to exclude Derek Duke.

10 MR. MILLER: I think you've heard a good part of my argument on this  
11 already, Your Honor. The simple fact is Dr. Duke, he provides two things in his  
12 deposition. One, he has no -- basically in terms of the actual causation and  
13 treatment of these two plaintiffs he basically says it's not related to the accident.  
14 I can say that to a reasonable degree of medical probability. In terms of anything  
15 else, I can't say; I have no idea. And then he likes to go and spent quite at length  
16 during his deposition regarding the fact that they're plaintiffs, the fact of what he  
17 calls the pursuit of litigation.

18 THE COURT: We've already talked about that one, though.

19 MR. MILLER: We have. We've gone far into it. So I mean, frankly, Your  
20 Honor, I think the entire -- I think Dr. Duke has been doing this so long as a defense  
21 expert his bias is just -- it's inseparable from his opinions. But at the very least,  
22 Your Honor, I think what we have to have here is have his opinions limited to simply  
23 the opinions regarding the causation and not introduce any of this secondary gain,  
24 pursuit of litigation, any of this stuff that he likes to delve into.



1 THE COURT: Okay.

2 MR. BAIRD: Your Honor, Dr. Duke is a qualified medical doctor who has  
3 examined these patients and examined all the medical records. Plaintiffs' doctors  
4 have not all reviewed all the medical records. Plaintiffs' doctors have not reviewed  
5 all of the deposition transcripts. As I recall, they hadn't reviewed any deposition  
6 transcripts. Dr. Duke has the best foundation of any witness in this case to testify  
7 overall as to how this course of treatment compares with non-litigation course  
8 of treatment and whether the conditions diagnosed have a foundation for being  
9 claimed to be caused by this accident. There should be no limitation on his  
10 testimony insofar as he demonstrates a foundation to do so. And he has -- he is  
11 the only one with a foundation.

12 Plaintiffs' argument starts with this assumption, that plaintiffs' doctors  
13 are above reproach, that they cannot be biased and that they should be treated  
14 differently, and that is not supported by the law. Doctors are doctors. Dr. Duke is a  
15 doctor, their doctors are doctors. They're all humans and they should all be treated  
16 the same way. If his doctors get to testify in any way plaintiff chooses and these  
17 doctors are treating on liens and have an interest in the case as well, there is no  
18 fair basis on which to exclude Dr. Duke.

19 THE COURT: Okay. I was not going to exclude Dr. Duke. However, we  
20 already discussed certain portions of his report that I wasn't going to allow as far as  
21 the arguments of malingering, secondary gain, litigation versus non-litigation medical  
22 course of treatment. Certainly he can testify on his review of the records and his  
23 opinions related to the care, treatment and cost of the bills.

24 MR. BAIRD: So Dr. Duke can't testify that there is evidence of motivation by

1 secondary gain?

2 THE COURT: No.

3 MR. BAIRD: And plaintiffs' doctors discuss it. That's what I don't understand.  
4 Their doctors have already testified that any one of these people could be motivated  
5 by secondary gain. Why can't Dr. Duke say this evidence to me says secondary  
6 gain?

7 THE COURT: I guess maybe -- please tell me how it came out in the  
8 deposition. I've never seen a doctor on behalf of the plaintiff testify that their patient  
9 was doing it for secondary gain.

10 MR. BAIRD: I'm not saying the doctors said they definitely were, but they all  
11 say, yeah, they could be. And then it comes down to are they or not, and that's really  
12 something that the jury is going to have to decide. But the doctor -- if a doctor says  
13 this evidence says to me secondary gain, why can't they present that evidence and  
14 let the jury weigh it? Let him cross-examine them on it. I mean, if --

15 THE COURT: But, I mean, was that question asked in a hypothetical?

16 MR. MILLER: It was a general principle, Your Honor.

17 MR. BAIRD: Yeah, as a general principle.

18 THE COURT: Because sometimes the plaintiffs' treating doctors do get up  
19 there and say I think this plaintiff is malingering. I've seen that happen.

20 MR. BAIRD: Your Honor --

21 THE COURT: But, I mean, the question was asked in a hypothetical situation.

22 MR. BAIRD: No, it was just as a general principle. None of these doctors  
23 have -- none of plaintiffs' doctors have explicitly said they suspect secondary gain.  
24 But on the other side of that coin I have asked doctors, for example, in your medical

1 records for this plaintiff -- and I can't remember if this is this case or not, but this is  
2 just an example. In this medical record you said that the injuries were caused by  
3 this accident to a reasonable degree of medical probability. Do you add that opinion  
4 to your non-litigation patients? And they say no, I don't do that. This is something  
5 special I do for litigation patients. I mean, these are all things that -- there is  
6 evidence of this and we should be allowed to discuss that there are things that are  
7 done differently when there's money involved than when there isn't.

8 And to hobble an expert who has -- who is the only person that has  
9 read all of the records and can watch the progression of the complaints and the  
10 diagnoses, to limit him from saying this doesn't match what you do when you're just  
11 treating a patient or this is not what patients who are not involved in litigation do,  
12 I mean, that is very valuable to the jury. And it is not unfair because it is -- there's  
13 evidence of it and it is a fact.

14 MR. MILLER: It is unfair, Your Honor, because there's no evidence. That's  
15 the problem. Dr. Duke testified he has no foundation to say it. He just talks about  
16 secondary gain. He wants to inject it into his opinions. But he -- and the same  
17 questions I asked him, do you have any evidence of secondary gain for these  
18 people other than they have an attorney? No. Do you have any evidence that these  
19 physicians, these treating physicians have committed malpractice? No. Do you  
20 have any evidence of malingering? No. Dishonesty? No. There's no foundation.  
21 That's the problem. That's a problem. You want to ask it in a general principle or  
22 hypothetical. There's no foundation based upon the evidence. That's the point of  
23 these experts.

24 If Dr. Duke wants to come in, it's fine. He can testify to what he has

1 reviewed because that's going to be the foundation for what is related to the accident  
2 and what's not. But he has not said -- he hasn't even listed it as an alternate theory  
3 to escape the reasonable degree of medical probability standard. He hasn't  
4 presented it. He hasn't said, well, because they have a lawyer that's an alternate  
5 theory of all their problems.

6 MR. BAIRD: Your Honor, that is a mis-statement of the law. A defense  
7 expert is not obligated to opine as to an alternative cause. That is not the law.  
8 An expert --

9 THE COURT: I agree with you.

10 MR. BAIRD: Okay. And so that's what he's saying. Well, he doesn't -- when  
11 he says he doesn't have an opinion to a reasonable degree of medical probability,  
12 he's saying -- the deposition, when you read their motion, he says he's unable to  
13 provide any cause to their complaints to a reasonable degree of medical probability.  
14 That's no basis on which to exclude his opinions on secondary gain. And there  
15 is documented evidence in his reports regarding secondary gain. So I don't  
16 understand how they can shoehorn that into the fact that he doesn't have an  
17 alternative cause. I don't know how they can shoehorn that into saying, well, he  
18 doesn't get to talk about pursuit of litigation or secondary gain factors.

19 MR. MILLER: It's not an alternate cause. There's nothing in his expert report  
20 that says secondary gain is the alternate cause of these injuries and treatment.  
21 Because even if you present -- It's fine, Dr. Duke can say I don't have a cause for  
22 why they're doing this -- that's fine -- to a reasonable degree of medical probability.  
23 He can say that. That's what he said. He said that this is not related to the  
24 accident. He has no problem saying that. But even if you present an alternate

1 cause, even if it's not to a reasonable degree of medical probability, you still have  
2 to have foundation for it. He's presented no foundation.

3 THE COURT: Okay. I'm not going to allow the argument based upon the  
4 evidence that's given to me of secondary gain. I don't think there's quite simply any  
5 evidence of it. And quite honestly, Dr. Duke makes that in every single Dr. Duke  
6 report I've ever seen. I think that without evidence of malingering or something else,  
7 there is simply just no basis to throw that out to the jury. I think that it's prejudicial.  
8 I think that our system allows someone to come in, if they can prove that they're  
9 damaged, to seek, you know, financial compensation. So I'm not going to allow  
10 that.

11 The other things in Dr. Duke's report I will allow. I think it's appropriate  
12 for him to testify regarding his review of the records, his opinions regarding the care,  
13 treatment, bills and everything that were rendered to the plaintiff. But I don't think  
14 there's any evidence of secondary gain. And perhaps that will change. I mean,  
15 there's always a possibility something could come out during the course of the trial.  
16 Like I said, I've seen plaintiffs' experts say things that probably make the plaintiff  
17 want to crawl under the table, and if that happens then, you know, we can address  
18 it at that time.

19 MR. BAIRD: Could you grant it pursuant to -- with the option of an offer of  
20 proof at trial?

21 THE COURT: Secondary gain?

22 MR. BAIRD: Yes.

23 THE COURT: Just throwing that argument out there?

24 MR. BAIRD: No, we would do an offer of proof outside the presence of the

1 jury after we -- so that we can get him to explain it, and then you can decide whether  
2 there's a foundation or not.

3 THE COURT: You can bring it up again at the time of trial. And yes,  
4 depending what the evidence shows.

5 MR. BAIRD: Okay.

6 THE COURT: If the evidence is there.

7 Okay. Have we gotten through all your motions in limine?

8 MR. MILLER: I think so, Your Honor.

9 MR. BAIRD: We have.

10 THE COURT: All right. Any questions before I call the next case?

11 MR. MILLER: Just briefly, Your Honor.

12 THE COURT: Yes, sir?

13 MR. MILLER: Do you know what the trial -- like if we -- you know, we're  
14 supposed to start trial November 10th. Do you know what days or how much time  
15 we have for trial?

16 THE COURT: (Speaking to the law clerk) You know what, can you get  
17 Carmen, please?

18 And the only reason I'm getting my assistant is the only thing that we  
19 absolutely can't move are the medical malpractice cases, as you're aware. I have,  
20 frankly, so few civil cases that actually go. When we give you -- you can almost pick  
21 your week, but expect to go --

22 MR. MILLER: Okay.

23 THE COURT: -- because you're not going to get bumped by something else.

24 MR. BAIRD: Okay.

1 MR. MILLER: Sounds good.

2 THE COURT: So before I say that, let me make sure I don't have any  
3 med-mal cases.

4 (The Judicial Executive Assistant enters the courtroom)

5 THE COURT: I just want to make sure on the stack this case is on, which  
6 is --

7 MR. BAIRD: November 10th, I believe.

8 THE COURT: Yeah. Cervantes-Lopez versus Ortega, that there's no med-  
9 mal, because they were asking if there's a good chance that it will go and I told them  
10 absent a med-mal case, yes.

11 (Colloquy between the Court and the JEA)

12 THE COURT: Are you ready?

13 MR. BAIRD: Yeah.

14 MR. MILLER: Yeah.

15 MR. BAIRD: I just need to -- once we know kind of what dates are out there,  
16 then I can make sure my experts are available, is the only issue.

17 THE COURT: Sure, of course. Just bear with me for a moment, please.

18 MR. MILLER: Thank you, Your Honor. I appreciate it.

19 (Off-record colloquy)

20 JUDICIAL EXECUTIVE ASSISTANT: You're number four.

21 (Colloquy regarding trial date)

22 THE COURT: You know what, we'll be able to give you specifics at calendar  
23 call, but realistically, again, I have so few civil cases going, we'll probably be able to  
24 accommodate you.

1 MR. BAIRD: Okay. Sounds good.  
2 MR. MILLER: Sounds good.  
3 THE COURT: I mean, that would be adequate time for you to get your  
4 experts ready, right?  
5 MR. MILLER: Oh, yeah, that should be fine.  
6 MR. BAIRD: Right, right. Now that I know we're likely to go, I can get all their  
7 availability for the five weeks and then we should be able to just match them up.  
8 THE COURT: Okay. Yeah, and we'll work with you on scheduling. Thank  
9 you.  
10 MR. BAIRD: Great. Thank you.  
11 MR. MILLER: All right. Thank you, Your Honor.  
12 THE COURT: Thank you.

13 (PROCEEDINGS CONCLUDED AT 10:57:45 A.M.)

14 \* \* \* \* \*

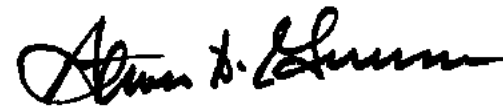
15  
16 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
17 audio/video proceedings in the above-entitled case to the best of my ability.

18 

19 Liz Garcia, Transcriber  
20 LGM Transcription Service  
21  
22  
23  
24



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CLERK OF THE COURT

1 SAO  
2 STEPHEN H. ROGERS, ESQ.  
3 Nevada Bar No. 5755  
4 ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
5 300 South Fourth Street, Suite 710  
6 Las Vegas, Nevada 89101  
7 Phone (702) 383-3400  
8 Fax (702) 384-1460  
9 Attorneys for Defendants

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 CHRISTIAN CERVANTES-LOPEZ,  
9 an individual; MARIA AVARCA, an individual,  
10 Plaintiffs,

CASE NO.: A-12-667141-C  
DEPT. NO.: XXIII

11 vs.

12 EVANGELINA ORTEGA, an individual;  
13 MIRIAM PIZARRO-ORTEGA, an individual;  
14 DOES I through V, inclusive; and  
15 ROE CORPORATIONS I through V, inclusive,  
16 Defendants.

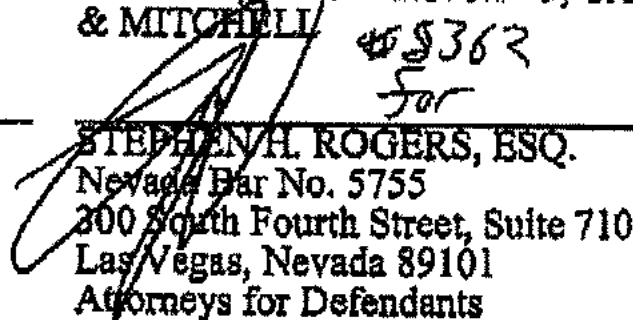
STIPULATION AND ORDER TO CONTINUE TRIAL DATE

17 IT IS HEREBY STIPULATED by and between the parties, through their respective counsel,  
18 that the trial date for the above-captioned matter which is currently set for November 12, 2014 be  
19 continued and reset on the trial stack of February 9, 2015, at 9:00 a.m., with a calendar call on  
20 Feb. 3, 2015, at 11:00 a.m. and the Pre-Trial Memorandums due on Jan. 30, 2015

21 DATED this 5 day of November 2014. DATED this 5<sup>th</sup> day of November, 2014.

22 SIMON & ASSOCIATES

ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL #5362

24 DANIEL S. SIMON, ESQ.  
25 Nevada Bar No: 4750  
26 810 South Casino Center Blvd.  
27 Las Vegas, NV 89101  
28 Attorneys for Plaintiffs

STEPHEN H. ROGERS, ESQ.  
Nevada Bar No. 5755  
300 South Fourth Street, Suite 710  
Las Vegas, Nevada 89101  
Attorneys for Defendants

**ORDER**

IT IS SO ORDERED that the civil jury trial presently scheduled for November 12, 2014 in the above-entitled matter be, and hereby is continued to the 9<sup>th</sup> day of February, in the year of 2015 at 9:00 a.m. A pretrial conference with the designated attorney and/or parties in proper person will be held on 11/11 at        .m. A calendar call will be held on Feb. 3, 2015 at 11:00 am .m. The pretrial memorandum must be filed no later than 4:00 p.m. on Jan 30, 2015 with a courtesy copy delivered to Department XIII All parties (attorneys and parties in proper person) must comply with ALL REQUIREMENTS of E.D.C.R. 2.67. All pretrial motions, including motions in limine, must be in writing and set for hearing no later than January 9, 2015. Any pretrial motion must be filed by 4:00 p.m. on December 9, 2014. Orders shortening time will not be signed except in extreme emergencies. The last day to supplement your documents and witness list, including expert and rebuttal witnesses, is January 9, 2015. All other orders of the prior Order Setting Civil Jury Trial shall remain in full force and effect.


DATED this 5<sup>th</sup> day of November 2014.

  
DISTRICT COURT JUDGE

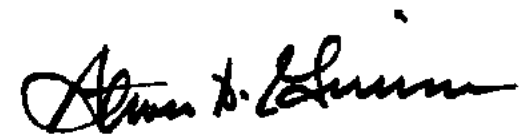
JUDGE STEFANY A. MILEY

Submitted by:

  
ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL

  
STEPHEN H. ROGERS, ESQ.  
Nevada Bar No. 5755  
300 South Fourth Street, Suite 710  
Las Vegas, Nevada 89101  
Attorneys for Defendants

McKee Ortega adl, Cervantes Lopez/Pleading/Sup Continue Trial/Sup to Continue Trial - 11-05-14.wpd



CLERK OF THE COURT

1 STEPHEN H. ROGERS, ESQ.  
Nevada Bar No. 5755  
2 R. KADE BAIRD, ESQ.  
Nevada Bar No. 8362  
3 ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
300 South Fourth Street, Suite 710  
4 Las Vegas, Nevada 89101  
Phone (702) 383-3400  
5 Fax (702) 384-1460  
Attorneys for Defendants

6  
7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 CHRISTIAN CERVANTES-LOPEZ, )  
an individual; MARIA AVARCA, an individual, )  
10 )  
Plaintiffs, )  
11 )  
vs. )  
12 )  
EVANGELINA ORTEGA, an individual; )  
13 MIRIAM PIZARRO-ORTEGA, an individual; )  
DOES I through V, inclusive; and )  
14 ROE CORPORATIONS I through V, inclusive, )  
15 Defendants. )

CASE NO.: A-12-667141-C  
DEPT. NO.: XXIII

16 **NOTICE OF ENTRY OF ORDER**

17 PLEASE TAKE NOTICE that an Order in the above-entitled action was entered and filed  
18 on the 14<sup>th</sup> day of November, 2014, a copy of which is attached hereto.

19 DATED this 14<sup>th</sup> day of November, 2014.

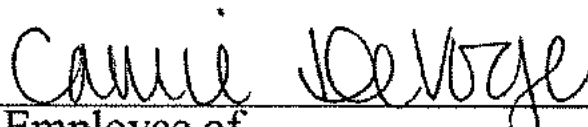
20  
21 ROGERS, MASTRANGELO, CARVALHO &  
MITCHELL

22  
23 STEPHEN H. ROGERS, ESQ.  
Nevada Bar No. 5755  
24 R. KADE BAIRD, ESQ.  
Nevada Bar No. 8362  
25 300 South Fourth Street, Suite 710  
26 Las Vegas, Nevada 89101  
Attorney for Defendants  
27  
28

1 **CERTIFICATE OF SERVICE**

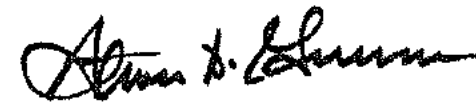
2 Pursuant to NRCP 5(a), and EDCR 7.26(a), I hereby certify that I am an employee of Rogers,  
3 Mastrangelo, Carvalho & Mitchell, and on the 20 day of November, 2014, a true and correct copy  
4 of the foregoing **NOTICE OF ENTRY OF ORDER** was served via Electronic Service, upon the  
5 following counsel of record:

6  
7 Daniel S. Simon, Esq.  
8 Nevada Bar No: 4750  
9 Simon & Associates  
10 810 South Casino Center Blvd.,  
11 Las Vegas, NV 89101  
12 P: (702) 364-1650  
13 F: (702) 364-1655  
14 *Attorneys for Plaintiffs*

15  
16  
17  
18   
19 An Employee of  
20 Rogers, Mastrangelo, Carvalho & Mitchell

21  
22  
23  
24  
25  
26  
27  
28 M:\Kade\Ortega adv. Cervantes-Lopez\Pleadings\Notice of Entry of Order.wpd

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CLERK OF THE COURT

1 SAO  
2 STEPHEN H. ROGERS, ESQ.  
3 Nevada Bar No. 5755  
4 ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
5 300 South Fourth Street, Suite 710  
6 Las Vegas, Nevada 89101  
7 Phone (702) 383-3400  
8 Fax (702) 384-1460  
9 Attorneys for Defendants

## DISTRICT COURT

CLARK COUNTY, NEVADA

8 CHRISTIAN CERVANTES-LOPEZ,  
9 an individual; MARIA AVARCA, an individual,  
10 Plaintiffs,

11 vs.

12 EVANGELINA ORTEGA, an individual;  
13 MIRIAM PIZARRO-ORTEGA, an individual;  
14 DOES I through V, inclusive; and  
15 ROE CORPORATIONS I through V, inclusive,  
16 Defendants.

CASE NO.: A-12-667141-C

DEPT. NO.: XXIII

STIPULATION AND ORDER TO CONTINUE TRIAL DATE

17 IT IS HEREBY STIPULATED by and between the parties, through their respective counsel,  
18 that the trial date for the above-captioned matter which is currently set for November 12, 2014 be  
19 continued and reset on the trial date of February 9, 2015, at 9:00 a.m., with a calendar call on  
20 Feb. 3, 2015, at 11:00 a.m. and the Pre-Trial Memorandums due on Jan. 30, 2015

21 DATED this 5 day of November 2014. DATED this 5<sup>th</sup> day of November, 2014.

22 SIMON &amp; ASSOCIATES

ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL


24 DANIEL S. SIMON, ESQ.  
25 Nevada Bar No: 4750  
26 810 South Casino Center Blvd.  
27 Las Vegas, NV 89101  
28 Attorneys for Plaintiffs

STEPHEN H. ROGERS, ESQ.  
Nevada Bar No. 5755  
300 South Fourth Street, Suite 710  
Las Vegas, Nevada 89101  
Attorneys for Defendants

ORDER

IT IS SO ORDERED that the civil jury trial presently scheduled for November 12, 2014 in the above-entitled matter be, and hereby is continued to the 9<sup>th</sup> day of February, in the year of 2015 at 9:00 a.m. A pretrial conference with the designated attorney and/or parties in proper person will be held on Feb. 3, 2015 at 11:00 am .m. A calendar call will be held on Jan 30, 2015 with a courtesy copy delivered to Department XII. All parties (attorneys and parties in proper person) must comply with ALL REQUIREMENTS of E.D.C.R. 2.67. All pretrial motions, including motions in limine, must be in writing and set for hearing no later than January 9, 2015. Any pretrial motion must be filed by 4:00 p.m. on December 9, 2014. Orders shortening time will not be signed except in extreme emergencies. The last day to supplement your documents and witness list, including expert and rebuttal witnesses, is January 9, 2015. All other orders of the prior Order Setting Civil Jury Trial shall remain in full force and effect.

DATED this 5<sup>th</sup> day of November 2014.

Submitted by:

ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL

STEPHEN H. ROGERS, ESQ.  
Nevada Bar No. 5755  
300 South Fourth Street, Suite 710  
Las Vegas, Nevada 89101  
Attorneys for Defendants

DISTRICT COURT JUDGE

JUDGE STEFANY A. MILEY

McKusick/Ortega et al., Cervantes-Lopez/Pleading/Ship Cumine Trial/Ship to Cumine Trial - 11-05-14.wpd

DISTRICT COURT  
CLARK COUNTY, NEVADA

  
CLERK OF THE COURT

CHRISTIAN CERVANTES-LOPEZ  
Plaintiff(s),

vs.

CASE NO. A667141  
DEPT NO. 23

EVANGELINA ORTEGA,

Defendant(s),

**AMENDED ORDER SETTING CIVIL JURY TRIAL**

**IT IS HEREBY ORDERED that:**

The trial date previously set in this matter for **November 12, 2014**, and all dates associated therewith are hereby VACATED; and

**IT IS FURTHER ORDERED that:**

A. The above entitled case is set to be tried for three to five days to begin on **Monday, February 9, 2015 at 1:00 pm.**

B. A Calendar Call will be held on **Tuesday, February 3, 2015 at 11:00 a.m.**

Trial Counsel (and any party in proper person) must appear. ***Trial Counsel*** must appear at the calendar call and bring the following:

- (1) Typed exhibit lists and exhibits;
- (2) Original, certified, unopened depositions;
- (3) List of equipment needed for trial;

C. The Pre-trial Memorandum must be filed no later than **January 30, 2015**, with a courtesy copy delivered to chambers. EDCR 2.67 must be complied with.

D. All discovery deadlines, deadlines for filing dispositive motions and motions to amend the pleadings or add parties are controlled by the previously issued Scheduling Order and/or any amendments or subsequent orders.

**STEFANY A. MILEY**  
DISTRICT JUDGE

DEPARTMENT TWENTY THREE  
LAS VEGAS NV 89101-2408

1 E. All motions in limine must be in writing and set for a hearing no later than 30 days  
2 prior to Trial. All pretrial motions shall be heard and decided no later than 15 days before the  
3 date scheduled for trial.

4 F. Stipulations to continue a trial date will not be considered by the Court. Pursuant to  
5 EDCR 2.35, a motion to continue trial due to any discovery issues or deadlines must be made  
6 before the Discovery Commissioner.  
7

8 G. Orders shortening time will not be signed except in extreme emergencies.

9 ***AN UPCOMING TRIAL DATE IS NOT AN EXTREME EMERGENCY***

10 Failure of the designated trial attorney or any party appearing in proper person to appear  
11 for any court appearances or to comply with this Order shall result in any of the following:

12 (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation of trial  
13 date; and/or any other appropriate remedy or sanction.  
14

15 Counsel must advise the Court immediately when the case settles or is otherwise  
16 resolved prior to trial. A stipulation which terminates a case by dismissal shall indicate  
17 whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial.

18 DATED: December 3, 2014.

19  
20   
21 HONORABLE STEFANY A. MILEY  
22 DISTRICT COURT JUDGE

23 **CERTIFICATE OF FACSIMILE**

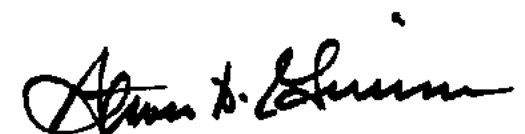
24 On the 3<sup>rd</sup> day of December, 2014 a copy of the foregoing Order Setting Civil Jury Trial was  
25 faxed to Kristian Lavigne, Esq. at (702) 364-1655 and to Stephen H. Rogers, Esq. at  
26 (702) 384-1460.

27 By:   
28 Carmen Alper  
Judicial Executive Assistant

STEFANY A. MILEY  
DISTRICT JUDGE

DEPARTMENT TWENTY THREE  
LAS VEGAS NV 89101-2408





CLERK OF THE COURT

PTD  
STEPHEN H. ROGERS, ESQ.  
Nevada Bar No. 5755  
R. KADE BAIRD  
Nevada Bar No. 8362  
ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
300 South Fourth Street, Suite 710  
Las Vegas, Nevada 89101  
Phone (702) 383-3400  
Fax (702) 384-1460  
Attorneys for Defendants

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHRISTIAN CERVANTES-LOPEZ,  
an individual; MARIA AVARCA, an individual,  
Plaintiffs,

vs.

EVANGELINA ORTEGA, an individual;  
MIRIAM PIZARRO-ORTEGA, an individual;  
DOES I through V, inclusive; and  
ROE CORPORATIONS I through V, inclusive,  
Defendants.

CASE NO.: A-12-667141-C

DEPT. NO.: XXIII

**DEFENDANTS' SUPPLEMENT NRCP 16.1(a)(3) PRE-TRIAL DISCLOSURES**

Defendants EVANGELINA ORTEGA, by and through her attorneys of record, the law firm of ROGERS, MASTRANGELO, CARVALHO & MITCHELL, and discloses her trial documents and witnesses, objects to depositions, and objects to Plaintiff's documents, pursuant to NRCP 16.1(3), as follows:

(A) Name, Address, and Telephone Number of Each Witness Defendants expect to Present, Have Subpoenaed for Trial, and Those the Party May Call if the Need Arises.

1. CHRISTIAN CERVANTES-LOPEZ  
c/o Kristian Lavigne, Esq.  
The Law Office of Kristian Lavigne & Assoc., P.C.  
5265 South Durango Drive, Suite 1  
Las Vegas, Nevada 89113

Plaintiff is expected to testify as to the facts and circumstances surrounding the subject

1 incident.

2 2. MARIA AVARCA  
3 c/o Kristian Lavigne, Esq.  
4 The Law Office of Kristian Lavigne & Assoc., P.C.  
5 5265 South Durango Drive, Suite 1  
6 Las Vegas, Nevada 89113

7 Plaintiff is expected to testify as to the facts and circumstances surrounding the subject  
8 incident.

9 3. EVANGELINA ORTEGA  
10 c/o Stephen H. Rogers, Esq.  
11 ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
12 300 S. Fourth Street, Suite 710  
13 Las Vegas, NV 89101

14 Defendant is expected to testify as to the facts and circumstances surrounding the subject  
15 incident.

16 4. MIRIAM PIZARRO-ORTEGA  
17 c/o Stephen H. Rogers, Esq.  
18 ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
19 300 S. Fourth Street, Suite 710  
20 Las Vegas, NV 89101

21 Defendant is expected to testify as to the facts and circumstances surrounding the subject  
22 incident.

23 5. MARIA CERVANTES-LOPEZ  
24 8 E Tonopah #A  
25 North Las Vegas, NV. 89030

26 This witness is expected to testify as to the facts and circumstances surrounding the subject  
27 incident.

28 6. ADAM SERRANO-SANTANA  
2558 Statz st., Apt C  
North Las Vegas, NV. 89030

This witness is expected to testify as to the facts and circumstances surrounding the subject  
incident.

7. RICO SERRANO-CORTEZ  
1077 Griffith Ave  
Las Vegas, NV. 89104

This witness is expected to testify as to the facts and circumstances surrounding the subject  
incident.

8. OFFICER S. ARRENDALE, ID #1550  
NORTH LAS VEGAS POLICE DEPARTMENT  
301 East Lake Mead Blvd.  
North Las Vegas, NV 89030

1 Officer Arrendale may testify regarding the facts of his investigation of the circumstances  
2 surrounding the subject incident.

3 9. DEREK A. DUKE, M.D., F.A.C.S  
4 861 Coronado Center Dr., Suite 200  
5 Henderson, Nevada 89052

6 Dr. Duke will testify regarding the Plaintiffs' alleged injuries and damages, consistent with  
7 the opinions expressed in his IME and Medical Record Reports.

8 10. TAMI ROCKHOLT, R.N.  
9 10940 SW Barnes Road, Suite 106  
10 Portland, OR 97225

11 Ms. Rockholt will testify regarding the Plaintiffs' alleged injuries and damages, consistent  
12 with the opinions expressed in her Medical Record Reports.

13 Defendants' list of witnesses pursuant to this disclosure is attached hereto as Exhibit A.  
14 Defendants reserve the right to amend their list of witnesses up to, and during, trial of this matter.

15 (B) Designation of Those Witnesses Whose Testimony is Expected to be Presented by Means of  
16 a Deposition.

17 Defendants reserve the right to use any and all deposition transcripts at trial of this matter,  
18 including, but not necessarily limited to:

- 19 a. Alain Coppel, M.D.  
20 2820 W. Charleston Boulevard  
21 Las Vegas, Nevada 89107
- 22 b. David Lanzkowsky, M.D.  
23 150 E. Harmon Avenue, Ste. 206  
24 Las Vegas, Nevada 89109
- 25 c. Govind Koka, D.O.  
26 9975 S. Eastern Avenue, Ste. 110B  
27 Las Vegas, Nevada 89183
- 28 d. John McCourt, M.D.  
University Medical Center  
901 Ranch Lane, Ste. 135  
Las Vegas, Nevada 89102

Pursuant to Defendants' Motions in Limine in this matter, Defendants object to the following  
portions of the deposition transcripts in this matter:

- a. To be determined.

1 (C) An Appropriate Identification of Each Document or Other Exhibit, Including Summaries of  
2 Other Evidence, Separately Identifying Those Which the Party Expects to Offer, and Those  
3 Which the Party May offer if the Need Arises.

4 Defendants' list of documents and other exhibits pursuant to this disclosure is attached hereto  
5 as Exhibit A. Defendants reserve the right to amend their list of documents and other exhibits up  
6 to, and during, trial of this matter.

7 DATED this 28 day of January, 2015.

8 ROGERS, MASTRANGELO, CARVALHO &  
9 MITCHELL

10 R. KYLE BAIRD  
11 Nevada Bar No. 8362  
12 STEPHEN H. ROGERS, ESQ.  
13 Nevada Bar No. 5755  
14 300 South Fourth Street, Suite 710  
15 Las Vegas, Nevada 89101  
16 Attorney for Defendants  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 CERTIFICATE OF SERVICE

2 Pursuant to N.R.C.P. 5(a) and E.D.C.R. 7.26(a), I hereby certify that I am an employee of  
3 Rogers, Mastrangelo, Carvalho & Mitchell, and on the 28 day of January, 2015, a true and correct  
4 copy of the foregoing **DEFENDANTS' SUPPLEMENT NRCP 16.1(a)(3) PRE-TRIAL**  
5 **DISCLOSURES** was served upon the following counsel of record as follows:

6  
7 \_\_\_\_\_ via First Class, U.S. Mail, postage prepaid

8 \_\_\_\_\_ via Facsimile

9 \_\_\_\_\_ via Hand-Delivery

10 XXX via Electronic Service pursuant to Rule 9 of the N.E.F.C.R.

11 (Administrative Order 14-2)

12 Daniel S. Simon, Esq.  
13 Nevada Bar No: 4750  
14 Simon & Associates  
15 810 South Casino Center Blvd.,  
16 Las Vegas, NV 89101  
17 P: (702) 364-1650  
18 F: (702) 364-1655  
19 *Attorneys for Plaintiffs*

20  
21  
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23  
24  
25  
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27  
28



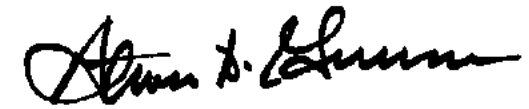
\_\_\_\_\_  
An Employee of  
Rogers, Mastrangelo, Carvalho & Mitchell

**CHRISTIAN CERVANTES-LOPEZ and MARIA AVARCA**  
**vs.**  
**EVANGELINA ORTEGA and MIRIAM PIZARRO-ORTEGA**  
**Case No. A-12-667141-C**

**EXHIBIT A**

1	Defendant's Answer to Plaintiff's Complaint
2	Defendant's Amended Answer to Plaintiff's Complaint
3	Plaintiff's vehicle damage estimates
4	Color photographs of ADAM SERRANO-SANTANA (driver) and RICO SERRANO-CORTEZ's (owner) vehicle
5	ADAM SERRANO-SANTANA (driver) and RICO SERRANO-CORTEZ's (owner) vehicle damage estimates
6	Color photographs of Plaintiff's vehicle
7	University Medical Center's medical records, and bills of Christian Cervantes-Lopez
8	Neck & Back Clinic's medical records, and bills of Christian Cervantes-Lopez
9	Las Vegas Radiology medical records and bills of Christian Cervantes-Lopez
10	Primary Care Consultants medical records and bills of Christian Cervantes-Lopez
11	Nevada Comprehensive Pain Center medical records and bills of Christian Cervantes-Lopez
12	Canyon Medical Billing medical records and bills of Christian Cervantes-Lopez
13	Centennial Pain Relief medical records and bills of Christian Cervantes-Lopez
14	University Medical Center's medical records and bills of Maria Avarca
15	Neck & Back Clinic's medical records and bills of Maria Avarca
16	Las Vegas Radiology's medical records and bills of Maria Avarca
17	Primary Care Consultant's medical records and bills of Maria Avarca
18	Nevada Comprehensive Pain Center's medical records and bills of Maria Avarca

19	North Las Vegas Fire Department's medical records and bills of Maria
20	Surveillance Video and Report of Plaintiffs' from Ally Investigations



CLERK OF THE COURT

1 **PMEM**  
2 DANIEL S. SIMON, ESQ.  
3 Nevada Bar #004750  
4 BENJAMIN J. MILLER, ESQ.  
5 Nevada Bar #010406  
6 SIMON LAW  
7 810 S. Casino Center Blvd.  
8 Las Vegas, Nevada 89101  
9 Telephone (702) 364-1650  
10 Fax (702) 364-1655  
11 [dan@simonlawlv.com](mailto:dan@simonlawlv.com)  
12 Attorneys for Plaintiffs

13  
14 **DISTRICT COURT**  
15  
16 **CLARK COUNTY, NEVADA**  
17

18 CHRISTIAN CERVANTES-LOPEZ,  
19 an individual,  
20 MARIA ABARCA, an individual

21 Plaintiffs,

22 vs.

23 EVANGELINA ORTEGA, an individual;  
24 MIRIAM PIZARRO-ORTEGA, an individual  
25 DOES I through V; inclusive  
26 and ROE CORPORATIONS I through V,  
27 inclusive

28 Defendants.

Case No.: A667141  
Dept. No.: XXIII

**PLAINTIFFS' PRE-TRIAL MEMORANDUM**

COMES NOW Plaintiffs, by and through their attorneys, SIMON LAW, and hereby submits  
the following Pre-Trial Memorandum:

**I**

**FACTS**

On November 20, 2011, Plaintiffs Christian Cervantes-Lopez and Maria ABARCA were  
traveling westbound on Lake Mead Blvd., when suddenly without warning Defendant Miriam Pizarro-  
Ortega, who was operating a motor vehicle owned by Defendant Evangelina Ortega, made an  
improper left turn, thus causing a violent collision with Plaintiffs' vehicle. As a result of the  
dangerous condition created by Defendants, Plaintiffs sustained serious injuries.

///

SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655



**II.**

**CLAIMS FOR RELIEF**

Plaintiffs seek damages for past and future medical expenses, past and future pain, suffering, anxiety, loss of enjoyment of life, severe emotional distress, mental anguish, disfigurement, permanent disability; general damages; and attorney's fees, interest, and costs.

**III.**

**AMENDMENTS REQUIRED OF THE PLEADINGS**

Plaintiffs will move to amend the Complaint to conform with the evidence, if necessary.

**IV.**

**TENDER OF ISSUES IN THE PLEADINGS TO BE ABANDONED**

None at this time.

**V.**

**PLAINTIFFS' EXHIBITS**

1. Summary of Medical Specials for Plaintiff Christian Cervantes-Lopez
2. Summary of Medical Specials for Plaintiff Maria Abarca
3. Billing and Medical Records from University Medical Center for Plaintiff Christian Cervantes-Lopez
4. Billing and Medical Records from the Neck and Back Clinic for Plaintiff Christian Cervantes-Lopez
5. Billing and Medical Records from Las Vegas Radiology for Plaintiff Christian Cervantes-Lopez
6. Billing and Medical Records from Primary Care Consultants for Plaintiff Christian Cervantes-Lopez
7. Billing and Medical Records from Advantage Diagnostic Imaging Center for Plaintiff Christian Cervantes-Lopez
8. Billing and Medical Records from Nevada Comprehensive Pain Center/Dr. Coppel for Plaintiff Christian Cervantes-Lopez
9. Billing and Medical Records from Nevada Comprehensive Pain Center Pharmacy/Dr. Coppel for Plaintiff Christian Cervantes-Lopez
10. Billing and Medical Records from Centennial Medical Group/Centennial Pain Center/Centennial Surgery Center for Plaintiff Christian Cervantes-Lopez
11. Billing and Medical Records from Western Regional Center for the Brain & Spine for Plaintiff Christian Cervantes-Lopez
12. Billing and Medical Records from University Medical Center for Plaintiff Maria Abarca
13. Billing and Medical Records from North Las Vegas Fire Department/EMS for Plaintiff Maria Abarca
14. Billing and Medical Records from Desert Radiologists for Plaintiff Maria Abarca
15. Billing and Medical Records from the Neck & Back Clinic for Plaintiff Maria Abarca
16. Billing and Medical Records from Las Vegas Radiology for Plaintiff Maria Abarca
17. Billing and Medical Records from Primary Care Consultants for Plaintiff Maria Abarca

18. Billing and Medical Records from Nevada Comprehensive Pain Center/Dr. Coppel for Plaintiff Maria Abarca
19. Billing and Medical Records from Centennial Medical Group/Centennial Pain Center/Centennial Surgery Center for Plaintiff Maria Abarca
20. State of Nevada Traffic Accident Report
21. Plaintiffs' vehicle damage estimate.
22. Color photographs of Plaintiffs' vehicle.
23. Rocio Serrano-Cortezs' vehicle damage estimate
24. CV, rate sheet and list of cases from David Lanzkowsky, M.D.
25. CV, rate sheet and list of cases from Alain Coppel, M.D.
26. CV, rate sheet and list of case from Stuart Kaplan, M.D.

Plaintiffs may use any and all writings, published works, journals, treatises, medical texts, affidavits, films, drawings, graphs, charts, photographs, reports, computer tapes, computer discs, and other data compilations, and other medical reference materials which Plaintiff and/or Plaintiffs' experts use in support of Plaintiffs' allegations.

Deposition transcripts will be used as needed for rebuttal or impeachment. Deposition transcripts may also be used for direct examination if the witness is unable to testify at the time of trial.

Plaintiffs may also use the Parties' responses to discovery as necessary.

Plaintiffs reserve the right to object to the admission of Defendants' exhibits at the time of trial.

Plaintiffs reserve the right to use any and all other exhibits needed for rebuttal or impeachment.

Plaintiffs may offer documents produced by Plaintiffs and Defendants in which experts have reviewed and formed an opinion based on each document, including but not limited to reports, pleadings, correspondence, notes, as well as medical records and billing.

## VI.

### PLAINTIFFS' WITNESSES

1. Christian Cervantes-Lopez  
c/o Simon Law  
810 S. Casino Center Blvd.  
Las Vegas, NV 89101

Is expected to testify regarding the facts and circumstances surrounding the November 20, 2011.

2. Maria ABARCA  
c/o Simon Law  
810 S. Casino Center Blvd.  
Las Vegas, NV 89101

Is expected to testify regarding the facts and circumstances surrounding the November 20, 2011.

3. Evangelina Ortega  
c/o Stephen Rogers, Esq., and Kade Baird, Esq.  
Rogers, Masterangelo, Carvalho & Mitchell  
300 S. Fourth Street, Suite 710  
Las Vegas, NV 89101

Is expected to testify regarding the facts and circumstances surrounding the November 20, 2011.

4. Miriam Pizarro-Ortega  
c/o Stephen Rogers, Esq., and Kade Baird, Esq.  
Rogers, Masterangelo, Carvalho & Mitchell  
300 S. Fourth Street, Suite 710  
Las Vegas, NV 89101

Is expected to testify regarding the facts and circumstances surrounding the November 20, 2011.

5. Person Most Knowledgeable and/or Custodian of Records for  
University Medical Center  
John D. McCourt, M.D.  
1800 W. Charleston Blvd.  
Las Vegas, NV 89102

Is expected to testify as a medical expert regarding the physical and mental condition and medical treatment rendered to Plaintiffs **CHRISTIAN CERVANTES-LOPEZ** and **MARIA ABARCA**, including that the diagnosis and prognosis as a result of the incident in question, that such treatment was necessitated by said incident and was reasonable and necessary for the injuries sustained, the permanent disability, pain, suffering, anxiety, loss of enjoyment of life and physical and mental restrictions resulting therefrom, and his inability to be gainfully employed, as well as the necessity and cost for future medical treatment. That the medical billings were reasonable, necessary and related to the subject incident. The custodian of records is expected to testify regarding all records and billings generated for **CHRISTIAN CERVANTES-LOPEZ** and **MARIA ABARCA** for treatment rendered as a result of the incident in question. This expert is expected to testify consistent with the medical records related to the treatment of the Plaintiffs for the subject incident, and any medical records for other incidents, before or after the subject incident having relevance to this action. The facts and opinions to which the expert is expected to testify include any and all facts and opinions in the said medical records and medical history of Plaintiffs and that the medical treatment the Plaintiffs received were reasonable, necessary, and caused by the incident set forth in the Complaint, and any facts and opinions that would rebut any opinions rendered by any witness disclosed by any party in this action that contradict the same. This expert will also interpret radiographic findings, physical therapy treatment, work restrictions, job duties, permanent impairments, inability to perform normal daily living activities, recreational activities,

hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the damages Plaintiffs have sustained as a result of this case.

6. Person Most Knowledgeable and/or Custodian of Records for  
The Neck and Back Clinics  
Marilyn Adair, D.C.  
P.O. Box 38653  
Las Vegas, NV 89113-6853  
(702) 644-3333

Is expected to testify as a medical expert regarding the physical and mental condition and medical treatment rendered to Plaintiffs **CHRISTIAN CERVANTES-LOPEZ** and **MARIA ABARCA**, including that the diagnosis and prognosis as a result of the incident in question, that such treatment was necessitated by said incident and was reasonable and necessary for the injuries sustained, the permanent disability, pain, suffering, anxiety, loss of enjoyment of life and physical and mental restrictions resulting therefrom, and his in ability to be gainfully employed, as well as the necessity and cost for future medical treatment. That the medical billings were reasonable, necessary and related to the subject incident. The custodian of records is expected to testify regarding all records and billings generated for **CHRISTIAN CERVANTES-LOPEZ** and **MARIA ABARCA** for treatment rendered as a result of the incident in question. This expert is expected to testify consistent with the medical records related to the treatment of the Plaintiffs for the subject incident, and any medical records for other incidents, before or after the subject incident having relevance to this action. The facts and opinions to which the expert is expected to testify include any and all facts and opinions in the said medical records and medical history of Plaintiffs and that the medical treatment the Plaintiffs received were reasonable, necessary, and caused by the incident set forth in the Complaint, and any facts and opinions that would rebut any opinions rendered by any witness disclosed by any party in this action that contradict the same. This expert will also interpret radiographic findings, physical therapy treatment, work restrictions, job duties, permanent impairments, inability to perform normal daily living activities, recreational activities, hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the damages Plaintiffs have sustained as a result of this case.

7. Person Most Knowledgeable and/or Custodian of Records for  
Las Vegas Radiology  
Lawrence Bogle, M.D.  
7500 Smoke Ranch Road, Suite 100  
Las Vegas, NV 89128  
(702) 254-5004

Is expected to testify as a medical expert regarding the physical and mental condition and medical treatment rendered to Plaintiffs **CHRISTIAN CERVANTES-LOPEZ** and **MARIA ABARCA**, including that the diagnosis and prognosis as a result of the incident in question, that such treatment was necessitated by said incident and was reasonable and necessary for the injuries sustained, the permanent disability, pain, suffering, anxiety, loss of enjoyment of life and physical and mental restrictions resulting therefrom, and his in ability to be gainfully employed, as well as the necessity and cost for future medical treatment. That the medical billings were reasonable, necessary and related to the subject incident. The custodian of records is expected to testify regarding all records and billings generated for **CHRISTIAN CERVANTES-LOPEZ** and **MARIA ABARCA** for treatment rendered as a result of the incident in question. This expert is expected to testify consistent with the medical records related to the treatment of the Plaintiffs for the subject incident, and any medical records for other incidents, before or after the subject incident having relevance to this action. The facts and opinions to which the expert is expected to testify include any and all facts and opinions in the said medical records and medical history of Plaintiffs and that the medical treatment

1 the Plaintiffs received were reasonable, necessary, and caused by the incident set forth in the  
2 Complaint, and any facts and opinions that would rebut any opinions rendered by any witness  
3 disclosed by any party in this action that contradict the same. This expert will also interpret  
4 radiographic findings, physical therapy treatment, work restrictions, job duties, permanent  
5 impairments, inability to perform normal daily living activities, recreational activities,  
6 hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the  
7 damages Plaintiffs have sustained as a result of this case.

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8. Person Most Knowledgeable and/or Custodian of Records for  
Primary Care Consultants  
D. Rodriguez, PA-C  
P.O. Box 778195  
Henderson, NV 89077-8915  
(702) 492-7208

Is expected to testify as a medical expert regarding the physical and mental condition and  
medical treatment rendered to Plaintiffs **CHRISTIAN CERVANTES-LOPEZ** and **MARIA  
ABARCA**, including that the diagnosis and prognosis as a result of the incident in question,  
that such treatment was necessitated by said incident and was reasonable and necessary for  
the injuries sustained, the permanent disability, pain, suffering, anxiety, loss of enjoyment of  
life and physical and mental restrictions resulting therefrom, and his inability to be gainfully  
employed, as well as the necessity and cost for future medical treatment. That the medical  
billings were reasonable, necessary and related to the subject incident. The custodian of  
records is expected to testify regarding all records and billings generated for **CHRISTIAN  
CERVANTES-LOPEZ** and **MARIA ABARCA** for treatment rendered as a result of the  
incident in question. This expert is expected to testify consistent with the medical records  
related to the treatment of the Plaintiffs for the subject incident, and any medical records for  
other incidents, before or after the subject incident having relevance to this action. The facts  
and opinions to which the expert is expected to testify include any and all facts and opinions  
in the said medical records and medical history of Plaintiffs and that the medical treatment  
the Plaintiffs received were reasonable, necessary, and caused by the incident set forth in the  
Complaint, and any facts and opinions that would rebut any opinions rendered by any witness  
disclosed by any party in this action that contradict the same. This expert will also interpret  
radiographic findings, physical therapy treatment, work restrictions, job duties, permanent  
impairments, inability to perform normal daily living activities, recreational activities,  
hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the  
damages Plaintiffs have sustained as a result of this case.

9. Person Most Knowledgeable and/or Custodian of Records for  
Centennial Medical Group  
Centennial Pain Relief Network  
Centennial Surgery Center  
David Lanzkowsky, M.D.  
4454 N. Decatur Blvd.  
Las Vegas, NV 89130  
(702) 839-1203

Is expected to testify as a medical expert regarding the physical and mental condition and  
medical treatment rendered to Plaintiffs **CHRISTIAN CERVANTES-LOPEZ** and **MARIA  
ABARCA**, including that the diagnosis and prognosis as a result of the incident in question,  
that such treatment was necessitated by said incident and was reasonable and necessary for  
the injuries sustained, the permanent disability, pain, suffering, anxiety, loss of enjoyment of  
life and physical and mental restrictions resulting therefrom, and his inability to be gainfully  
employed, as well as the necessity and cost for future medical treatment. That the medical  
billings were reasonable, necessary and related to the subject incident. The custodian of



records is expected to testify regarding all records and billings generated for **CHRISTIAN CERVANTES-LOPEZ** and **MARIA ABARCA** for treatment rendered as a result of the incident in question. This expert is expected to testify consistent with the medical records related to the treatment of the Plaintiffs for the subject incident, and any medical records for other incidents, before or after the subject incident having relevance to this action. The facts and opinions to which the expert is expected to testify include any and all facts and opinions in the said medical records and medical history of Plaintiffs and that the medical treatment the Plaintiffs received were reasonable, necessary, and caused by the incident set forth in the Complaint, and any facts and opinions that would rebut any opinions rendered by any witness disclosed by any party in this action that contradict the same. This expert will also interpret radiographic findings, physical therapy treatment, work restrictions, job duties, permanent impairments, inability to perform normal daily living activities, recreational activities, hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the damages Plaintiffs have sustained as a result of this case.

10. Person Most Knowledgeable and/or Custodian of Records for  
Advantage Diagnostic Imaging  
Keith M. Lewis, M.D.  
2980 S. Jones Blvd., #E  
Las Vegas, NV 89146  
(702) 362-6652

Is expected to testify as a medical expert regarding the physical and mental condition and medical treatment rendered to Plaintiffs **CHRISTIAN CERVANTES-LOPEZ** and **MARIA ABARCA**, including that the diagnosis and prognosis as a result of the incident in question, that such treatment was necessitated by said incident and was reasonable and necessary for the injuries sustained, the permanent disability, pain, suffering, anxiety, loss of enjoyment of life and physical and mental restrictions resulting therefrom, and his inability to be gainfully employed, as well as the necessity and cost for future medical treatment. That the medical billings were reasonable, necessary and related to the subject incident. The custodian of records is expected to testify regarding all records and billings generated for **CHRISTIAN CERVANTES-LOPEZ** and **MARIA ABARCA** for treatment rendered as a result of the incident in question. This expert is expected to testify consistent with the medical records related to the treatment of the Plaintiffs for the subject incident, and any medical records for other incidents, before or after the subject incident having relevance to this action. The facts and opinions to which the expert is expected to testify include any and all facts and opinions in the said medical records and medical history of Plaintiffs and that the medical treatment the Plaintiffs received were reasonable, necessary, and caused by the incident set forth in the Complaint, and any facts and opinions that would rebut any opinions rendered by any witness disclosed by any party in this action that contradict the same. This expert will also interpret radiographic findings, physical therapy treatment, work restrictions, job duties, permanent impairments, inability to perform normal daily living activities, recreational activities, hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the damages Plaintiffs have sustained as a result of this case.

11. Person Most Knowledgeable and/or Custodian of Records for  
Western Regional Center for Brain and Spine  
Stuart Kaplan, M.D.  
3061 S. Maryland Pkwy., #200  
Las Vegas, NV 89109  
(702) 737-1948

Is expected to testify as a medical expert regarding the physical and mental condition and medical treatment rendered Plaintiff **CHRISTIAN CERVANTES-LOPEZ** including that the diagnosis and prognosis as a result of the incident in question, that such treatment was

necessitated by said incident and was reasonable and necessary for the injuries sustained, the permanent disability, pain, suffering, anxiety, loss of enjoyment of life and physical and mental restrictions resulting therefrom, and his inability to be gainfully employed, as well as the necessity and cost for future medical treatment. That the medical billings were reasonable, necessary and related to the subject incident. The custodian of records is expected to testify regarding all records and billings generated for **CHRISTIAN CERVANTES-LOPEZ** for treatment rendered as a result of the incident in question. This expert is expected to testify consistent with the medical records related to the treatment of the Plaintiff for the subject incident, and any medical records for other incidents, before or after the subject incident having relevance to this action. The facts and opinions to which the expert is expected to testify include any and all facts and opinions in the said medical records and medical history of Plaintiff and that the medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident set forth in the Complaint, and any facts and opinions that would rebut any opinions rendered by any witness disclosed by any party in this action that contradict the same. This expert will also interpret radiographic findings, physical therapy treatment, work restrictions, job duties, permanent impairments, inability to perform normal daily living activities, recreational activities, hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the damages Plaintiff(s) have sustained as a result of this case.

12. Person Most Knowledgeable and/or Custodian of Records for  
NEVADA COMPREHENSIVE PAIN CENTER  
Alain Coppel, M.D.  
2820 W Charleston Blvd., Suite 7  
Las Vegas, NV 89102  
(702) 476-9999

Is expected to testify as a medical expert regarding the physical and mental condition and medical treatment rendered to Plaintiffs **CHRISTIAN CERVANTES-LOPEZ** and **MARIA ABARCA**, including that the diagnosis and prognosis as a result of the incident in question, that such treatment was necessitated by said incident and was reasonable and necessary for the injuries sustained, the permanent disability, pain, suffering, anxiety, loss of enjoyment of life and physical and mental restrictions resulting therefrom, and his inability to be gainfully employed, as well as the necessity and cost for future medical treatment. That the medical billings were reasonable, necessary and related to the subject incident. The custodian of records is expected to testify regarding all records and billings generated for **CHRISTIAN CERVANTES-LOPEZ** and **MARIA ABARCA** for treatment rendered as a result of the incident in question. This expert is expected to testify consistent with the medical records related to the treatment of the Plaintiffs for the subject incident, and any medical records for other incidents, before or after the subject incident having relevance to this action. The facts and opinions to which the expert is expected to testify include any and all facts and opinions in the said medical records and medical history of Plaintiffs and that the medical treatment the Plaintiffs received were reasonable, necessary, and caused by the incident set forth in the Complaint, and any facts and opinions that would rebut any opinions rendered by any witness disclosed by any party in this action that contradict the same. This expert will also interpret radiographic findings, physical therapy treatment, work restrictions, job duties, permanent impairments, inability to perform normal daily living activities, recreational activities, hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the damages Plaintiffs have sustained as a result of this case.

13. Person Most Knowledgeable and/or Custodian of Records  
North Las Vegas Fire Department/EMS  
4040 Losee Road  
North Las Vegas, Nevada 89030  
(702) 633-1102

Is expected to testify as a medical expert regarding the physical and mental condition and medical treatment rendered Plaintiff **MARIA ABARCA** including that the diagnosis and prognosis as a result of the incident in question, that such treatment was necessitated by said incident and was reasonable and necessary for the injuries sustained, the permanent disability, pain, suffering, anxiety, loss of enjoyment of life and physical and mental restrictions resulting therefrom, and his in ability to be gainfully employed, as well as the necessity and cost for future medical treatment. That the medical billings were reasonable, necessary and related to the subject incident. The custodian of records is expected to testify regarding all records and billings generated for **MARIA ABARCA** for treatment rendered as a result of the incident in question. This expert is expected to testify consistent with the medical records related to the treatment of the Plaintiff for the subject incident, and any medical records for other incidents, before or after the subject incident having relevance to this action. The facts and opinions to which the expert is expected to testify include any and all facts and opinions in the said medical records and medical history of Plaintiff and that the medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident set forth in the Complaint, and any facts and opinions that would rebut any opinions rendered by any witness disclosed by any party in this action that contradict the same. This expert will also interpret radiographic findings, physical therapy treatment, work restrictions, job duties, permanent impairments, inability to perform normal daily living activities, recreational activities, hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the damages Plaintiff(s) have sustained as a result of this case.

14. Person Most Knowledgeable and/or Custodian of Records  
Desert Radiologists  
P.O. Box 3057  
Indianapolis, IN 46206

Is expected to testify as a medical expert regarding the physical and mental condition and medical treatment rendered Plaintiff **MARIA ABARCA** including that the diagnosis and prognosis as a result of the incident in question, that such treatment was necessitated by said incident and was reasonable and necessary for the injuries sustained, the permanent disability, pain, suffering, anxiety, loss of enjoyment of life and physical and mental restrictions resulting therefrom, and his in ability to be gainfully employed, as well as the necessity and cost for future medical treatment. That the medical billings were reasonable, necessary and related to the subject incident. The custodian of records is expected to testify regarding all records and billings generated for **MARIA ABARCA** for treatment rendered as a result of the incident in question. This expert is expected to testify consistent with the medical records related to the treatment of the Plaintiff for the subject incident, and any medical records for other incidents, before or after the subject incident having relevance to this action. The facts and opinions to which the expert is expected to testify include any and all facts and opinions in the said medical records and medical history of Plaintiff and that the medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident set forth in the Complaint, and any facts and opinions that would rebut any opinions rendered by any witness disclosed by any party in this action that contradict the same. This expert will also interpret radiographic findings, physical therapy treatment, work restrictions, job duties, permanent impairments, inability to perform normal daily living activities, recreational activities, hobbies, pain, suffering, emotional distress, mentally and physically as it relates to the damages Plaintiff(s) have sustained as a result of this case.

15. Officer S. Arrendale, ID# 1550  
North Las Vegas Police Department  
301 East Lake Mead Blvd.  
North Las Vegas, NV 89030



1 Is expected to testify regarding the facts and circumstances surrounding the  
2 November 12, 2011 accident, and the investigation thereof.

3 16. Adam Serrano-Santana  
4 2558 Statz St., Apt C  
5 North Las Vegas, NV 89030

6 Is expected to testify regarding the facts and circumstances surrounding the November 20,  
7 2011.

8 17. Rico Serrano-Cortez  
9 1077 Griffith Ave.  
10 Las Vegas, NV 89104

11 Is expected to testify regarding the facts and circumstances surrounding the November 20,  
12 2011.

13 Plaintiffs may call the Custodian of Records of all treating physicians to testify as to the  
14 completeness and accuracy of records, medical records and bills generated in the normal course of  
15 business. Plaintiffs may also call any Custodian of Record necessary to lay the proper foundation for  
16 any item of evidence.

17 Plaintiffs reserve the right to call any witness named by Defendant. Plaintiff reserves the right  
18 to call any witness as may be necessary for the purpose of impeachment. Plaintiff may call any and  
19 all witnesses called in rebuttal to testimony given by Defendant's witnesses.

20 Plaintiffs reserve the right to object to any of Defendant's witnesses at the time of trial.  
21 Plaintiff has not yet subpoenaed any witnesses but reserve the right to do so should it be deemed  
22 necessary to ensure the appearance of any witness.

## 23 VII.

### 24 ISSUES OF LAW

25 The following are issues of law presented by Plaintiffs, which may be contested at the time  
26 of trial:

- 27 1. Whether the Defendants' were negligent and liable for the subject injury.
- 28 2. The extent of damages caused by the subject accident.

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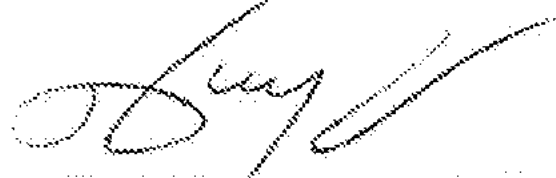
SIMON LAW  
810 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
702-364-1650 Fax: 702-364-1655

VIII.

TIME REQUIRED FOR TRIAL

Three to five days.

Dated this 30<sup>th</sup> day of January, 2015.

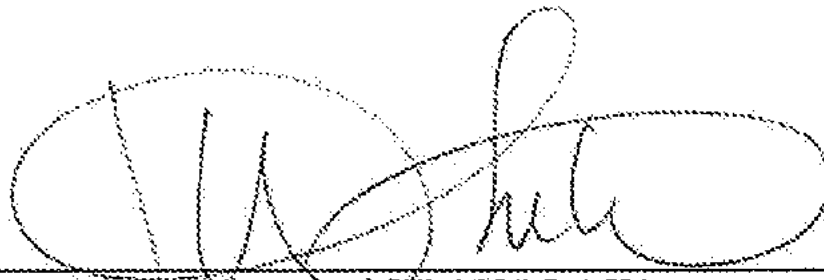


DANIEL S. SIMON, ESQ.  
Nevada Bar #004750  
BENJAMIN J. MILLER, ESQ.  
Nevada Bar #010406  
Attorney for Plaintiffs

CERTIFICATE OF E-SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this 30 day of January, 2015, I served the foregoing PLAINTIFFS' PRE-TRIAL MEMORANDUM on the following parties by electronic transmission through the Wiznet system:

Stephen Rogers, Esq.  
Kade Baird, Esq.  
Rogers, Masterangelo, Carvalho & Mitchell  
300 S. Fourth Street, Suite 710  
Las Vegas, NV 89101  
(702) 383-3400  
Fax (702) 384-1460  
Attorneys for Defendants



An Employee of SIMON LAW