

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DELUCCHI and
TOMMY HOLLIS,

Appellants,

v.

PAT SONGER and ERICKSON
THORPE & SWAINSTON, LTD.

Respondents

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JOINT APPENDIX

VOLUME III OF VII

Appeal from the Fifth Judicial District Court
Case. No. CV35969

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I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 5th day of August, 2016, I did serve the above and forgoing JOINT APPENDIX, VOLUME III of VII by way of Notice of Electronic Filing provided by the court mandated E-Flex filing service, to the following:

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EXHIBIT “11”

1 RECEIVED
2 AUG 21 2013
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5 TRANSCRIPT OF PROCEEDINGS

6 RE GRIEVANCES OF

7 TOMMY HOLLIS

8 AND

9 RAYMOND DELUCCHI
10
11
12
13

14 August 13, 2013

15 9:03 A.M.

16 270 Highway 160

17 Pahrump, Nevada
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23
24

25 Reported by: Jennifer A. Clark, RDR, CRR, CCR #422

logged.

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1 Does the Town rest?

2 MR. CAMPBELL: The Town rests.

3 THE ARBITRATOR: And is the Union ready
4 to proceed with that portion of its case that it has
5 not already presented out of order?

6 MR. LEVINE: We are.

7 THE ARBITRATOR: All right. You may
8 call your witness.

9 MR. LEVINE: Thank you. I would call
10 EMT Tommy Hollis.

11
12 TOMMY HOLLIS,
13 having been called as a witness and having been
14 first duly sworn, was examined and testified as
15 follows:

16 THE ARBITRATOR: Thank you. State your
17 name for the record, please.

18 THE WITNESS: Tommy Hollis.

19 THE ARBITRATOR: Thank you.

20 Please proceed.

21 THE WITNESS: H-O-L-L-I-S.

22

23 DIRECT EXAMINATION

24 BY MR. LEVINE:

25 Q. Mr. Hollis, let's start with your

1 background. How long have you worked in the field
2 of emergency medical services?

3 A. I've worked for the Town of Pahrump
4 since 2005. September was my hire date. I have
5 prior experience with the department when they were
6 all volunteer. I started in October of '91.

7 Q. So have you been working in emergency
8 medical and rescue for Pahrump Valley Fire and
9 Rescue since 1991 in either a volunteer or a paid
10 capacity?

11 A. I was a volunteer for approximately
12 15 years prior to getting hired after I tested. I
13 was just a fireman as a volunteer up until -- I
14 believe it was '95 that I got my basic, and I was a
15 basic for approximately eight years. I believe I
16 got my intermediate -- I went up to an intermediate
17 status so that I could eventually test with the
18 department when it was moving forward to practicing
19 in the paid department.

20 Q. So when you started back in 1991, was it
21 an all-volunteer department at that time?

22 A. Yes, it was all volunteer.

23 Q. And you were one of the volunteers?

24 A. Yes.

25 Q. And just so we have some understanding,

1 what does a volunteer do? What's the scope of what
2 you're doing to volunteer for your Town?

3 A. As a volunteer, you're going to do
4 whatever the department trains you to do at any hour
5 of the day or night, whenever the request is put out
6 to come to service. And at the same time, you
7 should be -- if you're not in the upper element of
8 ages, you probably have a full-time job, which I
9 did. And you'll do basically whatever firefighting
10 tasks you're trained to do. Whatever task is at
11 hand, I should say.

12 Q. Now, you got your EMT-basic in 1995; is
13 that correct?

14 A. I believe so, yes.

15 Q. And --

16 A. I'm not a hundred percent sure, but it
17 was somewhere in there.

18 Q. Eventually after becoming an
19 EMT-intermediate, you got hired on into a paid
20 position?

21 A. I tested twice. I got hired the second
22 time.

23 Q. And let's talk about what are you
24 trained to do as an EMT-I?

25 A. As an intermediate, we do intravenous

1 solutions. We're allowed to administer several
2 drugs, the treatments for asthmatics, epi for
3 patients having anaphylactic shock, sugar diabetes,
4 we can do sugar through intravenous and several
5 other things. I'm not a hundred percent sure, but
6 there's a list of about ten drugs that we're allowed
7 to give.

8 Q. I'd like to direct your attention to the
9 early morning hours of May 25, 2012. Please tell
10 the arbitrator what happened.

11 A. My partner and I were on an
12 interfacility transport from Desert View to
13 Las Vegas. As I spoke to about this -- the
14 investigation that went on after we were put on
15 unpaid leave, I explained to them that I did not
16 know exactly which facility we went to because we do
17 quite a few interfacility transports on a regular
18 basis.

19 But on our way back, it was in the wee
20 hours. It was after midnight. Don't exactly know
21 what time it was. We were coming back over the
22 mountain on the Pahrump side, which is approximately
23 mile marker 22, 23, in that area. My partner was
24 driving. I was in the passenger seat.

25 Q. For the record -- I don't think it's

1 really in dispute at this point -- your partner was
2 Mr. Delucchi.

3 A. Correct, my partner was Mr. Delucchi.

4 Q. Okay.

5 A. He was driving the ambulance. I was in
6 the passenger seat. He said a vehicle was coming up
7 very quickly behind us, and they had their flashers
8 on or flashing their lights, I'm not sure. I'm not
9 a hundred percent sure what was said in that. A lot
10 of things were happening very quickly.

11 I looked in my mirror, and I couldn't
12 see a vehicle, but he goes, whoa, and he swerved the
13 ambulance over. And in the number one lane on the
14 shoulder, there is rumble strips, 'cause we have hit
15 them many times coming back from transports 'cause
16 people are very tired and exhausted, and the rumble
17 strips have saved us from going off the road many
18 times.

19 And as I looked over, I could see the
20 vehicle come into my view through the driver's
21 window. He was -- there was a gentleman in there,
22 and he was pointing. He was just going crazy. He
23 was one-handed driving and pointing at us. We
24 couldn't hear what he was saying, but we could see
25 his mouth was moving, and I could see another person

1 in the passenger seat.

2 Ray swerved over. We hit the rumble
3 strips, and he got very nervous. He goes, I don't
4 like this. And we had a quick conversation of what
5 should we do, what should we do. We were both
6 immediately on the defensive mode, because when the
7 car swerved at us, we thought we were going to get
8 hit. We thought we were going to roll the
9 ambulance.

10 So we basically made a decision to try
11 and stop and see if somebody was asking for help,
12 'cause we don't know what was needed at that point.
13 We were unsure of what was really actually going on.
14 And it took me a minute to get Ray to slow down, and
15 we finally eventually pulled over on the shoulder of
16 the road, which is also, like I said, rumble strips.

17 And before I could even blink, there was
18 a guy in our window -- in the driver's window right
19 there just beating on the window real fast. I
20 thought I heard him grab the door handle, 'cause we
21 have long door handles that are really thick and
22 heavy and black. And when you pop them like that
23 and the door is still locked, it won't unlock the
24 door and open it. It just lets go, and you can hear
25 it thump. And I said, Ray, did he just grab your

1 door?

2 And Ray went, oh, my God. He goes,
3 where'd this guy come from? He didn't see the guy
4 approaching, I don't think. He may have just at the
5 last second.

6 And I said. Whoa, whoa, whoa, sir.
7 Both of us immediately in unison we're screaming at
8 this guy, whoa, whoa, whoa, back away from the
9 ambulance and calm down. It was very, very quick
10 and animated. He was extremely aggressive looking.
11 He was cursing at us.

12 And I said, Ray, I don't like this. And
13 we thought about just driving away, but we went,
14 maybe he needs some help. We've got to at least
15 investigate what's going on here.

16 We were in a radio dead zone. I don't
17 know if we had cell service. We never actually
18 picked our phones up. I don't even know where mine
19 was at that moment.

20 That's when Ray rolled the window down
21 approximately that far (indicating) and yelled, sir,
22 back away from the ambulance and calm down. The
23 next thing I know, the guy is not in the window
24 anymore.

25 Q. Let me stop you right there at this

1 point. I'm going to ask you to continue in a
2 moment.

3 What is the lighting like in this area?

4 A. It's pitch black. There's no moonlight.
5 There's zero lighting. It's absolutely as dark as
6 dark can be. You might as well be in the bottom of
7 a closet in the middle of night. It's that black.

8 Q. At some point, did Ray turn on -- flick
9 a switch for some lights?

10 A. Yes. He flipped on our emergency lights
11 so that any passing vehicles at that hour would know
12 we were at least on the side of the road in some
13 type of -- some type of fashion.

14 And the vehicle behind us had pulled in
15 to where I could not see them in my mirror. They
16 were kind of cocked sort of north, kind of cocked
17 almost to the number one lane. They were kind of in
18 the roadway, not in the roadway.

19 And I said, Ray, I can't see the
20 vehicle. I said, can you?

21 And he said yes.

22 I said, let's take a breath here for a
23 second before we get out. Let's get our faculties
24 here, because we're both -- the hair on our neck was
25 standing up. We're not really sure what's going to

1 happen when we exit the car. But we're going to at
2 least make an attempt to find out what is going on.

3 Q. Now let me just clarify one point before
4 I ask you to continue.

5 When you say he flipped on the emergency
6 lights, we've heard testimony that there's two types
7 of lights, flashing amber as opposed to a white
8 spotlight. Which light was it?

9 A. Correct. I do not -- I do not recall
10 flipping the scene lighting on. I only know that we
11 flipped on the sequencer which runs the flashing
12 lights.

13 Q. Okay. So the scene lights -- which are
14 the white lights; right?

15 A. Yes. They're all manually flipped on
16 with another button. You have to have the power
17 switch on and flip on the sequencer to turn those on
18 individually.

19 Q. Okay. So it was the flashing lights
20 that you recall being turned on.

21 A. Yes.

22 Q. Okay. Please continue with what
23 occurred.

24 A. So I told Ray before we get out of the
25 car, I said, I'm not really sure what's going to

1 happen here, 'cause this guy was extremely erratic
2 when he came to the window. It scared us both. I
3 said, let's get out very cautiously. I said, meet
4 me on the passenger side of the ambulance. I said,
5 we will be on the passenger side out of the roadway
6 in a safe area, and I wanted not to be anywhere
7 where we could have another problem.

8 If something else occurred, we'd at
9 least have an escape zone from any kind of emergency
10 situation that occurred. We used our ambulance as a
11 defense mode. Basically, that's what we're trained
12 to do is to put it on a position where we can at
13 least work with a safety net.

14 Q. Okay. We've heard a lot of testimony,
15 and I don't think I need to repeat it, but is safety
16 first for yourself and your partner --

17 A. Absolutely, safety first for me and my
18 partner. We are to work as a team and watch each
19 other's back, because I don't get a 180-degree
20 picture of everything, so he's got to see what he
21 sees, I've got to see what I see, and we watch each
22 other's backs.

23 Q. Please continue. Tell the arbitrator
24 what transpired.

25 A. When we got to the -- when I got to the

1 rear of the ambulance, I actually believe I had got
2 there just before Ray did. The person that came to
3 the window was already back in the driver's seat of
4 the car. The car was obviously running 'cause the
5 headlights were on. And I said, Ray, whoa, whoa,
6 whoa, whoa. What's going on here? This isn't --
7 this is not okay.

8 Q. Let me stop you. What was it about it
9 that was not okay?

10 A. He was back in the driver's seat. That
11 scared us because --

12 Q. Why?

13 A. Normally, everything I've ever
14 experienced in this field of emergency services, the
15 driver will always go over to the passenger door to
16 give us access to whoever is there if they need
17 assistance. This was different. This was not
18 something I've had ever happen before.

19 And we never spoke face-to-face with
20 anybody except at the window of the ambulance. The
21 gentleman did not talk to us. He screamed out -- I
22 believe I heard miscarriage. My partner said, yes,
23 I believe it was a miscarriage. That's all we got
24 before we got out of the ambulance.

25 Q. Okay. So you get out of the ambulance.

1 You're using it. You've positioned it sort of
2 defensively, and then you realize the driver has not
3 given you access to someone in the vehicle but has
4 gone back and gotten back in the vehicle?

5 A. Well, as I got there, the first thing I
6 noticed is the car was rocking. It was very -- it
7 was moving quite a bit from side to side. You could
8 see it, like, rocking. Somebody was moving around
9 it very quickly. His hands were going across the
10 dashboard. I never took the time to take my eyes
11 off of him.

12 When my partner came around the
13 ambulance and joined me on that side of the
14 ambulance, we kind of stepped a little more back
15 towards the ambulance so that we were in a better
16 position to just see what we were looking at without
17 being injured in the meantime.

18 Q. Okay. Now let me stop you. Why was it
19 that you did not take your eyes off the driver the
20 entire time?

21 A. Because he was screaming. We couldn't
22 understand his words completely. You could pick up
23 a few things here and there. I was trying to get at
24 an angle where I could yell at him, see what he was
25 doing in there. It was so dark that all we could

1 see was the silhouette.

2 We could see a female -- that's what I
3 interpreted was she was a female. I don't know that
4 for a hundred percent. But there was another
5 passenger that appeared to be a female in the car
6 and she looked -- as the amber lights flash, you get
7 a glimpse of it, but it really does not give you a
8 good idea of what you have. It's not a clear
9 picture. It is more of a flash and then boom.

10 She appeared to me that she was upset,
11 in my opinion. We never made contact with her. We
12 never approached her. We stayed right there, about
13 five to ten feet at the front passenger side of the
14 vehicle. We couldn't even tell you what the type of
15 vehicle was. It was all happening very quickly, and
16 we were analyzing what was going on as quickly as we
17 could because we have to make quick decisions on
18 whether to get back in the ambulance or to attempt
19 to --

20 We were screaming at the driver to get
21 out of the vehicle and calm down. I said it a
22 hundred times. We were saying it in unison, calm
23 down, calm down, get out of the vehicle. We were
24 trying to make the scene safe for us to make an
25 attempt to make some kind of contact and find out

1 what was going on, but we were never able to do
2 that.

3 And shortly after he was rocking the
4 ambulance -- or the car, I started to move a little
5 bit back towards the ambulance, and I said, Ray,
6 let's move back. Something's not right. And he
7 started to drive away.

8 And he as drove away, he was still
9 screaming out the window which I'd say was
10 approximately halfway down. It wasn't all the way
11 down, I'm almost positive. I saw the window halfway
12 down, and he screamed out the window of it. As he
13 was leaving, he was still screaming at us, and that
14 was the end of it. We really didn't have an
15 opportunity to talk to these people and find out
16 what was going on.

17 Q. Okay. At any point -- notwithstanding
18 what she said here today, at any point did the
19 female passenger tell you she was bleeding?

20 A. No.

21 Q. At any point were you -- before the
22 driver put the car in gear to drive away, did you
23 have an opportunity to assess for yourself or see if
24 there was any blood?

25 A. No, sir.

1 Q. Okay. What would the normal reaction be
2 if you were able to see blood on the person? What
3 would you normally do, assuming you were able to
4 convince yourself that the scene was safe?

5 A. We would make a good attempt to assess
6 the situation and find out what exactly was going on
7 with this person. Did they want an ambulance? Did
8 they want to go to the hospital? Were they in need
9 of medical help? We never got that opportunity
10 because the driver was making erratic movements.

11 And it was a very unnerving situation
12 for me and my partner. We never experienced this
13 before. We've always been in a safe area where --
14 and I'm saying in the Town of Pahrump where we could
15 call for some type of assistance from NCSL, the
16 sheriff's department here, or another ambulance or
17 an engine company to come out and assist us.

18 But things happened very rapidly. It
19 was very quick. I estimated the time -- we didn't
20 stick -- you know, we didn't put a stopwatch on it.
21 My estimation was 60 to two minutes at the most
22 before the car moved and sped away.

23 Q. Now, in this 60 seconds to two minutes
24 that this entire encounter took place, at one point,
25 did you say or shout to the driver of the vehicle

1 anything about taking them to the hospital here in
2 Pahrump?

3 A. Everything happened very quickly, and I
4 do believe either Ray or I -- one of us said we will
5 take you to the Pahrump hospital or heading north
6 anyways, trying to get somebody to get out of the
7 vehicle, come talk to us, something calming, you
8 know, the situation down.

9 Q. Okay. Now, when either you or
10 Mr. Delucchi -- now, this communication regarding
11 Pahrump hospital, was this made to the passenger or
12 to the driver?

13 A. It was all directed at the driver.

14 Q. When either you or Mr. Delucchi shouted
15 to the driver from five to ten feet back through the
16 half open window that we can take you to Desert View
17 or Pahrump hospital, whatever name you used for the
18 facility, did anybody in the car respond that that
19 was not an appropriate facility or they had received
20 instructions to go elsewhere?

21 A. No, sir, we never got an opportunity to
22 speak to anybody in that vehicle. I don't know who
23 they were. I didn't know any of the details till
24 the investigation and we hired the attorneys. Then
25 we started finding out exactly what happened from

1 the other side.

2 Q. At any point that evening, did you even
3 get a name?

4 A. No.

5 Q. Did he even identify himself at any
6 point, either when he was at the window or after he
7 retreated and went back into his car?

8 A. No, he never -- he was not there more
9 than a second, and we screamed, get away from the
10 ambulance, back away. And then he was gone. He
11 went right back to the vehicle and jumped in the
12 driver's seat for whatever reason.

13 Q. We don't have to look at it again, and
14 we've seen it before that in the contract, the
15 collective bargaining agreement, all the rules and
16 regulations are put together into one set of
17 standard operating guidelines. Do you recall that?

18 A. Yes.

19 Q. Prior to or as of May 25, 2012, had the
20 Town of Pahrump adopted a standard operating
21 guideline as to how to handle what I guess we'll
22 refer to as a roadside hail by a citizen?

23 A. No, sir.

24 Q. Had you ever received any training in
25 that subject?

1 A. No, sir.

2 Q. Was there ever a standard operating
3 guideline adopted as to how you are to respond if
4 you find yourself in a circumstance -- an unsafe
5 circumstance where you are in a radio dead zone?

6 A. Our safety is paramount.

7 Q. Other than --

8 A. It's always been safety first.

9 Q. Other than that safety first, are there
10 specific things you're supposed to do?

11 A. No. No, sir. There's never been any
12 kind of message through our department or SOGs or
13 rules or regs or anything that had anything that we
14 have that's unusual out in the radio dead zones.

15 Q. Okay. Turn to Exhibit 7, please. I'll
16 direct your attention to the regulation 02.01.05:

17 "Pahrump Valley Fire Rescue
18 Service realizes that situations
19 may arise from time to time which
20 cannot be foreseen and for which
21 no rule or regulation will be
22 found herein. It is expected
23 that all department members will
24 act at such times with promptness
25 and discretion while exercising

1 good judgment."

2 Do you see that?

3 A. Yes, sir.

4 Q. In light of the circumstance that you
5 found yourself in for which you had not been trained
6 before, do you believe you exercised discretion and
7 good judgment?

8 A. Yes, sir.

9 Q. Why?

10 A. Because my partner's life and mine at
11 the time, we felt, was in danger of something of the
12 unknown, so we exercised good judgment on our behalf
13 to safely get ourselves back home to our families,
14 which is number one. All our rules are safety
15 first.

16 Q. Okay. When Miss Choyce gave her
17 testimony earlier today, she claimed that she was
18 told that you can't do anything because you're at
19 the Clark County line. Do you recall that statement
20 by her?

21 A. I do recall her saying that.

22 Q. Was any such statement ever made?

23 A. Absolutely not.

24 Q. Does such a statement even make sense?

25 A. Absolutely not.

1 Q. Why does such a statement not make
2 sense? Please tell the arbitrator.

3 A. For my -- just speaking for myself, I
4 spent a lot of years and done a lot of training and
5 have got a lot of certificates, just like most of
6 the firemen in the service. We chose that career
7 because of the challenges, and I would never risk my
8 licensing. I would never risk losing my job over
9 something that ridiculous. I absolutely have a duty
10 to act, and if I saw a patient in need that was
11 requesting help, I absolutely would have helped
12 them.

13 Q. Okay. Is there any sort of arbitrary
14 distinction between the Clark County and the Nye
15 County line governing when you provide services?

16 A. There's no distinction. We do have a
17 mutual agreement that if Clark County cannot respond
18 to the area, they don't have an available engine or
19 whatever for whatever emergency is being requested,
20 we will send one from the other side, which is the
21 Pahrump side.

22 Q. So stated another way, you operate in
23 Clark County all the time --

24 A. Yes.

25 Q. -- when you're providing emergency

1 medical services.

2 It's not dependent upon the county line,
3 is it?

4 A. No, sir.

5 Q. From where you were standing -- I think
6 you've made it clear. Let's make it absolutely
7 clear.

8 From where you were standing the five to
9 ten feet away, the closest you got, were you able to
10 see her lap?

11 A. Absolutely not.

12 Q. Were you able to see her condition
13 inside the vehicle?

14 A. No, sir.

15 Q. Did she ever state to you what her
16 condition was?

17 A. No, sir. We never had any contact
18 face-to-face, any conversations. We never got close
19 enough to even see in the vehicle.

20 Q. All right. When you or Mr. Delucchi
21 made the offer about Pahrump, was that -- what did
22 he do then about Pahrump Valley hospital?

23 A. That's about the time that he started to
24 drive away. And as he was pulling away, like I
25 said, he was still screaming out the window. We

1 could hear him say the F word to us. We didn't know
2 exactly what he was referring to, but he was pretty
3 irate still in the car. He was still very animated.

4 Q. Do you believe you were given a fair
5 opportunity to even -- do you feel you were given an
6 opportunity to make an assessment?

7 A. No, we were not.

8 Q. Did you consider -- given the fact that
9 you were unable to -- that you did not speak with
10 the person in the front seat and you were unable to
11 visually ascertain her condition, did you consider
12 her a patient?

13 A. No, sir.

14 Q. You heard the testimony from
15 Dr. Slaughter a moment ago about there being no run
16 sheet. Why was there no run sheet on that call?

17 A. We do not have a policy for writing a
18 run sheet or what we call a patient care report, a
19 PCR, for a nonemergency situation where no patient
20 is ever found.

21 Q. Okay. If you had made an assessment and
22 determined a medical condition, what would have
23 happened then?

24 A. Then we would have treated her
25 appropriately, taken her to the appropriate

1 hospital, and we would have done a documented PCR.

2 Q. That answer raises a good point. How do
3 you determine which facility to take a patient to?

4 A. Based on their emergency, what's going
5 on with them. If it's trauma, we know Desert View
6 is clearly a hospital here that we take a lot of
7 trauma to. We take a lot of gunshot wounds,
8 stabbings, multisymptom traumas from automobile
9 accidents. People get run over, crash on their
10 motorcycles, et cetera, but they're not an
11 appropriate hospital to handle trauma, but they are
12 a hospital that can facilitate emergency procedures
13 to intervene and mitigate death and get the transfer
14 done, whether it be air ambulance or ground
15 ambulance, to an appropriate facility.

16 Q. Okay. Now, assuming hypothetically you
17 had been given the opportunity to have access to the
18 passenger in the front seat, either the passenger
19 herself made herself available or the driver gave
20 you access, what would you have to do before making
21 a determination as to which hospital to take her to?

22 A. We'd have to do an assessment head to
23 toe.

24 Q. And would you make the decision as to
25 which hospital to transport to only after you make

1 that assessment?

2 A. Absolutely.

3 Q. Now, after this event occurred -- this
4 was on -- I think it's about 1:00 in the morning,
5 2:00 in the morning on May 25. Is that accurate?

6 A. You know, I'm not a hundred percent on
7 the exact time. It was after midnight. I know
8 that. We were -- it was well after midnight.

9 Q. What did you do after that call?

10 A. He and I looked at each other and went,
11 what just happened? And we didn't really talk about
12 it. We waited at -- at the site of where we were
13 standing and watched the car go down the road. And
14 then we saw the vehicle. I don't know where he
15 turned around, but he was going back south, going
16 back up the mountain while we were still standing
17 there.

18 And we didn't really know what to do at
19 that point. Neither one of us had a clue, 'cause
20 neither one of us had got a description of the
21 vehicle. Couldn't tell you what color it was. I
22 couldn't tell what you kind of vehicle it was. It's
23 pitch black out there, so all you see is a set of
24 headlights. And we didn't get a license plate,
25 don't have names, don't really know what direction

1 we should have went.

2 After, in hindsight, we talked about
3 this and beat this up over and over again, we
4 probably should have called our lieutenant and just
5 advised him of what happened.

6 Q. And in fact, notwithstanding -- all
7 right. We'll get to that in a second.

8 Did you at some point leave the scene?

9 A. Yes, we did.

10 Q. Okay. And did you then resume the rest
11 of your shift?

12 A. Yes, we did.

13 Q. You still had how many hours left on
14 your shift?

15 A. From midnight till 8:00 o'clock,
16 8:00 A.M.

17 Q. Do you still have another eight hours
18 left on your shift?

19 A. Yes.

20 Q. How long of a shift do you work?

21 A. 24 hours.

22 Q. 24-hour shift. Okay.

23 A. From 8:00 A.M. to 8:00 A.M.

24 Q. Mr. Songer wrote in his conclusions --
25 I'm sure you've seen it plenty of times:

1 "Based on my interviews and
2 review of documents, I concluded
3 the EMS crew (paramedic and
4 EMT-I) did not want to take the
5 patient to Summerlin Hospital in
6 Las Vegas, Nevada, but instead to
7 Desert View Regional Medical
8 Center in Pahrump, Nevada, the
9 closest hospital to the EMS
10 crew's fire station, for the EMS
11 crew's personal convenience."

12 Do you recall reading that statement?

13 A. I read that, yes.

14 Q. Does that make any sense?

15 A. That's absurd.

16 Q. Tell the arbitrator why it's absurd.

17 A. It's absurd because we actually are
18 still on shift, so if another 911 occurs while we're
19 back in town, we are still going to act in that
20 capacity to run that call.

21 And our town is broken up into three
22 sections. We have the middle of the town, we have
23 the north end and the south end. And depending on
24 how the rotation falls for the inter facility
25 transports, when you come back into the valley and

1 put yourself back in service, you are back in
2 service for whatever comes up, whether it be a
3 fire-related issue or an EMS call.

4 Q. Okay. At any point in the 60 to
5 120 seconds that this entire event occurred, did the
6 driver ever mention Summerlin Hospital?

7 A. No, sir.

8 Q. Did he ask you to take him to Summerlin?

9 A. We never had a conversation with the
10 driver.

11 Q. After you completed the remainder of
12 your shift, what did you do next?

13 A. Ray and I have traditionally -- for
14 probably a year of being his partner, we almost
15 religiously got up at 6:00 o'clock, went into the
16 main station here. We drove from station 3 to
17 station 1 -- it's about an 11-mile, 12-mile drive --
18 and turn in all our reports.

19 We always do a handoff report with our
20 lieutenant. If there's maintenance that needs to be
21 done immediately or we did something that needed to
22 be done or we fill out any kind of a requested forms
23 that are needed at the time, we did, like, a handoff
24 from shift to shift.

25 Q. Okay. Did you complete at that time

1 a -- I guess what we call a special circumstance
2 report?

3 A. No, sir, we did not.

4 Q. And why is that?

5 A. Ray and I could not remember why we did
6 not have face-to-face contact with the lieutenant on
7 that morning, but after we looked at it, we realized
8 he wasn't there. He had gotten off shift at
9 5:00 o'clock that morning. He was working as the
10 only lieutenant for more than three or four months
11 straight, six days a week. So he was having to, by
12 our contract, take off two hours or three hours in
13 between his 72-hour shifts. So he actually had
14 left. He did not tell us he was leaving that
15 morning. We were unaware of it.

16 Q. Okay. At some point later, did your
17 lieutenant, Lieutenant Moody, approach you and ask
18 you to fill out a special circumstance report?

19 A. He actually contacted me. I believe it
20 was two days -- either the day of the complaint came
21 into the -- to the department or the next day. He
22 called me on my cell phone at home. I was off on
23 four day, and he said we have an issue that happened
24 out on the highway. I need to know if you guys were
25 involved in that.

1 And I said, what's the issue? Is it
2 something work related that can wait until tomorrow?
3 Because we had one more day before we came back on
4 shift.

5 He said, I need you guys to fill out a
6 special circumstance report.

7 And I said, for what?

8 And he said, for an incident that
9 happened on the highway on this date.

10 And I said, okay. I will. We didn't
11 have any more conversation on the phone until the
12 next morning -- the next morning when we came on
13 shift -- the following day when I went back to work,
14 he called me that morning and said I need you guys
15 to fill out that special circumstance report and
16 come up to station 1.

17 Q. Okay. Please turn to Exhibit A in the
18 small binder. Is that the special circumstance
19 report you filled out at the request of your
20 lieutenant on 5-31-2012?

21 A. Yes, sir.

22 Q. In your experience over however many
23 years you worked there, was there any formal policy
24 as to when you must or must not fill out a special
25 circumstance report?

1 A. Not that I'm aware of.

2 Q. In your experience, when does one get
3 filled out?

4 A. Either by request or by just discretion
5 of you wanting to document some unusual -- unusual
6 thing that's happened on a call or a transport or
7 some type of transport to the hospital here.

8 Q. Have you ever been put on notice by --

9 A. And that includes -- I'm sorry. And
10 that also includes fire issues or maintenance
11 problems, something to that effect.

12 Q. You indicated it's been treating as
13 discretionary; correct?

14 A. It's discretionary, yes.

15 Q. Have you ever been notified that you
16 might somehow be subject to discipline or
17 termination by the department for the exercise of
18 that discretion?

19 A. Not that I'm aware of.

20 Q. Now, after you were requested to fill
21 out Exhibit A by Lieutenant Moody, did there come a
22 time where Lieutenant Moody interviewed you?

23 A. Yes, sir.

24 Q. Tell us about the circumstance of that
25 first interview.

1 A. He called me into -- me and Ray to come
2 to station 1. I brought the special circumstance
3 report. He said I need to interview you both. He
4 goes, you'll need your Union rep.

5 So I went and asked -- I believe it was
6 Nate Alexander if he would sit in the meeting with
7 me and Moody and rep me. He said sure.

8 We went in. We closed the door. We sat
9 down. He read the report. He asked me a handful of
10 questions, and then he said he had no further
11 questions for me. Was there anything else I needed
12 to add? And I said, no.

13 And he said can you -- the interview
14 with him ended. He said can you go get Ray. I said
15 sure. So I went and got Ray.

16 Q. Now, in that interview that you had with
17 Lieutenant Moody, did you tell Lieutenant Moody what
18 you told the arbitrator here today?

19 A. I told him exactly what happened, which
20 is exactly what I just said.

21 Q. Did he offer any criticisms in that?

22 A. He didn't have a whole lot to say at the
23 moment. He said you guys probably should have
24 called me.

25 Q. Okay.

1 A. Regardless, you probably should have
2 called me just to give me a heads-up. Other than
3 that, there wasn't anything else that he advised me
4 of at that moment. It was just an interview.

5 Q. Did there come a point, then, where you
6 got interviewed a second time that same day?

7 A. Yes.

8 Q. Did anybody explain to you why it was
9 necessary to re-interview you again?

10 A. No. At the time that things happened
11 when Ray was in the office, I was in the kitchen
12 area of the station, and probably a good five
13 minutes, six minutes had gone by with him being in
14 the office.

15 I heard the door -- a door in the
16 building open, and I heard, stop, stop, stop, very
17 loud. It was a scream. Stop, stop, stop. And the
18 hair on my neck stood up, and the guys that I was
19 standing there talking to go, what is going on? It
20 was extremely abrupt, and it was very loud. And we
21 were, like, what just happened?

22 Q. And who was it who was shouting stop,
23 stop, stop?

24 A. It was Chief Lewis. He had entered the
25 room that Ray was being interviewed in and screamed

1 stop, stop, stop.

2 And I saw -- I looked down the hall from
3 the kitchen, 'cause you can see down the hall to the
4 end of it where the lieutenant's office is, and I
5 saw the lieutenant and the chief go into the
6 classroom part of the building and close the door.

7 Q. But you yourself were interviewed a
8 second time.

9 A. That was before I was interviewed the
10 second time.

11 Q. And after what happened with the chief
12 coming and yelling stop, stop, stop with regard to
13 Ray's interview, were you given an explanation as to
14 why it was necessary to interview you a second time?

15 A. Not really an explanation. I was asked
16 to come back into the classroom after Ray had
17 finished his interview in there. Chief Lewis said,
18 I have a previous engagement. I'm going to have to
19 leave in the next two minutes. And he said, do you
20 have any problems, Mr. Hollis, giving a recorded
21 statement of what happened?

22 I said, no, sir.

23 And he goes, do you have a problem with
24 Kohbarger or Terry Bostwick being in this interview?

25 And I said, no, sir. I said, should I

1 have a problem with that?

2 He said, no. He goes I just want to
3 make you aware that they're going to be in here.

4 And I said, that's fine, I have no
5 problem with it.

6 Q. And you proceeded to give a recorded
7 second interview?

8 A. I gave a recorded second interview the
9 same day. And when I started -- when he actually
10 started recording that, he took over the entire
11 investigation. Kohbarger did.

12 Q. And if you could turn to Exhibit 9. Is
13 that the transcript of your recorded statement?

14 A. Yes, I believe so, sir.

15 Q. And does Exhibit 9 -- given the time
16 constraints that we have, I'm not going to walk you
17 through page by page. I'll let the arbitrator read
18 it when she takes this matter under advisement, but
19 does what you told Kohbarger in Exhibit 9 accurately
20 reflect what happened that evening?

21 A. Yes, he does.

22 Q. You subsequently were interviewed -- I
23 guess it would be for a third time; correct?

24 A. Yes, that's correct.

25 Q. Was that by Mr. Songer?

1 A. Yes.

2 Q. Now, have you had an opportunity to
3 review the audio recordings produced by Mr. Songer
4 in this case of your interview?

5 A. Yes. It is completely blank.

6 Q. Is it complete?

7 A. No. It's completely blank.

8 Q. Isn't there --

9 A. I think it picks up the last minute or
10 two of his interview with me where he was asking me
11 about STAR CARE.

12 Q. Okay. So --

13 A. And radio control.

14 Q. So just so we're clear, when the
15 arbitrator takes a look at or listens to that
16 interview, which is going to be Exhibit Q, the file
17 which I believe is file number 3 for you is not the
18 complete interview.

19 A. Yes. It's not complete.

20 Q. During that interview, including the
21 portion that was produced, did you tell Mr. Songer
22 that you believe you used good judgment on that
23 call?

24 A. Yes, we did.

25 Q. And to this day, do you believe you used

1 good judgment on the call?

2 A. Yes, we did.

3 Q. And why is that?

4 A. Because I told him that at the time that
5 the vehicle pulled us over, we were already shaken
6 up by the actions of the driver, and we were in fear
7 at that time of the unknown, so our safety was
8 number one concern.

9 Q. And in the -- did you say 17 years,
10 you've been involved in a paid and unpaid status?

11 A. 22.

12 Q. In the entire time that you have been
13 employed, have you ever had any sort of discipline
14 take against you?

15 A. No, sir. I actually had -- I shouldn't
16 say that. I had an incident where I backed an
17 engine into a bay, and I bent part of the building
18 'cause one of the side doors was partially open.
19 And I did some damage to the building and the
20 engine, and I took full responsibility for it. It
21 was my fault. I was not paying attention. And
22 that's the only thing that I've ever had any type of
23 write-up for.

24 Q. Do you believe it is appropriate for the
25 Town to terminate your employment for what is, under

1 your policies, a discretionary call on your part
2 with regard to your safety?

3 A. My personal opinion is no, I believe
4 this is completely unwarranted.

5 Q. I pass the witness.

6 THE ARBITRATOR: Off the record.

7 (A recess was taken from 3:14
8 to 3:25 P.M.)

9 THE ARBITRATOR: Back on the record.
10 And Mr. Hollis, you're still under oath.
11 Mr. Campbell, please proceed.
12

13 CROSS-EXAMINATION

14 BY MR. CAMPBELL:

15 Q. Mr. Hollis, Rick Campbell. I represent
16 the Town.

17 You sat through the testimony of
18 Miss Choyce today; right?

19 A. Yes.

20 Q. You heard the whole thing?

21 A. Yes, sir.

22 Q. You know you're under oath right here
23 right now?

24 A. Yes, sir.

25 Q. You have an opportunity to change any

1 part of your story in light of what Ms. Choyce said.
2 Do you have any changes you want to make in light of
3 what she said?

4 A. No, sir. No, sir.

5 Q. So are you saying that she was lying on
6 the stand?

7 A. I'm not going to say she was lying. I'm
8 saying her version of what happened is not accurate.

9 Q. Do you have any reason to --

10 A. Okay. I'd be making an assumption to
11 call her a liar.

12 Q. Do you have any suspicion of why she
13 wouldn't want to give the truth of what happened on
14 that day?

15 A. No, sir, I sure don't.

16 Q. I think I heard you say in your direct
17 testimony that you were saying that if you saw a
18 patient in need of help, then you would admit that
19 you have a duty to treat.

20 A. Yes, sir, duty to act.

21 Q. So in this case, your duty to treat is
22 really dependent on what your version was, of
23 whether you saw a patient in need of help.

24 A. My version of what I saw was an unsafe
25 scene and the inability to find out what was

1 actually happening with the people in the vehicle.
2 The erratic driver kept our attention on him. We
3 never focused on her whatsoever, other than glancing
4 and noticing there was a second person in the
5 vehicle. So at that incident, my safety concerns
6 were more important.

7 Q. So you believe you never had a duty to
8 help her because you were never really aware at all
9 of her condition.

10 A. We never made -- we were never able to
11 make contact to find out that she even needed help.

12 Q. Okay. Now, I think you testified that
13 you and Mr. Delucchi had a conversation to pull over
14 to see if the driver needed help; right?

15 A. Somebody came at us with a vehicle. We
16 have a duty, because we are emergency services, to
17 make an attempt to find out what it is. As far as
18 we know, they could have wanted directions at that
19 hour, but we were taking a huge risk and a huge
20 gamble by stopping, yes.

21 Q. But they didn't want directions. In
22 fact, the driver told you in no unequivocal terms,
23 my wife is having a miscarriage.

24 A. The driver never told us anything. He
25 screamed something at the window, and that was it.

1 Q. Can you look at Exhibit A. On the
2 second page, it says, starting at the first
3 sentence, "Before getting out of the medic unit, a
4 very excited and erratic male" --

5 A. Erratic.

6 Q. -- "appeared in the driver's window
7 screaming my wife is having a miscarriage."

8 You heard that?

9 A. Yes.

10 Q. Let's talk about this report a little
11 bit. This is the report you just talked about that
12 you filled out after the lieutenant told you to fill
13 out a statement?

14 A. Yes, sir. He requested us to do this.

15 Q. Okay. And so there's two signatures on
16 the report. Is that your and Mr. Delucchi's
17 signature?

18 A. Yes, sir, and our radio numbers.

19 Q. And who filled out the report?

20 A. The both of us did. I wrote it. We
21 both talked about it and put down what we both --
22 what occurred out there, both of our versions
23 basically.

24 Q. So you talked about it before you put
25 anything down to pen and paper?

1 A. We talked that morning.

2 Q. Okay.

3 A. At the station.

4 Q. And who was -- who was in the room when
5 the two of you talked about it?

6 A. Just me and Ray.

7 Q. And that was after the lieutenant told
8 you that he wanted a report on the incident up on
9 the highway?

10 A. He said he had a complaint. He didn't
11 say anything about incident. It was more of a
12 complaint that was about an incident that possibly
13 happened out on the highway.

14 Q. So you knew what it was about?

15 A. Well, I had a very good idea, yes.

16 Q. In fact, you filled out the incident
17 report about this incident.

18 A. Yes.

19 Q. So just to be clear, the two of you sat
20 down in a room alone, talked about what should be in
21 the report. You wrote it down, and then you both
22 signed it.

23 A. Yes, sir. We were at our station. We
24 had just came on shift.

25 Q. Let's go back to the safety concern. I

1 want to really get clear in my mind as to your
2 safety concern.

3 You were first in fear for your safety
4 because of the way the guy came up on you; right?

5 A. That's correct.

6 Q. Flashing his lights, honking his horn,
7 whatever?

8 A. That's correct.

9 Q. And the way he got so close to you?

10 A. Yes.

11 Q. And then he came up to the driver's
12 window. Were you still concerned at that time for
13 your safety?

14 A. Yes. Well, that was a shock, to see him
15 pop up. I've never had anybody approach us like
16 that.

17 Q. So you were concerned about your safety
18 at that point.

19 A. Absolutely. We did not know what he
20 wanted. He could have came up and shot us both if
21 he had a gun.

22 Q. He never had a gun. You never saw a
23 weapon, did you?

24 A. Not that I'm aware of.

25 Q. Okay. So he didn't -- you didn't

1 communicate with him. At least he was yelling that
2 his wife was having a miscarriage?

3 A. I don't call that communicating.
4 Screaming to somebody to back up away from the
5 ambulance and calm down. That's not a
6 communication. That's more of us directing him and
7 giving him a command.

8 Q. I'm asking about the communication from
9 him saying my wife is having a miscarriage.

10 A. I only heard miscarriage. My partner
11 says he heard wife miscarriage, so we put it down
12 and documented it that way.

13 Q. Okay. And I think you put the same
14 thing in your interview, didn't you?

15 A. Yes. Like I said, my partner was closer
16 to the guy when he popped up than I was.

17 Q. So what made you feel uncomfortable
18 enough to exit the ambulance and no longer be
19 concern --

20 A. He --

21 Q. You're going to have to wait until I
22 finish my question.

23 A. Oh, I'm sorry. Go ahead.

24 Q. Let me start over.

25 What allayed your concerns such that you

1 now find it safe to exit the ambulance?

2 A. He was no longer in the window, so we
3 felt we could at least get out and do an
4 investigation type thing, move towards the vehicle.
5 Ray gave me the idea that it was in his view in his
6 mirror. I said, is the guy still out -- in the
7 mirror? He said, no, I don't see him.

8 Q. Okay. So because he wasn't standing
9 next to the car, he retreated somewhat, you were no
10 longer -- you felt comfortable enough to exit.

11 A. We felt in fear. Not -- I wouldn't say
12 in fear. We were uncomfortable, but we still had to
13 investigate. We pulled over to find out what these
14 people needed, and we have an obligation to at least
15 attempt it. But we have to attempt it in a safe
16 way.

17 Q. Okay. So you had the obligation, you
18 felt, to get out of the ambulance because of what
19 the driver told you through the window, that his
20 wife was having a miscarriage?

21 A. He was obviously wanting us to stop. We
22 made that decision to do that. We were under duress
23 at that moment. We were both nervous. We did not
24 ever have this happen, so this was totally unusual.
25 So we at least wanted to make an attempt in case it

1 was something that they -- we could do for them --

2 Q. Okay.

3 A. -- at that point.

4 Q. And you heard Miss Choyce today. There
5 was probably something you could have done for her,
6 huh?

7 A. From what she said, absolutely.

8 Q. Okay. So you got out of the vehicle.
9 Now, by the time you get out, he's back in his car
10 in the driver's seat; right?

11 A. He is back in the driver's seat.

12 Q. Okay. And your concern at that point is
13 for your safety, since he's in the driver's seat and
14 you're standing to the side of the car?

15 A. Yes, sir.

16 Q. What was your concern?

17 A. Being run over.

18 Q. Being run over. You're standing on the
19 side of the car. The ambulance is right in front of
20 the vehicle.

21 A. He was very erratic in the vehicle.
22 Like I said, the vehicle was rocking. He was moving
23 around very animated and screaming. He was not in
24 any control of himself.

25 Q. So if you're afraid of being run over,

1 would it have been safer to move more toward the
2 passenger window on the side of the car?

3 A. No.

4 Q. Why not?

5 A. We didn't know what -- we didn't know
6 what we had.

7 Q. Did you also say in your report that you
8 thought there was -- there was a ditch down there
9 and you didn't want to get down into the ditch area?

10 A. The side of the road is not flat. It
11 actually slopes down. It is -- I wouldn't call
12 it -- I wouldn't say it's a ditch like this
13 (indicating), but it slopes away for the water to
14 run off of the highway and run downhill with
15 gravity.

16 Q. In your report -- interview, you said:

17 "We only had take down
18 lights, basic loading lights on,
19 so it little up the car a little
20 bit. But where we were, there is
21 no shoulder out there. It
22 actually drops off into a ditch."

23 A. Yeah. It's dirt.

24 Q. "And he was really, really close to the
25 ditch area."

1 A. Well, we were parked on the actual
2 shoulder of the road. It's paved, and off of that
3 is dirt. Like I said, it gradually slopes off so
4 it's not level footing.

5 Q. Can you look at the photos that are up
6 there. I think they're Exhibit 38. They should
7 still be up there somewhere.

8 A. 38.

9 Q. They're not in the binder. They should
10 be loose.

11 MR. SNOW: I think your co-counsel took
12 them when Ms. Choyce was up here.

13 BY MR. CAMPBELL:

14 Q. I'm going to show you two pages of that
15 exhibit. Do you recognize the pages of that
16 Exhibit? There's one with a mile marker in it.

17 THE ARBITRATOR: The mile marker 23?

18 BY MR. CAMPBELL:

19 Q. Yeah. And then there's another one
20 that's looking the opposite direction.

21 A. I recognize the roadway. Like I said,
22 it was pitch black out there. I'm not exactly
23 100 percent sure where we actually stopped the
24 ambulance. We didn't have a mile marker at the
25 time. I said approximately one quarter mile past

1 the Mountain Springs Fire Department.

2 Q. Okay.

3 A. On the downslope.

4 Q. Is that ditch -- is that the dish you
5 were talking about.

6 A. Well, I'm talking about the dirt. If
7 you go further up the highway toward the -- towards
8 the fire station, it's more of a grade like this,
9 and we were not on a flat. There is actually a
10 grade, and the roadway off of the pavement is
11 actually -- it does slope away a lot more.

12 Q. But it's your testimony --

13 A. It looks gradual, but it's not extremely
14 steep.

15 Q. So it's your testimony that that mile
16 marker is not the place where they pulled over?

17 A. I cannot say that's exactly where it
18 was, no, sir. There was no mile markers -- the mile
19 marker identifier was not right by our ambulance.

20 Q. You also said earlier in your testimony
21 that you thought you heard the driver grab the door
22 handle.

23 A. Yes.

24 Q. I didn't see that anywhere in any of
25 your reports. Is there a reason you didn't put that

1 in?

2 A. I actually address that when they
3 recorded it. I didn't -- we didn't put a whole lot
4 of detail in our handwritten report because there
5 wasn't a whole lot of detail to put on there at the
6 time. We were still -- still just not sure what
7 exactly happened that night.

8 Q. You said it was very dark. You have
9 scene lights; right?

10 A. Yes, sir.

11 Q. Why weren't those turned on?

12 A. I can't answer that. I do not know why
13 we did not have them on.

14 Q. They would have at least helped to
15 illuminate the scene better; right?

16 A. Yes, sir.

17 Q. And you have a flashlight in the unit?

18 A. Yes, sir.

19 Q. And why didn't you grab the flashlight?

20 A. As Justin Snow, the president, told you,
21 they are in a very awkward position. It's in almost
22 six-foot area of the rear compartment, and I'm very
23 short. I'm on the side of the road where it slopes
24 away. I would have to climb up on the ambulance.
25 We just can't take the time to do it.

1 Q. But at that time, you were concerned for
2 your safety such that you didn't even want to
3 approach the car; right?

4 A. After I got to the rear of the ambulance
5 and noticed the driver was in the vehicle.

6 Q. So wouldn't it have been better to be
7 able to have more light on the scene to really see
8 what was going on and address your safety concerns?

9 A. Yes, sir. We were taking very quick
10 action to try and get some type of resolve with the
11 driver and get him out of the vehicle so that we
12 could at least have a safe scene. We did not have
13 one. He did not give us an opportunity to actually
14 do anything, other than stand there, screaming at
15 us.

16 Q. So let me get this straight. You were
17 more concerned for your safety because the driver
18 might have a gun or might have stabbed his wife or
19 might rob you while he was in the car, but you
20 weren't going to be concerned for your safety if he
21 got out of the car?

22 A. Sure we would have. Absolutely.

23 Q. But you were trying to get him out of
24 the car; right?

25 A. I wanted him out behind -- out from

1 behind the wheel of the vehicle, because the
2 vehicle -- in my line of work, a vehicle with the
3 wrong type of person behind the wheel is a weapon
4 so --

5 Q. Is that your primary concern, that he
6 was going to run you over?

7 A. Well, I expected him to at least
8 cooperate with our commands. We were asking him to
9 get out and calm down and hoping he would give us at
10 least access to his wife or girlfriend or
11 whatever -- the lady that was in the vehicle.

12 Q. Well, was it your primary concern that
13 he was going to run you down?

14 A. My primary concern was -- I didn't know
15 what he was going to do. I was taking action to
16 keep from having myself or my partner get injured.

17 Q. And he was in the driver's seat, and you
18 wanted to be able to access the wife so you could
19 talk to her; right?

20 A. We would have preferred he had gone to
21 the passenger side and opened the door to access
22 her, but he jumped back in the driver's seat. I
23 don't know what his mindset was at that moment. I
24 don't know why he was erratic. I don't know why he
25 didn't follow any of our commands. He gave us no

1 opportunity.

2 Q. Was there anything preventing you from
3 walking from the front end of the car three feet or
4 so, however far, to the passenger side window?

5 A. Yeah. If he would have dropped it into
6 drive and ran over one of us, struck one of us, we
7 were worried about getting hurt, absolutely.

8 Q. Was there anything that prevented you
9 from walking from the --

10 A. My safety concerns. That's what
11 prevented me from walking over.

12 Q. Okay. From the front -- you're on the
13 front -- off the front right bumper; right?

14 A. Correct, the front -- we were about five
15 to ten feet off that bumper.

16 Q. Back towards your ambulance to the side?

17 A. Yes, closest to our ambulance.

18 Q. So you could have walked closer to the
19 passenger vehicle and been farther away from the
20 front of the car?

21 A. Had he got out of the car and went
22 around, we would have absolutely went over and made
23 at least an attempt to help, whatever they were
24 asking me. He never got out of the vehicle. We
25 never got a chance to move towards the vehicle,

1 because the scene at that point we both deemed was
2 unsafe.

3 Q. Okay. I just want to get it clear what
4 your -- what your belief was.

5 Now, you heard Brittnie today, and you
6 also said that you didn't believe what she said that
7 she was actually communicating with you guys. Is
8 that correct?

9 A. That's correct. She never spoke to
10 either one of us.

11 Q. In your recorded statement, you say:

12 "We never really got to talk
13 to her because he yelled over her
14 the entire time."

15 A. Yes, sir.

16 Q. So was she talking but you just couldn't
17 hear her?

18 A. I honestly couldn't tell you. He was
19 screaming over the top of her out the window on the
20 side of the vehicle that she was sitting in the
21 seat.

22 Q. Well, when you say "he yelled over her,"
23 that seemed to imply that she was talking and you
24 couldn't hear her because he was yelling.

25 A. I'm not implying anything. I'm saying

1 that he was screaming the entire time obscenities,
2 and he was screaming stuff that we couldn't
3 understand. And he was very animated in the car.
4 We could not get him to comply with our orders,
5 asking him to get out of the vehicle and calm down.

6 Q. Okay. That's your words, right, in this
7 statement? You're not disputing that this was
8 transcribed in error?

9 A. If it's transcribed, I believe those are
10 my words, yes.

11 Q. Okay. And then you say:

12 "We never really got to talk
13 to her because he yelled over her
14 the entire time. She was crying.
15 She didn't appear like she could
16 really talk to us anyway."

17 A. With him screaming, nobody could have
18 talked.

19 Q. "She was just upset."

20 Why didn't she appear like she could
21 talk to you?

22 A. I'm just saying that because of his
23 actions and screaming out the window, we were not
24 able to communicate with her in any way.

25 Q. The way the sentence reads, you said:

1 "She didn't appear like she
2 could really talk to us anyway,
3 she was just upset."

4 Was it because she was so upset, her
5 crying, that she couldn't talk.

6 A. I cannot answer that, sir.

7 Q. Again, these are your words? You
8 wouldn't dispute these?

9 A. That's just my description.

10 Q. Okay. And then you said -- going down
11 to that same paragraph, it says, "We can take you
12 into Pahrump." You admit you said that?

13 A. Me or my partner, we were both yelling
14 in unison at the driver. One of us said, we'll take
15 you to Pahrump. I don't recall exactly which one it
16 was, if it was me or him.

17 Q. I'm a little confused, because your
18 testimony earlier was -- today on direct, you said
19 we would make the decision on where to transport a
20 patient if they needed some special circumstances
21 transport once we got them into the ambulance. Do
22 you remember that statement on direct?

23 A. Once we -- once we assessed them and
24 find out what they have as a problem, we would make
25 that decision based on the complaint of what their

1 problem is. That's when you make your decision on
2 where to transport.

3 Q. Okay. Why would you then offer to take
4 them to Pahrump?

5 A. Like I said, it was all happening very
6 fast. We were unsure of what the driver's doing, so
7 we just made an attempt, either Ray or I did. I
8 don't recall. I believe it was me that screamed it
9 out and just an attempt to get the driver to comply
10 with us and get out of the vehicle and at least calm
11 down enough to where we could find out what was
12 really going on.

13 Q. And when you suggested that, that's when
14 the driver got very agitated?

15 A. He did some more movements in the car,
16 and then the vehicle started to move.

17 Q. Okay. You know as paramedic out here,
18 and you're here for some 20-odd years, that there's
19 no OB/GYN facilities in Pahrump in the hospital?

20 A. Not currently, no.

21 Q. And at that time?

22 A. At that time, no.

23 Q. And all the information that had been
24 conveyed to you so far was that his wife was having
25 a miscarriage?

1 A. All the information that we got was
2 after we retained a lawyer because of the
3 investigation.

4 Q. No. The information you had at the
5 scene was the information the driver gave you when
6 he yelled, my wife is having a miscarriage?

7 A. That was the only time we heard
8 miscarriage.

9 Q. You got back to Pahrump. I think your
10 testimony on direct examination was you had about
11 eight hours left on your shift.

12 A. Yes, sir.

13 Q. And I may have missed your testimony.
14 Did you go back to the station?

15 A. Yes, sir. We went back to our south end
16 station, station 3.

17 Q. And that's not -- where was your
18 lieutenant on duty?

19 A. He's at the main station, station 1.

20 Q. Okay. And then so after you left
21 station 3 at the end your shift, you went to the
22 main station?

23 A. Yes. We usually went about 6:00 o'clock
24 every shift when -- him and I just seemed to always
25 get up and go to -- early and turn in our reports or

1 hand over our rollover reports.

2 Q. And you testified there was usually a
3 hand-over report?

4 A. It's -- it's a rollover report. It's
5 just to advise any housekeeping issues, maintenance
6 issues, any problems that we had with equipment that
7 needed to be passed on to the lieutenant so the next
8 duty crew coming on can handle them quickly.

9 Q. So normally, you have an opportunity to
10 talk to the lieutenant about your shift?

11 A. Yes, sir. He's usually there.

12 Q. This time he wasn't; right? Because I
13 think you testified he left early.

14 A. Yes.

15 Q. So because he left early, you didn't
16 feel like you ever had to tell him about this
17 incident?

18 A. I don't believe I needed to tell the
19 crew that was at station 1. None of them were up.
20 I didn't need to wake anybody up and say this
21 happened. We would have conveyed it to our
22 lieutenant, which is the chain of command.

23 Q. I'm not talking about the crew. Was
24 it -- in fact, you didn't ever talk to him about
25 this incident until somebody complained about it

1 because he wasn't there that night?

2 A. That's correct. He was not there that
3 morning, so we could not do a rollover report with
4 him.

5 Q. And then you never called anybody on the
6 radio or your cell phone because, where the accident
7 happened, it was in a dead zone.

8 A. That's correct. We would have had to
9 travel a distance down the road to get radio
10 communications, and like I say, it's very spotty out
11 there.

12 Q. So the two reasons you didn't tell the
13 lieutenant was because, one, he wasn't there and,
14 two, you didn't have any radio communication --

15 A. I didn't have any information --

16 Q. You're going to have to wait until I
17 finish my --

18 A. I'm sorry.

19 Q. The two reasons you didn't tell anybody
20 about it, first, the lieutenant wasn't there at the
21 end of your shift and, two, at the time of the
22 incident, there was no radio service or cell phone
23 service. Right?

24 A. At the time I -- at the time we did
25 rollover shift, we did not have a lieutenant on

1 duty. We were unaware that he had left. So we
2 went, dropped off all our reports, and went back to
3 our station. It had nothing to do with radio
4 communications at the scene.

5 I'm very aware, from all my years of
6 being out there, where communication is and where
7 it's not. And we would have not have been able to
8 retreat to our ambulance and actually pick up the
9 radio and transmit a mayday or any other type of
10 thing over the radio where we were at.

11 Q. But two miles down the road or three
12 miles down the road --

13 A. I cannot --

14 Q. Let me finish my question.

15 You heard the NHP officer; right?

16 A. Yes.

17 Q. And he said down the road at the bottom
18 of the road, a couple of miles at the curve, radio
19 service is established; right?

20 A. For NHP.

21 MR. LEVINE: Objection. Misstates his
22 testimony when you say "a couple miles." I think he
23 said through mile marker 29. That's six.

24 BY MR. CAMPBELL:

25 Q. Anyway, down the road some miles,

1 there's a place where you come out of the dead zone.

2 A. Yes. To the best of my knowledge, it is
3 approximately about where the NHP officer said.
4 About 29, there's a big curve.

5 Q. And at that point, there was nothing
6 that prohibited you from getting on the phone and
7 reporting this to somebody.

8 A. No, sir.

9 Q. Okay. In fact, if Brittanie's mom hadn't
10 made this complaint to the chief, no one would have
11 ever found out about this, would they have?

12 A. Sir, I can't answer that.

13 Q. Well, you never told anybody; right?

14 A. I would have eventually advised somebody
15 that we had an incident out there, absolutely.

16 Q. Eventually? When? A year from now? A
17 couple months later?

18 A. When I was back on shift. I believe Ray
19 and I would have absolutely -- this would have been
20 something we'd have talked about.

21 Q. So your testimony today is that at some
22 point in the future, you probably would have told
23 somebody about this, but you don't know when?

24 A. I had no idea what we had out there.
25 I'm not even sure what we'd be talking about other

1 than a vehicle pulling us over. It's a learning
2 curve for us to feed off of what we can do to change
3 things, you know, in case this ever happens again.

4 Q. But looking back in hindsight, you admit
5 in your report that you made a bad judgment call and
6 you should have told somebody right away.

7 A. Absolutely.

8 MR. CAMPBELL: That's all I have,
9 Mr. Hollis. Thank you.

10 THE ARBITRATOR: Any redirect?

11 MR. LEVINE: Yes. I want to clarify
12 something.

13

14 REDIRECT EXAMINATION

15 BY MR. LEVINE:

16 Q. You finished your shift on the 31st;
17 correct?

18 A. Yes, sir.

19 Q. You were asked about -- you said it
20 probably would have come up when you went back on
21 shift.

22 After you finished your shift on the
23 31st, did you have days off?

24 A. Four days.

25 THE ARBITRATOR: Are you talking about

1 the 25th?

2 BY MR. LEVINE:

3 Q. After you had the shift on the 25th, did
4 you work the 26th?

5 A. No.

6 Q. Did you work the 27th?

7 A. No.

8 Q. Did you work the 28th?

9 A. No.

10 Q. Did you work the 29th?

11 A. No.

12 Q. Okay. So by the time you got back, your
13 next day after working that shift, is that the day
14 the complaint came in, the 30th?

15 A. That's the date I was aware of the
16 complaint coming in, yes.

17 THE ARBITRATOR: Excuse me. Were you
18 working the same hours, then, with Mr. Delucchi?

19 THE WITNESS: You know, I believe
20 Mr. Delucchi was on that -- when we came back from
21 four day, yes.

22 THE ARBITRATOR: But you didn't always
23 work with him?

24 THE WITNESS: No. He was my partner.
25 Yes, I always worked with him.

1 THE ARBITRATOR: So if you weren't
2 coming back, he wasn't coming back either until the
3 30th?

4 THE WITNESS: Correct.

5 THE ARBITRATOR: Okay. That's what I
6 wanted to know. Thank you.

7 BY MR. LEVINE:

8 Q. So we're clear, the 30th, which is the
9 day the complaint came in, that would have been your
10 first day back; correct?

11 A. Yes.

12 Q. Okay. You were asked about why Brittnie
13 testified the way she did, and of course you
14 testified you can't answer for why she testified the
15 way she did. Do you recall that questioning?

16 A. Yes.

17 Q. Did you hear her testify that she has
18 short-term memory loss?

19 A. Yes.

20 Q. How long has it been now since the
21 incident?

22 A. The incident was --

23 Q. More than a year; correct?

24 A. More than a year, yes.

25 Q. Do you believe she is intentionally or

1 not -- whether it's intentional or not, do you
2 believe she is, for lack of a better term -- I don't
3 know if it's a word -- misremembering?

4 A. Yes.

5 Q. Do you believe her memory is faulty?

6 A. That would be speculation on my behalf.
7 I guess I could conclude that.

8 MR. LEVINE: I don't have anything
9 further.

10 MR. CAMPBELL: No recross.

11 THE ARBITRATOR: Thank you, Mr. Hollis.
12 And does the Union have another witness?

13 MR. LEVINE: I do. Let's talk about the
14 arbitrator's travel needs.

15 THE ARBITRATOR: Off the record.

16 (A discussion was held off the
17 record.)

18 THE ARBITRATOR: Back on the record.

19 It has become apparent that since it's
20 4:00 o'clock in the afternoon and we have one of our
21 principal witnesses still remaining as part of the
22 Union's case and potentially rebuttal, that we're
23 not going to finish this evening.

24 So it's been mutually agreed by the
25 parties and the arbitrator that we will resume this

1 case on September 13. The start time will be given
2 by the arbitrator after making her travel
3 arrangements and building in how much time it's
4 going to take me to get from the airport to -- I
5 guess we're going to go to Mr. Campbell's office.

6 So are those arrangements agreeable able
7 to both parties?

8 MR. LEVINE: Yes.

9 MR. CAMPBELL: Yes.

10 THE ARBITRATOR: And is there any other
11 matter that either party would like to raise before
12 we adjourn?

13 MR. LEVINE: Not that I can think of.

14 THE ARBITRATOR: And I did want to say
15 that I released my binder back to -- my Town binder
16 back to Mr. Campbell so he can break it into three
17 sections and so I wouldn't have to take it on the
18 airplane. May I also release my Union binder back
19 to the Union and have them bring it to the case?

20 MR. LEVINE: Yes. Did you want us to
21 send it to you so you could review?

22 THE ARBITRATOR: I don't think that will
23 be necessary. I don't think I'm going to forget in
24 that short a time. I think I'll be able to pick up
25 the thread right where we left off. So I'm

1 releasing the Union binder back to Mr. Levine.

2 Any other matters that either party
3 would like to raise?

4 MR. LEVINE: There's no notes or
5 anything I should not look at in here?

6 THE ARBITRATOR: If there's anything, it
7 would be minimal, like cross-reference to an
8 exhibit.

9 MR. LEVINE: "That is so much bullshit,"
10 nothing like that.

11 THE ARBITRATOR: Nothing like that.
12 Okay.

13 So we'll be adjourned for this evening,
14 and I'll see you all on September 13. We're off the
15 record.

16 (The proceedings were adjourned
17 at 4:05 P.M.)

18 * * * * *

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CERTIFICATE OF REPORTER

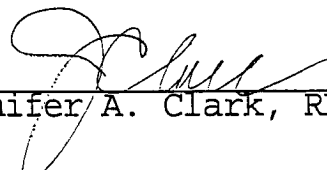
STATE OF NEVADA)
 SS:
COUNTY OF CLARK)

I, Jennifer A. Clark, a Certified Court Reporter licensed by the State of Nevada, do hereby certify: That I reported the arbitration proceedings commencing on August 13, 2013.

That prior to testifying, the witnesses were duly sworn to testify to the truth; that I thereafter transcribed my said stenographic notes into written form; that the typewritten transcript is a complete, true, and accurate transcription of said stenographic notes.

I further certify that I am not a relative, employee, or independent contractor of counsel or of any of the parties involved in the proceeding, nor a person financially interested in the proceeding, nor do I have any other relationship that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in the County of Clark, State of Nevada, this 24th day of August, 2013.



Jennifer A. Clark, RDR, CRR, CCR 422

EXHIBIT “12”

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AUG 21 2013
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TRANSCRIPT OF PROCEEDINGS

RE GRIEVANCES OF

TOMMY HOLLIS

AND

RAYMOND DELUCCHI

August 13, 2013

9:03 A.M.

270 Highway 160

Pahrump, Nevada

Reported by: Jennifer A. Clark, RDR, CRR, CCR #422

logged.

Rocket Reporting
702.8Rocket (702.876.2538)

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1 THE ARBITRATOR: Thank you very much,
2 Chief Lewis. Off the record to go get the next
3 witness.

4 (A recess was taken from 11:27
5 to 11:38 A.M.)

6 THE ARBITRATOR: Let's go back on the
7 record.

8 And the Town is calling?

9 MR. CAMPBELL: Ms. Brittanie Choyce.

10 THE ARBITRATOR: Would you raise your
11 right hand, please.

12
13 BRITTANIE MARIE CHOYCE,
14 having been called as a witness and having been
15 first duly sworn, was examined and testified as
16 follows:

17 THE ARBITRATOR: And would you state
18 your full name for the record, please.

19 THE WITNESS: Brittanie Marie Choyce.

20 THE ARBITRATOR: Thank you.

21 You may proceed, Mr. Campbell.

22

23 DIRECT EXAMINATION

24 BY MR. CAMPBELL:

25 Q. Mrs. Choyce, I think I've introduced

1 myself before. I'm the attorney for the Town of
2 Pahrump. We're here in an arbitration proceeding
3 regarding two firefighters that -- on an incident
4 that occurred -- I think it was May 25 of 2012, just
5 about a year and a few months ago. Okay? We're in
6 an informal proceeding. Like I told you, if you
7 have need to stop for a minute, get emotional, just
8 let me know. We can stop and take a little bit of a
9 break. Okay?

10 A. Okay. Thank you.

11 Q. Are you a resident of Pahrump?

12 A. No longer.

13 Q. Okay. Did you live here back in the May
14 of 2012 time frame?

15 A. We were back in -- we had an apartment.
16 Yeah, we had an apartment in Vegas, but we also had
17 our house in Pahrump.

18 We were having kind of a hard time with
19 my in-laws, my husband's family, so we moved to
20 Vegas for a little while and -- but we still had our
21 house. And my mother lived in it with my
22 grandmother and my grandfather, and we would stay
23 out here with them too, you know.

24 Q. Okay?

25 A. Yeah.

1 Q. I'll just call this incident --

2 A. But that night I -- I was in Pahrump.

3 Q. Okay. So let's just say that night.

4 Prior to that night, you had seen your
5 OB/GYN doctor. You were pregnant; correct?

6 A. Yes, sir.

7 Q. And your OB/GYN doctor had -- you had
8 discussed with him about what happened with the
9 complications from the pregnancy?

10 A. Uh-huh, yeah, and what was going to
11 happen.

12 Q. And what did he tell you?

13 A. Well, they did the ultrasound, and there
14 was no fetal heartbeat or movement. But I was
15 between 17 and 20 weeks, and so they couldn't just
16 do a normal D&C. So what they were going to do was
17 called a D&E, which was going to be on May 26 at
18 10:15 A.M.

19 He inserted seaweed inside of me to help
20 dilate and so that when I did go in to have the
21 procedure, that it wasn't so much trauma to my
22 cervix and everything. Well, that seaweed
23 completely put me into labor.

24 By the time I realized I was contracting
25 so much and everything and, you know, said we got to

1 go to the hospital, we were headed to the hospital
2 where the doctor was supposed to do the surgery.
3 And to this day, I don't remember now which hospital
4 it was.

5 Q. Okay. Let me --

6 A. I think it was Centennial Hills
7 Hospital.

8 Q. Let me stop you for a minute.
9 Was your doctor over in Las Vegas?

10 A. Yes, sir.

11 Q. And he told you he wanted to do this
12 procedure in a Las Vegas hospital?

13 A. Yes, sir.

14 Q. Did you ever talk about possibly doing
15 the procedure in the Pahrump hospital?

16 A. No, 'cause it was a high risk doctor and
17 they -- they didn't have -- they don't have OB/GYNs
18 out here.

19 Q. Okay. Your doctor specifically told you
20 that he was going to have to do this procedure --

21 A. In Vegas.

22 Q. Okay. And so I'll go back to your
23 story. So you started going into -- having
24 contractions and going into labor. And that would
25 have been about what time on the night of the 24th?

1 A. Around 10:30, 11:00.

2 Q. Okay?

3 A. And then we headed out, and at 12:18 or
4 12:15 is when I delivered the baby. And around
5 12:18 to 12:20 is right when we ran into the EMTs.
6 We were coming up that -- right at the volunteer
7 fire station, and they were passing.

8 Q. You were headed to Las Vegas?

9 A. Headed to Las Vegas. They were coming
10 from Las Vegas, heading to Pahrump, and it was right
11 dead at the fire station. So my husband turned
12 around and was flashing his lights and everything.
13 We got side by side by them, and we were waving them
14 down to, you know, pull over.

15 They kept driving a couple miles. They
16 kept looking out the window, like, you know, what
17 the heck is going on? They did turn on their
18 lights, and they did finally pull over.

19 Q. Did they pull over what would have been
20 a couple miles down the road from the summit?

21 A. Yes, yeah. It took a while for them to
22 pull over. My husband then got out of the vehicle,
23 and they stepped out of the vehicle. And he said my
24 wife just delivered the baby, and she's
25 hemorrhaging, and the doctor said if she delivered

1 the baby on her own, she was going to hemorrhage.

2 And he -- they were just saying calm
3 down, calm down. And there's nothing we can do;
4 that, you know, we're on Clark County line and we're
5 Nye County. By the time we call somebody to get
6 here, it -- you could drive yourself to the
7 hospital.

8 Q. Now, you have some pretty good recall of
9 the conversation. Was your passenger window open?

10 A. Both of the windows were down, yes, the
11 driver's side and the passenger side.

12 Q. And then when the -- when the EMTs got
13 out of the ambulance, where did they walk to when
14 they got out of the ambulance?

15 A. They stood at the end of -- in between
16 the back of the ambulance and my hood.

17 Q. Okay.

18 A. And they were talking. I was yelling
19 out the window, like crying, my baby's on my lap.
20 Just please come -- just come look at me. Come help
21 me, help me, help me. You know.

22 Q. So you were talking through the window
23 and making communications with the two firefighters.

24 A. Yes, sir.

25 Q. And were they responding to you?

1 A. They kept telling me to calm down, and
2 that's all they kept telling me to do is calm down.
3 They didn't even literally, like, come up to the
4 window and look at me. They just -- they were
5 several feet away, and they just looked.

6 And I tried to show them the baby. And
7 you know, you're sitting in the seat, and it's
8 leaned back, and I'm bleeding. It's going back, you
9 know. It's coming from the bottom so it's going
10 back. But I also had my legs sitting up on the
11 dashboard like this, and it was puddling up on top
12 and dripping down the sides of me.

13 Q. So if they would have gotten a little
14 closer to the --

15 A. They would have seen how it was puddles
16 of blood just pouring down.

17 Q. Was your husband pretty upset at the
18 time?

19 A. He -- he -- he was a medic in the
20 military, so he knew the signs of, you know, loss of
21 blood and everything. And he -- the whole -- whole
22 ride, he was questioning me and -- excuse me. I'm
23 sorry -- questioning me and, you know, talking to me
24 to keep me aware and keep me awake and asking me
25 questions.

1 Well, I -- while we were pulled over, I
2 started to let them know that I feel like somebody
3 is pulling sand on the back of my neck and I
4 couldn't -- I couldn't hold my neck up. It was
5 just --

6 Q. You said you made that evident to
7 somebody. Were you telling the paramedics on the
8 scene?

9 A. I was yelling out the window 'cause
10 they -- they went back over to talk to my husband.
11 My husband wasn't irate. He was just -- he was
12 worried about me and he was, like, I don't
13 understand. Why can't you guys help her? You know,
14 why can't you put her in the bed and get some fluid
15 in her? You know, she needs fluids in her while
16 she's bleeding this much.

17 And they just kept saying there's
18 nothing we can do. We're on Clark County line.
19 You're going to have to call it in and dispatch it.
20 By the time somebody gets here, you could already be
21 at the hospital. The closest hospital is on
22 Fort Apache. It's called Southern Hills.

23 So my husband ran back to the van, and
24 he said -- excuse my language -- "fuck you," and he
25 spun tires and took off. Well, then we had to drive

1 a ways down for the next turnaround to turn back to
2 Vegas. So, you know, that took even more time to
3 turn around and head back to Vegas to get to
4 Fort Apache to get to Southern Hills.

5 Q. Before we get there, let's go back to
6 the conversation.

7 Do you remember the paramedics ever
8 offering to drive you all to the Pahrump hospital?

9 A. No, no.

10 Q. Did they make any offer to drive you to
11 Las Vegas?

12 A. No. They said that they couldn't
13 because they were on Clark County and they were Nye
14 County and that they needed to be dispatched. It
15 needed to be called in. And by the time Flight For
16 Life got there or another ambulance, we could
17 already be there in our own vehicle.

18 Q. So they specifically said no, we're not
19 driving you to a Las Vegas hospital because we're
20 not in the right county?

21 A. Yeah.

22 Q. You said you felt like sand was pouring
23 on your head. Were you -- were you still fairly
24 alert and cognizant when this incident happened?

25 A. I was -- I was -- I'm going to be

1 honest. I was losing consciousness. It -- it did
2 start to where my ears were getting muffled and like
3 the whooo, whooo, whooo sound was going on and,
4 like, my vision with like the tunnel. It was
5 getting black, you know, started. And by the time
6 we got to the last gas station, I was out.

7 Q. The last -- you're talking about when
8 you come down the little -- Blue Diamond there?

9 A. Yeah.

10 Q. Right by Blue Diamond?

11 A. Yeah.

12 Q. Okay?

13 A. Before you turn on Fort Apache.

14 Q. And when you got to the hospital, what
15 happened?

16 A. My husband had called the hospital to
17 let them know what was going on, that I was
18 hemorrhaging and to have somebody waiting, that we
19 were almost there.

20 I guess when we pulled up, they were
21 already outside waiting. I kind of remember
22 being -- I don't remember -- I couldn't see it, but
23 I could hear a little bit, but it was muffled. They
24 pulled me out of the van, and when I -- when they
25 got me up out of the van, I mean, it just poured out

1 of me. And still to this day at Southern Hills on
2 the sidewalk is still -- you could see, you know,
3 like, a stain of my blood.

4 Q. Did they tell you how much blood you
5 ultimately lost?

6 A. I had to have six blood transfusions.
7 They wanted do another one before I went home, and I
8 just said that I would take all my vitamins and, you
9 know, eat all the meats and vegetables and
10 everything. I wanted to get home to my kids. I
11 just lost my baby. I just wanted to be home with my
12 other babies, you know.

13 And so yeah, I had six blood
14 transfusions. So honestly, I don't know how much
15 blood I lost, but six blood transfusions -- they
16 said that they've never done more than three blood
17 transfusions so --

18 Q. So that's pretty much your best
19 recollection as we sit here today as to what
20 happened up on the hill that night?

21 A. Yeah. I mean, I felt like they were
22 just not caring. It was, like, they just kept
23 telling me, calm down. You're -- you're fine. They
24 didn't check my vitals. They didn't check, you
25 know, anything. They peeked in, you know.

1 And like I said, if they would have just
2 come a little closer, let me turn on the light to
3 show the puddle of blood -- and also, you got to
4 realize that it's going behind me, you know. And
5 the baby -- obviously they couldn't do nothing for
6 the baby. That -- that's not the issue. The issue
7 was I felt like they offered no help, and it was,
8 well, here's your options. If we do dispatch it,
9 you could be at the hospital before anybody arrives.

10 Q. Were you able to see your husband
11 actually talk to them when he first got out of the
12 car and when they came out?

13 A. Yes. They got out of the driver -- the
14 driver got out, and then my husband got out, and
15 they both met right at the end of the ambulance and
16 the hood of our van.

17 And he explained the situation, you
18 know, of what happened and let him know that the
19 doctor said if I delivered the baby, I would
20 hemorrhage and told him that. And he -- he just
21 walked around. I don't -- actually, I don't know if
22 it was the driver that walked around or if it was --
23 'cause they went and talked -- the two
24 firefighters -- or EMTs went and talked to each
25 other for a second, and one just walked around and

1 looked inside and said you're not -- you're not
2 hemorrhaging. You're not bleeding that bad. This
3 is normal for a delivery of a baby.

4 Q. Do you remember if the scene was fairly
5 well lighted?

6 A. No. There was no light. I mean, they
7 had their -- they had their lights going and our
8 headlights were on, but it -- you know, there's no
9 streetlights or anything. And we weren't -- and it
10 was down the mountain. It wasn't at the top of the
11 mountain where it's more kind of, you know, lit up
12 with the streetlights or whatever, no. It was --
13 and like I said, it was 12:18, 12:20 A.M. It was in
14 the middle of the night. It was midnight.

15 Q. But they had their -- their ambulance
16 lights were on, and your headlights were on?

17 A. Yes, sir.

18 Q. Did you ever see your husband threaten
19 either one of the EMTs?

20 A. No. The only -- the only thing he
21 said -- the worse thing he said was "fuck you."

22 Q. Did he act aggressive toward them? Push
23 them?

24 A. Absolutely not. He did not put his hand
25 on them at all.

1 Q. Okay?

2 A. At all. At all. He -- he was concerned
3 about my health. And when they said that there was
4 nothing he -- they could do, he hopped back in the
5 van and was, like, fuck you. And then he said I'll
6 just get you there. And he drove 120 miles an hour
7 down that curve and everything to get me to the
8 hospital, you know.

9 Q. He was concerned about your safety.

10 A. Yes.

11 Q. Did you talk to him when you -- when you
12 first saw the ambulance going the other way?

13 A. That was -- the thing is -- is right
14 after I had -- my water broke, and then the next
15 contraction, the baby came out. And I was, like,
16 well, maybe we can stop at the -- the fire station.

17 And he was, like, honey, it's a
18 volunteer fire station. Nobody's probably going to
19 be there.

20 And it was just coincidental that that
21 ambulance was right there. And it honestly felt
22 like God was giving us, you know, help. And then
23 they didn't -- they didn't help at all.

24 My main concern is if you're going to
25 choose to be in that profession, you need to really

1 care about people's well-beings, you know. And I
2 almost lost my life, you know.

3 And even the doctors, I -- I can get
4 statements and everything. The doctor said if they
5 would have just put fluid in me, I would have never
6 ever lost consciousness, because now I have
7 short-term memory loss. I have a lot of things
8 going on now because of the situation. Not all of
9 it is their fault for not taking me. A lot of it,
10 you know, is from just having the miscarriage,
11 period, and hemorrhaging. But if I would have had
12 fluids in me and they could have elevated the bed a
13 little bit, I -- it wouldn't have been as severe as
14 it was.

15 And I don't know. And my husband even
16 told the doctors and nurses when we got to the
17 hospital the situation, and they -- they were
18 baffled, you know. So I don't know. After that, it
19 was a long -- a long process at the hospital, you
20 know. I had to deliver the afterbirth. I couldn't.
21 I just kept delivering blood clots. As you guys see
22 in the pictures, it was the baby and multiple blood
23 clots. And then they had to take me back into
24 surgery.

25 But you guys seen how much blood was in

1 the vehicle. And I had a towel underneath me and
2 everything, and I still bled that much, you know.
3 And I just -- I don't -- I don't understand. I
4 mean, how can you sit there and say I wasn't
5 bleeding that bad? And I had to have six blood
6 transfusions. And we were, you know, what, 15,
7 20 minutes from the hospital, and I had just
8 delivered the baby, so look how much blood I lost in
9 that van just in that amount of time. You know what
10 I mean?

11 Q. When you say 15 or 20 minutes, you're
12 talking about from Southern Hills?

13 A. Yeah, from the hospital, Southern Hills
14 on Fort Apache, to where we were, 15, 20 minutes,
15 you know, around about to get there.

16 Q. At over a hundred miles an hour?

17 A. Right, at over 120 miles an hour. So
18 when they seen me, there was obviously already a lot
19 of blood.

20 Q. Okay?

21 A. You know.

22 Q. And you're positive that the window was
23 open and they could hear what you were saying?

24 A. I'm positive, because they kept telling
25 me to calm down.

1 Q. Not just your husband but they told you
2 to calm down?

3 A. They were telling me to calm down.

4 MR. CAMPBELL: Okay. Thank you. You've
5 been very brave. I know this is tough for you. The
6 attorney for the Union will ask you a couple
7 questions, but thank you very much.

8

9 CROSS-EXAMINATION

10 BY MR. LEVINE:

11 Q. Miss Choyce, my name is Adam Levine, and
12 I'm very sorry for your loss and what you've had to
13 go through. I know it can't be easy. And I
14 apologize in advance, but I have to ask you some
15 questions about this. It's never easy for any of us
16 to have to do.

17 If I understand you correctly, you went
18 into labor at -- when you began to believe you were
19 going into labor here in Pahrump; is that correct?

20 A. Uh-huh, yes, sir.

21 Q. Would I be correct that your husband did
22 not call 911 or call for an ambulance to transport
23 you when you went into labor at the residence you
24 were staying at?

25 A. No.

1 Q. Why not?

2 A. Because we were going to the hospital
3 to -- I don't know. We just -- I didn't think I was
4 going to have the baby, and I thought I was just
5 cramping and we were going to the hospital where my
6 doctor was.

7 Q. The goal -- I guess you and your husband
8 perceived, am I correct, that you needed to go to a
9 hospital when you were at the residence here in
10 Pahrump; correct?

11 A. Right.

12 Q. And you knew that's a good hour, hour
13 and 15 minutes away?

14 A. Correct.

15 Q. Can you explain to me, then, why you or
16 your husband wouldn't call for EMT assistance to
17 come to you where you were and take you to where you
18 needed to go?

19 MR. CAMPBELL: I think that's asked and
20 answered. She said that she wasn't delivering at
21 the time so --

22 THE ARBITRATOR: Well, if she can add
23 anything.

24 BY MR. LEVINE:

25 Q. If you can --

1 A. I can't really say why or why not.

2 Q. Okay?

3 A. It was just what we chose to do. We
4 were going to my doctor, which he told us to go and
5 go to this hospital. And I didn't realize I was
6 going to deliver the baby, you know.

7 If I would have known I was in full
8 labor and the baby's about to come out, then -- then
9 obviously I would have -- you know, but I thought it
10 was just -- I was cramping due to the -- you know,
11 the seaweed and everything. And I didn't know I was
12 going to go into full term labor and actually
13 deliver the baby and then hemorrhage, or of course I
14 would have called 911 to transport me, you know.

15 But then I would have been transported
16 to Desert View and then all the way to Vegas, which
17 would have taken more time. And I would have
18 been -- you know -- you know what I mean? Like,
19 Desert View -- Desert View transports more people
20 than anything, and they don't -- they don't handle
21 OB/GYN.

22 Q. When -- at some point prior to
23 encountering what I'm going to refer to as
24 Medic 3 -- that's the ambulance that it's referenced
25 by -- prior to that, I guess your water broke and

1 you realized you were delivering; is that correct?

2 A. Uh-huh.

3 Q. If I understood your testimony
4 correctly, your husband subsequently called the
5 hospital to let them know you were arriving; right?

6 A. After -- after the ambulance had left
7 and we got cell phone coverage --

8 Q. Okay.

9 A. -- again.

10 Q. Is there a reason you didn't -- when the
11 water broke, is there a reason your husband didn't
12 call 911 at that point?

13 A. No service.

14 Q. Okay. So there's no cell service in
15 that area?

16 A. No. No, sir.

17 Q. All right. That's been an issue of
18 discussion?

19 So your experience is there's no cell
20 service out there?

21 A. No service from at least -- I want to
22 say a little before Tecopa turnoff to almost till
23 you get to the last -- to the gas station. You get
24 service right before you get to the gas station. So
25 almost that whole way, you don't have -- I don't

1 have service.

2 Q. Do you recall the fire chief coming out
3 to your residence on two occasions, one in May and
4 one in June 2012, to meet with you and your husband?

5 A. Yes, sir.

6 Q. Is there a reason that you would not
7 give a recorded statement on either of those
8 occasions to the fire chief?

9 A. I wasn't ready to talk about everything.
10 I mean, look how emotional I was just looking at the
11 pictures. That was my daughter, you know, and --
12 and also -- not only that, I almost lost my life.

13 It took -- it took a good five months
14 for me to actually get back to feeling normal again
15 and okay. I didn't have any energy. I didn't
16 have -- literally, I -- I was just so like this,
17 blah, you know, and I wasn't ready to talk about it.
18 I didn't know that it was going to go this far. It
19 wasn't that I just put it off.

20 And like I -- as you guys know, Nevaeh
21 passed away -- that was her name -- May 25. I lost
22 my husband October 4. There was multiple times that
23 I started to write the letter, and God as my witness
24 and my mom, I started, and I just couldn't continue
25 and relive that -- that whole night again. And

1 then -- I don't know. And then ever since my
2 husband passed away, I've had to deal with that.

3 MR. LEVINE: Arbitrator's indulgence.

4 THE ARBITRATOR: Let's go off the record
5 for a moment.

6 (A discussion was held off the
7 record.)

8 THE ARBITRATOR: Back on the record.

9 MR. LEVINE: I have no further
10 questions.

11 THE ARBITRATOR: And will there be any
12 redirect?

13 MR. CAMPBELL: No redirect.

14 THE ARBITRATOR: Thank you very much,
15 Miss Choyce.

16 THE WITNESS: Thank you. I just want
17 you guys to know that I told you guys what I can
18 recall as my memory, and I -- I wish my husband was
19 here to speak for himself.

20 THE ARBITRATOR: One thing that has
21 occurred to me, I want to make sure we have your
22 spelling correct. Is Brittnie -- how do you spell
23 that?

24 THE WITNESS: B-R-I-T-T-N-I-E.

25 THE ARBITRATOR: It has not been spelled

1 correctly in some of the paperwork.

2 And then your last name.

3 THE WITNESS: C-H-O-Y-C-E.

4 THE ARBITRATOR: Thank you very much.

5 And we'll go off the record to find the
6 next witness.

7 (A discussion was held off the
8 record.)

9 THE ARBITRATOR: Back on the record. By
10 agreement of the parties, we're going to go out of
11 order again because the Town has not yet rested. It
12 has at least one additional witness to present.

13 So is that the agreement of the parties?

14 MR. CAMPBELL: Yes.

15 MR. LEVINE: Yes.

16 THE ARBITRATOR: So you may call your
17 witness, Mr. Levine.

18 MR. LEVINE: Sergeant John Sivia, I
19 would call.

20
21 JOHN SIVIA,
22 having been called as a witness and having been
23 first duly sworn, was examined and testified as
24 follows:

25 THE ARBITRATOR: Thank you. And would

EXHIBIT “13”

Pahrump Fire-Rescue Service



Fire / EMS Special Circumstance Report

3/26/03

Date: 5-31 Run #: _____ Apparatus: M-3 Crew: Holts
Delucchi

_____ Police Issue _____ Fire Department Issue
_____ ALS (911) Issue _____ BLS (Transport) Issue
_____ Equipment _____ Other

Description: On A-shift after a transport to a vegas hospital
from D.V. hospital M-3 was on the way back to Pahrump
appx 4 mile from mountain Springs Fire Station on the Pahrump
side a very dangerous & erratic vehicle pulled up beside
M-3 - the driver of the vehicle was pointing & yelling
at M-3 to stop. Due to the circumstance & area having
no lighting we stopped in the best & most safe place
to as possible before getting out of the medic unit a very

Official Use Only

Referred to:

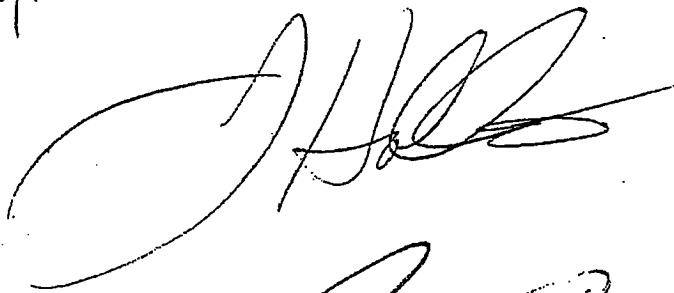
_____ Fire Chief _____ Assistant Chief _____ Lieutenant

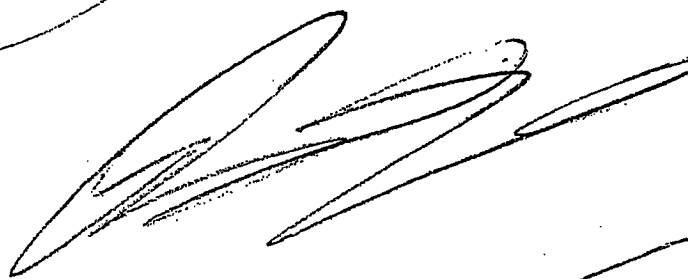
Date Received: _____

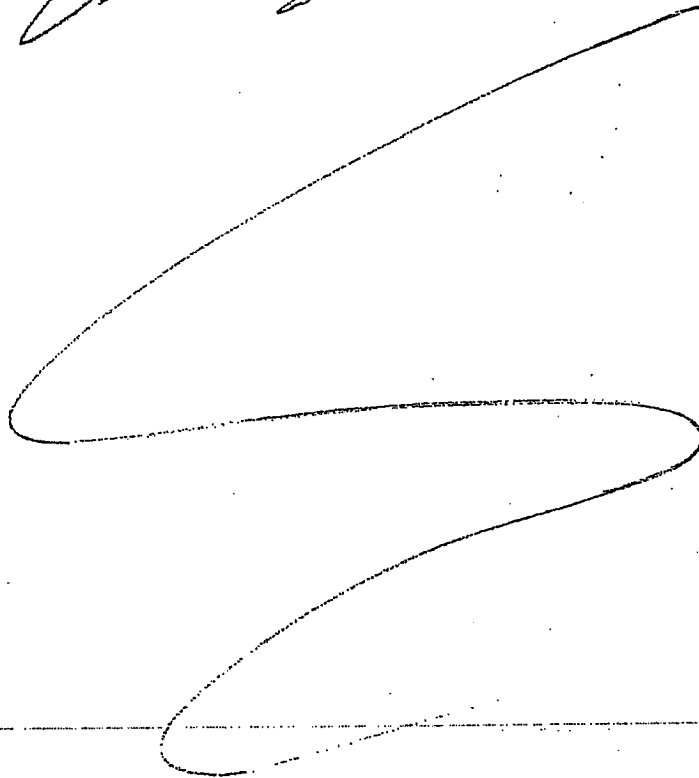
Action Taken: _____

PVF1024

Excited + erratic male appeared in the drivers window + screaming my wife is having a miscarriage, both my self + my partner were yelling calm down through the window of the medic unit at the male who was obviously out of control. my partner + I were in fear due to the unknown. We cautiously approached the vehicle on the passenger side of the car where a woman was crying, the passenger window was down half way + the male had jumped back in the driver seat of car and was yelling erratically. we my partner + I told him to calm down + we offered to take her to the hospital ⁱⁿ Pahrump + the male yelled F Desert view + put the car in drive so we moved back from car not knowing what the driver was gonna do, still yelling calm down + the car started to move + the driver was still yelling + not making any sense sped away.

 118

 #121



1 Case No. CV35969

2 Dept. No. 1

FILED
FIFTH JUDICIAL DISTRICT COURT

JUL 30 2014

NYE COUNTY DEPUTY CLERK
DEPUTY *[Signature]*

3
4 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

5 IN AND FOR THE COUNTY OF NYE

6 RAYMOND DELUCCI and TOMMY
7 HOLLIS,

8 Plaintiff,

9 v.

PAT SONGER and ERICKSON, THORPE
& SWAINSTON, LTD.,

10 Defendants.
11 _____ /

12
13 **SPECIAL MOTION TO DISMISS UNDER NEVADA'S ANTI-SLAPP STATUTES**
14 **(NRS 41.635, ET SEQ.)**

15 Defendant ERICKSON, THORPE & SWAINSTON, LTD. (also referred to herein as
16 "ETS"), by and through its attorneys, Lemons, Grundy & Eisenberg, hereby moves this Court for
17 an order dismissing the Plaintiffs' claims based on the immunity provided to ETS by Nevada
18 common law and Nevada's anti-Strategic Lawsuit Against Public Participation (anti-SLAPP)
19 statute. As will be set forth below, the plaintiffs' claims against ETS must be dismissed as the
20 conduct which forms the basis of the plaintiffs' complaint is absolutely privileged and protected
21 by Nevada's anti-SLAPP statute. Therefore, the claims must fail as a matter of law.

22
23 This motion is based on the following memorandum of points and authorities and any
24 further information this Court deems appropriate to consider.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Mr. Delucchi and Mr. Hollis bring this lawsuit after they were terminated, and eventually reinstated to their EMT positions with the Town of Pahrump ("the Town"). The complaint asserts two claims both of which stem entirely from an investigation and subsequent report which was prepared by the defendant Pat Songer at the direction of ETS. The first claim for relief alleges defamation. The second claim alleges intentional infliction of emotional distress ("IIED").

In June of 2012, the Town received a report that Messrs. Delucchi and Hollis failed to render aid to Brittanie Choyce, who was delivering a stillborn baby on the side of the road close to the county line between Nye County and Clark County. Following this incident, Mr. Delucchi and Mr. Hollis were placed on leave pending an investigation. Thereafter, the Town retained ETS to coordinate and oversee an investigation into these allegations. Rebecca Bruch was the attorney primarily responsible for ETS's engagement with the Town.

After Messrs. Delucchi and Hollis were placed on leave, plaintiff Delucchi filed an internal complaint wherein he alleged that he was placed on leave in retaliation for his activities as the union president. Because of this new claim, Ms. Bruch engaged two independent investigators, Cindy Davis and Pat Songer. Ms. Davis was retained to investigate the retaliation allegations, and Mr. Songer was retained to investigate the underlying allegations against Mr. Hollis and Mr. Delucchi. Specifically, the complaint against the plaintiffs was that while on duty in a Pahrump Valley Fire and Rescue Service ("PVFRS") ambulance, they failed to render aid to a patient who had delivered a stillborn baby on her way to a Las Vegas hospital. Notably, there was no factual dispute as to whether they failed to render aid. The only dispute was why they

1 did not render aid.

2 Following the completion of his investigation, Mr. Songer prepared a written report.
3 Before submitting that report to the Town, Rebecca Bruch edited the report, but only for various
4 typographical and spelling errors. She made no substantive changes to his report. As a result of
5 the investigation, Mr. Delucchi and Mr. Hollis were terminated. As noted above, they were
6 eventually returned to work after a grievance and arbitration proceeding.
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8 As will be detailed below, this lawsuit is precisely the type of retaliatory litigation that
9 prompted the Nevada legislature to adopt anti-SLAPP (Strategic Lawsuits Against Public
10 Participation) legislation similar to at least 35 other states. In creating this Act, Nevada's
11 legislature recognized that the proliferation of litigation against those who were willing to come
12 forward and speak out about perceived misconduct of public employees was having a profound
13 chilling effect upon the public's participation in government activities. To regain the public's
14 confidence, the legislature knew that it would have to enact legislation that would grant
15 comprehensive protection to those who, in good faith, proffered information germane to any
16 governmental proceedings. Because the legislature deemed these protections so vital, it created a
17 mechanism unlike anything which had ever existed in Nevada to protect citizens and remove any
18 disincentive which might otherwise dissuade a person to participate in the public process. Thus,
19 the protective mechanism had to be not only all-encompassing, but also exceedingly swift in
20 application. This, of course, is why the legislature mandated that the District Court actually
21 render a decision in just seven days after the anti-SLAPP motion is filed.
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24 The purpose of a special motion to dismiss under NRS 41.660, is to protect the entity and
25 its representatives from the punishment, retribution, reprisal and/or revenge from individuals like
26 Mr. Delucchi and Mr. Hollis, when the sued defendant had engaged in good-faith
27 communications pertaining to an issue of concern to the Town. No matter the outcome of the
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2 investigation; no matter the opinions that were reached; no matter what legal advice Attorney
3 Bruch may have given, the Town through its representatives, Attorney Bruch and Mr. Songer,
4 must be at liberty to engage in that process, and reach their conclusions, without fear of having to
5 answer to a lawsuit.
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7 As will be detailed below, to bring a Special Motion to Dismiss under the anti-SLAPP
8 statute, the moving party need only establish, by a preponderance of the evidence that the
9 plaintiff's claims are premised upon on a good-faith communication made by the defendant to a
10 governmental entity. NRS 41.660(3)(a). In sharp contrast, once that initial burden is met, the
11 plaintiff then must overcome a very high evidentiary burden in order proceed forward with the
12 case. In this regard, the plaintiff must establish, by clear and convincing evidence, a probability
13 of prevailing on the claim. NRS 41.660(3)(b). Mr. Delucchi and Mr. Hollis cannot meet their
14 burden in this case because the alleged conduct of ETS was absolutely privileged, and because
15 the plaintiff will never be able to prove, by clear and convincing evidence, that they will be able
16 to prevail on their asserted claims. Therefore, the claims asserted against ETS should be
17 dismissed.
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19 **II. STATEMENT OF RELEVANT FACTS**

20 **A. The Highway 160 incident involving James and Brittnie Choyce**

21 On May 30, 2012, a woman named Vicki, who eventually was identified as Brittnie
22 Choyce's mother, called Town officials to report that in the early morning hours of May 25,
23 2012, Ms. Choyce's life was endangered when PVFRS personnel failed to render the necessary
24 aid to her. *Complaint*, p. 2, ¶ 9; *see also Record of Phone Conversation, dated May 31, 2012*,
25 attached hereto as **Exhibit 1**.
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27 The details of the events on the side of the road on May 25, 2012, were chillingly
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provided by Ms. Choyce at the grievance arbitration hearing on August 13, 2013. *Testimony of Brittne Choyce*, attached hereto as **Exhibit 2**. Ms. Choyce testified that after her initial contact with Town representatives, she ignored subsequent attempts by the Town to contact her because she was not emotionally able to meet with anyone until the grievance almost 18 months later. **Exhibit 2**, pp. 23-24. She testified that because of the trauma of the events, as well as the fact that her husband James committed suicide a few weeks after the May 25, 2012 events, she simply was unable to respond to the request for information. **Exhibit 2**, p. 24.

Ms. Choyce testified that she was pregnant, but she had previously been informed that her baby was not alive and would be stillborn. **Exhibit 2**, pp. 5-6. Her doctor had instructed her to go to a Las Vegas hospital when she went into labor because the delivery of a stillborn baby was a high-risk situation, and there were no OB/GYNs at the hospital in Pahrump. **Exhibit 2**, p. 7. In the late evening hours of May 24, 2012, she went into labor and she and her husband began their drive to Las Vegas along Highway 160. **Exhibit 2**, p. 7. Tragically, she delivered her stillborn baby in the car at approximately 12:15 a.m. **Exhibit 2**, p. 7. A few minutes later, at or near the county line between Nye and Clark Counties, Ms. Choyce and her husband passed an ambulance driving in the opposite direction. **Exhibit 2**, p. 8. Mr. Choyce then turned his vehicle around and tried to get the ambulance to stop, hoping that the ambulance would transport his wife to a Las Vegas hospital. **Exhibit 2**, p. 8. After a couple miles, the ambulance finally pulled over. **Exhibit 2**, p. 8. Mr. Choyce and the ambulance attendants, Mr. Delucchi and Mr. Hollis, got out of their respective vehicles. **Exhibit 2**, pp. 8-9. Mr. Choyce frantically explained that his wife was in the car, that she had just delivered a stillborn baby, and that she was hemorrhaging. **Exhibit 2**, p. 8.

Mr. Delucchi and Mr. Hollis stood between the back of the ambulance and the hood of the Choyces' car, talking with Mr. Choyce. **Exhibit 2**, p. 8. Ms. Choyce yelled and cried, "my

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2 baby's on my lap. Just please come – just come look at me. Come help me, help me, help me.”
3 **Exhibit 2**, p. 9. Instead, Mr. Delucchi and Mr. Hollis stood several feet away and looked into
4 the Choyces' car, but they refused to approach and assess Ms. Choyce's medical situation.
5 **Exhibit 2**, pp. 9-10. With her legs up on the dashboard, Ms. Choyce tried to show Mr. Delucchi
6 and Mr. Hollis the stillborn baby she had just delivered. **Exhibit 2**, p. 10.

7
8 Mr. Delucchi and Mr. Hollis refused to render any care whatsoever to Ms. Choyce, and
9 they refused to transport her to the Las Vegas hospital. **Exhibit 2**, pp. 8-11. Instead, they told
10 the Choyces there was nothing they could do because they were on the Clark County line and, to
11 be of any service, they would need to be dispatched. **Exhibit 2**, pp. 11-12. Mr. Delucchi and
12 Mr. Hollis informed Mr. Choyce that he could call it in and have emergency services dispatched,
13 but that the Choyces could already be at the hospital by the time emergency services units could
14 respond. **Exhibit 2**, pp. 11-12. Mr. Delucchi and Mr. Hollis then informed Mr. Choyce of the
15 nearest hospital in Las Vegas. **Exhibit 2**, p. 11.

16
17 Frustrated and angry, Mr. Choyce returned to his vehicle and continued to drive Ms.
18 Choyce to Las Vegas. **Exhibit 2**, p. 11. Ms. Choyce continued to hemorrhage and lose a large
19 amount of blood, and she ultimately lost consciousness before arriving at the hospital in Las
20 Vegas. **Exhibit 2**, pp. 12-13.

21
22 Curiously, Mr. Delucchi and Mr. Hollis made absolutely no report of their encounter with
23 James and Brittnie, until after the Town of Pahrump had received the May 30, 2012 complaint
24 from Brittnie's mother. *Declaration of Pat Songer*, attached hereto as **Exhibit 3**. They did not
25 prepare an incident report. **Exhibit 3**. They did not prepare a patient care report. **Exhibit 3**.
26 They did not make any calls or radio transmissions to their dispatcher. **Exhibit 3**. They did not
27 notify any law enforcement agencies. **Exhibit 3**. They did not report the incident to their
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1 lieutenant or to the Fire Chief when they got back to their fire station. **Exhibit 3.** They did not
2 even report the incident to their superiors the following morning. **Exhibit 3.**

3 **B. The labor dispute between Mr. Delucchi and Fire Chief Scott Lewis**

4 At the time of the Highway 160 incident, Mr. Delucchi was president of the IAFF Local
5 4068 Union. **Exhibit 3; see also Declaration of Rebecca Bruch**, attached hereto as **Exhibit 4.**
6 Shortly after the incident, Mr. Delucchi filed an internal complaint against Fire Chief Scott
7 Lewis, claiming that Chief Lewis was retaliating against him because of his union activities,
8 taking absolutely no responsibility for the events at the side of the road. **Exhibits 3 and 4.** In
9 response, Chief Lewis filed a cross-complaint against Delucchi for harassment. **Exhibits 3 and**
10 **4.**

11 **C. Investigation of the Highway 160 incident by Chief Lewis and Lt. Moody**

12 Immediately after receiving the complaint by Ms. Choyce's mother, Lt. Moody and Chief
13 Lewis began an internal investigation of the incident. *Report of External Complaint*, attached
14 hereto as **Exhibit 5.** Lt. Moody and Chief Lewis began their investigation by returning Ms.
15 Choyce's mother's phone call. **Exhibit 5.** During that call, Lt. Moody and Chief Lewis spoke
16 directly with the Choyces, who each recounted the events of incident. **Exhibit 5.**

17 Ms. Choyce provided details of her labor with a stillborn baby, the drive to Las Vegas,
18 and the fact that her husband flagged down the ambulance in an effort to get medical assistance
19 for her. **Exhibit 5.** She informed Chief Lewis and Lt. Moody that one of the medics approached
20 her side of the car and, through the open window, asked, "What's going on?" She described her
21 communication with the medic who approached the car, stating that "[s]he was crying while she
22 informed him that she was having a miscarriage and was bleeding. **Exhibit 5.** She stated by this
23 time the stillborn was delivered and was 'in her pants.'" **Exhibit 5.**

24 Ms. Choyce informed Chief Lewis and Lt. Moody that the medic who approached her car
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2 refused to help her or look at the amount of blood she was losing. **Exhibit 5.** "She stated her
3 need for help to the same medic, but again he did not help." **Exhibit 5.** Ms. Choyce stated that
4 eventually the medic offered to drive her back to the Pahrump hospital, but he only offered the
5 name and directions to the closest Las Vegas hospital. **Exhibit 5.** She informed Chief Lewis
6 and Lt. Moody that her husband became more agitated and finally got back in the car and drove
7 to Las Vegas. **Exhibit 5.** She stated that when she arrived at the Las Vegas hospital, she
8 required five blood transfusions and passed five large blood clots. **Exhibit 5.**

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10 Mr. Choyce then got on the phone with Chief Lewis and Lt. Moody and relayed the same
11 story with some additional details. **Exhibit 5.** He stated that both medics approached Ms.
12 Choyce's window and asked her, "what's going on?" **Exhibit 5.** He described his wife's cries
13 for help and her statement that she was having a miscarriage and bleeding. **Exhibit 5.** He stated
14 that one of the medics responded to Ms. Choyce that she wasn't losing that much blood and that
15 they offered to take her back to Pahrump "as that was the direction they were heading."
16 **Exhibit 5.** He explained to Mr. Delucchi and Mr. Hollis that Ms. Choyce had been instructed by
17 her doctor to go to Las Vegas, rather than to the hospital in Pahrump. **Exhibit 5.** Mr. Choyce
18 then recounted his growing anger and his final decision to drive away after Mr. Delucchi and Mr.
19 Hollis provided directions to the closest hospital in Las Vegas. **Exhibit 5.**

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21 Chief Lewis and Lt. Moody then scheduled a face-to-face visit with the Choyces, to
22 inspect the Choyces' vehicle and gather additional information. **Exhibit 5.** At the scheduled
23 appointment at the Choyces' home, Chief Lewis and Lt. Moody looked at their minivan, where
24 they observed large blood stains on and under the passenger seat. **Exhibit 5.** They
25 demonstrated the position of the medics in relation to the passenger side of the minivan when the
26 medics had approached and talked with Ms. Choyce. **Exhibit 5.** Chief Lewis and Lt. Moody
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1 measured the distance at which the medics had stood from the minivan at approximately three
2 feet nine inches. **Exhibit 5.**

3 Mr. Choyce then stated that the entire encounter with the medics lasted approximately
4 five minutes. **Exhibit 5.** Mr. Choyce then recounted that Ms. Choyce had described feeling as
5 though sand was being “poured over her head [as though she was losing too much blood and
6 beginning to lose consciousness],” but that the medics still refused to help her. **Exhibit 5.** The
7 Choyces then stated that neither of the medics appeared to be scared or in fear, but more that
8 “they wanted to get home.” **Exhibit 5.**

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10 **D. The Town of Pahrump’s engagement of ETS, and ETS’s engagement of Songer**

11 In June of 2012, ETS was retained by the Town to coordinate and oversee investigations
12 into the Highway 160 incident and the internal cross-complaints filed by Mr. Delucchi and Chief
13 Lewis. **Exhibit 4.** Chief Lewis and Lt. Moody had been leading the investigation into the
14 encounter with the Choyces. **Exhibit 4.** Because of the allegations by Mr. Delucchi against
15 Chief Lewis, Attorney Bruch determined that Chief Lewis and Lt. Moody should not continue to
16 conduct the investigation, so as to insure a completely unbiased and neutral process. **Exhibit 4.**
17 Attorney Bruch oversaw the investigation and retained an outside, independent investigator,
18 Cindy Davis at Strategic HR Partners. **Exhibit 4.**

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20 Ms. Davis recognized that despite her past employment with REMSA in northern
21 Nevada, she did not have an extensive background in emergency medical services and was not
22 qualified to investigate the propriety of Mr. Delucchi’s and Mr. Hollis’ conduct on the night of
23 the incident involving Ms. Choyce. **Exhibit 4.** Accordingly, Attorney Bruch also retained
24 defendant Pat Songer, the Director of Emergency Medical Services for Humboldt General
25 Hospital in Winnemucca, Nevada, to conduct the investigation into the propriety of the conduct.
26 **Exhibit 4.** Mr. Songer’s role was to determine whether the events on the side of the road
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2 violated Town policy, protocol or law.

3 **E. Mr. Songer's investigation and report**

4 Mr. Songer is now the administrative director for Humboldt General Hospital in
5 Winnemucca, Nevada. **Exhibit 3.** At the time of his investigation of the Highway 160 incident,
6 he was the Director of Emergency Medical Services at Humboldt General. **Exhibit 3.** Mr.
7 Songer had over 20 years of experience as an emergency medical technician. **Exhibit 3.** As
8 such, he was eminently qualified to conduct an investigation into the allegations which had been
9 made against the plaintiffs.
10

11 On or about June 27, 2012, Attorney Bruch contacted Mr. Songer to investigate the
12 Highway 160 incident on behalf of the Town. **Exhibits 3 and 4.** Songer was asked to review
13 the facts that had already been gathered by Chief Lewis and Lt. Moody, and to conduct
14 additional interviews as he determined were necessary. **Exhibit 3.** Mr. Songer began his
15 investigation by reviewing policies and procedures of the Town and the PVFRS, as well as the
16 personnel files of Mr. Delucchi and Mr. Hollis. **Exhibit 3.** He reviewed statements from the
17 Choyces, which were taken by Chief Lewis and Lt. Moody. **Exhibits 3 and 5.** He then
18 conducted interviews of Mr. Delucchi and Mr. Hollis. **Exhibit 3.**
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20 After collecting all available information, Mr. Songer prepared a written report
21 containing the facts he had gathered in his investigation and the opinions he reached by virtue of
22 his investigation. **Exhibit 3; see also Songer Investigative Report of Facts and Conclusions,**
23 **attached hereto as Exhibit 6.** In reaching his findings, conclusions and opinions, Mr. Songer
24 relied in part on the reports of the incident prepared by Chief Lewis and Lt. Moody, after their
25 interviews with the Choyces. **Exhibit 3.** He also relied on his own interviews with Mr. Delucchi
26 and Mr. Hollis. **Exhibit 3.**
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1 Mr. Songer concluded, among other things, that the story proffered by Mr. Delucchi and
2 Mr. Hollis was not plausible and that Mr. Delucchi and Mr. Hollis were not credible witnesses.
3 **Exhibits 3 and 6.** Mr. Songer further concluded that Mr. Delucchi and Mr. Hollis had breached
4 the standard of care applicable to emergency medical services personnel, that their failure to
5 prepare a Patient Care Report or Incident Report could be viewed as an attempt to cover up their
6 wrongdoing, and that their conduct potentially exposed the Town to civil liability. **Exhibit 6.**

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8 **F. Attorney Bruch's review and edit of the Songer report**

9 Attorney Bruch reviewed the Songer report and suggested various grammatical and
10 stylistic revisions to the report. *Songer Report with Bruch Edits*, attached hereto as **Exhibit 7.**
11 As is apparent from a review of Attorney Bruch's edits, she made purely grammatical and
12 typographical corrections to the report. **Exhibit 7.** In an effort to make Mr. Songer's
13 conclusions a bit more clear and concise, she also made a few stylistic changes to his report.
14 **Exhibit 7.** In this regard, at the bottom of page 4 of the "conclusions" section of the report,
15 Attorney Bruch rewrote the first sentence of paragraph 8 of the report because Mr. Songer's
16 original sentence was grammatically incorrect. **Exhibit 7.** As is easily recognized from a
17 comparison of the original sentence drafted by Mr. Songer and the revision drafted by Attorney
18 Bruch, she did nothing more than make clear the conclusions reached by Mr. Songer.
19 Importantly, none of Attorney Bruch's edits made any substantive change to the findings or
20 conclusions. **Exhibit 7.**

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22 The "conclusions" portion of Mr. Songer's report was marked as "confidential attorney
23 work product." **Exhibit 6.** Such a demarcation is standard in an investigative process.
24 **Exhibit 4.** The notation was placed on the report because Mr. Songer's investigation was
25 conducted in anticipation of litigation and was performed at the request of an attorney.
26 **Exhibit 4.** More importantly, the Town fully anticipated that the Choyces would later file a
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lawsuit against the Town based upon the actions of the plaintiffs. The hope was to prevent disclosure of the report, not only to protect the Town, but also to protect Mr. Delucchi and Mr. Hollis in the likely event of litigation. *Ballard v. Eighth Judicial Dist. Court*, 106 Nev. 83, 84-85, 787 P.2d 406, 407 (1990). **Exhibit 4.**

After Mr. Songer completed his report, the Town subsequently requested that Mr. Songer also prepare recommendations as to how the Town should respond to his conclusions. **Exhibits 3 and 4; see also Songer Recommendations Report**, attached hereto as **Exhibit 8.** Mr. Songer's ultimate recommendations consisted of the actions he would have taken if Mr. Delucchi and Mr. Hollis were under Mr. Songer's command. **Exhibit 3.** Mr. Songer's recommendations included a recommendation that the Town should comply with state law by fully briefing and informing PVFRS's EMS medical director, as well as the State of Nevada EMS program manager, on the incident and the investigation. **Exhibit 8.** Mr. Songer also ultimately recommended that Mr. Delucchi and Mr. Hollis be terminated from their positions with PVFRS. **Exhibit 8.** Mr. Songer's final recommendations were based on what Mr. Songer interpreted as various violations of the Town's personnel policies, PVFRS's rules and regulations, and PVFRS's EMS protocols. In this regard, he concluded that their roles in the incident, their lack of judgment in the handling of the incident, as well as their response to the allegations merited the discipline he recommended. **Exhibit 8.**

G. This SLAPP lawsuit filed by Mr. Delucchi and Mr. Hollis

Mr. Delucchi and Mr. Hollis now assert claims against ETS and Songer for defamation and IIED. They allege that Mr. Songer's report contained false and defamatory statements and that the preparation of the report constitutes extreme and outrageous conduct intended to cause Mr. Delucchi and Mr. Hollis emotional distress. Mr. Delucchi and Mr. Hollis further seek an

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2 award of punitive damages from both defendants. As is the hallmark of a SLAPP lawsuit, Mr.
3 Delucchi and Mr. Hollis now hope to punish ETS and Mr. Songer for participating in good faith
4 in public affairs, and for conducting an investigation which, at least in part, was conducted to
5 protect them as well as the Town from anticipated litigation by the Choyces.
6

7 To link ETS to the findings and recommendations made by Mr. Songer, the plaintiffs
8 allege that Mr. Songer and Attorney Bruch "co-authored" Mr. Songer's investigative report.
9 Complaint, p. 3, ¶ 13. They allege that Attorney Bruch edited the portions written by Mr.
10 Songer, and that other paragraphs "were written directly by Attorney Bruch and directed to be
11 incorporated into the report." Complaint, p. 3, ¶ 13. Attempting to show that Attorney Bruch
12 "co-authored" the report, Mr. Delucchi and Mr. Hollis further allege that "[s]everal pages of the
13 'Conclusions' portion of the report stated that it was 'confidential attorney work product'."
14 Complaint, p. 3, ¶ 13.
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16 The irrefutable evidence reveals that Attorney Bruch did not "co-author" Mr. Songer's
17 report. She merely edited the report for typographical and grammatical errors, in an effort to
18 make them more clear and concise. Portions of the report were marked as "confidential attorney
19 work product" in order to provide protection to both the Town and the plaintiffs in the event of
20 litigation by third parties. *Ballard*, 106 Nev. at 84-85, 787 P.2d at 407. Thus, even if this Court
21 could somehow find that the report contained false information, the information was not
22 provided by ETS.
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24 Perhaps most importantly, the findings and conclusions contained in Songer's report were
25 either entirely true, or they were merely recitations of the opinions of the investigator based upon
26 the results of his investigation. There is no evidence, let alone clear and convincing evidence,
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2 that the report is anything other than a good-faith communication to the Town regarding a matter
3 reasonably of concern to the Town. As such, ETS is immune from Mr. Delucchi's and Mr.
4 Hollis' claims asserted in this action. Because of this fact, the complaint must be dismissed.
5

6 **III. STANDARD FOR GRANTING THIS SPECIAL MOTION TO DISMISS**

7 If an action is brought against a person based upon a good- faith communication to a
8 governmental entity (regarding a matter reasonably of concern to the governmental entity), "[t]he
9 person against whom the action is brought may file a special motion to dismiss."
10 NRS 41.660(1)(a). A special motion to dismiss must be filed within 60 days after service of the
11 complaint. NRS 41.660(2). Discovery is stayed pending a ruling on the motion and pending the
12 disposition of any appeal from the ruling on the motion. NRS 41.660(3)(e). The anti-SLAPP
13 statute is intended to allow a citizen "to obtain prompt review of potential SLAPP lawsuits and
14 have them dismissed before she is forced to endure the burdens and expense of the normal
15 litigation process." *Metabolic Research, Inc. v. Ferrell*, 693 F.3d 795, 802 (9th Cir. 2012).
16

17 A special motion to dismiss "functions as a motion for summary judgment and allows the
18 district court to evaluate the merits of the alleged SLAPP claim." *Stubbs v. Strickland*, 129 Nev.
19 ___, ___, 297 P.3d 326, 329 (2013); *see also John v. Douglas County Sch. Dist.*, 125 Nev.
20 746, 753, 219 P.3d 1276, 1281 (2009). Like a motion for summary judgment, the moving party
21 bears the initial burden of production and persuasion. *John*, 125 Nev. at 754, 219 P.3d at 1282.
22 However, the moving party need only make a threshold showing, "by a preponderance of the
23 evidence, that the lawsuit is based upon a good faith communication in furtherance of the right to
24 petition or the right to free speech in direct connection with an issue of public concern." NRS
25 41.660(3)(a). Once the moving party satisfies this threshold showing, the burden then shifts to
26 the nonmoving party.
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2 As a result of the 2013 amendments to Nevada's anti-SLAPP statute, the burden upon a
3 plaintiff has been significantly increased. In the context of a special motion to dismiss, the
4 nonmoving party now bears a heightened substantive evidentiary burden. To survive a special
5 motion to dismiss, the plaintiff must establish "by clear and convincing evidence a probability of
6 prevailing on the claim." NRS 41.660(3)(b) (emphasis added). This is critical because, just as in
7 ruling on a motion for summary judgment, "the judge must view the evidence presented through
8 the prism of the substantive evidentiary burden." *Bonnell v. Lawrence*, 128 Nev. ___, ___,
9 282 P.3d 712, 718, (2012).

11 The nonmoving party cannot overcome the special motion to dismiss on the gossamer
12 threads of whimsy, speculation and conjecture. *John*, 125 Nev. at 754, 219 P.3d at 1281.
13 Instead, the nonmoving party must provide more than general allegations and conclusions; it
14 must submit specific factual evidence demonstrating the existence of a genuine factual issue. *Id.*
15 Clear and convincing evidence is evidence "sufficiently strong to command the unhesitating
16 assent of every reasonable mind." *In re Valerie W.*, 162 Cal.App.4th 1, 13, 75 Cal.Rptr.3d 86,
17 95 (2008). If the plaintiff cannot meet this heavy evidentiary burden, "the district court must
18 dismiss the action, and that dismissal operates as an adjudication on the merits." *John*, 125 Nev.
19 at 754, 219 P.3d at 1282.

21 IV. LEGAL ARGUMENT

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23 A. The report authored by Mr. Songer and edited by Attorney Bruch was a "good
24 faith communication in furtherance of the right to petition or the right to free
25 speech in direct connection with an issue of public concern."

26 Anti-SLAPP statutes were created to allow public entities and their representatives to
27 speak and act freely in the course of their duties. SLAPP lawsuits are pointedly and deliberately
28 filed to prevent that very conduct which is critical to the safe operations of those entities. As

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2 articulated by New York Supreme Court Judge J. Nicholas Colabella, in reference to SLAPP
3 lawsuits such as the one brought by Mr. Delucchi and Mr. Hollis, "Short of a gun to the head, a
4 greater threat to First Amendment expression can scarcely be imagined." *Gordon v. Morrone*,
5 590 N.Y. S.2d 649, 656 (N.Y. Sup.Ct. 1992).
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7 As noted above, ETS must make a threshold showing, by a preponderance of the
8 evidence, that this lawsuit is based upon "a good faith communication in furtherance of the right
9 to petition or the right to free speech in direct connection with an issue of public concern."
10 NRS 41.660(3)(a). The term "good faith communication in furtherance of the right to petition or
11 the right to free speech in direct connection with an issue of public concern" is defined in
12 NRS 41.637. That definition includes a "[c]ommunication of information or a complaint to a
13 Legislator, officer or employee of ... a political subdivision of this state, regarding a matter
14 reasonably of concern to the respective governmental entity." NRS 41.637(2). The
15 communication of information must be truthful or made without knowledge of its falsehood.
16 NRS 41.637 (Emphasis added). It is incomprehensible that Mr. Delucchi and Mr. Hollis will
17 argue that the disturbing events on the side of the road on May 25, 2012, are not matters
18 reasonably of concern to the Town.
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20 The concept of protected communications to a governmental entity was explained and
21 applied in *John, supra*. In that case, Mr. John, a security officer at Douglas County School
22 District ("DCSD"), was disciplined after an investigation revealed that he had engaged in, among
23 other things, the improper videotaping of special education students. 125 Nev. at 750, 219 P.3d
24 at 1279. As part of the investigation, other acts of sexual harassment and misconduct were
25 uncovered. *Id.* After the investigation, John received a letter of discipline and other disciplinary
26 measures from DCSD. *Id.* He then filed a union grievance related to his discipline and a claim
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2 with the EEOC, but the imposition of discipline was upheld by the union and the EEOC. *Id.*
3 John subsequently engaged in further misconduct when he obtained confidential student
4 disciplinary records and failed to cooperate with the school district's investigation into the
5 matter. *Id.* Because of this, along with his previous misconduct, John was fired, but like Mr.
6 Delucchi and Mr. Hollis, was eventually reinstated. *Id.* After his termination, John filed a
7 wrongful termination and defamation lawsuit against DCSD and others. *Id.* at 751, 219 P.3d at
8 1279-80.
9

10 DCSD filed a special motion to dismiss pursuant to NRS 41.660. *Id.* at 751, 219 P.3d at
11 1280. Just like ETS in this case, DCSD argued that "the school officials' actions related to the
12 investigations of John constituted protected conduct under the statute, and the communications
13 between school officials and the DCSD in furtherance of these investigations were privileged
14 and truthful." *Id.* The district court granted DCSD's special motion to dismiss, finding that the
15 communications by DCSD and its officials related to its investigations were protected under the
16 anti-SLAPP statute. *Id.*
17

18 The district court's order was upheld *en banc* by the Nevada Supreme Court. *Id.* at 763,
19 219 P.3d at 1287. The Supreme Court first delved into the background and purpose of Nevada's
20 anti-SLAPP legislation. It recognized the Nevada State Legislature's explanation that a SLAPP
21 lawsuit is one that "abuse[s] the judicial process by chilling, intimidating, and punishing
22 individuals for their involvement in public affairs." *John*, 125 Nev. at 752, 219 P.3d at 1281.
23 One of the bases for the prevention of SLAPP suits, the *John* Court held, is that "representative
24 democracy demands that citizens and public officials have the ability to openly engage in
25 discussions of public concern." *Id.* at 753, 219 P.3d at 1281. The Nevada Supreme Court clearly
26 recognized that the protections provided by Nevada's anti-SLAPP legislation remove what might
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2 otherwise be a powerful disincentive against participation, a disincentive that would operate to
3 deny the entity of the benefit of critical information, views and expertise.

4 The Supreme Court then held that the communications by DCSD and its officials,
5 regarding the investigations into John's misconduct, fell within the protections of the anti-
6 SLAPP statute. *Id.* at 760-62, 219 P.3d at 1286-87. The Court reasoned that (1) the
7 communications were truthful or made without knowledge of falsehood, and (2) the
8 communications were of reasonable concern to the school district. *Id.* at 761-62, 219 P.3d at
9 1286-87. For those reasons, the Supreme Court held, the district court had properly granted
10 DCSD's special motion to dismiss. *Id.*

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12 Just as in *John*, ETS's communications to the Town regarding the investigation into Mr.
13 Delucchi's and Mr. Hollis' conduct, including Mr. Songer's report, were truthful or made
14 without knowledge of falsehood. All evidence demonstrates that the information in Mr.
15 Songer's report was true or, at the very least, that Attorney Bruch and Mr. Songer had no
16 knowledge of its falsehood. In fact, the majority of the information came directly from Mr.
17 Delucchi and Mr. Hollis. As stated above, by the time Mr. Songer and Attorney Bruch got
18 involved, Ms. Choyce would no longer speak with any Town representatives. It was not until the
19 arbitration that she, at the eleventh hour, agreed to come testify.

20
21 Attached as exhibits to this motion are declarations from Attorney Bruch and Mr.
22 Songer. **Exhibits 3 and 4.** Both Attorney Bruch and Mr. Songer declare that their
23 communications were truthful to the best of their knowledge, and that they made no statements
24 they knew to be false. **Exhibits 3 and 4.** There is no evidence, let alone clear and convincing
25 evidence, that any of the information contained in Mr. Songer's report was false. Moreover,
26 there is certainly no evidence that either Attorney Bruch or Mr. Songer knew such information to
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2 be false.

3 Even if the plaintiffs could prove that Mr. Songer's opinions and conclusions were false,
4 they must still prove that (1) Attorney Bruch made an unprivileged communication of Mr.
5 Songer's statements to a third person, and (2) she made such a communication with actual
6 knowledge of the falsity of the information. *Clark County Sch. Dist. v. Virtual Educ. Software,*
7 *Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009); *Adelson v. Harris*, 973 F.Supp.2d 467, 501-
8 03 (S.D.N.Y. 2013).
9

10 Such a showing cannot be made in this case. In an effort to link Ms. Bruch to Mr.
11 Songer's opinions and conclusions, Mr. Delucchi and Mr. Hollis allege that Attorney Bruch "co-
12 authored" Mr. Songer's report. This allegation is clearly intended to prove that Attorney Bruch
13 directed Mr. Songer to make substantive changes to his report. This allegation is completely
14 belied by the evidence. As shown in **Exhibit 7**, Attorney Bruch made purely grammatical and
15 typographical changes to the report. None of Attorney Bruch's edits made any substantive
16 change to Mr. Songer's factual recitation. The reference to "confidential attorney work product"
17 does not show that Attorney Bruch had in any way "co-authored" the report. Rather, the
18 reference to "confidential attorney work product" was made in an effort to potentially shield Mr.
19 Songer's report from mandatory disclosure in the event of a lawsuit asserted by the Choyces.
20 Stated differently, the designation was an attempt to protect the Town as well as Mr. Delucchi
21 and Mr. Hollis in the event of an adverse finding in the investigation.
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24 Before rendering his opinions, Mr. Songer collected all information that was then
25 reasonably available to him. **Exhibit 3**. He relied on the statements of the Choyces, as
26 recounted by Chief Lewis and Lt. Moody. He also relied on his own interviews of Mr. Delucchi
27 and Mr. Hollis. As an investigator, Mr. Songer's role required him to use his best judgment to
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2 determine the credibility of witnesses based not only on the witnesses' characteristics, but also
3 on the plausibility of their respective accounts of the events in question. **Exhibit 3.** Mr. Songer
4 concluded that the stories proffered by Mr. Delucchi and Mr. Hollis were neither credible nor
5 plausible. **Exhibits 3 and 6.** Mr. Songer further opined that Mr. Delucchi and Mr. Hollis were
6 not credible witnesses. **Exhibits 3 and 6.** Mr. Songer and Attorney Bruch believed that the
7 evidence revealed in Mr. Songer's investigation supported the findings and conclusions set forth
8 in his report. **Exhibits 3, 4 and 6.** There is no evidence to the contrary.

9
10 Mr. Songer was justified in relying on the statements of the Choyces, as those statements
11 were recounted by Chief Lewis and Lt. Moody, and as they were verified in emotionally charged
12 testimony by Ms. Choyce at the arbitration. Even without that testimony, Mr. Songer's opinions
13 were that Mr. Delucchi and Mr. Hollis' stories were simply implausible, and that their conduct
14 violated PVFRS protocol, policies and procedures.

15
16 Plaintiffs may argue that Mr. Songer had failed to conduct a complete investigation as to
17 the truth of the statements recounted by Chief Lewis and Lt. Moody, or that Mr. Songer relied on
18 unreliable sources when he relied on the statements recounted by Chief Lewis and Lt. Moody.
19 Such arguments would be unavailing. To demonstrate that communications to a governmental
20 entity were not in made good faith, a plaintiff is required to present facts showing that the
21 informant had **actual** knowledge that the communicated information was false. *Adelson v.*
22 *Harris*, 973 F.Supp.2d 467, 501-03 (S.D.N.Y. 2013)(emphasis added).

23
24 *Adelson* was a defamation action in which the United States District Court for the
25 Southern District of New York applied Nevada's anti-SLAPP statute and relied extensively on
26 *John*. *Id.* at 496-500. The *Adelson* Court considered whether the allegedly defamatory
27 statements were made in good faith and whether there was any evidence to the contrary. *Id.* at
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2 501-03. It concluded that an alleged failure to investigate the truth of the communications and
3 reliance upon unreliable sources in making the communications are insufficient to show that
4 such communications were not made in good faith. *Id.* at 502. Rather, under Nevada's anti-
5 SLAPP statute, a plaintiff is required to allege and prove the communicator's actual knowledge
6 of the falsity of the communicated information. *Id.* at 502-03. Furthermore, as noted above,
7 such a showing must now be made by clear and convincing evidence. NRS 41.660(3)(b).
8

9 Mr. Delucchi and Mr. Hollis cannot make the required showing that either Attorney
10 Bruch or Mr. Songer had actual knowledge that the information contained in Mr. Songer's report
11 was false. Mr. Songer had derived the information contained in his report from his review of the
12 statements of the Choyces, as recounted by Chief Lewis and Lt. Moody, as well as his interviews
13 with Mr. Delucchi and Mr. Hollis. Mr. Songer and Attorney Bruch believed Mr. Songer's report
14 to be accurate. **Exhibits 3 and 4.** They still believe it to be accurate. **Exhibits 3 and 4.**
15

16 Further attesting to the validity of Mr. Songer's opinions, they were later corroborated by
17 the under-oath testimony of Ms. Choyce. **Exhibit 2.** She testified that Mr. Delucchi and Mr.
18 Hollis refused to render any medical assistance despite her cries and pleas for help. **Exhibit 2,**
19 pp. 8-9. Although she tried to show Mr. Delucchi and Mr. Hollis the baby she had just delivered,
20 as well as all the blood she was losing, Mr. Delucchi and Mr. Hollis refused to approach her and
21 render the necessary aid. **Exhibit 2,** pp. 10-11. As Mr. Songer concluded, this conduct fell
22 below the standard of care applicable to EMS personnel, and it subjected the Town to potential
23 civil liability. **Exhibit 6.** As recognized by the Nevada Supreme Court in *John*, subsequent
24 support for the veracity of communications can and should be considered when determining
25 whether those communications were previously made in good faith. *John*, 125 Nev. at 762, 219
26 P.3d at 1287 (stating that "[m]oreover, the DCSD's subsequent investigations supported the
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2 veracity of the communications.”).

3 Mr. Songer was also requested to make recommendations to the Town as to how to deal
4 with Mr. Delucchi and Mr. Hollis. **Exhibit 8.** To perform this task, Mr. Songer was called upon
5 to interpret policies, regulations, rules and protocols, and, to the best of his ability, apply those
6 principles to the conduct exhibited by Mr. Delucchi and Mr. Hollis. **Exhibit 3.** Mr. Songer
7 performed these difficult tasks to the best of his ability, and he did not dissipate any information
8 he knew to be false. **Exhibit 3.** To the contrary, Mr. Songer and Attorney Bruch wholeheartedly
9 believed Mr. Songer ultimately reached appropriate conclusions that were supported by the
10 evidence. **Exhibits 3 and 4.** They still wholeheartedly believe this. **Exhibits 3 and 4.**
11 According to Mr. Delucchi’s and Mr. Hollis’ SLAPP lawsuit, Mr. Songer and ETS should be
12 punished simply because Mr. Songer’s investigation revealed conclusions that were not
13 favorable to Mr. Delucchi and Mr. Hollis.
14
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16 In reaching his opinions, Mr. Songer also relied heavily on the fact that Mr. Delucchi and
17 Mr. Hollis had not reported the incident to anyone. **Exhibits 3, 6 and 8.** They did not make any
18 cell phone calls or radio transmissions to their dispatcher or to any law enforcement agency.
19 They did not prepare an incident report or a patient care report. They did not report the incident
20 to the on-duty Lieutenant or Fire Chief after returning to Pahrump, and they did not even make
21 any such reports the following morning. It was only after their conduct was discovered, when
22 Ms. Choyce’s mother made her complaint, that Mr. Delucchi and Mr. Hollis came finally
23 forward with their stories of the incident. Mr. Songer concluded that such a failure to report
24 tended to indicate that Mr. Delucchi and Mr. Hollis had been attempting to cover up their
25 wrongdoing, and that such cover-up attempts made them even less credible. **Exhibit 3.**
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27 Attorney Bruch’s knowledge is set forth in her declaration. As stated in that declaration,
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2 all information provided by Attorney Bruch and Mr. Songer to the Town of Pahrump was
3 truthful to the best of her knowledge, and she made no statements she knew to be false.

4 **Exhibit 4.** This Court should therefore conclude that the communications from ETS and Songer
5 to the Town of Pahrump were made in good faith, as such communications were true or made
6 without knowledge of falsehood.
7

8 **B. Mr. Songer's report was undeniably of concern to the Town.**

9 It cannot be plausibly denied that the legal advice and investigation coordinated by ETS,
10 including Mr. Songer's report, were of reasonable concern to the Town. Indeed, the Town
11 sought out Attorney Bruch's legal advice and requested that she coordinate an investigation into
12 the incident. Mr. Delucchi's and Mr. Hollis' conduct was of concern to the Town for three
13 primary reasons: (1) the Town reasonably anticipated that a lawsuit would arise out of the
14 incident; and (2) the Town was concerned as to whether any disciplinary measures were
15 necessary, and (3) the Town had a legitimate interest in using the incident as a tool to ensure that
16 such an incident did not occur in the future.
17

18 Because ETS's legal advice to the Town of Pahrump, including Mr. Songer's
19 investigative report, were good-faith communications to a political subdivision of this State,
20 regarding a matter of reasonable concern to the Town, ETS's and Mr. Songer's communications
21 to the Town meet NRS 41.637's definition of protected communications. As such, ETS is
22 immune from Mr. Delucchi's and Mr. Hollis' claims based on the communications.
23

24 **C. Mr. Delucchi and Mr. Hollis cannot establish by clear and convincing evidence**
25 **a probability of prevailing on their claims.**

26 NRS. 41.660 lays out the high burden which Mr. Delucchi and Mr. Hollis must satisfy
27 once the Court determines that ETS has established by a preponderance of the evidence that the
28 claim is based upon a good faith communication in furtherance of the right to petition or the right

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2 to free speech in direct connection with an issue of public concern. They must prove by clear
3 and convincing evidence a probability of prevailing on the claim. They have asserted two
4 claims: (1) defamation, and (2) IIED.

5
6 **1. The defamation claim:**

7 **a. ETS did not, by clear and convincing evidence, or otherwise,**
8 **engage in defamatory conduct.**

9 The general elements of a defamation claim require a plaintiff to prove: (1) a false and
10 defamatory statement by a defendant concerning the plaintiff; (2) an unprivileged publication to
11 a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.
12 *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82, 90 (2002).

13 With the adoption of the First Amendment's free speech provisions to the United States
14 Constitution, the United States Supreme Court was forced to determine how the First
15 Amendment interacted with the common law of defamation. Initially, the High Court suggested
16 that the First Amendment did not protect against false statements and was not implicated in a
17 defamation action. However, in the landmark case of *New York Times Company v. Sullivan*,³⁷⁶
18 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), the Supreme Court concluded that the negligence
19 standard was too broad when applied to defendants who were commenting about the actions of a
20 public official.
21

22 To promote free criticism of public officials, and avoid any chilling effect from the threat
23 of a defamation action, the High Court concluded that a defendant could not be held liable for
24 damages in a defamation action involving a public official plaintiff unless "actual malice" is
25 alleged and proven by clear and convincing evidence. Actual malice has been defined as
26 "knowledge that it [the statement] was false or with reckless disregard of whether it was false or
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3 not.” Reckless disregard means that the publisher of the statement acted with a “high degree of
4 awareness of... [the] probable falsity” of the statement or had serious doubts as to the
5 publication's truth. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 719, 57 P.3d 82, 90
6 (2002).

7 In *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342-43, 94 S.Ct. 2997, 41 L.Ed.2d 789
8 (1974), the United States Supreme Court refined its definition of a limited-purpose public figure,
9 by noting that it is preferable to reduce the public-figure question to a more meaningful context
10 by looking to the nature and extent of an individual's participation in the particular controversy
11 giving rise to the defamation. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82,
12 90 (2002).
13

14 In *Posadas v. City of Reno*, 109 Nev. 448, 454, 851 P.2d 438, 443 (Nev. 1993), a police
15 officer brought an action against the City of Reno and others to recover for defamation and
16 intentional infliction of emotional distress in connection with the police chief's press release
17 accusing the officer of having lied under oath. In that decision, the Court held that as a police
18 officer, Posadas was a public official. The Court stated, “Because of the importance to the
19 public of being informed as to the conduct and integrity of its public servants, Posadas' right to
20 protection against untrue attacks must be balanced against the First Amendment interest in
21 holding local government actors accountable. The propriety of the district court's summary
22 adjudication of Posadas' claim therefore rests on Posadas' ability to show that the allegedly
23 defamatory statement was made with actual malice.”
24

25 Mr. Delucchi and Mr. Hollis have voluntarily placed themselves in the public eye by
26 virtue of their positions as EMTs. They know they are subject to close scrutiny of their work,
27 because of the critical nature of their job duties, and the need for transparency in the way in
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2 which they conduct their work. In fact, it was one of Mr. Songer's major concerns that Mr.
3 Delucchi and Mr. Hollis did not report to their supervisors the encounter with the Choyces.
4

5 To prevail on their defamation claim, they must prove actual malice by clear and
6 convincing evidence. That is, they must prove that the Songer report, as edited by Attorney
7 Bruch, was communicated with knowledge that it was false or with reckless disregard of whether
8 it was false or not. Reckless disregard means that Mr. Songer and/or Attorney Bruch acted with
9 a high degree of awareness of the probable falsity of the statement or had serious doubts as to the
10 publications' truth. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82, 90
11 (2002).
12

13 Mr. Delucchi and Mr. Hollis base their allegation that the report is defamatory on the fact
14 that it was "co-authored" by Attorney Bruch. As discussed above, that is simply not true, which
15 by itself is sufficient to defeat a defamation claim. Grammatical edits to the report do not
16 constitute "co-authoring." But whatever label Mr. Delucchi and Mr. Hollis care to put on the
17 edited report, there is nothing in the report that is false or stated with reckless disregard of
18 whether it was false or not. The report is a memorialization of Mr. Songer's fact-finding task
19 wherein he rendered opinions as to Mr. Delucchi's and Mr. Hollis's veracity, and subsequently
20 made a recommendation as to how he would handle the situation if he were the final decision-
21 maker. There is certainly nothing in the report which Mr. Delucchi and Mr. Hollis can prove
22 was false, or made with a reckless disregard for the truth.
23

24 **b. Even if Mr. Delucchi and Mr. Hollis are not limited public figures,**
25 **they cannot prove their defamation claim by clear and convincing**
26 **evidence, because the Songer report as edited by Attorney Bruch was**
pure opinion.

27 In *People for the Ethical Treatment of Animals v. Bobby Berosini*, 111 Nev. 615, 895
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2 P.2d 1269 (Nev. 1995), there is an exhaustive discussion of libel, defined as written defamation.
3 In that case, an entertainer at a Las Vegas casino sued two nonprofit animal protection groups
4 and several individuals for, among other things, comments made by individuals that "Berosini
5 regularly abuses his orangutans." As the Court points out, whether the violence portrayed in the
6 videotape is seen as abuse or proper discipline is a matter of wide-ranging difference of opinion
7 among the witnesses in the case and within the public in general. *Id.* at 622. The Court went on
8 to render its ruling that the statements made were opinion, not libel, and offered the following
9 discussion:
10

11 "The opinion expressed by any defendants or by any of defendants' witnesses in
12 this case that Berosini's activities, as represented in the videotape, constituted
13 abuse or cruelty falls squarely into a class of opinion described by Prosser and
14 Keeton as "evaluative opinions." PROSSER AND KEETON ON TORTS 814 (W. Page
15 Keeton, ed.; 5th ed. 1984). An evaluative opinion involves a value judgment
16 based on true information disclosed to or known by the public. Evaluative
17 opinions convey the publisher's judgment as to the quality of another's behavior
18 and, as such, it is not a statement of fact. "Under the Restatement (Second)
19 virtually all 'evaluative only' opinions would be nonactionable, since they are by
20 definition based on disclosed facts.... The statement that 'Jane Doe did not
21 deserve the Oscar for her movie role because it was a shallow, two-bit, hack
22 performance' is not actionable even in the face of ironclad proof that every other
23 living being who has ever seen the movie loved the performance." RODNEY A.
24 SMOLLA, LAW OF DEFAMATION § 6.05 [2], page 6-20 (1988) (citations omitted).
25 The divergent evaluative opinions expressed in the case now before us are subject
26 to debate. Neither is "right" or "wrong."

27 In the present case, everyone involved has seen the "movie"; and all the facts
28 upon which opinions were based were "disclosed" in the videotape itself. Those
who were of the opinion that Berosini was being abusive to the animals were
making an evaluative judgment based on the facts portrayed in the video. All
viewers of that video are free to express their opinion on the question of whether
they think Berosini was being cruel to those animals, and no one can be
successfully sued for expressing such an evaluative opinion—even if it is
"wrong." There is no such thing as a false idea or a wrong opinion. *See Nevada*
Ind. Broadcasting Corp. v. Allen, 99 Nev. 404, 410, 664 P.2d 337, 341-42 (1983).

...

Finally, the constitutional privilege provided by the Nevada Constitution protects

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2 the animal rights activists from defamation liability in this case. Article 1, section
3 9, of the Nevada Constitution provides that "[e]very citizen may freely speak,
4 write and publish his sentiments on all subjects, being responsible for the abuse of
5 that right." Citing to the Nevada Constitution, in *Culinary Workers Union v.*
6 *Eighth Judicial Dist. Court*, 66 Nev. 166, 207 P.2d 990 (1949), this court
7 observed that the "constitutional right to free speech ... embraces every form and
8 manner of dissemination of ideas held by our people." *Id.* at 173, 207 P.2d at 993.
9 "Free speech ... must be given the greatest possible scope and have the least
10 possible restrictions imposed upon it, for it is basic to representative democracy."
11 *Id.* at 173, 207 P.2d at 994 (citations omitted). In *Culinary Workers*, the district
12 court issued a restraining order against peaceful picketing. The Culinary Workers
13 Union sought a writ of prohibition countermanding the restraining order. One of
14 the grounds asserted by the parties opposed to the Culinary Workers Union's
15 application for the prohibition writ was that the "unfair" sign used on the picket
16 line was untruthful. *Id.* at 176, 207 P.2d at 995 (citations omitted). With regard to
17 the Culinary Workers Union's use of the word "unfair" on picket signs, this court
18 ruled in *Culinary Workers*, that "[s]uch normal statements or claims which in
19 general convey the idea that a business is 'unfair' to organized labor' are no
20 more than statements of opinion and are not subject to judicial restraint." *Id.* at
21 177, 207 P.2d at 995."

22 *Id.* at 624.

23 The statements made in the Songer report are his opinion based on the facts as he
24 believed them to be true. They cannot be defamatory statements, any more than the statements
25 and opinions rendered by the Arbitrator in this case, wherein she took great exception to the
26 decision to terminate Mr. Delucchi and Mr. Hollis. Obviously, the Town strongly disagrees with
27 her opinion. That does not make the Arbitrator's opinion defamatory. Mr. Songer's opinion as
28 outlined in the report, and edited by Attorney Bruch, is his opinion about whether various
PVFRS policies, and procedures, as well as relevant state laws and codes, were violated.

As in *Berosini*, the report is an evaluative opinion, and therefore not libelous. The
Berosini Court elaborated that the manner in which Berosini is seen to be treating his animals in
the videotape provides the framework in which the expressed, evaluative opinions of abuse must
be seen, that is to say, as expressions of pure opinion and not statements of fact. So long as the

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2 factual basis for the opinion is readily available, the persons receiving the opinion are in a
3 position to judge for themselves the validity of the opinion. *Id.* at 628. And that is exactly what
4 the Arbitrator did in this case - she disregarded the opinions rendered in the Songer report, and
5 she formulated her own opinions. Neither her opinion nor Mr. Songer's opinions are right or
6 wrong. They are merely vastly contrasting opinions. Neither are defamatory.
7

8 **2. The intentional infliction of emotional distress ("IIED") claim.**

9 **a. The Songer report, as edited by Attorney Bruch, does not**
10 **constitute conduct which satisfies the elements of the IIED claim.**

11 In order to prevail on their IIED claim, Mr. Delucchi and Mr. Hollis must prove (1) the
12 Songer report constitutes conduct which was extreme or outrageous with either the intention of,
13 or reckless disregard for, causing emotional distress to the plaintiffs; and (2) that they suffered
14 severe or extreme emotional distress as the actual or proximate result of defendant's conduct.
15 *Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 989 P.2d 882 (1999).
16

17 Mr. Delucchi and Mr. Hollis must prove that Mr. Songer and Ms. Bruch created a report
18 with the intention of causing emotional distress. This is the very report that was generated in
19 large part for the purpose of protecting the Town and Mr. Delucchi and Mr. Hollis in the event
20 the Choyces sued them.

21 Extreme and outrageous conduct is that which is outside all possible bounds of decency
22 and is regarded as utterly intolerable in a civilized community. *Maduike v. Agency Rent-A-Car*,
23 114 Nev. 1, 953 P.2d 24 (1998). The emotional distress cannot merely be embarrassment or
24 humiliation. *Dicomes v. State*, 113 Wash.2d 612, 630, 782 P.2d 1002 (Wash. 1989).
25 Notwithstanding the impetus for the report, the fact that a report was generated which ultimately
26 made adverse findings against Mr. Delucchi and Mr. Hollis, does not constitute extreme and
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2 outrageous conduct.

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4 In *Janaszak v. State*, 173 Wash.App. 703, 297P.3d 723 (Wash.App. Div. 1 2013), Dr.
5 Eric Janaszak had been accused of inappropriate sexual relationships with patients, sexual
6 encounters during scheduled appointments, billing for dental services not actually performed,
7 among other things. The Washington Dental Quality Assurance Commission authorized an
8 investigation, which took place over the course of eight months. The Washington Department of
9 Health sought an order prohibiting Janaszak from treating adult female patients pending further
10 disciplinary proceedings. Instead, the Commission prohibited Janaszak from treating female
11 patients aged 12 and older. A third complainant came forward, but at deposition the original two
12 complainants stopped cooperating with the disciplinary proceedings. The Commission therefore
13 withdrew the restrictions and charges against Janaszak.
14

15 Janaszak sued on a variety of grounds, including a claim of IIED. He argued that the
16 Commission acted outrageously by conducting a biased investigation, selectively gathering
17 evidence to build a case against him, and branding him a pedophile by limiting his practice to
18 exclude all females over 12 years old. The Court ruled that while Janaszak may have been
19 distressed by the Commission's actions, he presented no evidence that the Commission or the
20 investigator acted intentionally or recklessly to injure him. As a matter of law, Janaszak failed to
21 present a prima facie case of outrage. *Id.* at 736.
22

23 In *Chowdhry v. NLVH*, 109 Nev. 478, 483, 851 P.2d 459, 462 (Nev. 1993), the Court
24 examined comments about patient abandonment. The plaintiff testified that as a result of the
25 comments, "he was very upset" and could not sleep. Mr. Delucchi and Mr. Hollis do not even
26 present any basic representations about what severe or extreme emotional distress they have
27 suffered. They cannot by clear and convincing evidence establish a probability of prevailing on
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2 this claim.

3 **D. Attorney Bruch and Mr. Songer are protected by very strong immunities which**
4 **compel early dismissal of the lawsuit.**

5 Nevada's anti-SLAPP statute provides full and complete immunity against the lawsuit
6 which has been filed. In addition, however, there also exist a number of common law
7 immunities which render this action meritless, with no likelihood of success. The Nevada
8 Supreme Court has long frowned on the viability of defamation claims against communications
9 afforded absolute privilege on the basis that "the public interest in having people speak freely
10 outweighs the risk that individuals will occasionally abuse the privilege by making false and
11 malicious statements." *Jacobs v. Adelson*, 130 Nev.____, ____, 325 P.3d 1282, 1285(2014).
12 The alleged defamatory statements under scrutiny here are exactly such privileged
13 communications.
14

15 Nevada has extended this absolute immunity referenced above to not only quasi-judicial
16 hearings, but administrative ones as well. *Sahara Gaming Corp., v. Culin. Workers Union Local*
17 *226*, 115 Nev. 212, 217-219, 984 P.2d 164, 167, 168 (1999). In such proceedings, defamatory
18 statements connected with, relevant to or material to the subject matter in controversy are
19 absolutely privileged, and this standard is applied liberally to affect the public policies
20 underlying the privilege. *Id.*, at 219, at 168. Since the quality of emergency medical care can
21 literally be a matter of life and death, public policy demands that communications amongst those
22 responsible for maintaining the quality of emergency medical services be privileged. *Imperial v.*
23 *Drapeau*, 716 A. 2d 244, 250-51 (Ct. App. Maryland 1998).
24

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3 **V. CONCLUSION**

4 Anti-SLAPP legislation is the epitome of a policy decision by Nevada's lawmakers that
5 harm to a plaintiff in leaving a claim unaddressed is outweighed by harm to the public in having
6 officials' decision-making impaired by fear of liability for their decisions. Nevada's anti-SLAPP
7 statute assists the judiciary in managing cases by providing a vehicle to dismiss meritless claims.
8 These statutes aid the judiciary by conserving judicial resources, saving the parties from
9 incurring unnecessary expenses, and preventing the parties from prolonging meritless cases. The
10 statute is intended to filter unmeritorious claims in an effort to protect citizens from costly
11 retaliatory lawsuits arising from their right to free speech.
12

13 Public entities by and through their counsel, cannot be afraid to conduct investigations
14 into matters of public concern, especially matters with the gravity of this one. Likewise, their
15 counsel cannot be afraid to oversee and conduct independent investigations. They must not be
16 intimidated by the fear of being sued, even at the risk of reaching conclusions that are
17 detrimental to the entity or its employees, even at the risk of reaching conclusions that may
18 ultimately be wrong, and even at the risk of an ultimate decision being overturned by an
19 arbitrator.
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2
3 ETS's communications to the Town are protected by Nevada's anti-SLAPP statute.
4 Based upon the facts and the applicable law, ETS respectfully requests that this Court grant its
5 special motion to dismiss pursuant to NRS 41.660.

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


9 Dated: July 29, 2014.

10 By: Tesodor
11 Todd R. Alexander, Esq.
12 Attorneys for Defendants
13 *Erickson, Thorpe & Swainston*
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on July 29, 2014, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **SPECIAL MOTION TO DISMISS UNDER NEVADA'S ANTI-SLAPP STATUTES (NRS 41.635, ET SEQ.)**, addressed to the following:

Daniel Marks, Esq.
Adam Levine, Esq.
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, Nevada 89101



Susan G. Davis

INDEX OF EXHIBITS

| <i>Exhibit No.</i> | <i>Description</i> | <i>Length of Exhibit</i> |
|---------------------------|--|---------------------------------|
| 1 | Toni Glines description | 1 page |
| 2 | Deposition transcript of Brittnie Marie Choyce | 26 pages |
| 3 | Declaration of Pat Songer | 4 pages |
| 4 | Declaration of Becky Bruch | 3 pages |
| 5 | External Complaint | 5 pages |
| 6 | Pat Songer – Points of Interview with Complainants | 4 pages |
| 7 | Pat Songer – Points of Interview with Complainants with atty notes | 9 pages |
| 8 | Pat Songer – Recommendations | 5 pages |
| | | |

EXHIBIT 1

EXHIBIT 1

5-31-12

On Wednesday, May 30, 2012, I received a message on my phone from a Vicki. She stated she wanted to issue a complaint against our medics. She stated in the message that it was Medic 3 which was involved. She left her number for me to call.

I returned her call and the following is a detail of our conversation.

She stated that her son-in-law was taking her daughter into Las Vegas, she was pregnant and bleeding. At the top of the hill he saw one of our units coming back into Pahrump so he turned around and attempted to flag them down. After about 6 miles they finally stopped and he told them his wife was pregnant and bleeding. He was told by one of our medics to "calm down" and she wasn't bleeding that much. The medic also told him that all they could do was take her to Desert View. He then got angry got back in his car and headed to Las Vegas.

Vicki then stated that by the time they arrived at the hospital, her daughter had passed out.

I asked her if she could describe the medics and she asked her son-in-law to describe them. I heard him state that the one was bald and he didn't remember what the other looked like.

At this time I told Vicki that I would give this information to the Fire Chief would return her call. 29. 5-31-12



Toni Glines

EXHIBIT 2

EXHIBIT 2

CERTIFIED COPYEXCERPT FROM TRANSCRIPT OF PROCEEDINGS

RE GRIEVANCES OF

TOMMY HOLLIS

AND

RAYMOND DELUCCHI

TESTIMONY OF BRITTNIE MARIE CHOYCE

August 13, 2013

270 Highway 160

Pahrump, Nevada

Reported by: Jennifer A. Clark, RDR, CRR, CCR #422

1 APPEARANCES:

2 For the Town of Pahrump:

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17 The Arbitrator:

18 CATHERINE HARRIS, ESQ.
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21 Also Present:

22 Raymond Delucchi
23 Tommy Hollis
24 Dean Fletcher
25 William J. Snow

I N D E XWitnessPage

BRITTNIE MARIE CHOYCE

Direct Examination by Mr. Campbell

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Cross-Examination by Mr. Levine

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THE ARBITRATOR: Let's go back on the record.

And the Town is calling?

MR. CAMPBELL: Ms. Brittanie Choyce.

THE ARBITRATOR: Would you raise your right hand, please.

BRITTANIE MARIE CHOYCE,
having been called as a witness and having been first duly sworn, was examined and testified as follows:

THE ARBITRATOR: And would you state your full name for the record, please.

THE WITNESS: Brittanie Marie Choyce.

THE ARBITRATOR: Thank you.

You may proceed, Mr. Campbell.

DIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Mrs. Choyce, I think I've introduced myself before. I'm the attorney for the Town of Pahrump. We're here in an arbitration proceeding regarding two firefighters that -- on an incident that occurred -- I think it was May 25 of 2012, just

1 about a year and a few months ago. Okay? We're in
2 an informal proceeding. Like I told you, if you
3 have need to stop for a minute, get emotional, just
4 let me know. We can stop and take a little bit of a
5 break. Okay?

6 A. Okay. Thank you.

7 Q. Are you a resident of Pahrump?

8 A. No longer.

9 Q. Okay. Did you live here back in the May
10 of 2012 time frame?

11 A. We were back in -- we had an apartment.
12 Yeah, we had an apartment in Vegas, but we also had
13 our house in Pahrump.

14 We were having kind of a hard time with
15 my in-laws, my husband's family, so we moved to
16 Vegas for a little while and -- but we still had our
17 house. And my mother lived in it with my
18 grandmother and my grandfather, and we would stay
19 out here with them too, you know.

20 Q. Okay.

21 A. Yeah.

22 Q. I'll just call this incident --

23 A. But that night I -- I was in Pahrump.

24 Q. Okay. So let's just say that night.

25 Prior to that night, you had seen your

1 OB/GYN doctor. You were pregnant; correct?

2 A. Yes, sir.

3 Q. And your OB/GYN doctor had -- you had
4 discussed with him about what happened with the
5 complications from the pregnancy?

6 A. Uh-huh, yeah, and what was going to
7 happen.

8 Q. And what did he tell you?

9 A. Well, they did the ultrasound, and there
10 was no fetal heartbeat or movement. But I was
11 between 17 and 20 weeks, and so they couldn't just
12 do a normal D&C. So what they were going to do was
13 called a D&E, which was going to be on May 26 at
14 10:15 A.M.

15 He inserted seaweed inside of me to help
16 dilate and so that when I did go in to have the
17 procedure, that it wasn't so much trauma to my
18 cervix and everything. Well, that seaweed
19 completely put me into labor.

20 By the time I realized I was contracting
21 so much and everything and, you know, said we got to
22 go to the hospital, we were headed to the hospital
23 where the doctor was supposed to do the surgery.
24 And to this day, I don't remember now which hospital
25 it was.

1 Q. Okay. Let me --

2 A. I think it was Centennial Hills
3 Hospital.

4 Q. Let me stop you for a minute.
5 Was your doctor over in Las Vegas?

6 A. Yes, sir.

7 Q. And he told you he wanted to do this
8 procedure in a Las Vegas hospital?

9 A. Yes, sir.

10 Q. Did you ever talk about possibly doing
11 the procedure in the Pahrump hospital?

12 A. No, 'cause it was a high risk doctor and
13 they -- they didn't have -- they don't have OB/GYNs
14 out here.

15 Q. Okay. Your doctor specifically told you
16 that he was going to have to do this procedure --

17 A. In Vegas.

18 Q. Okay. And so I'll go back to your
19 story. So you started going into -- having
20 contractions and going into labor. And that would
21 have been about what time on the night of the 24th?

22 A. Around 10:30, 11:00.

23 Q. Okay.

24 A. And then we headed out, and at 12:18 or
25 12:15 is when I delivered the baby. And around

1 12:18 to 12:20 is right when we ran into the EMTs.
2 We were coming up that -- right at the volunteer
3 fire station, and they were passing.

4 Q. You were headed to Las Vegas?

5 A. Headed to Las Vegas. They were coming
6 from Las Vegas, heading to Pahrump, and it was right
7 dead at the fire station. So my husband turned
8 around and was flashing his lights and everything.
9 We got side by side by them, and we were waving them
10 down to, you know, pull over.

11 They kept driving a couple miles. They
12 kept looking out the window, like, you know, what
13 the heck is going on? They did turn on their
14 lights, and they did finally pull over.

15 Q. Did they pull over what would have been
16 a couple miles down the road from the summit?

17 A. Yes, yeah. It took a while for them to
18 pull over. My husband then got out of the vehicle,
19 and they stepped out of the vehicle. And he said my
20 wife just delivered the baby, and she's
21 hemorrhaging, and the doctor said if she delivered
22 the baby on her own, she was going to hemorrhage.

23 And he -- they were just saying calm
24 down, calm down. And there's nothing we can do;
25 that, you know, we're on Clark County line and we're

1 Nye County. By the time we call somebody to get
2 here, it -- you could drive yourself to the
3 hospital.

4 Q. Now, you have some pretty good recall of
5 the conversation. Was your passenger window open?

6 A. Both of the windows were down, yes, the
7 driver's side and the passenger side.

8 Q. And then when the -- when the EMTs got
9 out of the ambulance, where did they walk to when
10 they got out of the ambulance?

11 A. They stood at the end of -- in between
12 the back of the ambulance and my hood.

13 Q. Okay.

14 A. And they were talking. I was yelling
15 out the window, like crying, my baby's on my lap.
16 Just please come -- just come look at me. Come help
17 me, help me, help me. You know?

18 Q. So you were talking through the window
19 and making communications with the two firefighters.

20 A. Yes, sir.

21 Q. And were they responding to you?

22 A. They kept telling me to calm down, and
23 that's all they kept telling me to do is calm down.
24 They didn't even literally, like, come up to the
25 window and look at me. They just -- they were

1 several feet away, and they just looked.

2 And I tried to show them the baby. And
3 you know, you're sitting in the seat, and it's
4 leaned back, and I'm bleeding. It's going back, you
5 know. It's coming from the bottom so it's going
6 back. But I also had my legs sitting up on the
7 dashboard like this, and it was puddling up on top
8 and dripping down the sides of me.

9 Q. So if they would have gotten a little
10 closer to the --

11 A. They would have seen how it was puddles
12 of blood just pouring down.

13 Q. Was your husband pretty upset at the
14 time?

15 A. He -- he -- he was a medic in the
16 military, so he knew the signs of, you know, loss of
17 blood and everything. And he -- the whole -- whole
18 ride, he was questioning me and -- excuse me. I'm
19 sorry -- questioning me and, you know, talking to me
20 to keep me aware and keep me awake and asking me
21 questions.

22 Well, I -- while we were pulled over, I
23 started to let them know that I feel like somebody
24 is pulling sand on the back of my neck and I
25 couldn't -- I couldn't hold my neck up. It was

1 just --

2 Q. You said you made that evident to
3 somebody. Were you telling the paramedics on the
4 scene?

5 A. I was yelling out the window 'cause
6 they -- they went back over to talk to my husband.
7 My husband wasn't irate. He was just -- he was
8 worried about me and he was, like, I don't
9 understand. Why can't you guys help her? You know,
10 why can't you put her in the bed and get some fluid
11 in her? You know, she needs fluids in her while
12 she's bleeding this much.

13 And they just kept saying there's
14 nothing we can do. We're on Clark County line.
15 You're going to have to call it in and dispatch it.
16 By the time somebody gets here, you could already be
17 at the hospital. The closest hospital is on
18 Fort Apache. It's called Southern Hills.

19 So my husband ran back to the van, and
20 he said -- excuse my language -- "fuck you," and he
21 spun tires and took off. Well, then we had to drive
22 a ways down for the next turnaround to turn back to
23 Vegas. So, you know, that took even more time to
24 turn around and head back to Vegas to get to
25 Fort Apache to get to Southern Hills.

1 Q. Before we get there, let's go back to
2 the conversation.

3 Do you remember the paramedics ever
4 offering to drive you all to the Pahrump hospital?

5 A. No, no.

6 Q. Did they make any offer to drive you to
7 Las Vegas?

8 A. No. They said that they couldn't
9 because they were on Clark County and they were Nye
10 County and that they needed to be dispatched. It
11 needed to be called in. And by the time Flight For
12 Life got there or another ambulance, we could
13 already be there in our own vehicle.

14 Q. So they specifically said no, we're not
15 driving you to a Las Vegas hospital because we're
16 not in the right county?

17 A. Yeah.

18 Q. You said you felt like sand was pouring
19 on your head. Were you -- were you still fairly
20 alert and cognizant when this incident happened?

21 A. I was -- I was -- I'm going to be
22 honest. I was losing consciousness. It -- it did
23 start to where my ears were getting muffled and like
24 the whooo, whooo, whooo sound was going on and,
25 like, my vision with like the tunnel. It was

1 getting black, you know, started. And by the time
2 we got to the last gas station, I was out.

3 Q. The last -- you're talking about when
4 you come down the little -- Blue Diamond there?

5 A. Yeah.

6 Q. Right by Blue Diamond?

7 A. Yeah.

8 Q. Okay.

9 A. Before you turn on Fort Apache.

10 Q. And when you got to the hospital, what
11 happened?

12 A. My husband had called the hospital to
13 let them know what was going on, that I was
14 hemorrhaging and to have somebody waiting, that we
15 were almost there.

16 I guess when we pulled up, they were
17 already outside waiting. I kind of remember
18 being -- I don't remember -- I couldn't see it, but
19 I could hear a little bit, but it was muffled. They
20 pulled me out of the van, and when I -- when they
21 got me up out of the van, I mean, it just poured out
22 of me. And still to this day at Southern Hills on
23 the sidewalk is still -- you could see, you know,
24 like, a stain of my blood.

25 Q. Did they tell you how much blood you

1 ultimately lost?

2 A. I had to have six blood transfusions.
3 They wanted do another one before I went home, and I
4 just said that I would take all my vitamins and, you
5 know, eat all the meats and vegetables and
6 everything. I wanted to get home to my kids. I
7 just lost my baby. I just wanted to be home with my
8 other babies, you know.

9 And so yeah, I had six blood
10 transfusions. So honestly, I don't know how much
11 blood I lost, but six blood transfusions -- they
12 said that they've never done more than three blood
13 transfusions so --

14 Q. So that's pretty much your best
15 recollection as we sit here today as to what
16 happened up on the hill that night?

17 A. Yeah. I mean, I felt like they were
18 just not caring. It was, like, they just kept
19 telling me, calm down. You're -- you're fine. They
20 didn't check my vitals. They didn't check, you
21 know, anything. They peeked in, you know.

22 And like I said, if they would have just
23 come a little closer, let me turn on the light to
24 show the puddle of blood -- and also, you got to
25 realize that it's going behind me, you know. And

1 the baby -- obviously they couldn't do nothing for
2 the baby. That -- that's not the issue. The issue
3 was I felt like they offered no help, and it was,
4 well, here's your options. If we do dispatch it,
5 you could be at the hospital before anybody arrives.

6 Q. Were you able to see your husband
7 actually talk to them when he first got out of the
8 car and when they came out?

9 A. Yes. They got out of the driver -- the
10 driver got out, and then my husband got out, and
11 they both met right at the end of the ambulance and
12 the hood of our van.

13 And he explained the situation, you
14 know, of what happened and let him know that the
15 doctor said if I delivered the baby, I would
16 hemorrhage and told him that. And he -- he just
17 walked around. I don't -- actually, I don't know if
18 it was the driver that walked around or if it was --
19 'cause they went and talked -- the two
20 firefighters -- or EMTs went and talked to each
21 other for a second, and one just walked around and
22 looked inside and said you're not -- you're not
23 hemorrhaging. You're not bleeding that bad. This
24 is normal for a delivery of a baby.

25 Q. Do you remember if the scene was fairly

1 well lighted?

2 A. No. There was no light. I mean, they
3 had their -- they had their lights going and our
4 headlights were on, but it -- you know, there's no
5 streetlights or anything. And we weren't -- and it
6 was down the mountain. It wasn't at the top of the
7 mountain where it's more kind of, you know, lit up
8 with the streetlights or whatever, no. It was --
9 and like I said, it was 12:18, 12:20 A.M. It was in
10 the middle of the night. It was midnight.

11 Q. But they had their -- their ambulance
12 lights were on, and your headlights were on.

13 A. Yes, sir.

14 Q. Did you ever see your husband threaten
15 either one of the EMTs?

16 A. No. The only -- the only thing he
17 said -- the worse thing he said was "fuck you."

18 Q. Did he act aggressive toward them? Push
19 them?

20 A. Absolutely not. He did not put his hand
21 on them at all.

22 Q. Okay.

23 A. At all. At all. He -- he was concerned
24 about my health. And when they said that there was
25 nothing he -- they could do, he hopped back in the

1 van and was, like, fuck you. And then he said I'll
2 just get you there. And he drove 120 miles an hour
3 down that curve and everything to get me to the
4 hospital, you know.

5 Q. He was concerned about your safety.

6 A. Yes.

7 Q. Did you talk to him when you -- when you
8 first saw the ambulance going the other way?

9 A. That was -- the thing is -- is right
10 after I had -- my water broke, and then the next
11 contraction, the baby came out. And I was, like,
12 well, maybe we can stop at the -- the fire station.

13 And he was, like, honey, it's a
14 volunteer fire station. Nobody's probably going to
15 be there.

16 And it was just coincidental that that
17 ambulance was right there. And it honestly felt
18 like God was giving us, you know, help. And then
19 they didn't -- they didn't help at all.

20 My main concern is if you're going to
21 choose to be in that profession, you need to really
22 care about people's well-beings, you know. And I
23 almost lost my life, you know.

24 And even the doctors, I -- I can get
25 statements and everything. The doctor said if they

1 would have just put fluid in me, I would have never
2 ever lost consciousness, because now I have
3 short-term memory loss. I have a lot of things
4 going on now because of the situation. Not all of
5 it is their fault for not taking me. A lot of it,
6 you know, is from just having the miscarriage,
7 period, and hemorrhaging. But if I would have had
8 fluids in me and they could have elevated the bed a
9 little bit, I -- it wouldn't have been as severe as
10 it was.

11 And I don't know. And my husband even
12 told the doctors and nurses when we got to the
13 hospital the situation, and they -- they were
14 baffled, you know. So I don't know. After that, it
15 was a long -- a long process at the hospital, you
16 know. I had to deliver the afterbirth. I couldn't.
17 I just kept delivery blood clots. As you guys see
18 in the pictures, it was the baby and multiple blood
19 clots. And then they had to take me back into
20 surgery.

21 But you guys seen how much blood was in
22 the vehicle. And I had a towel underneath me and
23 everything, and I still bled that much, you know.
24 And I just -- I don't -- I don't understand. I
25 mean, how can you sit there and say I wasn't

1 bleeding that bad? And I had to have six blood
2 transfusions. And we were, you know, what, 15,
3 20 minutes from the hospital, and I had just
4 delivered the baby, so look how much blood I lost in
5 that van just in that amount of time. You know what
6 I mean?

7 Q. When you say 15 or 20 minutes, you're
8 talking about from Southern Hills?

9 A. Yeah, from the hospital, Southern Hills
10 on Fort Apache, to where we were, 15, 20 minutes,
11 you know, around about to get there.

12 Q. At over a hundred miles an hour?

13 A. Right, at over 120 miles an hour. So
14 when they seen me, there was obviously already a lot
15 of blood.

16 Q. Okay.

17 A. You know.

18 Q. And you're positive that the window was
19 open and they could hear what you were saying?

20 A. I'm positive, because they kept telling
21 me to calm down.

22 Q. Not just your husband but they told you
23 to calm down?

24 A. They were telling me to calm down.

25 MR. CAMPBELL: Okay. Thank you. You've

1 been very brave. I know this is tough for you. The
2 attorney for the union will ask you a couple
3 questions, but thank you very much.

4
5 CROSS-EXAMINATION

6 BY MR. LEVINE:

7 Q. Miss Choyce, my name is Adam Levine, and
8 I'm very sorry for your loss and what you've had to
9 go through. I know it can't be easy. And I
10 apologize in advance, but I have to ask you some
11 questions about this. It's never easy for any of us
12 to have to do.

13 If I understand you correctly, you went
14 into labor at -- when you began to believe you were
15 going into labor here in Pahrump; is that correct?

16 A. Uh-huh, yes, sir.

17 Q. Would I be correct that your husband did
18 not call 911 or call for an ambulance to transport
19 you when you went into labor at the residence you
20 were staying at?

21 A. No.

22 Q. Why not?

23 A. Because we were going to the hospital
24 to -- I don't know. We just -- I didn't think I was
25 going to have the baby, and I thought I was just

1 cramping and we were going to the hospital where my
2 doctor was.

3 Q. The goal -- I guess you and your husband
4 perceived, am I correct, that you needed to go to a
5 hospital when you were at the residence here in
6 Pahrump; correct?

7 A. Right.

8 Q. And you knew that's a good hour, hour
9 and 15 minutes away?

10 A. Correct.

11 Q. Can you explain to me, then, why you or
12 your husband wouldn't call for EMT assistance to
13 come to you where you were and take you to where you
14 needed to go.

15 MR. CAMPBELL: I think that's asked and
16 answered. She said that she wasn't delivering at
17 the time so --

18 THE ARBITRATOR: Well, if she can add
19 anything.

20 BY MR. LEVINE:

21 Q. If you can --

22 A. I can't really say why or why not.

23 Q. Okay.

24 A. It was just what we chose to do. We
25 were going to my doctor, which he told us to go and

1 go to this hospital. And I didn't realize I was
2 going to deliver the baby, you know.

3 If I would have known I was in full
4 labor and the baby's about to come out, then -- then
5 obviously I would have -- you know, but I thought it
6 was just -- I was cramping due to the -- you know,
7 the seaweed and everything. And I didn't know I was
8 going to go into full term labor and actually
9 deliver the baby and then hemorrhage, or of course I
10 would have called 911 to transport me, you know.

11 But then I would have been transported
12 to Desert View and then all the way to Vegas, which
13 would have taken more time. And I would have
14 been -- you know -- you know what I mean? Like,
15 Desert View -- Desert View transports more people
16 than anything, and they don't -- they don't handle
17 OB/GYN.

18 Q. When -- at some point prior to
19 encountering what I'm going to refer to as
20 Medic 3 -- that's the ambulance that it's referenced
21 by -- prior to that, I guess your water broke and
22 you realized you were delivering; is that correct?

23 A. Uh-huh.

24 Q. If I understood your testimony
25 correctly, your husband subsequently called the

1 hospital to let them know you were arriving; right?

2 A. After -- after the ambulance had left
3 and we got cell phone coverage --

4 Q. Okay.

5 A. -- again.

6 Q. Is there a reason you didn't -- when the
7 water broke, is there a reason your husband didn't
8 call 911 at that point?

9 A. No service.

10 Q. Okay. So there's no cell service in
11 that area?

12 A. No. No, sir.

13 Q. All right. That's been an issue of
14 discussion.

15 So your experience is there's no cell
16 service out there?

17 A. No service from at least -- I want to
18 say a little before Tecopa turnoff to almost till
19 you get to the last -- to the gas station. You get
20 service right before you get to the gas station. So
21 almost that whole way, you don't have -- I don't
22 have service.

23 Q. Do you recall the fire chief coming out
24 to your residence on two occasions, one in May and
25 one in June 2012, to meet with you and your husband?

1 A. Yes, sir.

2 Q. Is there a reason that you would not
3 give a recorded statement on either of those
4 occasions to the fire chief?

5 A. I wasn't ready to talk about everything.
6 I mean, look how emotional I was just looking at the
7 pictures. That was my daughter, you know, and --
8 and also -- not only that, I almost lost my life.

9 It took -- it took a good five months
10 for me to actually get back to feeling normal again
11 and okay. I didn't have any energy. I didn't
12 have -- literally, I -- I was just so like this,
13 blah, you know, and I wasn't ready to talk about it.
14 I didn't know that it was going to go this far. It
15 wasn't that I just put it off.

16 And like I -- as you guys know, Nevaeh
17 passed away -- that was her name -- May 25. I lost
18 my husband October 4. There was multiple times that
19 I started to write the letter, and God as my witness
20 and my mom, I started, and I just couldn't continue
21 and relive that -- that whole night again. And
22 then -- I don't know. And then ever since my
23 husband passed away, I've had to deal with that.

24 MR. LEVINE: Arbitrator's indulgence.

25 THE ARBITRATOR: Let's go off the record

1 for a moment.

2 (A discussion was held off the
3 record.)

4 THE ARBITRATOR: Back on the record.

5 MR. LEVINE: I have no further
6 questions.

7 THE ARBITRATOR: And will there be any
8 redirect?

9 MR. CAMPBELL: No redirect.

10 THE ARBITRATOR: Thank you very much,
11 Miss Choyce.

12 THE WITNESS: Thank you. I just want
13 you guys to know that I told you guys what I can
14 recall as my memory, and I -- I wish my husband was
15 here to speak for himself.

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CERTIFICATE OF REPORTER

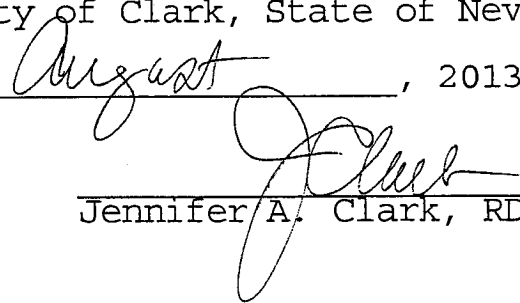
STATE OF NEVADA)
 SS:
COUNTY OF CLARK)

I, Jennifer A. Clark, a Certified Court Reporter licensed by the State of Nevada, do hereby certify: That I reported the arbitration proceedings commencing on August 13, 2013.

That prior to testifying, the witness was duly sworn to testify to the truth; that I thereafter transcribed my said stenographic notes into written form; that the typewritten transcript is a partial, true, and accurate transcription of said stenographic notes.

I further certify that I am not a relative, employee, or independent contractor of counsel or of any of the parties involved in the proceeding, nor a person financially interested in the proceeding, nor do I have any other relationship that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in the County of Clark, State of Nevada, this 15th day of August, 2013.



Jennifer A. Clark, RDR, CRR, CCR 422

EXHIBIT 3

EXHIBIT 3

DECLARATION OF PAT SONGER

STATE OF NEVADA)
COUNTY OF HUMBOLDT) ss.

I, PAT SONGER, declare under penalty of perjury as follows:

1. I am the administrative director for Humboldt General Hospital in Winnemucca, Nevada.

2. I have been named as a defendant in the lawsuit asserted by Plaintiffs Raymond Delucchi and Tommy Hollis, filed as Case No. CV35969 in the Fifth Judicial District Court of the State of Nevada, in and for the County of Nye.

3. At the time of the events in question in the aforementioned lawsuit, I was the Director of Emergency Medical Services at Humboldt General Hospital.

4. On or about June 27, 2012, attorney Rebecca Bruch contacted me to investigate an encounter between Delucchi and Hollis and James and Brittne Choyce, which occurred on Highway 160, when James and Brittne were on their way to a Las Vegas hospital.

5. I was asked to review the facts that had already been gathered by Fire Chief Scott Lewis and Lt. Steve Moody, and to conduct additional interviews as necessary to complete an investigation of the incident on June 27, 2012.

6. During the course of my investigation, I discovered evidence that led me to conclude that: a) Delucchi and Hollis had not reported the incident to anyone; b) They did not make any cell phone calls or radio transmissions about the incident to their dispatcher or to any law enforcement agency; c) They did not prepare an incident report or a patient care report; d) They did not report the incident to the on-duty Lieutenant or Fire Chief after returning to Pahrump; and e) they did not even make any such reports the following morning. It was only after their conduct was discovered through a complaint to the department and they were confronted by the department that Delucchi and Hollis finally came forward with their stories of the incident.

///

1 7. In my investigation, I believe I collected all relevant information that was
2 then reasonably available to me.

3 8. After collecting all available information, I prepared a written report
4 containing the facts I had gathered in my investigation and the conclusions I reached by
5 virtue of my investigation. I am unaware of any other evidence that was withheld, and I
6 have not been advised of the existence of any information that would have caused me
7 to modify my written report. A true and correct copy of my report is attached as Exhibit
8 6 to Erickson, Thorpe & Swainston's Special Motion to Dismiss and Exhibit A to
9 Defendant Pat Songer's Special Motion to Dismiss.

10 9. In reaching my findings and conclusions, I relied on my investigation which
11 included review of the reports of the incident prepared by Lewis and Moody, after their
12 interviews with James and Brittne Choyce.

13 10. I also relied on my own interviews with Delucchi and Hollis. I also drew
14 my conclusions in part based on the fact that Delucchi and Hollis had not reported the
15 incident to anyone on the night in question or the following morning.

16 11. As an investigator, I acted in good faith and believe that my role required
17 me to, among other things, use my best judgment to determine the credibility of
18 witnesses based not only on the witnesses' characteristics, but also on the plausibility of
19 their respective accounts of the events in question. I performed this task to the best of
20 my ability and at all times acted in good faith.

21 12. I concluded, among other things, that the story proffered by Delucchi and
22 Hollis was not plausible and that Delucchi and Hollis were not credible witnesses.

23 13. I understood that Delucchi and Hollis were obligated to report the incident
24 promptly after it transpired and I concluded that Delucchi's and Hollis' failure to report
25 suggested to me that they had been attempting to conceal their wrongdoing, and that
26 concealment made them even less credible.

27 ///

28 ///

1 14. I further concluded that Delucchi and Hollis had breached the standard of
2 care¹ applicable to emergency medical services personnel, that their failure to prepare a
3 Patient Care Report or Incident Report could be viewed as an attempt to cover up their
4 wrongdoing, and that their conduct potentially exposed the Town of Pahrump to civil
5 liability.

6 15. After my report of findings and conclusions were finalized, I was asked by
7 Becky Burch to prepare a report of recommendations as to how the Town of Pahrump
8 should deal with Delucchi and Hollis. I subsequently provided a report of my
9 recommendations. A true and correct copy of my report of recommendations is
10 attached as Exhibit 8 to Erickson, Thorpe & Swainston's Special Motion to Dismiss and
11 Exhibit B to Defendant Pat Songer's Special Motion to Dismiss.

12 16. In making my report of recommendations, I was called upon to interpret
13 policies, regulations, rules and protocols, and, to the best of my ability, apply those
14 principles to the conduct exhibited by Delucchi and Hollis. I performed these tasks to
15 the best of my ability, in good faith, and I did not disseminate any information I knew to
16 be false.

17 17. My recommendations consisted of the actions I would have taken if
18 Delucchi and Hollis were under my command. My recommendations included fully
19 briefing and informing PVFRS's EMS medical director, as well as the State of Nevada
20 EMS program manager, on the incident and the investigation. I also recommended that
21 Delucchi and Hollis be terminated from their positions with PVFRS. My
22 recommendations for termination were based on what I interpreted as various violations
23 of the Town of Pahrump's personnel policies, PVFRS's rules and regulations, and
24 PVFRS's EMS protocols.

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28 ¹ I understand that standard of care in this context required: all emergency medical services personnel to
file a report regarding any patient contact.

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18. The information contained in my reports was truthful to the best of my knowledge, and I made no statements I knew to be false. I am unaware of any facts in the report being incorrect.

19. I still believe the information contained in my reports to be accurate, truthful, and supported by the evidence revealed in my investigation.

20. I had no knowledge or belief that any information provided to the Town of Pahrump was false.

21. If I was deposed or otherwise offered the opportunity to testify, I would testify that I believed my report and recommendations were truthful, accurate and supported by the evidence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 18, 2014.

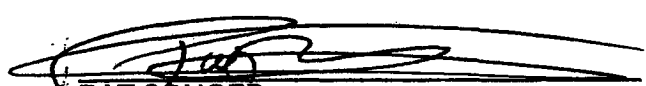

PAT SONGER

EXHIBIT 4

EXHIBIT 4

DECLARATION OF REBECCA BRUCH

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, REBECCA BRUCH, declare under penalty of perjury as follows:

1. I am an attorney licensed to practice law in the States of Nevada and California and I am admitted to practice before all courts in the State of Nevada.

2. I am a shareholder with the law firm Erickson, Thorpe & Swainston, Ltd. ("ETS"), which has been named as a defendant in lawsuit asserted by Plaintiffs Raymond Delucchi and Tommy Hollis, filed as Case No. CV35969 in the Fifth Judicial District Court of the State of Nevada, in and for the County of Nye.

3. This Declaration is submitted in support of a Special Motion to Dismiss, filed on behalf of ETS, seeking the dismissal of the aforementioned lawsuit.

4. In June of 2012, ETS and I were appointed by ASC Risk Management to oversee and coordinate investigations into two incidents of concern to the Town of Pahrump. ASC is the third-party administrator for the Nevada Public Agency Insurance Pool, of which the Town of Pahrump is a member for insurance purposes.

5. One incident involved an encounter between Raymond Delucchi and Tommy Hollis and James and Brittnie Choyce, which occurred on Highway 160 when James and Brittnie were on their way to a Las Vegas hospital.

6. The other incident involved internal cross-complaints concerning a union labor dispute between Mr. Delucchi, who was at that time the president of the IAFF Local 4068 Union, and Fire Chief Scott Lewis. I was informed that Mr. Delucchi had filed an internal complaint against Chief Lewis, alleging retaliation, and that Chief Lewis had filed a cross-complaint against Mr. Delucchi for harassment.

7. I came to learn that Chief Lewis and Lt. Steve Moody were, at that time, leading the investigation into the encounter with James and Brittnie Choyce.

8. I determined that Chief Lewis and Lt. Moody should not continue to conduct the investigation. Rather, to avoid even the appearance of bias or impropriety, I determined

1 that an outside, independent investigator should conduct the investigations.

2 9. I initially retained Cindy Davis at Strategic HR Partners, LLC to conduct the
3 independent investigations.

4 10. Ms. Davis informed me that the findings and conclusions of her investigation
5 into the dispute between Mr. Delucchi and Fire Chief Lewis would depend, in part, on the
6 outcome of the investigation of the Highway 160 incident.

7 11. Ms. Davis further informed me that she did not have a background in
8 emergency medical services and did not feel she was qualified to investigate the propriety of
9 Mr. Delucchi's and Mr. Hollis' conduct on the night of the incident involving Brittnie Choyce.

10 12. Accordingly, I also retained Pat Songer, who was then the Director of
11 Emergency Medical Services for Humboldt General Hospital in Winnemucca, Nevada, to
12 conduct the investigation into the propriety of Mr. Delucchi's and Mr. Hollis' conduct.

13 13. Mr. Songer conducted his investigation and provided me a draft report of his
14 findings and conclusions.

15 14. I reviewed Mr. Songer's draft report of findings and conclusions, and I made
16 various typographical and grammatical edits to the draft report. I did not make any
17 substantive changes to the content of the findings and conclusions. A true and correct copy of
18 the draft report, showing the extent of my edits, is attached as Exhibit 7 to the Special Motion
19 to Dismiss.

20 15. Mr. Songer's report was then finalized and provided to the Town Manager of
21 the Town of Pahrump. A true and correct copy of Mr. Songer's finalized report of findings and
22 conclusions is attached as Exhibit 6 to the Special Motion to Dismiss.

23 16. Mr. Songer's report was marked as "confidential attorney work product" in
24 anticipation of litigation by the Choyces. The report was authored by Mr. Songer, and
25 reviewed by me. After Mr. Songer's report of findings and conclusions was finalized and
26 provided to the Town of Pahrump, the Town Manager requested that Mr. Songer prepare a
27 report of recommendations as to how the Town of Pahrump should deal with Mr. Delucchi
28 and Mr. Hollis. Mr. Songer subsequently provided a report of his final recommendations. A

1 true and correct copy of Mr. Songer's final report of recommendations is attached as Exhibit 8
2 to the Special Motion to Dismiss.

3 17. At the time that I provided Mr. Songer's reports to the Town of Pahrump, I
4 believed the information contained in the reports to be accurate, truthful, and supported by
5 the evidence revealed in Mr. Songer's investigation. I had no reason to believe the
6 information was false.

7 18. I still believe the information contained in Mr. Songer's reports to be accurate,
8 truthful, and supported by the evidence revealed in his investigation.

9 19. I had no knowledge or belief that any information or legal advice provided to
10 the Town of Pahrump was false.

11 20. If I was deposed or was otherwise offered the opportunity to testify, I would
12 testify that I believed Mr. Songer's report and recommendations were truthful, accurate and
13 supported by the evidence.

14 21. I declare under penalty of perjury that the foregoing is true and correct.

15 Dated: July 29, 2014.

16 
17 REBECCA BRUCH

EXHIBIT 5

EXHIBIT 5

External Complaint

May 25, 2012 at Approx. Midnight

State Highway 160 near the Top of the Spring Mountains

Medic 3 (Delucchi and Hollis)

Lead Investigator: Lt. Steve Moody

Assistant Investigator: Fire Chief Scott Lewis

On May 30, 2012 at approximately 15:30, Administrative Director Tony Glines entered my office at 300 N. Hwy 160 and informed me of a complaint that was received to her telephone. She placed a written note before me, which listed the complainant name, their telephone number, the patient's name, the location of an incident, and the Medic Number.

In the presence of Lt. Steve Moody (conference call) I telephoned 1-702-417-8008 and spoke with Vicki. I identified myself and explained that I was returning her telephone call. Vicki informed me of a serious complaint against the crew of Medic 3. The incident occurred on May 25, 2012 at approximately midnight on Hwy 160, (approximately 1 mile) North of the Spring Mountain pass. As she explained the situation, I asked if her information was first hand. She explained that the situation involved her daughter Brittney and her son-in-law, James Choyce. She informed me that both were present and she placed Brittney on to the phone.

Brittney explained that she had been 17 ¼ weeks pregnant with her fourth child when it was determined that she was carrying a stillborn child. She informed me of a scheduled appointment the next day for the evacuation of the stillborn. In the meantime, her Doctor informed her to be extremely careful and if she were to begin experiencing problems to get to Summerlin Hospital in Las Vegas. Later she began to have problems including bleeding and her husband began to drive her to Summerlin as the local Pahrump Hospital (Desert View) was unable to provide the level of care.

As they drove to on Highway 160 her condition deteriorated and her water broke approximately 5-10 miles before the top of Spring Mountain and at some point she began delivery of the still born child with profuse bleeding. At the top of the Spring Mountain on Highway 160, they passed PVFRS Medic 3 travelling in the opposite direction (toward Pahrump). Her husband pulled a U-turn and attempted to catch up to Medic 3 while flashing his lights. Approximately 2 miles from Fire Station 79, Medic 3 pulled onto the shoulder of the road and her husband jumped out to tell the crew that she was having a miscarriage and needed help.

She stated that a "bald" medic approached her side of the car and through an open window asked "What's going on"? She was crying while she informed him that she was having a miscarriage and was bleeding. She stated by this time the stillborn was delivered and was "in her pants". However, the "bald" medic refused to help her or look at the amount of blood that she was losing. She stated her need for help to the same medic, but again he did not help. Eventually, he offered to drive them back to the Pahrump Hospital, but only offered the name and directions to the closest Las Vegas Hospital.

External Complaint

May 25, 2012 at Approx. Midnight

State Highway 160 near the Top of the Spring Mountains

Medic 3 (Delucchi and Hollis)

Lead Investigator: Lt. Steve Moody

Assistant Investigator: Fire Chief Scott Lewis

Brittney stated that her husband was becoming more agitated and finally began to drive her to Las Vegas after making another u-turn on Highway 160. Shortly after, she passed out.

At the Las Vegas hospital, she received 5 blood transfusions and passed 5 large blood clots.

James Choyce then came on to the phone and relayed the same story with some additional points. He stated that he is veteran and feels that the medics did not take his wife's situation seriously. He stated that her seat was covered in her blood and she was on the verge of passing out from the miscarriage. He was previously informed by their Dr. that if this condition presented, that it was a true life emergency. He stated that he was talking with the Dr. and trying to reach the hospital on the way. He stated that when he observed Medic 3 he began flashing his lights, made a u-turn, attempted to catch up with them. He pulled aside the ambulance and they eventually pulled over. He approached the driver's window and spoke with the "bald" driver. He informed the driver that his wife was having a miscarriage. The "bald" medic and his passenger seated partner got out of the vehicle and approached his wife's side window and asked her "what's going on"? She was crying and informing him that she was having a miscarriage and was bleeding. The medic responded that it wasn't that much blood and that they could take her back to Pahrump as that was the direction they were heading. James explained that they were instructed to get to Las Vegas not Desert View. James stated that he became angrier and finally just drove away after the crew informed them of the closest LV hospital off of Fort Apache.

Both James and Brittney expressed their desire to further their complaint and they would follow-up in writing.

Lt. Moody and I concluded the telephone conversation.

On 05/31/2012, at approximately 8:30 am I met with Town Manager Bill Kohbarger and HR Terry Bostwick at the Town Office. I relayed the content of the complaint and preliminary information confirming that Medic 3 was returning from an Inter-Facility transfer and had been travelling on Hwy 160 around that time. Further, the crew names were confirmed including the physical description of the driver.

The Town Manager instructed me to assign Lt. Moody to the investigation with my direct assistance to help through the process. Specific parameters were directed to me including the recording of both interviews. While in the TM's office, I telephoned Lt. Moody (209-5882) at 9:01 and informed him to have the crew come to Station 1 for interviews and that I would be over in a short while. When I arrived back at Station 1 (approx. 9:47) I observed the Lts. door closed. I opened the door without knowing who

External Complaint

May 25, 2012 at Approx. Midnight

State Highway 160 near the Top of the Spring Mountains

Medic 3 (Delucchi and Hollis)

Lead Investigator: Lt. Steve Moody

Assistant Investigator: Fire Chief Scott Lewis

was inside. I then observed Lt. Moody conducting an interview of Ray Delucchi with Union Rep. Nate Alexander. I stated "stop" to cease the interview as Lt. Moody began the interview and was conducting it outside of the scope directed to me by TM Kohbarger. I pulled Lt. Moody aside, informed him of the dictated parameters and asked each to the training to allow Lt. Moody to begin the recorded interview.

After the introduction, Ray Delucchi, made a statement regarding the interruption and stated that he felt he was being retaliated against and feared for his job. He requested HR to attend and later amended the request to include the TM to the interview process. This request was completed without incident. The interview was conducted with both the Town and the Union recording the interview.

The same process was completed with the second crew member, Tommy Hollis. I had to excuse myself several minutes into the interview due to a previous 11:00 commitment. I returned toward the end of the interview process.

I telephoned and spoke with Britney and James Choyce. I scheduled a 13:00 appointment for us to inspect the subject van and to gather additional information.

On the way to our appointment, Lt. Moody informed me that Ray Delucchi was on his way to HR to file a harassment charge against me.

Lt. Moody and I travelled to 951 E Laguna Court. We observed a silver color Dodge Caravan (Van) with Nevada Reg. 501-XLC parked in the driveway in front of the single-family dwelling. At the front door we met with Brittney Choyce and her husband, James, soon joined us from a nearby bedroom. The Choyce's provided access to the inside of the van where we observed an apparent "large" blood stain on the passenger side bucket style seat cushion, the lower seat back, and under the seat. The Choyces informed us that they were able to get some of the blood stain out, but not all.

They then demonstrated the position of the PVFRS medics in relation to their van's passenger side window as they conversed with Mrs. Choyce. Measured, it was approximately 3' 09".

James restated that the entire conversation with the PVFRS medic lasted approximately 5 minutes in which Brittney stated that she was bleeding and "felt like there was sand be poured over her head" still the medic would not help her. They further stated that neither medic presented as being scared or in fear, but more that "they wanted to get home".

External Complaint

May 25, 2012 at Approx. Midnight

State Highway 160 near the Top of the Spring Mountains

Medic 3 (Delucchi and Hollis)

Lead Investigator: Lt. Steve Moody

Assistant Investigator: Fire Chief Scott Lewis

Brittney and James were asked to provide a recorded interview, but preferred to provide their information in written form. Brittney freely offered to show a photo of the stillborn and the material contained in her pants. Brittney took the photo using her cell phone upon arrival at the hospital. She allowed a photo of the image displayed on her phone.

James did inform us that he is with the U.S. Army Reserve (Chemical) and served two tours in Afghanistan. He is set to enter the Special Forces in July or August of 2012.

At approximately 13:30, Lt. Moody and I travelled to the area described by the PVFRS Medic 3 crew and Brittney and James Choyce. The area is thought to be around mm 23 and is approximately 2 miles North of the CCFD Station 79 in the North bound lanes. There is a designated turn-around less than a mile and the Lovell Canyon turn-off is located at mm 24.1. There is a semi-graded shoulder and no illumination. Photos secured.

Upon return to town, I met with HR Bostwick and filed harassment charges against Ray Delucchi as it became apparent that he was attempting to use his position as Union President and a recent arbitration hearing to thwart my authority and responsibility to conduct an investigation resulting from an external complaint. This is especially true as I received a directive from the Town Manager as to how the investigation was to be conducted with Lt. Moody and the fact that the incident occurred prior to the Arb. hearing. Additionally, the crew never called 911, never called the on-duty Lt., never reported the matter to dispatch, never mentioned the incident to the on-duty Lt. of the Fire Chief, never completed paperwork including a Special Circumstances Form, never provided patient care, and never requested other emergency medical care for the patient.

At 15:00, I received a text message from Lt. Moody. He informed me that Ray Delucchi was going home sick. I notified the TM and HR.

On 06/04/2012 at approx. 13:40 hours, I telephoned and spoke with State of Nevada EMS representative Buck Fenlason (John Lambert was out of the office). We discussed and reviewed the requirements of our EMS providers as outlined in the Nevada Administrative Code (NAC) for patient, documentation, etc.

On 6/6/2012 at approximately 15:30 hours, Lt. Moody and I travelled back to the complainant's E. Laguna residence. We spoke with both James and Brittney who informed us that they are pursuing the complaint, but have been in the process of moving into the Laguna address and were unable to

External Complaint

May 25, 2012 at Approx. Midnight

State Highway 160 near the Top of the Spring Mountains

Medic 3 (Delucchi and Hollis)

Lead Investigator: Lt. Steve Moody

Assistant Investigator: Fire Chief Scott Lewis

complete their written statements. They anticipated that the complaints would be completed within the next day or so.

On June 9, 2012, I was informed by the on-duty Lt. that FF/P Delucchi called out sick.

On June 11, 2012 at approximately 8:30 am, I met with Cindy Davis (Strategic HR Partners) at the Town Annex. The purpose of our meeting was to discuss a complaint filed against me by Ray Delucchi. I provided information, documentation, and oral feedback throughout the investigative process. At approximately 11:30 I met again with Cindy Davis to further review the matter and concluded the additional discussion at approximately 12:15.

At approximately, 11:00, Lt. Moody informed me of a grievance filed by the Union against me for unspecified reasons over several dates. I walked to the Town Office and discussed the information with the Town Manager.

6/20/12
Per
B. Kalkbrenner turned
over to outside counsel.

EXHIBIT 6

EXHIBIT 6

Pat Songer

Facts From Pahrump Valley Fire-Rescue Services Investigation

Points of Interview with Complainants

A. By Complainant Brittney

1. "she has been 17 ½ weeks pregnant with her fourth child when it was determined that she was carrying a stillborn child."
2. "In the meantime, her doctor informed her to be extremely careful and if she were to begin experiencing problems to get to Summerland Hospital in Las Vegas"
3. "Approximately 2 miles from fire station 79, Medic 3 pulled onto the shoulder of the road and her husband jumped out"

B. Allegations by Complainant Brittney

1. "She stated that a "Bald" medic approached her side of the car and through an open window asked "What's going on"? She was crying while she informed him that she was having a miscarriage and was bleeding. She stated by this time the stillborn was delivered and was "in her pants". However, the "bald" medic refused to help her or look at the amount of blood that she was losing. She stated her need for help to the same medic, but again he did not help. Eventually, he offered to drive them back to the Pahrump Hospital, but only offered the name and directions to the closest Las Vegas Hospital."
2. "At the Las Vegas Hospital, she received 5 blood transfusions and passed 5 large blood clots."

C. Allegations by Complainant James Choyce

1. "The medic responded that it wasn't that much blood and that they could take her back to Pahrump as that was the direction they were heading."

Pat Songer

Facts From Pahrump Valley Fire-Rescue Services Investigation

Review of Documents

A. External Complaints

B. Resumes

1. Raymond Delucchi, EMT-Advanced (Paramedic)
2. Tommy Hollis, EMT-Intermediate
3. Steve Moody, Lieutenant, Firefighter/EMT-Intermediate

C. Pahrump Valley Fire-Rescue Services

1. Job Description for Firefighter/Paramedic
2. Job Description for Firefighter/EMT-I Transport

D. Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC)

E. International Association of Fire Fighters Local 4068 & Town of Pahrump, Collective Bargaining Agreement

F. Town of Pahrump Personnel Policies with POOL/PACT Human Resources

G. Pahrump Valley Fire-Rescue Services Rules and Regulations

H. Pahrump Valley Fire-Rescue Services EMS Protocols

I. Pahrump Valley Fire-Rescue Services Rules and Regulations

Pat Songer

Facts From Pahrump Valley Fire-Rescue Services Investigation

Interview Raymond Delucchi, Firefighter/EMT-Advanced (Paramedic)

1. Before Paramedic Delucchi exited the ambulance, he stated a man told him "I believe my wife is having a miscarriage".
2. Paramedic Delucchi stated, "We can take you to Desert View", the Pahrump Hospital.
3. Paramedic Delucchi stated, "The whole incident took 60 seconds".
4. Paramedic Delucchi stated, I was speaking to the driver not the patient".
"The scene wasn't safe enough to make contact with the passenger".

Pat Songer

Facts From Pahrump Valley Fire-Rescue Services Investigation

Interview Tommy Hollis, Firefighter/EMT-Intermediate

1. EMT-Intermediate Hollis stated, a man came up to the driver's window and stated "miscarriage".
2. EMT-Intermediate Hollis stated, girl looked upset, "driver kept our attention".
3. EMT-Intermediate Hollis stated, directions at the driver, "please get out of the vehicle".
4. EMT-Intermediate Hollis stated, "well take you to Pahrump".
5. EMT-Intermediate Hollis stated Timeframe took "2 minutes".
6. EMT-Intermediate Hollis restated "miscarriage", at the ambulance window by a male.
7. Asked, what dictates a Special Circumstance Report to be filled out. Answer by EMT-Intermediate Hollis "Erratic Situation", and "at the Lieutenant or Chief's request".
8. Asked, what dictates a Patient Care Report (PCR) to be filled out. Answer by EMT-Intermediate Hollis "patient contact".
9. Asked, is STAR Care in your Policies and Procedures? Answer by EMT-Intermediate Hollis "No". Asked, are you trained in Star Care? Answer by EMT-Intermediate Hollis "No". Asked, do you know what STAR Care is? Answer by EMT-Intermediate Hollis "No".
10. EMT-Intermediate Hollis stated that he used good sound judgment on this call. Further, "I am not sorry for what I did in the call".
11. Asked, is that in your response area? Answer by EMT-Intermediate Hollis "No", it's in our "Clark County mutual aid"
12. Asked, have you filled out a PCR since that date? Answer by EMT-Intermediate Hollis "no".

EXHIBIT 7

EXHIBIT 7

Pat Songer

+ elucchi -
atty notes

Facts From
Pahrump Valley Fire-Rescue Services Investigation

Points of Interview with Complainants

A. By Complainant Brittney

1. "she has been 17 ½ weeks pregnant with her fourth child when it was determined that she was carrying a stillborn child."
2. "In the meantime, her doctor informed her to be extremely careful and if she were to begin experiencing problems to get to Summerland Hospital in Las Vegas"
3. "Approximately 2 miles from fire station 79, Medic 3 pulled onto the shoulder of the road and her husband jumped out"

B. Allegations by Complainant Brittney

1. "She stated that a "Bald" medic approached her side of the car and through an open window asked "What's going on"? She was crying while she informed him that she was having a miscarriage and was bleeding. She stated by this time the stillborn was delivered and was "in her pants". However, the "bald" medic refused to help her or look at the amount of blood that she was losing. She stated her need for help to the same medic, but again he did not help. Eventually, he offered to drive them back to the Pahrump Hospital, but only offered the name and directions to the closest Las Vegas Hospital."
2. "At the Las Vegas Hospital, she received 5 blood transfusions and passed 5 large blood clots."

C. Allegations by Complainant James Choyce

1. "The medic responded that it wasn't that much blood and that they could take her back to Pahrump as that was the direction they were heading."

Pat Songer

Facts From Pahrump Valley Fire-Rescue Services Investigation

Review of Documents

A. External Complaints

B. Resumes

1. Raymond Delucchi, EMT-Advanced (Paramedic)
2. Tommy Hollis, EMT-Intermediate
3. Steve Moody, Lieutenant, Firefighter/EMT-Intermediate

C. Pahrump Valley Fire-Rescue Services

1. Job Description for Firefighter/Paramedic
2. Job Description for Firefighter/EMT-I Transport

D. Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC)

E. International Association of Fire Fighters Local 4068 & Town of Pahrump *Collective Bargaining agreement*

F. Town of Pahrump Personnel Policies with POOL/PACT Human Resources

G. Pahrump Valley Fire-Rescue Services Rules and Regulations

H. Pahrump Valley Fire-Rescue Services EMS Protocols

I. Pahrump Valley Fire-Rescue Services Rules and Regulations

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Facts From Pahrump Valley Fire-Rescue Services Investigation

Interview Raymond Delucchi, Firefighter/EMT-Advanced (Paramedic)

1. Before Paramedic Delucchi exited the ambulance, he stated a man told him "I believe my wife is having a miscarriage".
2. Paramedic Delucchi stated, "We can take you to Desert View", the Pahrump Hospital.
3. Paramedic Delucchi stated, "The whole incident took 60 seconds".
4. Paramedic Delucchi stated, I was speaking to the driver not the patient".
"The scene wasn't safe enough to make contact with the passenger".

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Facts From Pahrump Valley Fire-Rescue Services Investigation

Interview Tommy Hollis, Firefighter/EMT-Intermediate

1. EMT-Intermediate Hollis stated, a man came up to the driver's window and stated "miscarriage".
2. EMT-Intermediate Hollis stated, girl looked upset, "driver kept our attention".
3. EMT-Intermediate Hollis stated, directions at the driver, "please get out of the vehicle".
4. EMT-Intermediate Hollis stated, "well take you to Pahrump".
5. EMT-Intermediate Hollis stated Timeframe took "2 minutes".
6. EMT-Intermediate Hollis restated "miscarriage", at the ambulance window by a male.
7. Asked, what dictates a Special Circumstance Report to be filled out. Answer by EMT-Intermediate Hollis "Erratic Situation", and "at the Lieutenant or Chief's request".
8. Asked, what dictates a Patient Care Report (PCR) to be filled out. Answer by EMT-Intermediate Hollis "patient contact".
9. Asked, is STAR Care in your Policies and Procedures? Answer by EMT-Intermediate Hollis "No". Asked, are you trained in Star Care? Answer by EMT-Intermediate Hollis "No". Asked, do you know what STAR Care is? Answer by EMT-Intermediate Hollis "No".
10. EMT-Intermediate Hollis stated that he used good sound judgment on this call. Further, "I am not sorry for what I did in the call".
11. Asked, is that in your response area? Answer by EMT-Intermediate Hollis "No", it's in our "Clark County mutual aid"
12. Asked, have you filled out a PCR ^{since} sense that date? Answer by EMT-Intermediate Hollis "no".

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1. The Complainants could have ^{been} more believable for the following reasons 2-13.

2. There was "Patient Contact". Contrary to what the two (2) Firefighter/EMS personnel want us to believe, because they both went to Brittney's front passenger door where she was seated. The PVFRS employee's statement "What's going on" at the right side of the vehicle in close proximity to the front passenger door, combined with both Brittney's statement (see #3. below), and James Joyce's statement (see # 4 below) constitutes Patient Contact.

Choyce's

3. In the Allegations by Complainant Brittney

"What's going on", stated by the Paramedic while at the passenger/patient's front passenger window denotes "patient contact".

Brittney's statements recorded by Lieutenant Moody, and witnessed by Chief Lewis, have a more believable and plausible pattern to it. Brittney explains in detail what the "bald" person (Paramedic Delucchi) stated ("What's going on") to her and her response to that (See Brittney's statements recorded by Lieutenant Moody, and witnessed by Chief Lewis). An EMS expert will tell you that the words that were stated by Brittney would be a typical response to Paramedic Delucchi's question. Paramedic Delucchi's statement that all the passenger did was cry is not believable nor what a bleeding miscarriage lady would be saying or doing. She would be verbalizing everything (and possibly more) as in the statement by Brittney. Additionally, for the two Firefighter/EMS employees to have credibility and be considered believable, then STAR CARE (As in the PVFRS Rules and Regulations) would have to be demonstrated by the "A" and the "R" (in STAR), and the "C", "A", "R", and "E" (in CARE). And in this case six (6) out of the eight (8) STAR CARE topics were disregarded.

Moreover, failure by both Fire/EMS personnel together or individually to document the details of this encounter in a PVFRS's Patient Care Report, or PVFRS's Special Circumstance Report (Incident Report) form will be viewed as a cover up by the two (2) Firefighter/EMS personnel.

4. The allegation by complainant James Choyce

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"The medic responded that it wasn't that much blood and that they could take her back to Pahrump as that was the direction they were heading."

This demonstrates that Paramedic Delucchi was in fact close enough to the patient to make a ~~call~~ statement "it wasn't that much blood". Moreover, Paramedic Delucchi ~~did~~ make "Patient Contact".

call ms

5. Before Paramedic Delucchi exited the ambulance, he stated a man told him "I believe my wife is having a miscarriage".

Therefore, Paramedic Delucchi, by the National Standards of Care from the Department of Transportation (DOT) for EMT-Basic, and or EMT-Paramedic didactic, clinical, and or field education should have responded appropriately. Additionally, STAR CARE (see #3) which is a part of PVFRS Rules and Regulations were continuously disregarded by both EMS providers. Moreover, a "Miscarriage" is a serious situation which can/may lead to a life threatening situation called Hemorrhagic Shock (loss of blood/bleeding), resulting in possible death.

6. Paramedic Delucchi stated, "The whole incident took 60 seconds". EMT-Intermediate Hollis stated "2 minutes". Paramedic Delucchi stated, I was speaking to the driver not the patient". "The scene wasn't safe enough to make contact with the passenger".

If you look at all the conversations detailed by all four people on scene that night, then compile them into a conversational screen play format the true on scene time probably exceeded 5 minutes.

7. All the questioning regarding the Patient Care Report, the Special Circumstance Report, and or any other reports or documentation for Dispatch, Medical, and or Operations that was not nor has been filled out as of the date of our interviews is severely damaging. ~~In the United States of America, "if you didn't document it, it didn't happen". This is the foundation of all the legal chapters in every EMT-Basic, EMT-Intermediate, and all EMT-Paramedic book and courses emphasize the need to document.~~ Not documenting all aspects in a lengthy narrative within the Patient Care Report, exposes the town, service, and EMT's to litigation. ~~that finds for the~~

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~~plaintiff~~. What they did, by doing nothing ^{may} will be perceived by any reasonable person as an attempt to cover up that whole situation. What they should have done was ~~expose~~ ^{disclose and report} the entire situation; then they ~~are~~ ^{are} believable.

*
All next page

8. As far as EMT-Intermediate Tommy Hollis, ^{while} ~~yes~~ ^{master} he is the subordinate to a Paramedic regarding patient care in as far as he is to follow a Paramedic's requests, ~~unless, the Paramedic's requests or actions does not follow the National Standards of Care as outlined in all EMS educational material.~~ These standards can be found in all published DOT approved EMS course textbooks. Therefore, all Volunteer and Professional EMS personnel (PVFRS is a Professional EMS Service) have a Responsibility and "Duty to Act" which EMT-Intermediate Tommy Hollis and Paramedic Delucchi failed to perform as a professional EMS provider and team. Additionally, EMT-Intermediate Tommy Hollis was the Senior PVFRS employee on that ambulance. Therefore, EMT-Intermediate Tommy Hollis did not ^{properly} supervise that ambulance's activity/operation and reporting as the senior PVFRS employee in accordance with PVFRS Rules and Regulations, and the National Standards of Care.

9. In EMT-Intermediate Tommy Hollis's "second interview", "by Bill Kohbarger", on page (no page numbers are documented) 8 at the bottom, ^{he} When asked by "BK (Chuck)": "You have no problem writing Incident Reports at any time." Answer: "They are a key thing in court." This demonstrates ^{his} the knowledge ^{of his responsibility} of the Supervising ambulance team leader regarding what is proper and the right thing to do for this event, IE: file an Incident Report, which was not filed that day.

10. The more damaging fact discovered in our investigation was ^{the fact that} Summerlin Hospital in Las Vegas Nevada (Where Brittney's Physician wanted her to go, and an "appropriate hospital") was only approximately 33 miles away from their location. In comparison, Desert View Regional Medical Center in Pahrump Nevada was approximately 31 miles away in the opposite (North) direction, and not an "Appropriate Hospital" to transport to.

11. "Appropriate Hospital Destination" as denoted in the National DOT Standards of Care, is a hospital that can appropriately care for a/your patient's medical needs. Desert View Regional Medical Center, in Pahrump Nevada is not an

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"Appropriate Hospital" for an Obstetrical emergency of this nature. Desert View Regional Medical Center, in Pahrump, Nevada does not have an Obstetrician specially trained and board-certified on call 24/7; nor do ~~most~~ small hospitals across America. Summerlin Hospital in Las Vegas, Nevada is a major receiving hospital with many specialty board-certified Physicians, including Obstetricians. Additionally, ~~all~~ EMS personnel in America are fully educated as to what constitutes a "Appropriate Hospital Destination".

Both EMT-Intermediate Tommy Hollis, the PVFRS Ambulance leader/supervisor; PVFRS Paramedic Delucchi, and all other EMS personnel in ~~America~~, have been educated regarding "Appropriate Hospital Destination" during their EMS Certification/Education.

properly trained
to me ~~Based on my interviews and review of documents, it appeared~~ *I concluded*
~~Now, twelve people could conclude~~ that the EMS crew (Paramedic and EMT-I) did not want to take the patient to Summerlin Hospital in Las Vegas, Nevada, but instead to Desert View Regional Medical Center, in Pahrump Nevada, the closest hospital to the EMS crew's fire station for the EMS crew's personal convenience.

12. No effort on either provider's part was made to contact law enforcement, another ambulance service, Medical Control, and or PVFRS's supervisory personnel. Moreover, both individual's failure and flagrant disregard to report by filing proper documentation to PVFRS as part as their Rules and Regulations, PVFRS EMS Protocols, State of Nevada Reporting criteria for Patient Contact, and Radio Failure with Medical Control.

8. As far as EMT-Intermediate Tommy Hollis, while he is subordinate to a Paramedic regarding patient care, and is to follow a Paramedic's direction, ~~he~~ he is not to follow those directions if they do not follow the National Standards of Care as outlined in all EMS educational material. . . . [add the rest of the paragraph]

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13. This mind set of both Paramedic Delucchi and EMT-Intermediate Tommy Hollis, is that they used good sound judgment, which we cannot find/identify in either ~~the~~ the documentation provided by PVFRS and/or in our Interviews or investigation. Additionally, their ~~mindset they didn't do anything wrong;~~ demonstrates a pattern of behavior and professional conduct that may be repeated in the future. Moreover, they showed no remorse for anything that transpired. This was their demeanor, and mindset at the interviews. Therefore, their attitude leads me to believe that there may be repeated poor judgment in the future resulting in ramifications for the Town of Pahrump. Probability in Actuarial Analysis tells us that it's not if, but when the next event/incident will happen.

*refusal to acknowledge
any wrongdoing*

EXHIBIT 8

EXHIBIT 8

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Recommendations From
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We would be more than happy to assist, coordinate, and or lead the Town of Pahrump, the PVFRS's Medical Director, and or anyone else you desire during this process on your behalf.

Our Immediate Recommendations for the Town of Pahrump is to:

1. Medical Director: Have the Fire Chief (or his Agent) fully inform and brief PVFRS's EMS Medical Director regarding:
 - a. The incident
 - b. The severity
 - c. Current investigations
 - d. Investigations findings
 - e. Possible litigation
 - f. Actions taken (see g., 1))
 - g. Actions he/she as Medical Director may/should take immediately:
 - 1) As Medical Director PVFRS I have temporary revoked Paramedic Raymond Delucchi's, and EMT-Intermediate Tommy Hollis's authorization to practice under my license, pending their investigation(s) outcome.
 - 2) Medical Director notifies the State of Nevada EMS Program Manager Patrick Irwin of his action (See 1) above).
 - 3) Medical Director desires to actively cooperate with the State of Nevada's investigation.
2. PVFRS Fire Chief, PVFRS Administration, and the Town of Pahrump: Have their Agent fully inform and brief the State of Nevada EMS Program Manager Patrick Irwin regarding:
 - a. The incident
 - b. The severity
 - c. Current investigations
 - d. Investigations findings
 - e. Possible litigation
 - f. Actions taken
 - g. PVFRS Fire Chief, PVFRS Administration, and the Town of Pahrump's desires to actively cooperate with State of Nevada EMS Program Manager Patrick Irwin, and the State of Nevada's investigation.

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3. In accordance with the Town of Pahrump's Personnel Policies, the PVFRS Rules and Regulations, and the PVFRS EMS Protocols:
 - a. For PVFRS Firefighter/Paramedic Raymond Delucchi's willful and flagrant disregard for the Town of Pahrump's Personnel Policies, the PVFRS Rules and Regulations, and the PVFRS EMS Protocols; we recommend the following:
 - 1) Termination for the listed reasons, the Town of Pahrump's Personnel Policies:
 - a) 11. Disciplinary Actions and Appeals:
 - 1] 11.1.1, 1., 2., 7. Intimidation, 11., 12.
 - b) 11. Disciplinary Actions and Appeals:
 - 1] 11.1.4, "administrative leave, without pay"
 - 2) Termination for the listed reasons, the PVFRS Rules and Regulations:
 - a) 02.03.01, Line:
 - 1] D., H., K.
 - b) 02.03.02
 - c) 02.03.03, Willful and flagrant disregard for reporting and documenting
 - d) 02.03.04, Willful and flagrant disregard for reporting and documenting
 - e) 02.03.05
 - f) 02.03.11
 - g) 02.03.14
 - h) 02.05.15
 - i) 02.05.24

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- 3) Termination for the listed reasons, the PVFRS EMS Protocols:
 - a) Documentation (Page 14)
 - 1] 1., 2., 3., 4.
 - b) Refusal of Care (Page 18)
 - Star 11
 - c) Standard of Care (Page 20)
 - 1] Paragraph 1, and 2, Notes: Star 10, 11
 - d) Childbirth. Failure to evaluate or perform
 - e) Pre-Term Labor. Failure to evaluate or perform
 - f) Shock – Hypovolemia. Failure to evaluate or perform

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4. In accordance with the Town of Pahrump's Personnel Policies, the PVFRS Rules and Regulations, and the PVFRS EMS Protocols:
 - a. For PVFRS Firefighter/EMT-Intermediate Tommy Hollis's willful and flagrant disregard for the Town of Pahrump's Personnel Policies, the PVFRS Rules and Regulations, and the PVFRS EMS Protocols; we recommend the following:
 - 1) Termination for the listed reasons, the Town of Pahrump's Personnel Policies:
 - a) 11. Disciplinary Actions and Appeals:
 - 1] 11.1.1, 1., 2., 7. Intimidation, 11., 12.
 - b) 11. Disciplinary Actions and Appeals:
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15
16 **IN THE FIFTH JUDICIAL DISTRICT COURT**
17 **IN AND FOR THE COUNTY OF NYE**

18 RAYMOND DELUCCHI and TOMMY
19 HOLLIS,

20 Plaintiffs,

21 v.

22 PAT SONGER and ERICKSON, THORPE &
23 SWAINSTON, LTD.,

24 Defendants.

CASE NO: CV35969
DEPT NO: 1

DEFENDANT PAT SONGER'S
REPLY IN SUPPORT OF HIS
SPECIAL MOTION TO DISMISS
PURSUANT TO NRS § 41.660

Hearing Date: August 4, 2014
Hearing Time: 1:30 p.m.

25 Defendant, PAT SONGER, by and through his attorneys of record, the law firm of
26 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C., hereby submit DEFENDANT PAT
27 SONGER'S REPLY IN SUPPORT OF HIS SPECIAL MOTION TO DISMISS PURSUANT
28 TO NRS § 41.660.

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FILED
FIFTH JUDICIAL DISTRICT COURT

AUG 01 2014

NYE COUNTY DEPUTY CLERK
DEPUTY

Patricia Couture

RECEIVED
AUG 01 2014
BY:

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Mr. Songer's report was a good faith communication in furtherance of his right to free speech on a matter of public concern. Plaintiffs failed to carry their burden of presenting clear and convincing *admissible* evidence to overcome the special Motion to Dismiss. Instead, Plaintiffs have attempted to obscure the facts and ignore the basic tenants of statutory interpretation. Because Plaintiffs have failed to meet their burden, this Court should grant Mr. Songer's Special Motion to Dismiss in total.

II. The Legislature's Amendments of 2013 clarified the law as the legislature's intent had always been to offer protection to every person in Nevada who makes a good faith communication in furtherance of the right to free speech on an issue of public concern

The general principles of statutory construction are straightforward. "It is well settled in Nevada that words in a statute should be given their plain meaning unless this violates the spirit of the act." *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986). It is also well settled that in Nevada "[w]here a former statute is amended, or a doubtful interpretation of a former statute rendered certain by subsequent legislation, it has been held that such amendment is persuasive evidence of what the Legislature intended by the first statute." See *In re Estate of Thomas*, 116 Nev. 492, 495 (2000) (citing *Sheriff v. Smith*, 91 Nev. 729, 734, (1975) (emphasis added); see also *Pub. Emps. Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 157 (2008) ("when a statute's doubtful interpretation is made clear through subsequent legislation, we may consider the subsequent legislation persuasive evidence of what the Legislature originally intended"). Thus, the Court should apply the amended statute, which clarifies the former statute in order to give meaning to the legislative intent. See, e.g. *State v. First Judicial Dist. Court in & for Storey Cnty.*, 53 Nev. 386, 2 P.2d 129 (1931).

Although Plaintiffs attempt to mislead this Court and urge application of the former statute, the law requires that the 2013 amendments apply to this case because the nature

1 of the amendments was to clarify the prior statute.¹ See Hearing on S.B. 286 Before the
2 Senate Committee on Judiciary, 77th Leg. (Nev., March 28, 2013); Hearing on S.B. 286
3 Before the Assembly Committee on Judiciary, 77th Leg. (Nev., May 6, 2013). In fact, the
4 Legislature's amendments to Nevada's anti-SLAPP statutes were in direct response to the
5 Ninth Circuit Court of Appeals' interpretation that Nevada's anti-SLAPP laws had limited
6 protection to the public and a very narrow scope. *Metabolic Research, Inc. v. Ferrell* 693
7 F.3d 795, 799 (9th Cir. 2012). In *Metabolic Research* the Ninth Circuit held that Nevada's
8 anti-SLAPP statutes were more in line with the narrow statutes of Oregon, than with those
9 of California, despite Nevada's SLAPP statutes being very similar to California's statutes
10 and denied protection for free speech communication. 693 F.3d 795, 799 (9th Cir. 2012).
11 Given the limited application that the Ninth Circuit read into Nevada's anti-SLAPP statutes
12 the year before, the Legislature purposefully undertook the 2013 amendments to clarify
13 the statute to be in line with the original intent of offering protection for all speech directly
14 connected to matters of public concern. See Hearing on S.B. 286 Before the Senate
15 Committee on Judiciary, 77th Leg. (Nev., March 28, 2013); Hearing on S.B. 286 Before
16 the Assembly Committee on Judiciary, 77th Leg. (Nev., May 6, 2013). The Legislative
17 history shows the 2013 Amendments not only passed unanimously, but were passed
18 because the prior statute was interpreted as too narrow and was antiquated, which was
19 not in line with the legislative intent in offering anti-SLAPP protection to the public for their
20 exercising their First Amendment rights. *Id.*

21 Given the legislative history and the 2013 amendments' clarifying nature, the Court
22 should apply the 2013 statute in this matter to ensure the legislative intent in offering
23 protection of items of public concern are met. Thus, because Mr. Songer's report was a
24 good faith communication in furtherance of the right to free speech on an issue of public

25
26 ¹ Plaintiffs appear to concede that the proper statute that applies to this matter is the 2013 statute through
27 their request for attorney's fees under NRS § 41.670(2) and (3). To be clear, there is nothing vexatious or
28 frivolous about Mr. Songer's Special Motion to Dismiss. Plaintiffs cannot credibly argue for the application of
the 2012 statute and simultaneously argue an entitlement to attorney's fees under the 2013 statute. Should
the Court grant the Special Motion to Dismiss, then Mr. Songer is entitled to an award of reasonable costs
and attorney's fees under NRS § 41.670(1)(a).

1 concern, Plaintiffs must show by clear and convincing evidence a probability of
2 prevailing on the claim. NRS § 41.660(3)(b).

3 **III. Mr. Songer's report falls squarely within the protections of Nevada's anti-**
4 **SLAPP statutes.**

5 Plaintiffs argue that Mr. Songer's report falls outside the scope of the 2013 statute
6 because (1) Mr. Songer was hired to write the report; (2) the report was not related to an
7 issue of public concern. Rather than reviewing the plain language of the statute and then
8 Nevada's legislative history to find meaning of the pertinent sections of the statutes that may
9 be ambiguous, Plaintiffs skip these basic tenants of statutory interpretation and instead point
10 to unbinding authority. However, the plain language of the statute and legislative history
11 show that Plaintiffs' arguments lack merit. See NRS § 41.650; NRS § 41.660; see Hearing
12 on S.B. 286 Before the Senate Committee on Judiciary, 77th Leg. (Nev., March 28, 2013);
13 Hearing on S.B. 286 Before the Assembly Committee on Judiciary, 77th Leg. (Nev.,
14 May 6, 2013).

15 **A. The plain language of the statute shows that immunity is provided to the**
16 **person irrespective of how or why the communication was made so long**
17 **as the communication was in good faith as defined by NRS § 41.637**

18 The plain language of NRS § 41.650 makes no distinction between whether
19 Mr. Songer was a citizen exercising his free speech or hired to write the report. Plaintiffs'
20 reliance on unbinding authority is unpersuasive and misplaced because the anti-SLAPP
21 statutes apply to a "person." Specifically, NRS § 41.650 states, "a person who engages in a
22 good faith communication in furtherance of ... the right to free speech in direct connection
23 with an issue of public concern is immune from any civil action for claims based upon the
24 communication." NRS § 41.650. Had the legislature intended for the immunity to apply only
25 to "citizens" as Plaintiffs claim, then the legislature would have used that specific language.
26 Chapter 41 of the NRS is replete with definitions relating to the status of a person such as:
27 "employee," "local judicial officer," "volunteer" and "recipient." See NRS § 41.0307; NRS §
28 41.03377; NRS § 41.500; and NRS § 41.725. As the Court is required to give the word
"person" its plain meaning within the statute, Plaintiffs limitation that immunity only applies

1 "citizens" is inapplicable. *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438,
2 441 (1986).

3 Even if the word "person" is somehow ambiguous, the legislative history shows that
4 the legislature intended all persons to be able to use the anti-SLAPP laws to protect all
5 speech that was made in good faith in furtherance of the right to free speech on an issue of
6 public concern. See Hearing on S.B. 286 Before the Senate Committee on Judiciary, 77th
7 Leg. (Nev., March 28, 2013); Hearing on S.B. 286 Before the Assembly Committee on
8 Judiciary, 77th Leg. (Nev., May 6, 2013). As Senator Justin C. Jones stated on May 6,
9 2013, "Chapter 41 of the Nevada Revised Statutes protects people from civil liability for
10 claims based on protected communication." See Hearing on S.B. 286 Before the
11 Assembly Committee on Judiciary, 77th Leg., p. 2 (Nev., May 6, 2013). Therefore,
12 Plaintiffs' misnomer that Nevada's anti-SLAPP laws only apply to "citizens" is incorrect and
13 the Court should disregard that baseless argument.

14 **B. California's definition of a "public interest" has no bearing on Nevada's**
15 **intentionally broad definition of a matter of public concern**

16 Nevada's anti-SLAPP laws did not define a matter of "public concern" on purpose.
17 Thus, because "public concern" can be ambiguous, the tenants of statutory interpretation
18 require a review of the pertinent legislative history. The legislature concerned the term
19 "public concern" during its hearing on March 28, 2013, as follows:

20 Senator Ford: What is the definition of public concern relative to the
21 case law definition?

22 Mr. Randazza: Public concern is broadly defined. Public concern is a
23 matter of interest to multiple people. It does not necessarily have to
24 be a matter of governance. Public concern can even be said to be
25 matters of local importance, local governments, local news. It would
26 not be a narrow definition. Any statute needs to make the term public
27 concern broad.

28 Senator Hutchison: In exercising a [person]'s First Amendment rights
on an issue of public concern, you admit the definition is very broad?

Mr. Randazza: Correct. If I am speaking out about how an
investigation is going, of course that is a matter of public concern. If I
am speaking about the lack of a traffic light at an intersection, that is a

1 matter of public concern. If I am speaking out about how a neighbor
2 can mow his or her lawn, then that is not a matter of public concern.

3 See Hearing on S.B. 286 Before the Senate Committee on Judiciary, 77th Leg. (Nev.,
4 March 28, 2013)(emphasis added).

5 The legislature never intended to narrow the scope of an issue of public concern to
6 those issues that "impact a broad segment of society and/or that affect the community." See
7 Opposition 7:10-11. Plaintiffs are attempting to commandeer California's decision in *Talega*
8 *Maintenance Corp. v. Standard Pac. Corp.*, which dealt with the limited inquiry solely on
9 whether an issue was of "public interest" in defining whether the statements were "made in
10 [a] place open to the public or a public forum in connection with an issue of public interest" to
11 define an "public concern." 225 Cal.App.4th 722, 734 (2014). *Talega* was defining a "public
12 interest" in the context of whether statements made at a homeowner's association meeting
13 were in connection with an issue of public interest. *Id.* In other words, Plaintiffs mistakenly
14 believe that Mr. Songer is arguing that his report was a "communication made in direct
15 connection with an issue of public interest in a place open to the public or in a public forum,
16 which is truthful or is made without knowledge of its falsehood." NRS § 41.637(4)(emphasis
17 added). To be clear, Mr. Songer has not argued that his report was good faith
18 communication as defined by subsection 4; Mr. Songer's report falls within the definitions of
19 subsection 2 and 3. Therefore, the definition of "public interest" has no bearing on this
20 matter.

21 The only relevant term is whether the speech was in direct connection with an issue of
22 "public concern." As the legislature intended the definition to be broad, it is evident that the
23 actions or inactions on Highway 160 were an issue of public concern.

24 **IV. Plaintiffs failed to meet their burden and therefore the case must be dismissed**

25 **A. Plaintiffs failed to submit admissible evidence to show the probability of
26 prevailing on their claims**

27 Nevada Rule of Civil Procedure 56(e) specifically requires that the non-moving party
28 submit admissible evidence to overcome summary judgment. Nev. R. Civ. P. 56(e). As the
Nevada Supreme Court has stated "summary judgment is appropriate under NRCP 56 when

1 the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that
2 are properly before the court demonstrate that no genuine issue of material fact exists, and
3 the moving party is entitled to judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 Nev.
4 724, 731, 121 P.3d 1026, 1031 (2005). Summary judgment opponent’s documentation must
5 be admissible evidence and he is not entitled to build case “on gossamer threads of whimsy,
6 speculation and conjecture.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731 (2005); *Posadas v.*
7 *City of Reno*, 109 Nev. 448, 452 (1993) Rules Civ.Proc., Rule 56(c). In *Schnieder v.*
8 *Continental Assur. Co.*, the Nevada Supreme Court reversed summary judgment because
9 the lower court relied solely on inadmissible evidence. 110 Nev. 1270, 1274 (1994).

10 As Mr. Songer has met his burden of showing the report to be in good faith as
11 defined by NRS § 41.637(2) and (3), the burden shifted to Plaintiffs to show by clear and
12 convincing admissible evidence their probability of prevailing on their claims. NRS §
13 41.660(3)(b). Plaintiffs cannot overcome the special motion to dismiss “on the gossamer
14 threads of whimsy, speculation and conjecture.” *Wood v. Safeway, Inc.*, 121 Nev. 724,
15 731 (2005).

16 Here, Plaintiffs improperly and intentionally have presented this Court with the
17 Arbitration opinion and award and transcripts from that hearing. There is no legal basis that
18 would allow these inadmissible hearsay documents to be admissible at trial and therefore the
19 documents cannot be considered to overcome the special motion to dismiss. Because
20 Plaintiffs’ have relied solely on the arbitration documents, all of which are inadmissible, the
21 Court must grant the special Motion to Dismiss.

22 **B. Plaintiffs have attempted to shift their burden**

23 Plaintiffs are blatantly attempting to shift their burden of persuasion to Mr. Songer in
24 their arguments about the issue preclusion and claims that the statements in the report are
25 defamatory.² Because Mr. Songer’s report was a good faith communication as defined by

26
27 ² Defendant reserves the right to fully brief the issue of claim and issue preclusion at a later time should the
28 Special Motion to Dismiss be denied.

1 NRS § 41.637(2) and (3), he is protected from any civil liability arising from the content of the
2 report. Plaintiffs need to show by **clear and convincing admissible evidence** that the
3 report was not a communication regarding a matter reasonably of concern to Pahrump and a
4 written statement made in direct connection with an issue under consideration by Pahrump.
5 Instead, Plaintiffs have conceded that the report was regarding a matter of reasonable
6 concern to Pahrump in their purported "Undisputed Material Facts" section.³ See Opposition
7 2-3. Plaintiffs state "It is undisputed that the Town of Pahrump retained Defendant Erickson,
8 Thorpe & Swainston, who hired Defendant Pat Songer to conduct an investigation into a
9 report/complaint about the Plaintiffs." See Opposition 2:13-15. In other words, Pahrump had
10 a reasonable concern about Plaintiffs alleged misconduct of abandoning and/or unwilling to
11 treat a woman suffering a miscarriage.

12 Plaintiffs' red-herring arguments about edits to the report, alleged false
13 communications, and implied conspiracy theories simply have no bearing on the issue of
14 whether Mr. Songer's good faith communication as defined by NRS § 41.637(2) and (3). As
15 Plaintiffs have failed to meet their burden, the Court should grant Mr. Songer's Special
16 Motion to Dismiss and award costs and attorney's fees as required by NRS § 41.670(1).

17 **V. Conclusion**

18 The clarifying nature of the 2013 amendments to Nevada's anti-SLAPP statutes
19 dictates that the proper statute to use in this matter is the current 2013. The Legislative
20 intent is to provide immunity for all protected speech. The Legislature made no
21 classifications of individuals and intentionally decided on broad language to ensure the
22 statute reflected the legislative intent. As the 2013 statute is the proper authority, Plaintiffs
23 carried the burden of showing through **clear and convincing admissible evidence** that
24 their probability of prevailing on the merits. Plaintiffs failed to meet this burden and instead
25 make red-herring arguments and spend pages discussing how Mr. Songer's good faith
26

27 ³ Plaintiffs "facts" are supported by the inadmissible evidence and are indeed disputed. However, this dispute
28 on the drafting of the report does not diminish Mr. Songer's rights to immunity for good faith communication in
furtherance of his free speech rights on a matter of public concern.

1 communication does not fit into the NRS § 41.637(4) definition, a definition that Mr. Songer
2 made no argument that it applies. Mr. Songer's good faith communication falls squarely
3 within the definitions of NRS § 41.637(2) and (3) and was directly related to an issue of
4 public concern. Because Plaintiffs failed to meet their burden, Mr. Songer respectfully asks
5 this Court to grant his Special Motion to Dismiss and award the statutory fees and costs, and
6 any additional sanctions the Court sees fit.

7 DATED this 31st day of July, 2014.

8 LIPSON, NEILSON, COLE, SELTZER, GARIN, P.C.

9
10 By: 

11 JOSEPH P. GARIN, ESQ.

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22 *Attorneys for Defendant,*
23 *PAT SONGER*
24
25
26
27
28

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document,

DEFENDANT PAT SONGER'S REPLY IN SUPPORT OF SPECIAL MOTION TO
DISMISS PURSUANT TO NRS § 41.660

filed in Case Number: 35969

☒ Document does not contain the social security number of any person

- OR -

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

(State specific law)

- or -

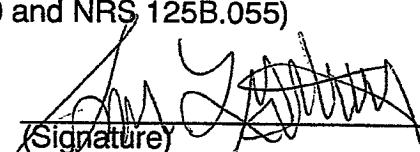
☐ For the administration of a public program or for an application for a federal or state grant.

- or -

☐ Confidential Family Court Information Sheet

(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: July 31, 2014


(Signature)
Siria L. Gutierrez, Esq.

Attorney for Defendant, PAT SONGER

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Attorneys for Plaintiffs

FILED
FIFTH JUDICIAL DISTRICT COURT

AUG 15 2014

NYE COUNTY DEPUTY CLERK
DEPUTY

TANNER DAVIS

7 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF NYE

10 RAYMOND DELUCCHI and
TOMMY HOLLIS,

Case No. CV35969
Dept. No. I

11 Plaintiffs,

12 v.

13 PAT SONGER and ERICKSON,
14 THORPE & SWAINSTON, LTD.,

15 Defendants.

16
17 **OPPOSITION TO DEFENDANT ERICKSON, THORPE & SWAINSTON'S**
18 **SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660.**

19 COMES NOW Plaintiffs Raymond Delucchi and Tommy Hollis by and through undersigned
20 counsel Adam Levine, Esq. of the Law Office of Daniel Marks and hereby opposes Defendant
21 Erickson, Thorpe & Swainston's Special Motion to Dismiss Pursuant to NRS 41.660.

22 ///

23 ///


24 ///

25 ///

1 The grounds for Plaintiffs' Opposition are set forth in the attached Memorandum of Points and
2 Authorities.

3 DATED this 12th day of August, 2014.

4 LAW OFFICE OF DANIEL MARKS

5 
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13 *Attorneys for Plaintiffs*

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 Prior to the filing of the Special Motion to Dismiss by Defendant Erickson, Thorpe &
16 Swainston, LTD ("ETS"), Plaintiffs had already filed their Opposition to a Special Motion to Dismiss
17 filed by Co-Defendant Pat Songer ("Songer"). The same reasons that Songer's Special Motion to
18 Dismiss must be denied (i.e. the statute does not apply the vendors/contractors, the accusations made
19 are demonstrably false, and a neutral arbitrator who reviewed all of the facts found that the Report
20 contained "*intentional* misrepresentations") likewise requires ETS' Motion be denied and the
21 Opposition filed with regard to Songer's Special Motion is hereby incorporated by reference.

22 ETS' Motion disputes that Attorney Rebecca Bruch was a co-author of the report, and argues
23 that she did nothing more than edit the report for grammar and stylistic changes. However, as set forth
24 in Plaintiffs' Opposition to Songer's Special Motion to Dismiss, Bruch sent Songer an e-mail saying
25 that she was directing the investigation and that Songer was to report to her. (Exhibit "2" to the
Opposition to Songer's Special Motion). On August 2, 2012 Bruch asked Songer to call her "before
you write your report, so I have an idea where it's going". (Exhibit "3" to the Opposition to Songer's
Special Motion). Songer testified that he did in fact tell Bruch that he had never spoken with the

1 Choyces. (Exhibit "1" to the Opposition to Songer's Special Motion at p. 148). As an attorney, Nevada
2 Rule of Professional Conduct 4.1(b) entitled "Truthfulness and Statements to Others" required Bruch
3 to disclose to the recipients of the Report, including the Plaintiffs, the material misrepresentations of
4 Songer's Report. Her failure to do so renders her responsible for its content.

5 More significantly, if ETS' contention that Bruch is not a co-author of the report is accepted,
6 then ETS is not entitled to bring a motion under Nevada's anti-SLAPP statutes. NRS 41.650 only
7 protects "A person who engages in a good faith communication in furtherance of the right to petition".
8 If Bruch did not make the communication, she is not entitled to the benefit of the anti-SLAPP statutes.

9 However, even if Bruch is not a co-author, this would not relieve ETS of liability. If Songer is
10 found liable on the claims of either Defamation or Intentional Infliction of Emotional Distress, ETS
11 will be vicariously liable for the tortious conduct of the agent which it hired. *Bank of Nevada v. Butler*
12 *Aviation-O'Hare, Inc.*, 96 Nev. 763, 765, 616 P.2d 398, 399 (1980) ("The courts have consistently
13 held that the principal is responsible to third parties for the misconduct of an agent committed within
14 the scope of his authority even though the principal is completely innocent and has received no benefit
15 from the transaction").

16 ETS' Motion does raise additional arguments relating to the substantive law of defamation and
17 intentional infliction of emotional distress, separate and apart from Anti-SLAPP, which were not raised
18 by the Special Motion of Co-Defendant Songer. Accordingly, Plaintiffs will address those arguments
19 to the extent that they were not addressed in the Opposition to Songer's Special Motion.

20 **I. DELUCCHI AND HOLLIS ARE NOT LIMITED PURPOSE PUBLIC FIGURES.**

21 ETS' Motion argues that Delucchi and Hollis are limited purpose public figures such that the
22 "actual malice" standard from *New York Times v. Sullivan*, 376 U.S. 254 (1964) and its progeny will
23 require proof that the defamatory statements were known to be false or made with reckless disregard
24 for the truth or falsity. This argument is without merit.

25 ///

1 In *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 57 P.3d 82 (2002) the Nevada Supreme
2 Court adopted the test from *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974) for determining whether
3 a person is a general purpose or limited purpose public figure. A limited purpose public figure "is a
4 person who voluntarily injects himself or is thrust into a particular public controversy or public
5 concern, and thereby becomes a public figure for a limited range of issues." 118 Nev. at 720, 57 P.3d
6 at 91. A limited purpose public figure is not somebody who "voluntarily placed themselves in the
7 public eye by virtue of their positions as EMTs" as argued by the Motion at p. 25. By ETS' definition,
8 every public employee would be a limited purpose public figure. This is not the case.

9 There was no evidence of any "public controversy or public concern" relating to the incident on
10 Highway 160. There is no evidence it was reported in the newspaper, at press conferences, or the local
11 news. It was a *confidential* internal investigation of employees. Nobody knew about the investigation
12 other than the City, its investigators, and Delucchi and Hollis. Absent evidence of a *public* controversy
13 or concern, it cannot be said that Delucchi and Hollis "voluntarily injected" themselves into anything
14 or were involuntarily "thrust" into a public controversy or concern. Accordingly, it is the negligence
15 standard, not the constitutional/actual malice standard, which will govern the defamation claim.

16 **II. THE DEFAMATORY STATEMENTS IN THE SONGER/BRUCH REPORT WERE**
17 **NOT OPINION.**

18 ETS argues that the statements contained in the Songer/Bruch Report constitute non-actionable
19 statements of opinion citing *People for the Ethical Treatment of Animals v. Bobby Berosini*, 111 Nev.
20 615, 895 P.2d 1269 (Nevada 1995). However, the *Berosini* case involved evaluative opinions and
21 value judgments as to whether the actions depicted on the videotape of the plaintiff disciplining
22 orangutans constituted proper discipline or abuse.

23 In this case, it is undisputed that ETS was hired to be "an independent investigator" to look into
24 the allegations against Delucchi and Hollis, and that ETS then hired Songer to conduct that
25 *investigation* for them. (Testimony of William Kohbarger attached hereto as Exhibit "1" at pp. 34-39).

1 The defamatory statements were made in the context of the *investigative report* co-authored by Songer
2 and ETS attorney Bruch.

3 The verb “investigate” is defined by the Merriam-Webster’s dictionary is “to try to find out **the**
4 **facts** about (something, such as a crime or an accident) in order to learn how it happened, who did it,
5 etc.” (Exhibit “2” to this Opposition emphasis added). Investigations are not conducted to find
6 opinions; they are conducted to find *facts*.

7 A defendant cannot evade liability for libel by inaccurately characterizing the defamatory
8 statements as “opinion”. “Expressions of opinion may suggest that the speaker knows certain facts to
9 be true or may imply that facts exist which will be sufficient to render the message defamatory if
10 false.” *K-Mart Corp. v. Washington*, 866 P.2d 274, 282 (Nev.1993). “Words must be reviewed in their
11 entirety and in context to determine whether they are susceptible to defamatory meaning.” *Chowdhry v.*
12 *NLVH, Inc.*, 851 P.2d 459, 463 (Nev.1993). Where a statement is capable of different constructions,
13 one of which is defamatory, the question is reserved for the jury. *Posadas v. City of Reno*, 851 P.2d
14 438, 442 (1993).

15 Even if the Songer/Bruch Report had offered its findings in the form of “opinions” (and it did
16 not), such “opinions” arising from a fact-finding investigation would by their very nature suggest the
17 existence of facts sufficient to render the statements defamatory if false.

18 **III. SONGER AND BRUCH ARE NOT ENTITLED TO ABSOLUTE IMMUNITY.**

19 ETS’ Motion cites *Jacobs v. Adelson*, 130 Nev. ___, 325 P.3d 1282 (2014) to argue that the
20 Defendants had an “absolute privilege” on the grounds that “a public interest in having people speak
21 freely outweighs the risk that individuals will occasionally abuse the privilege by making false and
22 malicious statements.”

23 However, the privilege at issue in *Jacobs v. Adelson* was “absolute privilege for defamatory
24 statements made during the course of judicial and quasi-judicial proceedings”. This privilege has no
25 application to the present case because the defamation claim brought by Plaintiffs was with regard to

1 the falsified report submitted to their employer. While Songer would enjoy an absolute privilege with
2 regard to a statement he made during the *arbitration proceedings*, no such privilege attaches to a false
3 report submitted to the employer prior to the contractual grievance process even being invoked. It
4 should be pointed out that in *Jacobs v. Adelson, supra* the Nevada Supreme Court held that the
5 privilege *did not apply* to defamatory statements made at a press conference, as opposed to in court.

6 Likewise, ETS cites *Imperial v. Drapeau*, 716 A.2d 244, 250-251 (Ct. App. Maryland 1998) in
7 support of the absolute privilege. However, in *Imperial* the issue as to whether there was an absolute
8 privilege to report misconduct to a regulatory agency was at issue. Plaintiffs' complaint for defamation
9 does not arise from Songer, ETS, or the Town of Pahrump reporting to the State of Nevada Division of
10 Public and Behavioral Health which licenses and regulates EMTs. As set forth above, the claims in this
11 case arise from the submission of a false report containing defamatory statements to Plaintiffs'
12 employer. Defendants and cited no cases establishing any absolute privilege for this.

13 **IV. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

14 ETS' Motion argues that the Complaint fails to state a claim establishing the elements for
15 Intentional Infliction of Emotional Distress ("IIED"). ETS' Motion recognizes that IIED is established
16 where there is extreme or outrageous conduct with either the intention of, or reckless disregard for,
17 causing emotional distress. *Dillard Department Stores, Inc. v. Beckwith*, 115 Nev. 372, 99 P.2d 882
18 (1999). Extreme and outrageous conduct is that which falls outside "all possible bounds of decency
19 and is regarded as utterly intolerable in a civilized community." *Maduike v. Agency Rent-A-Car*, 114
20 Nev. 1, 953 P.2d 24 (1998).

21 ETS' Motion cites *Janaszak v. State*, 173 Wash. App. 703, 297 P.3d 723 (2013) wherein the
22 Washington Court of Appeals granted *summary judgment* on the grounds that the actions of the
23 Washington Dental Quality Assurance Commission in summarily suspending a license did not rise to
24 the requisite level of outrage so as support an IIED claim. *Janaszak* involved the grant of summary
25

1 judgment. The decision in *Janaszak* turned on the fact that the plaintiff presented no evidence that the
2 Commission or investigator acted intentionally or recklessly to injure plaintiff. This case is before the
3 Court on a Rule 12 motion where all of the allegations of Plaintiffs' complaint must be presumed to be
4 true.

5 In *Smith v. Iowa State University*, 838 N.W.2d 869 (Iowa App. 2013) the court upheld a
6 judgment on a jury verdict for IIED wherein the defendant made false reports about the plaintiff to
7 campus police. In *Almy v. Grisham*, 273 Va. 68, 639 S.E.2d 182 (2007) the Supreme Court of Virginia
8 held that the plaintiff's allegations that the defendants submitted false reports accusing plaintiff's
9 husband of marital infidelity would support a claim for IIED.

10 In this case, as found by the arbitrator, the Songer/Bruch Report contained "intentional
11 misrepresentations" and was written in a manner so as to deceive the Plaintiffs' employer into
12 believing that Songer had in fact interviewed victim and made a credibility determination based on
13 such interviews. The Report accused the Plaintiffs of violating the Town of Pahrump's policy against
14 "intimidation" of others despite the fact that Songer admitted at the arbitration that he had no
15 explanation as to why that finding was in the Report and he had no evidence to support it. The Report
16 falsely accused Plaintiffs of deliberately refusing to take the Choyces to a hospital in Las Vegas, and
17 only offering to take them to Desert View in Pahrump, *for their own personal convenience* when there
18 was no such evidence to support the statement. Both Plaintiffs told Songer in their investigatory
19 interviews that James Choyce sped off after they offered to take them to Desert View.¹ The report
20 falsely accused Plaintiffs of a "cover-up" based upon the fact that they did not complete a Patient Care
21 Report despite the fact that Brittanie Choyce did not meet the definition of a "Patient" under NAC
22 450B.180. This is sufficient to constitute the requisite extreme and outrageous conduct.

23 ///

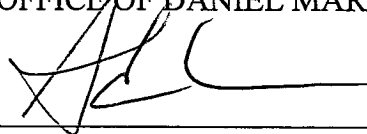
24
25 ¹ This was subsequently confirmed by Brittanie Choyce when she came forward for the first time in her arbitration testimony more than a year later.

1 IV. CONCLUSION

2 For all of the reasons set forth above the Special Motion to Dismiss must be denied.

3 DATED this 12th day of August, 2014.

4 LAW OFFICE OF DANIEL MARKS

5 

6 DANIEL MARKS, ESQ.

Nevada State Bar No. 002003

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10 *Attorneys for Plaintiffs*

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS, and that on the 13th day of August, 2014, I did deposit in the United States Post Office, at Las Vegas, Nevada, in a sealed envelope with first class postage fully prepaid thereon, a true and correct copy of the foregoing OPPOSITION TO DEFENDANT ERICKSON, THORPE & SWAINSTON'S SPECIAL MOTION TO DISMISS PURSUAN TO NRS41.660, to the addresses as follows:

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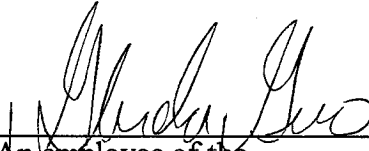

An employee of the
LAW OFFICE OF DANIEL MARKS

EXHIBIT “1”

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RECEIVED
AUG 21 2013
BY: _____

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

RE GRIEVANCES OF

TOMMY HOLLIS

AND

RAYMOND DELUCCHI

August 12, 2013

9:59 A.M.

270 Highway 160

Pahrump, Nevada

Reported by: Jennifer A. Clark, RDR, CRR, CCR #422

logged

Rocket Reporting
702.8Rocket (702.876.2538)

CC TO CLIENT 8/21/13
INITIALS *AL*
Condensed
via email

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16 The Arbitrator:

17 CATHERINE HARRIS, ESQ.
18 5960 South Land Park Drive
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21 disputeresolutions@att.net

20 Also Present:

21 Raymond Delucchi
22 Tommy Hollis
23 Dean Fletcher
24 William J. Snow
25

I N D E X

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|--|-------------|
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| * * * * * | |
| Town Exhibits 1-37 were marked for identification and received into evidence on page 8. | |
| Union Exhibits A-V were marked for identification and received into evidence on page 9. | |

1 PAHRUMP, NEVADA; AUGUST 12, 2013

2 9:59 A.M.

3 -o0o-

4
5 THE ARBITRATOR: On the record.

6 Good morning, everyone. This is an
7 arbitration hearing in the matter of a controversy
8 between the Town of Pahrump and IAFF Local 4068
9 involving the grievances of Mr. Delucchi and Hollis.

10 My name is Catherine Harris, and I am
11 the arbitrator, mutually selected by the parties to
12 render a final and binding opinion and award.

13 Before we go any further, would each of
14 the parties beginning with the Town of Pahrump
15 please state their appearances for the record.

16 MR. CAMPBELL: Rick Campbell on behalf
17 of the Town of Pahrump.

18 THE ARBITRATOR: Thank you.

19 And the record should reflect that
20 Rebecca --

21 MS. BRUCH: Bruch.

22 THE ARBITRATOR: -- Bruch is also
23 present on behalf of the Town.

24 And appearing on behalf of the Union.

25 MR. LEVINE: Adam Levine for Local 4068.

1 THE ARBITRATOR: Thank you.

2 And the record should reflect also that
3 Mr. Snow, the president of Local 4068, is also
4 present, as well as both grievants. And I believe
5 we have Mr. Fletcher --

6 MR. FLETCHER: Yes.

7 THE ARBITRATOR: -- who is the state
8 representative.

9 MR. FLETCHER: Yes, the PFFN state
10 representative.

11 THE ARBITRATOR: All right. And is he
12 going to be a witness?

13 MR. LEVINE: No, he is not.

14 THE ARBITRATOR: All right. So just so
15 the record is clear, we did have some off-the-record
16 discussions, and it was asked that witnesses not
17 overhear each other's testimony, so the rule is in
18 effect during the course of this proceeding.

19 So I also would like to make a few other
20 matters of record, and those are the following:
21 First of all, each party has a continuing objection
22 to hearsay so that it won't be necessary to raise
23 hearsay objections during the course of the
24 testimony, and I believe that's agreeable to both
25 parties. Correct?

1 MR. LEVINE: Yes.

2 MR. CAMPBELL: Agreed.

3 THE ARBITRATOR: All right. And then
4 the parties have advised the arbitrator that they
5 are in agreement that this matter or both matters
6 involving both grievants are properly before the
7 arbitrator for final and binding determination, that
8 there are no procedural or substantive arbitrability
9 issues that would prevent the arbitrator from
10 reaching the merits.

11 So stipulated?

12 MR. LEVINE: Yes.

13 MR. CAMPBELL: So stipulated.

14 THE ARBITRATOR: That stipulation is
15 received.

16 And then I believe both parties are in
17 agreement that the issues are the following: Issue
18 number 1, whether there was just cause for the
19 terminations; and then issue number 2, if not, what
20 shall be the appropriate remedy. And it's also
21 understood that with respect to each of the
22 grievants, independent determination as to both
23 issues will need to be made.

24 So stipulated?

25 MR. LEVINE: Yes.

1 MR. CAMPBELL: Yes.

2 THE ARBITRATOR: All right. That
3 stipulation is also received.

4 And then I'd also like to confirm for
5 the record that it is the joint request of the
6 parties that in the event that a remedy were to be
7 ordered, that the arbitrator retain jurisdiction
8 over implementation of the award.

9 So stipulated?

10 MR. LEVINE: Yes.

11 MR. CAMPBELL: Yes.

12 THE ARBITRATOR: That stipulation is
13 also received.

14 I should also mention that there is an
15 additional issue to be determined by the arbitrator,
16 and that is the application of the loser pay
17 provisions of the collective bargaining agreement,
18 and those provisions are found at 5B of page 45 of
19 what is going to be identified later as the Town's
20 Exhibit 6.

21 And then I'd also like to confirm that
22 the parties are in agreement that as soon as I've
23 received all the evidence and deliberated the case,
24 that I will issue my final and binding opinion and
25 award, by regular mail, duplicate originals,

1 directed to the representatives of each of the
2 parties.

3 Is that agreeable?

4 MR. LEVINE: Yes.

5 MR. CAMPBELL: Yes.

6 THE ARBITRATOR: Okay. Are there any
7 other -- oh, and let me also mention that while we
8 were off the record, I marked for identification
9 Town Exhibits 1 through 37, and the index of those
10 exhibits has been provided to the arbitrator and to
11 the Union's attorney.

12 Is there any objection to my making
13 Exhibits 1 through 37, the Town exhibits, part of
14 the record of the proceeding?

15 MR. LEVINE: No, so long as my
16 understanding is we have an agreement to stipulate
17 both sets.

18 THE ARBITRATOR: Yes, that would be
19 subject to hearsay and relevancy objections that
20 either party wish to raise at the conclusion of the
21 case.

22 MR. LEVINE: Correct.

23 MR. CAMPBELL: Correct.

24 THE ARBITRATOR: So with that
25 understanding, is there any objection to my

1 receiving them?

2 MR. LEVINE: No.

3 THE ARBITRATOR: Okay. And then I've
4 also marked for identification as Union Exhibits A
5 through V various documents. Again, an index has
6 been provided to both the arbitrator and to the
7 Town's attorney. Is there any objection to the
8 receipt of Union Exhibits A through V, subject to
9 hearsay and relevancy objections?

10 MR. CAMPBELL: None.

11 THE ARBITRATOR: Then those documents
12 will also be received.

13 MR. LEVINE: If I might make a point for
14 the record, there is some degree of duplicate and
15 overlap between the two, and I guess we can identify
16 those for you when -- where they're in both sets as
17 arises.

18 THE ARBITRATOR: All right. Thank you.
19 That will save me the time and effort of going
20 through each one page by page and examining them to
21 make sure that they are, in fact, the same or if
22 they are different.

23 Okay. And then I believe it's also been
24 agreed that at the conclusion of our two-day
25 hearing, that I'm going to release these exhibits to

1 either the Union or the Town, perhaps the Town's
2 exhibits to the Town and the Union's exhibits to the
3 Union, so that they can be mailed to me, because
4 they are rather voluminous for taking through
5 security at the Las Vegas airport.

6 So is that agreeable to both parties?

7 MR. CAMPBELL: Yes.

8 MR. LEVINE: Yes.

9 THE ARBITRATOR: Is there any other
10 preliminary matter that either party would like to
11 raise before opening statements?

12 MR. LEVINE: No. Only that you made a
13 reference to you might be required to adjudicate the
14 fee lose pay provision of the contract.

15 THE ARBITRATOR: Yes.

16 MR. LEVINE: I suppose it is
17 theoretically possible, though unlikely, that there
18 could be a split decision, since there is a case
19 with regard to Mr. Delucchi and Mr. Hollis. In that
20 case, I presume each party would bear their own if
21 there's a split decision?

22 THE ARBITRATOR: I think that I would
23 have to make the ruling according to the contract,
24 but then obviously, I think you would adjust that
25 between yourselves if it were to come out in that

1 fashion.

2 MR. LEVINE: Fair enough. I think it's
3 an unlikely outcome, but it is theoretically
4 possible.

5 THE ARBITRATOR: All right. Okay. So
6 any other matter that either party would like to
7 raise?

8 All right. So since this is a
9 discipline case, then would the Town like to make an
10 opening statement?

11 MR. CAMPBELL: Yes, very briefly,
12 because we did file with you a prehearing brief.

13 THE ARBITRATOR: Yes, and I mentioned
14 that. And it has been served on the Union, and I
15 have received it.

16 MR. CAMPBELL: I'll be very brief, and I
17 just want to make a couple highlighted points.

18 I think you'll see in this case, Madam
19 Arbitrator, that a lot of the facts that we hear are
20 not going to be in dispute. This case involved two
21 firefighter/EMTs, Mr. Delucchi and Mr. Hollis, who
22 were returning from Las Vegas on a transport from
23 the Las Vegas hospital.

24 They were flagged down by a driver on
25 the highway just past the summit that you probably

1 drove over to get here. They stopped their
2 ambulance after being flagged down or signaled by
3 the driver of the vehicle. The driver of the
4 vehicle came out, told them that his wife or the
5 passenger was having a miscarriage.

6 They both exited the vehicle and
7 approached some point of the vehicle. That's one of
8 the areas in dispute as to that. But they did exit
9 the vehicle and were close to the vehicle and in
10 some proximity to it. They do admit that they were
11 able to visually see the passenger and that she was
12 under some kind of distress. I think it's not --
13 there's no dispute as to the facts that the --
14 they -- they offered to take her to the Pahrump
15 hospital and that the driver of the vehicle did not
16 want to go to the Pahrump hospital. And there was a
17 verbal exchange regarding that, and there's no
18 dispute that then the driver of the vehicle
19 subsequently drove off. Those are all facts that I
20 think will be, you know, pretty solid in front of
21 you.

22 Secondly, there's no dispute at all that
23 Mr. Delucchi or Mr. Hollis never made a report of
24 this incident, never called the Nevada Highway
25 Patrol, never called their lieutenant, and the only

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1 report that was made was after this complaint was
2 filed by the drivers and passenger's mother-in-law
3 within a day or so after the incident. But prior to
4 that time, neither one of these gentlemen had taken
5 the time to call or notify anybody about this
6 incident.

7 So those -- I think the factual scenario
8 in this case is pretty straight and clear. I think
9 what you're going to hear today, instead of disputed
10 facts, you're going to hear excuses. We didn't
11 treat the driver. We didn't approach the driver
12 because we were afraid. We didn't call anybody
13 because we forgot to or we didn't know we were
14 supposed to call.

15 And most importantly, this -- the big
16 claim is that this termination is not about this
17 incident that happened up on the highway. This
18 termination is somehow a result of a feud or bad
19 feelings between the Town management and
20 Mr. Delucchi and Mr. Hollis, especially Mr. Delucchi
21 because of his involvement as a union chief.

22 So I think we're going to hear a lot of
23 facts on our side. I think you're going to hear a
24 lot of excuses on their side. And I think the facts
25 are the important part of this thing, not the

1 excuses.

2 THE ARBITRATOR: Thank you for your
3 statement.

4 And would the Union like to make an
5 opening statement at this time?

6 MR. LEVINE: Yes. On the early morning
7 hours of May 25, 2012, Firefighter/Paramedic
8 Delucchi and EMT Hollis were returning to Pahrump
9 from a patient transport to Las Vegas. Up just over
10 the top of the hill on Highway 160, which you, Madam
11 Arbitrator, would have had to drive by to get
12 here --

13 THE ARBITRATOR: Is that about the
14 halfway point between --

15 MR. LEVINE: Yes, approximately. It's
16 been identified as mile marker 23. It was just over
17 the top portion of the hill. Mr. Delucchi was
18 driving Medic 3 ambulance, and he noticed a car
19 coming up on him at a high rate of speed. The car
20 got so close --

21 THE ARBITRATOR: From the back or
22 oncoming?

23 MR. LEVINE: From the back.

24 The car got so close that it forced
25 Mr. Delucchi over into what we refer to as the

1 rumble strip. If you've ever driven on a highway
2 and you start to veer off, they have little
3 strips -- corrugated strips to rumble to alert a
4 driver, force them off. That obviously concerned,
5 scared, alarmed the passengers in the vehicle.

6 The area where this happened, at
7 approximately 1:00 A.M. in the morning, it is pitch
8 dark. There is no light in the area. More
9 ominously, it is also, you'll hear testimony, a
10 radio dead zone. The radios do not work in that
11 area. Not knowing what to do, after this vehicle
12 did this to them, they could see the person inside
13 the car gesticulating. They pulled the ambulance
14 over, and they hit the flashing lights.

15 Next thing they realized, somebody was
16 right outside their window. That concerned them.
17 There is a safety issue involved. You're going to
18 hear a lot of testimony, and you're going to see a
19 lot of policies that when it comes to fire and
20 rescue, scene safety, the safety of the paramedics
21 and the EMTs comes first. That is drilled into
22 them, and that is repeated in multiple standard
23 operating guidelines and policies that you have in
24 evidence. The fact is is that robberies of
25 ambulances is not unheard of. They carry narcotics,

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1 medications which could make them a target.

2 So at 1:00 in the morning in the dark in
3 a radio dead zone, all of a sudden, they are almost
4 forced off the road and confronted with somebody
5 right outside their window. They roll the window
6 down a bit and tell them he needs to back off
7 because he's yelling. He's acting erratically. He
8 doesn't identify himself, and he's screaming. They
9 think they hear something about a possible
10 miscarriage, but they ask him to back away from the
11 vehicle, from the window, because he is yelling,
12 because he's cursing, because he's acting
13 erratically.

14 When he backs away, they exit the
15 vehicle. Then the driver does something that is
16 extremely unusual. He does not say my wife needs
17 assistance and take them over to the passenger door
18 to give them access to a passenger, which is what
19 would normally be expected. Instead, he does
20 something extremely unusual. He goes around his car
21 and gets back in it. That raises the sense of
22 concern, because they're out in the dark. You have
23 somebody acting erratically, and he's not doing what
24 you would expect him to do.

25 The passenger side window -- there was a

1 passenger, a female. They could see a female in
2 there crying. The driver gets back in and is still
3 yelling and cursing. So what Mr. Delucchi and
4 Mr. Hollis do is what they're trained to do, try to
5 calm him down so they can assess the situation.
6 They tell him to calm down. They tell him to stop
7 screaming. They're five to ten feet away from the
8 vehicle because, again, it's dark. They don't know
9 if he's armed. They don't know what's going on.
10 This is a highly unusual situation. They tell him,
11 calm down, sir, because they can't talk to the
12 passenger when he's screaming over her.

13 In an attempt to get him to calm down,
14 they say, well, we can take you to the Pahrump
15 hospital. They were heading towards Pahrump.
16 They're on a divided highway. You can't just make a
17 U-turn and go back. You would have to go several
18 miles further towards Pahrump before you can turn
19 the ambulance around, but in just an effort to get
20 him to calm down, they say, we can take her, you, to
21 Pahrump hospital.

22 THE ARBITRATOR: Uh-huh.

23 MR. LEVINE: At that point, he starts
24 cursing and screaming, dropping what I'll call
25 F bombs, you know, shit, fuck, yelling and

1 screaming. And instead of calming down, what he
2 does is he drops the car into gear, which further
3 alarms our client, because they're out there with a
4 vehicle in the middle of the dark. They back up,
5 and then he drives off, and that is the end of the
6 encounter.

7 Now, you're going to see the contract
8 which says that the Town is to follow the statutes
9 and regulations relating to firefighters. You're
10 going to see the statutes and regulations relating
11 to firefighters and EMTs, and by law and by common
12 sense under this scenario which they face, which
13 there is no policy for, in this town -- there is no
14 standard operating guideline as to how to react to
15 the situation they found themselves in. But the
16 evidence is going to be that by law, there is no
17 patient contact.

18 Patient contact, by law in the state of
19 Nevada, is defined as treating a person or
20 transporting a person. The evidence is going to be
21 undisputed that they never treated her and they
22 never transported her. They never got a chance to
23 assess her. They never got closer than five to ten
24 feet from the vehicle because of the actions of the
25 driver. And before they had an opportunity to

1 assess the person in the passenger seat, he put the
2 car in gear and drove away.

3 At that point, they got back in the
4 ambulance and sort of looked at each other. It's,
5 like, okay, what just happened? You heard in
6 opening that they did not call the highway patrol.
7 That is true. First and foremost, in the area
8 they're in, the radios don't work. They could have,
9 in theory, pulled out a cell phone, I suppose, and
10 tried to call the highway patrol, but the evidence
11 is going to be that the highway patrol doesn't even
12 patrol that stretch of highway at that time of
13 night. It would have to be a special call-out. And
14 what would the evidence show? The evidence would
15 show that calling the highway patrol would be
16 telling them what? They didn't have a name of the
17 person. They didn't have a license plate. They
18 couldn't even identify the make and model of the
19 vehicle.

20 They didn't call the highway patrol, but
21 the evidence is going to be that calling the highway
22 patrol would have been absolutely futile. And
23 you're going to hear tomorrow most likely from an
24 NHP officer who used to work the Pahrump area to
25 tell you this area isn't even patrolled. It's a

1 special call-out, and they wouldn't have got there
2 for probably 45 minutes. Only to find what? No
3 name. No license plate. No make and model. There
4 would be nothing to call the NHP over.

5 Now, within a matter of days after this
6 incident, the Town of Pahrump and Local 4068 was
7 involved in an extremely acrimonious labor
8 arbitration. You'll hear it referred to as the
9 Van Leuven arbitration. It got very personal with
10 the chief of police, including who the chief of
11 police was having personal relations with. The
12 evidence is going to be that that was a very
13 uncomfortable, hostile arbitration. That
14 arbitration took place on May 30, four days after
15 this incident.

16 On May 31, the chief was informed that a
17 mother of the alleged people in the car had called
18 in to voice concerns over how the daughter and
19 son-in-law were treated. The evidence is going to
20 be that Firefighter Delucchi was interviewed by his
21 lieutenant that day regarding the incident, and in
22 the middle of that interview, the chief walks in,
23 stops the interview, and says we're starting over.
24 That alarmed Mr. Delucchi, who was the president of
25 Local 4068.

1 Mr. Delucchi became concerned because
2 this was a fairly unusual instance where the chief
3 comes in and puts a stop to an investigatory
4 interview mid interview by the lieutenant.
5 Mr. Delucchi becomes concerned that he is being the
6 potential subject of retaliation by the chief for
7 his activities as union president, that he's being
8 targeted. He says I want a representative of HR and
9 the Town present for this.

10 The Town obliges him. The evidence is
11 going to be, however, that same day, the fire chief
12 and lieutenant went out to talk to the people who
13 were in the vehicle, and the evidence is going to be
14 undisputed that they refused to give any sort of
15 recorded statement to the chief. The evidence is
16 going to be that they refused to give a statement to
17 the chief. And the evidence is going to be that the
18 very same day, May 31, the day the chief goes out
19 there, the day that Mr. Delucchi and Mr. Hollis are
20 interviewed, that the chief then goes to human
21 resources and files a complaint against President
22 Delucchi, alleging that President Delucchi is --
23 what's the word that -- bullying him as president of
24 the local.

25 You're going to see a lot of evidence

1 that there was a great deal of animosity between the
2 Town and Mr. Delucchi as the new union president.
3 Mr. Delucchi had been the union president only for a
4 very short period of time, but you're going to hear
5 testimony and you're going to actually see a video
6 of how Mr. Delucchi was singled out in the press
7 by Mr. Kohbarger, the Town manager, and personally
8 attacked for his role and what he did as union
9 president, criticizing him for filing grievances,
10 criticizing him for meeting with other union
11 presidents.

12 I think the arbitrator will see that the
13 claim of antiunion bias infecting this investigation
14 is not fanciful but is actually going to be
15 supported by substantial evidence.

16 Because of the hostility between the
17 chief and President Delucchi and because the chief
18 filed a complaint, the Town outsources the
19 investigation to a third party. Now, discharge and
20 disciplinary procedures are the subject of mandatory
21 bargaining in Nevada. There was no prior
22 negotiations with the local as to how this was going
23 to happen or who was going to be selected. The Town
24 did it on its own.

25 And you're going to see that report of

1 the investigator in evidence. You're going to see
2 that it was marked up and substantially rewritten by
3 the Town's attorney, Rebecca Bruch, who's present
4 here. You're also going to see that the
5 investigator reached conclusions that are in its
6 report that are not remotely substantiated by any
7 substantial evidence whatsoever.

8 If you were to read the investigator's
9 report, which you will, you would think that
10 Brittnie Choyce, the woman who was in the car in the
11 passenger seat, and James Choyce, the driver of the
12 vehicle who was acting erratically and drove off --
13 reading the reports generated by the Town, you would
14 think that they actually gave a statement, recorded
15 or written, in support of the complaint.

16 The opposite is true. They refused to
17 do so. The so-called neutral outside investigator
18 reached credibility determinations without ever
19 speaking to them and charged Delucchi and Hollis
20 with violations that simply defy common sense and
21 aren't substantiated by anything.

22 When you take a look at the objective
23 evidence, you're going to see that they were faced
24 with an unusual situation; that they used their best
25 judgment in accordance with the training which they

1 got, which is safety first. And when I think you'll
2 look at all the evidence, we are confident you'll
3 conclude that there was no just cause to discipline
4 at all, much less jump the entire contractual
5 provision for progressive discipline and move it to
6 summary termination. Thank you.

7 THE ARBITRATOR: Thank you for your
8 statement.

9 And is the Town ready to proceed?

10 MR. CAMPBELL: Yes, we are. We'd like
11 to call Mr. Kohbarger as our first witness.

12 THE ARBITRATOR: All right. Let's go
13 off the record to go get him.

14 (A discussion was held off the
15 record.)

16 THE ARBITRATOR: Back on the record.

17
18 WILLIAM KOHBARGER,
19 having been called as a witness and having been
20 first duly sworn, was examined and testified as
21 follows:

22 THE ARBITRATOR: Thank you. State your
23 name for the record, please.

24 THE WITNESS: William Kohbarger.

25 THE ARBITRATOR: Thank you. And we have

1 your spelling.

2 Go ahead, please.

3

4 DIRECT EXAMINATION

5 BY MR. CAMPBELL:

6 Q. Mr. Kohbarger, where are you presently
7 employed?

8 A. City of North Las Vegas, Nevada.

9 Q. And how long have you been employed
10 there?

11 A. This will be my fifth week.

12 Q. And what's your position there?

13 A. Deputy director of HR. Deputy director
14 human resources. Sorry about that.

15 Q. Prior to the employment at North
16 Las Vegas, where were you employed?

17 A. Town of Pahrump.

18 Q. And what was your position this?

19 A. Town manager.

20 Q. How long were you the Town manager for
21 the Town of Pahrump?

22 A. Five years and four days.

23 Q. Okay. Were you the Town manager during
24 the incident that brought us here today regarding
25 Mr. Delucchi and Mr. Hollis?

1 A. Yes, sir.

2 Q. And as Town manager, is it your
3 authority to handle disciplinary matters regarding
4 the fire department?

5 A. Yes, sir.

6 Q. And is it your ultimate authority? I
7 mean, are you the ultimate decider on disciplinary
8 matters?

9 A. Yes, sir.

10 Q. So as Town manager, you became aware of
11 the incident that's brought us here today.

12 A. Yes, sir.

13 Q. When did you first become aware that --
14 about the -- a mother or a mother-in-law of the
15 passengers on the -- in the car in this incident
16 that made a complaint to the Town?

17 A. I believe it was May 30 or 31.

18 Q. Okay. And what was your understanding
19 of what happened?

20 A. A gentleman and a young lady -- or a
21 young man and a young lady were driving to
22 Las Vegas, and they saw one of our ambulances coming
23 down the other side of the mountain towards Pahrump.
24 They turned around and went after the ambulance and
25 got the ambulance to pull over and -- do you want me

1 to go further on?

2 Q. Continue.

3 A. They flagged the ambulance down, got the
4 ambulance to turn over -- or not turn over, I'm
5 sorry, pull over. They pulled in behind the
6 ambulance. The gentleman in the vehicle got out.

7 MR. LEVINE: I'm going to object at this
8 point. The question was his understanding as to
9 what happened. Can I have some foundation? Was he
10 present? How did he get this information?

11 THE ARBITRATOR: Well, I've been
12 understanding this as to what -- what the complaint
13 was.

14 MR. CAMPBELL: Yeah, yeah.

15 THE ARBITRATOR: I think he -- is that
16 what you're giving us, what you understood from the
17 complaint?

18 THE WITNESS: Yes, ma'am.

19 MR. LEVINE: All right.

20 THE ARBITRATOR: I think we're clear
21 now.

22 BY MR. CAMPBELL:

23 Q. Your understanding at that time early
24 on. I know you --

25 THE ARBITRATOR: And excuse me. Was

1 this a written complaint, or is this oral?

2 THE WITNESS: Verbal..

3 THE ARBITRATOR: Okay. Verbal.

4 So you talked with them directly?

5 THE WITNESS: No, ma'am. They left a
6 voicemail.

7 THE ARBITRATOR: Okay. All this is --
8 what you're telling us what you heard on the
9 voicemail?

10 THE WITNESS: Yes, ma'am.

11 THE ARBITRATOR: Okay. Thank you.

12 Go ahead.

13 BY MR. CAMPBELL:

14 Q. So initially, you heard a voicemail.
15 You heard this complaint about this incident up on
16 the highway. I think you were describing it, in the
17 middle of it.

18 What was your understanding at that
19 point in time as to what happened? Not later facts
20 that you learned but at that point in time right
21 after you heard about the complaint.

22 A. That the couple flagged down the
23 ambulance because she was in distress, going through
24 a miscarriage of some type. And the individuals in
25 the ambulance got out, talked to them briefly,

1 offered to take them to Pahrump, and then they left
2 in haste, going the other way. And the mom
3 basically stated they refused to help her daughter.

4 Q. Okay.

5 THE ARBITRATOR: When you said "they
6 left," did you mean the couple or the firefighters?

7 THE WITNESS: I'm sorry. The couple.
8 The fighters, from what I understand, were still
9 standing there, watching the other vehicle drive
10 away.

11 THE ARBITRATOR: Thank you. Go ahead.

12 BY MR. CAMPBELL:

13 Q. So Mr. Kohbarger, after you received or
14 listened to this voicemail message, what was your
15 next action as Town manager?

16 A. Actually, it was to contact Chief Lewis.

17 Q. And did you checking account Chief
18 Lewis?

19 A. Yes.

20 Q. And tell us about that contact.

21 A. Chief Lewis advised he'd gotten the same
22 voicemail, and so did another individual in the fire
23 department.

24 Q. At that point, did you task -- did you
25 decide to investigate the matter?