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ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

JAN 22 2009

BY ALICE JACOBSON, DEPUTY

SVETLANA SINGLETARY, individually, as
the Representative of the Estate of
REGINALD SINGLETARY, and as parent
and legal guardian of GABRIEL L.
SINGLETARY, a Minor,

CASE NO.: A-12-656091-C
DEPT. NO.: XXX

SPECIAL VERDICT FORM

Plaintiff,

vs.

TON VINH LEE, DDS, individually,
FLORIDA TRAIVAI, DMD, individually, JAI
PARK, DDS, individually, TON V. LEE,
DDS, PROF. CORP., a Nevada
Professional Corporation d/b/a
SUMMERLIN SMILES, DOE
SUMMERLIN SMILES EMPLOYEE, and
DOES I through X and ROE
CORPORATIONS I through X, inclusive,

Defendants.

We the jury in the above-entitled action find the following special verdict on the

Questions submitted to us:

Question No. 1: Was Ton Vinh Lee, DDS, negligent in his care and treatment of
Reginald Singletary?

ANSWER: Yes _____ No ✓

If your answer to Question 1 is "no" please sign and return the General Verdict
finding in favor of Dr. Lee.

Question No. 2: Was negligence on the part of Ton Vinh Lee, DDS a cause of injury
to Reginald Singletary?

ANSWER: Yes _____ No ✓

4836-8365-9543.1

1 If your answer to Question 2 is "no" please sign and return the General Verdict
2 finding in favor of Dr. Lee.

3 Question No. 3: Was Florida Traival, DMD, negligent in her care and treatment of
4 Reginald Singletary?

5 ANSWER: Yes ☒ No ☐

7 If your answer to Question 3 is "no" please sign and return the General Verdict
8 finding in favor of Dr. Traival.

9 Question No. 4: Was negligence on the part of Florida Traival, DMD, a cause of injury
10 to Reginald Singletary?

11 ANSWER: Yes ☒ No ☐

12 If your answer to Question 4 is "no" please sign and return the General Verdict
13 finding in favor of Dr. Traival.

14 Question No. 5: Was Jai Park, DDS, negligent in his care and treatment of Reginald
15 Singletary?

16 ANSWER: Yes ☐ No ☒

18 If your answer to Question 5 is "no" please sign and return the General Verdict
19 finding in favor of Dr. Park.

20 Question No. 6: Was negligence on the part of Jai Park, DDS, a cause of injury to
21 Reginald Singletary?

22 ANSWER: Yes ☐ No ☒

24 If your answer to Question 6 is "no" please sign and return the General Verdict
25 finding in favor of Dr. Park.

26 Question No. 7: Was Summerlin Smiles negligent in its care and treatment of
27 Reginald Singletary?

28 ANSWER: Yes ☒ No ☐

1 If your answer to Question 7 is "no" please sign and return the General Verdict
2 finding in favor of Summerlin Smiles.

3 Question No. 8: Was negligence on the part of Summerlin Smiles a cause of injury to
4 Reginald Singletary?

5 ANSWER: Yes ✓ No

6 If your answer to Question 8 is "no" please sign and return the General Verdict
7 finding in favor of Summerlin Smiles.

8 If there is any Defendant for whom you have not signed and returned a General
9 Verdict Form please proceed to questions 9 through 16 for that Defendant or Defendants.

10 Question No. 9: What amount of damage, if any, do you find was sustained by Svetlana
11 Singletary for past grief or sorrow, loss of companionship, society, comfort and
12 consortium, and damages for pain, suffering or disfigurement of the decedent?
13

14 ANSWER \$ 125,000.-

15 Question No. 10: What amount of damage, if any, do you find will be sustained by
16 Svetlana Singletary for future grief or sorrow, loss of companionship, society, comfort and
17 consortium?
18

19 ANSWER \$ 500,000.-

20 Question No. 11: What amount of damage, if any, do you find was sustained by Gabriel
21 Singletary for past grief or sorrow, loss of companionship, society, comfort and
22 consortium, and damages for pain, suffering or disfigurement of the decedent?
23

24 ANSWER \$ 125,000.-

25 Question No. 12: What amount of damage, if any, do you find will be sustained by Gabriel
26 Singletary for future grief or sorrow, loss of companionship, society, comfort and
27 consortium?
28

ANSWER \$ 2,000,000.00

1 Question No. 13: What amount of damage, if any, do you find was sustained by Svetlana
2 Singletary for past loss of probable support?

3 ANSWER \$ 60,000.-

4 Question No. 14: What amount of damage, if any, do you find will be sustained by
5 Svetlana Singletary for future loss of probable support?

6 ANSWER \$ 300,000.-

7 Question No. 15: What amount of damage, if any, do you find was sustained by Gabriel
8 Singletary for past loss of probable support?

9 ANSWER \$ 60,000.-

10 Question No. 16: What amount of damage, if any, do you find will be sustained by Gabriel
11 Singletary for future loss of probable support?

12 ANSWER \$ 300,000.-

13 Question No. 17: Was Reginald Singletary comparatively negligent?

14 ANSWER: Yes ☒ No ☐

15 If you answered "yes", please proceed to Question No. 18. If you answered "no"
16 please proceed to Question No. 19.

17 Question No. 18: If you answered "yes" to Question No. 17, was the comparative
18 negligence of Reginald Singletary a cause of his injuries?

19 ANSWER: Yes ☒ No ☐

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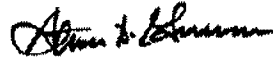
1 Question No. 19: Assuming that 100% represents the total negligence which was the
2 cause of the Plaintiffs' damages, what percentage of this 100% is due to the comparative
3 negligence of Reginald Singletary and what percentage of this 100% is due to the
4 negligence of each of the Defendants?

5	Reginald Singletary	<u>25</u>	%
6	Ton Vinh Lee, DDS	<u>0</u>	%
7	Florida Traivai, DMD	<u>50</u>	%
8	Jai Park, DDS	<u>0</u>	%
9	Summerlin Smiles	<u>25</u>	%
10			
11	TOTAL	<u>100</u>	%

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13 DATED this 22 day of January, 2014

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16 FOREPERSON
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EXHIBIT C



CLERK OF THE COURT

1 Lloyd W. Baker, Esq.
2 Nevada Bar No. 6893
3 Ingrid Patin, Esq.
4 Nevada Bar No. 011239
5 **BAKER LAW OFFICES**
6 500 S. Eighth Street
7 Las Vegas, NV 89101
8 Telephone : (702) 360-4949
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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 SVETLANA SINGLETARY, individually, as
13 the Representative of the Estate of
14 REGINALD SINGLETARY, and as parent
15 and legal guardian of GABRIEL L.
16 SINGLETARY, a Minor,

Plaintiff,

v.

18 TON VINH LEE, DDS, individually,
19 FLORIDA TRAIKAI, DMD, individually, JAI
20 PARK, DDS, individually; TON V. LEE,
21 DDS, PROF. CORP., a Nevada Professional
22 Corporation d/b/a SUMMERLIN SMILES,
23 DOE SUMMERLIN SMILES EMPLOYEE,
24 and DOES I through X and ROE
25 CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-12-656091-C
Dept. No.: ~~364~~ XXX

ORDER

26 Defendant FLORIDA TRAIKAI, DMD'S MOTION TO RETAX, and Defendant TON
27 VINH LEE, DDS', Joinder to Motion to Retax, having come before the Court for hearing on the
28 11th day of March, 2014; Jessica Goodey, Esq. of Baker Law Offices appearing for Plaintiff
SVETLANA SINGLETARY, individually, as the Representative of the Estate of REGINALD

1 SINGLETARY, and as parent and legal guardian of GABRIEL L. SINGLETARY, Amanda
2 Brookhyser, Esq. of LEWIS, BRISBOIS, BISGAARD & SMITH, LLP appearing for Defendant
3 FLORIDA TRAI VAL, DMD, and Jason Friedman, Esq. of STARK, FREIDMAN & CHAPMAN
4 appearing before Defendant TON V. LEE, DDS, PROF. CORP., and the Court having examined
5 the records and documents on file in the above-entitled matter and being fully advised in the
6 premises:

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant FLORIDA
8 TRAI VAL, DMD's Motion to Retax and Defendant TON VINH LEE, DDS' Joinder thereto is
9 GRANTED IN PART and DENIED IN PART, as set forth below.

10 Plaintiff's requested witness fees are hereby reduced to \$18,495.64, and Plaintiffs'
11 requested photocopy costs are hereby reduced to \$4,153.44. All other costs requested by
12 Plaintiff are granted in the full amounts requested.

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1 Therefore, IT IS HEREBY ORDERED ADJUGED AND DECREED that Plaintiff is
2 awarded \$38,042.64 in costs.

3 Dated this ____ day of March, 2014.

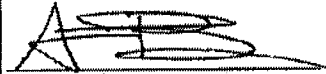
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5
6 Honorable Jerry Wiese, II, District Court Judge


7 Respectfully Submitted By:

8 **BAKER LAW OFFICES**

9
10
11 Lloyd W. Baker, Esq.
12 Nevada Bar No. 6893
13 Ingrid Patin, Esq.
14 Nevada Bar No. 011239
15 500 S. Eighth Street
16 Las Vegas, NV 89101
17 Attorneys for Plaintiff

18 **APPROVED AS TO FORM AND CONTENT:**

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Amanda Brookheysen, Esq.
LEWIS, BRISBOIS,
BISGAARD & SMITH, LLP.
6385 S. Rainbow Blvd, Suite 600
Las Vegas, NV 89118
Attorney for Defendant
Florida Trailvai, DMD


Jason Friedman, Esq.
STARK, FRIEDMAN & CHAPMAN
200 W. Sahara, #1401
Las Vegas NV 89102
Attorney for Defendants,
Ton Vinh Lee, DDS and Ton V. Lee, DDS,
Prof. Corp., d/b/a Summerlin Smiles

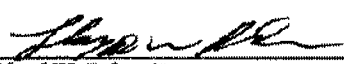
1 Therefore, IT IS HEREBY ORDERED ADJUGED AND DECREED that Plaintiff is
2 awarded \$38,042.64 in costs. *Apri*

3 Dated this 1 day of *March*, 2014.
4
5


6 Honorable Jerry Wiese, II, District Court Judge *CH*

7 Respectfully Submitted By:

8 **BAKER LAW OFFICES**

9 
10 Lloyd W. Baker, Esq.
11 Nevada Bar No. 6893
12 Ingrid Patin, Esq.
13 Nevada Bar No. 011239
14 500 S. Eighth Street
Las Vegas, NV 89101
Attorneys for Plaintiff

15 **APPROVED AS TO FORM AND CONTENT:**

16
17
18 Amanda Brookheiser, Esq.
19 LEWIS, BRISBOIS,
20 BISGAARD & SMITH, LLP.
6385 S. Rainbow Blvd., Suite 600
Las Vegas, NV 89118
Attorney for Defendant
Florida Traivai, DMD

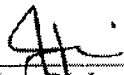

17 Jason Friedman, Esq.
18 STARK, FRIEDMAN & CHAPMAN
19 200 W. Sahara, #1401
20 Las Vegas NV 89102
21 Attorney for Defendants,
22 Ton Vinh Lee, DDS and Ton V. Lee, DDS,
Prof. Corp., d/b/a Summerlin Smiles

EXHIBIT D



CLERK OF THE COURT

Lloyd W. Baker, Esq.
Nevada Bar No. 6893
Ingrid Patin, Esq.
Nevada Bar No. 011239
BAKER LAW OFFICES
500 S. Eighth Street
Las Vegas, NV 89101
Telephone : (702) 360-4949
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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

SVETLANA SINGLETARY, individually, as
the Representative of the Estate of
REGINALD SINGLETARY, and as parent
and legal guardian of GABRIEL L.
SINGLETARY, a Minor,

Plaintiff,

v.

TON VINH LEE, DDS, individually,
FLORIDA TRAIVAL, DMD, individually, JAI
PARK, DDS, individually; TON V. LEE,
DDS, PROF. CORP., a Nevada Professional
Corporation d/b/a SUMMERLIN SMILES,
DOE SUMMERLIN SMILES EMPLOYEE,
and DOES I through X and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-12-656091-C
Dept. No.: 30

JUDGMENT ON JURY VERDICT

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Stop Dis	<input type="checkbox"/> Sum Jdgmt
<input type="checkbox"/> Involuntary (sett) Dis	<input type="checkbox"/> Stop Jdgmt	<input type="checkbox"/> Non-Jury Trial
<input type="checkbox"/> Jdgmt on Arts Award	<input type="checkbox"/> Default Jdgmt	<input checked="" type="checkbox"/> Jury Trial
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1 **IT IS FURTHER ORDERED AND ADJUDGED** that Plaintiff is entitled to her costs
2 of Thirty Eight Thousand Forty Two Dollars and Sixty Four Cents (\$38,042.64), as the
3 prevailing part under Nevada Revised Statute 18.020.

4 **IT IS FURTHER ORDERED AND ADJUDGED** that the amounts awarded to
5 Plaintiffs, SVETLANA SINGLETARY, individually, and GABRIEL SINGLETARY, a minor,
6 shall bear interest at the legal rate of 5.25% per year from the date thereon.

7 DATED this 15 day of April, 2014.

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10 
11 DISTRICT COURT JUDGE *AN*

12 Prepared by:

13 BAKER LAW OFFICES

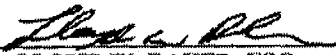
14 By: 
15 LLOYD W. BAKER, ESQ.
16 Nevada Bar No. 6893
17 INGRID PATIN, ESQ.
18 Nevada Bar No.: 011239
19 500 South Eighth St.
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21 (702) 360-4949
22 Attorneys for Plaintiff
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EXHIBIT E

The Trial Reporter

NEVADA

Published Monthly

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February, 2014

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IN MEMORIAM

Andy Anderson

Editor & Publisher 1967 - 2003

Editor & Publisher

Beverly Graham



Table of Contents

Clark County District Court Civil Jury Trials . . .	2
Addendum & Erratum	11
Churchill County District Court Civil Jury Trials	12
Case Catalogue	12



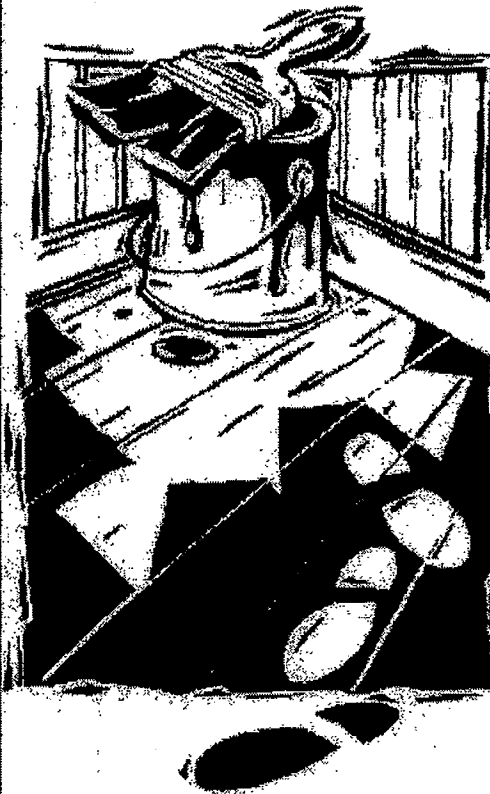
OPEN THE DOOR
TO A FORENSIC
EXPERT'S PAST
HISTORY

Call:
The Trial Reporter

1/17/14 - pro tem Judge HARRY P. MARQUIS - CV A636746 - ACOSTA (Ralph A. Schwartz, a sole practitioner) v LAS VEGAS METROPOLITAN POLICE DEPARTMENT and CROSSMAN (Craig R. Anderson of Marquis Auerbach Coffing, P.C.) - PERSONAL INJURY - REAR-END - POLICE VEHICLE. Case being tried as a Shorttrial. Plntf, male, age 37, an unemployed Nevada resident, alleged that, while stopped southbound on Lamb Boulevard, he was rear-ended by Dfnt Crossman, male, a Nevada resident, who was in the course and scope of his occupational duties as a police officer for Dfnt Las Vegas Metropolitan Police Department. Plntf alleged he sustained cervical and thoracic strains and sprains, with secondary headaches; plus a bulging cervical disk at C-4, C-5, which necessitated bilateral facet injections and occipital nerve blocks. Plntf also alleged he has ongoing residual complaints. Prayer: In excess of \$10,000 compensatory damages; plus \$42,507.44 medical expenses. (Dfnts self-insured.) One day trial. By stipulation, four jurors deliberated. Jury out ? hours. AWARDED PLNTF \$35,000 COMPENSATORY DAMAGES (REPRESENTING \$25,000 FOR MEDICAL EXPENSES AND \$10,000 FOR PAIN AND SUFFERING).

1/22/14 - Judge JERRY A. WIESE - CV A656091 - SINGLETARY (Lloyd W. Baker, Ingrid M. Patin, and Jessica M. Goodey of Baker Law Offices) v LEE, D.D.S., dba SUMMERLIN SMILES (Jason B. Friedman of Stark, Friedman & Chapman, L.L.P., of Long Beach, California); PARK, D.D.S. (Edward J. Lemons of Lemons, Grundy & Eisenberg, P.C.); and TRAIVAL, D.M.D. (S. Brent Vogel of Lewis, Brisbols, Bisgaard & Smith, L.L.P.) - WRONGFUL DEATH - MEDICAL MALPRACTICE - DENTAL - FAILURE TO DIAGNOSE/TREAT - INFECTION - LACK OF INFORMED CONSENT. Prologue: Decedent presented to Dfnt Summerlin Smiles, on March 24, 2011, for routine dental work. New

PLAN AHEAD!



Don't Paint Yourself
Into A Corner; Order
A **Compendium** of Jury
Awards In Cases With
Like Injuries. Call:

The Trial Reporter

patient examination was done. Dfnts dentists Traivai and Park were independent contractors of Dfnt Summerlin Smiles. On April 16th, Decedent returned to Dfnt Summerlin Smiles for an extraction of the number 32 wisdom tooth, performed by Dfnt Traivai. Following the extraction, Decedent experienced ongoing severe pain in the extraction area on the right side of his face; swelling of the face, jaw, and neck; plus difficulty swallowing. Dfnt Summerlin Smiles was allegedly contacted via telephone on April 18th, and Decedent was advised to call again if his symptoms did not subside within four to five days. Decedent continued to experience his prior symptoms, and had difficulty swallowing, as well as difficulty speaking and eating, on April 19th and April 20th. Decedent was vomiting, began having difficulty breathing, and was transported by ambulance to non-party hospital, where he was admitted to the Intensive Care Unit, on April 21st. Antibiotics were administered and drainage of Decedent's neck was performed. Decedent died on April 25th. Case being tried on comparative fault, Decedent, male, age 42, was survived by his spouse and minor son, who brought suit for his wrongful death. Plntfs, both Nevada residents, alleged Dfnts fell below the standard of care by giving Decedent incorrect advice when he called Dfnt Summerlin Smiles, and followed their advice even though he became progressively sicker. Plntfs also alleged Dfnts failed to obtain Decedent's informed consent regarding use of antibiotics to prevent infection. (Court ruled issue was moot.) Plntfs called Joseph B. Marzouk, M.D., an infectious diseases specialist, of Oakland, California. Plntfs also called Andrew Pallos, D.D.S. of Laguna Niguel, California, who was of the opinion that Dfnts fell below the standard of care. Dfnts Lee and Park denied liability, advancing the defense that they did not provide any treatment to Decedent. Dfnt Traivai, female, a Nevada resident, denied falling below the standard of care. Dfnt Traivai argued that there were no complications during the procedure, and Decedent was given both

verbal and written postoperative instructions, which instructed Decedent to contact the office or go to the emergency department if he experienced any severe or unexpected complications. Dfnt Traivai also argued that, in the days following the extraction procedure, she was not contacted and was not aware of Decedent's condition and/or any potential complications. Additionally, Dfnt Traivai argued she did not instruct an employee of Dfnt Summerlin Smiles to give any medical advice and/or instructions to Decedent. Dfnt Traivai called Christian E. Sandroock, M.D., an infectious diseases specialist, of Sacramento, California; and William C. Ardary, D.D.S., M.D., an oral and maxillofacial surgeon, of Arcadia, California. Plntfs alleged that, as a result of Dfnts' negligence, Decedent developed necrotizing mediastinitis and septic shock, then Ludwig's angina from the dental abscess, which resulted in his death. Prayer: In excess of \$10,000 compensatory damages; plus \$600,000 loss of support (D Vogel). (Carrier: Hartford Insurance.) Seven day trial. Jury out two-plus hours. **FOUND FOR DFNTS LEE AND PARK; AWARDED PLNTF SPOUSE \$985,000 COMPENSATORY DAMAGES (REPRESENTING \$125,000 FOR PAST PAIN AND SUFFERING, \$500,000 FOR FUTURE PAIN AND SUFFERING, \$60,000 PAST LOSS OF SUPPORT, AND \$300,000 FUTURE LOSS OF SUPPORT). AWARDED PLNTF SON \$2,485,000 COMPENSATORY DAMAGES (REPRESENTING \$125,000 FOR PAST PAIN AND SUFFERING, \$2 MILLION FOR FUTURE PAIN AND SUFFERING, \$60,000 PAST LOSS OF SUPPORT, AND \$300,000 FUTURE LOSS OF SUPPORT).** (Found Decedent to be twenty-five percent at fault, found Dfnt Traivai to be fifty percent at fault, and found Dfnt Summerlin Smiles to be twenty-five percent at fault; therefore, Plntf spouse to recover \$492,500 from Dfnt Traivai and \$246,250 from Dfnt Summerlin Smiles; and Plntf son to recover \$1,242,500 from Dfnt Traivai and \$621,250 from Dfnt Summerlin Smiles).

EXHIBIT F

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— Navigation — ▼

Settlement – Verdict

Settlement/Verdict

Every person deserves to be treated fairly. We are a team of lawyers that pride ourselves on the ability to get the results you deserve. We never settle for the first offer, and are willing to take your case to trial if necessary. We will fight for you to obtain compensation for your medical expenses, lost wages, property damage, pain and suffering and loss of enjoyment of life.

Recent Settlements and Verdicts

DENTAL MALPRACTICE/WRONGFUL DEATH – PLAINTIFF'S VERDICT \$3.4M, 2014

Description: Singletary v. Ton Vinh Lee, DDS, et al.

A dental malpractice-based wrongful death action that arose out of the death of Decedent Reginald Singletary following the extraction of the No. 32 wisdom tooth by Defendants on or about April 16, 2011. Plaintiff sued the dental office, Summerlin Smiles, the owner, Ton Vinh Lee, DDS, and the treating dentists, Florida Traival, DMD and Jai Park, DDS, on behalf of the Estate, herself and minor son.

NEGLIGENCE/WRONGFUL DEATH – SETTLEMENT, 2014

Description: Lavoll v. Jack in the Box, Inc.

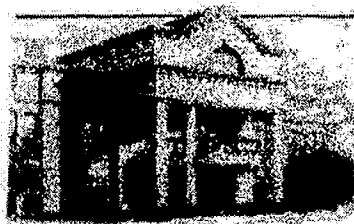
A negligence-based wrongful death action that arose out of the shooting of Decedent Brittney Lavoll by Third-Party Defendant, Kevin Gipson, on March 25, 2010 in or near the parking lot of Jack in the Box, located at 7510 West Lake Mead Boulevard, Las Vegas, Nevada 89128.

MOTOR VEHICLE ACCIDENT – SETTLEMENT, 2014

Description: Benefraim v. Colorado Casualty Insurance Company

A negligence-based bad faith action that arose out of a motor vehicle accident that occurred on February 18, 2011. Plaintiff was a 70 year old restrained passenger in the vehicle. There was moderate damage to both vehicles as a result of the subject motor vehicle accident.

EXHIBIT G



NEVADA

Legal Update

Fall 2014

Iverson Taylor Mortensen & Sanders • Nevada's Law Firm

HIGHLIGHTS

Nevada Supreme Court Clarifies Standard for Testimony of a Treating Physician and Prohibits Ex Parte Communication with an Opposing Party's Experts

Whether the testimony of a treating physician must be stated to a "reasonable degree of medical probability" depends on the purpose of the testimony, and whether it supports an alternative causation theory. Further, counsel is prohibited from contacting an opposing party's expert, including a non-retained treating physician, without express consent.

Entertainer Awarded More Than \$1.3 Million after Backstage Fall

A professional comedian, hired to perform at the Bellagio Hotel and Casino, allegedly tripped and fell over an unsecured speaker cord resulting in a complete rupture of his Achilles tendon. The jury awarded the plaintiff \$1,308,500.00 for personal injuries and alleged lost wages.

NEVADA SUPREME COURT DECISIONS

MEDICAL MALPRACTICE

A Treating Provider Need Not Testify to a Reasonable Degree of Medical Certainty if Contradicting a Plaintiff's Causation Theory and Parties Must Obtain Express Consent Before Contacting an Opposing Party's Expert

Plaintiff filed a complaint alleging medical malpractice and negligence. Plaintiff specifically asserted that after receiving Lasik corrective surgery on both eyes she experienced ocular irritation and subsequently lost a majority of her sight. Defendant denied liability and asserted that Plaintiff's deteriorating eye condition may have resulted from abuse of numbing eye drops.

In support of Defendant's theory, Defendant called Plaintiff's treating physician to testify at trial. Plaintiff's treating provider testified that, in his opinion, plaintiff could have returned to her best corrective vision had she followed his instructions and recommendations, but conceded that this was speculation. He also testified that, while not the cause of the defect, it was possible that Plaintiff's use of numbing eye drops caused her vision to deteriorate and contributed to her lack of improvement. The jury returned a verdict for Defendant and Plaintiff appealed.

The Nevada Supreme Court determined the testimony offered by Plaintiff's treating physician was permissible pursuant to *Williams v. Eighth Judicial District Court*, 127 Nev. 262 P.3d 360 (2011). *Williams* provided that the testimony of a defense expert need not be stated to a reasonable degree of medical probability when being used to controvert an element of the plaintiff's claim, rather than

establish an independent theory of causation. Here, Defendant did not offer the expert's testimony to establish the alternative causation theory that eye damage resulted from abuse of numbing drops, rather than defendant's actions. Rather, the expert's testimony was offered to furnish reasonable alternative causes to those offered by Plaintiff.

On appeal, Plaintiff also asserted that defense counsel contacted the Plaintiff's treating physician without express consent, thereby warranting a new trial. Defendant argued the communication with the expert was necessary only to coordinate the physician's appearance at trial. The Nevada Supreme Court initially noted that a plaintiff's claim for personal injury or medical malpractice served as a limited waiver of the physician-patient privilege with regard to directly relevant and essential information necessary to resolve the case. Further, the Nevada Rules of Civil Procedure affirmatively allow formal depositions of individuals who have been identified as experts whose opinions may be presented at trial. NRCF 26(b)(4). Rule 26 does not, however, contemplate ex parte communications with the opposing party's expert witnesses. The Court also noted that the professional ethics rules for the Ninth Circuit Court of Appeals preclude counsel from speaking directly to an opposing party's expert. *Erickson v. Newmar Corp.*, 87 F.3d 298, 301 (9th Cir. 1996).

The Nevada Supreme Court ultimately balanced the desire for confidentiality with the need for full disclosure of relevant medical information and concluded there was no need to allow ex parte communication with an opposing party's expert, absent express consent. While the Nevada Supreme Court agreed that improper ex parte communication had occurred, Plaintiff's motion for a new trial was properly denied. The Court noted that the physician's trial testimony remained unchanged from his prior deposition testimony, and therefore Plaintiff did not suffer prejudice as a result of the conduct of Defendant. *Lewitt v. Stems*, 130 Nev. Adv. Rep. 54 (2014).

IN THIS ISSUE

NEVADA SUPREME COURT

Medical Malpractice	Page 1
Negligence	Page 2

NEVADA JURY VERDICTS

Personal Injury	Page 2
Medical Malpractice	Page 3
Personal Liability	Page 4
Breach of Contract	Page 4

COMMENTS

Page 5

the property.

As a result of the contract with the chemicals, Plaintiff allegedly developed reactive airway dysfunction syndrome. When Plaintiff's worker's compensation coverage terminated six months after the incident, she was unable to obtain her prescription medication, which allegedly resulted in a stroke. Defendant denied liability.

Plaintiff sought compensatory damages, including approximately \$180,000.00 in medical expenses and \$100,000.00 in lost wages. After a nine day trial the jury awarded Plaintiff \$21,122.00 in compensatory damages. *Wright v. Valley Health System, L.L.C.*, March 6, 2014.

Truck Driver Found Liable for Another Vehicle's Rollover

Defendant was operating a tractor-trailer in the course of his occupational duties as a truck driver for Defendant Pet Food Wholesale. Plaintiff, a 19 year-old female retail clerk, alleged that Defendant negligently executed a lane change into Plaintiff's lane of travel, which caused her to lose control and roll her vehicle. Plaintiff sustained a degloving injury to her dominant left hand.

Defendants denied liability and asserted that Plaintiff was either traveling in Defendant's "blind spot" or she attempted to "shoot the gap" to avoid travelling behind Defendant's tractor-trailer. Defendants called an accident reconstructionist to testify in support of their theory. Plaintiff called a psychiatrist, a hand surgeon, a vocational rehabilitation expert and economist to testify as to Plaintiff's alleged damages.

Plaintiff sought \$199,525.48 in past medical expenses, plus \$64,581.00 to \$87,381.00 for future medical treatment. Plaintiff served an \$825,000.00 pretrial Offer of Judgment and during closing arguments, Plaintiff's counsel asked the jury to award more \$5 million. After a 12 day trial, the jury awarded Plaintiff \$1,261,780.22, but found her to be 10 percent at fault. *Kumar v. Pet Food Wholesale, Inc.*, February 5, 2014.

MEDICAL MALPRACTICE

Jury Returns Defense Verdict as to Claims Resulting from Plaintiff's Apparent Suicide

Decedent, a 23 year-old female, professional golfer, was survived by her parents who brought suit for her wrongful death. Defendant, a

medical physician, met decedent through mutual friends at a Country Club and treated decedent four times for minor health issues. Five months after their initial meeting, decedent and Defendant developed a romantic relationship.

On May 8, 2010, Defendant arrived at decedent's residence and found her intoxicated. Decedent was instructed to take a shower and the pair then chipped golf balls in decedent's backyard until 9:00 p.m., when Defendant went home to his pregnant wife. On May 9, 2010, Defendant called decedent 17 times, but was unable to reach her. He then drove to her home and gained entry through an unlocked rear door. Defendant found decedent in her bedroom with a plastic bag secured with rubber bands around her head. Defendant removed decedent's suicide note and a blister pack of Xanax, which appeared to be from Mexico, and placed them in the trunk of his vehicle. Decedent's cause of death was determined to be suicide by asphyxiation.

Plaintiffs alleged Defendant fell below the standard of care when he prescribed medication without determining decedent's medical conditions, allergies to the medications, or whether decedent was at risk for taking medications other than those prescribed. Plaintiffs further alleged that Defendant did not properly document decedent's medical chart with the prescribed controlled substances, and failed to properly evaluate her on May 8 and left her in a medically compromised condition. Plaintiffs also claimed that a combined drug intoxication was a significant cause of decedent's death. Defendant denied falling below the standard of care.

Plaintiffs sought compensatory damages and punitive damages. After a seven day trial the jury returned a verdict for Defendant. *Blasberg v. Hess, M.D.*, May 13, 2014.

Jury Finds for Decedent's Family after Overdose on Methadone

Decedent was treated by Defendant physician for several years preceding his death. During the course of his treatment, Defendant discussed referring decedent to an opioid addiction specialist and prescribed a one month supply of Methadone, ten milligrams. Decedent began taking the prescribed Methadone and experienced insomnia, hallucinations and constipation. After four days, decedent experienced pinpoint eyes, profuse sweating, twitching in his sleep, sleep walking, blue-tinged lips and an ashen complexion. Decedent's spouse contacted Defendant's office and was advised by the staff that the decedent's

symptoms were normal and the information would be passed along to the Defendant. Twenty minutes later, decedent stopped breathing and died. Decedent's cause of death was determined to be Methadone intoxication.

Decedent was survived by his spouse and three minor children, who brought suit for his wrongful death. Plaintiffs alleged that Defendant fell below the standard of care when he negligently prescribed methadone for opioid addiction and failed to conduct a thorough medical assessment and physical evaluation. Plaintiffs also alleged that Defendant's medical staff fell below the standard of care when they advised decedent's spouse that the symptoms were normal and failed to recommend that decedent be taken to the emergency department. Additionally, Plaintiffs alleged that the Defendant failed to respond to decedent's wife and failed to supervise and/or train employees in appropriate counseling to patients. Defendant denied falling below the standard of care and maintained that decedent was comparatively at fault for not properly following the prescription's instructions and for taking more than was prescribed.

Plaintiffs sought between \$3 million and \$4 million in damages. After a 13 day trial, the jury found Defendant to be 53 percent at fault. Decedent's estate recovered \$1,592,650.00; decedent's spouse was awarded \$530,000.00; two of decedent's children received \$1,060,000.00 and the third child received \$795,000.00. *Davis and Davis, Estate v. Gautham Gummadi Reddy, M.D., Ltd.*, June 18, 2014.

Plaintiffs Awarded More Than \$2.6 Million Following Wisdom Tooth Extraction

Decedent presented to Defendant dentist for routine dental work and underwent a new patient examination. Decedent returned to Defendant one month later for an extraction of his wisdom teeth. Following the extraction, the decedent experienced ongoing severe pain in the extraction area on the right side of his face, jaw and neck, and experienced difficulty swallowing. Decedent allegedly contacted Defendant via telephone two days later and was advised to call again if his symptoms failed to subside in four to five days. Four days after the extraction, decedent continued to experience symptoms and developed difficulty eating, speaking and breathing and was vomiting. Decedent was taken to the hospital by ambulance where he was admitted to the Intensive Care Unit. Decedent

is administered antibiotics and drainage of his abscess was performed, but decedent passed nine days after the extraction.

Decedent's spouse and minor son asserted claims for wrongful death. Plaintiffs alleged that Defendant fell below the standard of care by providing decedent incorrect advice when he called after the extraction. Plaintiffs also asserted that Defendant failed to obtain decedent's informed consent regarding the use of antibiotics to prevent infection. Further, plaintiffs claimed that as a result of Defendant's negligence, decedent developed necrotizing fasciitis, septic shock and Ludwig's angina on the dental abscess, which resulted in his death.

Plaintiffs relied on the testimony of an infectious disease specialist and a dentist who opined that Defendant fell below the standard of care. Defendant denied liability and maintained that there were no complications during the procedure. Defendant argued that decedent was given both verbal and written postoperative instructions, which instructed decedent to contact the office or go to the emergency room if he experienced any severe or unexpected complications. Defendant also asserted that he was not contacted or aware of decedent's condition and/or potential complications, or did Defendant instruct an employee of the dental office to give medical advice and/or instructions to the decedent. Defendant relied on the testimony of an infectious disease specialist and an oral and maxillofacial surgeon at trial.

Plaintiffs sought compensatory damages plus \$600,000.00 in loss of support. After a seven day trial, the jury found decedent to be 25 percent at fault. Decedent's spouse was awarded \$738,750.00 in compensatory damages and decedent's minor child was awarded \$1,863,750.00. *Singleton v. L.C. D.D.S.*, January 22, 2014.

Premises Liability

Defendant Not Liable For a Trip and Fall on its Premises

Plaintiff, a 57 year-old female accounts payable clerk, alleged that while on Defendant's premises she was injured when her shoe became stuck in a concrete expansion joint, which caused her to trip and fall. Plaintiff alleged Defendant was negligent in its maintenance of the premises, and failed to fill the concrete

expansion joint to a sufficient level required to prevent the hazardous condition.

Plaintiff relied on the testimony of an architect who opined that the expansion joint failed to meet the building code, and a safety engineer who opined the expansion joint could have been a tripping hazard. Defendant denied liability and maintained that it had no notice of the condition. Defendant further argued that there had never been a fall involving any of the 58,000 feet of expansion joints and that its maintenance of the premises was reasonable.

As a result of the fall, Plaintiff allegedly sustained a fractured left elbow. Her orthopedic physician opined that Plaintiff would develop arthritis and may possibly require future surgery. Defendant retained an orthopedic physician who opined that the fracture was causally related to the fall, but maintained that Plaintiff would not develop arthritis or require future surgery.

Plaintiff sought \$119,000.00 in medical expenses and more than \$10,000.00 in lost wages. Plaintiff made a pretrial demand of \$350,000.00 and Defendant offered \$135,000.00. After a five day trial, the jury returned a verdict for Defendant. *Biondi v. Paris Las Vegas Properties, L.L.C.*, May 23, 2014.

Jury Returned Verdict for Entertainer Who Suffered Injury Backstage

Plaintiff, a 61 year-old male professional comedian, was hired to perform at the Bellagio Hotel and Casino. Plaintiff alleged that Defendant's staff negligently set up the stage, causing Plaintiff to trip and fall over an unsecured speaker cord. Plaintiff sustained a complete rupture of his Achilles tendon, which resulted in a permanent limp. Defendant denied liability and argued Plaintiff was contributory negligent.

At trial, Plaintiff called an entertainment expert, an orthopedic physician and an economist who estimated Plaintiff's damages

were \$7,500,000.00. Defendant relied on the testimony of an orthopedic physician and an economist. Plaintiff sought \$3,214,632.00 in past lost wages; \$4,121,970.00 in future lost wages; and medical expenses. Plaintiff made a pretrial demand of \$500,000.00 and Defendant countered with \$175,000.00. After a 15 day trial, the jury returned a verdict for the Plaintiff and awarded \$1,308,500.00. *Wallace v. Bellagio, L.L.C.*, April 8, 2014.

BREACH OF CONTRACT

Plaintiff Awarded Damages and Ownership Interest in Business Established during Plaintiff's Divorce

Plaintiff and Defendant were engaged to be married in 1999 and allegedly established and operated Canyon Gate Cleaners as equal co-owners. Plaintiff also owned and operated a machinery sales corporation in Phoenix, Arizona, and utilized his resources and equipment to find a location and equip Canyon Gate Cleaners. Because Plaintiff was involved in divorce proceedings at the time, Defendant suggested that Plaintiff not be listed as an officer and shareholder of Canyon Gate in order to insure Plaintiff's wife would not assert a lien on the business. It was agreed that Defendant would constructively hold Plaintiff's interest in the business, which flourished over the next ten years. The parties shared the income from the business and purchased various personal properties that they jointly owned. Subsequently, however, Defendant removed Plaintiff from their home and business by filing a temporary restraining order. Plaintiff alleged that Defendant breached their agreement to sell the business and divide their personal assets.

Defendant denied liability and maintained that Plaintiff was neither an owner nor an interest holder in the business. Defendant further alleged that Plaintiff did not start or operate the business, did not contribute funds or other consideration to the operation, did not design the business and had no financial or "sweat equity." Defendant asserted she hired Plaintiff as a paid consultant through his businesses, LES Systems, Inc., and Lorenz Equipment Sales, and that she purchased the residence where they lived from 1998 through 2009.

After a nine day trial, the jury awarded Plaintiff \$944,000.00 in compensatory damages

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EXHIBIT H



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Case of the Month West's Jury Verdicts - Nevada Reports Professional Golfer Committed Suicide Following Personal Relationship with Prescribing Physician
Missing: singletary

Abdul Howard, 49, was convicted by a jury last June of one count of felon in possession of a firearm, 14 counts... More... \$0 (01-08-2015 - NV); United States of ...
Missing: singletary

Watts himself expressed concern that the jury's verdict had been influenced by his sleeping: WATTS: The jury made the decision because of my sleeping disorder. Nevada 504 U.S. 127, 139-40, 112 S.Ct. 1810, 1817, 118 L.Ed.2d 479...

Singletary v. Lee - Avvo.com

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Singletary v. Lee, Jessica M. Goodey [Back to profile](#), Practice Area: Personal Injury
Outcome: Jury Verdict in excess of \$3 million. Description: Dental malpractice...

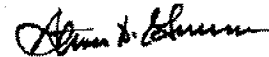
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EXHIBIT I



CLERK OF THE COURT

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2 Nevada Bar No. 8437
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4 Facsimile: (702) 382-5816
mechols@maclaw.com

5 **Baker Law Offices**
Lloyd W. Baker, Esq.
6 Nevada Bar No. 6893
Ingrid Patin, Esq.
7 Nevada Bar No. 11239
500 S. Eighth Street
8 Las Vegas, Nevada 89101
Telephone: (702) 360-4949
9 Facsimile: (702) 360-3234
lloyd@bakerattorneys.net
10 ingrid@patinlaw.com

11 Attorneys for Plaintiffs

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14
15 SVETLANA SINGLETARY, individually, and as
the Representative of the Estate of REGINALD
16 SINGLETARY, and as parent and legal guardian of
GABRIEL L. SINGLETARY, a Minor,

17 Plaintiffs,

18 vs.

19 TON VINH LEE, DDS, individually, FLORIDA
20 TRAIVAL, DMD, individually, JAI PARK, DDS,
individually, TON V. LEE, DDS, PROF.CORP., a
21 Nevada Professional Corporation d/b/a
SUMMERLIN SMILES, DOE SUMMERLIN
22 SMILES EMPLOYEE, DOES I through X and
ROE CORPORATIONS I through X, inclusive,

23 Defendants.

Case No.: A656091
Dept. No.: XXX

CASE APPEAL STATEMENT

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

CASE APPEAL STATEMENT

Plaintiffs, Svetlana Singletary, individually, and as the Representative of the Estate of Reginald Singletary, and as parent and legal guardian of Gabriel L. Singletary, a Minor, by and through her attorneys of record, Marquis Aurbach Coffing and Baker Law Offices, hereby files this Case Appeal Statement.

1. Name of appellant filing this Case Appeal Statement:

Plaintiffs, Svetlana Singletary, individually, and as the Representative of the Estate of Reginald Singletary, and as parent and legal guardian of Gabriel L. Singletary, a Minor

2. Identify the Judge issuing the decision, judgment, or order appealed from:

Honorable Jerry A. Wiese II

3. Identify each appellant and the name and address of counsel for each appellant:

Appellants: Svetlana Singletary, individually, and as the Representative of the Estate of Reginald Singletary, and as parent and legal guardian of Gabriel L. Singletary, a Minor

Attorneys: Micah S. Echols, Esq.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, Nevada 89145

Lloyd W. Baker, Esq.
Ingrid Patin, Esq.
Baker Law Offices
500 S. Eighth Street
Las Vegas, Nevada 89101

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicated as much and provide the name and address of that respondent's trial counsel):

Respondents: Ton Vinh Lee, DDS and Ton V. Lee, DDS, Prof.Corp. d/b/a Summerlin Smiles

Attorneys: Jason Friedman, Esq.
Stark, Freidman & Chapman
200 W. Sahara Blvd., Suite 1401
Las Vegas Nevada 89102

Respondent: Florida Traivai, DMD

Attorneys: S. Brent Vogel, Esq.
Lewis Brisbois Bisgaard & Smith, LLP
6385 S. Rainbow Blvd., Suite 600
Las Vegas, Nevada 89118

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint indictment, information, or petition was filed):

The complaint was filed on February 7, 2012.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This appeal is taken from a wrongful death suit brought against Defendants by Plaintiffs after the death of Reginald Singletary following dental surgery to extract a wisdom tooth. The jury found for Plaintiffs against Defendants Ton V. Lee, DDS, Prof.Corp. d/b/a Summerlin Smiles and Florida

1 Traivai, DMD, and awarded a total of \$3,470,000. The Judgment on Jury Verdict
2 awarded the total of \$3,470,000, plus interest, and costs in the amount of
3 \$38,042.64 to Plaintiffs.

4 Defendants Ton V. Lee, DDS, Prof.Corp. d/b/a Summerlin Smiles and
5 Florida Traivai, DMD, filed Rule 50(b) motions for judgment as a matter of law,
6 which were granted, with the result that the District Court vacated the award by
7 the jury.

8 Defendant Ton Vinh Lee, DDS, filed a motion for costs, which was
9 granted in the amount of \$6,032.83.

10 Plaintiffs appeal from: (1) the Order [Granting in Part and Denying in Part
11 Defendant Florida Traivai's Motion to Retax Costs and Defendant Ton Vinh Lee,
12 DDS' Joinder Thereto], filed on April 11, 2014; (2) the Judgment on Jury Verdict,
13 filed on April 29, 2014; (3) the Order on Defendant Traivai's and Lee's Motions
14 for Judgment as a Matter of Law Pursuant to NRCp 50(b) and Motion for
15 Remittitur, filed on July 16, 2014; and (4) the Minute Order [Granting Costs to
16 Defendant, Ton Vinh Lee, DDS], filed on April 3, 2014.¹

17 Defendant Florida Traivai, DMD's Motion for Costs and Defendant Ton
18 V. Lee, DDS, Prof.Corp. d/b/a Summerlin Smiles' Motion for Costs are currently
19 pending in the District Court.

20 11. Indicate whether the case has previously been the subject of an appeal to or
21 original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
22 number of the prior proceeding:

23 This case was the subject of a writ petition to the Supreme Court docketed as
24 Case No. 64734.

25 12. Indicate whether this appeal involves child custody or visitation:

26 N/A.

27 ¹ The April 3, 2014 Minute Order has not yet been reduced to a written order. Plaintiff will file an
28 amended notice of appeal and an amended case appeal statement once a written order has been filed.

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 13. If this is a civil case, indicate whether this appeal involves the possibility of
2 settlement:

3 This case does involve the possibility of a settlement.

4 Dated this 8th day of August, 2014.

5 MARQUIS AURBACH COFFING
6

7 By /s/ Micah S. Echols
8 Micah S. Echols, Esq.
9 Nevada Bar No. 8437
10 10001 Park Run Drive
11 Las Vegas, Nevada 89145
12 Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **CASE APPEAL STATEMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 9th day of August, 2014. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:²

Baker Law Offices		
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S. Brent Vogel, Esq.	Brent.Vogel@lewisbrisbois.com	
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Ingrid Patin, Esq.	ingrid@patinlaw.com	
STARK, FREIDMAN & CHAPMAN		
Contact	Email	
Jason Friedman	jason@stfc-law.com	

/s/ Leah Dell
Leah Dell, an employee of
Marquis Aurbach Coffing

² Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

EXHIBIT J


CLERK OF THE COURT

JASON B. FRIEDMAN, ESQ.
Nevada State Bar No. 11799
STARK, FRIEDMAN & CHAPMAN, LLP
200 W. Sahara, #1401
Las Vegas, NV 89102

Attorneys for Defendants, TON VINH LEE, DDS and
TON V. LEE, DDS, PROF. CORP. dba SUMMERLIN SMILES

DISTRICT COURT
CLARK COUNTY, NEVADA

SVETLANA SINGLETARY, individually, as) Case No. A656091
the Representative of the Estate of REGINALD)
SINGLETARY, and as parent and legal guardian) Dept. No. XXX
of GABRIEL L. SINGLETARY, a Minor,)

Plaintiff,

CASE APPEAL STATEMENT (CROSS-
APPEAL)

vs.

TON VINH LEE, DDS, individually, FLORIDA
TRAIVAI, DMD, individually, JAI PARK,
DDS, individually, TON V. LEE, DDS, PROF.
CORP., a Nevada Professional Corporation
d/b/a/ SUMMERLIN SMILES, DOE
SUMMERLIN SMILES EMPLOYEE, ; and
DOBS I through X and ROE CORPORATIONS
I through X, inclusive,

Defendants.

CASE APPEAL STATEMENT (CROSS-APPEAL)

Defendant, TON VINH LEE, DDS and TON V. LEE, DDS, PROF. CORP. dba
SUMMERLIN SMILES, by and through her/its attorneys of record, Stark, Friedman &
Chapman, LLP, hereby files this Case Appeal Statement on Cross-Appeal.

///

///

1 1. Name of appellant filing this Case Appeal State:

2 TON VINH LEE, DDS and TON V. LEE, DDS, PROF. CORP. dba SUMMERLIN
3 SMILES

4 2. Identify the Judge issuing the decision, judgment, or order appealed from:

5 Honorable Jerry A. Wiese II

6
7 3. Identify each cross-appellant and the name and address of counsel for each cross-
8 appellant:

9 Cross-Appellants: TON VINH LEE, DDS and TON V. LEE, DDS, PROF. CORP. dba
SUMMERLIN SMILES

10 Attorneys: Jason B. Friedman, Esq.
11 Stark, Friedman & Chapman, LLP
12 200 W. Sahara, #1401
13 Las Vegas, NV 89102

14 4. Identify each respondent and the name and address of appellate counsel, if known, for
15 each respondent (if the name of a respondent's appellate counsel is unknown, indicated as
much and provide the name and address of that respondent's trial counsel):

16 Respondents: Svetlana Singletary, individually, and as the Representative of the
17 Estate of Reginald Singletary, and as parent and legal guardian of
18 Gabriel L. Singletary, a Minor

19 Attorneys: Micah S. Echols, Esq.
20 Marquis Aurbach Coffing
21 10001 Park Run Drive
Las Vegas, Nevada 89145

22 Lloyd W. Baker, Esq.
23 Ingrid Patin, Esq.
24 Baker Law Offices
500 S. Eighth Street
Las Vegas, Nevada 89101

25 ///
26 ///
27 ///
28 ///

1 Respondents: Florida Traivai, DMD

2 Attorneys: S. Brent Vogel, Esq.
3 Lewis, Brisbois, Bisgaard & Smith, LLP
4 6385 S. Rainbow Blvd., Suite 600
5 Las Vegas, Nevada 89118

- 6 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
7 licensed to practice law in Nevada and, if so, whether the district court granted that
8 attorney permission to appear under SCR 42 (attach a copy of any district court order
9 granting such permission):

10 N/A.

- 11 6. Indicate whether appellant was represented by appointed or retained counsel in the
12 district court:

13 Retained.

- 14 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

15 Retained.

- 16 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date
17 of entry of the district court order granting such leave:

18 N/A.

- 19 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint
20 indictment, information, or petition was filed):

21 The complaint was filed on February 7, 2012.

- 22 10. Provide a brief description of the nature of the action and result in the district court,
23 including the type of judgment or order being appealed and the relief granted by the
24 district court:

25 This appeal is taken from a wrongful death suit brought against Defendants by
26 Plaintiff after the death of Reginald Singletary following dental surgery to extract a
27 wisdom tooth. The jury found for Plaintiffs against Defendant Ton V. Lee, DDS, Prof.

1 Corp. d/b/a Summerlin Smiles and Florida Traivai, DMD, and awarded a total of
2 \$3,470,000. The Judgment on Jury Verdict awarded the total of \$3,470,000, plus interest,
3 and costs in the amount of \$38,042.64 to Plaintiffs.
4

5 Defendant Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles and Florida
6 Traivai, DMD, filed Rule 50(b) motions for judgment as a matter of law, which were
7 granted, with the result that the District Court vacated the award by the jury.
8

9 Defendant Ton Vinh Lee, DDS, filed a motion for costs, which was granted in the
10 amount of \$6,032.83. Defendant Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles
11 filed a motion for costs, which was granted in the amount of \$6,032.83.
12

13 Plaintiffs appeal from: (1) the Order [Granting in Part and Denying in Part
14 Defendant Florida Traivai's Motion to Retax costs and Defendant Ton Vinh Lee, DDS'
15 Joinder Thereto], filed on April 11th, 2014; (2) the Judgment on Jury Verdict, filed on
16 April 29th, 2014; (3) the Order on Defendant Traivai's and Lee's Motions for Judgment
17 as a Matter of Law Pursuant to NRCF 50 (b) and Motion for Remittitur, filed on July
18 16th, 2014; and (4) the Minute Order [Granting Costs to Defendant, Ton Vinh Lee, DDS],
19 filed on April 3rd, 2014.
20

21 Defendant Ton V. Lee, DDS Prof Corp dba SUMMERLIN SMILES is filing its
22 Cross-Appeal based on the question of whether the District Court erred in its application
23 of the NRS 41A.035 statutory cap on non-economic damages in the Judgment on Jury
24 Verdict filed April 29, 2014. Defendant Ton V. Lee, DDS Prof Corp dba SUMMERLIN
25 SMILES is also filing its Cross-Appeal based on the question of whether the Judgment on
26 Jury Verdict filed April 29, 2014 imposed joint and several liability on defendants in
27
28

1 violation of NRS 41A.045.

2
3 11. Indicate whether the case has previously been the subject of an appeal to or original writ
4 proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
5 number of the prior proceeding:

6 This case was the subject of a writ petition to the Supreme Court docketed as Case No.
7 64734.

8 12. Indicate whether this appeal involves child custody or visitation

9 N/A.

10 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

11 This case does involve the possibility of a settlement.

12
13 Dated: November 7, 2014

STARK, FRIEDMAN & CHAPMAN

14
15
16 BY: 

JASON B. FRIEDMAN, ESQ.

Nevada State Bar No. 11799

STARK, FRIEDMAN & CHAPMAN

200 W. Sahara, #1401

Las Vegas, NV 89102

Attorneys for Defendants,

TON VINH LEE, DDS and TON V. LEE,

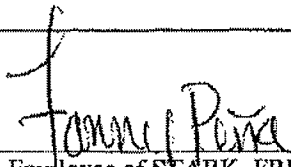
21 DDS, PROF. CORP. dba SUMMERLIN

SMILES

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing **Case Appeal Statement** was submitted for filing and/or service with the Eighth Judicial District Court made on November 7, 2014. Electronic service of the foregoing documents shall be made in accordance with the E-Service List as follows:¹

Baker Law Offices Contact: Aidee Garccia Email: Aidee@bakerattorneys.net
Lewis Brisbois Contact: Amanda Brookhyser Email: Amanda.brookhyser@lewisbrisbois.com
Lewis Brisbois Bisgaard & Smidt, LLP Contact: Carla Herndon Email: carlaherndon@lewisbrisbois.com Contact: Nicole Etienne Email: nicole.etienne@lewisbrisbois.com Contact: S. Brent Vogel, Esq. Email: Brent.Vogel@lewisbrisbois.com
Patin Law Group, LLC Contact: Ingrid Patin, Esq. Email: ingrid@patinlaw.com


An Employee of STARK, FRIEDMAN &
CHAPMAN, LLP

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).


CLERK OF THE COURT

****CODE**
JASON B. FRIEDMAN, ESQ.,
Nevada State Bar No. 11799
STARK, FRIEDMAN & CHAPMAN, LLP
200 W. Sahara, #1401
Las Vegas, NV 89102

Attorneys for Defendants, TON VINH LEE, DDS and
TON V. LEE, DDS, PROF. CORP. dba SUMMERLIN SMILES

DISTRICT COURT
CLARK COUNTY, NEVADA

SVETLANA SINGLETARY, individually, as
the Representative of the Estate of REGINALD
SINGLETARY, and as parent and legal guardian
of GABRIEL L. SINGLETARY, a Minor,

Case No. A-12-656091-C

Dept. No. XXX

Plaintiff,

CASE APPEAL STATEMENT (CROSS-
APPEAL)

vs.

TON VINH LEE, DDS, individually, FLORIDA
TRAIVAI, DMD, individually, JAI PARK,
DDS, individually, TON V. LEE, DDS, PROF.
CORP., a Nevada Professional Corporation
d/b/a/ SUMMERLIN SMILES, DOE
SUMMERLIN SMILES EMPLOYEE, ; and
DOES I through X and ROE CORPORATIONS
I through X, inclusive,

Defendants.

CASE APPEAL STATEMENT (CROSS-APPEAL)

Defendant, TON VINH LEE, DDS and TON V. LEE, DDS, PROF. CORP. dba
SUMMERLIN SMILES, by and through her/its attorneys of record, Stark, Friedman &
Chapman, LLP, hereby files this Case Appeal Statement on Cross-Appeal.

///

///

1 1. Name of appellant filing this Case Appeal State:

2 TON VINH LEE, DDS and TON V. LEE, DDS, PROF. CORP. dba SUMMERLIN
3 SMILES

4 2. Identify the Judge issuing the decision, judgment, or order appealed from:

5 Honorable Jerry A. Wiese II
6

7 3. Identify each cross-appellant and the name and address of counsel for each cross-
8 appellant:

9 Cross-Appellants: TON VINH LEE, DDS and TON V. LEE, DDS, PROF. CORP. dba
SUMMERLIN SMILES

10 Attorneys: Jason B. Friedman, Esq.
11 Stark, Friedman & Chapman, LLP
12 200 W. Sahara, #1401
13 Las Vegas, NV 89102

14 4. Identify each respondent and the name and address of appellate counsel, if known, for
15 each respondent (if the name of a respondent's appellate counsel is unknown, indicated as
much and provide the name and address of that respondent's trial counsel):

16 Respondents: Svetlana Singletary, individually, and as the Representative of the
17 Estate of Reginald Singletary, and as parent and legal guardian of
18 Gabriel L. Singletary, a Minor

19 Attorneys: Micah S. Echols, Esq.
20 Marquis Aurbach Coffing
21 10001 Park Run Drive
Las Vegas, Nevada 89145

22 Lloyd W. Baker, Esq.
23 Ingrid Patin, Esq.
24 Baker Law Offices
500 S. Eighth Street
Las Vegas, Nevada 89101

25 ///
26 ///
27 ///
28 ///

Page 2 of 5

CASE APPEAL STATEMENT (CROSS-APPEAL)

1 Respondents: Florida Traival, DMD

2 Attorneys: S. Brent Vogel, Esq.
3 Lewis, Brisbois, Bisgaard & Smith, LLP
4 6385 S. Rainbow Blvd., Suite 600
5 Las Vegas, Nevada 89118

- 6 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
7 licensed to practice law in Nevada and, if so, whether the district court granted that
8 attorney permission to appear under SCR 42 (attach a copy of any district court order
9 granting such permission);

10 N/A.

- 11 6. Indicate whether appellant was represented by appointed or retained counsel in the
12 district court;

13 Retained.

- 14 7. Indicate whether appellant is represented by appointed or retained counsel on appeal;

15 Retained.

- 16 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date
17 of entry of the district court order granting such leave;

18 N/A.

- 19 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint
20 indictment, information, or petition was filed);

21 The complaint was filed on February 7th, 2012.

- 22 10. Provide a brief description of the nature of the action and result in the district court,
23 including the type of judgment or order being appealed and the relief granted by the
24 district court;

25 This appeal is taken from a wrongful death suit brought against Defendants by
26 Plaintiff after the death of Reginald Singletary following dental surgery to extract a
27 wisdom tooth. The jury found for Plaintiffs against Defendant Ton V. Lee, DDS, Prof.
28

1 Corp. d/b/a Summerlin Smiles ad Florida Traivai, DMD, and awarded a total of
2 \$3,470,000. The Judgment on Jury Verdict awarded the total of \$3,470,000, plus interest,
3 and costs in the amount of \$38,042.64 to Plaintiffs.
4

5 Defendant Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles and Florida
6 Traivai, DMD, filed Rule 50(b) motions for judgment as a matter of law, which were
7 granted, with the result that the District Court vacated the award by the jury.
8

9 Defendant Ton Vinh Lee, DDS, filed a motion for costs, which was granted in the
10 amount of \$6,032.83.
11

12 Plaintiffs appeal from: (1) the Order [Granting in Part and Denying in Part
13 Defendant Florida Traivai's Motion to Retax costs and Defendant Ton Vinh Lee, DDS'
14 Joinder Thereto], filed on April 11th, 2014; (2) the Judgment on Jury Verdict, filed on
15 April 29th, 2014; (3) the Order on Defendant Traivai's and Lee's Motions for Judgment
16 as a Matter of Law Pursuant to NRCF 50 (b) and Motion for Remittitur, filed on July
17 16th, 2014; and (4) the Minute Order [Granting Costs to Defendant, Ton Vinh Lee, DDS],
18 filed on April 3rd, 2014.
19

20 Defendant Florida Traivai, DMD's Motion for Costs and Defendant Ton V. Lee,
21 DDS, Prof. Corp. d/b/a Summerlin Smiles' Motion for Costs are currently pending in the
22 District Court.
23

- 24 11. Indicate whether the case has previously been the subject of an appeal to or original writ
25 proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
26 number of the prior proceeding:

27 This case was the subject of a writ petition to the Supreme Court docketed as Case No.
28 64734,

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12. Indicate whether this appeal involves child custody or visitation

N/A.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

This case does involve the possibility of a settlement.

Dated: September 11, 2014

STARK, FRIEDMAN & CHAPMAN

BY:



JASON B. FRIEDMAN, ESQ.

Nevada State Bar No. 11799

STARK, FRIEDMAN & CHAPMAN

200 W. Sahara, #1401

Las Vegas, NV 89102

Attorneys for Defendants,

TON VINH LEE, DDS and TON V. LEE,

DDS, PROF. CORP. dba SUMMERLIN

SMILES

CERTIFICATE OF SERVICE

Singletary v. Lee, D.D.S., et al.

Case No. A-12-656091-C

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of STARK, FRIEDMAN & CHAPMAN, LLP and that on September 11, 2014, I caused the above and foregoing documents entitled: **CASE APPEAL STATEMENT (CROSS-APPEAL)** to be served as follows:

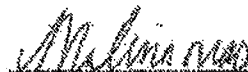
☒ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Long Beach, California; and/or

☐ Pursuant to EDCR 7.26, to be sent via facsimile;

☐ To be hand-delivered to the attorney listed below at the address indicated below; and/or

☐ Via electronic mail to the attorneys listed below:

Lloyd W. Baker, Esq. Ingrid Patin, Esq. BAKER LAW OFFICES 500 South Eighth Street Las Vegas, Nevada 89101	(702) 369-4949; (702) 360-3234 Fax Attorneys for Plaintiff, SVETLANA SINGLETARY, individually, as the Representative of the Estate of REGINALD SINGLETARY, and as parent and legal guardian of GABRIEL L. SINGLETARY, a Minor
Edward J. Lemons, Esq. Tiffany Barker Pagni, Esq. LEMONS, GRUNDY & EISENBERG 6005 Plumas Street, 3 rd Floor Reno, Nevada 89519	(775) 786-6868; (775) 786-9716 Fax Attorneys for Defendant, JAI PARK, D.D.S.
S. Brent Vogel, Esq. Amanda J. Brookhyser, Esq. LEWIS, BRISBOIS, BISGAARD & SMITH, LLP 6385 S. Rainbow Blvd., Suite 600 Las Vegas, Nevada 89118	Attorneys for Defendant, FLORIDA TRAVAI, D.M.D.



MALINA MAO

EXHIBIT K

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
March 28, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:05 a.m. on Thursday, March 28, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Senator Joseph P. Hardy, Senatorial District No. 12
Senator Michael Roberson, Senatorial District No. 20

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Marc Randazza, Randazza Legal Group
Allen Lichtenstein, American Civil Liberties Union
Wayne Carlson, Executive Director, Nevada Public Agency Insurance Pool
Steve Balkenbush, Nevada Public Agency Insurance Pool
Rebecca Bruch, Nevada Public Agency Insurance Pool

Senator Hutchison:

Why is there a clear and convincing evidence standard? For example, the moving party initially starts by preponderance of the evidence that in fact the claim is based on free speech-First Amendment rights. Then if the court determines the moving party has met that burden of proof, the court then has to determine by clear and convincing evidence a probability of prevailing on the claim. Now the burden shifts to the plaintiff. The defendant points out the First Amendment right demonstrated by preponderance of the evidence. Is that correct?

Mr. Randazza:

Correct.

Senator Hutchison:

The burden shifts now to the plaintiff who wants to win this lawsuit by clear and convincing evidence to the court in that early stage, which is a fraud standard—a very high standard in the law. What is the rationale for setting the standard that high?

Mr. Randazza:

The way it has worked in California, Washington and Oregon cases, the plaintiff needs to front load his or her case. The plaintiff needs to show this evidence is going beyond the motion-to-dismiss standard. It is a burden-shifting statute. But without that important element, defendants can be quieted and punished for exercising free speech rights simply by winning a case. That burden-shifting is important, necessary and proper.

Chair Segerblom:

Is the lawsuit for defamation? Or is the lawsuit characterized as being something designed to suppress First Amendment rights?

Mr. Randazza:

The lawsuit is anything designed to quash First Amendment rights. This proposed law will be most frequently used in defamation lawsuits. Possibly, this proposed law could also be used in intellectual property lawsuits. For example, the company Righthaven, which operates in southern Nevada, has over 200 cases on the federal docket. Some of the cases involved Righthaven suing bloggers for exercising their right to free speech.

EXHIBIT L

Certificate of Business: Fictitious Firm Name

Please Select One:

☐ New Application

☒ Renewal of existing name

FILED

2010 OCT 26 A 10:26

Please Print or Type

The expiration date for such certificates shall be the last day of the twelfth month from the date of filing.

The undersigned do/does hereby certify that TON V. LEE, DDS., PROSP CORP.

(Name of individual, corporation, partnership or trust)

with mailing address of 6206 W. Desert Inn Rd., Ste # A, Las Vegas, NV, 89146

(Mailing Address for notification of renewal) (Street)

(City)

(State)

(Zip)

is/are conducting business in Clark County, Nevada, under the fictitious name of
SUMMERLIN SMILES

(Fictitious Firm Name) or (Doing Business As)

and that said firm is composed of the following person(s) whose name(s) and address(es) are as follows:

By signing below I do solemnly swear (or affirm), under penalty of perjury, that all statements made in this document are true.

(1) Ton V. Lee President/Owner

Full Name and title (Type or Print)

4245 S. Grand Canyon Dr., Ste 108

Street Address of Business or Residence

6206 W. Desert Inn Rd., Ste # A

Mailing Address, if different from above

Signature

Date

Las Vegas, NV 89147

City, State, Zip

Las Vegas, NV 89146

City, State, Zip

(2)

Full Name and title (Type or Print)

Signature

Date

Street Address of Business or Residence

City, State, Zip

Mailing Address, if different from above

City, State, Zip

(3)

Full Name and title (Type or Print)

Signature

Date

Street Address of Business or Residence

City, State, Zip

Mailing Address, if different from above

City, State, Zip

(4)

Full Name and title (Type or Print)

Signature

Date

Street Address of Business or Residence

City, State, Zip

Mailing Address, if different from above

City, State, Zip

Diana Alba, County Clerk
10/26/2010 10:24:10 AM

Mail to: Diana Alba, County Clerk, Attn: FPN, P.O. Box 55160
Include: Filing Fee of \$20.00 with the certificate plus 2 copies and a



RECEIVED
OCT 25 2010
COUNTY CLERK

Certificate of Business: Fictitious Firm Name

Please Select One:

- ☐ New Application
☒ Renewal of existing fictitious firm name

2009 AUG 10 P 2:02

Please Print or Type

The expiration date for such certificates shall be the last day of the sixtieth month from the date of filing.

The undersigned do/does hereby certify that Ton V. Lee, DDS Prof. Corp.
(Name of individual, corporation, partnership or trust)

with mailing address of 4245 S Grand Canyon Dr. Ste 108, Las Vegas, NV, 89147
(Mailing Address for notification of renewal) (Street) (City) (State) (Zip)

is/are conducting business in Clark County, Nevada, under the fictitious name of

Summerlin Smiles

(Fictitious Firm Name) or (Doing Business As)

and that said firm is composed of the following person(s) whose name(s) and address(es) are as follows:

By signing below I do solemnly swear (or affirm), under penalty of perjury, that all statements made in this document are true.

(1) Ton Vinh Lee - president

Full Name and title (Type or Print)

2077 ORCHARD MIST ST.

Street Address of Business or Residence

Signature

LAS VEGAS, NV 89135

City, State, Zip

Date

08/05/09

Mailing Address, if different from above

City, State, Zip

(2) N/A

Full Name and title (Type or Print)

Signature

Date

Street Address of Business or Residence

City, State, Zip

Mailing Address, if different from above

City, State, Zip

(3) N/A

Full Name and title (Type or Print)

Signature

Date

Street Address of Business or Residence

City, State, Zip

Mailing Address, if different from above

City, State, Zip

(4) N/A

Full Name and title (Type or Print)

Signature

Date

Street Address of Business or Residence

City, State, Zip

Mailing Address, if different from above

City, State, Zip

Mail to: Shirley B. Farraguirre, County Clerk, Attn. FFM, P.O. Box 51
Include: Filing Fee of \$20.00 with the certificate plus 2 copies and a set

Shirley B. Farraguirre, County Clerk
08/10/2009 02:01:28 PM



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COUNTY CLERK

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TON V. LEE, DDS, PROF.CORP.

Business Entity Information			
Status:	Active	File Date:	02/10/2005
Type:	Domestic Professional Corporation	Entity Number:	E0093232005-7
Qualifying State:	NV	List of Officers Due:	02/29/2016
Managed By:		Expiration Date:	
Foreign Name:		On Admin Hold:	No
NV Business ID:	NV20051222745	Business License Exp:	02/29/2016

Additional Information	
	Central Index Key

Registered Agent Information			
Name:	TON V. LEE, DDS	Address 1:	2077 ORCHARD MIST STREET
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89135
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

View all business entities under this registered agent ()

Financial Information			
No Par Share Count:	0	Capital Amount:	\$ 10,000.00
Par Share Count:	1,000,000.00	Par Share Value:	\$.01

Officers				<input type="checkbox"/> Include Inactive Officers
President - TON V LEE, DDS				
Address 1:	2077 ORCHARD MIST STREET	Address 2:		
City:	LAS VEGAS	State:	NV	
Zip Code:	89135	Country:	USA	
Status:	Active	Email:		
Secretary - TON V LEE, DDS				
Address 1:	2077 ORCHARD MIST STREET	Address 2:		
City:	LAS VEGAS	State:	NV	
Zip Code:	89135	Country:	USA	
Status:	Active	Email:		
Treasurer - TON V LEE, DDS				
Address 1:	2077 ORCHARD MIST STREET	Address 2:		
City:	LAS VEGAS	State:	NV	
Zip Code:	89135	Country:	USA	
Status:	Active	Email:		
Director - TON V LEE, DDS				
Address 1:	2077 ORCHARD MIST STREET	Address 2:		
City:	LAS VEGAS	State:	NV	
Zip Code:	89135	Country:	USA	
Status:	Active	Email:		

Actions/Amendments
Click here to view 13 actions/amendments associated with this company ()
Disclaimer ()

EXHIBIT M

1 CASE NO. A-12-656091

2 DEPT. NO. 30

3 DOCKET U

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 * * * * *

7 SVETLANA SINGLETARY,)
8 individually, as the)
9 representative of the Estate)
10 of REGINALD SINGLETARY, and as)
11 parent and legal guardian of)
12 GABRIEL L. SINGLETARY, a)
13 minor,)

11 Plaintiffs,)
12 vs.)

13 TON VINH LEE, DDS,)
14 individually, FLORIDA TRAIVAI,)
15 DMD, individually, JAI PARK,)
16 DDS, individually, TON V. LEE,)
17 DDS, PRO. CORP., a Nevada)
18 Professional Corporation d/b/a)
19 SUMMERLIN SMILES, DOE)
20 SUMMERLIN SMILES EMPLOYEE and)
21 DOES I through X and ROE)
22 CORPORATIONS I through X,)
23 inclusive,)

18 Defendant.)
19

20 REPORTER'S TRANSCRIPT OF JURY TRIAL

21 BEFORE THE HONORABLE JERRY A. WIESE, II

22 DEPARTMENT XXX

23 DATED FRIDAY, JANUARY 17, 2014

24 REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,
25 CA CSR #13529

1 APPEARANCES:

2 For the Plaintiff:

3 BAKER LAW OFFICES
4 BY: INGRID M. PATIN, ESQ.
5 500 South Eighth Street
6 Las Vegas, Nevada 89101
(702) 360-4949
ingrid@bakerattorneys.net

7 For the Defendant Florida Traivai, DMD:

8 LEWIS BRISBOIS BISGAARD & SMITH LLP
9 BY: S. BRENT VOGEL, ESQ.
6385 South Rainbow Boulevard
Suite 600
10 Las Vegas, Nevada 89118
11 (702) 893-3383

12 For the Defendant Ton Vinh Lee, DDS and Summerlin
13 Smiles:

14 FORD WALKER HAGGERTY & BEHAR
15 BY: JASON B. FRIEDMAN, ESQ.
3960 Howard Hughes Parkway
Suite 500
16 Las Vegas, Nevada 89102
(702) 990-3580
17 jfriedman@fwhb.com

18 For the Defendant Jai Park, DDS:

19 LEMONS, GRUNDY & EISENBERG
20 BY: EDWARD J. LEMONS, ESQ.
6005 Plumas Street
Third Floor
21 Reno, Nevada 89519
(775) 786-6868
22 ejl@lge.net

23
24 * * * * *

25

1	I N D E X	
2	WITNESS:	PAGE
3	<u>TON V. LEE, D.D.S.</u>	
4	Direct Examination by Mr. Friedman	13
5	Cross-Examination by Mr. Vogel	33
6	Cross-Examination by Ms. Patin	35
7	Recross-Examination by Ms. Patin	81
8		
9	<u>CHRISTIAN SANDROCK, D.D.S.</u>	
10	Direct Examination by Mr. Vogel	83
11	Cross-Examination by Ms. Patin	110
12	Redirect Examination by Mr. Vogel	131
13		
14	<u>DAVID LEVITT, D.D.S.</u>	
15	Direct Examination by Mr. Lemons	134
16	Cross-Examination by Ms. Patin	149
17	Redirect Examination by Mr. Lemons	158
18	Cross-Examination by Mr. Vogel	159
19	Recross-Examination by Ms. Patin	160
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1 It's done at her discretion.
2 MR. VOGEL: Thank you, Doctor.
3 THE WITNESS: Welcome.
4 THE COURT: Mr. Lemons?
5 MR. LEMONS: I have nothing additional to
6 that, Your Honor. Thank you.
7 THE COURT: Ms. Patin.
8
9 CROSS-EXAMINATION
10 BY MS. PATIN:
11 Q. Good morning.
12 A. Good morning.
13 Q. Dr. Lee, you're the president and owner of
14 Summerlin Smiles, correct?
15 A. That's correct.
16 Q. And you're also the president and owner of
17 Distinctive Smiles as well, correct?
18 A. That's correct.
19 Q. And the tooth extraction that was performed
20 on Reginald Singletary by Dr. Park and Dr. Traivai was
21 done at your clinic, Summerlin Smiles, correct?
22 A. That's correct.
23 Q. And that was on April 16th of 2011?
24 A. That's correct.
25 Q. Now, Dr. Park and Dr. Traivai, they don't pay

200

1 **ORDER**

2 **PRESCOTT T. JONES, ESQ.**

3 Nevada State Bar No. 11617

4 **AUGUST B. HOTCHKIN, ESQ.**

5 Nevada State Bar No. 12780

6 **BREMER WHYTE BROWN & O'MEARA LLP**

7 1160 N. TOWN CENTER DRIVE

8 SUITE 250

9 LAS VEGAS, NV 89144

10 TELEPHONE: (702) 258-6665

11 FACSIMILE: (702) 258-6662

12 pjones@bremerwhyte.com

13 ahotchkin@bremerwhyte.com

14 Attorneys for Plaintiff,

15 **TON VINH LEE**

Electronically Filed
10/22/2015 10:50:33 AM



CLERK OF THE COURT

16 **DISTRICT COURT**

17 **CLARK COUNTY; NEVADA**

18 **TON VINH LEE, an individual**

19 **Plaintiff,**

20 **vs.**

21 **INGRID PATIN, an individual, and PATIN**
22 **LAW GROUP, PLLC, a Nevada Professional**
23 **LLC,**

24 **Defendants.**

) Case No.: A723134

) Dept. No.: IX

) **ORDER DENYING DEFENDANTS'**
) **MOTION TO DISMISS**

25 Defendants*, INGRID PATIN and PATIN LAW GROUP, PLLC (collectively
26 "Defendants") Motion to Dismiss came on for hearing before this Court at 9:00 a.m. on the 14th day
27 of October, 2015. The Court, having read all of the pleadings and papers on file herein, and good
28 cause appearing, therefore, it is hereby:

29 ///

30 ///

31 ///

32 ///

33 ///

34 ///

BREMER WHYTE BROWN &
O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
(702) 258-6665

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1 ORDERED, ADJUDGED AND DECREED Defendants' Motion to Dismiss is deemed a
2 Motion for Summary Judgment under NRCP 56.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED Defendants' Motion to
4 Dismiss, deemed a Motion for Summary Judgment, is DENIED without prejudice pursuant to
5 NRCP 56(f).

6 DATED: this 22nd day of October, 2015.

7
8 
9 DISTRICT COURT JUDGE
10 

11 Respectfully Submitted by:
12 BREMER WHYTE BROWN & O'MEARA LLP

13
14 By: 
15 Prescott T. Jones, Esq.
16 Nevada State Bar No. 11617
17 August B. Hotchkin, Esq.
18 Nevada State Bar No. 12780
19 Attorneys for Plaintiff
20 TON VINH LEE
21
22
23
24
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27
28

1 **ORDR**

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


CLERK OF THE COURT

4 ***

5
6 **SVETLANA SINGLETARY, et al**
7 **Plaintiffs**

8 **v.**

9 **TON LEE, DDS., et al,**
10 **Defendants**
11

CASE NO. A656091
DEPT. XXX

ORDER ON DEFENDANT
TRAIVAI'S AND LEE'S
MOTIONS FOR JUDGMENT
AS A MATTER OF LAW
PURSUANT TO NRCP 50(B),
AND MOTION FOR
REMITTITUR

12
13
14 **INTRODUCTION**

15
16 Defendants, Florida Traivai, DMD and Ton V. Lee, DDS d/b/a Summerlin
17 Smiles, each filed a Motion for Judgment as a Matter of Law Pursuant to NRCP 50(b).
18 Such Motions came on for hearing on June 26, 2014. Having reviewed the pleadings
19 and papers on file, having heard oral argument by the parties, and good cause
20 appearing, the Court now issues its Order.

21 This is a case in which plaintiffs – the wife, child, and estate – sued for dental
22 malpractice/wrongful death. Decedent Reginald Singletary went to Dr. Park at
23 Summerlin Smiles for a wisdom tooth extraction on April 16, 2011. Following the
24 tooth extraction, Reginald did not do well. His condition deteriorated from April 21,
25 2011, to April 24, 2011, and he passed away on April 25, 2011, due to necrotizing
26 mediastinitis and septic shock due to Ludwig's Angina from dental abscess.

27 The case was tried by a Jury from January 13, 2014, through January 22, 2014,
28 and resulted in a verdict in favor of the Plaintiffs.

1 **ARGUMENT**

2 Defendants both now argue, pursuant to NRCP 50(b), that a Judgment as a
3 Matter of Law should be granted in favor of the Defendants, and against the Plaintiffs,
4 due to the fact that Plaintiff failed to offer his opinions regarding standard of care and
5 causation to a reasonable degree of medical probability. Defendants further argue
6 that if the Court is now willing to grant Judgment as a Matter of Law in favor of the
7 Defendants, the Court should reduce the Plaintiffs' noneconomic damages by
8 Remittitur to \$350,000, pursuant to NRS 41A.035

9 Plaintiffs argue initially that the Defendants are precluded from bringing an
10 NRCP 50(b) Motion for Judgment as a Matter of Law now, because the Defendants
11 brought an NRCP 41(b) Motion to Dismiss during trial, and not an NRCP 50(b)
12 Motion, and consequently, the Defendants are now precluded from "renewing" an
13 NRCP 50(b) motion. Additionally, Plaintiffs argue that Dr. Pallos did offer his
14 opinions, to a "reasonable degree of medical probability," and that when he stated
15 those words on pg. 67 of the transcript, he was referring to his three main opinions
16 regarding standard of care, and not the requirements of informed consent.

17
18 **LEGAL ANALYSIS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW**

19 Both Defendants have brought a Motion for Judgment as a Matter of Law
20 pursuant to NRCP 50(b). NRCP 50(b) reads as follows:

21
22 (b) Renewing motion for judgment after trial; alternative motion for
23 new trial. If, for any reason, the court does not grant a motion for judgment as
24 a matter of law made at the close of all the evidence, the court is considered to
25 have submitted the action to the jury subject to the court's later deciding the
26 legal questions raised by the motion. The movant may renew its request for
27 judgment as a matter of law by filing a motion no later than 10 days after
28 service of written notice of entry of judgment and may alternatively request a
new trial or join a motion for new trial under Rule 59. In ruling on a renewed
motion the court may:

- (1) If a verdict was returned;
- (A) Allow the judgment to stand,
- (B) order a new trial, or

1 (C) direct entry of judgment as a matter of law; or

2

3 (NRCP 50(b)).

4 The Editor's Note with regard to rule 50(b) reads in part as follows:

5 Subdivision (b) is amended to conform to the 1991 amendment to the
6 federal rule. The Nevada rule was amended in 1971 to delete the requirement
7 under the then-existing federal rule that a motion for judgment
8 notwithstanding the verdict did not lie unless it was preceded by a motion for a
9 directed verdict. The revised rule takes the same approach as the federal rule,
10 as amended in 1963 and 1991, that a post-verdict motion for judgment as a
11 matter of law is a renewal of an earlier motion made before or at the close of
12 evidence. Thus, a "renewed" motion filed under subdivision (b) must have
13 been preceded by a motion filed at the time permitted by subdivision (a)(2). . . .

14 (NRCP 50 [Editor's Note]).

15 Plaintiff argues that Defendants' Motion for Judgment as a Matter of Law is
16 inappropriate, as Defendants never made a Rule 50(b) Motion for Judgment as a
17 Matter of Law during Trial, but instead brought a Rule 41(b) Motion to Dismiss.

18 NRCP 41(b) reads as follows:

19 (b) Involuntary dismissal: Effect thereof. For failure of the plaintiff to
20 comply with these rules or any order of court, a defendant may move for
21 dismissal of an action or of any claim against the defendant. Unless the court
22 in its order for dismissal otherwise specifies, a dismissal under this subdivision
23 and any dismissal not provided for in this rule, other than a dismissal for lack
24 of jurisdiction, for improper venue, or for failure to join a party under Rule 19,
25 operates as an adjudication upon the merits.

26 (NRCP 41(b)).

27 The Editor's Note to NRCP 41 states in pertinent part as follows:

28 Subdivision (b) is amended to conform to the 1963 and 1991
amendments to the federal rule by removing the second sentence, which
authorized the defendant to file a motion for involuntary dismissal at the close
of the plaintiff's evidence in jury and nonjury cases when the plaintiff had
"failed to prove a sufficient case for the court or jury." For a nonjury case, the
device is replaced by the new provisions of Rule 52(c), which authorize the
court to enter judgment on partial findings against the plaintiff as well as the
defendant. For a jury case, the correct motion is the motion for judgment as a
matter of law under amended Rule 50.

(NRCP 41, Editor's Note).

1 In the case of *Lehtola v. Brown Nevada Corporation*, 82 Nev. 132, 412 P.2d
2 972 (1966), the Nevada Supreme Court addressed facts similar to the facts in the
3 present case. In that case the Plaintiffs received jury verdicts in their favor, which
4 were set aside by the trial court and a judgment notwithstanding the verdicts
5 (JNOV's) were entered for the Defendant. In reviewing the case on appeal, the
6 Nevada Supreme Court noted that at the close of the plaintiffs' case in chief, the
7 defendant moved for involuntary dismissal pursuant to NRCP 41(b). The judge
8 reserved ruling and the defendant presented his case. Thereafter, the Court did not
9 rule on the 41(b) motion and the Defendant did not make a motion for directed
10 verdict at the close of the case. The Defendant proceeded to argue that the lower
11 court could treat the mid-trial motion as a motion for a directed verdict at the close of
12 the case, thereby providing the necessary foundation for the later motion for JNOV.
13 The Nevada Supreme Court did not agree. The Court acknowledged that a 41(b)
14 motion for involuntary dismissal made at the close of Plaintiff's case in chief and a
15 50(a) motion for a directed verdict made at the close of Plaintiff's case in chief were
16 functionally indistinguishable. The Court stated, "However, it does not follow that a
17 41(b) motion at the close of the plaintiffs' case may serve as a motion for a directed
18 verdict as contemplated by Rule 50 to establish a basis for a subsequent motion for a
19 judgment n.o.v. A 50(a) motion must be made at the close of all the evidence if the
20 movant wishes later to make a postverdict motion under that rule." (*Id.*, at 136). The
21 Court further stated that "A 41(b) mid-trial motion necessarily tests the evidence as it
22 then exists. Here the court reserved ruling on that motion. Thereafter, the
23 complexion of the case changed as the defendant offered evidence. The record does
24 not show that at the close of the case the defendant requested a ruling on the mid-trial
25 motion, and no motion was made for a directed verdict. Nothing occurred. The lower
26
27
28

1 court therefore, was not authorized to entertain a postverdict motion under 50(b)."
2 (Id., at 136).¹

3 The Court must address what motions were made by the Defense at the close of
4 Plaintiff's case, and what motions were made at the close of the evidence, to
5 determine if the Defendants preserved their right to bring a post-trial Rule 50 motion.

6 On January 16, 2014, at the close of the Plaintiffs' case in chief, the Defendants
7 each made a NRCP "Rule 41(b) motion." Mr. Vogel stated, "On behalf of Dr. Traivai, I
8 would like to make a Rule 41(b) motion. Based on the testimony of plaintiffs' expert,
9 they have not established that there was a deviation of the standard of care, an
10 admissible – admissible testimony of a deviation of the standard of care on behalf of
11 Dr. Traivai. . ." (See Trial Transcript 1/16/14, at pg. 160). Mr. Friedman similarly
12 stated, "And, Your Honor, I made the – a motion also on 41(b) relative to Dr. Lee as
13 well as Summerlin Smiles. There's been no testimony whatsoever that the person
14 who answered the phone, if anybody answered the phone, was an employee of
15 Summerlin Smiles or Dr. Lee. . . ." (See Trial Transcript 1/16/14, at pg. 161). Mr.
16 Lemons did not refer to Rule 41(b) or to Rule 50, but stated the following: "And I'm
17 going to make a similar motion on behalf of Dr. Park, Your Honor, but for a little
18 different grounds. Dr. Pallos testified that Dr. Park's involvement in the extraction
19 process accorded with the standard of care, and he didn't specify any deviation from
20 the standard of care to a reasonable degree of medical probability as to Dr. Park in his
21 testimony. . . ." (See Trial Transcript 1/16/14, at pg. 161).

22

23
24
25 ¹ It should be noted that in 1966, NRCP 41(b) allowed a Defendant to make a motion, at the close of
26 Plaintiff's evidence, for dismissal on the ground that the Plaintiff had failed to prove a sufficient case for the
27 court or jury. Rule 50(a) allowed for a motion for a directed verdict to be made at the close of the evidence
28 offered by an opponent or at the close of the case. Rule 50(b) provided that if a motion for directed verdict made
at the close of all the evidence was denied or not granted, the court was deemed to have submitted the action to
the jury subject to a later determination of the legal question raised by motion. Not later than 10 days after
service of the written notice of entry of judgment, the party who moved for a directed verdict could move again
to have the verdict and any judgment entered thereon set aside and to have a judgment entered in accordance
with the motion for directed verdict. (*Lehtola v. Brown*, at FN 1).

1 In response to the Defendants' Motions, the Court and the attorneys
2 participated in an exchange regarding whether, and to what extent, Dr. Pallos had
3 offered any opinions to a "reasonable degree of medical probability." There was also a
4 discussion regarding whether any case law required "standard of care" opinions to be
5 stated to a "reasonable degree of medical probability." The Court noted that Dr.
6 Pallos admitted with regard to the "informed consent issue," that his opinion was
7 based on speculation, and that he had no foundation for it, and consequently, the
8 Court struck that claim. (See Trial Transcript 1/16/14, at pg. 173).

9 Counsel for Dr. Lee and Summerlin Smiles argued that the Plaintiff could not
10 establish who, if anyone, answered the phone, and consequently, the Plaintiff's claims
11 against Dr. Lee and Summerlin Smiles failed. The Court concluded that based upon
12 Ms. Singletary's testimony that a call was made, and that she spoke with somebody,
13 there was at least "circumstantial evidence" that the Jury could rely on in that regard.

14 After reviewing the case of *Morsicato v. Sav-On Drug Stores*, 121 Nev. 153, 111
15 P.3d 1112 (2005), the Court concluded that expert testimony regarding both
16 "standard of care" and "causation," needed to be stated to a "reasonable degree of
17 medical probability." The *Morsicato* case specifically says that "medical expert
18 testimony, regarding the standard of care and causation in a medical malpractice
19 case, must be based on testimony made to a reasonable degree of medical
20 probability." (*Id.*, at pg. 158). During the hearing on the Defendants' Motions for
21 Judgment as a Matter of Law, it was argued that there was a difference between
22 requiring an opinion to be "based on" a reasonable degree of medical probability, and
23 requiring the witness to "state" that the opinion is "to a reasonable degree of medical
24 probability." The Supreme Court in *Morsicato*, however, indicated that "medical
25 expert testimony regarding standard of care and causation must be *stated* to a
26 reasonable degree of medical probability." (*Id.*, at pg. 158, emphasis added).

27 In the case at issue, Dr. Pallos only used the words, "to a reasonable degree of
28 medical certainty, or probability," one time. (See Trial Transcript 1/16/14, at pg. 67).

1 The Defendants argue that Dr. Pallos' only opinion stated to a reasonable degree of
2 medical probability related to "informed consent," an opinion the court later struck as
3 having no foundation. The Plaintiffs, on the other hand, argue that Dr. Pallos'
4 opinion given on 1/16/14, related not to the "informed consent" issue, but to the three
5 general opinions that Dr. Pallos offered. After being qualified as an expert, the
6 relevant questions and answers went substantially as follows:

7
8 Q. . . . did you formulate any opinions with regard to the standard of care?

9 A. Yes, I have.

10 Q. Okay. What are those opinions (See Transcript 1/16/14, at pg. 51)

11

12 A. One of the things required by the standard of care is that we obtain what's
13 called

14 an informed consent. Very important. That means I -- before I cut you, before
15 I do surgery, before I have permission to do those procedures that could harm
16 you, I have to inform you of what I'm going to do. What else could be done
17 instead of what I am proposing to do that I consider to be in your best interest?
18 What other methods are there? And what risks are associated with what I'm
19 going to do? . . .

20 I believe in this case that was not followed, and there was a failure in
21 following the standard of care relative to this item called the informed consent.
22 . . . (See Transcript 1/16/14, at pg. 52)

23 Number 2, antibiotics . . . We have to either give that antibiotic, make
24 that antibiotic accessible to that patient, or follow that patient like a dog on
25 bone to make sure that person does not need the antibiotic, if we choose not to
26 prescribe that antibiotic. . . .

27 Number 3, the follow up is required, whether I choose to call the patient
28 or I hire an employee who calls the patient on my behalf. Very important not
to abandon, neglect, leave that patient

So that is my opinion in a nutshell regarding those three categories.
(See Transcript, 1/16/14, at pg. 53).

Q. . . . Let's start with No. 1 and get specific with regard to how the dentist in
this case acted below the standard of care with regard to informed consent.

A. . . . The first thing required is that I tell you what the procedure is that

I'm about

to do or want to do. . . . (See Transcript, 1/16/14, at pg. 54).

. . . .

A. So this patient had a chronic infection in the opinion of the doctor who
treated or

at least got the consent. Okay? So she had to tell him this. You know, your
tooth is dead. Your pulp is necrotic. You have a periodontal infection. You
have a chronic infection. There exists that infection. Okay. So that's No. 1 she
had to tell him this.

1 Number 2, are there alternatives to taking out the tooth -- (See
2 Transcript, 1/16/14, at pg. 61).

3 Q. Dr. Pallos, now that you've kind of explained to us with regard to this
4 tooth, which is Tooth No. 32, and the condition of that tooth, can you continue
5 explaining to us how the dentist in this case acted below the standard of care
6 with regard to informed consent.

7 A. . . . So the first thing regarding the requirement for an adequate minimum
8 informed consent is that we tell the patient what we want to do

9
10 Now, the second component that's required is that we talk about an
11 alternative method.

12
13 Requirement No. 3 is I have to communicate with you what may happen
14 if I do this so that we can get through it together and you'll end up better than
15 you are now. Okay? And what's required there is that I tell about the risks if I
16 do this surgery. . . .

17
18 So we have these three requirements.

19 After that, the fourth requirement is all these things have to be written
20 down, and you get to sign that you still want to do this. . . . (See Transcript,
21 1/16/14, at pgs. 62-64).

22
23 Q. So let's start with the fourth part of this. . . . do you have any opinion with
24 regard to whether or not that informed consent form was not proper in any
25 way?

26 A. Okay. There's a form that we all get some kind of version of that form. It's
27 supposed to contain at least these three ingredients: What I want to do, what's
28 the procedure that I want to do, what are the alternatives to that procedure,
and what are the risks if I do this. . . . And yes, it meets the standard in that
sense. And so I don't have any objection about the form.

Q. Now, with regard to the other three parts of the informed consent
discussion, in what way did Dr. Traivai's informed consent discussion not meet
the standard of care? You've explained to us what's required. How did it not
meet the standard of care?

A. Okay. By what happened in this case, by the behavior of this person, he
was not prepared to know whether his infection was getting worse to the point
where he needed urgent attention and life-saving antibiotics. In my opinion,
they fell short of meeting the goal of explaining, listen, it's an infection

***So in my opinion, to a reasonable degree of medical
certainty, or probability is the way it's -- we have to phrase it, they fell
below the standard of care in meeting this requirement of giving
an effective informed consent. In all three of those points.***

Q. Dr. Pallos, we were talking about the first opinion that you have with
regard to informed consent and how the dentist violated the standard of care
with regard to the informed consent discussion. . . . (See Transcript, 1/16/14,
at pgs. 65-68, emphasis added).

1 In reviewing the transcript during Trial, the Court could not determine
2 whether Dr. Pallos' opinion to a reasonable degree of medical probability was related
3 solely to the "informed consent" opinion or if it related to the three general opinions,
4 which Dr. Pallos set forth in pgs. 52 and 53 of the Transcript. However, in
5 meticulously reviewing the transcript in its entirety, it is evident that the Court must
6 agree with Defendants; Dr. Pallos' opinion, which he offered to a "reasonable degree
7 of medical probability," only related to the 3 points that he referenced dealing with
8 the "informed consent" opinion. He was not critical of the "form" used, which he
9 referenced as the "fourth requirement," but he was critical of the other three (3)
10 elements which he discussed relating to informed consent. ([1] What the procedure
11 is/ What the problem is; [2] What are the alternatives; and [3] What are the risks.)
12 Plaintiff's counsel's follow-up questioning makes it even more clear that the opinions
13 Dr. Pallos was offering were limited to the "informed consent" issue.

14 The only opinion that Dr. Pallos stated to a "reasonable degree of medical
15 probability" was stricken for lack of foundation. The question then becomes whether
16 or not the other opinions that Dr. Pallos offered should have also been stricken, due
17 to the fact that they were not offered to a reasonable degree of medical probability.
18 The language referenced above, from the *Morsicato* case, indicates very clearly that
19 "medical expert testimony regarding standard of care and causation must be stated to
20 a reasonable degree of medical probability. . ." (*Morsicato*, at pg. 158). The Nevada
21 Supreme Court recently issued a decision, however, that may be interpreted as
22 relaxing that standard. In the case of *FCH1, LLC v. Rodriguez*, 130 Nev. Adv. Op. 46
23 (Nev. 2014), the District Court struck the testimony of the Palms' experts on security
24 and crowd control, and economics because they failed to offer their opinions "to a
25 reasonable degree of professional probability." (*FCH1*, at pg. 5) The District Court
26 relied on *Hallmark* in making its decision. The Nevada Supreme Court indicated that
27 "*Hallmark's* refrain is functional, not talismanic, because the 'standard for
28 admissibility varies depending upon the expert opinion's nature and purpose.'"

1 (FCH1, at pg. 5, citing to *Morsicato* at pg. 157.) The Court stated, "Thus, rather than
2 listening for specific words the district court should have considered the purpose of
3 the expert testimony and its certainty in light of its context." (FCH1, at pg. 5, citing to
4 *Williams v. Eighth Judicial Dist. Court*, 262 P.3d 360, 368 [2011]).

5 It has been argued recently that the FCH1 case intended to relax the standard
6 to which expert testimony should be held. The Court's language indicating that the
7 "standard for admissibility varies depending upon the expert opinion's nature and
8 purpose," is still quite ambiguous and we have no guidance as to what the court was
9 referring to. The nature and purpose of Dr. Pallos, the Plaintiff's expert, was to
10 provide expert opinion testimony regarding "standard of care" and "causation" in this
11 claim for alleged medical malpractice. The Nevada Supreme Court has clearly held in
12 the past that "medical expert testimony regarding standard of care and causation
13 must be stated to a reasonable degree of medical probability." (*Morsicato* at pg. 158).
14 Since the Supreme Court cited to *Morsicato* in its FCH1 case, but did not specifically
15 overrule *Morsicato*, this Court must conclude that it was not the intention of the
16 Nevada Supreme Court to change the standard which is required of a medical expert
17 when testifying as to standard of care and causation, and that such testimony must
18 still be offered "to a reasonable degree of medical probability."

19 Based upon the foregoing, this Court must conclude that Dr. Pallos' testimony
20 regarding standard of care and causation, which formed the basis for the Jury's
21 verdict in favor of the Plaintiff, should have been stricken because it was not stated to
22 a "reasonable degree of medical probability."

23 With regard to the issue of whether the Defendant's Rule 41(b) Motions at the
24 close of Plaintiffs' case, and at the close of the evidence, was sufficient to preserve the
25 issue for a post-trial motion, this Court believes, similarly to the Court in *Lehtola*, that
26 an NRCP 41(b) Motion and an NRCP 50(a) Motion are "functionally
27 indistinguishable." The better and clearer practice would be to call it an NRCP 50(a)
28 Motion, when moving for Judgment as a Matter of Law, but whether it was called a

1 41(b) Motion or a rule 50 Motion, the Defendants effectively sought judgment as a
2 matter of law. Such Motion was based on the contention that the Plaintiffs had failed
3 to make a prima facie case, due to the lack of standard of care and causation
4 testimony, to a reasonable degree of medical probability.

5 The Defendants did not make a motion at the close of the evidence, for
6 judgment as a matter of law. There was some discussion with Mr. Lemons, who
7 represented Dr. Park, on January 21, 2014, with regard to the standard to which an
8 economic expert must testify. The Court allowed the economic expert's testimony,
9 even though it was not offered to a reasonable degree of medical probability, because
10 the Court found such testimony to be based upon the expert's expertise, and to satisfy
11 the *Hallmark* requirements. (See *FCH1, LLC* at pg. 5). There was no additional
12 request from any attorney or party for judgment as a matter of law, with regard to the
13 argument that Dr. Pallos' testimony was not stated to the necessary standard. The
14 *Lehtola* case seems to indicate that a motion must be made at the close of the
15 evidence but this Court does not find that the state of the evidence, with regard to that
16 issue, was any different at the close of the evidence than it was at the close of the
17 Plaintiff's case in chief. Additionally, Rule 50 indicates that a motion for judgment as
18 a matter of law "may be made at the close of the evidence offered by the nonmoving
19 party *or* at the close of the case." (NRCP 50[A][2], emphasis added). An additional
20 distinction between the present case and the *Lehtola* case, is that the Judge in that
21 case reserved ruling on the motion for judgment as a matter of law, which was made
22 at the close of Plaintiff's case, and then did not rule on it at the end of the Trial either.
23 Consequently, it could not provide the pre-requisite for renewal of a motion for
24 judgment as a matter of law. In the present case, the Court denied the Defendant's
25 motion for judgment as a matter of law made at the close of the Plaintiffs' case.

26 **CONCLUSION.**

27 Based upon the foregoing, and good cause appearing, this Court concludes that
28 although Defendants called their motions "41(b)" motions, instead of "50(a)" motions,

1 the Defendants' Motions to Dismiss, stated pursuant to NRCP 41(b), were effectively
2 motions for judgment as a matter of law. Consequently, they were sufficient to form
3 the basis for an NRCP 50(b) "renewal" of a Motion for Judgment as a Matter of Law.

4 After considering the relevant trial transcripts, the Court concludes that Dr.
5 Pallos, who was the Plaintiffs' only standard of care and causation expert, failed to
6 state his opinions to a reasonable degree of medical probability. (With the exception
7 of his opinion relating to informed consent, which the Court struck at the time of Trial
8 as having no foundation). The Court further concludes that a medical expert's
9 testimony "regarding standard of care and causation must be stated to a reasonable
10 degree of medical probability," (*Morsicato*, at pg. 158), and that the case of *FCH1*,
11 *LLC v. Rodriguez*, 130 Nev. Adv. Op. 46 (Nev. 2014), did not overrule the specific
12 holding of *Morsicato*.

13 Although the Court is reluctant to do so, based upon the fact that the Plaintiffs
14 failed to establish the standard of care, a breach of the standard of care, or causation,
15 to a reasonable degree of medical probability, the Court has no choice but to grant the
16 Defendant's Motion for Judgment as a Matter of Law, vacate the Jury's Verdict, and
17 enter Judgment as a Matter of Law in favor of the Defendants. The Defendants'
18 alternative Motion for Remittitur is rendered Moot. Consequently, and good cause
19 appearing therefor,

20 Defendant Lee d/b/a Summerlin Smiles' Motion for Judgment as a Matter of
21 Law is hereby **GRANTED**;

22 Defendant Florida Traivai's Motion for Judgment as a Matter of Law is hereby
23 **GRANTED**.

24 DATED this 16 day of July, 2014.


25 
26 JERRY A. WIESE II
27 DISTRICT COURT JUDGE
28 DEPARTMENT XXX
Case A656091

EXHIBIT “B”

EXHIBIT “B”



CLERK OF THE COURT

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10 Attorneys for Plaintiff

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

13 SVETLANA SINGLETARY, individually, as
14 the Representative of the Estate of
15 REGINALD SINGLETARY, and as parent
16 and legal guardian of GABRIEL L.
17 SINGLETARY, a Minor,

18 Plaintiff,

19 v.

20 TON VINH LEE, DDS, individually,
21 FLORIDA TRAIVAI, DMD, individually, JAI
22 PARK, DDS, individually; TON V. LEE,
23 DDS, PROF. CORP., a Nevada Professional
24 Corporation d/b/a SUMMERLIN SMILES,
25 DOE SUMMERLIN SMILES EMPLOYEE,
26 and DOES I through X and ROE
27 CORPORATIONS I through X, inclusive,

28 Defendants.

Case No.: A-12-656091-C
Dept. No.: 30

**JUDGMENT ON JURY VERDICT
FOR DEFENDANT TON VINH
LEE, DDS**

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EXHIBIT "C"

EXHIBIT "C"

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Settlement – Verdict

Settlement/Verdict

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Recent Settlements and Verdicts

DENTAL MALPRACTICE/WRONGFUL DEATH – PLAINTIFF'S VERDICT \$3.4M, 2014

Description: Singletary v. Ton Vinh Lee, DDS, et al.

A dental malpractice-based wrongful death action that arose out of the death of Decedent Reginald Singletary following the extraction of the No. 32 wisdom tooth by Defendants on or about April 16, 2011. Plaintiff sued the dental office, Summerlin Smiles, the owner, Ton Vinh Lee, DDS, and the treating dentists, Florida Traivai, DMD and Jai Park, DDS, on behalf of the Estate, herself and minor son.

NEGLIGENCE/WRONGFUL DEATH – SETTLEMENT, 2014

Description: Lavoll v. Jack in the Box, Inc.

A negligence-based wrongful death action that arose out of the shooting of Decedent Brittney Lavoll by Third-Party Defendant, Kevin Gipson, on March 25, 2010 in or near the parking lot of Jack in the Box, located at 7510 West Lake Mead Boulevard, Las Vegas, Nevada 89128.

MOTOR VEHICLE ACCIDENT – SETTLEMENT, 2014

Description: Benefraim v. Colorado Casualty Insurance Company

A negligence-based bad faith action that arose out of a motor vehicle accident that occurred on February 18, 2011. Plaintiff was a 70 year old restrained passenger in the vehicle. There was moderate damage to both vehicles as a result of the subject motor vehicle accident.

SLIP AND FALL – SETTLEMENT, 2014

Description: Shanko v. Sunrise Mountain View Hospital d/b/a Mountain View Hospital

A negligence-based action that arose out of a slip and fall incident that occurred on July 7, 2011 in the cafeteria of Mountain View Hospital. Plaintiff slipped and fell due to liquid on the floor.

MINOR MOTOR VEHICLE ACCIDENT – PLAINTIFF'S VERDICT \$12,597, 2013

Description: Gomez v. Caldejon, et al.

A negligence-based action that arose out of a motor vehicle accident that occurred in a parking lot on September 30, 2010. There was approximately \$54.00 in property damage and \$4,857.00 in medial specials.

MINOR MOTOR VEHICLE ACCIDENT – SETTLEMENT, 2011

Description: Corbett v. Nestor Jonathan Mendez, et al.

A negligence-based action that arose out of a motor vehicle accident. There was minor property damage.

MODERATE MOTOR VEHICLE ACCIDENT – PLAINTIFF'S VERDICT \$57K, 2011

Description: Mesgun v. James Jordan, et al.

A negligence-based action that arose out of a motor vehicle accident that occurred on July 16, 2008. Following the trial of this matter, Defendants' appealed. A settlement was reached during the Supreme Court Settlement Conference.

Patin Law Group, PLLC

6671 S. Las Vegas Boulevard, Suite 210

Las Vegas, NV 89119

Ph: 702.461.5241

Fx: 702.728.2782

Email: info@patinlaw.com

Se habla espanol

Ingrid Patin



Map



Request a Free Case Review

Full Name *

Email Address *

Phone Number *

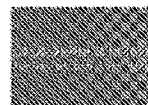
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EXHIBIT “D”

EXHIBIT “D”

Attorney or Party without Attorney: PRESCOTT T. JONES, ESQ. NBN 11617 BREMER WHYTE BROWN & O'MEARA LLP 1160 N. TOWN CENTER DRIVE # 250 LAS VEGAS, NV 89144 Telephone No: (702) 258-6665 FAX No: (702) 258-6662				For Court Use Only	
Attorney for: Plaintiff				Ref. No. or File No.:	
Insert name of Court, and Judicial District and Branch Court: EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA					
Plaintiff: TON VINH LEE Defendant: INGRID PATIN					
AFFIDAVIT OF SERVICE		Hearing Date:	Time:	Dept/Div:	Case Number: A723134

1. At the time of service I was at least 18 years of age and not a party to this action.

2. I served copies of the SUMMONS; COMPLAINT

3. a. Party served:

b. Person served:

PATIN LAW GROUP, PLLC

RAPHAEL RAY, SENIOR ASSOCIATE/pursuant to NRS 14.020, as a person of suitable age and discretion at the above address, which address is of the resident agent as shown on the current certificate of designation filed with the Secretary of State

4. Address where the party was served:

c/o INGRID PATIN, ESQ., REGISTERED AGENT
 6671 S. LAS VEGAS BLVD. #210
 LAS VEGAS, NV 89119

5. I served the party:

a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Wed., Aug. 19, 2015 (2) at: 11:13AM

7. Person Who Served Papers:

a. LEIDY P. SERNA (R-029907)

Fee for Service:

I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

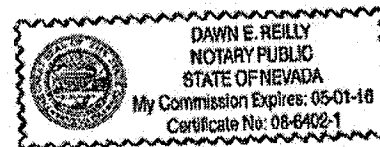


First Legal Investigations*
 704 S. Sixth Street
 Las Vegas, NV 89101
 Telephone (702) 671-4002
 Fax (702) 974-2223

*Attorney Support & Investigations provided by First Legal Investigations NV 11-00-1402

8-28-15
 (Date)

(Signature)



8. STATE OF NEVADA, COUNTY OF Clark

Subscribed and sworn to (or affirmed) before me on this 28 day of August by LEIDY P. SERNA (R-029907).
 proved to me on the basis of satisfactory evidence to be the person who appeared before me.

AFFIDAVIT OF SERVICE

(Notary Signature)

8769994 .bremer.725808

EXHIBIT “E”

EXHIBIT “E”

Attorney or Party without Attorney: PRESCOTT T. JONES, ESQ. (NBN 11617) BREMER WHITLEY BROWN & COMPANY LLP 1160 N. TOWN CENTER DRIVE # 250 LAS VEGAS, NV 89144 Telephone No: (702) 258-6665 FAX No: (702) 258-6662		For Court Use Only	
Attorney for: Plaintiff Insert name of Court, and Judicial District and Branch Court: DISTRICT COURT CLARK COUNTY, NEVADA Plaintiff: TON VINH LEE Defendant: INGRID PATIN		Ref. No. or File No.: Case Number: A723134	
AFFIDAVIT OF SERVICE		Hearing Date:	Time:
Dept/Div:		Case Number:	

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS, COMPLAINT
3. a. Party served: INGRID PATIN, AN INDIVIDUAL
 b. Person served: party in item 3. a.
4. Address where the party was served: 7791 GALLOPING HILLS STREET
 LAS VEGAS, NV 89101
5. I served the party:
 a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Wed., Sep. 16, 2015 (2) at: 10:23AM

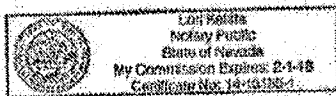
7. Person Who Served Papers:
 a. DEANNE BELTRAN
 b. FIRST LEGAL INVESTIGATIONS
 2070 N. TUSTIN AVENUE, 2ND FLOOR
 SANTA ANA, CA 92705
 c. (714) 550-1375

Fee for Service:

I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

9/18/15
 (Date)

[Signature]
 (Signature)



8. STATE OF NEVADA, COUNTY OF

Clark

Subscribed and sworn to (or affirmed) before me on this 18 day of Sept by DEANNE BELTRAN
 proved to me on the basis of satisfactory evidence to be the person who appeared before me.

AFFIDAVIT OF SERVICE

(Notary Signature)

bremer 731370

EXHIBIT “F”

EXHIBIT “F”

Attorney or Party without Attorney: PRESCOTT T. JONES, ESQ. (NBN 11617) BREMER WHITELBROWN & O'NEARLEY 1169 N. TOWN CENTER DRIVE # 250 LAS VEGAS, NV 89144 Telephone No: (702) 258-6665 FAX No: (702) 258-6662		For Court Use Only	
Attorney for: Plaintiff Insert name of Court, and Judicial District and Branch Court: DISTRICT COURT CLARK COUNTY, NEVADA Plaintiff: TON VINH LEE Defendant: INGRID PATIN		Ref. No. or File No.:	
AFFIDAVIT OF SERVICE		Hearing Date:	Case Number: A723134

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS; COMPLAINT
3. a. Party served: INGRID PATIN, AN INDIVIDUAL
 b. Person served: party in item 3. a.
4. Address where the party was served: 7791 GALLOPING HILLS STREET
 LAS VEGAS, NV 89101
5. I served the party:
 a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Wed., Sep. 16, 2015 (2) at: 10:23AM

7. Person Who Served Papers:
 - a. DEANNE BELTRAN
 - b. FIRST LEGAL INVESTIGATIONS
 2070 N. TUSTIN AVENUE, 2ND FLOOR
 SANTA ANA, CA 92705
 - c. (714) 550-1375

Fee for Service:
 I Declare under penalty of perjury under the laws of the State of NEVADA that the foregoing is true and correct.

9/18/15
 (Date)

[Signature]
 (Signature)

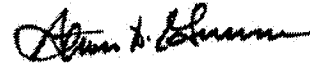


8. STATE OF NEVADA, COUNTY OF Clark
 Subscribed and sworn to (or affirmed) before me on this 18 day of Sept by DEANNE BELTRAN
 proved to me on the basis of satisfactory evidence to be the person who appeared before me.

AFFIDAVIT OF SERVICE

Notary Signature

9/27/15 bremer 731170



CLERK OF THE COURT

1 CHRISTIAN M. MORRIS, ESQ.
2 Nevada Bar No. 11218
3 NETTLES LAW FIRM
4 1389 Galleria Drive, Suite 200
5 Henderson, Nevada 89014
6 Telephone: (702) 434-8282
7 Facsimile: (702) 434-1488
8 briannettles@nettleslawfirm.com
9 christianmorris@nettleslawfirm.com
10 Attorneys for Plaintiff

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

13 TON VINH LEE, an individual,

14 Plaintiff,

15 v.

16 INGRID PATIN, an individual, and
17 PATIN LAW GROUP, PLLC, a Nevada
18 Professional LLC,

19 Defendants.

CASE NO. A-15-723134
DEPARTMENT NO. IX

DEFENDANTS' REPLY TO
PLAINTIFF'S OPPOSITION TO
MOTION TO DISMISS

20 Defendants, Ingrid Patin and Patin Law Group, PLLC (hereinafter, "Defendants"), by
21 and through their counsel of record, Christian M. Morris, Esq. of the Nettles Law Firm, hereby
22 submits this Reply to Plaintiff's Opposition to Defendant's Motion to Dismiss and moves this
23 honorable Court to dismiss Plaintiff's Complaint for Insufficiency of Service of Process and
24 Failure to State a Claim Upon Which Relief Can Be Granted pursuant to Nev.R.Civ.P. 12(b)(5),
25 or in the alternative, Motion for Summary Judgment.

26 ///

27 ///

28 ///

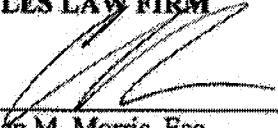
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1389 Galleria Drive, Suite 200
Henderson, NV 89014
702.434.8282 / 702.434.1488 (fax)

1 This Reply is made and based upon the papers and pleadings on file with the Court, the
2 exhibits attached hereto, the following Memorandum of Points and Authorities, and any oral
3 argument the Court may entertain at the hearing on the Motion.

4 Dated this 6th day of October, 2015.

6 NETTLES LAW FIRM

7
8 
9 Christian M. Morris, Esq.
10 Nevada Bar No. 011218
11 1389 Galleria Drive, Suite 200
Henderson, NV 89014
Attorneys for Defendants

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 I.

14 **INTRODUCTION**

15 As this Court is aware, Plaintiff filed the instant action as a defamation per se claim
16 against Defendants Ingrid Patin, individually, and Patin Law Group, PLLC alleging that
17 "Defendants posted a false and defamatory statement on the 'Recent Settlements and Verdicts'
18 portion of their business website, PatinLaw.com." From a reading of Plaintiff's Opposition, it
19 appears that this action is solely based upon the current procedural posture of the underlying
20 matter, Singletary, et al. v. Ton V. Lee, DDS, et al. However, the current procedural posture of
21 the underlying matter does not change the fact that the statement posted on Defendants' website
22 is true and not defamatory in nature, as it accurately depicts a judicial proceeding.

23
24 As previously stated, Defendant Ingrid Patin served as the lead counsel on the
25 underlying matter, and conducted a seven day jury trial which resulted in a Plaintiff's verdict in
26 the amount of Three Million Four Hundred Seventy Thousand Dollars and Zero Cents
27 (\$3,470,000.00) on behalf of Singletary and her minor son. There is no dispute that this
28

1 occurred, as corroborated in Plaintiff's Opposition which states "The medical malpractice and
2 wrongful death action proceeded through a seven day trial in the Eighth Judicial District Court
3 commencing on January 13, 2014. At conclusion of the trial the jury rendered a verdict in favor
4 of Singletary." Although Plaintiff fails to state the amount of the verdict in his rendition of the
5 facts, Plaintiff does not dispute the fact that this occurred, and is in fact the truth. This truth is
6 further supported by the Special Verdict Form that was filed in open court on January 22, 2014
7 (See Special Verdict Form, attached to Defendants' Motion to Dismiss as Exhibit B), as well as
8 the Judgment on Jury Verdict (See Judgment on Jury Verdict, attached to Defendants' Motion
9 to Dismiss as Exhibit D).

11 Furthermore, Defendants have not "failed to or otherwise refused to delete the incorrect,
12 misleading, and defamatory statement on the Patin Law Group website," as asserted by Plaintiff
13 in his Opposition. In fact, Defendants revised the statement to read that the matter was on
14 appeal, stated as follows:

16 DENTAL MALPRACTICE/WRONGFUL DEATH - PLAINTIFF'S
17 VERDICT, 2014

18 DESCRIPTION: SINGLETARY V. TON VINH LEE, DDS, ET AL.

19 A dental malpractice-based wrongful death action that arose out of the
20 death of Decedent Reginald Singletary following the extraction of the No.
21 32 wisdom tooth by Defendants on or about April 16, 2011. Plaintiff sued
the dental office, Summerlin Smiles, the owner, Ton Vinh Lee, DDS, and
the treating dentists, Florida Traivai, DDS and Jai Park, DDS, on behalf of
the Estate, herself and minor son.

This matter is on appeal.

22 (See Printout from Patin Law Group, attached hereto as Exhibit A). Although Plaintiff did not
23 request this revision nor was it required by the law or the State Bar of Nevada, Defendants
24 revised the statement contained on the website, as periodic updates are performed on the
25 website.

27 Based upon the fact that Defendants' statement concerning the verdict received on
28 January 25, 2014 in the matter of the underlying matter, Singletary, et al. v. Ton V. Lee, DDS,

et. al, is *true*, Plaintiff's Complaint should be dismissed with prejudice.

II.

LEGAL ARGUMENT

A. Dismissal of Plaintiff's Defamation Claim Is Appropriate As A Matter of Law

Should this Court determine that the Motion to Dismiss is proper for its consideration and fails to consider any admissible documents which were submitted in support of Defendants' Motion, then NRCP 12(b)(5) is applicable and Plaintiff's Complaint should be dismissed with prejudice.

A statement is only defamatory if it contains a factual assertion that can be proven false. See Pope v. Motel 6, 114 P.3d 277, 282 (Nev. 2005) ("A defamation claim requires demonstrating a false and defamatory statement of fact..."). Whether a statement contains a defamatory factual assertion is a question of law for the court to determine. Rodriguez v. Panayiotou, 314 F.3d 979 (9th Cir. 2002); see also Branda v. Sanford, 97 Nev. 643, 646, 637 P.2d 1223, 1225 (1981).

The only fact in the instant action is the statement posted by Defendants on the website, which reads:

DENTAL MALPRACTIC/WRONGFUL DEATH – PLAINTIFF'S VERDICT, 2014

DESCRIPTION: SINGLETARY V. TON VINH LEE, DDS, ET AL.

A dental malpractice-based wrongful death action that arose out of the death of Decedent Reginald Singletary following the extraction of the No. 32 wisdom tooth by Defendants on or about April 16, 2011. Plaintiff sued the dental office, Summerlin Smiles, the owner, Ton Vinh Lee, DDS, and the treating dentists, Florida Traival, DDS and Jai Park, DDS, on behalf of the Estate, herself and minor son.

This matter is on appeal.

This statement does not contain a defamatory factual assertion, as every fact contained in the statement is *true*, and accurately depicts a judicial proceeding. Based upon the fact that Plaintiff can prove no set of facts that would entitle him to relief, Plaintiff's Complaint should be dismissed with prejudice.

///

///

1 **B. Defendants' Motion To Dismiss Should Be Treated As A Motion for Summary**
2 **Judgment If This Court Relies Upon Exhibits Or Materials Outside The Pleadings**

3 In the alternative, Defendants moved this Court to consider the Motion to Dismiss as a
4 Motion for Summary Judgment based upon the fact that Defendants submitted numerous
5 admissible documents in support of the dismissal of Plaintiff's Complaint for failure to state a
6 claim upon which relief can be granted. Nevada Rule of Civil Procedure 56 allows this Court to
7 enter summary judgment when there is no genuine issue of material fact to be resolved, and the
8 moving party is entitled to judgment as a matter of law. There is no genuine issue of material
9 fact if there is insufficient evidence to sustain a judgment for the non-moving party. See
10 Matsushita Elec. Indus. Co. v. Venus Radio Corp., 475 U.S. 574 (1986); see also Celotex Corp.
11 v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

12 Parties seeking to defeat summary judgment cannot stand on their pleadings. See British
13 Airways Bd. v. Boeing Co., 585 F.2d 946, 952 (9th Cir. 1978) (noting that affidavits that do not
14 affirmatively demonstrate personal knowledge are insufficient). The non-moving party must
15 present admissible evidence which is of sufficient caliber or quantity to create a genuine issue
16 of material fact. Anderson 477 U.S. at 254. Accordingly, the non-moving party must do more
17 than "simply show that there is some metaphysical doubt" as to the operative facts in order to
18 avoid summary judgment. Id. at 247.

19 Summary Judgment is a preferred remedy in defamation cases such as the instant matter.
20 See e.g. Time, Inc. v. McManey, 406 F.2d 565, 566 (5th Cir.) (citing Dombrowski v. Pfister,
21 380 U.S. 479 (1965) (stating "that the failure to dismiss a libel suit might necessitate long and
22 expensive trial proceedings, which, if not really warranted, would themselves offend the
23 principles [of free express] because of the chilling effect of such litigation."). Guided by these
24 precepts, many judges have declared that summary judgment is to be freely used to protect
25 individuals against the inhibition that would result from their having to defend themselves in
26 27 28

unnecessary trials. See e.g. Wash. Post Co. v. Keogh, 365 F.2d 965, 968 (D.C. Cir. 1966) (citing Smith v. California, 361 U.S. 147 (1959)). In Keogh, the court aptly stated:

Summary Judgment serves important functions which would be left undone if courts too restrictively viewed their power. Chief among these are avoidance of long and expensive litigation productive of nothing, and curbing the danger that the threat of such litigation will be used to harass or coerce a settlement. *In the First Amendment area, summary procedures are even more essential.* For the sake here, if harassment succeeds, is free debate.

Id. (emphasis added). The Ninth Circuit Court of Appeals mirrored this view stating:

We agree with our brothers of the District of Columbia and Fifth Circuit that it is important that judges focus attention on the summary judgment, directed verdict and judgment notwithstanding the verdict procedures in libel actions. When civil cases may have a chilling effect on the First Amendment rights, special care is appropriate. Thus, a judicial examination at these stages of the proceeding, closely scrutinizing the evidence to determine whether the case should be terminated in a defendant's favor, provides a buffer against possible First Amendment interferences.

Guam Fed'n of Teachers, Local 1581, A.F.T. v. Ysrael, 492 F.2d 438, 441 (9th Cir. 1974).¹

Here, this matter is sufficiently ripe for adjudication as a matter of law. The undisputed facts material to the Defendants' request for summary judgment are as follows:

¹ Reiterating this sentiment, the Ninth Circuit stated "because unnecessarily protracted litigation would have a chilling effect upon the exercise of First Amendment rights, speedy resolution of cases involving free speech is desirable. Therefore, defamation actions should be disposed of at the earliest possible stage of the proceedings if the facts as alleged are insufficient as a matter of law to support a judgment for the plaintiff." Dorsey v. National Enquirer, Inc., 973 F.2d 1431, 1435 (9th Cir. 1992) (citing Good Government Group of Seal Beach, Inc. v. Superior Court, 586 P.2d 572 (CA 1978)). The Supreme Court of Kentucky has similarly suggested that although there is a preference for resolution of defamation action through a motion for summary judgment stating that "[c]ourts should resolve free speech litigation more expeditiously whenever possible. The perpetuation of meritless actions, with their attendant costs, chills the exercise of press freedom. To avoid this, trial courts should not hesitate to use summary judgment procedures where appropriate to bring such actions to a speedy end." Welch v. American Publishing Co. of Kentucky, 3 S.W.3d 724, 729 (KY 1999) (citing Maressa v. New Jersey Monthly, 89 N.J. 176, 445 A.2d 376, 387 (1982) (emphasis added)).

1. Defendant Ingrid Patin, Esq. served as lead counsel in the underlying matter, Singletary, et al. v. Ton Vinh Lee, DDS, et al.
2. That the appropriately abbreviated caption for the underlying matter is Singletary, et al. v. Ton Vinh Lee, DDS, et al.
3. That Svetlana Singletary, individually, and as the Representative of the Estate of Reginald Singletary, and as parent and legal guardian of Gabriel L. Singletary, a minor, was the Plaintiff in the underlying matter represented by Ingrid Patin, Esq.
4. That Ton Vinh Lee, DDS, Florida Traivai, DMD, Jai Park, DDS and Ton V. Lee, DDS d/b/a Summerlin Smiles were named as Defendants in the underlying matter.
5. That the underlying matter came on for trial before the Eighth Judicial District Court and a jury on January 13, 2014.
6. That at the conclusion of the trial of the matter, the jury rendered a verdict in favor of Plaintiffs in the amount of Three Million Four Hundred Seventy Thousand Dollars and Zero Cents (\$3,470,000.00).
7. A Special Verdict Form that was filed in open court on January 22, 2014. (See Special Verdict Form, attached to Defendants' Motion to Dismiss as **Exhibit B**).
8. A Judgement on Jury Verdict was filed on behalf of Plaintiffs in the underlying matter on April 29, 2014. (See Judgment on Jury Verdict, attached to Defendants' Motion to Dismiss as **Exhibit D**).

The focus of the instant Motion to Dismiss, or in the Alternative, Motion for Summary Judgment is not whether Plaintiff was damaged. Rather, the instant motion evidences the fact that Plaintiff cannot meet the necessary elements of defamation irrespective of any damages. Specifically, Plaintiff cannot establish that the single statement posted on Defendants' website at issue is: "(1) a *false* and defamatory statement by defendant concerning the plaintiff. . . ." Chowdhry v. NLVH, Inc., 109 Nev. 478, 483, 851 P.2d 459 (1993) (citing Restatement Second

of Torts, § 558 (1977)) (emphasis added). After a seven day trial in January, 2014, the Plaintiffs in the underlying case were collectively awarded Three Million Four Hundred Seventy Thousand Dollars and Zero Cents (\$3,470,000.00) by a jury. (See Special Verdict Form, attached to Defendants' Motion to Dismiss as Exhibit B). Despite the fact that the underlying matter is currently on appeal, this does not change the fact that the statement posted on Defendants' website is *true* and not defamatory in nature.

C. The Nevada Rules of Professional Conduct Are Not Designed To Be A Basis for Civil Liability

Prior to the filing of Plaintiff's Complaint, Plaintiff Ton Vinh Lee, DDS filed a grievance with the State Bar of Nevada for alleged violations of Nevada Rules of Professional Conduct 7.2 against Defendant Ingrid Patin, Esq. Whether or not a violation of Rule 7.2 occurred was reviewed by the State Bar of Nevada. An investigation of the allegations ensued, and a disciplinary assessment of Defendants' conduct - posting of the statement on the website - was completed. The State Bar of Nevada did not open a formal file, and closed the matter. (See Letter from the State Bar of Nevada dated August 7, 2015, attached hereto as Exhibit B). The State Bar did not impose sanctions, invoke disciplinary action, hold a disciplinary proceeding, require that Defendants alter or amend the statement, or engage in any other action under its disciplinary authority. *Id.* Thus, Defendants did not violate Nevada Rules of Professional Conduct 7.2 as asserted by Plaintiff in support of his Opposition to Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment.

Nevada Rules of Professional Conduct are clear with regard to the application of such rules in civil actions. Specifically, Nevada Rules of Professional Conduct state, in pertinent part, as follows:

Rule 1.0A. Guidelines for Interpreting the Nevada Rules of Professional Conduct.

(a) *The Rules of Professional Conduct are rules of reason. . .*

(c) *Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process.* The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

(d) *Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached.* In addition, *violation of a Rule does not necessarily warrant any other nondisciplinary remedy*, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. *They are not designed to be a basis for civil liability.* Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, *does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule.* Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

Nevada Rules of Professional Conduct 1.0A (emphasis added).

Based on the foregoing, Plaintiff's assertions that Defendants were in "direct violation" of the Nevada Rules of Professional Conduct when Defendants posted the subject statement on the website, are without merit. The State Bar of Nevada, which is the disciplinary authority for violations of the Nevada Rules of Professional Conduct, did not find the statement to be in violation of Rule 7.2 concerning advertising.

Additionally, Nevada Rules of Professional Conduct 7.2 does not support a civil action; specifically, an alleged violation of Rule 7.2 does not support a civil action for defamation or defamation per se. Nevada Rules of Professional Conduct 1.0A. Moreover, an alleged violation of Nevada Rules of Professional Conduct 7.2 does not create a presumption that Defendants engaged in defamatory behavior. *Id.* Lastly, an alleged violation of an ethical rule, by itself, does

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1 not provide a basis for a lawsuit or support an independent cause of action. Id. Whether or not
2 Defendants complied with Nevada Rules of Professional Conduct Rule 7.2 does not give rise to a
3 civil action for defamation. Therefore, this Court should not consider any alleged violation of
4 the Nevada Rules of Professional Conduct when reviewing the instant Motion to Dismiss, or in
5 the Alternative, Motion for Summary Judgment, as it is not a basis for this action or an element
6 to establish a prima facie case of defamation.


7
8 **III.**

9 **CONCLUSION**

10 Plaintiff can prove no set of facts sufficient to establish the elements of defamation
11 against Defendants. Thus, dismissal of Plaintiff's Complaint for failure to state a claim upon
12 which relief can be granted is proper. Based upon the foregoing, Defendants respectfully
13 request this Honorable Court to issue an Order dismissing, with prejudice, Plaintiff's
14 Complaint.

15 DATED this 6th day of October, 2015.

16 **NETTLES LAW FIRM**

17
18
19 
20 Christian M. Morris, Esq.
21 Nevada Bar No. 011218
22 1389 Galleria Drive, Suite 200
23 Henderson, NV 89014
24 Attorneys for Defendants
25
26
27
28

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PROOF OF SERVICE

Pursuant to NEFCR 9, NRCP (b) and EDCR 7.26, I certify that on this date, I served the forgoing *Defendant's Reply to Plaintiff Opposition to Motion to Dismiss* on the following parties by electronic transmission through the Wiznet system on this 10th day of October, 2015.

Prescott T. Jones, Esq.
Jessica Friedman, Esq.
BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
Telephone: (702) 258-6665
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pjones@bremerwhyte.com

Attorneys for Plaintiff
TON VINH LEE



An Employee of Nettles Law Firm

EXHIBIT A

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Settlement – Verdict

Settlement/Verdict

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Recent Settlements and Verdicts

DENTAL MALPRACTICE/WRONGFUL DEATH – PLAINTIFF'S VERDICT, 2014
Description: Singletary v. Ton Vinh Lee, DDS, et al.

A dental malpractice-based wrongful death action that arose out of the death of Decedent Reginald Singletary following the extraction of the No. 32 wisdom tooth by Defendants on or about April 16, 2011. Plaintiff sued the dental office, Summerlin Smiles, the owner, Ton Vinh Lee, DDS, and the treating dentists, Florida Traivai, DMD and Jai Park, DDS, on behalf of the Estate, herself and minor son. The matter is currently on appeal.

NEGLIGENCE/WRONGFUL DEATH – SETTLEMENT, 2014
Description: Lavoll v. Jack in the Box, Inc.

A negligence-based wrongful death action that arose out of the shooting of Decedent Brittney Lavoll by Third-Party Defendant, Kevin Gipson, on March 25, 2010 in or near the parking lot of Jack in the Box, located at 7510 West Lake Mead Boulevard, Las Vegas, Nevada 89128.

EXHIBIT B

STATE BAR OF NEVADA



August 7, 2015

Ingrid Patin, Esq.
7925 W. Russell Road, No. 401714
Las Vegas, NV 89140

RE: Grievance / Vinh Lee Ton
Reference No. OBC15-0408

Dear Ms. Patin:

Thank you for your letter of response in the above-referenced matter. Please allow this letter to inform you that based upon the correspondence received, the Office of Bar Counsel has decided not to open a formal file in this grievance. As such, please consider this matter closed.

Your cooperation in this matter is appreciated.

Sincerely,

Phillip J. Pattee
Assistant Bar Counsel

3100 W. Charleston Blvd.
Suite 100
Las Vegas, NV 89102
phone 702.382.2206
cell 800.254.2287
fax 702.385.2878

9456 Double B Blvd., Ste. B
Reno, NV 89521-5977
phone 775.329-6100
fax 775.329.0522

www.nubar.org

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Tort

COURT MINUTES

October 14, 2015

A-15-723134-C Ton Lee, Plaintiff(s)
vs.
Ingrid Patin, Defendant(s)

October 14, 2015 9:00 AM Motion to Dismiss

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison

REPORTER:

PARTIES

PRESENT: Jones, Prescott T. Attorney
Morris, Christian Attorney

JOURNAL ENTRIES

- Court made a record of all documents reviewed. Ms. Morris advised an anti-slap law may also be applicable and noted the bar complaint has been dealt with. Court advised it does not think professional conduct is relevant and the motion is really a Motion for Summary Judgment. Court reviewed the statement made and noted the verdict was against a dba, which is not a legal entity. Court requested information as to who owns the dba corporation. Ms. Morris advised she can get the information from the Secretary of State, noting that she believes Summerlin Smiles is owned by Ton V. Lee. Colloquy regarding the owner. Mr. Jones argued there is no verdict against his client as it was vacated by the Judge, although it is on appeal. Court made a record of Exhibit B and the 12 page order it has reviewed. Colloquy regarding the documenting statement. Mr. Jones objected to the statement of facts since they did not have an opportunity to respond. COURT ORDERED, motion DENIED WITHOUT PREJUDICE, noting any further motions must be re-filed. Further, Court noted if the Motion is treated as a Motion for Summary Judgment the motion is denied 56F. Mr. Jones to prepare the order and submit to opposing counsel prior to final submission to the Court.



CLERK OF THE COURT

1 PRESCOTT T. JONES, ESQ.
Nevada State Bar No. 11617
2 AUGUST B. HOTCHKIN, ESQ.
Nevada State Bar No. 12780
3 BREMER WHYTE BROWN & O'MEARA LLP
1160 N. TOWN CENTER DRIVE
4 SUITE 250
LAS VEGAS, NV 89144
5 TELEPHONE: (702) 258-6665
FACSIMILE: (702) 258-6662
6 pjones@bremerwhyte.com
ahotchkim@bremerwhyte.com
7 Attorneys for Plaintiff,
8 TON VINH LEE

9
10 DISTRICT COURT
11 CLARK COUNTY; NEVADA

12 TON VINH LEE, an individual) Case No.: A723134
13)
Plaintiff,) Dept. No.: IX
14 vs.)
15 INGRID PATIN, an individual, and PATIN) PLAINTIFF'S SUPPLEMENT TO
LAW GROUP, PLLC, a Nevada Professional) OPPOSITION TO DEFENDANTS'
16 LLC,) MOTION TO DISMISS
17 Defendants.) Date of Hearing: October 14, 2015
18) Time of Hearing: 9:00 A.M.

19 COMES NOW Plaintiff TON VINH LEE, by and through his attorneys of records, Prescott
20 T. Jones, Esq. and August B. Hotchkim, Esq. of the law firm BREMER WHYTE BROWN &
21 O'MEARA LLP, and hereby submits this Supplement to its Opposition to Defendants' Motion to
22 Dismiss on file herein.

23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

OFFICIAL ELECTRONIC SIGNATURE
OF BREMER WHYTE BROWN &
O'MEARA LLP
1160 N. TOWN CENTER DRIVE
SUITE 250
LAS VEGAS, NV 89144
(702) 258-6665

14333545923CFSupp to Opp to Def Mot to Dismiss.doc

1 This Supplement is being filed pursuant to a request of this Court in order to place the
2 September 19, 2014 "Docketing Statement Civil Appeals," attached hereto as Exhibit "A", on the
3 record.

4 Dated: October 14, 2015

BREMER WHYTE BROWN & O'MEARA LLP



By: _____

Prescott T. Jones, Esq.
Nevada State Bar No. 11617
August B. Hotchkin, Esq.
Nevada State Bar No. 12780
Attorney for Plaintiff,
TON VINH LEE

Exhibit "A"

IN THE SUPREME COURT OF THE STATE OF NEVADA

SVETLANA SINGLETARY,
INDIVIDUALLY, AND AS THE
REPRESENTATIVE OF THE ESTATE OF
REGINALD SINGLETARY, AND AS
PARENT AND LEGAL GUARDIAN OF
GABRIEL L. SINGLETARY, A MINOR,

Appellants/Cross-Respondents,

vs.

TON VINH LEE, DDS, INDIVIDUALLY,
FLORIDA TRAI VAI, DMD,
INDIVIDUALLY, JAI PARK, DDS,
INDIVIDUALLY, TON V. LEE, DDS,
PROF. CORP., A NEVADA PROFESSIONAL
CORPORATION D/B/A SUMMERLIN
SMILES,

Respondents/Cross-Appellants.

Electronically Filed
Sep 19 2014 03:12 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

No. 66278

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

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

WARNING

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

- 1 -

MAC\13785-001 2314465_1 9/19/2014 2:23 PM
Revised 9/30/11

Docket 66278 Document 2014-31273

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

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

1. Judicial District Eighth Department XXX
County Clark Judge Jerry A. Wiese II
District Ct. Docket No. A656091

2. **Attorney filing this docketing statement:**

Attorney Micah S. Echols, Esq. Telephone 702-382-0711
Firm Marquis Aurbach Coffing
Address 10001 Park Run Drive, Las Vegas, NV 89145

and

Attorneys Lloyd W. Baker, Esq. and Ingrid Patin, Esq.
Telephone 702 360-4949
Firm Baker Law Offices
Address 500 S. Eighth Street, Las Vegas, NV 89101

Clients Svetlana Singletary, individually, and as the Representative of the Estate of Reginald Singletary, and as parent and legal guardian of Gabriel L. Singletary, a Minor (collectively referred to as, "Plaintiffs" or "Appellants")

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

3. **Attorney(s) representing respondent(s):**

Attorney Jason Friedman, Esq. Telephone 562-888-4151
Firm Stark Friedman & Chapman, LLP
Address 200 W. Sahara, #1401, Las Vegas, NV 89102
Clients Ton Vinh Lee, DDS ("Lee") and Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles ("Summerlin Smiles")

Attorney S. Brent Vogel, Esq. and Amanda J. Brookhyser, Esq.
Telephone 702-893-3383
Firm Lewis Brisbois Bisgaard & Smith LLP
Address 6385 S. Rainbow, Suite 600, Las Vegas, NV 89118

and

Attorney David B. Frederick, Esq. and A. William Maupin, Esq.
Telephone 702-383-8888
Firm Lionel Sawyer & Collins
Address 300 South 4th Street, Suite 1700, Las Vegas, Nevada 89101

Client Florida Traivai, DMD ("Traivai")

(List additional counsel on separate sheet if necessary)

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

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input checked="" type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of Jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify) |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition |
| | (specify) |
| | Order Granting Defendants' |
| | NRCP 50(b) Motions; |
| | Order Granting Costs to Defendant |
| | Lee; and Order Granting Defendant |
| | Traivai's Motion to Retax and |
| | Defendant Lee's Joinder Thereto |

5. Does this appeal raise issues concerning any of the following: N/A.

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights

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

This case was the subject of a writ petition, Traivai, D.M.D. v. Dist. Ct., to the Supreme Court docketed as Case No. 64734.

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

District Court Case No. A656091, Svetlana Singletary v. Ton V. Lee, DDS, et al., which is the subject of the instant appeal.

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

This appeal is taken from a wrongful death suit brought against Defendants by Plaintiffs after the death of Reginald Singletary following dental surgery to extract a wisdom tooth. The jury found for Plaintiffs against Defendants Ton V. Lee, DDS, Prof.Corp. d/b/a Summerlin Smiles and Florida Traivai, DMD, and awarded a total of \$3,470,000. The Judgment on Jury Verdict awarded the total of \$3,470,000, plus interest, and costs in the amount of \$38,042.64 to Plaintiffs.

Defendants Ton V. Lee, DDS, Prof.Corp. d/b/a Summerlin Smiles and Florida Traivai, DMD, filed Rule 50(b) motions for judgment as a matter of law, which were granted, with the result that the District Court vacated the award by the jury.

Defendant Ton Vinh Lee, DDS, filed a motion for costs, which was granted in the amount of \$6,032.83.

Plaintiffs appeal from: (1) the Order [Granting in Part and Denying in Part Defendant Florida Traivai's Motion to Retax Costs and Defendant Ton Vinh Lee, DDS' Joinder Thereto], filed on April 11, 2014; (2) the Judgment on Jury Verdict, filed on April 29, 2014; (3) the Order on Defendant Traivai's and Lee's Motions for Judgment as a Matter of Law Pursuant to NRCp 50(b) and Motion for Remittitur, filed on July 16, 2014; and (4) the Judgment on Jury Verdict for Defendant Ton Vinh Lee, DDS [Granting Costs to Defendant and Dismissing Plaintiffs' Claims], filed on September 11, 2014.

Defendants, Florida Traivai and Ton V. Lee, DDS, Prof.Corp. d/b/a Summerlin Smiles, have each filed separate cross-appeals from the underlying case, which do not appear to be jurisdictionally proper.

Defendant Florida Traivai, DMD filed a Motion for Costs, which was granted in the amount of \$32,053.30, and Defendant Toni V. Lee, DDS, Prof.Corp. d/b/a Summerlin Smiles filed a Motion for Costs, which was granted in the amount of \$6,032.83. Plaintiffs intend to file a separate appeal from the award of costs to Traivai and Summerlin Smiles once written orders have been filed in the District Court and will then file a motion to consolidate the appeals once the second appeal has docketed to this Court.

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

(1) Whether the District Court erred in vacating the jury award based on its determination that Plaintiffs failed to establish the standard of care, a breach of the standard of care, or causation to a reasonable degree of medical probability.

(2) Whether the District Court erred in awarding costs to Defendants.

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

Appellants/Cross-Respondents are not aware of any other similar proceedings pending before this Court.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☒ A substantial issue of first impression
- ☐ An issue of public policy
- ☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain: Whether an NRCP 50(a) motion can be made orally. Whether a District Court denying an NRCP 50(a) motion can then grant an NRCP 50(b) motion without also granting a new trial.

13. Trial. If this action proceeded to trial, how many days did the trial last? 7 days
Was it a bench or jury trial? Jury

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

N/A.

TIMELINESS OF NOTICE ON APPEAL

15. Date of entry of written judgment or order appealed from

- The Order [Granting in Part and Denying in Part Defendant Florida Traivai's Motion to Retax Costs and Defendant Ton Vinh Lee, DDS' Joinder Thereto] was filed on April 11, 2014 and is attached as Exhibit 5.
- The Judgment on Jury Verdict was filed on April 29, 2014 and is attached as Exhibit 6.
- The Order on Defendant Traivai's and Lee's Motions for Judgment as a Matter of Law Pursuant to NRCP 50(b) and Motion for Remittitur was filed on July 16, 2014 and is attached as Exhibit 7.
- The Judgment on Jury Verdict for Defendant Ton Vinh Lee, DDS [Granting Costs to Defendant and Dismissing Plaintiffs' Claims] was filed on September 11, 2014 and is attached as Exhibit 8.

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

16. Date written notice of entry of judgment or order served

- The Notice of Entry of Order [Granting in Part and Denying in Part Defendant Florida Traivai's Motion to Retax Costs and Defendant Ton Vinh Lee, DDS' Joinder Thereto] was filed on April 11, 2014 and is attached as **Exhibit 5**.
- The Notice of Entry of Judgment on Jury Verdict was filed on April 30, 2014 and is attached as **Exhibit 6**.
- The Notice of Entry of Order on Defendant Traivai's and Lee's Motions for Judgment as a Matter of Law Pursuant to NRCP 50(b) and Motion for Remittitur was filed on July 16, 2014 and is attached as **Exhibit 7**.
- The Notice of Entry of Judgment on Jury Verdict for Defendant Ton Vinh Lee, DDS [Granting Costs to Defendant and Dismissing Plaintiffs' Claims] was filed on September 12, 2014 and is attached as **Exhibit 8**

Was service by:

- ☐ Delivery
☒ Mail/electronic/fax

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

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

- ☒ NRCP 50(b) Date of filing May 13, 2014
☐ NRCP 52(b) Date of filing
☒ NRCP 59 Date of filing May 13, 2014

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

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

1. The Order on Defendant Traivai's and Lee's Motions for Judgment as a Matter of Law Pursuant to NRCP 50(b) and Motion for Remittitur was filed on July 16, 2014, and is attached as **Exhibit 7**.

2. The Order [Denying Traivai's Motion to Alter or Amend Judgment Pursuant to NRCP 59(e) and Lee and Summerlin Smiles' Joinder Thereto] was filed September 9, 2014 and is attached as **Exhibit 10**.

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

1. The Notice of Entry of the Order on Defendant Traivai's and Lee's Motions for Judgment as a Matter of Law Pursuant to NRCP 50(b) and Motion for Remittitur was filed on July 16, 2014 and is attached as **Exhibit 7**.

2. The Notice of Entry of Order [Denying Traivai's Motion to Alter or Amend Judgment Pursuant to NRCP 59(e) and Lee and Summerlin Smiles' Joinder Thereto] was filed September 11, 2014 and is attached as **Exhibit 10**.

Was service by:

☐ Delivery

☒ Mail

18. Date notice of appeal filed

Appellants/Cross-Respondents filed their notice of appeal on August 8, 2014. Appellants/Cross-Respondents filed their amended notice of appeal on September 15, 2014.

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

Traivai filed her notice of cross-appeal on August 22, 2014, and Summerlin Smiles filed its notice of cross-appeal on August 22, 2014.

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

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

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

(a)

- | | |
|---|--------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 155.190 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) NRAP 3A(b)(8) | |

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

NRAP 3A(b)(1) allows an appeal to be taken from a final judgment.

NRAP 3A(b)(8) allows an appeal to be taken from special orders entered after final judgment, such as an order awarding or denying fees and costs.

NRAP 3A(b)(8) also allows for an appeal to be taken within 30 days after entry of an order resolving a Rule 50(b) motion for judgment as a matter of law or a Rule 59 motion to alter or amend the judgment.

Additionally, Appellants have challenged the interlocutory order granting the motion to retax costs. See Consol. Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998).

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

(a) Parties:

Plaintiffs: Svetlana Singletary, individually, and as the Representative of the Estate of Reginald Singletary, and as parent and legal guardian of Gabriel L. Singletary, a Minor

Defendants: Florida Traivai, DMD ; Jai Park, DDS; Ton Vinh Lee, DDS and Ton V. Lee, DDS, Prof.Corp. d/b/a Summerlin Smiles

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

Defendant, Jai Park, DDS, was dismissed from the action pursuant to the Stipulation and Order for Dismissal with Prejudice as to Defendant Jai Parks, DDS, Only, which was filed on March 3, 2014 and is attached as Exhibit 9.

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

Plaintiffs alleged dental malpractice/negligence against all Defendants.

Plaintiffs alleged the following claims against Summerlin Smiles: (1) corporate negligence; (2) negligent hiring, training and supervision; (3) vicarious liability; and (4) negligence *per se*.

The jury found for Defendants, Ton V. Lee, DDS and Jai Park, DDS, and awarded no damages to Plaintiff. Defendant, Jai Park, DDS, was later dismissed with prejudice from the entire case. See Exhibit 9. The jury found against Defendants, Florida Traivai, DMD, and Summerlin Smiles and awarded the total amount of \$3,470,000, plus interest, and costs in the amount of \$38,042.64 to Plaintiffs. The Judgment on Jury Verdict was filed on April 29, 2014 and is attached as Exhibit 6. The Judgment on Jury Verdict for Defendant Ton Vinh Lee, DDS [Granting Costs to Defendant and Dismissing Plaintiffs' Claims] was filed on September 11, 2014 and is attached as Exhibit 8.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

Exhibit	Document Description
1	Complaint (filed 02/07/12)
2	Defendant Florida Traivai, DMD's Answer to Plaintiffs' Complaint (filed 03/16/12)
3	Answer of Defendants Ton Vinh Lee, DDS, and Ton V. Lee, DDS, Prof. Corp. dba Summerlin Smiles (filed 03/23/12)
4	Defendant Jai Park, DDS' Answer to Complaint (filed 07/18/12)

5	Notice of Entry of Order [Granting in Part and Denying in Part Defendant Florida Traivai's Motion to Retax Costs and Defendant Ton Vinh Lee, DDS' Joinder Thereto] w/Order (filed 04/11/14)
6	Notice of Entry of Judgment on Jury Verdict w/Judgment (filed 04/30/14)
7	Notice of Entry of Order on Defendant Traivai's and Lee's Motions for Judgment as a Matter of Law Pursuant to NRCP 50(b) and Motion for Remittitur w/Order (filed 07/16/14)
8	Notice of Entry of Judgment on Jury Verdict for Defendant Ton Vinh Lee, DDS w/Judgment [Granting Costs to Defendant and Dismissing Plaintiffs' Claims] (filed 09/12/14)
9	Notice of Entry of Stipulation and Order for Dismissal with Prejudice as to Defendant Jai Parks, DDS, Only w/Stipulation and Order (filed 03/04/14)
10	Notice of Entry of Order [Denying Traivai's Motion to Alter or Amend Judgment Pursuant to NRCP 59(e) and Lee and Summerlin Smiles' Joinder Thereto] w/Order (filed 09/11/14)

VERIFICATION

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

Svetlana Singletary, individually, and
as the Representative of the Estate of
Reginald Singletary, and as parent and
legal guardian of Gabriel L. Singletary,
a Minor

Name of appellant

Micah S. Echols, Esq.; Lloyd Baker,
Esq.; and Ingrid Patin, Esq.

Name of counsel of record

September 19, 2014

Date

/s/ Micah S. Echols

Signature of counsel of record

Nevada, County of Clark

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 19th day of September, 2014, I served a copy of this completed docketing statement upon all counsel of record:

☒ Via the Supreme Court electronic service to:

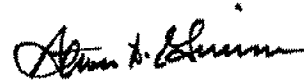
David Frederick, Esq.
Amanda Brookhyser, Esq.
James Jimmerson, Esq.
S. Brent Vogel, Esq.
A. William Maupin, Esq.

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Jason Friedman, Esq.
Stark Friedman & Chapman, LLP
200 W. Sahara, #1401
Las Vegas, NV 89102
*Attorney for Ton Vinh Lee, DDS ("Lee") and
Ton V. Lee, DDS, Prof.Corp. d/b/a Summerlin Smiles*

/s/ Leah Dell

Signature



CLERK OF THE COURT

1 CHRISTIAN M. MORRIS, ESQ.
2 Nevada Bar No. 11218
3 NETTLES LAW FIRM
4 1389 Galleria Drive, Suite 200
5 Henderson, Nevada 89014
6 Telephone: (702) 434-8282
7 Facsimile: (702) 434-1488
8 briannettles@nettleslawfirm.com
9 christianmorris@nettleslawfirm.com
10 Attorneys for Plaintiff

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

13 TON VINH LEE, an individual,

14 Plaintiff,

15 v.

16 INGRID PATIN, an individual, and
17 PATIN LAW GROUP, PLLC, a Nevada
18 Professional LLC,

19 Defendants.

CASE NO. A-15-723134
DEPARTMENT NO. IX

**SPECIAL MOTION TO DISMISS
PURSUANT TO NEVADA REVISED
STATUTE 41.635-70 OR IN THE
ALTERNATIVE MOTION TO DISMISS
PURSUANT TO NRS 12(b)(5)**

20 Defendants, Ingrid Patin and Patin Law Group, PLLC (hereinafter, "Defendants"), by
21 and through their counsel of record, Christian M. Morris, Esq. of the Nettles Law Firm, hereby
22 submits this Motion to Dismiss pursuant to NRS 41.635-70 (Nevada Anti-SLAPP statute) or in
23 the alternative a Motion to Dismiss Pursuant to NRS 12(b)(5) and hereby move for dismissal of
24 Plaintiff's Complaint and for an award of costs and attorney fees..

25 ///

26 ///

27 ///

NETTLES LAW FIRM
1389 Galleria Drive, Suite 200
Henderson, NV 89014
702.434.8282 / 702.434.1488 (fax)

1 This Motion is made and based upon the papers and pleadings on file with the Court, the
2 exhibits attached hereto, the following Memorandum of Points and Authorities, and any oral
3 argument the Court may entertain at the hearing on the Motion.

4 Dated this 16th day of October, 2015.

5 **NETTLES LAW FIRM**

6
7 /s/ Christian Morris

8 Christian M. Morris, Esq.

9 Nevada Bar No. 011218

10 1389 Galleria Drive, Suite 200

11 Henderson, NV 89014

12 Attorneys for Defendants

13 **NOTICE OF MOTION**

14 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

15 PLEASE TAKE NOTICE that Defendants will bring the instant SPECIAL MOTION
16 TO DISMISS PURSUANT TO NEVADA REVISED STATUTE 41.635-70 OR IN THE
17 ALTERNATIVE MOTION TO DISMISS PURSUANT TO NRS 12(b)(5) on for hearing before
18 the above-entitled Court on the 18 day of NOVEMBER, 2015, at the hour of
19 9:00A a.m. of that day, or as soon thereafter as counsel may be heard.

20 Dated this 16th day of October, 2015.

21 **NETTLES LAW FIRM**

22
23 /s/ Christian Morris

24 Christian M. Morris, Esq.

25 Nevada Bar No. 011218

26 1389 Galleria Drive, Suite 200

27 Henderson, NV 89014

28 Attorneys for Defendants

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendants move this Court to dismiss Plaintiff's complaint and award attorney's fees and costs as provided by Nevada's anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute, NRS 41.635, et. seq. This case addresses an allegation of libel brought by Ton V. Lee, DDS, a dentist and owner of Ton V. Lee, DDS, PC doing business as Summerlin Smiles. The allegation arises from a short statement on the website of Patin Law Group, PLLC. The statement concerns a lawsuit currently under appeal in which a \$3,470,000 jury verdict was awarded to plaintiffs in a dental malpractice case. In the case, a jury returned a verdict that Florida Traivai, DMD and Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles were negligent and liable for the death of a patient. That verdict was vacated by the judge in the matter following the Court's ruling on a Judgment as a Matter of Law pursuant to NRCP 50(b). The order to vacate the jury award, as well as others, are now up on appeal before the Supreme Court of Nevada. Prior to the verdict, all claims against Ton Vinh Lee, DDS in his personal capacity were dismissed. Accordingly, the verdict came down against Ton V. Lee, DDS PC (doing business as Summerlin Smiles) and one treating dentist. The issue here is whether the statement made about this jury verdict is false and defamatory. Below is the statement:

DENTAL MALPRACTICE/WRONGFUL DEATH – PLAINTIFF'S VERDICT, 2014

DESCRIPTION: SINGLETARY V. TON VINH LEE, DDS, ET AL.

A dental malpractice-based wrongful death action that arose out of the death of Decedent Reginald Singletary following the extraction of the No. 32 wisdom tooth by Defendants on or about April 16, 2011. Plaintiff sued the dental office, Summerlin Smiles, the owner, Ton Vinh Lee, DDS, and the treating dentists, Florida Traivai, DDS and Jai Park, DDS, on behalf of the Estate, herself and minor son.

This matter is on appeal.

1
2 Based on reasons given below, the Plaintiff's allegations of defamation, more
3 specifically libel, fail as a matter of law. Significant protections exist in the law to protect the
4 right to free speech and these protections, including Nevada's Anti-SLAPP statute, significantly
5 limit the situations in which a person is liable for defamation.

6 Accordingly, Defendants move this court to GRANT this Special Motion to Dismiss and
7 award statutory costs and attorney fees pursuant to NRS 41.635-70. In the alternative,
8 Defendants move for this court to dismiss this case matter pursuant to 12(b)(5) and award fees
9 and costs incurred by Defendants for having to bring this motion; based on the fact the
10 statement on the website is true and Dr. Ton Vinh Lee has testified under oath that he is the
11 owner of Summerlin Smiles.

12
13 **II.**

14 **BRIEF PROCEDURAL HISTORY**

15 On or about August 17, 2015, Plaintiff commenced the instant action through the filing
16 of a Complaint against Ingrid Patin, an individual, and Patin Law Group, PLLC, a Nevada
17 Professional LLC in the Eighth Judicial District Court. Thereafter, Plaintiff attempted service
18 of the Summons and Complaint on Defendant Patin Law Group, PLLC on or about August 19,
19 2015 by leaving a copy of the Summons and Complaint with a receptionist at Regus Las Vegas.
20 On or about September 16, 2015, Plaintiff properly served Defendant Ingrid Patin with a copy
21 of the Summons and Complaint.

22 On September 8, 2015, Defendants filed a Motion to Dismiss Plaintiff's Complaint.
23 Plaintiff filed an Opposition on September 25, 2015, to which Defendants replied on October 6,
24 2015. The matter came on for hearing before this honorable court on October 14, 2015. At that
25 time, the Motion to Dismiss was denied, without prejudice.

26 Defendants now file the instant Special Motion to Dismiss Plaintiff's Complaint,
27 pursuant to Nevada's Anti-SLAPP statute or in the alternative ask this court to dismiss the
28 matter with prejudice pursuant to NRCP 12(b)(5).

III.

STATEMENT OF FACTS AND RELEVANT BACKGROUND

The underlying case, of which the instant matter is based, involved a Complaint for dental malpractice brought by Plaintiff Svetlana Singletary, individually, and as the Representative of the Estate of Reginald Singletary, and as parent and legal guardian of Gabriel L. Singletary, a minor, for the wrongful death of Reginald Singletary following dental surgery to extract a wisdom tooth. Plaintiff Svetlana Singletary commenced the action through the filing of an original Complaint in the Eighth Judicial District Court on or about February 7, 2012. The Complaint named Ton Vinh Lee, DDS, Florida Traivai, DMD, Jai Park, DDS and Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles as Defendants. (See Caption, attached hereto as Exhibit A).

The action came on for trial before the Eighth Judicial District Court and a jury on January 13, 2014. At the conclusion of the trial of the matter, the jury rendered a verdict in favor of Plaintiffs in the amount of Three Million Four Hundred Seventy Thousand Dollars and Zero Cents (\$3,470,000.00) as follows: that Plaintiff, Svetlana Singletary, individually, be awarded the sum of Nine Hundred Eighty Five Thousand Dollars and Zero Cents (\$985,000.00) and that Plaintiff, Gabriel Singletary, a minor, be awarded the sum of Two Million Four Hundred Eighty Five Thousand Dollars and Zero Cents (\$2,485,000.00). Having found for the Plaintiffs and against Defendants, Florida Traivai, DMD and Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles, the jury further found that the percentage of negligence on the part of Decedent Reginald Singletary which was the proximate cause of Decedent Reginald Singletary's injury was twenty five percent (25%), the percentage of negligence on the part of Defendant, Florida Traivai, DMD, which was the proximate cause of Decedent Reginald Singletary's injury was fifty percent (50%), and the percentage of negligence on the part of Defendant Ton V. Lee, DDS, Prof. Corp. d/b/a Summerlin Smiles, which was the proximate

cause of Decedent Reginald Singletary's injury, was twenty five percent (25%). (See Special Verdict Form attached hereto as **Exhibit B**). Plaintiff Svetlana Singletary filed a Memorandum of Costs and Motion for Award of Costs on February 3, 2014. The Court granted in part Plaintiff's Motion for Award of Costs and Defendant Florida Traivai, DMD's Motion to Re-tax Costs, and awarded Plaintiff Svetlana Singletary her costs of Thirty Eight Thousand Forty Two Dollars and Sixty Four Cents (\$38,042.64), as the prevailing party under Nevada Revised Statute 18.020. (See Order, attached hereto as **Exhibit C**). Plaintiff Svetlana Singletary subsequently filed a Judgment on Jury Verdict. (See Judgement of Jury Verdict attached hereto as **Exhibit D**).

In February, 2014, the Trial Reporter of Nevada published the jury verdict in its monthly publication. (See The Trial Reporter of Nevada, attached hereto as **Exhibit E**). Following the favorable jury verdict, Ingrid Patin of Patin Law Group, PLLC posted the jury verdict on her website, including the case name [Singletary v. Ton Vinh Lee, DDS, et al.] and information regarding the nature of the case and damages. Specifically, the statement at issue reads as follows:

DENTAL MALPRACTIC/WRONGFUL DEATH – PLAINTIFF'S VERDICT, 2014
DESCRIPTION: SINGLETARY V. TON VINH LEE, DDS, ET AL.
A dental malpractice-based wrongful death action that arose out of the death of Decedent Reginald Singletary following the extraction of the No. 32 wisdom tooth by Defendants on or about April 16, 2011. Plaintiff sued the dental office, Summerlin Smiles, the owner, Ton Vinh Lee, DDS, and the treating dentists, Florida Traivai, DDS and Jai Park, DDS, on behalf of the Estate, herself and minor son.
This matter is on appeal.

(See Website Post attached hereto as **Exhibit F**).

In the Fall 2014, the Nevada Legal Update also published the jury verdict and case summary in its quarterly publication. (See The Nevada Legal Update, attached hereto as **Exhibit G**).

1 When performing a google search of "Nevada jury verdicts singletary," the Supreme
2 Court of the State of Nevada has the judgment upon jury verdict listed. (See Google Search,
3 attached hereto as **Exhibit H**).

4 An Appeal was filed in the underlying matter on behalf of Plaintiff Svetlana Singletary,
5 individually, and as the Representative of the Estate of Reginald Singletary, and as parent and
6 legal guardian of Gabriel L. Singletary, a minor, on or about August 8, 2015. (See Case Appeal
7 Statement, attached hereto as **Exhibit I**). A Cross-Appeal was subsequently filed in the
8 underlying matter on behalf of Ton Vinh Lee, DDS and Ton V. Lee, DDS, Prof. Corp. d/b/a
9 Summerlin Smiles. (See Case Appeal Statement (Cross-Appeal) dated September 11, 2015 and
10 Case Appeal Statement (Cross-Appeal) dated October 7, 2015, attached hereto as **Exhibit J**).
11 The underlying matter is currently on appeal before the Supreme Court of Nevada.
12

13 III.

14 LEGAL ARGUMENT

15 A. NRS 41.660 "Special" Motion to Dismiss

16 A NRS 41.660 special motion is a procedural mechanism, not a separate cause of action.
17 John v. Douglas County School District, 125 Nev. 746, 219 P.3d 1276, (2009). A SLAPP lawsuit
18 is characterized as "a meritless suit filed primarily to chill the defendant's exercise of First
19 Amended rights." John v. Douglas Cnty. Sch. Dist., 125 Nev. 746, 752, 219 p.3d 1276, 1280
20 (2009) (citing Dickens v. Provident life and Acc. Ins. Co., 117 Cal. App. 4th 705, 11 Cal. Rptr.
21 3d 877, 882 (Ct. App. 2004)).

22 It is designed to prevent wasteful and abusive litigation by requiring the Plaintiff to make
23 an initial showing of merit. Id. The showing is quite high, in fact, because the Plaintiff must
24 establish by clear and convincing evidence the probability of prevailing on the claim. NRS.
25 41.660(3)(b). Short of this strong showing, the special motion to dismiss must be granted and
26 costs, fees, and attorney's fees awarded to the Defendant. NRS 41.670.

27 The District Court must treat a special motion to dismiss as a motion for summary
28 judgment, and if granted, as an adjudication on the merits. NRS 41.660(3)-(4); John, 125 Nev. at

753, 219 p.3d at 1281. The appropriate standard of review for a denial of a special motion to dismiss is the same as for a grant of summary judgment: de novo. See Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

Pursuant to NRS 41.660 a special motion to dismiss must be filed within 60 days after service of the Complaint and the Court must rule on the Motion within 7 judicial days after the motion is served on the Plaintiff. In this matter, the special motion to dismiss has been timely filed, as Plaintiff was properly served on September 16, 2015.

a. Burden Shifting in the Special Motion to Dismiss

When filing a special motion to dismiss, the Defendant first needs to establish that the communication in question was made (1) in furtherance of the right to petition, or (2) in furtherance of the right to free speech in connection with an issue of public concern. NRS 41.660(3)(a). A statement is made in good faith and in furtherance of these rights when it is in "direct connection with an issue under consideration by a . . . judicial body," or when it is in "direct connection with an issue of public interest . . . in a public forum." NRS. 41.637.

Here, the statement describes a case that is still pending in the Nevada judicial system. It alerts the public of an ongoing case that is currently on appeal by citing the case name, giving a brief description of the nature of the case, and indicating the party's to the case and their respective roles. The statement does not provide opinion as to the wisdom of the verdict, the likelihood of the outcome of the appeal, nor does it provide any commentary on the parties involved. Rather, it is a factual description of the pending petition for redress.

Moreover, the statement directly addresses an issue of public interest. The practice of dental medicine is an issue of public health and safety. It is of such interest to Nevadans that State government places strict guidelines on those who can practice dentistry, including requiring a license from the State before a dentist may practice in Nevada. Accordingly, a lawsuit that involves allegations of malpractice by a state-licensed individual is certainly a matter of public concern. The public is interested generally in such cases because it goes to whether the requirements for licensure are sufficient, whether the State Board of Dentistry is effectively vetting license applicants, and whether continual education requirements

1 are sufficient. This statement addresses the public concern by providing the names of parties
2 involved in a dental malpractice case, a jury verdict in the case, and notes that the case is on
3 appeal.

4 **b. Clear and Convincing Evidence**

5 After a defendant shows that the statement concerns a petition for redress or an
6 issue of public concern, the burden shifts to the Plaintiff. NRS 41.660(3)(b) requires the
7 Plaintiff to show by clear and convincing evidence a probability of prevailing on his claim. The
8 Plaintiff must present more than general allegations or conclusions for his showing of clear and
9 convincing evidence. John, 125 Nev. at 754, 219 P.3d at 1281. As Nevada's legislative history
10 under the anti-SLAPP statute indicates, clear and convincing evidence is a high burden to meet.
11 (See Minutes of Nevada Senate Judiciary Committee, March 28, 2013, attached hereto as
12 **Exhibit K** at p. 7).

13 This clear and convincing showing requires Plaintiff to provide clear and
14 convincing evidence as to all the essential elements of a defamation claim, including (1) falsity,
15 (2) defamatory construction, (3) publication to a third-party, (4) damages. When the Plaintiff
16 cannot establish his case by clear and convincing evidence, or if the Defendant otherwise shows
17 that it is entitled to judgment as a matter of law, dismissal is proper. Moreover, it requires clear
18 and convincing evidence as to defenses, such as privilege. In adopting this approach, the Nevada
19 Legislature intended a very high burden.
20

21 Here, Defendants are entitled to judgment as a matter of law because the Plaintiff
22 cannot meet his burden as detailed below.

23 *i. Prima Facie Case for Defamation*

24 The prima facie case for defamation is (1) a false statement, (2) reasonably
25 capable of defamatory construction, (3) unprivileged published to a third-party, in which the
26 Plaintiff suffered (4) actual or presumed damages. Failure of any of these elements is fatal to a
27 defamation claim.

28 *ii. Truth is an absolute defense*

1 Truth is an absolute defense to a defamation action. Pegasus v. Reno Newspapers,
2 Inc., 118 Nev. 706, 715, 57 P.3d 82, 88 (2002). Moreover, a statement is not defamatory if it
3 contains only minor inaccuracies and is thus "substantially true." Id. Under the doctrine of
4 substantial truth relied on by the Nevada Supreme Court in Pegasus:
5 [M]inor inaccuracies do not amount to falsity unless the inaccuracies
6 would have a different effect on the mind of the reader from that which the
7 pleaded truth would have produced. Specifically, the court must determine
8 whether the gist of the story, or the portion of the story that carries the
9 'sting' of the article, is true.
10 Pegasus, 115 Nev. at n. 17. Here, a portion-by-portion analysis indicates the entire statement is
11 true.
12 "DENTAL MALPRACTICE/WRONGFUL DEATH – PLAINTIFF'S
13 VERDICT, 2014"
14 This portion is true because there was verdict for plaintiff given in the case.
15 "DESCRIPTION: SINGLETARY V. TON VINH LEE, DDS, ET AL."
16 This portion is true because it is the appropriate abbreviation of the case name.
17 "A dental malpractice-based wrongful death action that arose out of the
18 death of Decedent Reginald Singletary following the extraction of the No.
19 32 wisdom tooth by Defendants on or about April 16, 2011."
20 This portion is true because the action was a wrongful death case following an allegedly
21 faulty dental procedure.
22 "Plaintiff sued the dental office, Summerlin Smiles, the owner, Ton Vinh
23 Lee, DDS, and the treating dentists, Florida Traivai, DDS and Jai Park,
24 DDS, on behalf of the Estate, herself and minor son."
25 This portion is true because the plaintiff did sue these parties as named. The statement indicates
26 that Plaintiff sued "the dental office, Summerlin Smiles, the owner, Ton Vinh Lee, DDS." This is
27 a true statement. "Summerlin Smiles" is a fictitious firm name used by Ton Vinh Lee, DDS, PC.
28 See Certificate of Business – Fictitious Firm Application and Secretary of State listing for Ton
V. Lee, DDS, PC, attached hereto as Exhibit L) That is, "Summerlin Smiles" and "Ton V. Lee,
DDS, PC" are synonymous. Stated another way "the dental office, Summerlin Smiles" was not a
business owned by Ton Vinh Lee, DDS, PC, it was Ton Vinh Lee, DDS, PC.

1 In fact, this is consistent with documents signed by Mr. Lee and by his own testimony at
2 trial. In a 2010 Clark County fictitious firm name filing, Mr. Lee signed as "President/Owner" of
3 Ton v. Lee, DDS, Prof. Corp." doing business as Summerlin Smiles. Also, in his testimony
4 during trial, Mr. Lee confirmed that he was the "president and owner" of Summerlin Smiles:

5 Q. Dr. Lee, you're the president and owner of Summerlin Smiles,
6 correct?

7 A. That's correct.

8 ...

9 Q. And the tooth extraction that was performed on [decedent] by
10 [treating dentists] was done at your clinic, Summerlin Smiles,
11 correct?

12 A. That's correct.

13 (See Trial Testimony of Ton Vinh Lee, DDS, attached hereto as Exhibit M) By his own
14 admission at trial and in a county filing signed by him under penalty of perjury, Mr. Lee asserts
15 that he "owns" the dental office Summerlin Smiles. Accordingly, Mr. Lee should be estopped
16 from arguing to the contrary.

17 "This matter is on appeal."

18 This portion is accurate because the case is currently on appeal.

19 Every portion of the statement is accurate. Even if it were not entirely true, it would still
20 certainly be substantially true under Pegasus. The "gist" of the statement is the same, whether
21 "Ton V. Lee, DDS" is, or is not, followed by a "PC." Indeed, it seems unlikely that an ordinary
22 reader would know that "PC" made the rest of the name into an artificial business entity, rather
23 than a Dentist with multiple degrees or specialties.

24 The truth of the statement is an absolute defense to defamation and Defendants are
25 entitled to judgment as a matter of law.

26 *iii. Defamatory construction*

27 Dr. Lee cannot show a defamatory construction to the statement. A statement is
28 defamatory if it tends to lower the reputation of a person. The "reading" of a statement is to be

1 made as if by a "reasonable person," and one should not seek to split-hairs or adopt a complex
2 construction. See, Pegasus, 118 Nev. at 715. Here, the statement does not insult or attack Dr.
3 Lee's reputation, rather it accurately reports that he is the owner of a dental office where two
4 dentists had a jury verdict rendered against them.

5 The statement, in fact, takes steps to distinguish Dr. Lee's involvement in the case, as an
6 "owner" of the clinic, from the involvement of the other two dentists, identified as "the treating
7 dentists." No ordinary person reading the statement in its entirety could reasonably conclude that
8 the post was suggesting Dr. Lee was an unfit dentist or that he had personally committed
9 malpractice. The only reasonable conclusion that can be had from the statement is that Dr. Lee
10 owned a clinic where two dentists were sued and a jury verdict was rendered against the two
11 treating dentists and the clinic's owner (as noted above, Dr. Lee has previously admitted that he
12 "owns" Summerlin Smiles).

13 Because the statement, read in its entirety, cannot reasonably be understood to demean
14 Dr. Lee or his fitness as a dentist, and cannot be understood to suggest that he committed
15 malpractice, it is not defamatory as to him.

16 *iv. Fair Report Privilege*

17 Nevada has long recognized a fair reporting privilege that absolutely privileges the "fair
18 and accurate" reporting of a judicial proceeding. Sahara Gaming Corp. v. Culinary Workers
19 Union Local 226, 115 Nev. 212, 215 (1999). Provided the report is "fair, accurate, and
20 impartial," an *absolute* privilege protects publication by any person. *Id.* at 216.

21 Here, the statement is protected by the fair reporting privilege. The statement does not
22 include commentary, bias, or partisan interpretation—it is merely the recitation of public
23 information. As discussed above, the information, line-by-line, is true and a faithful recitation of
24 the outcome of a judicial proceeding. Because the statement was a fair and accurate reporting of
25 a judicial proceeding, it is absolutely protected by privilege.

26 *v. Damages in cases of multiple publications*

27 Damages cannot be presumed to come from a single publication when allegedly
28 defamatory information is available from multiple independent sources unrelated to the

1 publication at issue. Here, the information in the statement was published in at least three
2 different places by persons who obtained the information from a public source and not
3 Defendants. First, in February, 2014, the Trial Reporter of Nevada published the jury verdict in
4 its monthly publication. Second, in the fall 2014 Nevada Legal Update also published the jury
5 verdict and case summary in its quarterly publication. Third, a recent google search of "Nevada
6 jury verdicts Singletary," returned a page maintained by the Supreme Court of the State of
7 Nevada that displays the judgment upon jury verdict listed.

8 Accordingly, because there were multiple publications independent of Defendants,
9 Plaintiff is unable to prove that any alleged damages came from Defendants' publication to the
10 exclusion of all other potential sources.

11 *vi. Limited purpose public figure requires showing of actual malice*

12 In Nevada, a limited-purpose public figure is a person who "voluntarily injects
13 himself into a . . . public concern." Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 720
14 (2009). Businesses that "actively advertise and seek commercial patronage" have frequently
15 been found to be public figures with respect to customer reviews in newspapers and on the
16 internet. Id. Accordingly, in Pegasus the Nevada Supreme Court held a restaurant was a public
17 figure with respect to customer reviews of its food and service. Id. at 721. Although it is not
18 clear how far the Nevada Supreme Court is willing to extend the limited-purpose public figure
19 doctrine, it seems clear that if a restaurant is a public figure with respect to customer reviews (a
20 rather trivial publication), the owner of an eponymously-named dental office would also be a
21 public figure, for reviews by customers and, presumably, in relation to a malpractice lawsuit
22 brought against dentists practicing in the office.

23 By owning a dental office, naming his professional corporation after himself, and
24 advertising himself personally on the dental office website, Dr. Lee has made himself a limited-
25 purpose public figure with respect to lawsuits associated with that dental office. Moreover, Dr.
26 Lee has continued to interject himself into the spotlight by filing a cross-appeal on behalf of
27 himself in the matter pending before the Supreme Court. Accordingly, Dr. Lee must prove by
28 clear and convincing evidence that the statement was made with actual malice.

1 To establish actual malice, Dr. Lee must prove that the statement was made with
2 knowledge or reckless disregard for its falsity. Pegasus, 118 Nev. at 722. However, he cannot
3 do so because Defendants did not knowingly make any false statement. Moreover, there is no
4 evidence to support a finding of recklessness—indeed, Dr. Lee himself reported that he owned
5 Summerlin Smiles. It seems strange to think that Mr. Lee could make a statement under penalty
6 of perjury and turn around and accuse Defendants of actual malice for making the same
7 statement.

8 **B. In the Alternative this Matter Should be Dismissed Pursuant to NRS 12(b)(5)**
9 **Due to Fact Dr. Ton Vinh Lee DDS is the Owner of Summerlin Smiles and**
10 **Was a Party to the Lawsuit**

11 a. Standard of Review

12 A complaint will not be dismissed for failure to state a claim upon which relief
13 can be granted unless it appears beyond a doubt that the plaintiff could prove no set of facts
14 which, if accepted by the trier of fact, would entitle him or her to relief. Simpson v. Mars, Inc.,
15 113 Nev. 188, 929 P.2d 966 (1997). If the court, taking Plaintiff's allegations at face value,
16 determines that the allegations fail to state a recognizable claim for relief, then dismissal is
17 appropriate. Morris v. Bank of America, 110 Nev. 1274, 886 P.2d 454 (1994); see also
18 Bratcher v. City of Las Vegas, 113 Nev. 502, 937 P.2d 485 (1997) (dismissal with prejudice is
19 proper when it appears beyond a reasonable doubt that the Plaintiff can sustain no action which
20 would entitle him or her to relief.). When the complaint shows on its face that the cause of
21 action is barred, the burden falls upon the plaintiff to satisfy the court that the bar does not exist.
22 Bank of Nevada v. Friedman, 82 Nev. 417, 420 P.2d 1 (1996). A motion to dismiss for failure
23 to state a claim, if sustained without leave to proceed further, results in a judgment on the
24 merits. Zalk-Josephs Co. v. Wells Cargo, Inc., 81 Nev. 163, 400 P.2d 621 (1965).

25 A 12(b)(5) motion to dismiss that asks to the court to look outside the pleadings is treated
26 as a Rule 56 motion for summary judgment. NRCp 12(b)(5), 56. The standard for determining
27 whether to grant a motion requires the Court view all evidence in the light most favorable to the
28

1 non-moving party, with all inferences settled in that party's favor. NRCP 56. When the evidence
2 pointed to by the parties demonstrates, however, that an essential element of a claim fails as a
3 matter of law, the motion should be granted and the claim dismissed. NRCP 56.

4 b. Legal Argument

5 Here, the statement posted by Defendants is *true* and not defamatory in nature.
6 (See "*truth is an absolute defense*" argument above) After a seven day trial in January, 2014,
7 the Plaintiffs in the underlying case were collectively awarded Three Million Four Hundred
8 Seventy Thousand Dollars and Zero Cents (\$3,470,000.00) by a jury. Both the Special Verdict
9 Form and Judgment on Jury Verdict clearly state that the award to Plaintiffs was against Ton V.
10 Lee, DDS, a Prof. Corp. d/b/a Summerlin Smiles. Defendants statement concerning this verdict
11 on their website reads:

12
13 DENTAL MALPRACTIC/WRONGFUL DEATH – PLAINTIFF'S
14 VERDICT, 2014

15 DESCRIPTION: SINGLETARY V. TON VINH LEE, DDS, ET AL.

16 A dental malpractice-based wrongful death action that arose out of the
17 death of Decedent Reginald Singletary following the extraction of the No.
18 32 wisdom tooth by Defendants on or about April 16, 2011. Plaintiff sued
19 the dental office, Summerlin Smiles, the owner, Ton Vinh Lee, DDS, and
20 the treating dentists, Florida Traivai, DDS and Jai Park, DDS, on behalf of
21 the Estate, herself and minor son.

22 This matter is on appeal.

23 This statement does not contain a defamatory factual assertion, as every fact contained
24 in the statement is *true*, and accurately depicts a judicial proceeding. Ton Vinh Lee, DDS is, in
25 fact, the owner of Summerlin Smiles; Ton Vinh Lee, DDS did in fact get sued in the underlying
26 matter; there was a verdict rendered in the wrongful death of Mr. Singletary; and, Ton Vinh
27 Lee, DDS is actively participating in a cross-appeal in the matter before the Supreme Court.

28 Based upon the fact that Plaintiff can prove no set of facts that would entitle him to relief
as Defendants' statement is true or substantially true, Plaintiff's Complaint should be dismissed
with prejudice and fees and costs should be awarded to Defendants.

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2 **C. Defendants' Are Entitled To Attorney's Fees And Costs And a Statutory Award**
3 **From Plaintiff**

4 If a party is successful in their special motion to dismiss under Nevada's Anti-SLAPP
5 statute, the prevailing party is entitled to an award of their reasonable attorney's fees and costs
6 incurred in having to defend the action. NRS 41.670(1)(a). The Court is also permitted to
7 award up to \$10,000 to the prevailing party. NRS 41.670(1)(b).

8 Defendants have shown that the alleged defamatory statement posted on Defendants'
9 website was made in direct connection with an action currently under consideration by the
10 Supreme Court of Nevada and an issue of public concern. Defendants have also shown that
11 Plaintiff is unable to present clear and convincing evidence to show a probability of success on
12 the merits of his claim for defamation because Defendants' statement was *true*, not defamatory
13 in nature, and privileged. Thus, Defendants' Special Motion to Dismiss under Nevada's Anti-
14 SLAPP statute must be granted, and Defendants are entitled to an award of their reasonable
15 attorney's fees and costs plus statutory damages of \$10,000 under NRS 41.670 (1).
16

17 **III.**

18 **CONCLUSION**

19 Defendants respectfully request this Honorable Court to issue an Order dismissing, with
20 prejudice, Plaintiff's Complaint pursuant to NRS 41.635-70 (Nevada Anti-SLAPP statute), as
21 Defendants' statement was made in direct connection with a judicial proceeding and is an issue
22 of public concern. Plaintiff is unable to present clear and convincing evidence of a probability
23 of success on their claims because Defendants' statement is true, is not defamatory in nature, is
24 privileged, and because Plaintiff cannot establish causation to the exclusion of other
25 publications or actual malice. For these reasons, the Special Motion to Dismiss is appropriate
26 and Defendants are entitled to an award of attorney's fees and costs and statutory damages of
27 \$10,000.

28 In the alternative Defendants respectfully request this matter be dismissed with prejudice

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pursuant to NRS 12(b)(5) and attorney's fees and costs be granted to Defendants.

DATED this 16th day of October, 2015.

NETTLES LAW FIRM

/s/ Christian Morris
Christian M. Morris, Esq.
Nevada Bar No. 011218
1389 Galleria Drive, Suite 200
Henderson, NV 89014
Attorneys for Defendants

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP (b) and EDCR 7.26, I certify that on this date, I served the foregoing **SPECIAL MOTION TO DISMISS PURSUANT TO NEVADA REVISED STATUTE 41.635-70 OR IN THE ALTERNATIVE MOTION TO DISMISS PURSUANT TO NRS 12(b)(5)** on the following parties by electronic transmission through the Wiznet system on this 16th day of October, 2015.

Prescott T. Jones, Esq.
Jessica Friedman, Esq.
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1160 N. Town Center Drive Suite 250
Las Vegas, NV 89144
Attorneys for Plaintiff
TON VINH LEE

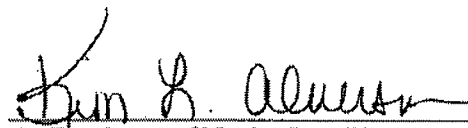

An Employee of Nettles Law Firm

EXHIBIT A

Alan L. Blum
CLERK OF THE COURT

1 **COMP**
2 **LLOYD W. BAKER, ESQ.**
3 Nevada Bar No. 6893
4 **INGRID PATIN, ESQ.**
5 Nevada Bar No.: 011239
6 **BAKER LAW OFFICES**
7 500 South Eighth Street
8 Las Vegas, NV 89101
9 (702) 360-4949
10 Attorneys for Plaintiff

11 **DISTRICT COURT**

12 **COUNTY OF CLARK, STATE OF NEVADA**

13 **SVETLANA SINGLETARY**, individually,
14 as the Representative of the Estate of
15 **REGINALD SINGLETARY**, and as parent and
16 legal guardian of **GABRIEL L. SINGLETARY**,
17 a Minor,

18 **Plaintiff,**

19 **vs.**

20 **TON VINH LEE, DDS**, individually, **FLORIDA**
21 **TRAVAI, DMD**, individually, **JAI PARK, DDS**,
22 individually, **TON V. LEE, DDS, PROF. CORP.**,
23 a Nevada Professional Corporation d/b/a
24 **SUMMERLIN SMILES, DOE SUMMERLIN**
25 **SMILES EMPLOYEE**, and **DOES I through X**
26 and **ROE CORPORATIONS I through X**,
27 inclusive,

28 **Defendants.**

Case No.: **A- 12- 656091- C**
Dept. No.:

XVI

ARBITRATION EXEMPTION:
WRONGFUL DEATH

COMPLAINT

COMES NOW the Plaintiff, **SVETLANA SINGLETARY**, individually, as the
Representative of the Estate of **REGINALD SINGLETARY**, and as parent and legal guardian of
GABRIEL L. SINGLETARY, by and through her counsel of record, **INGRID M. PATIN, ESQ.** of
BAKER LAW OFFICES, hereby alleges and complains as follows:

///

///

///

///

EXHIBIT B

IN THE SUPREME COURT OF THE STATE OF NEVADA

INGRID PATIN, AN INDIVIDUAL;
AND PATIN LAW GROUP, PLLC, A
PROFESSIONAL LLC,

Appellants,

vs.

TON VINH LEE,

Respondent.

Electronically Filed
Sep 21 2017 01:11 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No.: 69928

Appeal from the Eighth Judicial District
Court, the Honorable Jennifer P.
Togliatti Presiding

APPELLANTS' APPENDIX
(Volume 1, Bates Nos. 1–202)

Marquis Aurbach Coffing

Micah S. Echols, Esq.
Nevada Bar No. 8437
10001 Park Run Drive
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Nettles Law Firm

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1389 Galleria Drive, Suite 200
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Facsimile: (702) 434-1488
christian@nettleslawfirm.com

Attorneys for Appellants, Ingrid Patin and Patin Law Group, PLLC

INDEX TO APPELLANTS' APPENDIX

Document Description		Location
Complaint (filed 08/17/15)		Volume 1, Bates Nos. 1–4
Defendants' Motion to Dismiss (filed 09/08/15)		Volume 1, Bates Nos. 5–16
Exhibits to Defendants' Motion to Dismiss		
Exhibit	Document Description	
A	Caption Page of Complaint in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 02/07/12)	Volume 1, Bates Nos. 17–18
B	Special Verdict Form in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 01/22/14)	Volume 1, Bates Nos. 19–24
C	Order [Awarding \$38,042.64 in Costs] in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 04/11/14)	Volume 1, Bates Nos. 25–29
D	Judgment on Jury Verdict in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 04/29/14)	Volume 1, Bates Nos. 30–33
E	Published Jury Verdict in <i>The Trial Reporter</i> of Nevada (published February 2014)	Volume 1, Bates Nos. 34–37
F	Published Jury Verdict in <i>The Nevada Legal Update</i> (published Fall 2014)	Volume 1, Bates Nos. 38–41
G	Google Search Results	Volume 1, Bates Nos. 42–44
Plaintiff's Opposition to Defendants' Motion to Dismiss (filed 09/25/15)		Volume 1, Bates Nos. 45–59

Document Description		Location
Exhibits to Plaintiff's Opposition to Defendants' Motion to Dismiss		
Exhibit	Document Description	
A	Order on Defendant Traivai's and Lee's Motions for Judgment as a Matter of Law Pursuant to NRCP 50(b), and Motion for Remittitur (filed 07/16/14)	Volume 1, Bates Nos. 60–72
B	Judgment on Jury Verdict for Defendant Ton Vinh Lee, DDS in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 09/11/14)	Volume 1, Bates Nos. 73–75
C	Patin Law Group Website Page (printed 07/09/15)	Volume 1, Bates Nos. 76–80
D	Affidavit of Service to Patin Law Group, PLLC (dated 08/28/15)	Volume 1, Bates Nos. 81–82
E	Affidavit of Service to Ingrid Patin, Esq., individually (dated 09/18/15)	Volume 1, Bates Nos. 83–84
F	Duplicate of Affidavit of Service to Ingrid Patin, Esq., individually (dated 09/18/15) <i>Cited in brief as SOS Entity Info</i>	Volume 1, Bates Nos. 85–86
Defendants' Reply to Plaintiff's Opposition to Motion to Dismiss (filed 10/06/15)		Volume 1, Bates Nos. 87–97
Exhibits to Defendants' Reply to Plaintiff's Opposition to Motion to Dismiss		
Exhibit	Document Description	
A	Patin Law Group Website Page (printed 10/01/15)	Volume 1, Bates Nos. 98–99
B	August 7, 2015 Letter from State Bar of Nevada	Volume 1, Bates Nos. 100–101
Minutes of October 14, 2015 Hearing on Defendants' Motion to Dismiss		Volume 1, Bates No. 102
Plaintiff's Supplement to Opposition to Defendants' Motion to Dismiss (filed 10/14/15)		Volume 1, Bates Nos. 103–104

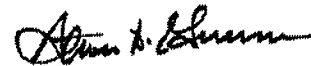
Document Description		Location
Exhibit to Plaintiff's Supplement to Opposition to Defendants' Motion to Dismiss		
Exhibit	Document Description	
A	Docketing Statement in <i>Singletary v. Lee</i> , Supreme Court Case No. 66278 without Exhibits (filed 09/19/14)	Volume 1, Bates Nos. 105–119
Special Motion to Dismiss Pursuant to NRS 41.635–70 or, in the Alternative, Motion to Dismiss Pursuant to [NRCP] 12(b)(5) (filed 10/16/15)		Volume 1, Bates Nos. 120–136
Exhibits to Special Motion to Dismiss Pursuant to NRS 41.635–70 or, in the Alternative, Motion to Dismiss Pursuant to [NRCP] 12(b)(5)		
Exhibit	Document Description	
A	Caption Page of Complaint in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 02/07/12)	Volume 1, Bates Nos. 137–138
B	Special Verdict Form in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 01/22/14)	Volume 1, Bates Nos. 139–144
C	Order [Awarding \$38,042.64 in Costs] in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 04/11/14)	Volume 1, Bates Nos. 145–149
D	Judgment on Jury Verdict in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 04/29/14)	Volume 1, Bates Nos. 150–153
E	Published Jury Verdict in <i>The Trial Reporter</i> of Nevada (published February 2014)	Volume 1, Bates Nos. 154–157
F	Patin Law Group Website Page (printed 07/09/15)	Volume 1, Bates Nos. 158–159
G	Published Jury Verdict in <i>The Nevada Legal Update</i> (published Fall 2014)	Volume 1, Bates Nos. 160–163
H	Google Search Results	Volume 1, Bates Nos. 164–166

Document Description		Location
Exhibits to Special Motion to Dismiss Pursuant to NRS 41.635–70 or, in the Alternative, Motion to Dismiss Pursuant to [NRCP] 12(b)(5) (cont.)		
Exhibit	Document Description	
I	Case Appeal Statement in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 08/08/14)	Volume 1, Bates Nos. 167–173
J	Case Appeal Statement for Cross-Appeal in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 11/07/14); and Case Appeal Statement for Cross-Appeal in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 09/11/14)	Volume 1, Bates Nos. 174–186
K	Excerpted Minutes of Nevada Senate Judiciary Committee (dated March 28, 2013)	Volume 1, Bates Nos. 187–189
L	Fictitious Firm Application and Secretary of State Listing for Ton V. Lee, DDS, PC	Volume 1, Bates Nos. 190–194
M	Excerpted Transcript of Trial Testimony of Ton Vinh Lee, DDS in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (dated 01/17/14)	Volume 1, Bates Nos. 195–199
Notice of Entry of Order Denying Defendants’ Motion to Dismiss with Order (filed 10/23/15)		Volume 1, Bates Nos. 200–202
Plaintiff’s Opposition to Defendants’ Special Motion to Dismiss Pursuant to NRS 41.635–70 or, in the Alternative, Motion to Dismiss Pursuant to [NRCP] 12(b)(5) (filed 11/02/15)		Volume 2, Bates Nos. 203–218

Document Description		Location
Exhibits to Plaintiff's Opposition to Defendants' Special Motion to Dismiss Pursuant to NRS 41.635–70 or, in the Alternative, Motion to Dismiss Pursuant to [NRC] 12(b)(5)		
Exhibit	Document Description	
A	Order on Defendant Traivai's and Lee's Motions for Judgment as a Matter of Law Pursuant to NRC 50(b), and Motion for Remittitur (filed 07/16/14)	Volume 2, Bates Nos. 219–231
B	Appellants/Cross-Respondents' Opening Brief in <i>Singletary v. Lee</i> , Supreme Court Case No. 66278 (filed 03/24/15)	Volume 2, Bates Nos. 232–287
C	Judgment on Jury Verdict for Defendant Ton Vinh Lee, DDS in <i>Singletary v. Lee</i> , Eighth Judicial Case No. A656091 (filed 09/11/14)	Volume 2, Bates Nos. 288–290
D	Senate Bill No. 444 (Anti-SLAPP)	Volume 2, Bates Nos. 291–295
E	Patin Law Group Website Page (printed 07/09/15)	Volume 2, Bates Nos. 296–300
F	Plaintiff's Opposition to Defendants' Motion to Dismiss without Exhibits (filed 09/25/15)	Volume 2, Bates Nos. 301–309
Reply to Plaintiff's Opposition to Defendants' Special Motion to Dismiss Pursuant to NRS 41.635–70 or, in the Alternative, Motion to Dismiss Pursuant to [NRC] 12(b)(5) (filed 11/12/15)		Volume 2, Bates Nos. 310–323
Plaintiff's Sur-Reply in Opposition to Defendant's Special Motion to Dismiss (filed 11/17/15)		Volume 2, Bates Nos. 324–336

Document Description		Location
Exhibits to Plaintiff's Sur-Reply in Opposition to Defendant's Special Motion to Dismiss		
Exhibit	Document Description	
A	Order on Defendant Traivai's and Lee's Motions for Judgment as a Matter of Law Pursuant to NRCP 50(b), and Motion for Remittitur (filed 07/16/14)	Volume 2, Bates Nos. 337–349
	Certificate of Service	Volume 2, Bates No. 350
Minutes of November 18, 2015 Hearing on All Pending Motions		Volume 2, Bates No. 351
Transcript of November 18, 2015 Hearing on All Pending Motions (filed 02/13/17)		Volume 2, Bates Nos. 352–361
Supplement to Plaintiff's Sur-Reply in Opposition to Defendants' Special Motion to Dismiss (filed 11/25/15)		Volume 2, Bates Nos. 362–375
Minutes of December 2, 2015 Hearing on Defendants' Special Motion to Dismiss Pursuant to NRS 41.635–70 or, in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5)		Volume 2, Bates Nos. 376–377
Transcript of December 2, 2015 Hearing on Defendants' Special Motion to Dismiss Pursuant to NRS 41.635–70 or, in the Alternative, Motion to Dismiss Pursuant to [NRCP] 12(b)(5) (filed 02/13/17)		Volume 2, Bates Nos. 378–400
January 13, 2016 Minute Order Denying Defendants' Special Motion to Dismiss Pursuant to NRS 41.635–70 or, in the Alternative, Motion to Dismiss Pursuant to [NRCP] 12(b)(5)		Volume 2, Bates Nos. 401–402
Notice of Entry of Order Denying Defendants' Special Motion to Dismiss Pursuant to NRS 41.635–70 or, in the Alternative, Motion to Dismiss Pursuant to NRCP 12(b)(5) with Order (filed 02/04/16)		Volume 2, Bates Nos. 403–408
Notice of Appeal (filed 03/04/16)		Volume 2, Bates Nos. 409–411

Document Description	Location
Case Appeal Statement (filed 03/04/16)	Volume 2, Bates Nos. 412–416
Supreme Court Clerk’s Certificate, Judgment, and Order Affirming in Part, Reversing in Part and Remanding from Case No. 66278 and Filed in District Court Case No. A656091 (<i>Singletary v. Lee</i>) (filed 11/29/16)	Volume 2, Bates Nos. 417–425



CLERK OF THE COURT

1 PRESCOTT T. JONES, ESQ.
2 Nevada State Bar No. 11617
3 JESSICA M. FRIEDMAN, ESQ.
4 Nevada State Bar No. 13486
5 BREMER WHYTE BROWN & O'MEARA LLP
6 1160 N. TOWN CENTER DRIVE
7 SUITE 250
8 LAS VEGAS, NV 89144
9 TELEPHONE: (702) 258-6665
10 FACSIMILE: (702) 258-6662
11 pjones@bremerwhyte.com

12 Attorneys for Plaintiff,
13 TON VINH LEE

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DISTRICT COURT
CLARK COUNTY; NEVADA

TON VINH LEE, an individual

Plaintiff,

vs.

INGRID PATIN, an individual, and PATIN
LAW GROUP, PLLC, a Nevada Professional
LLC,

Defendants.

Case No.: A-15-723134-C

Dept. No.: IX

COMPLAINT

COMES NOW, Plaintiff TON VINH LEE (hereinafter "Plaintiff"), by and through his
attorneys of record, Prescott T. Jones, Esq. and Jessica M. Friedman, Esq. of the law firm
BREMER, WHYTE, BROWN & O'MEARA, LLP, and hereby complains and alleges as follows:

I.

PARTIES

1. Plaintiff is, and at all times relevant herein, was a resident of Clark County, Nevada.
2. The actions complained of herein occurred in Clark County, Nevada.
3. Plaintiff, TON VINH LEE (hereinafter "Plaintiff") is a Doctor of Dental Surgery (DDS), and owner of Ton V. Lee, DDS, P.C., d/b/a Summerlin Smiles located at 9525 West Russell Rd. Suite 100, Las Vegas, NV 89148.

1 4. Plaintiff is informed, believes, and thereupon alleges, Defendant INGRID PATIN,
2 ESQ. is, and was at all relevant times, a practicing attorney in the State of Nevada.

3 5. Plaintiff is informed, believes, and thereupon alleges, Defendant PATIN LAW
4 GROUP, PLLC is a Nevada Professional Limited Liability Company licensed to do business in
5 Clark County, Nevada.

6 6. Defendants, and each of them, were the handling attorney and/or handling law firm
7 in *Svetlana Singletary v. Ton Lee, DDS*, Case Number A-12-656091-C.

8 **II.**

9 **GENERAL ALLEGATIONS**

10 7. Plaintiff incorporates herein by reference the preceding paragraphs, inclusive, as
11 though fully set forth herein.

12 8. On or about February 7, 2012, Svetlana Singletary, Gabriel Singletary, Gabriel I
13 Singletary, and the Estate of Reginald Singletary filed suit against, *inter alia*, TON VINH LEE for
14 various causes of action arising out of the death of Reginald Singletary, in Case Number A-12-
15 656091-C.

16 9. On September 10, 2014, a Judgement on Jury Verdict was entered in favor of
17 Defendant TON VINH LEE, in which TON VINH LEE was also awarded his cost in the amount of
18 Six Thousand Thirty-Two Dollars and Eighty-Three Cents (\$6,032.83), as the prevailing party
19 under NRS 18.020.

20 10. Despite the Judgment entered, Defendants lists on their website, PatinLaw.com,
21 under a section entitled "Recent Settlements and Verdicts," a Plaintiff's Verdict in the amount of
22 \$3.4M for *Svetlana Singletary v. Ton Lee, DDS* wherein it explicitly refers to Plaintiff Ton Vinh
23 Lee by name.

24 11. Nevada Rules of Professional Conduct, Rule 7.2, requires any statement made by an
25 attorney that includes a monetary sum, the amount involved must have been actually received by
26 the client.

27 12. Plaintiff added this statement to her website for her own personal gain.
28

1 **FIRST CLAIM FOR RELIEF**

2 **Defamation Per Se**

3 13. Plaintiff incorporates herein by reference the preceding paragraphs, inclusive, as
4 though fully set forth herein.

5 14. Defendants posted a false and defamatory statement on the "Recent Settlements and
6 Verdicts" portion of their business website, PatinLaw.com.

7 15. The defamatory statement directly names both the Plaintiff and his Medical Practice.

8 16. The defamatory statement lists the case name, *Singletary v. Ton Vinh Lee, DDS, et*
9 *al.*, as well as a detailed description of the case: "A dental malpractice-based wrongful death action
10 that arose out of the death of Decedent Reginald Singletary following the extraction of the No. 32
11 wisdom tooth by Defendants on or about April 16, 2011. Plaintiff sued the dental office,
12 Summerlin Smiles, the owner, Ton Vinh Lee, DDS, and the treating dentists, Florida Traivai, DMD
13 and Jai Park, DDS, on behalf of the Estate, herself and minor son."

14 17. Defendants have posted this statement on their website, which constitutes an
15 unprivileged publication to a third person.

16 18. Defendants knew or should have known that the statement was false.

17 19. Nevada Rules of Professional Conduct, Rule 7.2, prohibit attorneys from advertising
18 verdicts or recoveries that were not actually received or won.

19 20. The defamatory statement imputes to TON VINH LEE a lack of fitness as a dentist
20 in that it claims Plaintiffs were able to recover a \$3.4 million judgment for wrongful death.

21 21. The defamatory statement injures TON VINH LEE in his business as a simple
22 internet search reveals the claimed verdict for wrongful death.

23 WHEREFORE, Plaintiff expressly reserving the right to amend this complaint prior to or at
24 the time of trial of this action, to insert those items of damage not yet fully ascertainable, prays
25 judgement against all Defendants, and each of them, as follows:

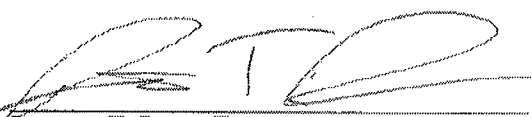
- 26 1. For general damages in excess of \$10,000.00.
27 2. For reasonable attorney's fees and costs
28 3. For pre- and post-judgement interest on any award rendered herein; and

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4. For such other and further relief as the Court deems just and proper

Dated: August 17, 2015

BREMER WHYTE BROWN & O'MEARA LLP

By: 

Prescott T. Jones, Esq.
Nevada State Bar No. 11617
Jessica M. Friedman, Esq.
Nevada State Bar No. 13486
Attorney for Plaintiff,
TON VINH LEE


CLERK OF THE COURT

1 **COMP**
2 BRIAN D. NETTLES, ESQ.
3 Nevada Bar No. 7462
4 CHRISTIAN M. MORRIS, ESQ.
5 Nevada Bar No. 11218
6 NETTLES LAW FIRM
7 1389 Galleria Drive, Suite 200
8 Henderson, Nevada 89014
9 Telephone: (702) 434-8282
10 Facsimile: (702) 434-1488
11 briannettles@nettlslawfirm.com
12 christianmorris@nettlslawfirm.com
13 Attorneys for Plaintiff

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 TON VINH LEE, an individual,
17
18 Plaintiff,

CASE NO. A-15-723134
DEPARTMENT NO. IX

19 v.

20 INGRID PATIN, an individual, and
21 PATIN LAW GROUP, PLLC, a Nevada
22 Professional LLC,
23
24 Defendants.

DEFENDANTS' MOTION TO DISMISS

25 Defendants, Ingrid Patin and Patin Law Group, PLLC (hereinafter, "Defendants"), by
26 and through their counsel of record, Christian M. Morris, Esq. of the Nettles Law Firm, hereby
27 move this honorable Court to dismiss Plaintiff's Complaint for Insufficiency of Service of
28 Process and Failure to State a Claim Upon Which Relief Can Be Granted pursuant to
Nev.R.Civ.P. 12(b)(5), or in the alternative, Motion for Summary Judgment.

///

///

NETTLES LAW FIRM
1389 Galleria Drive, Suite 200
Henderson, NV 89014
702.434.8282 / 702.434.1488 (fax)

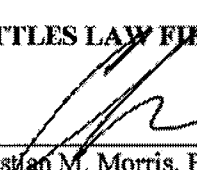
NETTLES LAW FIRM

1389 Galleria Drive, Suite 200
Henderson, NV 89014
702.434.8282 / 702.434.1488 (fax)

1 This Motion is made and based upon the papers and pleadings on file with the Court, the
2 exhibits attached hereto, the following Memorandum of Points and Authorities, and any oral
3 argument the Court may entertain at the hearing on the Motion.

4 Dated this 8th day of September, 2015.

6 **NETTLES LAW FIRM**

7
8 
9 Christian M. Morris, Esq.
10 Nevada Bar No. 011218
11 1389 Galleria Drive, Suite 200
12 Henderson, NV 89014
13 Attorneys for Defendants

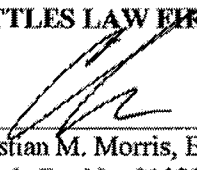
14 **NOTICE OF MOTION**

15 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

16 PLEASE TAKE NOTICE that Defendants will bring the instant MOTION TO
17 DISMISS on for hearing before the above-entitled Court on the 14 day of
18 OCTOBER, 2015, at the hour of 9:00A a.m. of that day, or as soon thereafter as
19 counsel may be heard.

20 Dated this 8th day of September, 2015.

21 **NETTLES LAW FIRM**

22
23 
24 Christian M. Morris, Esq.
25 Nevada Bar No. 011218
26 1389 Galleria Drive, Suite 200
27 Henderson, NV 89014
28 Attorneys for Defendants

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Plaintiff filed the instant action as a defamation per se claim against Defendants Ingrid
5 Patin, individually, and Patin Law Group, PLLC alleging that "Defendants posted a false and
6 defamatory statement on the 'Recent Settlements and Verdicts' portion of their business
7 website, PatinLaw.com." Plaintiff further alleges that the statement posted by Defendants
8 "imputes to TON VINH LEE a lack of fitness as a dentist," as well as "injures TON VINH LEE
9 in his business as a simple internet search reveals the claimed verdict for wrongful death."
10 However, the statement posted by Defendants is *true* and not defamatory in nature. Defendant
11 Ingrid Patin served as counsel on the underlying matter, and conducted a seven day jury trial
12 which resulted in a Plaintiff's verdict in the amount of Three Million Four Hundred Seventy
13 Thousand Dollars and Zero Cents (\$3,470,000.00). Defendant posted the favorable verdict on
14 her website, including the case name and information regarding the nature of the case and
15 damages in accordance with 7.2(i) of the Nevada Rules of Professional Conduct.

16
17 Based upon the fact that Defendants' statement concerning the verdict received on
18 January 25, 2014 on behalf of Ingrid Patin's client is *true*, Plaintiff's Complaint should be
19 dismissed with prejudice.
20

21 **II.**

22 **BRIEF PROCEDURAL HISTORY**

23 On or about August 17, 2015, Plaintiff commenced the instant action through the filing
24 of a Complaint against Ingrid Patin, an individual, and Patin Law Group, PLLC, a Nevada
25 Professional LLC in the Eighth Judicial District Court. Thereafter, Plaintiff improperly
26 attempted service of the Summons and Complaint on Defendant Patin Law Group, PLLC on or
27 about August 19, 2015 by leaving a copy of the Summons and Complaint with a receptionist at
28

1 Regus, Las Vegas.

2 As of the filing of this Motion to Dismiss, Plaintiff has not served Defendant Ingrid
3 Patin, individually, or the registered agent of Patin Law Group, PLLC with a Summons and
4 Complaint.

5
6 **III.**

7 **STATEMENT OF FACTS AND RELEVANT BACKGROUND**

8 The underlying case, of which the instant matter is based, involved a Complaint for
9 dental malpractice brought by Plaintiff Svetlana Singletary, individually, and as the
10 Representative of the Estate of Reginald Singletary, and as parent and legal guardian of Gabriel
11 L. Singletary, a minor, for the wrongful death of Reginald Singletary following dental surgery
12 to extract a wisdom tooth. Plaintiff Svetlana Singletary commenced the action through the
13 filing of an original Complaint in the Eighth Judicial District Court on or about February 7,
14 2012. The Complaint named Ton Vinh Lee, DDS, Florida Traivai, DMD, Jai Park, DDS and
15 Ton V. Lee, DDS d/b/a Summerlin Smiles as Defendants. (See Caption, attached hereto as
16 Exhibit A). The action came on for trial before the Eighth Judicial District Court and a jury on
17 January 13, 2014. At the conclusion of the trial of the matter, the jury rendered a verdict in
18 favor of Plaintiffs in the amount of Three Million Four Hundred Seventy Thousand Dollars and
19 Zero Cents (\$3,470,000.00) as follows: that Plaintiff, Svetlana Singletary, individually, be
20 awarded the sum of Nine Hundred Eighty Five Thousand Dollars and Zero Cents (\$985,000.00)
21 and that Plaintiff, Gabriel Singletary, a minor, be awarded the sum of Two Million Four
22 Hundred Eighty Five Thousand Dollars and Zero Cents (\$2,485,000.00). Having found for the
23 Plaintiffs and against Defendants, Florida Traivai, DMD and Summerlin Smiles, the jury further
24 found that the percentage of negligence on the part of Decedent Reginald Singletary which was
25 the proximate cause of Decedent Reginald Singletary's injury was twenty five percent (25%),
26 the percentage of negligence on the part of Defendant, Florida Traivai, DMD, which was the
27
28

1 proximate cause of Decedent Reginald Singletary's injury was fifty percent (50%), and the
2 percentage of negligence on the part of Defendant Summerlin Smiles, which was the proximate
3 cause of Decedent Reginald Singletary's injury, was twenty five percent (25%). (See Special
4 Verdict Form, attached hereto as Exhibit B). Plaintiff Svetlana Singletary filed a Memorandum
5 of Costs and Motion for Award of Costs on February 3, 2014. The Court granted in part
6 Plaintiff's Motion for Award of Costs and Defendant Florida Traivai, DMD's Motion to Re-tax
7 Costs, and awarded Plaintiff Svetlana Singletary her costs of Thirty Eight Thousand Forty Two
8 Dollars and Sixty Four Cents (\$38,042.64), as the prevailing party under Nevada Revised
9 Statute 18.020. (See Order, attached hereto as Exhibit C). Plaintiff Svetlana Singletary
10 subsequently filed a Judgment on Jury Verdict. (See Judgment on Jury Verdict, attached hereto
11 as Exhibit D).

12
13 In February, 2014, the Trial Reporter of Nevada published the jury verdict in its monthly
14 publication. (See The Trial Reporter of Nevada, attached hereto as Exhibit E).

15
16 Following the favorable jury verdict, Ingrid Patin of Patin Law Group, PLLC posted the
17 jury verdict on her website, including the case name [Singletary v. Ton Vinh Lee, DDS, et al.]
18 and information regarding the nature of the case and damages in accordance with 7.2(i) of the
19 Nevada Rules of Professional Conduct. Specifically, the following post appears at
20 www.patinlaw.com:

21
22 DENTAL MALPRACTICE/WRONGFUL DEATH – PLAINTIFF'S
23 VERDICT, 2014

24 DESCRIPTION: SINGLETARY V. TON VINH LEE, DDS, ET AL.

25 A dental malpractice-based wrongful death action that arose out of the
26 death of Decedent Reginald Singletary following the extraction of the No.
27 32 wisdom tooth by Defendants on or about April 16, 2011. Plaintiff sued
the dental office, Summerlin Smiles, the owner, Ton Vinh Lee, DDS, and
the treating dentists, Florida Traivai, DDS and Jai Park, DDS, on behalf of
the Estate, herself and minor son.

28 This matter is on appeal.

1 In the Fall 2014, the Nevada Legal Update also published the jury verdict and case
2 summary in its quarterly publication. (See The Nevada Legal Update, attached hereto as
3 Exhibit F).

4 When performing a google search of "Nevada jury verdicts singletary," the Supreme
5 Court of the State of Nevada has the judgment upon jury verdict listed. (See Google Search,
6 attached hereto as Exhibit G).

7
8 IV.

9 STANDARD FOR REVIEW

10 Nevada Rule of Civil Procedure 12(b)(5) provides for the filing of a Motion to Dismiss
11 when there is insufficiency of service of process and a Complaint fails to state a claim upon
12 which relief can be granted. Specifically, the Rule states that "every defense, in law or fact, to a
13 claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party
14 claim, shall be asserted in the responsive pleading thereto if one is required, except that the
15 following defenses may at the option of the pleader be made by motion: . . . (4) insufficiency of
16 service of process, (5) failure to state a claim upon which relief can be granted. . . ."

17
18 A. Insufficiency of Service of Process

19 Service of process upon a Nevada corporation requires that the summons and complaint be
20 served together to the *registered agent* of the corporation. NRCP 4(d)(1) (emphasis added). If
21 service cannot be had upon the registered agent, then "service may be made upon such entity by
22 delivering to the secretary of state, or the deputy secretary of state, a copy of said summons
23 attached to a copy of the complaint, and by posting a copy of said process in the office of the
24 clerk of the court in which such action is brought or pending." *Id.* Service of the summons and
25 complaint upon an assistant of defendant's business is insufficient. Karns v. State Bank & Trust
26 Co., 31 Nev. 170, 101 P. 564 (1909) (decision under former similar statute). Where the
27 evidence that the person served was not authorized by the defendant to receive service of
28

process is uncontradicted, such denial of authority must be taken by the court as true, for the purpose of applying subdivision (d)(6). In the absence of actual specific appointment or authorization, and in the absence of the statute conferring authority, an agency to accept service of process will not be implied. Foster v. Lewis, 78 Nev. 330, 372 P.2d 679 (1962).

B. Failure to State a Claim Upon Which Relief Can Be Granted

A complaint will not be dismissed for failure to state a claim upon which relief can be granted unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him or her to relief. Simpson v. Mars, Inc., 113 Nev. 188, 929 P.2d 966 (1997). If the court, taking Plaintiff's allegations at face value, determines that the allegations fail to state a recognizable claim for relief, then dismissal is appropriate. Morris v. Bank of America, 110 Nev. 1274, 886 P.2d 454 (1994); see also Bratcher v. City of Las Vegas, 113 Nev. 502, 937 P.2d 485 (1997) (dismissal with prejudice is proper when it appears beyond a reasonable doubt that the Plaintiff can sustain no action which would entitle him or her to relief.). When the complaint shows on its face that the cause of action is barred, the burden falls upon the plaintiff to satisfy the court that the bar does not exist. Bank of Nevada v. Friedman, 82 Nev. 417, 420 P.2d 1 (1996). A motion to dismiss for failure to state a claim, if sustained without leave to proceed further, results in a judgment on the merits. Zalk-Josephs Co. v. Wells Cargo, Inc., 81 Nev. 163, 400 P.2d 621 (1965).

V.

LEGAL ARGUMENT

A. Defendants' Statements Are True And Not Defamatory In Nature

In order to establish a prima facie case of defamation, a plaintiff must prove: (1) a *false* and defamatory statement by defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages. Chowdhry v. NLVH, Inc., 109 Nev. 478, 483, 851 P.2d 459 (1993) (citing

1 Restatement Second of Torts, § 558 (1977)) (emphasis added). If the defamation tends to injure
2 the plaintiff in his or her business or profession, it is deemed defamation per se, and damages
3 will be presumed. Id. at 483-84. Whether a statement could be construed as defamatory is a
4 question of law. Branda v. Sanford, 97 Nev. 643, 646, 637 P.2d 1223, 1225 (1981). A jury
5 question arises only when the statement is susceptible to different meanings, one of which is
6 defamatory. Id.; Chowdhry v. NLVH, Inc., 109 Nev. 478, 483-84, 851 P.2d 459 (1993).

7
8 In order to bring a Complaint for defamation, Plaintiff must provide factual allegations
9 of a *false or defamatory statement* by Defendants concerning the Plaintiff. In the Complaint,
10 Plaintiff alleges that “Defendants posted a false and defamatory statement on the ‘Recent
11 Settlements and Verdicts’ portion of their business website, PatinLaw.com.” However, the
12 statement posted by Defendants is *true* and not defamatory in nature. Instead, Plaintiff has
13 merely makes an unsupported and conclusory statement that Defendants’ statement was false
14 and defamatory.

15
16 After a seven day trial in January, 2014, the Plaintiffs in the underlying case were
17 collectively awarded Three Million Four Hundred Seventy Thousand Dollars and Zero Cents
18 (\$3,470,000.00) by a jury. (See Exhibit B). The Special Verdict Form memorializing the jury
19 award was filed in open court. (Id.).

20
21 Following the favorable jury verdict, multiple sources have published the award both in
22 print and online. Specifically, the Trial Reporter of Nevada published the jury verdict in its
23 monthly publication in February, 2014. (See Exhibit E). The Nevada Legal Update also
24 published the jury verdict and case summary in its quarterly publication in the fall of 2014.
25 (See Exhibit F). Lastly, the Supreme Court of Nevada has published the jury verdict amount
26 and costs awarded to Plaintiff in the underlying case.

27
28 Ingrid Patin of Patin Law Group, PLLC also posted the jury verdict on her website,
including the case name [Singletary v. Ton Vinh Lee, DDS, et al.] and information regarding

the nature of the case and damages in accordance with 7.2(i) of the Nevada Rules of Professional Conduct. Specifically, the following post appears at www.patinlaw.com:

DENTAL MALPRACTIC/WRONGFUL DEATH – PLAINTIFF’S VERDICT, 2014

DESCRIPTION: SINGLETARY V. TON VINH LEE, DDS, ET AL.

A dental malpractice-based wrongful death action that arose out of the death of Decedent Reginald Singletary following the extraction of the No. 32 wisdom tooth by Defendants on or about April 16, 2011. Plaintiff sued the dental office, Summerlin Smiles, the owner, Ton Vinh Lee, DDS, and the treating dentists, Florida Traivai, DDS and Jai Park, DDS, on behalf of the Estate, herself and minor son.

This matter is on appeal.

The statement above posted by Defendants is true and not defamatory in nature despite Plaintiff’s unfounded assertions. Defendant Ingrid Patin served as the lead counsel on the underlying matter, and conducted a seven day jury trial which resulted in a Plaintiff’s verdict in the amount of Three Million Four Hundred Seventy Thousand Dollars and Zero Cents (\$3,470,000.00). Defendant posted the favorable verdict on her website, including the case name and information regarding the nature of the case and damages in accordance with 7.2(i) of the Nevada Rules of Professional Conduct.

Based on the fact that the information contained on Defendants’ website is true and not defamatory in nature, Defendants respectfully request that Plaintiff’s Complaint be dismissed. Plaintiff should not be entitled to rely upon mere allegations and conclusory statements to survive dismissal, when such allegations and conclusory statements are without merit.

B. Plaintiff has Failed to Properly Serve Defendants with a Summons and Complaint

On or about August 19, 2015, Plaintiff improperly attempted service of the Summons and Complaint on Defendant Patin Law Group, PLLC by leaving a copy of the Summons and Complaint with a receptionist at Regus Las Vegas. Defendants’ office is located within the Regus Executive Office Suites, located at 66711 S. Las Vegas Boulevard, Suite 210, Las Vegas, Nevada 89119. However, Defendants do not employ the receptionists for the Regus

1 Executive Office Suites and/or Regus Las Vegas. Additionally, the receptionist for Regus Las
2 Vegas is not the registered agent for Patin Law Group, PLLC. Defendants have not granted
3 authority to any employees, receptionists or otherwise of Regus Las Vegas to receive service of
4 process or documents on behalf of Defendants, and Regus Las Vegas, its employees,
5 receptionists or otherwise are not agents of Defendants.

6 As of the filing of this Motion to Dismiss, Plaintiff has not served Defendant Ingrid
7 Patin, individually, or the registered agent of Patin Law Group, PLLC with a Summons and
8 Complaint. Thus, Plaintiff's Complaint should be dismissed.
9

10 VI.

11 **IN THE ALTERNATIVE, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

12 In the alternative, Defendants move this Court to consider the instant Motion to Dismiss
13 as a Motion for Summary Judgment. As this Court is aware, "[s]ummary judgment is
14 appropriate and 'shall be rendered forthwith' when the pleadings and other evidence on file
15 demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party
16 is entitled to a judgment as a matter of law.'" Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d
17 1026 (2005) (internal citations omitted). "When a motion for summary judgment is made and
18 supported as required by NRCP 56, the non-moving party may not rest upon general allegations
19 and conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating the
20 existence of a genuine factual issue. 'The non-moving party's documentation must be
21 admissible evidence,' as 'he or she is not entitled to build a case on the gossamer threads of
22 whimsy, speculation and conjecture.'" Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 57
23 P.3d 82 (2002) (internal citations omitted).
24

25 Where the motion for dismissal for failure to state a claim was supported by a number of
26 documents which were outside the pleadings, the district court's dismissal of the case had to be
27 reviewed as an order granting summary judgment. Lumbermen's Underwriting Alliance v.
28

NETTLES LAW FIRM

1389 Galleria Drive, Suite 200
Henderson, NV 89014
702.434.8282 / 702.434.1488 (fax)

1 RCR Plumbing, Inc., 114 Nev. 1231, 969 P.2d 301 (1998); see Paso Bldrs., Inc. v. Hebard, 83
2 Nev. 165, 426 P.2d 731 (1967).

3 In accordance with NRCP 56, Defendants have submitted numerous admissible
4 documents in support of the dismissal of Plaintiff's Complaint for failure to state a claim upon
5 which relief can be granted. These documents are considered outside of the pleadings, and
6 therefore, require this honorable court to review the case under NRCP 56 if this Court relies
7 upon said documents when issuing its Order.
8


9 **VII.**

10 **CONCLUSION**

11 Here, Plaintiff can prove no set of facts sufficient to establish the elements of
12 defamation against Defendants. Thus, dismissal of Plaintiff's Complaint for failure to state a
13 claim upon which relief can be granted is proper. Based upon the foregoing, Defendants
14 respectfully request this Honorable Court to issue an Order dismissing, with prejudice,
15 Plaintiff's Complaint.

16 DATED this 8th day of September, 2015.

17 **NETTLES LAW FIRM**

18
19
20 
21 Christian M. Morris, Esq.
22 Nevada Bar No. 011218
23 1389 Galleria Drive, Suite 200
24 Henderson, NV 89014
25 Attorneys for Defendants
26
27
28

NETTLES LAW FIRM
1389 Galleria Drive, Suite 200
Henderson, NV 89014
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PROOF OF SERVICE

Pursuant to NEFCR 9, NRCP (b) and EDCR 7.26, I certify that on this date, I served the forgoing **MOTION TO DISMISS** on the following parties by electronic transmission through the Wiznet system on this 8th day of September, 2015.

Prescott T. Jones, Esq.
Jessica Friedman, Esq.
BREMER WHYTE BROWN & O'MEARA LLP
1160 N. Town Center Drive
Suite 250
Las Vegas, NV 89144
Telephone: (702) 258-6665
Facsimile: (702) 258-6662
pjones@bremerwhyte.com

Attorneys for Plaintiff
TON VINH LEE

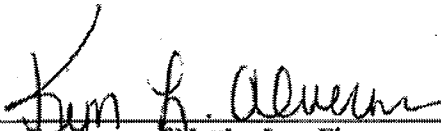

An Employee of Nettles Law Firm

EXHIBIT "A"

1 **COMP**
2 **LLOYD W. BAKER, ESQ.**
3 Nevada Bar No. 6893
4 **INGRID PATIN, ESQ.**
5 Nevada Bar No.: 011239
6 **BAKER LAW OFFICES**
7 500 South Eighth Street
8 Las Vegas, NV 89101
9 (702) 360-4949
10 Attorneys for Plaintiff

Alvin D. Shuman
CLERK OF THE COURT

11 **DISTRICT COURT**

12 **COUNTY OF CLARK, STATE OF NEVADA**

13 **SVETLANA SINGLETARY**, individually,
14 as the Representative of the Estate of
15 **REGINALD SINGLETARY**, and as parent and
16 legal guardian of **GABRIEL L. SINGLETARY**,
17 a Minor,

18 Plaintiff,

19 vs.

20 **TON VINH LEE, DDS**, individually, **FLORIDA**
21 **TRAVAI, DMD**, individually, **JAI PARK, DDS**,
22 individually, **TON V. LEE, DDS, PROF. CORP.**,
23 a Nevada Professional Corporation d/b/a
24 **SUMMERLIN SMILES, DOE SUMMERLIN**
25 **SMILES EMPLOYEE**, and **DOES I through X**
26 and **ROB CORPORATIONS I through X**,
27 inclusive,

28 Defendants.

Case No.: **A- 12- 656091- C**
Dept. No.:

XVI

ARBITRATION EXEMPTION:
WRONGFUL DEATH

29 **COMPLAINT**

30 COMES NOW the Plaintiff, **SVETLANA SINGLETARY**, individually, as the
31 Representative of the Estate of **REGINALD SINGLETARY**, and as parent and legal guardian of
32 **GABRIEL L. SINGLETARY**, by and through her counsel of record, **INGRID M. PATIN, ESQ.** of
33 **BAKER LAW OFFICES**, hereby alleges and complains as follows:

34 ///

35 ///

36 ///

37 ///

EXHIBIT "B"

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

JAN 22 2019

BY ALICE JACOBSON, DEPUTY

SVETLANA SINGLETARY, individually, as
the Representative of the Estate of
REGINALD SINGLETARY, and as parent
and legal guardian of GABRIEL L.
SINGLETARY, a Minor,

CASE NO.: A-12-656091-C
DEPT. NO.: XXX

SPECIAL VERDICT FORM

Plaintiff,

vs.

TON VINH LEE, DDS, individually,
FLORIDA TRAIVAI, DMD, individually, JAI
PARK, DDS, individually, TON V. LEE,
DDS, PROF. CORP., a Nevada
Professional Corporation d/b/a
SUMMERLIN SMILES, DOE
SUMMERLIN SMILES EMPLOYEE, and
DOES I through X and ROE
CORPORATIONS I through X, inclusive,

Defendants.

We the jury in the above-entitled action find the following special verdict on the
Questions submitted to us:

Question No. 1: Was Ton Vinh Lee, DDS, negligent in his care and treatment of
Reginald Singletary?

ANSWER: Yes _____ No ✓

If your answer to Question 1 is "no" please sign and return the General Verdict
finding in favor of Dr. Lee.

Question No. 2: Was negligence on the part of Ton Vinh Lee, DDS a cause of injury
to Reginald Singletary?

ANSWER: Yes _____ No ✓

1 If your answer to Question 2 is "no" please sign and return the General Verdict
2 finding in favor of Dr. Lee.

3 Question No. 3: Was Florida Traival, DMD, negligent in her care and treatment of
4 Reginald Singletary?

5 ANSWER: Yes ☒ No ☐

6
7 If your answer to Question 3 is "no" please sign and return the General Verdict
8 finding in favor of Dr. Traival.

9 Question No. 4: Was negligence on the part of Florida Traival, DMD, a cause of injury
10 to Reginald Singletary?

11 ANSWER: Yes ☒ No ☐

12 If your answer to Question 4 is "no" please sign and return the General Verdict
13 finding in favor of Dr. Traival.

14 Question No. 5: Was Jai Park, DDS, negligent in his care and treatment of Reginald
15 Singletary?

16 ANSWER: Yes ☐ No ☒

17
18 If your answer to Question 5 is "no" please sign and return the General Verdict
19 finding in favor of Dr. Park.

20 Question No. 6: Was negligence on the part of Jai Park, DDS, a cause of injury to
21 Reginald Singletary?

22 ANSWER: Yes ☐ No ☒

23
24 If your answer to Question 6 is "no" please sign and return the General Verdict
25 finding in favor of Dr. Park.

26 Question No. 7: Was Summerlin Smiles negligent in its care and treatment of
27 Reginald Singletary?

28 ANSWER: Yes ☒ No ☐

1 If your answer to Question 7 is "no" please sign and return the General Verdict
2 finding in favor of Summerlin Smiles.

3 Question No. 8: Was negligence on the part of Summerlin Smiles a cause of injury to
4 Reginald Singletary?

5 ANSWER: Yes ✓ No _____

7 If your answer to Question 8 is "no" please sign and return the General Verdict
8 finding in favor of Summerlin Smiles.

9 If there is any Defendant for whom you have not signed and returned a General
10 Verdict Form please proceed to questions 9 through 16 for that Defendant or Defendants.

11 Question No. 9: What amount of damage, if any, do you find was sustained by Svetlana
12 Singletary for past grief or sorrow, loss of companionship, society, comfort and
13 consortium, and damages for pain, suffering or disfigurement of the decedent?

14 ANSWER \$ 125,000.-

16 Question No. 10: What amount of damage, if any, do you find will be sustained by
17 Svetlana Singletary for future grief or sorrow, loss of companionship, society, comfort and
18 consortium?

19 ANSWER \$ 500,000.-

20 Question No. 11: What amount of damage, if any, do you find was sustained by Gabriel
21 Singletary for past grief or sorrow, loss of companionship, society, comfort and
22 consortium, and damages for pain, suffering or disfigurement of the decedent?

23 ANSWER \$ 125,000.-

25 Question No. 12: What amount of damage, if any, do you find will be sustained by Gabriel
26 Singletary for future grief or sorrow, loss of companionship, society, comfort and
27 consortium?

28 ANSWER \$ 2,000,000.00

1 Question No. 13: What amount of damage, if any, do you find was sustained by Svetlana
2 Singletary for past loss of probable support?

3 ANSWER \$ 60,000.-

4 Question No. 14: What amount of damage, if any, do you find will be sustained by
5 Svetlana Singletary for future loss of probable support?

6 ANSWER \$ 300,000.-

7 Question No. 15: What amount of damage, if any, do you find was sustained by Gabriel
8 Singletary for past loss of probable support?

9 ANSWER \$ 60,000.-

10 Question No. 16: What amount of damage, if any, do you find will be sustained by Gabriel
11 Singletary for future loss of probable support?

12 ANSWER \$ 300,000.-

13 Question No. 17: Was Reginald Singletary comparatively negligent?

14 ANSWER: Yes ☒ No ☐

15 If you answered "yes", please proceed to Question No. 18. If you answered "no"
16 please proceed to Question No. 19.

17 Question No. 18: If you answered "yes" to Question No. 17, was the comparative
18 negligence of Reginald Singletary a cause of his injuries?

19 ANSWER: Yes ☒ No ☐

1 Question No. 19: Assuming that 100% represents the total negligence which was the
2 cause of the Plaintiffs' damages, what percentage of this 100% is due to the comparative
3 negligence of Reginald Singletary and what percentage of this 100% is due to the
4 negligence of each of the Defendants?

5	Reginald Singletary	<u>25</u> %
6		
7	Ton Vinh Lee, DDS	<u>0</u> %
8	Florida Traivai, DMD	<u>50</u> %
9	Jai Park, DDS	<u>0</u> %
10	Summerlin Smiles	<u>25</u> %
11	TOTAL	<u>100</u> %

12
13 DATED this 22 day of January, 2014

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16 FOREPERSON
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EXHIBIT "C"



CLERK OF THE COURT

Lloyd W. Baker, Esq.
Nevada Bar No. 6893
Ingrid Patin, Esq.
Nevada Bar No. 011239
BAKER LAW OFFICES
500 S. Eighth Street
Las Vegas, NV 89101
Telephone : (702) 360-4949
Facsimile : (702) 360-3234

Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

SVETLANA SINGLETARY, individually, as
the Representative of the Estate of
REGINALD SINGLETARY, and as parent
and legal guardian of GABRIEL L.
SINGLETARY, a Minor,

Plaintiff,

v.

TON VINH LEE, DDS, individually,
FLORIDA TRAI VAL, DMD, individually, JAI
PARK, DDS, individually; TON V. LEE,
DDS, PROF. CORP., a Nevada Professional
Corporation d/b/a SUMMERLIN SMILES,
DOE SUMMERLIN SMILES EMPLOYEE,
and DOES I through X and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-12-656091-C
Dept. No.: ~~KIV~~ XXX

ORDER

Defendant FLORIDA TRAI VAL, DMD'S MOTION TO RETAX, and Defendant TON
VINH LEE, DDS', Joinder to Motion to Retax, having come before the Court for hearing on the
11th day of March, 2014; Jessica Goodey, Esq. of Baker Law Offices appearing for Plaintiff
SVETLANA SINGLETARY, individually, as the Representative of the Estate of REGINALD

1 SINGLETARY, and as parent and legal guardian of GABRIEL L. SINGLETARY, Amanda
2 Brookhyser, Esq. of LEWIS, BRISBOIS, BISGAARD & SMITH, LLP appearing for Defendant
3 FLORIDA TRAIVAL, DMD, and Jason Friedman, Esq. of STARK, FREIDMAN & CHAPMAN
4 appearing before Defendant TON V. LEE, DDS, PROF. CORP., and the Court having examined
5 the records and documents on file in the above-entitled matter and being fully advised in the
6 premises:

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant FLORIDA
8 TRAIVAL, DMD's Motion to Relax and Defendant TON VINH LEE, DDS' Joinder thereto is
9 GRANTED IN PART and DENIED IN PART, as set forth below.

10 Plaintiff's requested witness fees are hereby reduced to \$18,495.64, and Plaintiffs'
11 requested photocopy costs are hereby reduced to \$4,153.44. All other costs requested by
12 Plaintiff are granted in the full amounts requested.

13 ///

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1 Therefore, IT IS HEREBY ORDERED ADJUGED AND DECREED that Plaintiff is
2 awarded \$38,042.64 in costs.

3 Dated this ____ day of March, 2014.

4
5
6 Honorable Jerry Wiese, II, District Court Judge

7 Respectfully Submitted By:

8 **BAKER LAW OFFICES**

9
10 _____
11 Lloyd W. Baker, Esq.
12 Nevada Bar No. 6893
13 Ingrid Patin, Esq.
14 Nevada Bar No. 011239
15 500 S. Eighth Street
16 Las Vegas, NV 89101
17 Attorneys for Plaintiff

18 **APPROVED AS TO FORM AND CONTENT:**

19 

20 Amanda Brookheyser, Esq.
21 LEWIS, BRISBOIS,
22 BISGAARD & SMITH, LLP,
23 6385 S. Rainbow Blvd., Suite 600
24 Las Vegas, NV 89118
25 Attorney for Defendant
26 Florida Traivai, DMD

27 _____
28 Jason Friedman, Esq.
STARK, FRIEDMAN & CHAPMAN
200 W. Sahara, #1401
Las Vegas NV 89102
Attorney for Defedants,
Ton Vinh Lee, DDS and Ton V. Lee, DDS,
Prof. Corp., d/b/a Summerlin Smiles

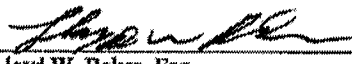
1 Therefore, IT IS HEREBY ORDERED ADJUGED AND DECREED that Plaintiff is
2 awarded \$38,042.64 in costs. *April*

3 Dated this 1 day of ~~March~~, 2014.

4
5
6 
Honorable Jerry Wiese, II, District Court Judge *cm*

7 Respectfully Submitted By:

8 **BAKER LAW OFFICES**

9 
10 Lloyd W. Baker, Esq.
11 Nevada Bar No. 6893
12 Ingrid Patin, Esq.
13 Nevada Bar No. 011239
14 500 S. Eighth Street
Las Vegas, NV 89101
Attorneys for Plaintiff

15 **APPROVED AS TO FORM AND CONTENT:**

16
17
18 Amanda Brookheyser, Esq.
19 LEWIS, BRISBOIS,
20 BISGAARD & SMITH, LLP.
6385 S. Rainbow Blvd., Suite 600
Las Vegas, NV 89118
21 Attorney for Defendant
22 Florida Traivai, DMD


16 
17 Jason Friedman, Esq.
18 STARK, FRIEDMAN & CHAPMAN
19 200 W Sahara, #1401
20 Las Vegas NV 89102
21 Attorney for Defedants,
Ton Vinh Lee, DDS and Ton V. Lee, DDS,
22 Prof. Corp., d/b/a Summerlin Smiles

EXHIBIT "D"



CLERK OF THE COURT

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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

SVETLANA SINGLETARY, individually, as
the Representative of the Estate of
REGINALD SINGLETARY, and as parent
and legal guardian of GABRIEL L.
SINGLETARY, a Minor,

Plaintiff,

v.

TON VINH LEE, DDS, individually,
FLORIDA TRAIVAI, DMD, individually, JAI
PARK, DDS, individually; TON V. LEE,
DDS, PROF. CORP., a Nevada Professional
Corporation d/b/a SUMMERLIN SMILES,
DOE SUMMERLIN SMILES EMPLOYEE,
and DOES I through X and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-12-656091-C

Dept. No.: 30

JUDGMENT ON JURY VERDICT

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Slip Dis	<input type="checkbox"/> Sum Jdgmt
<input type="checkbox"/> Involuntary (rel) Dis	<input type="checkbox"/> Slip Jdgmt	<input type="checkbox"/> Non-Jury Trial
<input type="checkbox"/> Jdgmt on Arb Award	<input type="checkbox"/> Default Jdgmt	<input checked="" type="checkbox"/> Jury Trial
<input type="checkbox"/> Min to Dis (by deft)	<input type="checkbox"/> Transferred	

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1 IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff is entitled to her costs
2 of Thirty Eight Thousand Forty Two Dollars and Sixty Four Cents (\$38,042.64), as the
3 prevailing part under Nevada Revised Statute 18.020.

4 IT IS FURTHER ORDERED AND ADJUDGED that the amounts awarded to
5 Plaintiffs, SVETLANA SINGLETARY, individually, and GABRIEL SINGLETARY, a minor,
6 shall bear interest at the legal rate of 5.25% per year from the date thereon.

7 DATED this 15 day of April, 2014.

8
9
10 
DISTRICT COURT JUDGE 

11 Prepared by:

12 BAKER LAW OFFICES


13
14 By: 
15 LLOYD W. BAKER, ESQ.
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EXHIBIT “E”

The Trial Reporter

NEVADA

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February, 2014

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IN MEMORIAM

Andy Anderson

Editor & Publisher 1967 - 2003

Editor & Publisher

Beverly Graham



Table of Contents

Clark County District Court Civil Jury Trials . . .	2
Addendum & Erratum	11
Churchill County District Court Civil Jury Trials	12
Case Catalogue	12



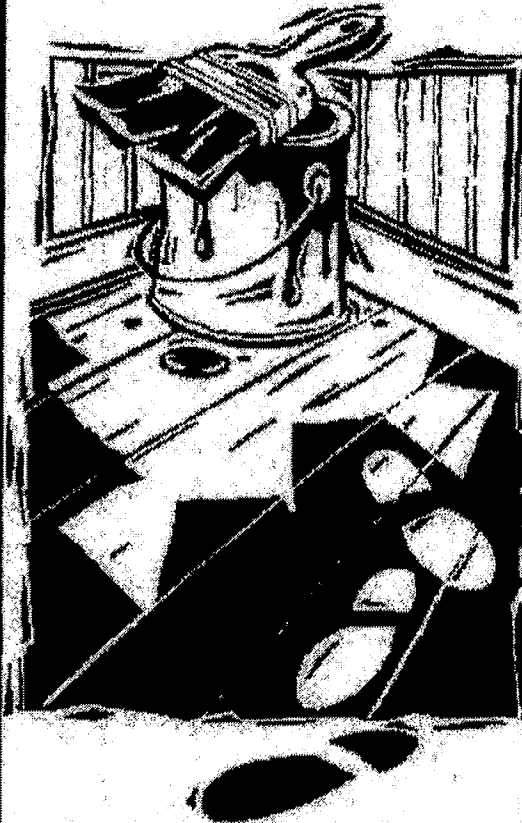
OPEN THE DOOR
TO A FORENSIC
EXPERT'S PAST
HISTORY

Call:
The Trial Reporter

1/17/14 - pro tem Judge HARRY P. MARQUIS - CV A636746 - ACOSTA (Ralph A. Schwartz, a sole practitioner) v LAS VEGAS METROPOLITAN POLICE DEPARTMENT and CROSSMAN (Craig R. Anderson of Marquis Auerbach Coffing, P.C.) - PERSONAL INJURY - REAREND - POLICE VEHICLE. Case being tried as a Shorttrial. Plntf, male, age 37, an unemployed Nevada resident, alleged that, while stopped southbound on Lamb Boulevard, he was rear-ended by Dfnt Crossman, male, a Nevada resident, who was in the course and scope of his occupational duties as a police officer for Dfnt Las Vegas Metropolitan Police Department. Plntf alleged he sustained cervical and thoracic strains and sprains, with secondary headaches; plus a bulging cervical disk at C-4, C-5, which necessitated bilateral facet injections and occipital nerve blocks. Plntf also alleged he has ongoing residual complaints. Prayer: In excess of \$10,000 compensatory damages; plus \$42,507.44 medical expenses. (Dfnts self-insured.) One day trial. By stipulation, four jurors deliberated. Jury out ? hours. AWARDED PLNTF \$35,000 COMPENSATORY DAMAGES (REPRESENTING \$25,000 FOR MEDICAL EXPENSES AND \$10,000 FOR PAIN AND SUFFERING).

1/22/14 - Judge JERRY A. WIESE - CV A656091 - SINGLETARY (Lloyd W. Baker, Ingrid M. Patin, and Jessica M. Goodey of Baker Law Offices) v LEE, D.D.S., dba SUMMERLIN SMILES (Jason B. Friedman of Stark, Friedman & Chapman, L.L.P., of Long Beach, California); PARK, D.D.S. (Edward J. Lemons of Lemons, Grundy & Eisenberg, P.C.); and TRAIVAL, D.M.D. (S. Brent Vogel of Lewis, Brisbois, Bisgaard & Smith, L.L.P.) - WRONGFUL DEATH - MEDICAL MALPRACTICE - DENTAL - FAILURE TO DIAGNOSE/TREAT - INFECTION - LACK OF INFORMED CONSENT. Prologue: Decedent presented to Dfnt Summerlin Smiles, on March 24, 2011, for routine dental work. New

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Into A Corner; Order
A Compendium of Jury
Awards In Cases With
Like Injuries. Call:

The Trial Reporter

patient examination was done. Dfnts dentists Traivai and Park were independent contractors of Dfnt Summerlin Smiles. On April 16th, Decedent returned to Dfnt Summerlin Smiles for an extraction of the number 32 wisdom tooth, performed by Dfnt Traivai. Following the extraction, Decedent experienced ongoing severe pain in the extraction area on the right side of his face; swelling of the face, jaw, and neck; plus difficulty swallowing. Dfnt Summerlin Smiles was allegedly contacted via telephone on April 18th, and Decedent was advised to call again if his symptoms did not subside within four to five days. Decedent continued to experience his prior symptoms, and had difficulty swallowing, as well as difficulty speaking and eating, on April 19th and April 20th. Decedent was vomiting, began having difficulty breathing, and was transported by ambulance to non-party hospital, where he was admitted to the Intensive Care Unit, on April 21st. Antibiotics were administered and drainage of Decedent's neck was performed. Decedent died on April 25th. Case being tried on comparative fault. Decedent, male, age 42, was survived by his spouse and minor son, who brought suit for his wrongful death. Plntfs, both Nevada residents, alleged Dfnts fell below the standard of care by giving Decedent incorrect advice when he called Dfnt Summerlin Smiles, and followed their advice even though he became progressively sicker. Plntfs also alleged Dfnts failed to obtain Decedent's informed consent regarding use of antibiotics to prevent infection. (Court ruled issue was moot.) Plntfs called Joseph B. Marzouk, M.D., an infectious diseases specialist, of Oakland, California. Plntfs also called Andrew Fallos, D.D.S. of Laguna Niguel, California, who was of the opinion that Dfnts fell below the standard of care. Dfnts Lee and Park denied liability, advancing the defense that they did not provide any treatment to Decedent. Dfnt Traivai, female, a Nevada resident, denied falling below the standard of care. Dfnt Traivai argued that there were no complications during the procedure, and Decedent was given both

verbal and written postoperative instructions, which instructed Decedent to contact the office or go to the emergency department if he experienced any severe or unexpected complications. Dfnt Traivai also argued that, in the days following the extraction procedure, she was not contacted and was not aware of Decedent's condition and/or any potential complications. Additionally, Dfnt Traivai argued she did not instruct an employee of Dfnt Summerlin Smiles to give any medical advice and/or instructions to Decedent. Dfnt Traivai called Christian E. Sandrock, M.D., an infectious diseases specialist, of Sacramento, California; and William C. Ardary, D.D.S., M.D., an oral and maxillofacial surgeon, of Arcadia, California. Plntfs alleged that, as a result of Dfnts' negligence, Decedent developed necrotizing mediastinitis and septic shock, then Ludwig's angina from the dental abscess, which resulted in his death. Prayer: In excess of \$10,000 compensatory damages; plus \$600,000 loss of support (D Vogel). (Carrier: Hartford Insurance.) Seven day trial. Jury out two-plus hours. FOUND FOR DFNTS LEE AND PARK; AWARDED PLNTF SPOUSE \$985,000 COMPENSATORY DAMAGES (REPRESENTING \$125,000 FOR PAST PAIN AND SUFFERING, \$500,000 FOR FUTURE PAIN AND SUFFERING, \$60,000 PAST LOSS OF SUPPORT, AND \$300,000 FUTURE LOSS OF SUPPORT). AWARDED PLNTF SON \$2,485,000 COMPENSATORY DAMAGES (REPRESENTING \$125,000 FOR PAST PAIN AND SUFFERING, \$2 MILLION FOR FUTURE PAIN AND SUFFERING, \$60,000 PAST LOSS OF SUPPORT, AND \$300,000 FUTURE LOSS OF SUPPORT). (Found Decedent to be twenty-five percent at fault, found Dfnt Traivai to be fifty percent at fault, and found Dfnt Summerlin Smiles to be twenty-five percent at fault; therefore, Plntf spouse to recover \$492,500 from Dfnt Traivai and \$246,250 from Dfnt Summerlin Smiles; and Plntf son to recover \$1,242,500 from Dfnt Traivai and \$621,250 from Dfnt Summerlin Smiles).

EXHIBIT “F”



NEVADA Legal Update

Fall 2014

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HIGHLIGHTS

Nevada Supreme Court Clarifies Standard for Testimony of a Treating Physician and Prohibits Ex Parte Communication with an Opposing Party's Experts

Whether the testimony of a treating physician must be stated to a "reasonable degree of medical probability" depends on the purpose of the testimony, and whether it supports an alternative causation theory. Further, counsel is prohibited from contacting an opposing party's expert, including a non-retained treating physician, without express consent.

Entertainer Awarded More Than \$1.3 Million after Backstage Fall

A professional comedian, hired to perform at the Bellagio Hotel and Casino, allegedly tripped and fell over an unsecured speaker cord resulting in a complete rupture of his Achilles tendon. The jury awarded the plaintiff \$1,308,500.00 for personal injuries and alleged lost wages.

IN THIS ISSUE

NEVADA SUPREME COURT

Medical Malpractice	Page 1
Negligence	Page 2

NEVADA JURY VERDICTS

Personal Injury	Page 2
Medical Malpractice	Page 3
Premises Liability	Page 4
Breach of Contract	Page 4

COMMENTS

NEVADA SUPREME COURT DECISIONS

MEDICAL MALPRACTICE

A Treating Provider Need Not Testify to a Reasonable Degree of Medical Certainty if Contradicting a Plaintiff's Causation Theory and Parties Must Obtain Express Consent Before Contacting an Opposing Party's Expert

Plaintiff filed a complaint alleging medical malpractice and negligence. Plaintiff specifically asserted that after receiving Lasik corrective surgery on both eyes she experienced ocular irritation and subsequently lost a majority of her sight. Defendant denied liability and asserted that Plaintiff's deteriorating eye condition may have resulted from abuse of numbing eye drops.

In support of Defendant's theory, Defendant called Plaintiff's treating physician to testify at trial. Plaintiff's treating provider testified that, in his opinion, plaintiff could have returned to her best corrective vision had she followed his instructions and recommendations, but conceded that this was speculation. He also testified that, while not the cause of the defect, it was possible that Plaintiff's use of numbing eye drops caused her vision to deteriorate and contributed to her lack of improvement. The jury returned a verdict for Defendant and Plaintiff appealed.

The Nevada Supreme Court determined the testimony offered by Plaintiff's treating physician was permissible pursuant to *Williams v. Eighth Judicial District Court*, 127 Nev. 262 P.3d 360 (2011). *Williams* provided that the testimony of a defense expert need not be stated to a reasonable degree of medical probability when being used to controvert an element of the plaintiff's claim, rather than

establish an independent theory of causation. Here, Defendant did not offer the expert's testimony to establish the alternative causation theory that eye damage resulted from abuse of numbing drops, rather than defendant's actions. Rather, the expert's testimony was offered to furnish reasonable alternative causes to those offered by Plaintiff.

On appeal, Plaintiff also asserted that defense counsel contacted the Plaintiff's treating physician without express consent, thereby warranting a new trial. Defendant argued the communication with the expert was necessary only to coordinate the physician's appearance at trial. The Nevada Supreme Court initially noted that a plaintiff's claim for personal injury or medical malpractice served as a limited waiver of the physician-patient privilege with regard to directly relevant and essential information necessary to resolve the case. Further, the Nevada Rules of Civil Procedure affirmatively allow formal depositions of individuals who have been identified as experts whose opinions may be presented at trial. NRCP 26(b)(4). Rule 26 does not, however, contemplate ex parte communications with the opposing party's expert witnesses. The Court also noted that the professional ethics rules for the Ninth Circuit Court of Appeals preclude counsel from speaking directly to an opposing party's expert. *Erickson v. Newmar Corp.*, 87 F.3d 298, 301 (9th Cir. 1996).

The Nevada Supreme Court ultimately balanced the desire for confidentiality with the need for full disclosure of relevant medical information and concluded there was no need to allow ex parte communication with an opposing party's expert, absent express consent. While the Nevada Supreme Court agreed that improper ex parte communication had occurred, Plaintiff's motion for a new trial was properly denied. The Court noted that the physician's trial testimony remained unchanged from his prior deposition testimony, and therefore Plaintiff did not suffer prejudice as a result of the conduct of Defendant. *Leavitt v. Siems*, 130 Nev. Adv. Rep. 54 (2014).

the property.

As a result of the contact with the chemicals, Plaintiff allegedly developed reactive airway dysfunction syndrome. When Plaintiff's worker's compensation coverage terminated six months after the incident, she was unable to obtain her prescription medication, which allegedly resulted in a stroke. Defendant denied liability.

Plaintiff sought compensatory damages, including approximately \$180,000.00 in medical expenses and \$100,000.00 in lost wages. After a nine day trial the jury awarded Plaintiff \$21,122.00 in compensatory damages. *Wright v. Valley Health System, L.L.C.*, March 6, 2014.

Truck Driver Found Liable for Another Vehicle's Rollover

Defendant was operating a tractor-trailer in the course of his occupational duties as a truck driver for Defendant Per Food Wholesale. Plaintiff, a 19 year-old female retail clerk, alleged that Defendant negligently executed a lane change into Plaintiff's lane of travel, which caused her to lose control and roll her vehicle. Plaintiff sustained a degloving injury to her dominant left hand.

Defendants denied liability and asserted that Plaintiff was either traveling in Defendant's "blind spot" or she attempted to "shoot the gap" to avoid travelling behind Defendant's tractor-trailer. Defendants called an accident reconstructionist to testify in support of their theory. Plaintiff called a psychiatrist, a hand surgeon, a vocational rehabilitation expert and economist to testify as to Plaintiff's alleged damages.

Plaintiff sought \$199,525.48 in past medical expenses, plus \$64,581.00 to \$87,381.00 for future medical treatment. Plaintiff served an \$825,000.00 pretrial Offer of Judgment and during closing arguments, Plaintiff's counsel asked the jury to award more \$5 million. After a 12 day trial, the jury awarded Plaintiff \$1,261,780.22, but found her to be 10 percent at fault. *Kumar v. Per Food Wholesale, Inc.*, February 5, 2014.

MEDICAL MALPRACTICE

Jury Returns Defense Verdict as to Claims Resulting from Plaintiff's Apparent Suicide

Decedent, a 23 year-old female, professional golfer, was survived by her parents who brought suit for her wrongful death. Defendant, a

medical physician, met decedent through mutual friends at a Country Club and treated decedent four times for minor health issues. Five months after their initial meeting, decedent and Defendant developed a romantic relationship.

On May 8, 2010, Defendant arrived at decedent's residence and found her intoxicated. Decedent was instructed to take a shower and the pair then chipped golf balls in decedent's backyard until 9:00 p.m., when Defendant went home to his pregnant wife. On May 9, 2010, Defendant called decedent 17 times, but was unable to reach her. He then drove to her home and gained entry through an unlocked rear door. Defendant found decedent in her bedroom with a plastic bag secured with rubber bands around her head. Defendant removed decedent's suicide note and a blister pack of Xanax, which appeared to be from Mexico, and placed them in the trunk of his vehicle. Decedent's cause of death was determined to be suicide by asphyxiation.

Plaintiffs alleged Defendant fell below the standard of care when he prescribed medication without determining decedent's medical conditions, allergies to the medications, or whether decedent was at risk for taking medications other than those prescribed. Plaintiffs further alleged that Defendant did not properly document decedent's medical chart with the prescribed controlled substances, and failed to properly evaluate her on May 8 and left her in a medically compromised condition. Plaintiffs also claimed that a combined drug intoxication was a significant cause of decedent's death. Defendant denied falling below the standard of care.

Plaintiffs sought compensatory damages and punitive damages. After a seven day trial the jury returned a verdict for Defendant. *Blasberg v. Hess, M.D.*, May 13, 2014.

Jury Finds for Decedent's Family after Overdose on Methadone

Decedent was treated by Defendant physician for several years preceding his death. During the course of his treatment, Defendant discussed referring decedent to an opioid addiction specialist and prescribed a one month supply of Methadone, ten milligrams. Decedent began taking the prescribed Methadone and experienced insomnia, hallucinations and constipation. After four days, decedent experienced pinpoint eyes, profuse sweating, twitching in his sleep, sleep walking, blue-tinged lips and an ashen complexion. Decedent's spouse contacted Defendant's office and was advised by the staff that the decedent's

symptoms were normal and the information would be passed along to the Defendant. Twenty minutes later, decedent stopped breathing and died. Decedent's cause of death was determined to be Methadone intoxication.

Decedent was survived by his spouse and three minor children, who brought suit for his wrongful death. Plaintiffs alleged that Defendant fell below the standard of care when he negligently prescribed methadone for opioid addiction and failed to conduct a thorough medical assessment and physical evaluation. Plaintiffs also alleged that Defendant's medical staff fell below the standard of care when they advised decedent's spouse that the symptoms were normal and failed to recommend that decedent be taken to the emergency department. Additionally, Plaintiffs alleged that the Defendant failed to respond to decedent's wife and failed to supervise and/or train employees in appropriate counseling to patients. Defendant denied falling below the standard of care and maintained that decedent was comparatively at fault for not properly following the prescription's instructions and for taking more than was prescribed.

Plaintiffs sought between \$3 million and \$4 million in damages. After a 13 day trial, the jury found Defendant to be 53 percent at fault. Decedent's estate recovered \$1,592,650.00; decedent's spouse was awarded \$530,000.00; two of decedent's children received \$1,060,000.00 and the third child received \$795,000.00. *Davis and Davis, Estate v. Gautham Gummadi Reddy, M.D., Ltd.*, June 18, 2014.

Plaintiffs Awarded More Than \$2.6 Million Following Wisdom Tooth Extraction

Decedent presented to Defendant dentist for routine dental work and underwent a new patient examination. Decedent returned to Defendant one month later for an extraction of his wisdom teeth. Following the extraction, the decedent experienced ongoing severe pain in the extraction area on the right side of his face, jaw and neck, and experienced difficulty swallowing. Decedent allegedly contacted Defendant via telephone two days later and was advised to call again if his symptoms failed to subside in four to five days. Four days after the extraction, decedent continued to experience symptoms and developed difficulty eating, speaking, and breathing and was vomiting. Decedent was taken to the hospital by ambulance where he was admitted to the Intensive Care Unit. Decedent

was administered antibiotics and drainage of his abscess was performed, but decedent passed nine days after the extraction.

Decedent's spouse and minor son asserted claims for wrongful death. Plaintiffs alleged that Defendant fell below the standard of care by providing decedent incorrect advice when he called after the extraction. Plaintiffs also asserted that Defendant failed to obtain decedent's informed consent regarding the use of antibiotics to prevent infection. Further, plaintiffs claimed that as a result of Defendant's negligence, decedent developed necrotizing fasciitis, septic shock and Ludwig's angina from the dental abscess, which resulted in his death.

Plaintiffs relied on the testimony of an infectious disease specialist and a dentist who opined that Defendant fell below the standard of care. Defendant denied liability and maintained that there were no complications during the procedure. Defendant argued that decedent was given both verbal and written postoperative instructions, which instructed decedent to contact the office or go to the emergency room if he experienced any severe or unexpected complications. Defendant also asserted that he was not contacted or aware of decedent's condition and/or potential complications, or did Defendant instruct an employee of the dental office to give medical advice and/or instructions to the decedent. Defendant relied on the testimony of an infectious disease specialist and an oral and maxillofacial surgeon at trial.

Plaintiffs sought compensatory damages plus \$600,000.00 in loss of support. After a seven day trial, the jury found decedent to be 25 percent at fault. Decedent's spouse was awarded \$738,750.00 in compensatory damages and decedent's minor child was awarded \$1,863,750.00. *Singleton v. Lee, D.D.S.*, January 22, 2014.

PREMISES LIABILITY

Defendant Not Liable For a Trip and Fall on its Premises

Plaintiff, a 57 year-old female accounts payable clerk, alleged that while on Defendant's premises she was injured when her shoe became stuck in a concrete expansion joint, which caused her to trip and fall. Plaintiff alleged Defendant was negligent in its maintenance of the premises, and failed to fill the concrete

expansion joint to a sufficient level required to prevent the hazardous condition.

Plaintiff relied on the testimony of an architect who opined that the expansion joint failed to meet the building code, and a safety engineer who opined the expansion joint could have been a tripping hazard. Defendant denied liability and maintained that it had no notice of the condition. Defendant further argued that there had never been a fall involving any of the 58,000 feet of expansion joints and that its maintenance of the premises was reasonable.

As a result of the fall, Plaintiff allegedly sustained a fractured left elbow. Her orthopedic physician opined that Plaintiff would develop arthritis and may possibly require future surgery. Defendant retained an orthopedic physician who opined that the fracture was causally related to the fall, but maintained that Plaintiff would not develop arthritis or require future surgery.

Plaintiff sought \$119,000.00 in medical expenses and more than \$10,000.00 in lost wages. Plaintiff made a pretrial demand of \$3350,000.00 and Defendant offered \$135,000.00. After a five day trial, the jury returned a verdict for Defendant. *Biondi v. Paris Las Vegas Propco, L.L.C.*, May 23, 2014.

Jury Returned Verdict for Entertainer Who Suffered Injury Backstage

Plaintiff, a 61 year-old male professional comedian, was hired to perform at the Bellagio Hotel and Casino. Plaintiff alleged that Defendant's staff negligently set up the stage, causing Plaintiff to trip and fall over an unsecured speaker cord. Plaintiff sustained a complete rupture of his Achilles tendon, which resulted in a permanent limp. Defendant denied liability and argued Plaintiff was contributory negligent.

At trial, Plaintiff called an entertainment expert, an orthopedic physician and an economist who estimated Plaintiff's damages

were \$7,500,000.00. Defendant relied on the testimony of an orthopedic physician and an economist. Plaintiff sought \$3,214,632.00 in past lost wages; \$4,121,970.00 in future lost wages; and medical expenses. Plaintiff made a pretrial demand of \$500,000.00 and Defendant countered with \$175,000.00. After a 15 day trial, the jury returned a verdict for the Plaintiff and awarded \$1,308,500.00. *Wallace v. Bellagio, L.L.C.*, April 8, 2014.

BREACH OF CONTRACT

Plaintiff Awarded Damages and Ownership Interest in Business Established during Plaintiff's Divorce

Plaintiff and Defendant were engaged to be married in 1999 and allegedly established and operated Canyon Gate Cleaners as equal co-owners. Plaintiff also owned and operated a machinery sales corporation in Phoenix, Arizona, and utilized his resources and equipment to find a location and equip Canyon Gate Cleaners. Because Plaintiff was involved in divorce proceedings at the time, Defendant suggested that Plaintiff not be listed as an officer and shareholder of Canyon Gate in order to insure Plaintiff's wife would not assert a lien on the business. It was agreed that Defendant would constructively hold Plaintiff's interest in the business, which flourished over the next ten years. The parties shared the income from the business and purchased various personal properties that they jointly owned. Subsequently, however, Defendant removed Plaintiff from their home and business by filing a temporary restraining order. Plaintiff alleged that Defendant breached their agreement to sell the business and divide their personal assets.

Defendant denied liability and maintained that Plaintiff was neither an owner nor an interest holder in the business. Defendant further alleged that Plaintiff did not start or operate the business, did not contribute funds or other consideration to the operation, did not design the business and had no financial or "sweat equity." Defendant asserted she hired Plaintiff as a paid consultant through his businesses, LES Systems, Inc., and Lorenz Equipment Sales, and that she purchased the residence where they lived from 1998 through 2009.

After a nine day trial, the jury awarded Plaintiff \$944,000.00 in compensatory damages

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EXHIBIT “G”



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Abdul Howard, 40, was convicted by a jury last June of one count of felon in possession of a firearm, 14 counts... More... \$0 (01-08-2015 - NV). United States of ... Missing: singletary

[PDF] HIGHLIGHTS IN THIS ISSUE NEVADA SUPREME COU...

alversontaylor.com/wp-content/.../2014-Nevada-Legal-Update-Fall.pdf

Nov 4, 2014 - NEVADA JURY VERDICTS: Personal Injury. ... jury returned a verdict for Defendant and Plaintiff appealed..... Singletary v. Lee, D.D.S.,

WATTS v. SINGLETARY | Leagle.com

www.leagle.com/decision/.../11151.../WATTS%20v.%20SINGLETARY

Watts himself expressed concern that the jury's verdict had been influenced by his sleeping: WATTS: The jury made the decision because of my sleeping disorder. ... Nevada, 504 U.S. 127, 139-40, 112 S.Ct. 1810, 1817, 118 L.Ed.2d 479 ...

[PDF] IN THE SUPREME COURT OF THE STATE OF NEVADA...

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Sep 23, 2014 - Client(s) Svetlana Singletary, individually and as the Rep. of the ... Whether the Judgment on Jury Verdict filed April 29, 2014 imposed joint and ...

[PDF] 15-08872 - Case Search

caseinfo.nvsupremecourt.us/document/view.do?csNameID...

Mar 24, 2015 - IN THE SUPREME COURT OF THE STATE OF NEVADA. SVETLANA ... the representative of the Estate of Reginald Singletary, and as parent and legal guardian of ... D. THE JURY'S VERDICT AND SUBSEQUENT AWARDS.

[PDF] 15-02468

caseinfo.nvsupremecourt.us/document/view.do?csNameID...

Jan 22, 2015 - IN THE SUPREME COURT OF THE STATE OF NEVADA. A judgment upon a jury verdict for a total of \$3,508,042.50 was entered against, inter ... Plaintiff/appellant Svetlana Singletary, individually and in representative ...

WATTS v. SINGLETARY - FindLaw

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Watts himself expressed concern that the jury's verdict had been influenced by his ... Nevada, 504 U.S. 127, 139-40, 112 S.Ct. 1810, 1817, 118 L.Ed.2d 479 ...

[PDF] View the Opinion(s) - Washington State Courts

<https://www.courts.wa.gov/.../JD2%2042357...>

Jun 19, 2013 - Injury. "We affirm the trial court's judgment and jury verdict, and we deny ... Singletary, 166 Wn. App. at 783 (quoting Marley, ... Exch. & Ass'n.

Singletary v. Lee - Avvo.com

www.avvo.com/attorneys/89107-nv-jessica-goodey/_/118369  [Payco](#) 
Singletary v. Lee, Jessica M. Goodey [Back to profile](#). Practice Area: Personal Injury.
Outcome: Jury Verdict in excess of \$3 million. Description: Dental malpractice ...

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15 **TON VINH LEE**

9
10 **DISTRICT COURT**
11 **CLARK COUNTY; NEVADA**

12 TON VINH LEE, an individual) Case No.: A723134
13)
14 Plaintiff,) Dept. No.: IX
15 vs.)
16 INGRID PATIN, an individual, and PATIN) **PLAINTIFF'S OPPOSITION TO**
17 LAW GROUP, PLLC, a Nevada Professional) **DEFENDANTS' MOTION TO DISMISS**
18 LLC,)
19 Date of Hearing: October 14, 2015
20 Defendants.) Time of Hearing: 9:00 A.M.
21)
22)
23)
24)
25)
26)
27)
28)

19 COMES NOW Plaintiff TON VINH LEE, by and through his attorneys of records, Prescott
20 T. Jones, Esq. and August B. Hotchkin, Esq. of the law firm BREMER WHYTE BROWN &
21 O'MEARA LLP, and hereby submits this Opposition to Defendants' Motion to Dismiss on file
22 herein.

23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 This Opposition is made and based upon the papers and pleadings on file herein, the
2 attached Memorandum of Points and Authorities, and any oral argument that may be entertained at
3 a hearing on this matter.

4 Dated: September 25, 2015

BREMER WHYTE BROWN & O'MEARA LLP

5
6 

7 By:

Prescott T. Jones, Esq., Bar No. 11617
August B. Hotchkin, Esq., Bar No. 12780
Attorneys for Plaintiff
TON VINH LEE

10
11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I.**

13 **STATEMENT OF RELEVANT FACTS**

14 The instant matter arises from a medical malpractice and wrongful death suit against
15 Plaintiff Ton Vinh Lee (hereinafter "Plaintiff") brought forth by Sventlana Singletary individually,
16 and as the representative of the Estate of Reginal Singletary, and as parent and legal guardian of
17 Gabriel L. Singletary, a minor (hereinafter "Singletary"). The medical malpractice and wrongful
18 death action proceeded through a seven day jury trial in the Eighth Judicial District Court
19 commencing on January 13, 2014. At conclusion of the trial the jury rendered a verdict in favor of
20 Singletary. However, Plaintiff d/b/a Summerlin Smiles and Florida Traivai, DMD each filed
21 Motions for Judgment as a Matter of Law Pursuant to NRCP 50(b), which were heard by Judge
22 Wiese on June 26, 2014. Ex. "A". In said motions, Plaintiff and Ms. Traivai argued that judgment
23 as a matter of law should be granted in favor of them and against Singletary, "due to the fact that
24 Plaintiff failed to offer his opinions regarding standard of care and causation to a reasonable degree
25 of medical probability." Ex. "A", p. 2, lines 2-5. Upon review of the motions and rendering its
26 opinion, the Court found among other things that:

27 1. Dr. Pallos, the expert for Singletary, admitted that his opinion concerning the
28 "informed consent issue" was based on speculation, that he had no foundation for it, and

1 consequently, the Court struck the claim; Id. p. 6, lines 5-8.

2 2. During trial, the Court was not able to determine whether Dr. Pallos' opinion to a
3 reasonable degree of medical probability was related solely to the "informed consent" issue or if it
4 was related to three other general opinions; Id. p. 9, lines 1-4.

5 3. That it was evident that the Court must agree with Plaintiff and Ms. Traivai that Dr.
6 Pallos' opinion which he offered to a reasonable degree of medical probability was only related to
7 the "informed consent" issue which was stricken for a lack of foundation; Id. at lines 5-15.

8 4. That the Court must conclude that Dr. Pallos' testimony regarding the standard of
9 care and causation, which formed the basis for the jury's verdict in favor of Singletary should have
10 been stricken since it was not stated to a reasonable degree of medical probability. Id., p. 10, lines
11 19-22.

12 Based on the foregoing, the district court granted Plaintiff and Ms. Traivai's motions for
13 judgment as a matter of law and a Judgment On Jury Verdict For Defendant Ton Vinh Lee, DDS,
14 was filed on September 11, 2014 wherein a judgment was entered in favor of Plaintiff Ton Vinh
15 Lee and awarded him costs in the amount of \$6,032.83 as a prevailing party under NRS 18.020.
16 Ex. "B".

17 Despite the fact that the Court granted Plaintiff's Motion for Judgment as a Matter of Law
18 and entered a Judgment on Verdict in favor of Plaintiff in the medical malpractice and wrongful
19 death suit over a year ago, Defendants have failed to or otherwise refused to delete the incorrect,
20 misleading, and defamatory statement on the Patin Law Group website, Ex. "C".

21 Based on the foregoing, Plaintiff filed his Complaint on August 17, 2015 against
22 Defendants. Thereafter, Plaintiff properly served Defendant Patin Law Group, PLLC on August
23 19, 2015. Ex. "D". Plaintiff also properly served Defendant Ingrid Patin as an individual and the
24 registered agent of Patin Law Group, PLLC on September 16, 2015. Ex. "E" and "F".

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1 II.

2 LEGAL DISCUSSION AND ARGUMENT

3 A. Standard of Review

4 1. Motion to Dismiss

5 A complaint will not be dismissed for failure to state a claim unless it appears beyond a
6 doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would
7 entitle said plaintiff to relief under Nevada law. *Simpson v. Mars, Inc.*, 113 Nev. 188, 929 P.2d 966
8 (1997). The standard of review for a dismissal under NRCP 12(b)(5) is rigorous and the district
9 courts must construe the pleading liberally and draw every fair inference in favor of the nonmoving
10 party. *Id.* "The test for determining whether the allegations of a complaint are sufficient to assert a
11 claim for relief is whether the allegations give fair notice of the nature and basis of legally
12 sufficient claim and relief requested." *Breliaut v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858
13 P.2d 1258, 1260 (1993). When considering a motion to dismiss, **the district court must accept all**
14 **factual allegations contained in the complaint as true.** *Lubin v. Kunin*, 117 Nev. 107, 110, 17 P.3d
15 422, 425 (2001). (Emphasis Added). The Supreme Court of Nevada has continually held this
16 position stating that:

17 When considering a motion to dismiss made under NRCP 12(b)(5), a district court
18 must construe the complaint liberally and draw every fair inference in favor of the
19 plaintiff. **A complaint should not be dismissed unless it appears to a certainty that**
20 **the plaintiff could prove no set of facts would entitle him or her to relief.**
21 Moreover, when a complaint can be amended to state a claim for relief, leave to
22 amend, rather than dismissal, is the preferred remedy. Leave to amend should be
23 freely given when justice requires, and a request to amend should not be denied
24 simply because it was made in open court rather than by formal motion.

25 *Cohen v. Mirage Resort, Inc.*, 119 Nev. 1, 22, 62 P.3d 720, 734 (2003) (emphasis added); see also
26 *Hampe v. Foote*, 118 Nev. 405, 47 P.3d 438 (2002). Furthermore, when it comes to pleadings,
27 Nevada is a notice-pleading jurisdiction wherein the "courts liberally construe pleadings to place
28 into issues matters which are fairly noticed to the adverse party." *Hay v. Hay*, 100 Nev. 196, 198,
678 P.2d 672, 674 (1984).

29 2. Motion To Dismiss Must Be Based On The Pleadings

NRCP 12(b) specifically states that a motion asserting a defense under 12(b), including

1 Rule 12(b)(5), "shall be made before pleading if a further pleading is permitted." It is well-
2 established in Nevada law that "[i]f 'matters outside the pleading are presented to and not excluded
3 by the court,' a motion to dismiss for failure to state a claim upon which relief can be granted 'shall
4 be treated as one for summary judgment and disposed of as provided in Rule 56.'" *Schneider v.*
5 *Cont'l Assur. Co.*, 110 Nev. 1270, 1271, 885 P.2d 572, 573 (1994) quoting NRCP 12(b). "A
6 district court **must** treat a motion to dismiss as one for summary judgment under NRCP 56 'where
7 materials outside of the pleadings are presented to and considered by the district court.'" *Id.*
8 quoting *Thompson v. City of North Las Vegas*, 108 Nev. 435, 438, 833 P.2d 1132, 1134 (1992).
9 (emphasis added).

10 3. Motion For Summary Judgment

11 Summary judgment is only appropriate if "the pleadings, depositions, answers to
12 interrogatories, and admissions on file, together with affidavits, if any, show that there is no issue
13 as to any material fact that the moving party is entitled to judgment as a matter of law." NRCP
14 56(c). Summary judgment is appropriate when trial would serve no useful purpose. *Short v. Hotel*
15 *Riviera, Inc.*, 79 Nev. 94, 96 (1963). As the Supreme Court of Nevada noted, summary judgment
16 is an "integral part" of civil practice and is "designed to secure the just, speedy, and inexpensive
17 determination of every action." *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1030 (2005) citing *Celotex*
18 *Corporation v. Catrett*, 477 U.S. 317, 327; 106 U.S. 254 (1986).

19 The Supreme Court of Nevada has held that summary adjudication is proper when there are
20 no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.
21 *Riley v. OPP IX, LP*, 112 Nev. 826, 830 (1996). A genuine issue of material fact is such that a
22 rational trier of fact could return a verdict for the non-moving party. *Wood v. Safeway, Inc.*, 121
23 P.3d 1026, 1032 (Nev. 2005); *Posadas*, 109 Nev. at 452.

24 A party opposing summary judgment must set forth facts demonstrating the existence of a
25 genuine issue for the Court or have summary judgment entered against it. *Bulbman, Inc. v. Nevada*
26 *Bell*, 108 Nev. 105, 110 (1992); *Collins v. Union Fed. Savings & Loan*, 99 Nev. 284, 294 (1983).
27 In assessing the merits of a summary judgment, the pleadings and proof are to be construed in a
28 light most favorable to the non-moving party. *Id.* at 302, 662 P.2d at 621.

1 Nevada courts apply the federal courts' approach with respect to burdens of proof and
2 persuasion in summary judgment context as outlined in Celotex Corp. v. Catrett, 477 U.S. 317, 323
3 (1986). Cuzze v. Univ. & Cmty. College Sys., 123 Nev. 598, 602, 1732 P.3d 131, 134 (2007).
4 Under this approach, the moving party bears the initial burden of production to show the absence
5 of a genuine issue of material fact, and once or if such a showing is made, the party opposing
6 summary judgment bears the burden of production to show the existence of a genuine issue of
7 material fact. Celotex Corp. at 323-331, 106 S.Ct. at 2553-2557 (Emphasis Added).

8 **B. The Instant Motion Must Be Treated As A Motion For Summary Judgment.**

9 Plaintiff filed his Complaint on August 17, 2015. The operable Complaint contains no
10 exhibits or materials outside the four corners of the pleading. Defendants' instant Motion to
11 Dismiss relies upon and attaches several exhibits which go outside the information contained in the
12 operable Complaint. See generally *Defendants' Motion*. Consequently, the instant Motion must be
13 treated as one for summary judgment under NRCP 56. Schneider at 1271, P.2d at 573 quoting
14 NRCP 12(b).

15 **C. Even If The Motion To Dismiss Is Properly In Front Of The Court It Fails As**
16 **A Matter of Law.**

17 As provided above, if the movant provides any "materials outside of the pleadings . . . to
18 [be] considered by the district court[.]" then it must be treated as a motion for summary judgment
19 under NRCP 56. Thompson at 438; see also, Schneider at 1271, P.2d at 573 quoting NRCP 12(b).
20 However, the foregoing argument notwithstanding, should this Court determine that Defendants'
21 Motion to Dismiss is proper for its consideration pursuant to NRCP 12(b)(5) it fails as a matter of
22 law.

23 A motion to dismiss must undergo rigorous scrutiny and a district court must "construe the
24 pleadings liberally and draw every reasonable inference in favor of the non-moving party." Lubin v.
25 Kunin, 117 Nev. 107, 110 n.1., 17 P.3d 422, 425 (2001); see also Vacation Village v. Hitachi
26 America, 110 Nev. 481, 484, 874 P.2d 774, 746 (1994). In addition, the district court must "accept
27 all factual recitations in the complaint as true." *Id.*; and Vacation Village, 110 Nev. at 484. "The
28 test for determining whether the allegations of a complaint are sufficient to assert a claim for relief

1 is whether the allegations give fair notice of the nature and basis of a legally sufficient claim and
2 the relief requested.” *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260
3 (1993).

4 Here Defendants only basis for its Motion to Dismiss under NRCP 12(b)(5) is the assertion
5 that Defendants’ statements are true. *Defendants’ Motion*, pp. 7-9. Defendants’ Motion to Dismiss
6 fails as a matter of law and must be denied because its sole basis that the statements are true
7 contradicts the primary and most important standard concerning a motion for dismissal which is
8 that the allegations in the Complaint must be accepted as true. Defendants provide no other
9 argument or reasonable basis as to why Defendants’ claim as a matter of law, and such an assertion
10 requires this court to make a factual determination which it cannot due pursuant to NRCP 12(b)(5).
11 *Lubin*, 117 Nev. at 107; see also *Vacation Village*, 110 Nev. at 484.

12 D. **Defendants’ Motion For Summary Judgment Must Be Denied Because**
13 **There Exists A Genuine Material Fact In Dispute As To Defendants’ Claims**
14 **That The Defamatory Statements Are “True” Are In Fact False, And The Issue**
Of Truth Or Falsity Is An Issue Properly Left To The Jury

15 As correctly stated in Defendants’ Motion, in order to establish a prima facie case of
16 defamation, Plaintiffs must prove that (1) a false and defamatory statement by defendant
17 concerning the plaintiff was made; (2) by an unprivileged publication to a third person; (3) the
18 existence fault, amounting to at least negligence; and (4) actual or presumed damages. *Chowdhry v.*
19 *NLVH, Inc.*, 109 Nev. 478, 483, 851 P.2d 459 (1993). “If the defamation tends to injure the
20 plaintiff or his or her business or profession, it is deemed defamation per se, and damages will be
21 presumed.” *Id.* citing *Nevada Ind. Broadcasting v. Allen*, 99 Nev. 404, 409, 664 P.2d 337, 341
22 (1983). “Whether a statement is capable of a defamatory construction is a question of law” and
23 “[a] jury question arises when the statement is susceptible of different meanings, one of which is
24 defamatory.” *Id.* at 484 citing *Brend v. Sanford*, 97 Nev. 643, 646-47, 637 P.2d 1223, 1225-1226
25 (1981). Statements or “words must be reviewed in their entirety and in context in order to
26 determine whether they are susceptible of defamatory meaning.” *Id.* Furthermore, “the truth or
27 falsity of an allegedly defamatory statement is an issue of fact properly left to the jury for
28 resolution.” *Posadas v. City of Reno*, 109 Nev. 448, 453, 851 P.2d 438, 442 (1993); see also *Fink v.*

1 Oshins, 118 Nev. 428, 437, 49 P.3d 640, 646 (2002). (Emphasis Added).

2 Defendants focuses their underlying Motion solely on that first element asserting that they
3 are entitled to dismissal or summary judgment because the following statement which was
4 published on Defendants' website in question is true and not defamatory in nature:

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6 **DENTAL MALPRACTICE/WRONGFUL DEATH – PLAINTIFF'S VERDICT,**
7 **2014 DESCRIPTION: SINGLETARY V. TON VINH LEE, DDS, ET AL.**

8 A dental malpractice-based wrongful death action that arose out of the death of
9 Decedent Reginald Singletary following the extraction of the No. 32 wisdom
10 tooth by Defendants on or about April 16, 2011. Plaintiff sued the dental office,
11 Summerlin Smiles, the owner, Ton Vinh Lee, DDS, and the treating dentists,
Florida Traivai, DDS and Jai Park, DDS, on behalf of the Estate, herself and
minor son.

This matter is on appeal.

12 *Defendants' Mot.*, p. 5, lines 22-28; p. 9, lines 4 – 10; see also Defendants' website,
13 www.patinlaw.com/settlement-verdict attached hereto as Ex. "C". (Emphasis Added).

14 While Defendants' attach a number of exhibits, including a Special Verdict Form, and legal
15 news media publications as support that the above statement is true, Defendants conveniently
16 neglect to put the statement into context. Specifically, Defendants fail to inform this Court the
17 significance of the last sentence of the statement: "This matter is on appeal" which was only
18 incorporated into the above statement after the underlying Complaint was filed. Ex. "C". Indeed,
19 the context of the statement and the reason why the matter is on appeal is the most vital piece of
20 information in order for a jury to consider and why the instant motion must be denied. While
21 Defendants cite to a number of sources that published the "verdict" in the underlying medical
22 malpractice and wrongful death suit, Defendants, in an obvious attempt to mislead this Court,
23 completely and utterly fail to mention that the true outcome of the case as to Plaintiff Ton Vinh Lee
24 which resulted in a Judgment on Jury Verdict For Defendant Ton Vinh Lee, DDS filed on
25 September 11, 2014 which states in relevant part:

26 This action came on for trial before the Eighth Judicial District Court and a
27 jury on January 13, 2014, before Honorable Jerry A. Wiese, II, District Judge,
28 presiding, and the issues having been duly tried and the jury having duly rendered
its verdict,

IT IS SO ORDERED AND ADJUDGED, that judgment be entered in favor

1 of Defendant Ton Vinh Lee, DDS.

2 IT IS FURTHER ORDERED AND ADJUDGED, that Defendant Ton Vinh
3 Lee, DDS is entitled to his costs in the amount of Six Thousand Thirty Two Dollars
4 and Eighty Three Cents (\$6,032.83), as the prevailing party under Nevada Revised
5 Statute 18.020.

6 Ex. "B" (Emphasis Added). Not only was a judgment entered in favor of Ton Vinh Lee, Plaintiff
7 in the instant action, and one of the defendants in the medical malpractice and wrongful death suit,
8 but even more striking is the fact that the Judgment was prepared and submitted by Defendants
9 themselves. Ex. "B". Indeed, it was not Defendants' clients that were the prevailing party with the
10 favorable verdict as to Plaintiff Ton Vinh Lee, but instead, only against the other defendants. See
11 *Defendants' Mot.'s Exhibit "C"* and Plaintiff's Ex. "B". The reason that the "matter is on appeal"
12 is because Defendants are attempting to reverse the district court's ruling wherein it granted
13 Plaintiff Ton Vinh Lee's Motion for Judgment as a Matter of Law vacating the Jury's Verdict
14 "based upon the fact that the Plaintiffs failed to establish the standard of care, a breach of the
15 standard of care, or causation, to a reasonable degree of medical probability, . . ." Ex. "A", p. 12,
16 lines 13-19. As such, Defendants' assertions that the subject defamatory statement is true are not
17 only patently false, but an attempt to mislead this Court by omitting a key detail that puts the
18 statement and its defamatory nature into context. See, Chowdhry at 483 and Brend, at 646-47.

19 Even more egregious is the fact that Defendants, who were the trial attorneys of the case
20 and completely aware and cognizant regarding the developments concerning the ultimate "verdict,"
21 not only continued to keep a known false and misleading statement on Defendants website, but
22 even now, are attempting to mislead this Court by continuing to represent this falsehood to seek
23 dismissal of Plaintiffs' Complaint. This alone is more than a sufficient basis to deny the instant
24 motion as a genuine issue of material fact exists concerning the subject defamatory statement made
25 by Defendants.

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1 E. Even If The Jury Originally Found In Favor Of Singletary And Special Verdict
2 Form Was Entered, Publication Of The "Verdict" Was Improper And
3 Impermissible Because 1) The Final Judgment Entered Was In Favor of
4 Plaintiff Ton Vinh Lee; and 2) Such Publication Was A Violation Of The
5 Nevada Rules Of Professional Conduct Rule 7.2(i).

6 1. Defendants' Publication Was Improper And Impermissible Because The
7 Final Judgment Entered In Favor Of Plaintiff Ton Vinh Lee And The Jury
8 Verdict Was Vacated By The District Court.

9 A final judgment is one which disposes of the entire merits of the case wherein nothing
10 requires further determination. See, e.g., Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417
11 (2000); Alper v. Posin, 77 Nev. 328, 330, 363 P.2d 502, 503 (1961); Magee et al. v. Whitacre et
12 al., 60 Nev. 202, 96 P.2d 201 (1939); Perkins v. Sierra Nevada S.M. Co., 10 Nev. 405, 411 (1876).
13 It is well-established that an appeal in a civil matter, generally, may not be heard until there is final
14 judgment. See NRAP 3A(a) and NRAP 3A(b); Outboard Marine Corp. v. Schupbach, 93 Nev.
15 158, 161, 561 P.2d 450, 452 (1977); GES, Inc. v. Corbitt, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001);
16 Warren v. Wilson, 47 Nev. 259, 261, 220 P. 242, 242 (1923).

17 A judgment entered by the Court is controlling notwithstanding a jury verdict. See Lehrer
18 McGovern Bovis, Inc. v. Bullock Insulation, Inc. 124 Nev. 1102, 1105-06, 197 P.3d 1032, 1034-35
19 (2008). In Lehrer, the Supreme Court of Nevada dealt with the issue of whether a new trial is
20 required when there are inconsistent jury verdicts stemming from a Special Verdict under NRCP
21 41(b). Id. In its analysis, the Court stated that while parties typically have a duty to object to
22 inconsistent jury verdicts prior to the discharge of the jury, the general rule is not absolute because
23 a "district court is obligated not to enter a judgment when the answers to interrogatories are
24 inconsistent with each other and one or more answers are also inconsistent with the general
25 verdict." Id. The Supreme Court of Nevada expressly held that an ultimate judgment shall not be
26 entered when such inconsistencies exist. Id.

27 While the underlying medical malpractice and wrongful death action did not deal with
28 "inconsistent interrogatory answers" from the Special Jury Verdict, the overall legal principle and
policy surrounding Special Verdict Forms and final judgments is applicable here. Specifically, that
a final determination concerning the outcome of litigation rests in a final judgment entered by the

1 court. A verdict from a jury serves only to assist in rendering that final judgment. Here,
2 Defendants attach a Special Verdict Form, however, the original verdict in favor of Singletary was
3 vacated by the district court and a final Judgement in favor of Plaintiff Ton Vinh Lee was entered.
4 Ex. "A" and "B".

5 2. Defendants' Publication Of The Defamatory Statement On Their Website
6 Was In Violation Of The Nevada Rules Of Professional Conduct Rule 7.2(i).

7 Nev. Rules of Prof'l Conduct 7.2 governs attorney advertising and provides in relevant part:

8 **Rule 7.2. Advertising.**

9 (a) Subject to the requirements of Rule 7.1, a lawyer may advertise services
10 through the public media, such as a telephone directory, legal directory, newspaper
11 or other periodical, billboards and other signs, radio, television and recorded
12 messages the public may access by dialing a telephone number, or through written
13 or electronic communication not involving solicitation as prohibited by Rule 7.3.

14 These Rules shall not apply to any advertisement broadcast or disseminated in
15 another jurisdiction in which the advertising lawyer is admitted if such
16 advertisement complies with the rules governing lawyer advertising in that
17 jurisdiction and the advertisement is not intended primarily for broadcast or
18 dissemination within the State of Nevada.

19 (b) If the advertisement uses any actors to portray a lawyer, members of the law
20 firm, clients, or utilizes depictions of fictionalized events or scenes, the same must
21 be disclosed. In the event actors are used, the disclosure must be sufficiently specific
22 to identify which persons in the advertisement are actors, and the disclosure must
23 appear for the duration in which the actor(s) appear in the advertisement.

24 (c) All advertisements and written communications disseminated pursuant to
25 these Rules shall identify the name of at least one lawyer responsible for their
26 content.

27 (d) Every advertisement and written communication that indicates one or more
28 areas of law in which the lawyer or law firm practices shall conform to the
requirements of Rule 7.4.

(e) Every advertisement and written communication indicating that the charging
of a fee is contingent on outcome or that the fee will be a percentage of the recovery
shall contain the following disclaimer if the client may be liable for the opposing
parties' fees and costs: "You may have to pay the opposing parties' attorney fees
and costs in the event of a loss."

(f) A lawyer who advertises a specific fee or range of fees shall include the
duration said fees are in effect and any other limiting conditions to the availability of
the fees. For advertisements in the yellow pages of telephone directories or other
media not published more frequently than annually, the advertised fee or range of
fees shall be honored for no less than one year following publication.

(g) A lawyer may make statements describing or characterizing the quality of
the lawyer's services in advertisements and written communications. However, such
statements are subject to proof of verification, to be provided at the request of the
state bar or a client or prospective client.

1 (h) Any statement or disclaimer required by these rules shall be made in each
2 language used in the advertisement or writing with respect to which such required
3 statement or disclaimer relates; provided, however, the mere statement that a
4 particular language is spoken or understood shall not alone result in the need for a
5 statement or disclaimer in that language.

6 (i) **Statement regarding past results.** If the advertisement contains any
7 reference to past successes or results obtained, the communicating lawyer or
8 member of the law firm must have served as lead counsel in the matter giving rise to
9 the recovery, or was primarily responsible for the settlement or verdict. The
10 advertisement shall also contain a disclaimer that past results do not guarantee,
11 warrant, or predict future cases.

12 If the past successes or results obtained include a monetary sum, the amount
13 involved must have been actually received by the client, and the reference must be
14 accompanied by adequate information regarding the nature of the case or matter and
15 the damages or injuries sustained by the client, and if the gross amount received is
16 stated, the attorney fees and litigation expenses withheld from the amount must be
17 stated as well.

18 (emphasis added).

19 The subject defamatory statement cited above as well as in the underlying motion and
20 operable Complaint is a statement regarding Defendants' past successes or results which included
21 as recent as July 9, 2015, the monetary sum of "\$3.4M". Ex. "C". Defendants represent in the
22 instant Motion that the subject statement, including the damage amount awarded was posted in
23 accordance with Nev. Rules of Prof'l. Conduct 7.2(i). *Defendants' Mot.*, p. 3, lines 14-16; p. 8,
24 line 27 – p. 9, line 17. However, Defendants fail to indicate whether or not the actual amount was
25 received by their clients. The reason that Defendants do not mention that the amount was actually
26 received and why Defendants have since deleted the amount from the subject statement is because
27 the monetary amount referenced in the previous version of the statement was not actually received
28 which is required under Nev. Rules of Prof'l. Conduct 7.2(i). Consequently, not only was the
defamatory statement patently false and misleading, it was also in direct violation of the Nevada
Rules of Professional Conduct 7.2(i).

29 **F. Plaintiff Properly And Duly Served Defendants With A Summons And**
30 **Complaint**

31 NRS 14.020 governs service of process on Nevada corporations which provides in relevant
32 part:

- 33 1. Every corporation, miscellaneous organization described in chapter

1 81 of NRS, limited-liability company, limited partnership, limited-liability limited
2 partnership, business trust and municipal corporation created and existing under the
3 laws of this State, any other state, territory or foreign government, or the
4 Government of the United States, doing business in this State shall appoint and keep
5 in this State a registered agent who resides or is located in this State, upon whom all
6 legal process and any demand or notice authorized by law to be served upon it may
7 be served in the manner provided in subsection 2. A statement of change of
8 registered agent must be filed in the manner provided in NRS 77.340 if the
9 corporation, miscellaneous organization, limited-liability company, limited-liability
10 partnership, limited partnership, limited-liability limited partnership, business trust
11 or municipal corporation desires to change its registered agent. A registered agent
12 must file a statement of change in the manner provided in NRS 77.350 or 77.360 if
13 the registered agent changes its name or address.

14 2. All legal process and any demand or notice authorized by law to be served
15 upon the corporation, miscellaneous organization, limited-liability company,
16 limited-liability partnership, limited partnership, limited-liability partnership,
17 business trust or municipal corporation may be served upon the registered agent
18 personally or by leaving a true copy thereof with a person of suitable age and
19 discretion at the most recent street address of the registered agent shown on the
20 information filed with the Secretary of State pursuant to chapter 77 of NRS.

21 3. Unless the street address of the registered agent is the home residence of the
22 registered agent, **the street address of the registered agent** of a corporation,
23 miscellaneous organization, limited-liability company, limited-liability partnership,
24 limited partnership, limited-liability limited partnership, business trust or municipal
25 corporation **must be staffed during normal business hours by:**

26 (a) The registered agent; or

27 (b) One or more natural persons who are:

28 (1) Of suitable age and discretion to receive service of legal process and any demand
or notice authorized by law to be served upon the corporation, miscellaneous
organization, limited-liability company, limited-liability partnership, limited
partnership, limited-liability limited partnership, business trust or municipal
corporation; and

(2) Authorized by the registered agent to receive service of legal process and any
demand or notice authorized by law to be served upon the corporation,
miscellaneous organization, limited-liability company, limited-liability partnership,
limited partnership, limited-liability limited partnership, business trust or municipal
corporation.

4. A corporation, miscellaneous organization, limited-liability company,
limited-liability partnership, limited partnership, limited-liability limited
partnership, business trust or municipal corporation that fails or refuses to comply
with the requirements of subsection 3 is subject to a fine of not less than \$100 nor
more than \$500 for each day of such failure or refusal to comply with the
requirements of subsection 3, to be recovered with costs by the State, before any
court of competent jurisdiction, by action at law prosecuted by the Attorney General
or by the district attorney of the county in which the action or proceeding to recover
the fine is prosecuted.

Defendants cite to Foster v. Lewis, 78 Nev. 330, 372 P.2d 679 (1962) as grounds that the

1 denial of authority where the issue of improper service of process on an authorized person is
2 uncontradicted pursuant to NRCP 4(d)(6) must be taken by the court as true. *Defendants' Mot.*, p.
3 6, line 27 – p. 7, line 5. However, contrary to Defendants' assertions, the Complaint was properly
4 and duly served pursuant to NRS 14.020 via First Legal. The Affidavit of Service states that copies
5 of the Summons and operable Complaint were personally served on Wednesday, August 19, 2015
6 at 11:30 a.m. via Raphael Ray, a senior associate who is of suitable age and discretion located at
7 Patin Law Group, PLLC, 6671 South Las Vegas Boulevard, Suite 210, Las Vegas, Nevada 89119.
8 **Ex. "E"**. Patin Law Group, PLLC is a registered corporation domesticated in Nevada whose
9 designated registered agent is Defendant Ingrid Patin, Esq. The aforementioned street address is
10 Patin Law Group, PLLC's commercial address and pursuant to NRS 14.020(3), it must be staffed
11 by either the registered agent, Ms. Patin, or someone of suitable age and discretion who is
12 authorized to accept such service. Service was effectuated during normal business hours upon
13 someone who represented that they were authorized to accept service. **Ex. "E"**. Defendants assert
14 that Plaintiff improperly attempted service by leaving a copy of the Summons and Complaint with
15 a receptionist at Regus Las Vegas. However, Defendants provide no supporting documentation,
16 affidavit, or declaration that the person served was in fact a receptionist and not an authorized
17 person who could accept service pursuant to NRS 14.020(3). Consequently, Defendants have not
18 carried their required burden of proof under NRCP 56(c) and the question of whether service was
19 proper must be construed in light most favorable to the non-moving party. Collins at 302.

20 The above notwithstanding, Defendants' argument is moot as Defendant, Ingrid Patin was
21 personally, properly and duly served with copies of the Summons and Complaint on September 16,
22 2015. **Ex. "E"**. Defendant Ingrid Patin is the registered agent for Defendant Patin Law Group,
23 PLLC, and thus, service on all defendants has been properly effectuated. **Ex. "F"**. At the time this
24 Opposition was filed, the electronic filing system was temporarily inaccessible due to technical
25 difficulties, and thus, a copy of the Affidavit of Service was not filed at the time.

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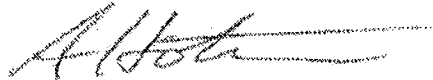
III.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court deny Defendants' Motion in its entirety.

Dated: September 25, 2015

BREMER WHYTE BROWN & O'MEARA LLP



By:

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Attorneys for Plaintiff TON VINH LEE

LIST OF EXHIBITS

- Exhibit A.....Order Granting Motion for Summary Judgment
Exhibit B.....Judgment on Verdict
Exhibit C.....Patin Law Website Page time stamped 7/9/15
Exhibit D.....Affidavit of Service (Patin Group)
Exhibit E.....Affidavit of Service (Patin Individual)
Exhibit F.....Nevada Secretary of State Business Entity
Information Concerning Patin Law Group, PLLC

EXHIBIT "A"

EXHIBIT "A"