

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT H. CAPANNA, M.D.,
Appellant/Cross-Respondent,

vs.

BEAU R. ORTH,
Respondent/Cross-Appellant.

Electronically Filed
No. 69935
May 14 2018 10:58 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

ALBERT H. CAPANNA, M.D.,
Appellant,

vs.

BEAU R. ORTH,
Respondent.

No. 70227

**APPELLANT'S RESPONSE TO MOTION TO STRIKE NOTICE OF
SUPPLEMENTAL AUTHORITIES**

In preparing for oral argument, Appellant's counsel did Westlaw research (all-states and all-federal databases) for new authorities, and counsel found *Peck*. That opinion was not already in counsel's research folder on Westlaw for this case. Counsel simply forgot that he had previously known of *Peck* more than four months earlier, and that he had filed the prior notice of supplemental authorities, which included *Peck*. Thus, counsel prepared the new notice filed on May 11, 2018. This was entirely inadvertent, without any intent to gain an advantage in this appeal.

Instead of a motion to strike, a simple phone call or email from Respondent's counsel would have been enough, and Appellant's counsel would have immediately withdrawn the inadvertently-filed second notice. In any event, Appellant's counsel

hereby withdraws the second notice and sincerely apologizes to the court for the mistake caused by his failure to remember the prior notice.

DATED: May 14, 2018

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CERTIFICATE OF SERVICE

I certify that I am employee of Lemons, Grundy & Eisenberg and that on this date the foregoing was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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DATED: 5/14/18 Chad S. Steyer