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CLERK OF THE COURT

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18 *Attorneys for Defendants Centennial Hills*

Hospital Medical Center and Universal Health

19 *Services, Inc.*

20 DISTRICT COURT

21 CLARK COUNTY, NEVADA

22 MISTY PETERSON, AS SPECIAL
23 ADMINISTRATOR OF THE ESTATE OF
JANE DOE,

24 Plaintiff,

25 vs.

26 VALLEY HEALTH SYSTEM LLC, a Nevada
limited liability company, d/b/a CENTENNIAL
27 HILLS HOSPITAL MEDICAL CENTER;
UNIVERSAL HEALTH SERVICES, INC., a
28 Delaware corporation; AMERICAN NURSING
SERVICES, INC., a Louisiana corporation;

CASE NO. A-09-595780-C
DEPT. NO. II

**STIPULATION AND ORDER FOR
DISMISSAL WITH PREJUDICE**

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input checked="" type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

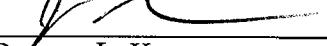
1 STEVEN DALE FARMER, an individual;
2 DOES I through X, inclusive; and ROE
3 CORPORATIONS I through X, inclusive,
4 Defendants.

5 Plaintiffs, by and through their counsel of record Murdock & Associates and Eckley M.
6 Keach, Chtd.; Defendants Valley Health System, LLC d/b/a Centennial Hills Hospital Medical
7 Center ("Valley") and Universal Health Services, Inc. ("UHS") (Valley and UHS are jointly referred
8 to as "Centennial Hills"), by and through their counsel of record Bailey❖Kennedy and Hall Prangle
9 & Schoonveld; Defendant American Nursing Services, Inc. ("ANS"), by and through its counsel of
10 record Lewis Brisbois Bisgaard & Smith and Pyatt Silvestri; and Defendant Steven Dale Farmer
11 ("Farmer"), by and through his counsel of record Carroll Kelly Trotter Franzen McKenna &
12 Peabody (Plaintiffs, Centennial Hills, ANS, and Farmer are collectively referred to as the "Parties"),
13 hereby stipulate and agree to dismiss, with prejudice, each and every claim asserted by the Parties in
14 the above-captioned matter, with each party to bear their own attorneys' fees and costs.

15 Additionally, the Parties hereby stipulate and agree that, notwithstanding the dismissal of this
16 matter and the terms of the Settlement Agreement and Release between the Parties, Centennial Hills
17 and Hall Prangle & Schoonveld hereby preserve their right to appeal the November 4, 2015 Order
18 Striking Answer of Defendant Valley Health System LLC as Sanction for Discovery Misconduct
19 (the "November Order"), along with the associated December 10, 2015 Order Denying Motion for
20 Reconsideration (the "December Order") (the November Order and the December Order are jointly
21 referred to as the "Sanction Order"). This Court shall retain jurisdiction over this matter until thirty
22 days following resolution of the appeal.

1 DATED this ^{February} 16 day of January, 2016.

2 BAILEY ♦ KENNEDY

3 By: 
4 DENNIS L. KENNEDY
5 JOSEPH A. LIEBMAN
6 JOSHUA P. GILMORE
7 MARK HESIAK
8 8984 Spanish Ridge Avenue
9 Las Vegas, Nevada 89148-1302

10 AND

11 MICHAEL E. PRANGLE
12 KENNETH M. WEBSTER
13 JOHN F. BEMIS
14 HALL PRANGLE & SCHOONVELD,
15 LLC
16 1160 North Town Center Drive
17 Suite 200
18 Las Vegas, Nevada 89144

19 *Attorneys Defendants Centennial Hills*
20 *Hospital Medical Center and Universal Health*
21 *Services, Inc.*

22 DATED this ____ day of January, 2016.

23 MURDOCK & ASSOCIATES

24 By: _____
25 ROBERT E. MURDOCK
26 521 South Third Street
27 Las Vegas, Nevada 89101

28 AND

ECKLEY M. KEACH
ECKLEY M. KEACH, CHTD.
521 South Third Street
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Attorneys for Plaintiffs

DATED this ____ day of January, 2016.

LEWIS BRISBOIS BISGAARD & SMITH

By: _____
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AMANDA J. BROOKHYSER
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AND

JAMES P.C. SILVESTRI
PYATT SILVESTRI
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Attorneys for Defendant American Nursing
Services, Inc.

DATED this 31st day of January, 2016.

CARROLL KELLY TROTTER FRANZEN
MCKENNA & PEABODY

By: 
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HEATHER S. HALL
8329 West Sunset Road, Suite 260
Las Vegas, Nevada 89113

Attorneys for Defendant Steven Dale Farmer

1 DATED this ____ day of January, 2016.

2 BAILEY ♦ KENNEDY

3 By: _____

4 DENNIS L. KENNEDY
5 JOSEPH A. LIEBMAN
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19 *Attorneys Defendants Centennial Hills*
20 *Hospital Medical Center and Universal Health*
21 *Services, Inc.*

22 DATED this ____ day of January, 2016.

23 MURDOCK & ASSOCIATES

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ECKLEY M. KEACH
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Attorneys for Plaintiffs

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By: _____

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AND

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Attorneys for Defendant American Nursing
Services, Inc.

DATED this ____ day of January, 2016.

CARROLL KELLY TROTTER FRANZEN
MCKENNA & PEABODY

By: _____

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Attorneys for Defendant Steven Dale Farmer

DATED this ____ day of January, 2016.

BAILEY ♦ KENNEDY

By: _____

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*Attorneys Defendants Centennial Hills
Hospital Medical Center and Universal Health
Services, Inc.*

DATED this ____ day of January, 2016.

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AND

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Attorneys for Plaintiffs

DATED this ^{February} 10 day of January, 2016.

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By: _____

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AND

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*Attorneys for Defendant American Nursing
Services, Inc.*

DATED this ____ day of January, 2016.

CARROLL KELLY TROTTER FRANZEN
MCKENNA & PEABODY

By: _____

ROBERT C. MCBRIDE
HEATHER S. HALL
8329 West Sunset Road, Suite 260
Las Vegas, Nevada 89113

Attorneys for Defendant Steven Dale Farmer

ORDER

Based on the foregoing Stipulation, and good cause appearing,

IT IS HEREBY ORDERED that each and every claim asserted by the Parties in this matter is hereby dismissed with prejudice, with each party to bear their own attorney's fees and costs. Centennial Hills and Hall Prangle & Schoonveld hereby preserve their right to appeal the Sanction Order and the Court will retain jurisdiction over this matter until thirty days following resolution of the appeal.

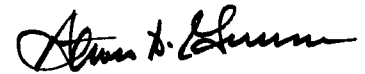


DISTRICT COURT JUDGE

AD

DATED: 18th February 2016

A-69-595780-C



CLERK OF THE COURT

1 **ORDR**

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

5
6 ESTATE OF JANE DOE, by and through its
7 Special Administrator, Misty Petersen,

8 Plaintiff,

9 vs.

10 VALLEY HEALTH SYSTEM, LLC, a Nevada
11 limited liability company, d/b/a CENTENNIAL
12 HILLS HOSPITAL MEDICAL CETER;
13 UNIVERSAL HEALTH SERVICES, INC., a
14 Delaware corporation; AMERICAN NURSING
15 SERVICE, INC., a Louisiana corporation;
16 STEVEN DALE FARMER, an individual;
17 DOES I through X, inclusive; and ROE
18 CORPORATIONS I through X, inclusive,

19 Defendants.

Case No.: 09-A-595780-C
Dept. No.: II

Date: August 28, 2015
Time: 9:00 a.m.

**ORDER STRIKING ANSWER OF
DEFENDANT VALLEY HEALTH
SYSTEM LLC AS SANCTION FOR
DISCOVERY MISCONDUCT**

16
17 **I. SUMMARY OF ORDER**

18 This action involves Plaintiff Jane Doe's claims that she was sexually assaulted by
19 Nurse Farmer at Centennial Hills Hospital Medical Center on May 14, 2008. Plaintiff Jane
20 Doe asserted the following two substantive claims against defendant Valley Health System,
21 LLC d/b/a/ Centennial Hills Hospital Medical Center, and Universal Health Services, Inc.,
22 (collectively "Centennial" herein): negligent failure to maintain the premises in a safe
23 manner; and *respondeat superior* liability for the sexual assault by Nurse Farmer. See
24 Amended Complaint, ¶¶ 11-17 (filed August 21, 2009).

25 The Amended Complaint established the relevance and materiality of the following
26 questions of fact: (a) as to the negligence claim: whether it was reasonably foreseeable to
27 Centennial, considering the totality of circumstances, that the premises were unsafe (See CD
28 Audio Recording of the Evidentiary Hearing at 10:27:06) (hereinafter "E.H. at

Hour:Minutes:Seconds”); and (b) as to the *respondeat superior* claim: whether the sexual assault by Nurse Farmer was reasonably foreseeable under the facts and circumstances of the case considering the nature and scope of [his] employment. NRS 41.745(1)(c).¹ Thus, in a general sense, it was critical to both the negligence and *respondeat superior* claims for the Plaintiff to conduct discovery on the issue whether it was reasonably foreseeable to defendant Centennial Hills that Nurse Farmer would commit a sexual assault. Plaintiff Jane Doe seeks sanctions against defendant Centennial for impeding Plaintiff’s ability to acquire critical evidence on the “reasonable foreseeability” issues.

On April 29, 2015, Plaintiff Estate of Jane Doe (“Plaintiff”) moved this Court to impose sanctions against Defendant Valley Health System, LLC d.b.a. Centennial Hills Hospital Medical Center (“Centennial”) pursuant to NRCP 37. Plaintiff contended that Centennial failed to timely disclose that nurses Murray, Wolfe, and Sumera had knowledge of relevant facts bearing on the most critical issue in this case – whether it was reasonably foreseeable to Centennial that Mr. Farmer would commit a criminal sexual assault against a patient. Plaintiff further contended that Centennial concealed from Plaintiff the existence of statements that nurses Murray and Wolfe gave to the Las Vegas Metropolitan Police Department (“LVMPD”). These statements are referenced herein as the “Police Statements.”

The Discovery Commissioner heard this matter on June 3, 2015, expressed her findings and recommendations orally at that time and executed the Discovery Commissioner’s Report and Recommendation (“DCRR”) on July 14, 2014. The Discovery Commissioner succinctly stated the issue and her findings as follows:

[W]hat is at issue is the failure to disclose witnesses, whether or not failure to disclose identifies of nurses who had information about Mr. Farmer prior to this case being filed is at a level to warrant Rule 37 sanctions and, whether the failures prejudiced Plaintiff. . . . The basis of the Motion involves three nurses,

¹ For purposes of resolving the motion for sanctions, it is not necessary for this Court to determine whether the Plaintiff has the burden of proving “reasonable foreseeability” to recover under NRS 41.745, or the defendant has the burden of proving that the intentional tort was not reasonably foreseeable as an affirmative defense to avoid liability. In either case, whoever has the burden, the pleadings and briefs in this action have very clearly established that “reasonable foreseeability” is a relevant and material issue of fact.

1 Christine Murray, Margaret Wolfe, and Renato Sumera. Ms.
2 Murray and Ms. Wolfe each gave statements to the LVMPD
3 around the time of the sexual assault that resulted in the arrest of
4 Mr. Farmer. Mr. Sumera met with Risk Management afterwards. .
5 . . None of the nurses were identified at the initial 16.1. The nurses
6 should have been identified as they were clearly likely to have
7 information discoverable under Rule 26(b). . . . While there is no
8 doubt but that Plaintiff was prejudiced by the delay, the Court is
9 more concerned with the issues of memories that fade. The delay
10 in this matter was not for a short time – this was for 6 or more
11 years. Accordingly, the Court finds that the failure to identify
12 these three nurses has resulted in substantial prejudice sufficient to
13 warrant NRCP 37 sanctions.

14 (DCRR filed August 17, 2015).

15 This Court has read and considered all applicable legal briefs of the parties, the
16 Discovery Commissioner's Report and Recommendations, and Defendant Centennial's
17 objection thereto. The Court has also listened to the argument of counsel at the Evidentiary
18 Hearing conducted on August 28, 2015. The Court has considered the exhibits admitted
19 during the Evidentiary Hearing, and the testimony of witnesses provided at the Evidentiary
20 Hearing. The Court has also read and considered the deposition testimony that the parties
21 have asked this Court to consider.

22 This Court finds that the Discovery Commissioner's factual findings are supported by
23 substantial evidence, and that the Discovery Commissioner properly applied the law. The
24 Court sustains the sanctions imposed by the Discovery Commissioner, and imposes the further
25 sanctions as discussed below.

26 This Court further finds that, based on evidence that this Court considers to be clear
27 and convincing, Centennial intentionally and willfully (a) violated its discovery obligations
28 under NRCP 16.1 in failing to timely disclose that nurses Murray, Wolfe, and Sumera
possessed relevant and material evidence relating to the central issue in this case – whether it
was reasonably foreseeable to Centennial that Mr. Farmer would commit a criminal sexual
assault on a patient; and (b) violated its duty under NRCP 16.1 to timely disclose the Police
Statements which also contained relevant and material evidence relating to the same central
issue. The Court also finds that, based on evidence that this Court considers to be clear and
convincing, Centennial's misconduct caused extreme unfair prejudice to Plaintiff Jane Doe,

1 and that Centennial's misconduct substantially impaired Plaintiff's ability to discover relevant
2 evidence and prepare for trial with respect to the issue whether it was reasonably foreseeable
3 that Mr. Farmer would commit a criminal sexual assault on a patient.

4 **The Court sanctions Defendant Centennial pursuant to NRCP 37 by striking its**
5 **Answer in this action such that liability is hereby established on Plaintiff Jane Doe's**
6 **claims against Defendant Centennial for negligence and *respondeat superior*; but**
7 **Centennial shall still be entitled to defend on the question of the nature and quantum of**
8 **damages for which it is liable. The procedures to implement this sanction are discussed**
9 **below in the Conclusion section.**

10 The Court finds that this is the least-onerous sanction that it could impose upon
11 Centennial and still mitigate the extreme prejudice that Centennial has unfairly and wrongfully
12 inflicted upon Plaintiff. This sanction is narrowly tailored to address the exact harm caused by
13 Centennial -- the infliction upon Plaintiff of an inability to conduct proper discovery as to
14 "reasonable foreseeability" before memories had faded and evidence had either gone stale or
15 disappeared entirely.

16 **II. PROCEDURAL POSTURE OF CASE**

17 **A. NATURE OF THE CASE**

18 This is an action by Plaintiff Jane Doe against Valley Health System, LLC d/b/a/
19 Centennial Hills Hospital Medical center, Universal Health Services, Inc., American Nursing
20 Service, and Steven Farmer arising out of a criminal sexual assault perpetrated by Certified
21 Nursing Assistant (hereinafter "CNA") Farmer on a female patient at Centennial on May 14,
22 2008. Plaintiff filed her Amended Complaint in this matter on or about August 21, 2009.

23 **B. DISCOVERY AND TRIAL SETTING**

24 Discovery in this action was conducted from about November 6, 2009 through about
25 September 15, 2015 except for certain stay periods.

26 This action was stayed from January 21, 2011 until July 18, 2012, and again from
27 February 29, 2014 through July 4, 2014.

28 This action is set for jury trial commencing on January 4, 2016.

1 Calendar Call is set for December 16, 2015.

2 **C. DISCOVERY HEARING REGARDING SANCTIONS**

3 Plaintiff Jane Doe filed her Motion for NRCP 37 Sanctions against Centennial on
4 April 29, 2015.

5 This matter came before Discovery Commissioner Bonnie Bulla on June 3, 2015.
6 Plaintiff Jane Doe asked the Discovery Commissioner to strike Centennial's Answer as a
7 sanction for its discovery violations. Tr. of Proc. at p. 16, line 20 (June 3, 2015).

8 The Discovery Commissioner executed her Findings of Fact, Conclusions of Law and
9 Recommendations on July 14, 2014, explaining as follows:

10 The basis of the Motion involves three nurses, Christine Murray,
11 Margaret Wolfe, and Renato Sumera. Ms. Murray and Ms. Wolfe
12 each gave statements to the LVMPD around the time of the sexual
13 assault that resulted in the arrest of Mr. Farmer. Mr. Sumera met
14 with Risk Management afterwards. Mr. Bemis confirmed that a
Quality Assurance meeting was held shortly after the incident but
did not know at the Hearing whether or not any of the individuals
appeared.

15 None of the nurses were identified at the initial 16.1 The nurses
16 should have been identified as they were clearly known to
17 Defendants. The nurses should have been identified per NRCP
18 16.1 as the nurses were certainly likely to have information
discoverable under Rule 26(b). The Court queried Mr. Bemis as to
why the nurses were not identified but Mr. Bemis could not answer
the question.

19 The witnesses were certainly important to the matter because they
20 provide evidence of "notice" regarding Mr. Farmer and his
proclivities.

21 While there is no doubt but that Plaintiff was prejudiced by the
22 delay in terms of filing motions, the Court is more concerned with
23 the issues of memories that fade. The delay in this matter was not
24 for a short period – this was for 6 or more years. Mr. Murdock
stated that nurse Sumera had a substantial memory lapse and Mr.
Bemis did not dispute this. Accordingly, the Court finds that the
failure to identify these three nurses has resulted in substantial
prejudice sufficient to warrant NRCP 37 sanctions.

25 The Discovery Commissioner recommended sanctions and a further evidentiary
26 hearing as follows:

27 The UHS Defendants are sanctioned in the amount of One
28 Thousand Dollars and No/100 (\$1000.00) per unidentified nurse
(3) for each year not identified (6) for a total of Eighteen Thousand

1 Dollars and No/100 (\$18,000.00). Half of that amount, or Nine
2 Thousand Dollars and No/100 (\$9,000.00), shall be paid to Barbara
3 Buckley's Legal Aid Center of Southern Nevada, and the other
half shall be paid to Plaintiff in attorney's fees and costs to offset
additional work done to figure out witnesses to proceed forward.

4 IT IS FURTHER RECOMMENDED THAT because of the time
length involved in UHS' failure to identify the nurses, and the
5 memory issues that arise as a result, additional sanctions are
warranted. However, the District Court should determine those via
6 an evidentiary hearing and this Court defers the evidentiary
hearing to the District Court. As such, an evidentiary hearing
7 before the District Court should be conducted to determine (1) if
case terminating sanctions are appropriate based on the conduct of
8 failing to disclose witnesses, (2) whether or not that was intention
to thwart the discovery process in this case, and hinder Plaintiff to
9 discovery the relevant facts, and (3) a failure to let the Court know
what was going on in the case and whether the USH Defendants
10 misled the Court.

11 The Discovery Commissioner was deeply concerned by the prejudice inflicted upon
12 Plaintiff by Defendants' failure to disclose the nurses and their Metro Statements,
13 commenting:

14 That's the prejudice . . . It's the fact that memories fade, and now
15 we have a situation where we can't go back in time . . . and find
out exactly what they knew, the details of their observations, which
16 we don't have and, of course, details help you with credibility, to
know what happened. So that's the prejudice, and it's significant."

17 Tr. of Proc., p. 9 (June 3, 2015).

18 The District Court approved and signed the DCRR on August 15, 2015, and filed the
19 DCRR on August 17, 2015, setting the Evidentiary Hearing for August 28, 2015.

20 **D. THE EVIDENTIARY HEARING**

21 The Evidentiary Hearing was conducted on August 28, 2015. Each side presented
22 opening statements. Plaintiff Jane Doe presented the following witnesses, who were subjected
23 to examination by both sides: John Bemis and Ken Webster (attorneys with Hall, Prangle,
24 Schooveld, LLC, counsel for Centennial). The following exhibits were admitted into
25 evidence: Plaintiff's exhibits 1, 1a-1n, 3-8, 10, 10a, and 11-19, 21-29, 30 (excerpt of
26 deposition of Carol Butler on June 19, 2015), 31 (excerpt of deposition of nurse Sumera on
27 May 15, 2015), 32 (excerpt of deposition of nurse Wolfe on May 5, 2015), 33 (excerpt of
28 deposition of Amy Blasing on July 28, 2015), and 34 (excerpt of deposition of Janet Callahan

1 on August 8, 2015; and Defendant Centennial's Exhs. A (Las Vegas Metropolitan Police
2 Department file supposedly received by Centennial's counsel on or about May 6, 2013); and B
3 (plaintiff's 15th Supplemental NRCP 16.1 Disclosure in the "RC" case). E.H. at 10:17-25.
4 Each side presented closing arguments. The entire Evidentiary Hearing took more than half a
5 day.

6 **III. UNDISPUTED FACTS**

7 **THE HIRING AND EMPLOYMENT OF MR. FARMER**

8 1. In May of 2008, Jane Doe was a patient at Centennial. For the purposes of the
9 undisputed facts that follow, the term "Centennial" shall refer to the hospital facility, as well
10 as the Defendant, as applicable.

11 2. In May of 2008, Centennial had a contractual agreement whereby American
12 Nursing Services ("ANS") would provide certain hospital staff, which included CNAs.

13 3. In May of 2008, Mr. Farmer was an agency CNA working at Centennial through
14 its agreement with ANS.

15 **FARMER'S ASSAULT AGAINST JANE DOE ON MAY 14, 2008**

16 4. On May 14, 2008, ANS sent Mr. Farmer to work at Centennial as a CNA.

17 5. On May 14, 2008, Centennial originally told Mr. Farmer to work in the
18 Emergency Room.

19 6. In May of 2008, Mr. Farmer wore an employee badge that had his name, ANS,
20 Centennial, and contract staff written on it.

21 7. At around 21:30 hours on May 14, 2008, while Farmer was working at
22 Centennial, Centennial staff re-directed Mr. Farmer from the Emergency Room to the sixth
23 floor to work.

24 8. On May 14, 2008, Jane Doe was on the sixth floor in Room 614 at Centennial.

25 9. On May 14, 2008, in the course and scope of his employment with ANS as a
26 CNA, and in the course and scope of working at Centennial, it was expected that Farmer
27 would enter patients' rooms on the sixth floor of Centennial as part of his tasks.

28 . . .

1 10. In addition, Mr. Farmer was expected to give bed baths, clean up stool, clean up
2 urine, and check monitor leads when requested to do so by a nurse or doctor.

3 11. On May 14, 2008, Mr. Farmer entered Jane Doe's room, Room 614 at Centennial.

4 12. On May 14, 2008, having contact with a patient in the patient's room on the sixth
5 floor of Centennial was in the course and scope of Farmer's employment with ANS and
6 Centennial as a CNA.

7 13. Mr. Farmer had contact with Jane Doe in her room on the sixth floor of
8 Centennial.

9 14. On May 14, 2008, Jane Doe awoke to find Mr. Farmer pinching and rubbing her
10 nipples telling her that he was fixing her EKG monitor leads.

11 15. Mr. Farmer lifted up Jane Doe's hospital gown.

12 16. Mr. Farmer sexually assaulted Jane Doe by digitally penetrating her anus and
13 vagina against her will.

14 17. Mr. Farmer sexually assaulted Jane Doe by pinching and rubbing her nipples
15 against her will.

16 **FARMER'S ASSAULT OF MS. CAGNINA ON MAY 15 & 16, 2008**

17 18. The first criminal investigation of Mr. Farmer began from an incident involving
18 the patient Roxanne Cagnina at Centennial. The matter involving Mr. Farmer's sexual assault
19 against Ms. Cagnina, including the Centennial investigation, and the Cagnina lawsuit, is
20 referenced herein as the "Cagnina Case."

21 19. Ms. Cagnina accused Mr. Farmer of sexually assaulting her while she was a
22 patient at Centennial on May 15 and 16, 2008 -- beginning the day after Mr. Farmer assaulted
23 Jane Doe.

24 20. Centennial hired the firm Hall, Prangle, Schooveld, LLC (hereinafter "HPS") to
25 represent Centennial in the Cagnina Case on or about May 22, 2008. E.H. 9:57:15.

26 21. The HPS attorneys conducted an investigation of Mr. Farmer's conduct with
27 respect to Ms. Cagnina, including an interview of nurse Wolfe (around mid-June 2008), nurse
28 Murray (around mid-July 2008), and nurse Sumera (around mid-August). E.H. at 9:57. The

1 HPS attorneys contended at the Evidentiary Hearing that they had no knowledge at the times
2 of these interviews that Mr. Farmer had assaulted Jane Doe.

3 22. The HPS attorneys had interviewed nurse Murray because she was the nurse
4 assigned to attend to Ms. Cagnina at the time of the assault by Mr. Farmer. She had relevant
5 and material information about the facts and circumstances surrounding Mr. Farmer's contact
6 with Ms. Cagnina at the time of this assault.

7 23. Ms. Cagnina filed a Complaint in Case No. A570756 against Centennial and Mr.
8 Farmer on September 2, 2008, alleging claims of sexual assault, negligence, intentional
9 infliction of emotional distress, negligent misrepresentation, and false imprisonment.

10 **THE NURSE STATEMENTS TO THE POLICE**

11 24. Nurse Margaret Wolfe gave a statement to the LVMPD on May 30, 2008.
12 Plaintiff's Exh. 14 to Evidentiary Hearing. Ms. Wolfe told LVMPD about a conversation she
13 had with nurse Ray Sumera who, before the assault on Jane Doe, expressed concern that
14 Farmer was overly attentive to female patients and anxious to connect them to heart monitor
15 leads, and that Mr. Sumera had asked Wolfe to keep an eye on Farmer. Wolfe Police
16 Statement at 8. E.H. at 10:36-37.

17 25. Nurse Christine Murray, a Registered nurse at Centennial, gave a recorded
18 statement to LVMPD on June 13, 2008 regarding Mr. Farmer. Plaintiff's Exh. 13 to
19 Evidentiary Hearing. Ms. Murray told LVMPD that (a) Mr. Farmer would always ask if he
20 could help with heart leads (where female breasts would be exposed and possibly touched) (b)
21 Mr. Farmer was very attentive to and more helpful to female patients over male patients, and
22 that (c) an incident occurred where Mr. Farmer was working as a "sitter" for an elderly
23 woman, and the elderly woman was heard yelling: "Get outta here! I don't want you by me!"
24 Murray Police Statement LVMPD00180-181. Murray Depo. at p. 60. E.H. at 10:35-37.

25 **CENTENNIAL'S INVESTIGATION OF MR. FARMER**

26 26. Upon learning of the Cagnina allegations, Centennial began an "internal
27 investigation" handled by the "risk and quality management" department. Butler Depo. at
28 p. 120, lines 20-12.

1 27. Ms. Cagnina had been a patient at Centennial who alleged that Mr. Farmer
2 sexually assaulted her on May 16, 2008. Exh. 4. Centennial Incident Report dated May 16,
3 2008.

4 28. On the very day of Mr. Farmer's assault of Ms. Cagnina, the management and
5 staff of Centennial held a meeting to discuss the allegations; the following persons from
6 Centennial attended this meeting: the Centennial CEO, the CFO, the COO, the Risk Manager,
7 and possibly others. Depo. of Pullarkat at pp. 35-36 (8/7/15) (Exh. 23). Depo. of Callihan at
8 pp. 15-20) (8/18/15) (Exh. 25).

9 29. After the Cagnina incident became public, Plaintiff Jane Doe reported Mr.
10 Farmer's sexual assault against her.

11 30. Nurse Margaret Wolfe gave a statement to Metro about Mr. Farmer on May 30,
12 2008. *See* Wolf Statement to Metro. In the Statement, nurse Wolfe disclosed that Mr. Farmer
13 was overly attentive to female patients. *Id.*

14 31. The Chief of Nursing, Carol Butler, learned about nurse Murray's Statement to
15 LVMPD, received a copy of the Statement, and discussed it with nurse Murray and others
16 shortly after the Farmer incidents. Murray Depo. at pp. 60-61.

17 32. Nurse Sumera met with Centennial staff and a Centennial lawyer about Mr.
18 Farmer sometime shortly after the sexual misconduct of Mr. Farmer was exposed. Sumera
19 Depo. at pp. 31-37.

20 33. The Centennial Head of the Emergency Room, Amy Blasing (a.k.a. Amy Bocek)
21 knew, before August 1, 2008, that nurse Wolfe had reported that nurse Sumera had expressed
22 concerns that Mr. Farmer was being "overly attentive" to female patients. Wolfe Depo. at
23 pp. 41-42; Butler Depo. at p. 114; Blasing Depo. at pp. 28-35, 40, 99-103. Ms. Blasing
24 testified that "We were made aware that Margaret [Wolfe] had expressed concerns." Blasing
25 Depo. at p. 33. Ms. Blasing also knew that nurse Wolfe has spoken with the police: "Q. In
26 fact, my understanding is that you became aware that a - - that Margaret had spoken with the
27 police about the situation. Is that right? A. That sounds familiar." Blasing Depo. at
28 pp. 33-34. Ms. Blasing further admitted: "[S]omehow it got back to us that Margaret [Wolfe]

1 had shared concerns with law enforcement ["between May and August"]. Blasing Depo. at
2 p. 38.

3 34. Ms. Blasing admitted in her deposition that she knew about Ms. Wolfe's concerns
4 from the Centennial internal investigation: "Margaret said that she expressed concerns that
5 Steven Farmer seemed to seek out duties with females and was overeager and that she felt
6 uncomfortable." Blasing Depo. at pp. 36-37.

7 35. Ms. Butler met with nurse Sumera and Amy Blasing shortly after the incident and
8 before August 2008 to discuss Mr. Farmer. Blasing Depo. at pp. 28-33.

9 36. Ms. Butler became aware of the Wolfe Statement sometime before August 1,
10 2008. Butler Depo. at pp. 113-115, 119 ("Q. By August 1 of 2008, you knew she had made a
11 statement? A. Sure."); Blasing Depo. at pp. 28-33.

12 37. It is undisputed that the Chief of Nursing of Centennial, Carol Butler, had read the
13 Murray Police Statement shortly after nurse Murray had given the Police Statement, and she
14 discussed the substance of the Police Statement with nurse Murray and others. Murray Depo.
15 at p. 61.

16 38. Centennial's counsel has admitted that he was "aware that some statements were
17 given by [your] nursing staff" "prior to 2009." Tr. of Proc., p. 11, lines 12-17 (June 3, 2015).

18 39. Centennial's counsel further confirmed at the Evidentiary Hearing that Centennial
19 became aware that nurses Murray and Wolfe had gone to the police and gave statements.
20 E.H. at 9:53.

21 **THE JANE DOE LAWSUIT, AND DISCOVERY THEREIN**

22 40. Plaintiff filed her lawsuit in this action on July 23, 2009. The matter involving
23 Mr. Farmer's sexual assault of Jane Doe, and the civil lawsuit resulting therefrom, are
24 referenced herein as the "Jane Doe Case."

25 41. Centennial hired the HPS firm to represent Centennial in the Jane Doe Case on or
26 about August 3, 2009. E.H. at 9:58:40. The HPS attorneys contended at the Evidentiary
27 Hearing that they did not re-interview nurses Murray, Wolfe, or Sumera about the Jane Doe
28 Case.

1 42. Plaintiff filed its Notice of Early Case Conference ("ECC") on October 5, 2009,
2 setting the time for the ECC on November 6, 2009. Counsel for the parties hereto, Plaintiff
3 Jane Doe and defendants Centennial, ANS, and Mr. Farmer, attended the ECC on
4 November 6, 2009.

5 43. Defendant Centennial filed its Initial list of Witnesses and Documents on
6 November 24, 2009. Centennial's initial NRCP 16.1 disclosure failed to identify nurse Wolfe,
7 nurse Murray, or nurse Sumera as persons with knowledge of relevant facts. Furthermore,
8 Centennial's initial NRCP 16.1 disclosure failed to disclose the existence of the Murray Police
9 Statement, or the Wolfe Police Statement.

10 44. The parties filed a Joint Case Conference Report ("JCCR") on December 9, 2009.
11 As evident by this JCCR, Centennial failed to produce or identify Police Statements of nurse
12 Murray or nurse Wolfe. Centennial also failed to identify nurses Murray, Wolfe, or Sumera as
13 persons with knowledge.

14 45. Defendant Farmer filed a Motion for Protective Order on March 3, 2010, which
15 the Discovery Commissioner granted on April 16, 2010. This Protective Order prohibited
16 disclosure of documents protected by the Protective Order issued in the Cagnina Case. *See*
17 Minutes 4-16-10; DCRR 9-15-9 (Cagnina Case).

18 46. This Protective Order in the Cagnina Case did not prohibit Centennial from
19 producing the Police Statements to Jane Doe; did not prohibit Centennial from disclosing the
20 existence of the Police Statements; and did not prohibit Centennial from identifying the nurses
21 who gave the statements. *See* DCRR in Case No. A570756 (9-15-09).

22 47. For more than five and one-half (5 1/2) years, from November 24, 2009, through
23 and including the date of the Evidentiary Hearing (August 28, 2015), Centennial never
24 disclosed in any NRCP 16.1 disclosure that nurses Murray or Wolfe had given Police
25 Statements regarding Mr. Farmer's conduct. For more than five and one-half (5 1/2) years,
26 through and including the date of the Evidentiary Hearing, Centennial never disclosed in any
27 NRCP 16.1 disclosure that nurses Wolfe or Sumera had knowledge of relevant facts in this
28 action. *See* Plaintiff's Exhs. 1, and 1a-1j to Evidentiary Hearing. As for nurse Murray,

1 Defendant Centennial made no mention of her in any NRCP 16.1 disclosure in 2009, 2010,
2 2011, 2012, 2013, or 2014. In a NRCP 16.1 disclosure on April 22, 2015, Centennial merely
3 noted that nurse Murray had mentioned “the alleged incident with the elderly patient to which
4 nurse Murray referred in her deposition testimony.” But Centennial still failed to designate
5 nurse Murray as a person with knowledge, and failed to give notice that nurse Murray had
6 expressed concern about Mr. Farmer being more willing to help female patients, and failed to
7 mention that nurse Murray had given a police Statement about Mr. Farmer.

8 48. Plaintiff Jane Doe had listed nurse Murray as a witness in January 2014; however,
9 Plaintiff had no way of knowing at that time the expected testimony of nurse Murray, or her
10 connection with the allegations against Mr. Farmer. (See State’s Eighth Supp. Wit. List;
11 Plaintiff’s NRCP 16.1 Witness List of January 29, 2014; Affidavit of Murdock submitted with
12 Plaintiff’s Evidentiary Hearing brief). Plaintiff had merely designated nurse Murray as a
13 witness because she had been designated as a witness Mr. Farmer’s criminal case.

14 **CENTENNIAL’S ATTORNEYS’ RECEIPT OF THE POLICE STATEMENTS**

15 49. Prior to the Evidentiary Hearing, Defendant Centennial’s attorneys admitted that
16 they received nurse Wolfe’s and nurse Murray’s Metro Statements on **May 6, 2013**. See
17 Centennial’s Objection to the DCRR at p. 5-7 (7/30/15). The paragraphs below summarize
18 Centennials’ various and changing positions on when it received the Statements.

19 **CENTENNIAL’S RECEIPT OF MURRAY POLICE STATEMENT**

20 50. At the Evidentiary Hearing, both sides presented evidence that proved that
21 Centennial’s counsel, Mr. Bemis, had asked the Deputy Public Defender (“DPD”)
22 representing Mr. Farmer in the criminal action, Amy Feliciano, to provide him with all of the
23 files pertaining to Mr. Farmer, including the Police Statements. Exh 10, 10a. at PD00055-58;
24 75-81. Ms. Feliciano specifically agreed to provide Mr. Bemis with the “voluntary statements
25 to the police.” Exh 10 at PD00079 (Ms. Feliciano’s emails dated January 22, 2013). The
26 correspondence between the DPD and Centennial’s counsel suggests that the DPD anticipated
27 providing the Police Statements to Centennial’s counsel the end of January 2013. Exhs. 10,
28 10a. Ms. Feliciano sent a letter to Mr. Bemis dated January 31, 2013, confirming that she

1 provided the “documents necessary for your review to assist with your consultation with us on
2 this case.” Exh. 11 at PDD15C0073.

3 Plaintiff Jane Doe submitted a FOIA request to the PD demanding a copy of all records
4 that she had given to Centennial’s counsel. In response thereto, Plaintiff received an Affidavit
5 from DPD Feliciano stating she was providing copies of all of the records that she believed
6 she had provided to Centennial’s counsel around January 30, 2013. This Affidavit from Ms.
7 Feliciano was accompanied by the Murray Police Statement. These facts all tend to prove that
8 Centennial’s attorney received the Murray Police Statement on or about January 30, 2013.

9 52. At the Evidentiary Hearing, Centennial’s counsel denied that it received the
10 Murray Police Statement by January 30, 2013.

11 53. Instead, Centennial’s counsel, in its Opening Statement, admitted that he received
12 the Murray Police Statement, and knew the “contents” of the Murray Police Statement, in
13 “May 2013.” (E.H. at 9:49-50). Centennial’s counsel also argued that it received the Murray
14 Police Statements in “May 2013” pursuant to a motion to compel in the “RC” case. E.H. at
15 9:56:01. Attorney Bemis testified that he knew there was a Murray Police Statement before
16 May 2013. E.H. at 11:02:10.

17 54. Attorney Bemis also testified that he had in his possession a CD audio recording
18 of the Murray Police Statement in February 2013 – although he says he never listened to it.
19 E.H. at 11:03-04. Attorney Bemis testified that his partner, Attorney Prangle, knew that Mr.
20 Bemis had received the Murray Statement in February 2013. *Id.*

21 55. Attorney Bemis re-confirmed that he had the audio file of the Murray Police
22 Statement in February 2013. E.H. at 11:11:40 and 11:13:45.

23 56. Based on the compelling evidence submitted at the Evidentiary Hearing, as well
24 as the pre-hearing admission of Centennial’s counsel, the Court concludes that Centennial’s
25 counsel **received the Murray Police Statement on or before May 6, 2013.**

26 **CENTENNIAL’S RECEIPT OF WOLFE POLICE STATEMENT**

27 57. At the sanction hearing before the Discovery Commissioner, the Discovery
28 Commissioner told Centennial’s counsel, John Bemis, that there was a “significant” non-

1 disclosure problem unless he could provide "some information" that he did not know about
2 the Wolfe Police Statement at the time of Centennial's initial NRCP 16.1 disclosures. Tr. of
3 Proc. at p. 13 (June 3, 2015). Mr. Bemis told the Discovery Commissioner that there was a
4 "possibility" that he had the Wolfe Police Statement "at the time" – meaning prior to the
5 initial NRCP 16.1 disclosure (11/24/09). *Id.* at p. 18.

6 58. In its Opening Statement, Centennial's counsel admitted that he received the
7 Wolfe Police Statement, and knew its "contents" in "May 2013." E.H. at 9:49-50)

8 59. Attorney Bemis testified under oath that he received the Wolfe Police Statement
9 in May 2013. E.H. at 10:33-34. Mr. Bemis testified: "Q. Okay. Now, the information you
10 got from those police files that alerted you to the relevance of Murray, Wolf[e] and Samera,
11 were the police – were the actual statements of Margaret Wolf[e] and Kristine Murray, which
12 you had seen for the first time when you got the police file in May 2013, right? A. Correct."
13 E.H. at 10:35

14 60. Mr. Bemis confirmed that he reviewed the Wolfe Police Statement promptly after
15 receiving it in May 2013. E.H. at 10:35. ("Q. So it wasn't long... and would be fair to say, It
16 wasn't long after receiving the police file that you reviewed it and actually saw the statements
17 of Wolf and Murray. Would that be a fair statement? A. That would be a fair statement.").
18 E.H. at 10:35.

19 61. Attorney Bemis further confirmed under oath that he first became aware of the
20 Wolfe Police Statement in May 2013 when he received files from the Las Vegas Metropolitan
21 Police Department. E.H. at 11:24:10.

22 62. Centennial's counsel admitted that the Discovery Commissioner ordered
23 Centennial to produce the entire Farmer criminal file, including both the Murray and Wolfe
24 Police Statements on or about October 27, 2014. E.H. at 11:27. Centennial's counsel
25 acknowledged that it made a production of the Farmer criminal file (that it had received from
26 Metro) on October 27, 2014. E.H. at 11:27; Exh 16. While examining attorney Bemis, Jane
27 Doe's counsel represented that the October 27, 2014 production DID NOT include the Wolfe
28 Police Statement. When asked "why not," Mr. Bemis suggested, and seemed to speculate, that

1 Centennial did not have it. E.H. at 11:39. His story at this point changed. Earlier in his
2 testimony Mr. Bemis had admitted that he had actually reviewed the Wolfe "in relatively short
3 order" after receiving it in May 2013 from Metro. But later, when confronted with Jane Doe's
4 evidence that Centennial failed to produce the Wolfe Police Statement to Jane Doe on October
5 2014, Mr. Bemis contradicted himself and testified under oath that he never really saw the
6 Wolfe Police Statement before October 2014.

7 63. On cross-examination, Attorney Bemis explained why his testimony changed. He
8 said that during a break in the Evidentiary Hearing, he examined the files that he received
9 from the Las Vegas Metropolitan Police Department (Exhibit "A"), and the Wolfe Police
10 Statement was not there. Attorney Bemis further explained that Jane Doe's Exhibit 29
11 (Centennial's 7th Supplemental NRCP 16.1 Disclosure to Jane Doe on October 27, 2014) is
12 supposed to be the exact same thing as Exhibit "A", and the Wolfe Statement is not there
13 either. According to Mr. Bemis, this all confirms that his earlier testimony that he received
14 the Wolfe Police statement from Metro in May 2013 was wrong. But none of this explains
15 why Mr. Bemis testified under oath that he had reviewed the Wolfe Police Statement in
16 "relatively short order" after getting in in May 2013, and then testifying under oath that he
17 never saw the Wolfe Police Statement before October 2014.

18 64. Finally, attorney Bemis testified that he received the Wolfe Police Statement
19 sometime before the deposition of Nurse Wolfe on May 5, 2015, but he did not know when he
20 had received it.

21 65. Here is a summary of the various positions of Centennial's counsel on when it
22 received the Wolfe Police Statement:

- 23 • "Possibly" before November 24, 2009.
- 24 • On May 6, 2013.
- 25 • Sometime in May, 2013.
- 26 • Maybe sometime after October 2014; or
- 27 • Sometime prior to May 5, 2015.

28

1 66. Having considered and weighed the evidence, **the Court is persuaded that**
2 **Centennial's counsel received the Wolfe Police Statement in or before May, 2013 –**
3 Attorney Bemis may have been confused on HOW he received the Wolfe Police Statement,
4 but he was clear in his early testimony on WHEN he received it – on or before May 6, 2013.
5 E.H. at 10:33-34; 11:24:10. Mr. Bemis contradicted himself on WHETHER he REVIEWED
6 the Wolfe Police Statement prior to October 2014 – but whether he reviewed it or not, that
7 does not change his testimony that he had the Wolfe Police Statement in his POSSESSION on
8 or before May 6, 2013.

9 67. It bears repeating here that it is undisputed that Centennial's management knew
10 about the existence of the Wolfe Police Statement and Murray Police Statement by August
11 2008. Centennial's knowledge is imputed to its attorneys. Thus the HPS attorneys had
12 constructive knowledge as early as August 2009 (before Centennial's initial NRCP 16.1
13 disclosure in the Jane Doe Case) about the Murray and Wolfe Police Statements.

14 **PLAINTIFF'S RECEIPT OF THE POLICE STATEMENTS, AND**
15 **SUBSEQUENT DEPOSITIONS**

16 68. Plaintiff received the Murray Police Statement for the first time in October 2014.
17 E.H. at 9:27:50; 11:34:15; 11:38:05; Exh. 29.

18 69. Plaintiff received the Wolfe Police Statement for the first time in January 2015.
19 E.H. at 9:27:58.

20 70. Plaintiff took the deposition of Christine Murray in this action on January 8, 2015.

21 71. Plaintiff took the deposition of Renato Sumera in this action on May 1, 2015.

22 72. Plaintiff took the deposition of Margaret Wolfe in this action on May 5, 2015.

23 73. Plaintiff took the deposition of Amy Blasing in this action on July 28, 2015.

24 74. Plaintiff took the deposition of Janet Callahan in this action on August 8, 2015.

25 **THE PROTECTIVE ORDER IN THE CAGNINA CASE**

26 75. On April 3, 2013 the Discovery Commissioner issued an oral Protective Order in
27 the Cagnina Case providing that "All discovery concerning the Criminal Action is subject to
28 the Protective Order previously entered on September 17, 2009, which remains in full force

1 and effect; all Las Vegas Metropolitan Police Department depositions and transcripts; and Mr.
2 Farmer's deposition and transcript must be kept under seal; and all documents relating to the
3 Criminal Action must be kept as confidential. The Discovery Commissioner's Report and
4 Recommendation relating thereto was entered as an Order of the Court on May 3, 2013. (*See*
5 Notice of Entry of Order) (Case No. A570756, May 6, 2013).

6 76. The Discovery Commissioner issued an oral recommendation lifting the
7 Protective Order on October 27, 2014. The written Discovery Commissioner recommendation
8 was issued on November 6, 2014, and the Order of the Court was entered and served on
9 November 14, 2014.

10 **CENTENNIALS'S REPEATED IMPROPER DENIALS OF EXISTENCE OF**
11 **ANY POTENTIAL EVIDENCE REGARDING FARMER**

12 77. On October 14, 2014, Centennial filed and served an opposition to Plaintiff's
13 Motion for Summary Judgment making the following statement: "[T]here were **absolutely no**
14 **known prior acts** by Mr. Farmer that could **potentially put Centennial on notice** that Mr.
15 Farmer would assault a patient." (Centennial Opposition to Motion For Summary Judgment at
16 p. 9) (emphasis added).

17 78. In a brief filed with the Nevada Supreme Court on April 29, 2015, Centennial
18 incorrectly represented that it had not withheld any relevant evidence. Petitioners Valley
19 Health System, LLC [] Petition for Writ of Mandamus and/or Writ of Prohibition, pp. 14-15
20 (April 29, 2015) (No. 67886). Centennial stated: "[T]here were no known prior acts or any
21 other circumstances that could have put Centennial on notice that Farmer would sexually
22 assault Ms. Doe." *Id.*

23 79. In its Objection to Discovery Commissioner's Report and Recommendation, filed
24 July 30, 2015, Centennial argued that "Defendants did not have knowledge that these persons
25 [nurses Wolfe, Sumera, and Murray] had information relevant to this Plaintiff's claims (or
26 knowledge of the substance of either nurse Wolfe's or nurse Murray's 2008 statements to the
27 LVMPD) until after they received a copy of Farmer's police file in May 2013). *See*
28 Centennial's Objection at pp 3-4 (filed July 30, 2015). This statement is false.

1 80. The undisputed facts, as summarized above, are that Centennial had knowledge,
2 before August 2008, that nurses Murray, Wolfe and Sumera had all expressed concerns or had
3 discussions regarding Mr. Farmer being overly attentive to female patients, that nurse Murray
4 had recounted the incident about the elderly lady who yelled at Mr. Farmer to "get out," and
5 that nurse Murray and nurse Wolfe had given Police Statements about Mr. Farmer. Any
6 reasonable person could reach the conclusion that this information is certainly relevant to the
7 issue of whether Centennial had notice of Mr. Farmer's dangerous propensities. Centennial's
8 statement that there were "absolutely no known prior acts" of Mr. Farmer to possibly put them
9 on notice is a statement that goes far beyond the bounds of zealous advocacy, and
10 demonstrates an intent to conceal relevant evidence.

11 **FALSE DISCOVERY RESPONSES BY CENTENNIAL**

12 81. In Centennial's Objection to the DCRR, at pp 6-7, Centennial's attorneys wrote:
13 "Prior to obtaining the police file, the Hospital Defendants were aware that several nurses had
14 spoken with the police but they neither attended nor were privy to the substance of those
15 interviews/statements." This is false. As stated in the above statements of undisputed fact,
16 before August 2008, Centennial management had discussed the Police Statement given by
17 nurses Murray and Wolfe.

18 82. In Centennial's Objection to the DCCR, at p. 7, Centennial states: "Upon
19 obtaining a copy of Mr. Farmer's file, the Hospital Defendants learned for the first time that
20 nurses Murray, Wolfe, and Sumera had information that could be relevant to Plaintiff's
21 claims. . . . The Hospital Defendants did not willfully withhold any information, much less
22 know that these witnesses had information relevant to the instant Plaintiff's claims until May
23 2013 at the earliest." These statements are false. As stated in the above statements of
24 undisputed facts, Centennial had conducted an internal investigation and absolutely learned
25 that nurses Wolfe, Murray, and Sumera ALL had information relevant to the issue of
26 Centennial's knowledge of Mr. Farmer's possibly dangerous proclivities. Perhaps the
27 attorneys for the Defendants did not know about the nurses, but their client definitely knew.

28 . . .

1 83. Plaintiff asked Defendant Centennial by Interrogatory no. 18 to disclose “when
2 you received LVMPD Statement of Margaret Wolfe.” On June 12, 2015, Defendant
3 Centennial objected and further stated: “Without waiving said Objection, this Answering
4 Defendant has only learned of the LVMPD Statement of Margaret Wolfe through counsel.”
5 Centennial’s Risk Analyst, Amanda Bell, signed a Verification swearing upon oath to the
6 accuracy of this response. However, Ms. Bell verified a false statement. As indicated above,
7 Centennial knew “of” the Wolfe Police Statement by August, 2009.

8 84. Plaintiff then asked Defendant Centennial by Interrogatory no. 19 to disclose
9 “when you first became aware that Margaret Wolfe had spoken with LVMPD regarding
10 Steven Farmer.” Ms. Bell repeated the same response under oath. Again, Ms. Bell verified a
11 false statement.

12 85. Plaintiff also asked, by Interrogatory no. 17, for Defendant Centennial to disclose
13 all “persons present at the meeting between Renato Sumera and Centennial Hills Hospital after
14 Farmer was arrested.” Defendant Centennial, through the sworn response of Ms. Bell,
15 responded: “Object. This Interrogatory is irrelevant. Counsel of record met with Mr. Sumera
16 following Mr. Farmer’s arrest. Former Centennial Hills Hospital Risk Manager, Janet
17 Callihan, and her staff provided introduction and left the meeting prior to any substantive
18 discussion.” Plaintiff was entitled to the requested information because the memories of
19 Sumera and the others had faded regarding persons involved in the internal investigation.
20 Centennial had an opportunity to help alleviate some of the prejudice they had inflicted upon
21 Plaintiff, but choose not to do so.

22 **FARMER’S CRIMINAL CONVICTION**

23 86. On May 30, 2014, Farmer was convicted in the Eighth Judicial District Court,
24 Clark County, Nevada, in Case Number 08C245739, as follows: Count 10 of **Sexual Assault**
25 (Felony – Category A) in violation of NRS 200.364 & 200.366 for the digital penetration, by
26 inserting his finger(s) into the anal opening of Jane Doe, against her will or under conditions
27 in which Farmer knew, or should have known, that Jane Doe was mentally or physically
28 incapable of resisting or understanding the nature of Farmer’s conduct; Count 11 of **Open or**

1 **Gross Lewdness** (Gross Misdemeanor) in violation of NRS 201.210 for touching and/or
2 rubbing the genital opening of Jane Doe with his hand(s) and/or finger(s); Count 12 of **Sexual**
3 **Assault** (Felony – Category A) in violation of NRS 200.364 & 200.366 for the digital
4 penetration, by inserting his finger(s) into the genital opening of Jane Doe, against her will or
5 under conditions in which Farmer knew, or should have known, that Jane Doe was mentally or
6 physically incapable of resisting or understanding the nature of Farmer's conduct; Count 13 of
7 **Open or Gross Lewdness** (Gross Misdemeanor) in violation of NRS 201.210 for touching
8 and/or rubbing and/or pinching the breast(s) and/or nipple(s) of Jane Doe with his hand(s)
9 and/or finger(s). Count 14 of **Open or Gross Lewdness** (Gross Misdemeanor) in violation of
10 NRS 201.210 for touching and/or rubbing and/or pinching the breast(s) and/or nipple(s) of
11 Jane Doe with his hand(s) and/or finger(s); and Count 15 of **Indecent Exposure** (Gross
12 Misdemeanor) in violation of NRS 201.220 for deliberately lifting the hospital gown of Jane
13 Doe to look at her genital opening and/or anal opening and/or breast(s).

14 **IV. STANDARD FOR AWARD OF SANCTIONS**

15 Centennial had a duty under NRCP 16.1 to timely disclose a list of all persons known
16 to have relevant knowledge relating to the claims and defenses alleged in this action. The
17 initial NRCP 16.1 disclosure was due in November 2009. Centennial filed its initial
18 disclosure on November 24, 2009. By this deficient disclosure, Centennial failed to comply
19 with its NRCP 16.1 obligations.

20 Nevada law provides that the remedy for a party's disclosure obligations under
21 NRCP 16.1 include the sanctions listed in NRCP 37. Pursuant to NRCP 37, the Court has the
22 discretion to impose any of the following sanctions that may be warranted in appropriate
23 circumstances:

24 **(2) Sanctions—Party.** If a party or an officer, director, or
25 managing agent of a party or a person designated under Rule
26 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an
27 order to provide or permit discovery, including an order made
28 under subdivision (a) of this rule or Rule 35, or if a party fails to
obey an order entered under Rules 16, 16.1, and 16.2, the court in
which the action is pending may make such orders in regard to the
failure as are just, and among others the following:

1 (A) An order that the matters regarding which the order was made
2 or any other designated facts shall be taken to be established for
the purposes of the action in accordance with the claim of the party
obtaining the order;

3 (B) An order refusing to allow the disobedient party to support or
4 oppose designated claims or defenses, or prohibiting that party
from introducing designated matters in evidence;

5 (C) An order striking out pleadings or parts thereof, or staying
6 further proceedings until the order is obeyed, or dismissing the
action or proceeding or any part thereof, or rendering a judgment
by default against the disobedient party;

7 (D) In lieu of any of the foregoing orders or in addition thereto, an
8 order treating as a contempt of court the failure to obey any orders
except an order to submit to a physical or mental examination;

9 (E) Where a party has failed to comply with an order under Rule
10 35(a) requiring that party to produce another for examination, such
orders as are listed in subparagraphs (A), (B), and (C) of this
11 subdivision, unless the party failing to comply shows that that
party is unable to produce such person for examination.

12 In lieu of any of the foregoing orders or in addition thereto, the
13 court shall require the party failing to obey the order or the
attorney advising that party or both to pay the reasonable
14 expenses, including attorney's fees, caused by the failure, unless
15 the court finds that the failure was substantially justified or that
other circumstances make an award of expenses unjust.

16
17 Before the Court can strike a defendant's answer as a sanction, the Court is required to
18 conduct an Evidentiary Hearing. Plaintiff Jane Doe asked the Court to strike Centennial's
19 Answer as a sanction for its discovery violations. This Court determined that there were
20 sufficient grounds to proceed with the Evidentiary Hearing.

21 The Nevada Supreme Court has provided guidance for the Court on the factors to
22 consider at an Evidentiary Hearing before striking an answer as a sanction:

23 The factors a court may properly consider include, but are not
24 limited to, the **degree of willfulness** of the offending party, the
extent to which the non-offending party would be **prejudiced by a**
25 **lesser sanction**, the **severity** of the sanction of dismissal relative to
the severity of the discovery abuse, whether any **evidence has**
26 **been irreparably lost**, the feasibility and fairness of alternative,
less severe sanctions, such as an order deeming facts relating to
27 improperly withheld or destroyed evidence to be admitted by the
offending party, the **policy** favoring adjudication on the merits,
whether sanctions unfairly operate to penalize a party for the
28 **misconduct of his or her attorney**, and the **need to deter** both the
parties and future litigants from similar abuses.

1 *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88, 93 (Nev. 1990) (emphasis added).

2 “Nevada jurisprudence does not follow the federal model of requiring progressive
3 sanctions against a party for failing to comply with a discovery order.” *Bahena v. Goodyear*
4 *Tire & Rubber Co.*, 245 P.3d 1182, 1184 (Nev. 2010). However, if a party requests a case
5 concluding sanction, the Court must conduct an evidentiary hearing.

6 **V. ANALYSIS**

7 **A. CENTENNIAL CONCEALED EVIDENCE ABOUT THE NURSES**

8 Centennial’s failure to comply with NRCP 16.1 was not just a minor or technical non-
9 compliance. Centennial’s failure to comply with its NRCP 16.1 obligations was material,
10 substantial, and extremely prejudicial to Plaintiff Jane Doe. Centennial left out major
11 witnesses and major documents from its NRCP 16.1 disclosure. Moreover, Centennial’s
12 failure to comply with NRCP 16.1 was repetitive, and extended over a lengthy, multiple-year
13 time period.

14 **B. CENTENNIAL’S “PROTECTIVE ORDER” DEFENSE LACKS MERIT**

15 Centennial contends that it could not produce the Police Statements or disclose nurses
16 Murray, Wolfe, and Sumera, because Centennial was subject to a Protective Order in the
17 Cagnina Case. Centennial’s argument lacks merit for several reasons:

- 18 • The Protective Order did not prohibit Centennial from submitting to Plaintiff a
19 privilege log listing the Police Statements and identifying the privilege claimed.
20 Centennial understood the importance of preparing a privilege log for relevant
21 documents that it withheld. Centennial’s supplemental NRCP 16.1 disclosures
22 contained privilege logs, but Centennial elected not to include the Police
23 Statements in any of its privilege logs.
- 24 • The Protective Order did not prohibit Centennial from disclosing the existence of
25 the Murray Police Statement or the Wolfe Police Statement. Centennial could have
26 and should have disclosed the existence of the Police Statements in its initial
27 NRCP 16.1 disclosure, and its supplemental disclosures.

28 . . .

- As admitted by attorney Bemis (E.H. at 10:41), the Protective Order did not prohibit Centennial from identifying the names of nurses Murray, Wolfe, and Sumera, as persons with knowledge of relevant facts, nor did the Protective Order prohibit Centennial from identifying the general knowledge that each of these nurses possessed. **Attorney Bemis admitted that Centennial's failure to disclose nurses Murray, Wolfe, and Sumera, was a violation of NRCP 16.1. (E.H. at 10:42:20).**
- Centennial suggests it acted in good faith by seeking to lift the September 17, 2009 Protective Order. However, Centennial did not move to lift the Protective Order until October 2014. Centennial had a duty to identify the Police Statements in its initial NRCP 16.1 disclosure on November 24, 2009. If Centennial truly felt limited in disclosing the mere existence of the Police Statements due to the Protective Order, Centennial would have sought to lift the Protective Order in November 2009, rather than waiting almost five (5) years, until October of 2014, to do so.

C. CENTENNIAL'S ARGUMENT - THAT THE NURSE EVIDENCE WAS ONLY RELEVANT TO THE CAGNINA CASE - IS FRIVOLOUS

Centennial argues, in various iterations, that it had a good faith believe the early evidence it learned about Mr. Farmer only related to the Cagnina case. Centennial notes that nurse Murray was the nurse assigned to Mr. Farmer on the day Ms. Cagnina reported Mr. Farmer's sexual assault. This argument is logically flawed. Once Jane Doe filed her lawsuit on July 23, 2009, a major issue in the Jane Doe case was whether Centennial had notice that Mr. Farmer posed a risk of committing a sexual assault on a female patient at Centennial. If Mr. Farmer was overly attentive to female patients at Centennial, and liked to assist in monitor placements so he could lift their gowns and see and/or touch their breasts, then that information was undeniably relevant to the Jane Doe Case.

The fact that Centennial failed to make the connection is Centennial's own fault. As soon as Centennial discovered the information, they had a duty to disclose it. It is undisputed

1 that Centennial discovered the information by August 1, 2008 – long before Jane Doe filed her
2 lawsuit. Therefore, Centennial had a duty to disclose the nurses and the existence of their
3 police statements in the very first NRCP 16.1 production in 2008. This Court finds that there
4 is no valid excuse for Centennial’s failure to timely disclose the nurses and existence of the
5 Police Statements.

6 **B. THE SANCTION FACTORS**

7 **1. Degree of Willfulness**

8 This Court finds that there is clear and convincing evidence that Centennial willfully
9 and intentionally concealed the relevance of nurses Murray, Wolfe, and Sumera, and the
10 existence of the Police Statements with an intent to harm and unfairly prejudice Plaintiff. This
11 inescapable conclusion is derived from the following evidence:

- 12 • Centennial had knowledge prior to August 2009 of the very relevant information
13 possessed by nurses Murray, Wolfe, and Sumera.
- 14 • Centennial’s counsel in the Cagnina Case is the same counsel that began
15 representing Centennial in the Jane Doe Case by August 2009.
- 16 • Centennial failed to timely disclose nurses Murray, Wolfe, and Sumera in its initial
17 and supplemental NRCP 16.1 disclosures.
- 18 • Centennial failed to disclose the mere existence of the Police Statements in its
19 initial and supplemental NRCP 16.1 disclosures.
- 20 • Centennial changed its story several times about when it discovered the
21 significance of the information known by nurses Murray, Wolfe, and Sumera.
- 22 • Centennial changed its position several times about when it received the Wolfe
23 Police statement.
- 24 • Centennial provided false discovery responses to Jane Doe, and incorrectly
25 represented to this Court that it had not withheld any relevant evidence. Centennial
26 and its counsel told this Court in October of 2014, a minimum of eighteen (18)
27 months after admitting they had the criminal file with the names and statements,
28 that “In the instant situation, there were absolutely no known prior acts by Mr.

1 Farmer that could potentially put Centennial on notice that Mr. Farmer would
2 assault a patient.” CH. Opp. to MSJ at 9. Rule 3.3 of the Nevada Rules of
3 Professional Conduct states “(a) A lawyer shall not knowingly: (1) Make a false
4 statement of fact or law to a tribunal by the lawyer.” Centennial’s lawyers violated
5 this Rule.

- 6 • Centennial incorrectly represented to the Nevada Supreme Court that it had not
7 withheld any relevant evidence. Centennial stated: “there were no known prior
8 acts or any other circumstances that could have put Centennial on notice that
9 Farmer would sexually assault Ms. Doe.” Writ at 14-15. Again, Centennial’s
10 lawyers violated Rule 3.3.
- 11 • Centennial’s argument that it withheld the Police Statements due to the
12 September 17, 2009 Protective Order was a false, pre-textual excuse.
- 13 • Centennial unreasonably delayed in seeking to lift the Protective Order.
- 14 • Centennial unreasonably failed to identify the Police Statements in a Privilege log.
- 15 • Centennial understood that, through the passage of time, the memories of key
16 witnesses would fade.
- 17 • With the passage of time, the memories of key witnesses did, in fact, fade.
- 18 • Centennial’s argument - that it failed to appreciate the importance of the
19 information known by the nurses because the HPS firm interviewed the nurses
20 before it started working on the Jane Doe Case -- is frivolous.
- 21 • Centennial provided false discovery responses under oath, designed to mislead this
22 Court.
- 23 • Centennial’s counsel admitted that it had a duty under NRCP 16.1 to review the
24 recorded statement of Murray as soon as it received it to ascertain whether the
25 Statement contained information relevant to the Jane Doe case. E.H. 11:15:35.
- 26 • Centennial admitted that it violated NRCP 16 in failing to timely disclose the
27 names of nurses Murray, Wolfe, and Sumera, and to disclose their general
28 knowledge. E.H. 10:38, and 10:42:20

2. The Prejudice To Jane Doe By a Lesser Sanction

The prejudice to Plaintiff, as discussed below, is that memories have faded over time. When Plaintiff finally discovered the importance of nurses Murray, Wolfe, and Sumera to this case, years had passed and, understandably, their memories had extensively faded. That evidence cannot be retrieved. A remedy must be fashioned to help overcome the prejudice that Plaintiff has suffered at Centennial's hands. The lost evidence related directly to the issue whether Centennial had notice that Mr. Farmer posed a risk of sexual assault to a female patient. The lost evidence likely would have assisted Jane Doe in proving that Centennial had such notice, that Centennial had a duty to protect Jane Doe from the danger posed by Mr. Farmer, that Centennial breached its duty to protect Jane Doe, and also that Centennial was liable to Jane Doe for Farmer's misconduct on a theory of respondeat superior. The evidence that Centennial concealed, and the probable fruits of such concealed evidence, would have assisted Jane Doe in establishing Centennial's liability, and in rebutting Centennial's defenses to liability.

Any lesser sanction would be wholly insufficient to mitigate the prejudice to Jane Doe caused by Centennial. A possible lesser sanction would be to impose an evidentiary presumption that it was reasonably foreseeable to Centennial that Mr. Farmer would sexually assault Jane Doe. But an evidentiary presumption would not bar Centennial from presenting evidence to try to rebut such presumption. Centennial would then be able to benefit from its conduct in hiding evidence. Moreover, an evidentiary presumption would create a huge logistical problem at trial. Further, any evidentiary presumption would apply against defendant Centennial, but not against ANS. This would undoubtedly confuse the jury.

A possible way to avoid such unnecessary confusion would be to bifurcate trial. If the Court were to bifurcate Jane Doe's claims against Centennial from Jane Doe's claims against ANS, however, this would impose undue burden and expense on Jane Doe to conduct essentially a second trial. It would be extremely unfair to impose a burden of a second trial on Plaintiff to mitigate the prejudice caused by Centennial.

...

1 This Court has already imposed a monetary sanction against Centennial. A stronger
2 monetary sanction would not redress the prejudice to Plaintiff.

3 Finally, disqualifying Centennial's counsel would not eliminate the prejudice to
4 Plaintiff.

5 **3. The Severity Of The Sanction Of Dismissal Relative To The Severity**
6 **Of The Discovery Abuse**

7 The discovery abuse was indeed extreme, and warrants a very severe sanction against
8 Defendant Centennial. Centennial utterly failed to honor its duty to disclose witnesses that it
9 knew were critical witnesses as early as august 2008 -- before this lawsuit was even filed.
10 Centennial also intentionally concealed the similarly critical police statements of nurses
11 Murray and Wolfe. Again, Centennial didn't miss its disclosure deadline by a mere few days
12 or even a few months; Centennial missed its deadline by more than five (5) years.

13 The sanction must be sufficiently severe. But the Court seeks not to impose a sanction
14 for the primary sake of punishment of Centennial. Rather the Court is primarily motivated to
15 impose a sanction that is no greater than necessary to undo the prejudice that Defendant
16 Centennial inflicted upon Jane Doe. Striking Centennial's Answer is appropriately severe in
17 light of Centennial's discovery abuses.

18 **4. Whether Evidence Has Been Irretrievably Lost**

19 Centennial's concealment of evidence has irreparably prejudiced Plaintiff Jane Doe,
20 because the evidence has been irretrievably lost. Centennial's delay in disclosing the nurses'
21 Police Statements has caused incurable and substantial prejudice to Plaintiff. The significant
22 passage of time has resulted in extensive fading of witness memories and loss of evidence of
23 the facts and circumstances discussed within the nurses' Police Statements, as follows:²

24 **NURSE MURRAY**

25 Nurse Murray suffered significant memory loss of relevant facts:

26 P.35-36 Nurse Murray recalled the incident where the lady yelled at Mr. Farmer
27 (who had been acting as sitter for her) to leave her alone, but she could not recall the room

28 ² The page numbers refer to the pages of each witness deposition transcript.

1 number, and she could not recall the attending nurse for that patient. If Plaintiff had been able
2 to obtain the room number, they could have tracked down this patient who had complained
3 about Mr. Farmer. Then Plaintiff could have learned the nature of the patient's undisputed
4 complaint against Mr. Farmer. Plaintiff could have discovered whether Mr. Farmer had
5 engaged in some sexual assault, and whether any other nurses attending to this lady had been
6 alerted to Mr. Farmer's improper conduct. All of this discovery was prevented because
7 Centennial concealed the existence of nurse Murray and the substance of her relevant
8 testimony.

9 P.43 Nurse Murray could not recall the specifics of what she told the police in
10 her statement without seeing the statement.

11 P.57 Nurse Murray could not recall the substance of her discussions with
12 Centennial staff about the complaint from the lady about Mr. Farmer.

13 P.58 Nurse Murray could not recall if she had a conversation with the nurse
14 about the "sitter" incident.

15 P.68 Nurse Murray recalled an incident when Mr. Farmer offered to place the
16 telemetry leads on a female patient, but she could not recall any specifics.

17 P.68 Nurse Murray could not recall if, during the time that she worked at
18 Centennial, CNAs were not allowed to apply telemetry leads without first being instructed to
19 do so by a nurse.

20 **RAY SUMERA**

21 Ray Sumera was a nurse working at Centennial on May 15, 2008, and is the person
22 whom nurse Wolfe reportedly heard say he was concerned about Mr. Farmer because he was
23 overly attentive to female patients. In his deposition, he indicated that his memory of this
24 conversation with nurse Wolfe had greatly faded:

25 P.75 Q: "Do you recall telling Ms. Wolfe that you were concerned about Mr.
26 Farmer because he was very anxious to connect and disconnect them from heart monitors,
27 which would require him to reach into their clothing?" A: "I don't remember any

28 . . .

1 conversation." Q: "Okay. You're not saying it didn't happen, you're saying you just don't
2 remember, right?" A: "I don't remember."

3 P.78 Q: "Do you recall Ms. Wolfe telling you about an incident where Mr.
4 Farmer had exposed a female patient's breasts where he was allegedly checking monitor
5 placements?" A: "I don't remember."

6 P.77 Q: "And you told Margaret that you had talked to him [Mr. Farmer],
7 right?" A: "For a follow-up, I probably did tell Margaret that I talked to him." Q: "You just
8 don't have any memory of it?" A: "I don't have any memory." Q: "But you have no reason to
9 disagree with what she says here [in the police report], is that correct?" A: "Correct."

10 P.127 Q: "Were you the charge nurse on May 15th? A: "I don't know whether I
11 was in charge or not - - on what specific day."

12 P.138 A: "It's possible it [the conversation with nurse Wolfe about Mr. Farmer
13 being "overly attentive to female patients"] did occur, but I don't remember the exact
14 conversation."

15 **AMY BLASING**

16 The Centennial Head of the Emergency Room, Amy Blasing, was extensively involved
17 in investigating the allegations of nurse Sumera, Wolfe, and Murray, and their
18 communications with each other. She expressed a great loss of memory when confronted with
19 relevant and material questions at her deposition on July 28, 2015:

20 P. 29:13-20 She could not remember who she included in her internal discussions
21 about Mr. Farmer other than Ray Sumera, Margaret Wolfe, Karen Goodhart, and Darby
22 Curless.

23 P.30:19-24 She could not remember if she took any notes of her internal meeting
24 regarding Mr. Farmer because "It was several years ago."

25 P.32-33 She recalled having discussions with Carol Butler about her meeting with
26 Margaret Wolfe, but could not recall specifics.

27 P.33-34 She could not recall the specifics of what nurse Wolf said she had told the
28 police.

1 P.35 She recalls that she spoke with nurse Wolfe and nurse Sumera about their
2 different recollections about their concerns with Mr. Farmer, but she could not recall the
3 specifics.

4 P.40:18-22 She could not recall the first time that she spoke with counsel for
5 Centennial about Mr. Farmer's sexual assault against Ms. Cagnina.

6 P.90:12-18 She could not recall whether she had any other discussions about Mr.
7 Farmer besides the very limited information given regarding staff discussions, because: "It
8 just was a long time ago."

9 **CAROL BUTLER**

10 The Centennial Director of Nursing, Carol Butler, also had a significant memory loss
11 by the time of her deposition, on June 19, 2015:

12 P.75 She could not recall whether she had spoken with Ray Sumera.

13 P. 75-76 She believes she spoke with nurse Wolfe, but she was not certain, and she
14 also could not recall whether she took notes of her meeting with nurse Wolfe.

15 P.76 She admitted that if she had been asked questions about the Farmer
16 investigation five (5) years ago, events "certainly would have been fresher in her mind:

17 "Q. . . . If I asked you five years ago, you might have a better answer; right? Your
18 memory? A. Certainly."

19 P.87:2-13 She recalls the Centennial investigation concerned allegations that Mr.
20 Farmer had an "inappropriate contact in the E.D. and then again on the sixth floor," but she
21 could not recall "what" inappropriate contact was discussed.

22 P.87:17-22 She could not recall if her meetings regarding the Farmer investigation
23 included separate meeting with Centennial staff, or with all staff all together.

24 P.114:4-7 She could not recall if she ever talked to nurse Wolfe about her Metro
25 Statement.

26 P.121:10-16 She could not recall whether she notified the Centennial Risk Manager
27 that Amy Blasing brought to her attention that a nurse had expressed concerns about Mr.
28 Farmer.

1 P.130 She could not recall any of the conversations that she had with nurse
2 Wolfe about the Farmer investigation.

3 P.130 She could not recall any of the conversations that she had with nurse
4 Sumera about the Farmer investigation.

5 P.130:21-23 She admitted that her memory about conversation with nurses Wolfe and
6 Sumera would have been better five years earlier.

7 **JANET CALLIHAN**

8 Janet Callihan was the Administrative Director for Quality Outcomes for Centennial
9 beginning the summer of 2007 through the time of the Farmer incident. Her memory had
10 faded as to significant events:

11 P.22-37 She could not recall if she had ever met with Christine Murray, even
12 thought, as she acknowledged, nurse Murray would have prepared an incident report, and it
13 was Ms. Callihan's duty to review such reports. Also she did not recognize the names of Ray
14 Sumera or Margaret Wolfe.

15 **MARGARET WOLFE**

16 Nurse Margaret Wolfe also had significant memory loss due to the passage of time:

17 P.15 She could not recall whether she spoke to anybody at Centennial about her
18 statement to the police.

19 P.20&51 She could not recall any specifics of her discussion with Ray Sumera
20 about Mr. Farmer

21 P.27-28 She recalls that "all the nurses" were talking about concerns they had with
22 Mr. Farmer; but she could not remember who because "it was so long ago."

23 P.40 She could not recall whether she had any conversation with anybody at
24 Centennial about Mr. Farmer after she was terminated as a nurse from Centennial.

25 **SUMMARY**

26 The passage of time has clearly undermined, frustrated, and eliminated Plaintiff Jane
27 Doe's opportunity to gather relevant information in this litigation, as follows:

28 . . .

- 1 • In a case where the most critical issue is whether Centennial had knowledge
- 2 that Mr. Farmer might pose a risk of harm to female patients, Centennial
- 3 concealed the fact that nurse Sumera reported concerns that Mr. Farmer might
- 4 be a danger to female patients.
- 5 • Centennial concealed the fact that nurse Sumera had reported his concerns to
- 6 nurse Wolfe.
- 7 • In July 2008, according to nurse Wolfe, nurse Sumera had expressed concern
- 8 that Mr. Farmer was overly attentive to female patients. However, seven (7)
- 9 years later, nurse Sumera's recollection had changed, as well as his tenor of
- 10 remarks about Mr. Farmer.
- 11 • Jane Doe can no longer find out from nurses Murray, Wolfe, or Sumera, which
- 12 of the other nurses, staff, and management at Centennial were suspicious of Mr.
- 13 Farmer's conduct prior to May 14, 2008.
- 14 • If Centennial had complied with its disclosure obligations, Jane Doe could have
- 15 deposed nurses Murray, Wolfe, and Sumera in 2009 -- when their memories
- 16 were much more fresh regarding the facts and circumstances surrounding the
- 17 2008 events.
- 18 • If Jane Doe had taken the depositions of nurses Murray, Wolfe and Sumera in
- 19 2009, that would have led to the prompt depositions of Amy Blasing and Carol
- 20 Butler in 2009 -- before their memories faded as to critical "notice" issues.
- 21 • Centennial concealed the fact that nurse Wolfe reported the Sumera disclosure
- 22 to Centennial management.
- 23 • Centennial concealed the fact that nurse Wolfe provided a Police Statement to
- 24 Metro about Mr. Farmer.
- 25 • Centennial concealed the fact that nurse Murray provided a Police Statement to
- 26 Metro about Mr. Farmer.
- 27 • Centennial concealed the fact that it conducted an internal investigation
- 28 involving nurses Murray, Wolfe, and Sumera prior to August, 2008.

- 1 • Centennial concealed the fact that nurse Murray had some information about
2 the “crazy old lady” who yelled at Mr. Farmer to get out of her room.
3 Centennial argues that nurse Murray concluded that Mr. Farmer had not done
4 anything wrong. Centennial suggests that, if it had disclosed this incident and
5 Jane Doe had taken depositions pertaining to this incident, it would not have
6 yielded anything important. There are two problems with this argument. First,
7 nurse Murray did not testify that Mr. Farmer did not do anything wrong.
8 Second, if nurse Murray had testified years closer to the incident, she might
9 have remembered facts that could have led to the identity of this “crazy old
10 lady.” Then Jane Doe could have discovered what Mr. Farmer did to her, when
11 he did these things to her, and who had notice of such misconduct of Mr.
12 Farmer.
- 13 • Centennial concealed the fact that nurse Wolfe expressed concern that Mr.
14 Farmer had on one occasion lifted the gown of a female patient exposing her
15 breasts.
- 16 • Since Centennial concealed these facts, Plaintiff Jane Doe had no knowledge to
17 conduct discovery about these facts. As time passed, memories faded. By the
18 time Plaintiff Jane Doe received the metro statements, the memories of the
19 nurses and other witnesses had already faded. Centennial had accomplished its
20 objective.

21 Defendant Centennial contends that Plaintiff Jane Doe was not prejudiced by
22 Centennial’s failure to disclose nurses Wolfe, Murray, and Sumera because Plaintiff already
23 knew that these nurses “may have information relevant to the instant case” as early as May 13,
24 2010. Defendants Objection to Discovery Commissioner Report and Recommendation, at
25 p. 4 (7/30/15). Defendant Centennial fails to appreciate the huge difference between
26 discovering that a person “may” know something, and discovering the “something” that such
27 person may actually know. Plaintiff Jane Doe discovered the former but not the later.

28 ...

1 Defendant Centennial concealed the information that Centennial knew about the
2 criticality of the knowledge of nurses Wolfe, Murray and Sumera to this litigation.

3 Centennial contends that it is too speculative to assume that Jane Doe would have
4 deposed the witnesses earlier than they did if they had received the Police Statements at the
5 start of the case. Centennial notes that, prior to October 2014, Jane Doe had only deposed one
6 (1) of the NRCP 16.1 witnesses designated by Centennial. The Court has not verified that
7 fact. However, there are four main flaws with Centennial's argument. First, Centennial
8 concealed the important information known by nurses Murray, Wolfe, and Sumera – so it is
9 understandable that Jane Doe was not in any hurry to depose the unimportant witnesses.
10 Second, Centennial is the party that created the need to consider when Jane Doe might have
11 taken the depositions of the key witnesses; so Centennial should not be allowed to benefit
12 from a problem it created. Third, once Jane Doe did obtain the information that Centennial
13 concealed, Jane Doe's attorneys aggressively pursued discovery related to such information.
14 This aggressive action is strong evidence that Jane Doe would have taken prompt depositions
15 earlier in the case if Centennial had complied with its discovery obligations. Fourth, as
16 acknowledged by attorney Bemis, many of the witnesses designated in Centennial's early
17 NRCP 16.1 witness lists DID NOT relate to the critical issue of foreseeability – so there was
18 no big need for depositions of such persons. E.H. 10:45.

19 **5. Consideration of less-severe sanctions**

20 As discussed above, the Court has considered the possible sanctions less severe than
21 striking Centennial's answer.

22 The Discovery Commissioner already recommended the imposition of a modest
23 monetary sanction, which this Court has approved. This monetary sanction does serve as a
24 punishment of Centennial (and encouragement not to repeat its transgressions), but does
25 nothing to reverse or mitigate the prejudice that Centennial has inflicted upon Jane Doe.

26 The Court could impose a "rebuttable" presumption that Centennial had notice of Mr.
27 Farmer's dangerous propensities; but that would still leave Jane Doe at a disadvantage.

28 . . .

1 Centennial has caused the destruction of the evidence that Jane Doe could have used to
2 negate Centennial's rebuttal evidence.

3 The Court could preclude Centennial from offering any evidence that it DID NOT
4 have notice of Mr. Farmer's dangerous proclivities. But again this is insufficient. The Court
5 has already held in this case that Plaintiff Jane Doe has an initial burden of proving that it was
6 reasonably foreseeable to Centennial that Mr. Farmer posed a danger to female patients.
7 Centennial has caused the destruction of evidence that Jane Doe may have needed to satisfy its
8 initial burden. Thus it would not be an adequate remedy to merely prevent Centennial from
9 rebutting Jane Doe's evidence.

10 The Court has considered other possible lesser sanctions, and concludes that the only
11 reasonable sanction that sufficiently mitigates the harm caused by Centennial is to strike
12 Centennial's Answer.

13 **6. The policy favoring adjudication on the merits**

14 Centennial is the party that elected to hide evidence to prevent Jane Doe from
15 adjudicating its claims on the merits. Striking Centennial's Answer is the only way to undo
16 the prejudice that Centennial created. Centennial is still entitled to defend itself with regard to
17 damages. In sum, the Court merely mitigates the prejudice that Centennial caused, and
18 permits the parties to proceed with the remainder of the lawsuit in a fair and even manner.

19 **7. Whether the sanction would unfairly punish centennial for its lawyers'**
20 **misconduct**

21 The misconduct in this case is clearly that of Centennial, to an equal or greater extent
22 than its lawyers. Centennial knew that Murray had given a police statement, but failed to
23 provide such statement to its lawyers in this case. Centennial knew that nurses Murray,
24 Wolfe, and Sumera were critical witnesses in this case, and yet allowed their attorneys to
25 submit no less than Eight (8) NRCP 16.1 disclosures that omitted any reference to these
26 witnesses. One need not be trained in the law to appreciate that one's list of persons with
27 knowledge ought to have included critical witnesses such as these. Additionally, Centennial
28 provided verifications of the false discovery responses discussed herein.

IN THE SUPREME COURT OF THE STATE OF NEVADA

HALL PRANGLE & SCHOONVELD,
LLC, a Nevada Limited Liability
Company; MICHAEL E. PRANGLE,
ESQ., an individual; KENNETH M.
WEBSTER, ESQ., an individual; JOHN F.
BEMIS, ESQ., an individual;

Petitioners,

v.

EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND
FOR THE COUNTY OF CLARK,
HONORABLE JUDGE RICHARD
SCOTTI,

Respondent,

AND

MISTY PETERSON, AS BECIAL
ADMINISTRATOR OF THEESTATE
OF JANE DOE

Real Party in Interest.

Supreme Court No71045

Electronically Filed
District Court No. Aug 18 2016 03:23 p.m.
A-09-595780-C Tracie K. Lindeman
Clerk of Supreme Court

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TO CONSOLIDATE

Pursuant to N.R.A.P. 3(b), Petitioners Hall Prangle & Schoonveld, LLC,
Michael E. Prangle, Esq., Kenneth M. Webster, Esq., and John F. Bemis, Esq.

move to consolidate their Petition for

([WUDRUGLQDU\ :ULW 5 H With Valley Health System

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1 LLC, d E D & HQWHQQLD O +LOOV +RVSLWDO O HGLFD O
2 8QLYHUVDO +HDOWK pending Appeal Case No 70083 + 6

3 DATED this 18th day of August, 2016.

4 BAILEY TM KENNEDY

5
6 By: /s/ Dennis L. Kennedy

DENNIS L. KENNEDY
JOSEPH A. LIEBMAN
JOSHUA P. GILMORE

7
8 AND

HALL PRANGLE & SCHOONVELD, LLC
MICHAEL E. PRANGLE
KENNETH M. WEBSTER
JOHN F. BEMIS

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10 Attorneys for Petitioners

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13 Centennial Hills and UHS have appealed from the November 4, 2015
14 Order Striking Answer of Defendant Valley Health System LLC as Sanction

15 IRU 'LVFRYHU\ 0LVFRQGXFV WKH 36DQFWLRQ 2UC
16 OLPLWHG WR WKH 'LRW&HLEWH&RQXLDV\VLQVLDNQG
17 DV WR OLDELOLW\ Petitioners were also the subject of the

18
1 A copy of the Sanction Order is attached as Exhibit 1.

Sanction Order. Specifically, the District Court issued a public reprimand to the Petitioners by finding that they twice violated Nevada Rule of Professional

On February 29, 2016, an Order was entered by the District Court dismissing the lawsuit with prejudice following a global settlement (the

Hills, UHS, and the Petitioners preserved their rights to appeal the Sanction Order.² Centennial Hills and UHS timely filed their Joint Notice of Appeal on March 30, 2016.

Because the Petitioners are not parties to the underlying litigation, they were required to address the Attorney Sanctions through the Writ Petition. See *Watson Rounds v. Dist. Ct.*, 131 Nev. Adv. Op. 79, 358 P.3d 228, 231 (2015)

parties in the underlying action; therefore, extraordinary writs are a proper

Petitioners filed their Writ Petition on August 6, 2016, following the filing of

& HQWHQQLD O + L Onq Bried QG 8 + 6 ¶ 2 SH

² A copy of the Dismissal Order is attached as Exhibit 2.

1 Although the Nevada Rules of Appellate Procedure do not explicitly
2 contemplate the consolidation of an appeal with an extraordinary writ,
3 N.R.A.P. 3(b)(2) does contemplate the consolidation of related matters. A
4 shown above, the Party Sanctions and the Attorney Sanctions were
5 concurrently issued by the District Court in its Sanction Order. The Party
6 Sanctions and the Attorney Sanctions are based on the same evidentiary
7 hearing and the evidence admitted at the hearing. As a result, the issues
8 surrounding the Party Sanctions and the Attorney Sanctions are extensively
9 intertwined. Judicial efficiency and economy would be well served by
10 consolidating these two proceedings into one.

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III. CONCLUSION

For the foregoing reasons, Petitioners request that this Court consolidate the Writ Petition into Case No. 670083.

DATED this 18th day of August, 2016.

BAILEY TM KENNEDY

By: /s/ Dennis L. Kennedy
DENNIS L. KENNEDY
JOSEPH A. LIEBMAN
JOSHUA P. GILMORE

AND

HALL PRANGLE & SCHOONVELD, LLC
MICHAEL E. PRANGLE
KENNETH M. WEBSTER
JOHN F. BEMIS

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY™KENNEDY and that on the 18th day of August, 2016, service of the foregoing MOTION TO CONSOLIDATE was made by electronic service through 1 HYDGD 6XSUHPH &RXUW¶V HOHFWURQLF ILOLQJ and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK Honorable Richard Scotti Department 2 200 Lewis Avenue Las Vegas, Nevada 89155	Respondent
Robert E. Murdock, Esq. Eckley M. Keach, Esq. KEACH MURDOCK, LTD. 521 South Third Street Las Vegas, Nevada 89101	Email: lasvegasjustice@aol.com emkeach@yahoo.com KeachMurdock2@gmail.com Attorneys for Real Party in Interest

/s/ Sharon L. Murnane
Sharon L. Murnane, an Employee of
Bailey™Kennedy