

1 Jean-Paul DeChambeau is one of the plaintiffs in this case and has knowledge of
2 the facts and circumstances of the case.

3 5. David Smith, MD
4 343 Elm Street, Suite 400
5 Reno, Nevada 89503
6 (775) 323-6700

7 Dr. Smith is one of the defendants in the underlying case and has knowledge of
8 the facts and circumstances of the case.

9 6. David Kang, MD
10 c/o Sierra Anesthesia
11 520 Hammill Lane
12 Reno, Nevada 8950
13 Phone: (775) 348-1313

14 Dr. Kang is one of the defendants in the underlying case and has knowledge of the
15 facts and circumstances of the case.

16 7. Fred Morady, M.D.
17 Professor of Internal Medicine
18 McKay Professor of Cardiovascular Disease
19 University Michigan
20 TC B1 140
21 1500 East Medical Center Drive
22 Ann Arbor, MI 48106-0311

23 Dr. Morady was designated as an expert witness by the plaintiff in the underlying
24 case, and provided a supporting affidavit for the complaint in the underlying case.

25 8. William James Mazzei, M.D.
26 UCSD Medical Center
27 200 West Arbor Drive
28 San Diego, CA 92103-8770

Dr. Mazzei was designated as an expert witness by the plaintiff in the underlying
case, and provided a supporting affidavit for the complaint in the underlying case.

///

1 9. Ronald Pearl, MD
2 Department of Anesthesia
3 Stanford, California

4 Dr. Pearl was designated as an expert witness by defendant David Kang, MD and
5 Rinehardt, Ltd. in the underlying case.

6
7 10. Rahul Doshi, MD
8 25262 Rockridge Road
9 Laguna Hills, CA 92653

10 Dr. Doshi was designated as an expert witness by defendant David Kang, MD and
11 Rinehardt, Ltd. in the underlying case.

12 11. Hugh G. Calkins, MD
13 The Johns Hopkins Hospital
14 Carnegie Building, Roiom 530
15 600 North Wolfe Street
16 Baltimore, Maryland 21287-0409

17 Dr. Calkins was designated as an expert witness by defendant David Smith, MD,
18 et al., in the underlying case.

19 12. Anil K. Bhandari, MD
20 Los Angeles Cardiology Associates
21 1245 Wilshire Boulevard, Suite 703
22 Los Angeles, California 90017

23 Dr. Bhandari was designated as an expert witness by defendant David Smith, MD,
24 et al., in the underlying case.

25 13. Edward J. Lemons, Esq.
26 Lemons, Grundy & Eisenberg
27 6005 Plumas Street, Suite 300
28 Reno, Nevada 89519-6069
 Phone: (775) 786-6868

 Mr. Lemons was the attorney for defendant David Smith, MD, et al., in the
underlying case.

1 14. John H. Cotton, Esq.
2 Michael D. Navratil, Esq.
3 John H. Cotton & Associates, Ltd.
4 200 West Sahara Avenue, Suite 420
5 Las Vegas, Nevada 89102
6 Phone: (702) 367-9993

7 Mr. Cotton and Mr. Navratil were the attorneys for defendants David Kang, MD
8 and Rinehart, Ltd. in the underlying case.

9 15. Casey Blitt, MD
10 Old Pueblo Anesthesia
11 5700 East Pima, Suite E
12 Tucson, Arizona 85712
13 Phone: (520) 324-2030

14 Dr. Blitt reviewed medical records for Stephen Balkenbush on behalf of the
15 plaintiff, and was not retained.

16 16. Douglas H. McConnell, MD
17 2650 Elm Avenue, Suite 318
18 Long Beach, California 90806

19 Stephen Balkenbush sent Dr. McConnell medical records to review on behalf of
20 the plaintiff, and was not retained.

21 17. Thomas Vallas
22 Renown Health
23 1155 Mill Street
24 Reno, Nevada 89502-1474
25 Phone: (775) 982-5718

26 Mr. Vallas had communications with Stephen Balkenbush relating to the patient's
27 EP strips.

28 ///


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1 **II. DOCUMENTS**

2 1. Defendants' file in the underlying case of Angela DeChambeau, et al. vs. David
3 Smith, MD, et al., Second Judicial District Court of the State of Nevada, in and for the County of
4 Washoe, Case No. CV07-02028, bates labeled SB00001 through SB02835.

5 DATED this 9th day of May, 2012.

6
7 PISCEVICH & FENNER

8
9 By: 
10 MARGO PISCEVICH
11 Attorneys for Defendants
12
13
14
15
16
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18
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27
28

Piscevich & Fenner
499 West Plumb Lane, Suite 201
Reno, NV 89509 775.329.0958

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of PISCEVICH & FENNER and that on this date I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served:

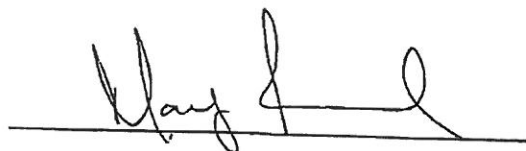
Defendants' Initial NRCP 16.1 Disclosure

Person(s) Served:

Charles R. Kozak
1225 Tarleton Way
Reno, NV 89523

<u> X </u>	Hand Deliver
<u> </u>	U.S. Mail
<u> </u>	Overnight Mail
<u> </u>	Facsimile (775)
<u> </u>	Electronic Filing

DATED this 9th day of May, 2012.



FILED
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Jacqueline Bryant
Clerk of the Court
Transaction # 5830361 : pmsewell

EXHIBIT 2

EXHIBIT 2

1 1610
2 EDWARD J. LEMONS, ESQ.
3 Nevada Bar No. 699
4 LEMONS, GRUNDY & EISENBERG
5 6005 Plumas Street, Suite 300
6 Reno, Nevada 89519-6069
7 (775) 786-6868

8 Attorneys for Defendants
9 DAVID SMITH, M.D. and
10 BERNDT, CHANEY-ROBERTS,
11 DAVEE, GANCHAN, ICHINO,
12 JUNEAU, NOBLE, SEHER, SMITH,
13 SWACKHAMER, THOMPSON,
14 WILLIAMSON and ZEBRACK, LTD.

15
16
17 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
18
19 IN AND FOR THE COUNTY OF WASHOE

20 -o0o-

21 ANGELA DECHAMBEAU, individually)
22 JEAN-PAUL DECHAMBEAU and)
23 ANGELA DECHAMBEAU as Special)
24 Administrator of the Estate of Neil)
25 DeChambeau,)

26 Plaintiffs,

27 vs.

28 DAVID SMITH, M.D., BERNDT,)
29 CHANEY-ROBERTS, DAVEE,)
30 GANCHAN, ICHINO, JUNEAU,)
31 NOBLE, SEHER, SMITH,)
32 SWACKHAMER, THOMPSON,)
33 WILLIAMSON and ZEBRACK, LTD., a)
34 Nevada professional corporation, DAVID)
35 KANG, M.D., RINEHART, LTD., a)
36 Nevada professional corporation, and)
37 DOES 1-10 inclusive,)

38 Defendants.

CASE NO.: CV07 02028
DEPT. NO.: 10

39
40 DEFENDANTS DAVID SMITH, M.D. AND BERNDT,
41 CHANEY-ROBERTS, DAVEE, GANCHAN, ICHINO, JUNEAU,
42 NOBLE, SEHER, SMITH, SWACKHAMER, THOMPSON,
43 WILLIAMSON and ZEBRACK'S DESIGNATION OF EXPERT WITNESSES

44 ///

45 LEMONS, GRUNDY
46 EISENBERG
47 6005 PLUMAS STREET
48 SUITE 300
49 RENO, NV 89519
50 (775) 786-6868

SB01894

1 Defendants DAVID SMITH, M.D. and BERNDT, CHANEY-ROBERTS,
2 DAVEE, GANCHAN, ICHINO, JUNEAU, NOBLE, SEHER, SMITH,
3 SWACKHAMER, THOMPSON, WILLIAMSON and ZEBRACK, LTD., by and
4 through their counsel, EDWARD J. LEMONS, ESQ. and LEMONS, GRUNDY &
5 EISENBERG, hereby offers the following designation of expert witnesses:

6 1. Hugh G. Calkins M.D.
7 The Johns Hopkins Hospital
8 Carnegie Building, Room 530
9 600 N. Wolfe Street
10 Baltimore, Maryland 21287-0409

11 Hugh G. Calkins, M.D. is Board Certified in Internal Medicine and
12 Cardiovascular Disease with a subspecialty in Electrophysiology. He is
13 licensed to practice medicine in the states of Michigan and Maryland and is the
14 Director of the Arrhythmia Service, Clinical Electrophysiology Laboratory, and
15 the Arrhythmogenic Right Ventricular Dysplasia Program at The Johns Hopkins
16 Hospital in Baltimore, Maryland. It is expected that Dr. Calkins may be
17 requested to testify regarding standard of care, causation and damages issues
18 in this case. His testimony will be based upon the medical records produced in
19 this case, depositions he may review, and his training and practice experience.
20 Dr. Calkins' report, curriculum vitae and fee schedule are attached hereto as
21 Exhibits 1, 2 and 3, respectively.

22 2. Anil K. Bhandari, M.D.
23 Los Angeles Cardiology Associates
24 1245 Wilshire Blvd., Suite 703
25 Los Angeles, California 90017

SB01895

26 Anil Bhandari, M.D. is Board Certified in Internal Medicine and
27 Cardiovascular Disease with a subspecialty in Clinical Cardiac
28 Electrophysiology. He is the Director of the Electrophysiology Laboratory at
good Samaritan Hospital in Los Angeles, California and at San Antonio
Community Hospital in Upland, California. It is expected that Dr. Bhandari may
be requested to testify regarding standard of care, causation and damages

1 issues in this case. His testimony will be based upon the medical records
2 produced in this case, depositions he may review, and his training and practice
3 experience. Dr. Bhandari's report, curriculum vitae and fee schedule are
4 attached hereto as Exhibits 4, 5 and 6, respectively.

5 3. Such other expert witnesses as may become necessary to address
6 any opinions expressed by expert witnesses called on behalf of Plaintiff on the
7 issue of alleged negligence of the Defendant herein. If the need for such
8 additional expert testimony arises, this designation will be supplemented in
9 writing.

10 4. Such treating physicians as may be listed in the medical records;
11 although, at present, it is anticipated that such physicians would likely be called
12 only to testify regarding the medical care provided by them.

13 PURSUANT TO NRS 239B.030 THE UNDERSIGNED DOES HEREBY
14 AFFIRM THAT THE PRECEDING DOCUMENT DOES NOT CONTAIN THE
15 SOCIAL SECURITY NUMBER OF ANY PERSON.

16 DATED this 23rd day of March, 2010.

17 LEMONS, GRUNDY & EISENBERG
18 Attorney for Defendants
19 DAVID SMITH, M.D. and
20 BERNDT, CHANEY-ROBERTS,
21 DAVEE, GANCHAN, ICHINO,
22 JUNEAU, NOBLE, SEHER, SMITH,
23 SWACKHAMER, THOMPSON,
24 WILLIAMSON and ZEBRACK, LTD.

25 BY: 
26 EDWARD J. LEMONS, ESQ.
27 Nevada Bar No. 699

28 SB01896

VS GRUNDY
EISENBERG
DEPOSITION
7-17-00
OR
1-0000

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of
LEMONS, GRUNDY & EISENBERG and that on this date I caused to be served
a true and correct copy of the document described herein by the method
indicated below, and addressed to the following:

Document Served:

*Defendants David Smith, M.D. and Berndt,
Chaney-Roberts, Davee, Ganchan, Ichino,
Juneau, Noble, Seher, Smith, Swackhamer,
Thompson, Williamson And Zebrack's
Designation Of Expert Witnesses*

Person(s) Served:

Stephen C. Balkenbush, Esq.
THORNDAL, ARMSTRONG, DELK,
BALKENBUSH & EISENGER
6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509

☒
☐
☐
☐

Hand Delivery
U.S. Mail
Overnight Mail
Facsimile

Michael D. Navratil
JOHN H. COTTON & ASSOCIATES
2300 W. Sahara Blvd., Suite 420
Las Vegas, Nevada 89102

☒
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☐
☐

Hand Delivery
U.S. Mail
Overnight Mail
Facsimile

DATED this 23rd day of March, 2010.

D. H. Hesse

INDEX OF EXHIBITS

NO.	DESCRIPTION	NO. OF PAGES
1	Report of Hugh G. Calkins, M.D.	3
2	Curriculum Vitae of Hugh G. Calkins, M.D.	60
3	Fee Schedule of Hugh G. Calkins, M.D.	1
4	Report of Anil Bhandari, M.D.	5
5	Curriculum Vitae of Anil Bhandari, M.D.	25
6	Fee Schedule of Anil Bhandari, M.D.	1

DECLARATION OF HUGH G. CALKINS, M.D.

HUGH G. CALKINS, M.D. does hereby swear, under penalty of perjury, that the assertions of this Declaration are true

Qualifications and Experience

I am the Director of the Arrhythmia Service and Clinical Electrophysiology Laboratory at Johns Hopkins Hospital. I am also Professor of Medicine at the Johns Hopkins University School of Medicine. I received my medical degree from Harvard Medical School in 1983. I trained in Internal Medicine at the Massachusetts General Hospital. I completed my training in cardiology and electrophysiology at Johns Hopkins. I am board certified in Internal Medicine, Cardiology, and Electrophysiology. I am a fellow of the Heart Rhythm Society, the American College of Cardiology, and the American Heart Association. My attached curriculum vitae include publications of over 350 peer-reviewed manuscripts and 50 book chapters. I spend approximately 75% of my time involved in the care and treatment of patients with cardiac arrhythmias with a much of this time involved in the care and treatment of patients with atrial fibrillation. I have performed over 1000 catheter ablation of atrial fibrillation procedures. I have 20 years of experience as a practicing cardiologist and electrophysiologist.

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Materials Reviewed:

Records of David Smith, M.D.

Records of Patricia Levan, M.D.

Records of Washoe Medical Center

Summary and Conclusions

I was asked to review the available medical records and testimony and render an opinion in the care which Dr. David Smith provided to Mr. DeChambeau. After reviewing the patient's medical records that were provided to me it is my opinion to a reasonable degree of medical certainty that the Mr. DeChambeau's death in September 2007 following a catheter ablation procedure was not a result of medical negligence. All opinions herein are to a reasonable, or higher, degree of medical or scientific certainty or probability based on my review of the medical records and documentation that was provided to me.

Medical Summary of Mr. Neil DeChambeau's Medical Care

Mr. Neil DeChambeau was a 56 year old man with a long history of atrial fibrillation, hypertension, and obesity. His atrial fibrillation was highly symptomatic and did not respond to medical therapy with atenolol, digoxin, and flecainide. He also had a history of SVT. Dr. Smith discussed the option of catheter ablation of atrial fibrillation with the patient in July 2006. He informed the patient of the efficacy and complications associated with the procedure at a clinic appointment

in July 2006. After considering these risks the patient elected to proceed with the procedure. Mr. Smith underwent catheter ablation of atrial fibrillation on September 7, 2006. Near the end of the procedure the patient experienced cardiac tamponade resulting in a cardiac arrest. The cardiac tamponade was diagnosed, appropriate measures were undertaken, including an immediate Code, and pericardiocentesis was successfully performed. During the cardiac arrest the patient experienced a significant anoxic injury to his brain which ultimately resulted in his death.

Comments on this Case

Based on my review of this case and my medical experience and training that I can make the following conclusions:

- 1) Mr. DeChambeau was an appropriate candidate for catheter ablation of atrial fibrillation. In particular, he had highly symptomatic atrial fibrillation refractory to medical management.
- 2) Informed consent was appropriately obtained. The patient decided to proceed with catheter ablation after carefully considering he risks and benefits of the procedure.
- 3) Dr. Smith performed the AF ablation procedure appropriately.
- 4) Cardiac tamponade is a well established complication of all EP procedures and also of catheter ablation of atrial fibrillation. The diagnosis and treatment of the patient's cardiac arrest resulting from cardiac tamponade was appropriate.

DATED this 22 day of March, 2010.



HUGH G. CALKINS, M.D.

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2016-11-30 05:50:48 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5830361 : pmsewell

EXHIBIT 3

EXHIBIT 3

5267

1 DISC
2 MARGO PISCEVICH
3 Nevada State Bar No. 000917
4 MARK J. LENZ
5 Nevada State Bar No. 004672
6 PISCEVICH & FENNER
7 499 West Plumb Lane, Suite 201
8 Reno, Nevada 89509
9 775-329-0958
10 Attorneys for Defendants

11
12
13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR THE COUNTY OF WASHOE
16

17 ANGELA DECHAMBEAU and
18 JEAN-PAUL DECHAMBEAU, both
19 Individually and as SPECIAL
20 ADMINISTRATORS of the ESTATE
21 Of NEIL DECHAMBEAU,

22 Plaintiffs,

23 vs.

24 STEPHEN C. BALKENBUSH, ESQ.,
25 THORNDAL, ARMSTRONG, DELK,
26 BALKENBUSH and EISINGER,
27 A Nevada Professional Corporation,
28 And DOES I through X, inclusive,

Defendants.

Case No. CV12-00571

Dept. No. 7

DEFENDANTS' PRETRIAL DISCLOSURES

Defendants, STEPHEN C. BALKENBUSH, ESQ. and THORNDAL, ARMSTRONG,
DELK, BALKENBUSH and EISINGER, a Nevada professional corporation, by and through its

Piscevich & Fenner
499 West Plumb Lane, Suite 201
Reno, NV 89509 775.329.0958

1 counsel, PISCEVICH & FENNER, hereby submits it pretrial disclosure of information in
2 accordance with NRCP Rule 16.1(3):

3 **I. LIST OF PROSPECTIVE WITNESSES, INCLUDING REBUTTAL WITNESSES**

- 4 (a) Stephen Balkenbush, c/o Margo Piscevich, Piscevich & Fenner
5
6 (b) Angela DeChambeau, c/o Charles Kozak
7
8 (c) Jean Paul DeChambeau, c/o Charles Kozak
9
10 (d) David Smith, M.D., 43 Elm Street, Suite 400, Reno, Nevada 89503
11
12 (e) Fred Morady, M.D., Professor of Internal Medicine, McKay Professor of
13 Cardiovascular Disease, University Michigan, TC B1 140, 1500 East Medical Center Drive,
14 Ann Arbor, MI 48106-0311
15
16 (f) Rahul Doshi, M.D., 25262 Rockridge Road, Laguna Hills, CA 92653
17
18 (g) Hugh G. Calkins, M.D., The Johns Hopkins Hospital, Carnegie Building, Room
19 530, 600 North Wolfe Street, Baltimore, Maryland 21287-0409
20
21 (h) Anil K. Bhandari, M.D., Los Angeles Cardiology Associates, 1245 Wilshire
22 Boulevard, Suite 703, Los Angeles, California 90017
23
24 (i) Edward J. Lemons, Esq., Lemons, Grundy & Eisenberg, 6005 Plumas Street,
25 Suite 300, Reno, Nevada 89519-6069
26
27 (j) Michael D. Navratil, Esq., John H. Cotton & Associates, Ltd., 200 West Sahara
28 Avenue, Suite 420, Las Vegas, Nevada 89102
29
30 (k) Thomas Vallas, Renown Health, 1155 Mill Street, Reno, Nevada 89502-1474
31
32 (l) Peter Durney, Durney & Brennan, 190 West Huffaker Lane, Suite 406, Reno,
33 Nevada 89511

34 **II. LIST OF PROPOSED EXHIBITS AND DOCUMENTS, INCLUDING REBUTTAL**
35 **EXHIBITS**

1 (a) The file of Stephen Balkenbush in the underlying case, Bates stamped SB0001-
2 SB02835, including emails SB2836-SB2930. It is anticipated the medical records from Reno
3 Heart Physicians (pages SB01071-01230) and Renown Regional Medical Center, formerly
4 known as Washoe Medical Center, (pages SB01329-01501) will be used in the medical
5 malpractice portion of the case, together with the expert disclosures, expert reports and
6 curriculum vitae of the physicians that were disclosed in the underlying case. It is anticipated
7 that the balance of the file will be used during the legal malpractice case.
8

9 (b) The FICA summary of earnings for Mr. and Mrs. DeChambeau

10 (c) The file from White, Meany & Wetherall, Bates stamped WMW00001-
11 WMW00064.

12 (d) The EPS tape (in Plaintiffs' counsel's possession)

13 (e) Current Curriculum Vitae of Fred Morady, M.D.

14 (f) Current Curriculum Vitae of Hugh Calkins, M.D.

15 (g) Current Curriculum Vitae of Anil K. Bhandari, M.D.

16 DATED this 12 day of September, 2013.
17
18
19

PISCEVICH & FENNER

20 By: 

21 MARGO PISCEVICH

22 Attorneys for Defendants
23
24
25
26
27
28

Piscevich & Fenner
499 West Plumb Lane, Suite 201
Reno, NV 89509 775.329.0958

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of PISCEVICH & FENNER and that on this date I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served:

Defendants' Pretrial Disclosures

Person(s) Served:

Charles R. Kozak
3100 Mill Street, Suite 115
Reno, NV 89502

<input type="checkbox"/>	Hand Deliver
<input checked="" type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Facsimile (775)
<input type="checkbox"/>	Electronic Filing

DATED this 13th day of September, 2013.


Beverly Chambers

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Jacqueline Bryant
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EXHIBIT 4

EXHIBIT 4

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Joey Orduna Hastings
Clerk of the Court
Transaction # 3070252

1 DISC
2 CHARLES R. KOZAK, ESQ.
3 Nevada State Bar No. 11179
4 1225 Tarleton Way
5 Reno, NV 89523
6 (775) 622-0711
7 Kozak131@charter.net
8 Attorney for the Plaintiffs

9
10
11 **IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA**
12 **IN AND FOR THE COUNTY OF WASHOE**

13 ANGELA DECHAMBEAU and
14 JEAN-PAUL DECHAMBEAU, both
15 Individually and as SPECIAL
16 ADMINISTRATORS of the ESTATE
17 of NEIL DECHAMBEAU,

Case No. CV12-00571

Dept. No. 7

18 Plaintiff,

19 Vs.

20 STEPHEN C. BALKENBUSH, ESQ.,
21 THORNDAL, ARMSTRONG, DELK,
22 BALKENBUSH and EISINGER,
23 A Nevada Professional Corporation,
24 & DOES I through X, inclusive,

25 Defendants.

26
27 **PLAINTIFFS' INITIAL NRCP 16.1 DISCLOSURE**

28 Plaintiffs, ANGELA DeCHAMBEAU and JEAN-PAUL DeCHAMBEAU, by and through
their Attorney of Record, CHARLES R. KOZAK, ESQ., hereby incorporate by reference
herein all witnesses and documents referenced in Defendants' 16.1 Initial NRCP 16.1
Disclosure.

In addition, Plaintiffs will call as yet unknown medical experts, an economist and medical

1 records subpoenaed from Renown Regional Medical Center, Reno Heart Physicians and Sierra
2 Anesthesia.
3

4 Pursuant to NRS 1239B.030 the undersigned certifies no Social Security numbers are contained in this document.

5 Dated this 10th day of July, 2012.

6 /s/ Charles R. Kozak
7 CHARLES R. KOZAK, ESQ.
8 Nevada State Bar No. 11179
9 1225 Tarleton Way
10 Reno, NV 89523
11 (775) 622-0711
12 Kozak131@charter.net
13 Attorney for the Plaintiffs
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by :

FEDERAL EXPRESS or other overnight delivery

DISCLOSURE, Case #CV12-00571, addressed as follows:

MARGO PISCEVICH, ESQ.
PISCEVICH & FENNER
499 West Plumb Lane, Ste. 201
Reno, Nevada 89509

/s/ Sandi DeSilva
SANDI DeSILVA

XXXX_ I hereby certify that on the 10th day of July, 2012, I electronically filed the foregoing with the Clerk of the Court by using the ECF System which will send a Notice of Electronic filing to the above-named partie(s).

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Jacqueline Bryant
Clerk of the Court
Transaction # 5830361 : pmsewell

EXHIBIT 5

EXHIBIT 5

5267

1 DISC
2 CHARLES R. KOZAK, ESQ.
3 Nevada State Bar No. 11179
4 1225 Tarleton Way
5 Reno, NV 89523
6 (775) 622-0711
7 Kozak131@charter.net
8 Attorney for the Plaintiff
9

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IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ANGELA DECHAMBEAU and
JEAN-PAUL DECHAMBEAU, both
Individually and as SPECIAL
ADMINISTRATORS of the ESTATE
of NEIL DECHAMBEAU,

Plaintiff,

vs.

STEPHEN C. BALKENBUSH, ESQ.,
THORNDAL, ARMSTRONG, DELK,
BALKENBUSH and EISINGER,
A Nevada Professional Corporation,
& JOHN DOES I through X, inclusive,

Defendants.

Case No. CV12-00571

Dept. No. 7

PLAINTIFFS' FIRST SUPPLEMENTAL 16.1 DISCLOSURES

Plaintiffs, ANGELA DeCHAMBEAU, JEAN-PAUL DeCHAMBEAU and THE
ESTATE OF NEIL DeCHAMBEAU, by their Attorney of Record, CHARLES R. KOZAK,
ESQ., hereby provide the following list of documents in accordance with Rule 16.1:

///

///

I. DOCUMENTS

<u>DOCUMENT DESCRIPTION</u>	<u>BATES NUMBER</u>	<u>DATE</u>
1. Designation of expert witnesses, Calkins and Bhandari by Dr. David Smith et al in CV07-02028	DS00051-157 ¹	3/23/10
2. Designation of expert witnesses, Pearl and Doshi by Dr. David Kang et al in CV7-02028	DS00158-207	3/22/10
3. Dr. Fred Morady's Affidavit	DS00208-211	8/29/07
4. Partial CV of Dr. Morady	DS00212-216	8/6/07
5. Dr. William Mazzei's Affidavit and CV	DS00217-233	9/1/07
6. Procedure report of Dr. Smith	DS00234-236	9/12/06
7. Transesophageal echocardiographic report signed by Dr. Kolli	DS00237	9/8/06
8. History and physical signed by Dr. Smith	DS00238-240	9/12/06
9. Acknowledgement of receipt of Prucka Optical Disk , signed by Charles R. Kozak	DS00241	9/30/11
10. Letter – Balkenbush to Kozak re Prucka Disk	DS00242-243	9/30/11
11. Email Atchley (for Balkenbush) to Morady with conformed affidavit attached	DS00244-248	8/30/07
12. Email Morady to Atchley re affidavit	DS00249	8/30/07
13. Email Atchley to Morady re change to re change to paragraph 1 of affidavit	DS00250-251	8/30/07

¹ By agreement of counsel for the Parties, as each counsel has a complete set of documents with the Bates Stamp numbers beginning with "SB", and since Plaintiffs' documents numbered DS0001-50 are, in fact, documents also numbered SB00902-945 and SB02460-65, said 50 pages are not being produced to Defendants' counsel as per this agreement.

1	14. Email Balkenbush to Morady re revised paragraph 2 of affidavit with affidavit attached	DS00252-256	8/27/07
2			
3	15. Email from Atchley to Morady with affidavit attached (only pages 1-2)	DS00257-259	8/27/07
4			
5	16. Letter from Balkenbush to Patricia Levan, M.D. re med records request	DS00260-262	10/24/06
6			
7	17. Letter from Balkenbush to Reno Heart Physicians re med records request	DS00263-265	10/24/06
8			
9	18. Letter from Balkenbush to St. Mary's re med records request	DS00266-268	10/24/06
10			
11	19. Letter from Balkenbush to Washoe Medical Center re med records request	DS00269-271	10/24/06
12			
13	20. Copy of Washoe Medical Center med records request	DS00272-273	10/23/06
14			
15	21. Letter from Renown to Balkenbush re refusal due to documentation needed	DS00274	11/2/06
16			
17	22. Copy of letter from Balkenbush to Washoe Medical Center re med records request	DS00275	10/24/07
18			
19	23. Letter from Balkenbush to Morady re enclosing DeChambeau's med records	DS00276	3/22/07
20			
21	24. Letter from White, Meany to Balkenbush re Balkenbush substituting back in as counsel	DS00277	3/28/07
22			
23	25. Letter from Balkenbush to S. White with file-stamped appearance enclosed	DS00278-280	4/5/07
24			
25	26. Letter from Vallas of Renown to Balkenbush with 2 pages of med records	DS00281-283	4/6/07
26			
27	27. Letter from Balkenbush to Moray enclosing 2 pages of med records from Renown	DS00284-286	6/25/07
28			
	28. Letter from Balkenbush to Blitt, M.D. re	DS00287-288	6/25/07


1	transferring Bates-stamped records		
2	D00001-D00350		
3	29. Letter from Balkenbush to Mazzei, M.D.	DS00289-290	8/17/07
4	Transferring Bates-stamped records		
	D00001-D00350		
5	30. Letter from Mazzei, M.D. to Balkenbush	DS00291-292	9/1/07
6	with statement for services (marked paid		
7	9/18/07		
8	31. Copy of \$1,000 check paid by Thorndal to	DS00293	9/18/07
9	Mazzei, M.D.		
10	32. Letter from Blitt, M.D. to Thorndal re billing	DS00294	11/1/07
11	33. Letter from Lemons to Renown re med	DS00295- 296	11/7/07
12	records		
13	34. Letter from Lemons to Levan, M.D. re	DS00297-298	11/7/07
14	med records		
15	35. Fax from Balkenbush to Navratil re affidavit	DS00299-300	11/14/07
16	of Mazzei (affidavit not attached to fax)		
17	36. Letter from Balkenbush to Lemons re	DS00301-305	11/8/07
18	16.1 production and medical releases		
19	37. Letter from Balkenbush to Lemons re	DS00306-309	11/19/07
20	tax returns for 2003, 2004 and 2005 with		
21	returns attached		
22	38. Letter from Balkenbush to Cotton re	DS00310-311	11/8/07
23	Plaintiffs' 16.1 production		
24	39. Letter from Balkenbush to Cotton re	DS00312-318	11/19/07
25	med records authorizations and tax returns		
26	40. Fax from Thorndal to Cotton re Summons	DS00319-328	9/19/07
27	and affidavit of service for Kang, M.D. and		
28	Rinehart, Ltd.		
	41. Letter from Lemons to Balkenbush re	DS00329	2/15/08
	enclosing copy of the original Joint Case		
	Conference Report (not attached)		

1	42. Letter from Navratil to Balkenbush re	DS00330	9/19/08
2	scheduling Plaintiff's depositions		
3	43. Letter from Navratil to Balkenbush re	DS00331	7/21/08
4	scheduling Plaintiff's deposition		
5	44. Letter from Navratil to Balkenbush re	DS00332	4/6/08
6	scheduling Plaintiff's deposition		
7	45. Letter from Balkenbush to Navratil	DS00333	4/10/08
8	requesting additional time to respond		
9	to Navratil's discovery requests		
10	46. Letter from Balkenbush to Lemons	DS00334	4/10/08
11	requesting additional time to respond		
12	to Lemon's discovery requests		
13	47. Letter from Lemons to Balkenbush	DS00335	10/16/08
14	re conference call with all counsel re		
15	scheduling depositions		
16	48. Letter from Lemons to Balkenbush	DS00336-338	11/21/08
17	re Stipulation and Order Re: Discovery		
18	attached		
19	49. Letter from Lemons to Balkenbush re	DS00339	2/4/09
20	Stipulation and Order to Continue Trial		
21	Date and Re-Set Discovery deadlines		
22	50. Letter from Navratil to Balkenbush and	DS00340	2/2/09
23	Lemons re moving disclosure deadline back		
24	30 days as depositions of parties not done yet		
25	51. Letter from Navratil to Lemons enclosing	DS00341-344	2/2/09
26	proposed stipulation and order amending		
27	the discovery deadlines and trial date		
28	52. Letter from Balkenbush to Morady re trial	DS00345-346	3/35/10
	on July 19, 2010 and enclosing defense		
	expert reports		
	53. Letter from Balkenbush to Morady re	DS00347-348	3/25/10
	transmitting Prucka DVD and letter from		
	Lemons re Prucka disk		
	54. Email Mazzei to Balkenbush re signing	DS00349	8/30/07
	affidavit		

1			
2	55. Fax from Balkenbush to Mazzei with	DS00350-354	8/30/07
3	Mazzei's affidavit attached		
4	56. Email from Mazzei to Balkenbush re not	DS00355	8/29/07
5	having received revised report		
6	57. Settlement fund receipt for \$1,350.	DS00356	5/9/08
7	58. Letter from D. Meany to A. DeChambeau	DS00357	5/16/08
8	re AHP settlement check of \$1,350		
9	59. 2005 income tax return (2 pages) for Neil	DS00358-359	undated
10	and Angela DeChambeau		
11	60. Power of Attorney of Neil DeChambeau to	DS00360-363	10/1/94
12	Angela DeChambeau		
13	61. Picture of Angela and Neil DeChambeau	DS00364	undated
14	62. Picture of Neil, Angela and Jean-Paul	DS00365	undated
15	DeChambeau		
16	63. Handwritten notes of payments to	DS00366	undated
17	Obrien, Rogers and Crosby Funeral Home		
18	64. Social Security Benefit Statement for Angela	DS00367	undated
19	65. Medical bills for Neil DeChambeau	DS00368-399	various
20	66. GuideOne Life Insurance payout information	DS00400-427	various

21 Pursuant to NRS 239B.030 the undersigned certifies this document does not contain a Social Security number.

22
23
24 DATED this 19th day of June, 2013.

25
26 
27 Charles R. Kozak
28 1225 Tarleton Way
Reno, Nevada 89523
Attorney for Plaintiffs
Kozak131@charter.net

1
2
3
4 CERTIFICATE OF SERVICE
5

6 I, Linda F. Walker, certify that on the 19th day of June, 2013, I caused to be delivered
7 by:

8 XXXX HAND DELIVERY

9 _____ MESSENGER SERVICE
10

11 _____ FACSIMILE to the following number: _____
12

13 _____ U.S. MAIL

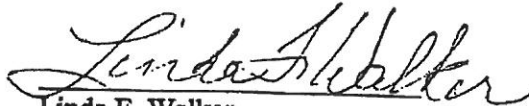
14 _____ CERTIFIED MAIL, RETURN RECEIPT REQUESTED

15 _____ FEDERAL EXPRESS or other overnight delivery

16 A true and correct copy of the within document: FIRST SUPPLEMENTAL 16.1

17 DISCLOSURES Case No. CV12-00571, addressed as follows:
18

19 MARGO PISCEVICH, ESQ.
20 Piscevich & Fenner
21 499 W. Plumb Lane
22 Reno, NV 89509


Linda F. Walker
420 Hidden Meadows Ct.
Reno, NV 89502
23
24
25
26
27
28

DS00000051

1 1610
2 EDWARD J. LEMONS, ESQ.
3 Nevada Bar No. 699
4 LEMONS, GRUNDY & EISENBERG
5 6005 Plumas Street, Suite 300
6 Reno, Nevada 89519-6069
7 (775) 786-6868

8 Attorneys for Defendants
9 DAVID SMITH, M.D. and
10 BERNDT, CHANEY-ROBERTS,
11 DAVEE, GANCHAN, ICHINO,
12 JUNEAU, NOBLE, SEHER, SMITH,
13 SWACKHAMER, THOMPSON,
14 WILLIAMSON and ZEBRACK, LTD.

15
16 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
17 IN AND FOR THE COUNTY OF WASHOE

-o0o-

18 ANGELA DECHAMBEAU, individually
19 JEAN-PAUL DECHAMBEAU and
20 ANGELA DECHAMBEAU as Special
21 Administrator of the Estate of Neil
22 DeChambeau,

23 Plaintiffs,

24 vs.

25 DAVID SMITH, M.D., BERNDT,
26 CHANEY-ROBERTS, DAVEE,
27 GANCHAN, ICHINO, JUNEAU,
28 NOBLE, SEHER, SMITH,
SWACKHAMER, THOMPSON,
WILLIAMSON and ZEBRACK, LTD., a
Nevada professional corporation, DAVID
KANG, M.D., RINEHART, LTD., a
Nevada professional corporation, and
DOES 1-10 inclusive,

Defendants.

CASE NO.: CV07 02028

DEPT. NO.: 10

DEFENDANTS DAVID SMITH, M.D. AND BERNDT,
CHANEY-ROBERTS, DAVEE, GANCHAN, ICHINO, JUNEAU,
NOBLE, SEHER, SMITH, SWACKHAMER, THOMPSON,
WILLIAMSON and ZEBRACK'S DESIGNATION OF EXPERT WITNESSES

///

LEMONS, GRUNDY
& EISENBERG
ATTORNEYS AT LAW
6005 PLUMAS STREET
SUITE 300
RENO, NEVADA 89519-6069
(775) 786-6868

1 together with the expert disclosures, expert reports and curriculum vitae
2 of the physicians that were disclosed in the underlying case. It is anticipated
3 that the balance of the file will be used during the legal malpractice case.

4 b. The email from plaintiffs' expert Mark Seifert, M.D. to plaintiff's counsel
5 Charles Kozak, Esq. dated April 26, 2013. This document was discovered on
6 September 19, 2013. It is not intended to be marked as an exhibit or
7 introduced at the time of trial but it is defendants' position this document
8 needs to be identified as a potential impeachment document.

9 c. The FICA summary of earnings for Mr. and Mrs. DeChambeau.

10 d. The file from White, Meany & Weatherall, Bates Stamped WMW00001-
11 WMW00064.

12 e. The EPS tape (in plaintiffs' counsel's possession.)

13 f. The current curriculum vitae of Fred Morady, M.D.

14 g. The current curriculum vitae of Hugh Calkins, M.D.

15 h. The current curriculum vitae of Anil Bhandari, M.D.

16 Dated: September 1, 2016

17 POLLARA LAW GROUP

18
19 By 

20 DOMINIQUE A. POLLARA, ESQ.

21 Nevada Bar No. 5742

22 3600 American River Drive, Suite 160

23 Sacramento, CA 95864

24 (916) 550-5880

25 Attorneys for Defendants STEPHEN C.
26 BALKENBUSH, ESQ. and THORNDAL,
27 ARMSTRONG, DELK, BALKENBUSH
28 and EISINGER, a Nevada Professional
Corporation

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CERTIFICATE OF SERVICE BY SERVICE

Pursuant to NRCP 5(b), I hereby certify I am an employee of Reno Carson Messenger and that on the 2nd day of September, 2016, I caused DEFENDANTS' 16.1 PRETRIAL DISCLOSURES to be served on all parties in this action by:

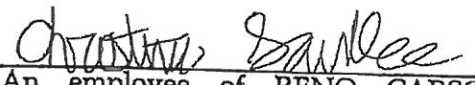
- ☒ placing an original or true copy thereof in a sealed envelope, postage prepaid, in the United States mail at Reno, Nevada.
- ☐ personal delivery.
- ☐ facsimile (courtesy copy).
- ☐ electronically served by the Court upon filing of document(s).
- ☐ email (courtesy copy).
- ☐ UPS/Federal Express or other overnight delivery.

fully addressed as follows:

Attorney
Charles R. Kozak, Esq.
3100 Mill Street, Suite 115
Reno, NV 89502

Representing
Plaintiffs

Phone/Fax/E-Mail
(775) 322-1239 - phone
(775) 800-1767 - fax
chuck@kozaklawfirm.com


An employee of RENO CARSON
MESSENGER

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2016-11-15 04:29:38 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5807912 : pmsewell

EXHIBIT 4

EXHIBIT 4



KOZAK LUSIANI LAW, LLC

3100 Mill Street
Suite 315
Reno, NV 89502
P: 775.322.1239
F: 775.800.1767
KozakLusianiLaw.com

September 28, 2016

Sent Via Regular US Mail

Dominique Pollara, Esq.
Pollara Law Group
3600 American River Dr.
Suite 160
Sacramento, CA 95864

Re: Expert Witness Disclosures

Attorneys:

Charles R. Kozak
Chuck@KozakLusianiLaw.com
Admitted States:
Nevada
California

R. Craig Lusiani
Craig@KozakLusianiLaw.com
Admitted States:
Nevada
California
US Supreme Court

Susan M. Leeder
Susan@KozakLusianiLaw.com
Admitted States:
California

Dear Dominique,

We address the issues in your letter of September 2, 2016 in the order presented.

First, the depositions of the experts have been taken.

Second, we do not intend to call the percipient witnesses disclosed in our previous 16.1 filing.

Third, I believe we do have the copy of the EPS tape and will attempt to locate it. However, the tape has already been reviewed by Dr. Morady, so I am wondering what it is needed for at this point.

We are taking the position that this case was fully prepared for trial at the time the motion for Summary Judgment was granted by the trial judge. The only outstanding matter that needed to be completed was the trial deposition of Dr. Morady. On this point, were Dr. Caulkin, Bhandari and Doshi disclosed as experts in this case? In addition, I do not recall Thomas Vallas, Esq., being designated as a witness or expert in this case. Can you clarify this issue for me?

In the meantime, we will try to get the EPS tape to you as soon as possible.

Sincerely,

Charles R. Kozak, Esq.

CRK/dls

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Jacqueline Bryant
Clerk of the Court
Transaction # 5807912 : pmsewell

EXHIBIT 5

EXHIBIT 5

Dominique A. Pollara, Esq.*
Jason S. Edmister, Esq.*
Vanessa N. Hunter, Esq.
Jacqueline C. Zee, Esq.

Pollara
LAW GROUP

3600 American River Dr.
Suite 160
Sacramento, CA 95864
(916) 550-5800 office
(916) 550-5066 fax

*Also admitted in Nevada

October 18, 2016

VIA FACSIMILE AND FIRST CLASS MAIL (775) 800-1767

Charles R. Kozak, Esq.
Kozak Lusiani Law, LLC
3100 Mill Street, Suite 115
Reno, NV 89502

Re: DeChambeau v. Balkenbush

Dear Chuck:

Thank you for your letter dated September 28, 2016. I also appreciate your assistance in allowing us to pick up the EPS tape.

In addition, thank you for clarifying the issue regarding percipient witnesses.

Judge Flanagan issued a Scheduling Order signed by him February 1, 2016. We served our expert disclosure pursuant to that Scheduling Order. In addition, we also served our 16.1 Pretrial Disclosure. I am confused as to your question regarding Drs. Bhandari and Doshi. We have not disclosed them as expert witnesses. Dr. Caulkin is disclosed as an expert witness. Mr. Vallas was previously listed as a witness pursuant to 16.1. We have reiterated that he will potentially be called as a witness at the time of trial. We do not consider him an expert and he is not disclosed as such.

We remain willing to discuss resolution of this matter if it can be done reasonably.

Very truly yours,

POLLARA LAW GROUP

DOMINIQUE A. POLLARA
Dominique A. Pollara
DAP:bf

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2016-11-15 04:29:38 PM
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Transaction # 5807912 : pmsewell

EXHIBIT 6

EXHIBIT 6



KOZAK LUSIANI LAW, LLC

3100 Mill Street
Suite 116
Reno, NV 89502
P: 775.322.1239
F: 775.800.1767
KozakLusianiLaw.com

October 27, 2016

Dominique Pollara

Pollara Law Group

3600 American River Dr., Suite 160

Sacramento, CA 95864

By Fax and First Class Mail // (916) 550-5066

Re: DeChambeau v. Balkenbush

Attorneys:

Charles R. Kozak
Chuck@KozakLusianiLaw.com
Admitted States:
Nevada
California

R. Craig Lusiani
Craig@KozakLusianiLaw.com
Admitted States:
Nevada
California
US Supreme Court

Susan M. Leeder
Susan@KozakLusianiLaw.com
Admitted States:
California

Dear Dominique,

We write to you in response to your September 2, 2016 letter in attempting to identify further experts in this matter.

You have confirmed to us the intent on disclosing a further expert witness for the very first time in this letter.

We feel that this attempted disclosure is late for a number of reasons which will be recited below. We intend on filing a Motion to Strike in that regard, accordingly.

Please note the Joint Case Conference Report filed August 17, 2012. Pursuant to that agreement expert disclosures were cut off 120 days prior to trial. The trial date to which this disclosure cut off was relevant eventually became October 14, 2013.

There has been no agreement to extend any discovery since that date and, in fact, you will recall at the Settlement Conference that we attended last month that our position was, and continues to be, that there was no further disclosure of experts possible.

There is no reason why a further expert could not have been named previously up to and including as this matter moved towards the October, 2013 trial date.

To allow testimony from a newly identified expert at this point, we believe would be an abuse of discretion on behalf of the trial judge. In that regard, we ask you to note the case of Douglas v. Burley, 134 So. 3d 692 (2012).

Please provide us with your position as it relates to this issue by not later than 5 PM on November 1, 2016. As noted above, we shall be filing a Motion to Strike your current attempt at identifying a new expert subsequent to that.

Respectfully,


R. Craig Lusiani, Esq.

RCL/rcf

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Clerk of the Court
Transaction # 5807912 : pmsewell

EXHIBIT 7

EXHIBIT 7

Dominique A. Pollara, Esq.
Jason S. Barman, Esq.
Vanessa N. Hunter, Esq.
Jacqueline C. Zee, Esq.

Pollara
LAW GROUP

3601 American River Dr.
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(916) 550-5066 fax

*Also admitted in Nevada

October 11, 2016

R. Craig Lusiani, Esq.
Kozak Lusiani Law, LLC
3100 Mill Street, Suite 115
Reno, NV 89502

Re: DeChambeau v. Balkenbush

Dear Mr. Lusiani:

I am writing in response to your letter dated October 27, 2016. Although you mention my September 2, 2016 letter in fact, Mr. Kozak wrote to me September 28, 2016 regarding this issue and I further responded to him October 18, 2016.

After this case was remanded to the District Court we held a further case conference with Judge Flanagan on January 21, 2016. As a result of that conference the Court issued a scheduling order which was served on your office after it was electronically filed February 1, 2016. In that scheduling order Judge Flanagan made it clear that discovery remained open. In fact he ordered that all discovery be complete by December 2, 2016. He also ordered that initial expert disclosure occur on or before September 3, 2016 and that rebuttal expert disclosure was due on or before October 3, 2016. At no point did your office object to the scheduling order or complain that it was somehow erroneous.

I would note you have not cited to any Nevada authority with respect to this matter. It is my position *Douglas v. Burley* does not apply as the court in that case did not issue a new scheduling order after the case was remanded. That is not true here. The Court in this case issued a scheduling order February 1, 2016. There was no objection to the scheduling order by your office at that time nor at any point thereafter.

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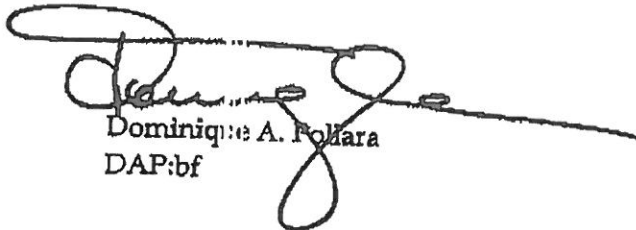
Charles R. Kozak, Esq.
R. Craig Lusiani, Esq.
Re: DeChambeau v. Balkenbush
October 31, 2016
Page 2

Furthermore, I would note that all of the individuals identified in our expert disclosure served September 2, 2016 have been known by your office since the beginning of this lawsuit. In fact, all of them were disclosed in prior 16.1 documents. The only difference is that we have identified Dr. Calkins as an expert witness in addition to his prior designation.

I remain available to discuss this matter further with you should you so desire.

Very truly yours,

POLLARA LAW GROUP



Dominique A. Pollara
DAP:bf

[2645]
DOMINIQUE A. POLLARA, Nevada SBN 5742
POLLARA LAW GROUP
3600 American River Drive, Suite 160
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KIM MANDELBAUM
Nevada Bar No. 318
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2012 Hamilton Lane
Las Vegas, Nevada 89106
(702) 367-1234
Email: filing@memlaw.net

Attorneys for Defendants STEPHEN C. BALKENBUSH, ESQ.
and THORDAHL ARMSTRONG DELK BALKENBUSH &
EISINGER, a Nevada Professional Corporation

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ANGELA DeCHAMBEAU and JEAN-
PAUL DeCHAMBEAU, both individually
and as Special Administrator of the Estate
of NEIL DeCHAMBEAU,

CASE NO. CV-12-00571

Plaintiffs,

vs.

STEPHEN C. BALKENBUSH, ESQ.; and
THORDAHL ARMSTRONG DELK
BALKENBUSH & EISINGER, a Nevada
Professional Corporation,

Defendants.

DEFENDANTS STEPHEN C. BALKENBUSH, ESQ. AND THORDAHL
ARMSTRONG DELK BALKENBUSH & EISINGER'S
OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE

Defendants STEPHEN C. BALKENBUSH, ESQ. and THORDAHL ARMSTRONG
DELK BALKENBUSH & EISINGER, a Nevada Professional Corporation, by and through
their attorney Dominique A. Pollara, Esq. of Pollara Law Group submits the following

1 Opposition to Plaintiffs' Motion to Strike as follows:

2 I.

3 INTRODUCTION

4 Plaintiffs have filed a Motion to Strike defendants' disclosure of Hugh Calkins, M.D.
5 as an expert claiming the disclosure is untimely. Plaintiffs appear to be taking the position
6 the Court's Scheduling Order dated February 1, 2016, wherein the Court states initial
7 expert disclosure should be made prior to September 3, 2016, is a nullity and should have
8 been ignored by counsel, even though plaintiffs never objected to the same, and that
9 somehow they were taken by surprise when Dr. Calkins was disclosed as an expert.
10 Defendants contend they had the right to rely on the Court's February 1, 2016 Scheduling
11 Order and that close examination of the facts reveals plaintiffs not only knew about Dr.
12 Calkins since the onset of this litigation but also disclosed him as a witness and his report
13 setting forth his opinions in their 16.1 and pretrial disclosures. Defendants request this
14 Court deny the motion in its entirety.

15 II.

16 PROCEDURAL STATUS

17 Defendants generally agree with the dates and description of documents filed and
18 served as referred to by counsel as well as the procedural history regarding the appeal to
19 the Nevada Supreme Court and subsequent remand. However, plaintiffs omit additional
20 essential information as follows:

21 Hugh Calkins, M.D. is not a surprise witness nor a witness unknown to plaintiffs
22 prior to his disclosure as an expert on September 2, 2016. Rather, Dr. Calkins was one of
23 the standard of care experts disclosed by Edward Lemons, Esq. in March, 2010 in the
24 underlying medical malpractice action. This fact has been known by plaintiffs' counsel at
25 least since the onset of this legal malpractice action, and possibly before, as defendants gave
26 plaintiffs' counsel a copy of the legal file at plaintiffs' request before the legal malpractice
27 action was initiated.

28 \\\

1 During the course of the legal malpractice action, Dr. Calkins was identified in
2 numerous documents served on plaintiffs by defendants including:

3 * Defendants' Initial NRC P 16.1 Disclosure dated and hand-delivered to plaintiffs'
4 counsel May 9, 2012 identified Hugh Calkins, M.D. as a witness at page 4, paragraph
5 11. (A true and correct copy is attached hereto as Exhibit 1);

6 * Defendants' Initial NRC P 16.1 Disclosure dated and hand-delivered to plaintiffs'
7 counsel May 9, 2012 included a document disclosure which was the underlying legal
8 malpractice file from defendants. This document disclosure included medical
9 malpractice defendant David Smith, M.D.'s previous Designation of Expert
10 Witnesses which identified Dr. Calkins as an expert witness and attached his report
11 dated March 22, 2010. (A true and correct copy of Defendants' 16.1 document
12 disclosure pages SB 01894-SB 01901 is attached hereto as Exhibit 2);

13 * Defendants Pretrial Disclosures dated September 13, 2013 identified both Dr.
14 Calkins as a witness and states "the file of Stephen Balkenbush in the underlying
15 case, Bate stamped SB 0001-SB 02835, including emails SB 2838-SB 2930. It is
16 anticipated the medical records from Reno Heart Physicians (cite omitted) and
17 Renown Regional Medical Center, formerly known as Washoe Medical Center, (cite
18 omitted) will be used in the medical malpractice portion of the case, together with
19 the expert disclosures, expert reports and curriculum vitae as of the physicians
20 that were disclosed in the underlying case." (*Emphasis added*) (Exhibit 3.)

21 In addition, significantly, plaintiffs also disclosed Dr. Calkins and his expert report
22 and curriculum vitae in the course of discovery in this case on multiple occasions as
23 follows:

24 * In their Initial NRC P 16.1 Disclosure dated July 10, 2012 plaintiffs "incorporate[d]
25 by reference herein all witnesses and documents referenced in Defendants' 16.1
26 Initial NRC P 16.1 Disclosure," in essence at a minimum acknowledging Dr. Calkins
27 was a known witness and incorporating in their disclosures his expert witness
28 declaration. (A true and correct copy is attached hereto as Exhibit 4);

1 * In Plaintiffs' First Supplemental 16.1 Disclosures plaintiffs specifically disclosed the
2 expert witness designation of Dr. Calkins by medical malpractice defendant Dr.
3 David Smith including Dr. Calkins' March 22, 2010 declaration and his curriculum
4 vitae. (A true and correct copy of Plaintiffs' First Supplemental 16.1 Disclosure
5 together with pages DS0000051-0000058 is attached hereto as Exhibit 5. Dr. Calkins'
6 CV, which is voluminous, is not attached but can be provided if the Court so
7 desires);

8 * In Plaintiffs' Second Supplemental 16.1 Disclosures, plaintiffs once again disclosed
9 Dr. Calkins' declaration. (A true and correct copy of Plaintiffs' Second Supplemental
10 16.1 Disclosure dated June 26, 2013 is attached hereto as Exhibit 6. The actual
11 declaration authored by Dr. Calkins is identical to that attached to Exhibit 5 herein
12 above.)

13 * In Plaintiffs' Pretrial Disclosures, plaintiffs refer to the underlying legal file which
14 includes Dr. Calkins' declaration and CV. In addition, they specifically designate
15 the underlying expert witness designation of him by Dr. Smith in the underlying
16 litigation as a document they intend to introduce into evidence at the time of trial.
17 (A true and correct copy of Plaintiffs' Pretrial Disclosures is attached hereto as
18 Exhibit 7.)

19 After this action was remanded by the Nevada Supreme Court to the District Court
20 for further proceedings, the Court held a pretrial conference on January 21, 2016. At that
21 time the Court scheduled trial for January 17, 2017 and further indicated it would be
22 issuing a new Scheduling Order. Plaintiffs' counsel offered no objection at that time and
23 there was no discussion about the status of discovery or the parties' respective positions
24 relative thereto. Subsequently, on February 1, 2016, the Court issued and served a new
25 Scheduling Order. (A true and correct copy of the Court's Scheduling Order is attached as
26 Exhibit 8.) The Court's Scheduling Order specifically states in pertinent part:

27 \\\

28 \\\

1 "IT IS HEREBY ORDERED:

2 1. Complete all discovery by December 2, 2016 (45 days prior to trial)

3 ...

4 3. Make initial expert disclosures pursuant to NRC P 16.1(a)(2) on or
5 before September 3, 2016 (at least 90 days prior to the close of
6 discovery; and 30 days thereafter for rebuttal)." (Exhibit 8.)

7 Plaintiffs' counsel apparently concedes they received the Scheduling Order.
8 Plaintiffs' counsel offered no objection to the Scheduling Order at that time or at any later
9 point in time prior to this motion.

10 On September 2, 2016, pursuant to the Court's February 1, 2016 Scheduling Order,
11 defendants timely served their initial expert disclosure. (A true and correct copy of
12 Defendants' Disclosure of Expert Witnesses is attached as Exhibit 9.) The disclosure is
13 identical to defendants' prior expert disclosure except that it also identifies Dr. Calkins,
14 who had been previously disclosed as a fact witness in the litigation, as an expert witness.
15 Two weeks later counsel for defendants received correspondence from plaintiffs' counsel
16 attached to their motion as Exhibit 4.

17 III.

18 ARGUMENT

19 It is defendants' position their September 2, 2016 expert witness disclosure was
20 appropriate, timely and in accordance with this Court's February 1, 2016 Scheduling Order,
21 to which plaintiffs never objected and remains the operative Scheduling Order relative to
22 the upcoming trial.

23 Plaintiffs cite to *Douglas v. Burley*, 134 So.3d 692 (2012)(2012 WL 5358987) and discuss
24 it extensively; however close examination of its facts reveal it is distinguished from the case
25 at hand as to the most important fact. After the case in *Douglas* was remanded, the trial
26 court did not issue a further scheduling order and the plaintiff in that case unilaterally
27 served an expert witness disclosure that was not pursuant to any court order whatsoever.

28 That significant distinction is ignored by plaintiffs here. However, there can be no
question, this Court issued a new Scheduling Order after the case was remanded and after

1 the Court held a conference with counsel. That Order states, in pertinent part, that the
2 parties are to "Make initial expert disclosures pursuant to NRC P 16.1(a)(2) on or before
3 September 3, 2016." (Exhibit 8.) At no point did plaintiffs' counsel object to the Court's
4 Scheduling Order although almost 9 months passed after it was issued by the Court.

5 While the *Douglas* case is distinguishable on its facts; importantly that court
6 recognized "whether to reopen discovery and other pretrial matters in a case is left
7 squarely within the sound discretion of the trial court." (*Douglas, supra*, 134 So.3d at 697.)
8 In the case before this Court, it properly exercised its discretion when it issued its
9 Scheduling Order on February 1, 2016, and defendants had the right to and properly relied
10 on it as the operative Order in place going forward to the new trial date. While plaintiffs
11 do not specifically state; they appear to imply the Court had no authority to issue a
12 scheduling order absent a motion by counsel to reopen discovery. However, plaintiffs cite
13 no case in support of this argument and defendants disagree this is procedurally accurate.
14 Clearly the Court has discretion to order whether discovery is closed or remains open. If
15 plaintiffs had some objection it was incumbent on them to bring this to the Court's
16 attention in a timely fashion; which they did not do.

17 Plaintiffs also cite to *Jama v. City and County of Denver*, 304 F.R.D. 289 (D. Colo.
18 2014)(2014 WL 2610015); however once again that case is distinguishable. In *Jama, supra*,
19 the parties made initial Rule 26(a) disclosures and engaged in significant discovery, with
20 orders issued by the court extending discovery deadlines several times to accommodate
21 the massive amount of discovery between the parties. After the close of discovery, and
22 after defendants filed a motion for summary judgment, plaintiffs served a 4th supplemental
23 Rule 26(a) disclosure naming an additional 108 witnesses, with little other information as
24 to the nature or scope of their involvement or testimony. The appellate court found the
25 disclosure untimely and ordered the 4th supplemental disclosure stricken after concluding
26 the disclosure in essence nullified the defendant's motion for summary judgment. (*Jama,*
27 *supra* at 300.)

28 \\\

1 As an initial matter, *Jama, supra.*, concerns Rule 26(a) disclosures (the generally
2 analogous provision is N.R.C.P. 16.1(a).) In the instant case, Dr. Calkins has been disclosed
3 from the beginning as a 16.1 witness by both defendants and plaintiffs; as such his identity
4 and his opinions have been known to plaintiffs since the inception of this case.
5 Furthermore, plaintiffs again fail to acknowledge the crucial distinction between the facts
6 here and those in *Jama, supra.*, where in that case no court order existed by which the
7 plaintiffs were permitted disclosure. Once again plaintiffs here ignore the Court's February
8 1, 2016 Scheduling Order.

9 Lastly, plaintiffs' appear to argue there will be some prejudice as they will have to
10 incur the expense to travel to Baltimore to depose Dr. Calkins. However, it should be
11 noted plaintiffs did not find it necessary to travel to depose Dr. Morady in person; rather
12 they took his deposition upon written questions. Furthermore, plaintiffs have had Dr.
13 Calkins' curriculum vitae and his declaration from the underlying lawsuit which outlines
14 his opinions for years. As such, plaintiffs' attempt to argue surprise and/or prejudice are
15 without merit.

16 *Santana v. City and County of Denver* 448 F.3d 860 (10th Cir. Colo. 2007) involved a
17 claim of employment discrimination and disparate treatment. The plaintiff in that case
18 sought to reopen discovery to depose an official at the jail who allegedly witnessed
19 discrimination. Notably, and distinguished from the case before this Court, that witness
20 had not been previously disclosed pursuant to Rule 26 or in written responses to discovery.
21 The magistrate judge denied the request to reopen discovery. This decision was adopted
22 by the district court judge and affirmed by the Court of Appeal; noting the standard for
23 review of discovery rulings was "an abuse of discretion." (448 F.3d at 867.)

24 The quote referenced by plaintiffs in their motion actually refers to another portion
25 of that decision, not the decision to decline to reopen discovery. Rather, the plaintiff in that
26 case sought to disclose 35 exhibits not previously disclosed before the close of discovery.
27 The magistrate judge ordered the exhibits excluded and the trial court and Court of Appeal
28 agreed. (*Id.*)

1 Once again the present situation is distinguishable; however it is significant all of
2 these courts recognize great deference is given to the trial court and that its decisions in this
3 regard will only be reversed for an abuse of discretion. Here, it is defendants position their
4 expert disclosure was timely and in accordance with the Court's February 1, 2016
5 Scheduling Order. Furthermore, without question, and unlike the witness in *Santana, supra*,
6 Dr. Calkins and his opinions have been known to plaintiffs and their counsel from the
7 outset.

8 The same distinction is present in *Plumley v. Mockett*, 836 F.Supp.2d 1053 (C.D. Cal.
9 2010)(2010 WL 8160423). In that case, the plaintiff untimely served a supplemental expert
10 witness report, after the deadline set by the court, wherein the opinions of it's expert were
11 substantially different then those expressed in the initial report. (Expert witnesses reports
12 were waived by the parties in this case but not in the underlying medical malpractice case.)
13 There the court found that because the opinions were significantly different from those
14 originally expressed and thus did not qualify as a supplemental report, the trial court
15 ordered it excluded. (*Id.* at 1063-1064.)

16 Here, it is defendants' position its expert disclosure of Dr. Calkins was timely and
17 in accordance with the Court's February 1, 2016 Scheduling Order. As such *Plumley,*
18 *supra.*, is applicable to the situation at hand.

19 *Miksis v. Howard*, 106 F.3d 754 (7th Cir., 1997) involved a defendant who disclosed
20 expert witnesses and reports 60 days after the court imposed a deadline and three days
21 before trial. The court excluded the experts; this decision was upheld by the Court of
22 Appeal. A review of the facts of that case will not be repeated here; however it is again not
23 surprising that the party against whom the discovery sanction was issued violated the
24 court order in effect at the time. As pointed out several times, that is not the case here.
25 However, the court in *Miksis, supra*, did impart the following comments:

26 "The appellate court reviews a district court's discovery determinations for
27 abuse of discretion. The appellate court will not find that the court abused
28 its discretion unless one or more of the following circumstances is present:
(1) the record contains no evidence upon which the district court could have
rationally based its decision; (2) the decision is based on a erroneous

1 conclusion of law; (3) the decision is based on a clearly erroneous factual
2 finding; or (4) the decision clearly appears arbitrary. Moreover, there must
3 be a "clear showing" that a discovery limitation resulted in actual or
substantial prejudice for it to warrant reversal." (*Id.* at 758.)

4 In the case before this Court, it exercised its discretion when it issued a new
5 Scheduling Order after meeting with counsel for the parties. At no point before now has
6 any objection been lodged as to the Court's order, which clearly was a matter of discretion
7 on its part given the entire circumstances presented. Furthermore, defendants had a right
8 to rely on the Court's Order, particularly in light of the fact that no objection was ever
9 raised to it in the intervening months.

10 Morolf v. Aguirre, 2011 WL 6012203 (D. Neb. Dec. 1, 2011) concerned a personal
11 injury action brought after a gun misfired and caused catastrophic injury to plaintiff. In
12 that case plaintiff sought to disclose an additional expert and for destructive testing of the
13 gun after the deadline for disclosure of expert witnesses. The court determined under the
14 facts of that case that plaintiffs' would not be permitted to untimely disclose an additional
15 expert. (*Morolf, supra.*, at page 13.) However, again, this case is entirely distinguishable on
16 the facts. Here, defendants timely disclosed pursuant to the Court's February 1, 2016
17 Scheduling Order. As such, the case is not persuasive.

18 For the same reasons stated above Wingates, LLC v. Commonwealth Insurance, 21 F.
19 Supp. 3d 206 (E.D. NY 2014) also is distinguished. In that case the deadlines to disclose
20 experts was past. Furthermore, in the case at hand plaintiffs also have disclosed Dr.
21 Calkins' expert opinions as to the medical malpractice allegations against Dr. Smith. As
22 such, the case is not persuasive.

23 IV.

24 CONCLUSION

25 Plaintiffs claim defendants' expert witness designation of Dr. Calkins was untimely.
26 In doing so they ignore the Court's February 1, 2016 Scheduling Order and appear to imply
27 counsel should have disregarded same. It is defendants' position they timely disclosed Dr.
28 Calkins and that the cases cited by plaintiffs are entirely distinguishable from the facts at

1 hand here and are not persuasive or dispositive. Furthermore, plaintiffs themselves
2 disclosed Dr. Calkins as a witness in this case (albeit not as an expert) as well as his
3 detailed declaration setting forth his expert opinions as to the care and treatment provided
4 by Dr. Smith. As such, plaintiffs' motion to strike should be denied in its entirety.

5 **AFFIRMATION**

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

8 Dated: November 29, 2016

9 **POLLARA LAW GROUP**

10
11 By 

12 DOMINIQUE A. POLLARA
13 Nevada Bar No. 5742
14 3600 American River Drive, Suite 160
15 Sacramento, CA 95864
16 (916) 550-5880
17 Attorneys for Defendants STEPHEN C.
18 BALKENBUSH, ESQ. and THORND AHL
19 ARMSTRONG DELK BALKENBUSH &
20 EISINGER
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INDEX OF EXHIBITS

<u>No.</u>	<u>Description</u>	<u>Pages</u>
1.	Defendants' Initial 16.1 Disclosure dated May 9, 2012	8
2.	Defendants' 16.1 document disclosure pages SB 01894-SB 01901	9
3.	Defendants' Pretrial Disclosures dated September 13, 2013	5
4.	Plaintiffs' Initial 16.1 Disclosure dated July 10, 2012	4
5.	Plaintiffs' First Supplemental 16.1 Disclosure with exhibits	16
6.	Plaintiffs' Second Supplemental 16.1 Disclosure dated June 26, 2013	3
7.	Plaintiffs' Pretrial Disclosures	9
8.	Court's Scheduling Order dated February 1, 2016	5
9.	Defendants' Disclosure of Expert Witnesses dated September 2, 2016	8

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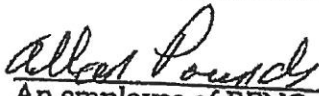
CERTIFICATE OF SERVICE BY SERVICE

Pursuant to NRCP 5(b), I hereby certify I am an employee of Reno Carson Messenger and that on the 30th day of November, 2016, I caused DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE to be served on all parties in this action by:

- ☐ placing an original or true copy thereof in a sealed envelope, postage prepaid, in the United States mail at Reno, Nevada.
- ☒ personal delivery.
- ☐ facsimile (courtesy copy).
- ☐ electronically served by the Court upon filing of document(s).
- ☐ email (courtesy copy).
- ☐ UPS/Federal Express or other overnight delivery.

fully addressed as follows:

Attorney	Representing	Phone/Fax/E-Mail
Charles R. Kozak, Esq.	Plaintiffs	(775) 322-1239 - phone
3100 Mill Street, Suite 115		(775) 800-1767 - fax
Reno, NV 89502		chuck@kozaklawfirm.com


An employee of RENO CARSON
MESSENGER

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Jacqueline Bryant
Clerk of the Court
Transaction # 5830361 : pmsewell

EXHIBIT 1

EXHIBIT 1

5/9/12

Piscevich & Fenner
499 West Plumb Lane, Suite 201
Reno, NV 89509 775.329.0958

1 DISC
2 MARGO PISCEVICH
3 Nevada State Bar No. 000917
4 MARK J. LENZ
5 Nevada State Bar No. 004672
6 PISCEVICH & FENNER
7 499 West Plumb Lane, Suite 201
8 Reno, Nevada 89509
9 775-329-0958
10 Attorneys for Defendants

11
12
13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR THE COUNTY OF WASHOE

16 ANGLEA DECHAMBEAU and
17 JEAN-PAUL DECHAMBEAU, both
18 Individually and as SPECIAL
19 ADMINISTRATORS of the ESTATE
20 Of NEIL DECHAMBEAU,

Case No. CV12-00571

Dept. No. 7

21 Plaintiffs,

22 vs.

23 STEPHEN C. BALKENBUSH, ESQ.,
24 THORNDAL, ARMSTRONG, DELK,
25 BALKENBUSH and EISINGER,
26 A Nevada Professional Corporation,
27 And DOES I through X, inclusive,

28 Defendants.

DEFENDANTS' INITIAL NRCP 16.1 DISCLOSURE

Defendants, STEPHEN C. BALKENBUSH, ESQ. and THORNDAL, ARMSTRONG,
DELK, BALKENBUSH and EISINGER, a Nevada professional corporation, by and through its

1 counsel, PISCEVICH & FENNER, hereby provides the following list of witnesses and
2 documents in accordance with Rule 16.1:

3 **I. LIST OF WITNESSES**

- 4
5 1. Stephen C. Balkenbush, Esq.
6 c/o Piscevich & Fenner
7 499 West Plumb Lane
8 Reno, Nevada 89509
9 Phone: (775) 329-0958

10 Mr. Balkenbush is one of the defendants in this case and has knowledge of the
11 facts and circumstances of the case.

- 12 2. Defendant Thorndal, Armstrong, Delk, Balkenbush and Eisinger, a Nevada
13 professional corporation
14 c/o Piscevich & Fenner
15 499 West Plumb Lane
16 Reno, Nevada 89509
17 Phone: (775) 329-0958

18 Thorndal, Armstrong, Delk, Balkenbush and Eisinger is one of the defendants in
19 this case and some of the employees have knowledge of the facts and circumstances of the case,
20 including Robert Balkenbush and Susan Balkenbush.

- 21 3. Angela DeChambeau
22 c/o Charles R. Kozak
23 1225 Tarleton Way
24 Reno, NV 89523
25 Telephone: 622-0711

26 Angela DeChambeau is one of the plaintiffs in this case and has knowledge of the
27 facts and circumstances of the case.

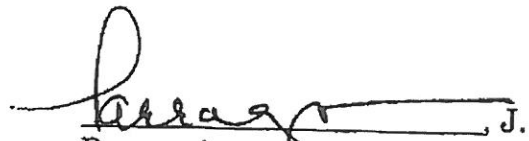
- 28 4. Jean-Paul DeChambeau
c/o Charles R. Kozak
1225 Tarleton Way
Reno, NV 89523
Telephone: 622-0711

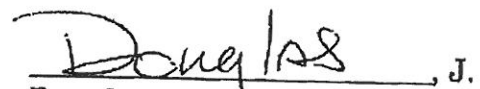
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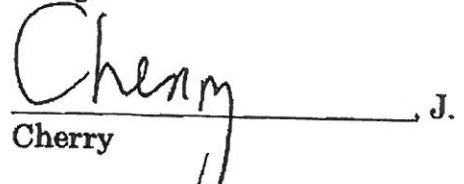
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Wood, 121 Nev. at 731, 121 P.3d at 1031 (noting that the "[t]he substantive law controls which factual disputes are material" and that a "factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party"). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


Parraguirre, J.


Douglas, J.


Cherry, J.

cc: Hon. Patrick Flanagan, District Judge
David Wasick, Settlement Judge
Charles R. Kozak
Pollara Law Group
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Washoe District Court Clerk

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: December 1st, 2015

Supreme Court Clerk, State of Nevada

By [Signature] Deputy

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 ANGELA DECHAMBEAU, et al.,

10 Plaintiffs,

Case No.: CV12-00571

Dept. No.: 7

11 vs.
12

13 STEPHEN C. BALKENBUSH, ESQ.,
14 et al.,

15 Defendants.
16

17 **SCHEDULING ORDER**

18 Nature of Action: Legal Malpractice

19 Date of Filing Joint Case Conference Report(s): Nothing filed

20 Time Required for Trial: (2) weeks; Jury Demand Filed: Yes

21 Charles Kozak, Esq. for Angela Dechambeau; and

22 Pollara Law Group for Stephen Balkenbush, et al.

23 Counsel representing all parties have been heard and after consideration by
24 the Court,

25 **IT IS HEREBY ORDERED:**

- 26 1. Complete all discovery by December 2, 2016 (45 days prior to trial).
27 2. File motions to amend pleadings or add parties on or before September
28 3, 2016 (at least 90 days prior to close of discovery).

1 3. Make initial expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or
2 before September 3, 2016 (at least 90 days prior to close of discovery; and 30 days
3 thereafter for rebuttal).

4 4. Make rebuttal expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or
5 before October 3, 2016.

6 a. Written reports of experts waived: Yes _____ No _____

7 5. Dispositive motions submitted on or before December 17, 2016 (30 days
8 prior to trial pursuant to Pretrial Order).

9 6. Motions in Limine to be submitted on or before January 1, 2016 (15
10 days prior to trial pursuant to Pretrial Order).

11 In the absence of extraordinary circumstances and except as otherwise
12 provided in subdivision (2), all required pretrial disclosures pursuant to NRCP
13 16.1(a)(2) shall be made at least 90 days before the discovery cutoff date. Unless
14 otherwise directed by the Court, all pretrial disclosures pursuant to NRCP
15 16.1(a)(3) must be made at least thirty (30) days before trial.

16 Motions for extensions of discovery shall be made to the Discovery
17 Commissioner prior to the expiration of the discovery deadline above. Any
18 modification of discovery deadlines **must** be in writing, signed by the parties or their
19 attorneys (or authorized representatives) and the Discovery Commissioner. A
20 **continuance of the trial date does not modify, alter, change or continue the**
21 **discovery schedule unless specifically agreed to by the parties, in writing, and**
22 **ordered by the Court.**

23 Unless other ordered, all discovery disputes (except disputes presented at a
24 pretrial conference or at trial) must be first heard by the Discovery Commissioner.

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If this matter is a bench trial, findings of fact are to be submitted, not filed, to the Court with the trial statement, but not in lieu of the trial statement.

DATED this 1st day of February, 2016.


DISTRICT JUDGE

1
2
3 **CERTIFICATE OF SERVICE**

4 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second
5 Judicial District Court of the State of Nevada, County of Washoe; that on this
6 1st day of February, 2016, I electronically filed the following with the Clerk of
7 the Court by using the ECF system which will send a notice of electronic filing to
8 the following:

9 Charles Kozak, Esq. for Angela Dechambeau; and

10 I deposited in the Washoe County mailing system for postage and mailing
11 with the United States Postal Service in Reno, Nevada, a true copy of the attached
12 document addressed to:

13 Pollara Law Group
14 3600 American River Dr., #160
15 Sacramento, CA 95864

16 
17 Judicial Assistant

1 Code 2475
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3 chuck@kozaklusianilaw.com
4 R. CRAIG LUSIANI, ESQ. (SBN 552)
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9 (775) 322-1239; Fax (775) 800-1767
10 *Attorneys for Plaintiffs*

11
12 **IN THE SECOND JUDICIAL DISTRICT OF THE STATE OF NEVADA**
13
14 **IN AND FOR THE COUNTY OF WASHOE**

15 ANGELA DECHAMBEAU, et al.,

16 Plaintiff

Case No.: CV12-00571

17 vs.

Dept. No.: 7

18 STEPHEN C. BALKENBUSH, ESQ.,
19 et al.,
20 Defendants

21
22 **PLAINTIFFS' MOTION TO STRIKE**

23 Plaintiffs hereby move to strike Defendants' disclosure of Hugh Calkins, M.D. as an
24 expert witness. Plaintiffs' Motion is brought pursuant to the following Points and Authorities
25 along with the record on file herein.¹

26
27 **POINTS AND AUTHORITIES**

28 On March 6, 2012, Plaintiffs filed their Complaint and Demand for Jury. On March 28,
2012, Defendants filed their Answer.

¹ Plaintiffs' counsel certifies that he attempted to resolve the issue with Defendants' counsel but was unable to do so.

1 On April 30, 2012, this Court entered its Pretrial Order. With regard to discovery, the
2 Order states: "A continuance of trial does not extend the deadline for completing discovery. A
3 request for an extension of the discovery deadline, if needed, must be included as part of any
4 motion for continuance."
5

6 Pursuant to NRCP 16.1(b), counsel for the parties are required to participate in an early
7 case conference where, among other things, they are to develop a discovery plan and determine
8 when discovery will be completed. The case conference occurred on May 9, 2012.
9

10 On May 29, 2012, an Application for Setting was filed, establishing October 14, 2013 as
11 the date set for trial.

12 On August 17, 2012, the parties filed their Joint Case Conference Report. According to
13 the Report, the parties "agreed" that the final date for "expert disclosures" would be 120 days
14 prior to trial or June 17, 2013 and that discovery would close 90 days prior to trial or July 16,
15 2013.
16

17 In a paper dated June 14, 2013, Defendants disclosed a total of five expert witnesses,
18 Fred Marady, M.D., David Smith, M.D., Edward Lemons, Esq., Michael Navratil, Esq., and
19 Peter Durney, Esq. (See Exhibit 1).
20

21 On July 11, 2013, a Stipulation and Order to Amend Joint Case Conference Report was
22 filed. Pursuant to it, the parties agreed that the depositions of experts Richard Teichner, Gerald
23 Gillock and Peter Durney along with the depositions of lay witnesses Doris Stewart and Pastor
24 Dave Smith may go forward beyond the July 16, 2013 "close of discovery" date previously set.
25

26 Aside from the July 11, 2013 Stipulation, no other agreements were made to change the
27 discovery dates set forth in the parties' Joint Case Conference Report.

28 On August 14, 2013, Defendants filed their Motion for Summary Judgment.

1 In a letter to Defendants' counsel dated September 4, 2013, Plaintiffs' counsel
2 confirmed: "We will object to any experts being called in the trial on behalf of Mr. Stephen
3 Balkenbush or Dr. Smith, other than those designated in your expert witness designation filed
4 June 17, 2013... The discovery cut off has long passed for any discovery depositions of any
5 other medical experts." (See Exhibit 2).

7 On September 3, 2013, Plaintiffs filed their Opposition to Motion for Summary
8 Judgment and on September 6, 2013, Defendants filed their Reply. Following oral argument
9 and on September 24, 2013, this Court granted Defendants' Motion for Summary Judgment.
10 (See 9/24/13 Minutes filed herein). The Court's Order came 20 days before the date set for
11 trial.
12

13 Subsequently, Plaintiffs appealed. On November 24, 2015, the Nevada Supreme Court
14 entered its Order of Reversal and Remand. In doing so, the Supreme Court returned the matter
15 "to the district court for proceedings consistent with this order." Nowhere in the Order did it
16 state that discovery was re-opened. A Supreme Court's decision and remand does not alter
17 discovery deadlines. Discovery deadlines "remain in place absent a party's motion to extend
18 deadlines and a subsequent order by the trial court." Douglas v. Burley 134 So.3d 692, 697
19 (Miss 2012).
20

21
22 In fact, this Court's 4/30/12 Pretrial Order specifically stated that a "continuance of trial
23 does not extend the deadline for completing discovery" and a request for such extension must
24 be made by Motion. (See 4/30/12 Pretrial Order filed herein).

25 Although no such Motion was made, this Court would enter a Scheduling Order on
26 February 2, 2016 that "initial expert disclosures" be made "on or before September 3, 2016"
27 and that all discovery be completed by "December 2, 2016". The Court's Scheduling Order
28

1 clearly contradicts its Pretrial Order. Furthermore, "initial expert disclosures" were made by
2 Defendants on June 14, 2013, thirty-two months prior to the Scheduling Order. (See Exhibit 1).

3
4 On September 2, 2013, Defendants submitted a Disclosure identifying six experts, Fred
5 Morady, M.D., David Smith, M.D., Edward Lemons, Esq., Michael Navratil, Esq., Peter
6 Durney, Esq. and, for the first time, Hugh Calkins, M.D. (See Exhibit 3). Of significance in
7 terms of added costs and fees from this late addition of this expert is Dr. Calkins resides in
8 Baltimore, Maryland. (See below in this regard).

9
10 In a letter dated September 28, 2016, Plaintiffs' counsel addressed the Disclosure as
11 follows: "We are taking the position that this case was fully prepared for trial at the time the
12 Motion for Summary Judgment was granted by the trial judge. The only outstanding matter that
13 needed to be completed was the trial deposition of Dr. Morady. On this point, were Dr. Calkin,
14 Bhandari and Doshi disclosed as experts in this case?" (See Exhibit 4).

15
16 In her letter dated October 18, 2016, Dominique Pollara responded that neither Bhandari
17 nor Doshi have been disclosed as experts but Dr. Calkin is being disclosed as an expert pursuant
18 to the September 2, 2016 Disclosure. (See Exhibit 5).

19 In his letter dated October 27, 2016, Plaintiffs' counsel Craig Lusiani informed Ms.
20 Pollara as follows:

21
22 You have confirmed to us the intent on disclosing a further expert
23 witness for the very first time in this [September 2, 2016] letter.

24 We feel that this attempted disclosure is late for a number of reasons
25 which will be recited below. We intend on filing a Motion to Strike in
that regard, accordingly.

26 Please note the Joint Case Conference Report filed August 17, 2012.
27 Pursuant to that agreement expert disclosures were cut off 120 days
28 prior to trial. The trial date to which this disclosure cut off was relevant
eventually became October 14, 2013.

1
2 There has been no agreement to extend any discovery since that date
3 and, in fact, you will recall at the Settlement Conference that we attended
4 last month that our position was, and continues to be, that there was no
further disclosure of experts possible.

5 There is no reason why a further expert could not have been named
6 previously up to and including as this matter moved towards the October,
2013 trial date.

7 To allow testimony from a newly identified expert at this point, we believe
8 would be an abuse of discretion on behalf of the trial judge. In that regard,
9 we ask you to note the case of Douglas v. Burley, 134 So. 3d 692 (2012).

10 Please provide us with your position as it relates to this issue by not later
11 than 5 PM on November 1, 2016. As noted above, we shall be filing a
12 Motion to Strike your current attempt at identifying a new expert subsequent
to that.

13 (See Exhibit 6).

14 In her letter faxed on November 1, 2016, Ms. Pollara failed to cite any further discovery
15 agreement between the parties and failed to dispute the contention that Defendants could have
16 disclosed Dr. Caulkin as an expert prior to the agreed upon cut-off date of June 17, 2013. In
17 arguing the disclosure of Dr. Caulkin was indeed proper, Ms. Pollara failed to cite any Rule
18 supporting her position. She failed to cite to any case law controverting Douglas v. Burley.
19 (See Exhibit 7).

20
21 Douglas is remarkably similar to the case at hand. According to the Opinion, James
22 Burley filed a wrongful death action on June 7, 2004 for the deaths of his daughter and
23 grandchildren resulting from a vehicular accident between his daughter and an employee
24 (Douglas) of Yazoo Valley Electric Power Association (YVEPA).
25

26 In response to an interrogatory, Burley identified Ricky Shivers as his expert witness on
27 March 17, 2005.
28

1 Subsequently, the trial court entered a Scheduling Order that plaintiff's experts be
2 designated on or before May 30, 2005, defendants' experts be designated on or before June 30,
3 2005 and that all discovery be completed on or before October 30, 2005. Trial was set for April
4 3, 2006.
5

6 The parties eventually stipulated that discovery be completed on or before December 31,
7 2005 but all other terms of the Scheduling Order would remain in effect.
8

9 Burley would withdraw Shivers as an expert and trial was reset for December 3, 2007.
10

11 YVEPA moved for Summary Judgment and on November 7, 2007, the trial court
12 granted the Motion. Burley appealed. On November 5, 2009, the Supreme Court reversed and
13 remanded the case to the trial court "for further proceedings consistent with [its] opinion."
14

15 On October 8, 2010, Burley filed an expert designation of Alvin Rosenhan. According
16 to the designation, Burley stated he would make Rosenhan available for deposition at an
17 agreeable time and would be responsible for the associated charges of Rosenhan along with
18 those of a court reporter.

19 In response to the expert designation, YVEPA moved to strike Rosenhan. YVEPA
20 argued that the designation was untimely since it was filed 5½ years after the expert designation
21 deadline and 5 years after the close of discovery. YVEPA further argued the disclosure failed to
22 comply with Rule 26.

23 At hearing on the Motion to Strike, Burley argued, that on remand, the Scheduling Order
24 had no effect as there was a "clean slate". The trial court noted that neither party had moved
25 to extend the Scheduling Order and queried why, if Rosenhan was so important, Burley did not
26 initially designate him as an expert.
27
28

1 Following hearing, the trial court refused to strike Rosenhan and directed the parties to
2 enter into a new agreed Scheduling Order. YVEPA then filed an Interlocutory Appeal.

3
4 On Appeal, the Supreme Court found the trial court abused its discretion in refusing to
5 strike the designation of Rosenhan. In rendering its Opinion, the Supreme Court stated “the
6 plaintiffs are incorrect that, when this Court remands a case, it completely starts over as with a
7 ‘clean slate.’” “Thus, upon remand, prior orders governing discovery remain in place absent a
8 party’s motion to extend deadlines and a subsequent order by the trial court.” Since there was
9 no such Motion, the Supreme “Court’s decision and remand did not alter discovery deadlines”.
10

11 The Opinion goes on to point out “plaintiffs designated Rosenhan approximately six
12 years after filing the Complaint, five and a half years after the expert-designated deadline, and
13 five years after the close of discovery.” Moreover, all discovery was completed at the time of
14 the first Appeal. Under Rule of Civil Procedure 26, a party has a duty to timely supplement its
15 responses respecting expert witness disclosures. Burley failed in this regard. As found, “the
16 plaintiffs presented no evidence of an excusable oversight.”
17

18 With respect to the case at hand, NRCP 26(e) also provides that a party has a duty to
19 timely supplement its expert witness disclosures. The disclosure of Calkin as an expert comes
20 54 months after the Complaint was filed, 39 months after the agreed upon deadline for expert
21 disclosures, 38 months after the agreed upon deadline for discovery and 10 months after the
22 Supreme Court’s Order of Reversal.
23

24 At no time did Defendants file a Motion to extend the deadline for expert disclosures set
25 forth in the Joint Case Conference Report. When Summary Judgment was granted on
26 September 24, 2013, all discovery was completed, but for the deposition of Dr. Morady, and the
27 case was ready for trial.
28

1 In Jama v. City and County of Denver 304 F.R.D. 289 (D. Colo. 2014), the court granted
2 a Motion to Strike witnesses, finding the supplemental disclosure untimely.² As cited therein:
3 “The mandatory disclosures serve several purposes, including eliminating surprise, promoting
4 settlement, and giving the opposing party information about the identification and locations of
5 persons with knowledge so as to assist that party in contacting the individual and determining
6 which witness should be deposed.” Id at 295. Rule 26(e) requires that any supplemental
7 disclosures be made timely. “The obligation to supplement arises when the disclosing party
8 reasonable should know that its prior discovery responses are incomplete, e.g. because the party
9 had now obtained information it did not previously have.” Id at 299-300. As the court found,
10 “Plaintiffs untimely production poses prejudice to Denver in the form of additional and undue
11 delay in the resolution of this already-aged matter.” “As the adage goes, ‘time is money.’ undue
12 delay necessarily translates to additional attorney’s fees, incurred in revising strategies in light
13 of the new disclosures, attorneys re-familiarizing themselves with the proceedings after delays,
14 and even intangible costs relating to maintaining files for an ongoing action.” Id at 300-301.

18 Considering that Dr. Caulkin resides in Baltimore, the costs and fees Plaintiffs will come
19 to bear will be significantly magnified.

21 In Santana v. City and County of Denver 488 F.3d 860 (10th 2007), it was held that the
22 magistrate judge did not abuse discretion in excluding witnesses and denying a request to re-
23 open discovery. As cited therein: “It is generally not an abuse of discretion for a court to
24 exclude evidence based upon a failure to timely designate.” Id at 867.

27 ² “Federal cases interpreting the Federal Rules of Civil Procedure ‘are strong persuasive authority, because the
28 Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.” Executive
Management, LTD. v. Ticor Title Insurance Company 118 Nev. 46, 53, 38P.3d 872, 876 (2002).

1 NRCP 37(c)(1) provides: "A party that without substantial justification fails to disclose
2 information required by Rule 16.1, 16.2 or 26 (e)(1), or to amend a prior response to discovery
3 as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence
4 at a trial, at a hearing, or on a motion any witness or information not so disclosed." A failure to
5 timely disclose expert testimony is not substantially justified where "the need for such
6 testimony could reasonably have been anticipated." Plumley v. Mockett 836 F.Supp.2d 1053,
7 1064 (C.D. Cal. 2010).
8

9
10 Citing Rule 37 (c), the court in Miksis v. Howard 106 F.3d 754 (7th 1997) found no
11 abuse of discretion in striking defendant's experts for failing to make timely disclosures. As
12 noted therein, defendants failed to provide their expert disclosures until 60 days after the
13 deadline. *Id* at 760.

14
15 In Marolf v. Aya Aguire 2011 WL 6012203 (D. Neb. Dec. 1, 2011), the plaintiff filed a
16 Motion for Leave to identify an additional expert. The Motion was filed on August 12, 2011,
17 more than four months after the March 25, 2011 deadline for disclosing plaintiff's liability
18 experts. In denying the Motion, it was ruled that the plaintiff did not make a threshold showing
19 of due diligence. The need or want of an additional expert "could have been anticipated before
20 the March 25, 2011 expert disclosure deadline." *Id* at *5. Citing to Rule 1, it was noted: "In all
21 cases involving the interpretation and application of the Federal Rules of Civil Procedure, the
22 court must fairly balance the obligations and positions of the parties to promote the 'just,
23 speedy, and inexpensive determination of every action.'" *Id.* at *4
24

25 Certainly, the expert testimony of Dr. Calkin could have reasonably been anticipated
26 when Defendants disclosed their experts in a paper dated June 14, 2013. (See Exhibit 1).
27
28

1 Discovery deadlines are “designed, at least in part, ‘to offer a measure of certainty in
2 pretrial proceedings, ensuring that at some point both the parties and the pleadings will be
3 fixed.’” Wingates, LLC v. Commonwealth Insurance 21 F.Supp.3d 206, 214 (E.D. Ny. 2014).
4 According to the recitation of the Wingates, LLC case, discovery closed on August 14, 2013.
5 On December 16, 2013, Commonwealth moved for Summary Judgment dismissing the
6 Complaint. In opposing, plaintiffs submitted the Affidavit of Hess in which, at times, he
7 purports to give his expert opinion regarding common insurance claim standards and practices.
8

9 On April 24, 2014, Commonwealth moved to strike Hess’s Affidavit on the basis
10 plaintiffs failed to disclose him as an expert.
11

12 On April 29, 2014, plaintiffs moved to re-open discovery to disclose Hess and Zendler
13 as experts. The Motion was made more than 8 months after the close of discovery and plaintiffs
14 sought no extensions in order to disclose these experts prior to the conclusion of discovery.
15

16 The court would deny the Motion to re-open discovery and strike those portions of the
17 Affidavit where Hess proffered expert testimony. As the court cited, “the discovery period
18 should not be extended when a party has had ample opportunity to pursue the evidence during
19 discovery.” The court also noted the fact that plaintiffs previously disclosed Hess as a possible
20 lay witness “does not cure their failure to disclose him as an expert”. Id at 215-216.
21

22 In the case at bar, the exclusion of Calkins as an expert would not hamper the
23 defense of the case since Defendants have timely designated two other medical experts upon
24 which they can rely. Dr. Calkins’ testimony would be merely cumulative. Further, there can be
25 no prejudice to defendants in excluding this added attempt at adding an expert when the expert
26 could have been added, timely, but was not.
27
28

1 As shown above, an Order striking Defendants' expert disclosure of Hugh Calkins, M.D.
2 is well warranted.

3 Pursuant to NRS 239B.030, the undersigned certifies that this document does not
4 contain a Social Security number.

5 DATED: November 15th, 2016.

6
7 /s/ R. Craig Lusiani, Esq.
8 R. CRAIG LUSIANI, ESQ.
9 Kozak Lusiani Law Firm
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CERTIFICATE OF SERVICE

Pursuant to NRCp Rule 5(b), I hereby certify I am an employee of Kozak Lusiani Law, LLC and that on November 15th, 2016, I electronically filed a true correct copy of the **Plaintiffs Motion to Strike**, with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

Dominique Pollara, Esq.
Pollara Law Group
3600 American River Dr., #160
Sacramento, CA 95864

/s/ Dedra Sonne
Dedra Sonne
Employee of Kozak Lusiani Law, LLC

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EXHIBIT LIST

<u>No</u>	<u>Document</u>	<u>Pages</u>
1	Defendants' Disclosure of Potential Expert Witnesses	5
2	9/4/13 letter to Defendants' counsel from Charles Kozak, Esq.	2
3	9/2/16 letter from Dominique Pollara, Esq. with Disclosure of of Expert Witnesses attached	7
4	9/28/16 letter to Dominique Pollara, Esq. from Charles Kozak, Esq.	2
5	10/18/16 letter from Dominique Pollara, Esq. to Charles Kozak, Esq.	2
6	10/27/16 letter from Craig Lusiani, Esq. to Dominique Pollara, Esq.	3
7	Letter from Dominique Pollara, Esq. to Craig Lusiani, Esq. faxed on November 1, 2016	3

FILED
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CV12-00571
2016-11-15 04:29:38 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5807912 : pmsewell

EXHIBIT 1

EXHIBIT 1

1 **DISC**

2 MARGO PISCEVICH
3 Nevada State Bar No. 0917
4 MARK J. LENZ
5 Nevada State Bar No. 4672
6 PISCEVICH & FENNER
7 499 West Plumb Lane, Suite 201
8 Reno, Nevada 89509
9 775-329-0958
10 Attorneys for Defendants

11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

12 **IN AND FOR THE COUNTY OF WASHOE**

13 ANGLEA DECHAMBEAU and
14 JEAN-PAUL DECHAMBEAU, both
15 Individually and as SPECIAL
16 ADMINISTRATORS of the ESTATE
17 Of NEIL DECHAMBEAU,

Case No. CV12-00571

Dept. No. 7

18 Plaintiffs,

19 vs.

20 STEPHEN C. BALKENBUSH, ESQ.,
21 THORNDAL, ARMSTRONG, DELK,
22 BALKENBUSH and EISINGER,
23 a Nevada Professional Corporation,
24 and DOES I through X, inclusive,

25 Defendants.

26 **DEFENDANTS STEPHEN C. BALKENBUSH, ESQ., AND THORNDAL, ARMSTRONG,**
27 **DELK, BALKENBUSH AND EISENGER'S DISCLOSURE OF**
28 **POTENTIAL EXPERT WITNESSES**

29 Defendants, by and through their counsel, Piscevich & Fenner, herewith disclose persons
30 who may be called as expert witnesses at the time of trial:

- 31 1. Fred Morady, MD, FACC
32 University of Michigan Cardiovascular Center
33 1500 East Medical Center Drive, SPC 5853
34 Ann Arbor, MI 48109-5853
35 Tel: 734-763-7141

1 Fred Morady, M.D., is a cardiologist in clinical practice in the State of Michigan, board-
2 certified in cardiology, in clinical cardiac electrophysiology and in internal medicine. Dr.
3 Morady is McKay Professor of Cardiovascular Disease at the University of Michigan School of
4 Medicine, and was an expert for the Plaintiffs in the underlying medical malpractice case,
5 number CV07-02028, *Angela DeChambeau, Jean-Paul DeChambeau v. David, M.D., David*
6 *Kang, M.D., et al.* Dr. Morady will testify regarding the underlying case as to the medical care
7 and treatment of decedent Neil DeChambeau, causation, and the standard of care as to Defendant
8 David Smith, M.D. Dr. Morady's expert information was previously provided in the underlying
9 case.
10

11 2. David Smith, M.D.
12 Reno Heart Physicians
13 343 Elm Street, Suite 400
14 Reno, NV 89503
15 Tel: 775-323-6700

16 David Smith, M.D., a Defendant in the underlying case, is a cardiologist in clinical
17 practice and licensed in the State of Nevada. Dr. Smith will testify as to his medical care and
18 treatment of Mr. DeChambeau. Dr. Smith's professional information was previously provided in
19 the underlying case.

20 3. Edward Lemons, Esq.
21 Lemons, Grundy & Eisenberg
22 6005 Plumas Street, Third Floor
23 Reno, NV 89519
24 Tel: 775-786-6868

25 Edward Lemons, Esq., is an attorney licensed and in practice in the State of Nevada who
26 represented Defendant David Smith, M.D., in the underlying case.

27 4. Michael Navratil, Esq.
28 Cotton, Driggs, Walch, Holley, Woloson & Thompson
400 South Fourth Street, Third Floor
Las Vegas, NV 89101
Tel: 702-791-0308

1 Michael Navratil, Esq., is an attorney licensed and in practice in the State of Nevada who
2 represented Co-Defendant David Kang, M.D. in the underlying case.

3 5. Peter Durney, Esq.
4 Durney & Brennan
5 190 West Huffaker Lane, Suite 406
6 Reno, NV 89511
7 Tel: 775-322-2923

8 Peter Durney is an attorney licensed and in practice in the State of Nevada since 1974.
9 Mr. Durney will testify as to the legal standard of care as to Defendant Stephen C. Balkenbush.
10 Mr. Durney's fees are \$400/hour for review, consultation and deposition testimony, with a two-
11 hour minimum for deposition testimony, payable in advance.

12 6. Defendants reserve the right to call as an expert witness any person identified by
13 any party in the instant case and the underlying case, or any other witnesses who may be
14 necessary to address opinions rendered by Plaintiffs' witnesses.

15 7. Defendants reserve the right to identify rebuttal expert witnesses.


16 NOTICE: Defendants will object to Plaintiffs calling any expert witness at trial who has
17 not been timely disclosed under strict compliance with NRCP 26(b)(5).

18 **AFFIRMATION**

19 The undersigned does hereby affirm that the preceding document **DOES NOT**
20 contain the Social Security number of any person.

21 DATED this 14th day of June, 2013.

22
23 PISCEVICH & FENNER

24
25 By: 
26 Margo Piscevich
27 Attorneys for Defendants
28

Piscevich & Fenner
499 West Plumb Lane, Suite 201
Reno, NV 89509 775.329.0958

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of PISCEVICH & FENNER, and that on this date I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served:

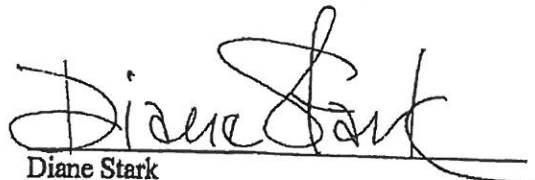
Defendants Stephen C. Balkenbush, Esq., and
Thorndal, Armstrong, Delk, Balkenbush &
Eisenger's Disclosure of Potential Expert
Witnesses

Person(s) Served:

Charles Kozak
1225 Tarleton Way
Reno, NV 89523
F: 622-0711

_____	Electronic Filing
_____	Hand Deliver
<u> X </u>	U.S. Mail
_____	Overnight Mail
_____	Facsimile (775)

DATED this 14th day of June, 2013.


Diane Stark

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2016-11-15 04:29:38 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5807912 : pmsewell

EXHIBIT 2

EXHIBIT 2

Charles R. Kozak, Attorney at Law, LLC

3100 Mill Street, Suite 115

Reno, Nevada 89502

(775) 322-1239

chuck@kozaklawfirm.com

September 4, 2013

Margo Piscevich, Esq.
Piscevich & Fenner
499 West Plumb Lane, Suite 201
Reno, Nevada 89509

RE: DeChambeau v Balkenbush

Dear Margo:

We have the following positions on the matters discussed today with regards to the above case.

1. We will make arrangements to attend the deposition of Dr. Fred Morady on October 2, 2013.
2. We will object to any experts being called in the trial on behalf of Mr. Stephen Balkenbush or Dr. Smith, other than those designated in your expert witness designation filed June 17, 2013.
3. In addition, we will be filing a motion in limine with regards to Dr. Smith testifying as an expert witness in his own case in the medical malpractice portion of the bifurcated trial, as this is prohibited by Nevada rules and statutes.

The discovery cut off has long passed for any discovery depositions of any other medical experts. You indicated you intend to call expert witnesses from the designation of Mr. Lemon several years ago. We simply cannot allow our client's rights to be jeopardized by allowing undesignated experts who have not been previously deposed to testify in the underlying case at this late date.

Sincerely,

Charles R. Kozak, Esq.

CRK/na

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2016-11-15 04:29:38 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5807912 : pmsewell

EXHIBIT 3

EXHIBIT 3

Dominique A. Pollara, Esq.*
Jason S. Barnas, Esq.*
Vanessa N. Hunter, Esq.
Jacqueline C. Zee, Esq.

Pollara
LAW GROUP

3680 American River Dr.
Suite 160
Sacramento, CA 95864
(916) 550-5880
(916) 550-5866

*Also admitted in Nevada

September 2, 2016

VIA FACSIMILE AND FIRST CLASS MAIL (775) 800-1767

Charles R. Kozak, Esq.
3100 Mill Street, Suite 115
Reno, NV 89502

Re: DeChambeau v. Balkenbush

Dear Chuck:

Enclosed please find our Expert Witness Disclosure relative to the above matter as well as our Pretrial Disclosures. These are courtesy copies. The originals are being served on you today.

I understand from reviewing the file and speaking with Ms. Piscevich that depositions of the experts previously disclosed have already occurred. If you have a different understanding please advise.

I understand you previously represented to Ms. Piscevich that you did not intend to call any of the percipient witnesses listed in your prior disclosures. If your position on this issue has changed, please advise so we can get those depositions set.

I understand that you have possession of the EPS tape relative to this matter. I need to make arrangements to take possession of the tape so it can be re-reviewed by my experts. Please advise how you would like to handle this issue. I am happy to sign a reasonable stipulation relative to the same to facilitate this.

Lastly, I was disappointed in how the mandatory settlement conference unfolded. Your stated position received through Judge Freeman surprised me given our previous

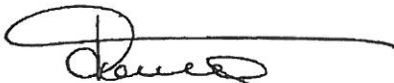
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Charles R. Kozak, Esq.
Re: DeChambeau v. Balkenbush
September 2, 2016
Page 2

telephone conversation about your desire to schedule this settlement conference. If there is any interest in resolving this case reasonably then we remain willing to have further conversations about this.

Very truly yours,

POLLARA LAW GROUP



Dominique A. Pollara
DAP:bf

1 [DISC]

2 DOMINIQUE A. POLLARA, Nevada SBN 5742
3 POLLARA LAW GROUP
3600 American River Drive, Suite 160
Sacramento, California 95864
4 (916) 550-5880 - telephone
(916) 550-5066 - fax

5 KIM MANDELBAUM
Nevada Bar No. 318
6 MANDELBAUM ELLERTON & MCBRIDE
2012 Hamilton Lane
7 Las Vegas, Nevada 89106
(702) 367-1234
8 Email: filing@memlaw.net

9 Attorneys for Defendants STEPHEN C. BALKENBUSH, ESQ.
10 and THORNDAL ARMSTRONG DELK BALKENBUSH &
EISINGER

11
12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
13 IN AND FOR THE COUNTY OF WASHOE
14

15 ANGELA DeCHAMBEAU and JEAN-
16 PAUL DeCHAMBEAU, both individually
and as Special Administrator of the Estate
17 of NEIL DeCHAMBEAU,

18 Plaintiffs,

19 vs.

20 STEPHEN C. BALKENBUSH, ESQ.; and
THORDAHL ARMSTRONG DELK
21 BALKENBUSH & EISINGER, a Nevada
Professional Corporation,

22 Defendants.
23

CASE NO. CV-12-00571

Trial Date: January 17, 2017

24 DEFENDANTS' 16.1 PRETRIAL DISCLOSURES

25 Defendants STEPHEN C. BALKENBUSH, ESQ. and THORNDAL, ARMSTRONG,
26 DELK, BALKENBUSH & EISINGER, a Nevada professional corporation, by and through
27 their counsel, Pollara Law Group, hereby submit their pretrial disclosure of information in
28 accordance with an N.R.S. 16.1(4)(A)(B)(C):

1 I. LIST OF PROSPECTIVE WITNESSES, INCLUDING REBUTTAL WITNESSES

- 2 a. Stephen Balkenbush, Esq., c/o Pollara Law Group
- 3 b. Angela DeChambeau, c/o Charles Kozak, Esq.
- 4 c. Jean Paul DeChambeau, c/o Charles Kozak, Esq.
- 5 d. David Smith, M.D., Renown Institute for Heart & Vascular Health, 1500 E.
- 6 2nd Street, Suite 400, Center B, Reno, NV 89502.
- 7 e. Fred Morady, M.D., Professor of Internal Medicine, McKay Professor of
- 8 Cardiovascular Disease, University of Michigan, 1500 E. Medical Center
- 9 Drive, SPC 5853, Ann Arbor, MI 48106-5853.
- 10 f. Rahul Doshi, M.D., 1520 San Pablo Street, Suite 4600, Los Angeles, CA 90033.
- 11 g. Hugh G. Calkins, M.D., Johns Hopkins Hospital, Carnegie Building, Room
- 12 530, 600 North Wolfe St., Baltimore, MD 21287-0409.
- 13 h. Anil Bhandari, M.D., Los Angeles Cardiology Associates, 1245 Wilshire
- 14 Blvd., Suite 703, Los Angeles, CA 90017.
- 15 i. Peter Durney, Esq., Durney & Brennan, 6900 So. McCarran Blvd., Suite 2060,
- 16 Reno, NV 89509 or 190 West Huffaker Lane, Suite 406, Reno, NV 89511.
- 17 j. Michael Navartil, Esq., John H. Cotton & Associates, Ltd., 7900 West Sahara
- 18 Avenue, Suite 200, Las Vegas, NV 89711.
- 19 k. Thomas Vallas, Esq., Hoy Chrissinger Kimmel Vallas, PC, 50 West Liberty
- 20 Street, Suite 840, Reno, NV 89501.
- 21 l. Edward J. Lemons, Esq., 6005 Plumas St., Suite 300, Reno, NV 89519-6069.

22 II. LIST OF PROPOSED EXHIBITS AND DOCUMENTS, INCLUDING REBUTTAL

23 EXHIBITS

- 24 a. The file of Stephen Balkenbush, Esq. in the underlying case, Bates Stamped
- 25 SB0001-SB02835, including emails SB2836-2930. It is anticipated the medical
- 26 records from Reno Heart Physicians (pages SB01071-01230) and Renown
- 27 Regional Medical Center, formerly known as Washoe Medical Center, (pages
- 28 SB01329-01501) will be used in the medical malpractice portion of the case,

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANGELA DECHAMBEAU and)
JEAN-PAUL DECHAMBEAU, both)
Individually and as Special)
Administrator of the ESTATE OF NEIL)
DECHAMBEAU)

Petitioners,)

vs.)

THE SECOND JUDICIAL DISTRICT)
COURT OF THE STATE OF NEVADA)
IN AND FOR THE COUNTY OF)
WASHOE and JUDGE PATRICK)
FLANAGAN)

Respondents,)

STEPHEN C. BALKENBUSH, ESQ.,)
and THORNDAL ARMSTRONG)
DELK BALKENBUSH & EISINGER,)
a Nevada professional Corporation,)

Real Parties in Interest.)
)
)
)

Electronically Filed
Dec 28 2016 08:58 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Sup. Ct. Case No.

Dist. Ct. Case No. CV12-00571

PETITIONERS' APPENDIX TO:

**NRAP 21(a)(6) EMERGENCY PETITION FOR WRIT OF MANDAMUS
AND REQUEST FOR STAY OF TRIAL**

A0001-A0156

TABLE OF CONTENTS:

<u>DOCUMENT</u>	<u>FILED</u>	<u>PAGE NO.</u>
Application for Setting	5/29/2012	A0008-A0009
Defendants' Opposition to Motion to Strike	11/30/2016	A0068-A0146
Minutes granting Summary Judgment	9/24/2013	A0020
NRCP 16.1 Joint Case Conference Report	8/17/2012	A0010-A0016
Order denying Motion to Strike	12/21/2016	A0154-A0156
Plaintiffs' Motion to Strike	11/15/2016	A0031-A0067
Pretrial Order	4/30/2012	A0001-A0007
Reply to Defendants' Opposition to Motion to Strike	12/6/2016	A0147-A0153
Scheduling Order	2/1/2016	A0027-A0030
Stipulation & Order to Amend Joint Case Conference Report	7/11/2013	A0017-A0019
Supreme Court Order of Reversal and Remand	12/24/2015	A0021-A0026

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ANGELA DECHAMBEAU, et al.,

Plaintiffs,

Case No.: CV12-00571

Dept. No.: 7

vs.

STEPHEN C. BALKENBUSH, ESQ.,
THORNDAL, ARMSTRONG, DELK,
BALKENBUSH and EISINGER, a Nevada
Professional Corporation, & DOES 1-X,
inclusive,

Defendants.

PRETRIAL ORDER

IT IS HEREBY ORDERED THAT:

No later than twenty (20) days after entry of this order, counsel for the parties shall set an Initial Mandatory Pretrial Conference, Pretrial Conference and Trial. Please contact the Judicial Assistant of the department (775) 328-3158 to schedule a setting appointment. Plaintiff's counsel is to prepare the Application for Setting form; and should the setting be a telephonic setting, the form shall be delivered to chambers prior to setting.

I. PRETRIAL CONFERENCES

A. The Initial Mandatory Pretrial Conference shall be held within sixty (60) days of this Order. The purpose of this conference is to expedite settlement or other appropriate disposition of the case. Attendance by counsel for each party will be required; however, if

1 counsel is located out of the Reno area, telephonic appearance will be acceptable and is to be
2 discussed with the Judicial Assistant during the setting appointment.

3 Counsel must be prepared to discuss the following:

- 4 (1) The status of settlement discussions and any possible court assistance;
- 5 (2) Any alternative dispute resolution techniques appropriate to this case;
- 6 (3) Any possible simplification of issues;
- 7 (4) The nature and timing of all discovery;
- 8 (5) Any special case management procedures appropriate to this case;
- 9 (6) Whether there is good cause to waive the requirements for expert witness
10 reports (NRCPP 16.1(2)(B));
- 11 (7) Whether there is good cause to limit the number and duration of
12 depositions;
- 13 (8) Whether there is good cause to limit requests for production, or to increase
14 the number of interrogatories;
- 15 (9) Whether discovery, and any other disputes, may be handled by a meeting
16 or telephonic conference with the parties and the Court without the need
17 for written motions; or without submitting discovery disputes to the
18 Discovery Commissioner;
- 19 (10) Whether any or all of the requirements of NRCPP 16.1 should be waived
20 pursuant to NRCPP 16.1(f);
- 21 (11) Any possible amendments to the pleadings or additional parties; and,
- 22 (12) Other matters as may aid in the prompt disposition of this action.
23 (See, NRCPP 1).

24 B. The Final Pretrial Conference is held approximately two weeks prior to trial. The
25 parties should be prepared to discuss the status of Motions in Limine, and formulate a program
26 for facilitating the admission of evidence

27 The conference shall be attended by:

- 28 (1) Trial or lead counsel for all parties;

- 1 (2) The parties (if the party is an entity, an authorized representative);
2 (3) A representative with negotiating and settlement authority of any insurer
3 insuring any risk pertaining to this case may attend, in person or
4 telephonically; and
5 (4) Any unrepresented parties.

6 II. PRETRIAL MOTIONS

7 A. Any motions which should be addressed prior to trial – including motions for
8 summary judgment – shall be served, filed and submitted for decision no later than thirty (30)
9 days before trial.

10 B. Motions in limine shall be served, filed and submitted for decision no later than
11 fifteen (15) days before trial. Except upon a showing of unforeseen extraordinary circumstances,
12 the Court will not entertain any pretrial motions filed or orally presented after these deadlines.

13 C. Legal memoranda submitted in support of any motion shall not exceed fifteen
14 (15) pages in length; opposition memoranda shall not exceed fifteen (15) pages in length; reply
15 memoranda shall not exceed five (5) pages in length. These limitations are exclusive of exhibits.
16 This limitation also applies to post-trial motions. The parties may request leave to exceed these
17 limits in extraordinary circumstances.

18 III. DISCOVERY

19 A. Prior to filing any discovery motion, the attorney for the moving party must
20 consult with opposing counsel about the disputed issues. Counsel for each side must present to
21 each other the merits of their respective positions with candor, specificity, and supporting
22 material.

23 B. Unless a discovery dispute is submitted directly to this Court pursuant to § IB(10),
24 supra, and if both sides desire a dispute resolution conference pursuant to NRCP 16.1(d), counsel
25 must contact the Discovery Commissioner's office at (775) 328-3293 to obtain a date and time
26 for the conference that is convenient to all parties and the Discovery Commissioner. If the
27 parties cannot agree upon the need for a conference, the party seeking the conference must file
28 and submit a motion in that regard.

1 C. A continuance of trial does not extend the deadline for completing discovery. A
2 request for an extension of the discovery deadline, if needed, must be included as part of any
3 motion for continuance.

4 D. A party objecting to a written discovery request must, in the original objection,
5 specifically detail the reasons that support the objection, and include affidavits or other evidence
6 for any factual assertions upon which an objection is based.

7 IV. TRIAL STATEMENT

8 A. A trial statement on behalf of each party shall be hand delivered to opposing
9 counsel, filed herein and a copy delivered to chambers no later than 5:00 p.m. five (5) court days
10 prior to trial.

11 B. In addition to the requirements of WDCR 5, the trial statement shall contain:

- 12 (1) Any practical matters which may be resolved before trial (e.g. suggestions
13 as to the order of witnesses, view of the premises, availability of audio or
14 visual equipment);
- 15 (2) A list of proposed general voir dire questions for the Court or counsel to
16 ask of the jury;
- 17 (3) A statement of any unusual evidentiary issues, with appropriate citations
18 to legal authorities on each issue; and
- 19 (4) Certification by trial counsel that, prior to the filing of the trial statement,
20 they have personally met and conferred in a good faith-effort to resolve
21 the case by settlement.

22 V. JURY INSTRUCTIONS

23 A. The parties shall exchange all proposed jury instructions and verdict forms ten
24 (10) court days prior to trial.

25 B. All original instructions shall be accompanied by a separate copy of the
26 instruction containing a citation to the form instruction, statutory or case authority supporting
27 that instruction. All modifications made to instructions taken from statutory authority, Nevada
28 Pattern Jury Instructions, *Devitt and Blackmar*, CALJIC, BAJI or other form instructions shall be

1 specifically noted on the citation page.

2 C. The parties shall confer regarding the proposed jury instructions and
3 verdict forms and submit these instructions and verdict forms jointly to the Court five (5) court
4 days prior to trial. The parties shall indicate which instructions and verdict forms are jointly
5 agreed upon and which are disputed.

6 D. At the time Jury Instructions are settled, the Court will consider the disputed
7 instructions and any additional instructions which could not have been readily foreseen prior to
8 trial.

9 VI. MISCELLANEOUS

10 A. The Court expects that all counsel will cooperate to try the case within the time
11 set. Trial counsel are ordered to meet and confer regarding the order of witnesses, stipulations
12 and exhibits and any other matters which will expedite trial of the case.

13 B. Jurors will be permitted to take notes during trial. Jurors will be permitted to ask
14 reasonable questions in writing during trial after the questions are screened by the Court and
15 counsel. Any party objecting to this procedure shall set forth this objection in the trial statement.

16 C. Counsel and/or the parties are ordered to specifically inform every witness that
17 they call about any orders in limine, or similar rulings, that restrict or limit testimony or evidence
18 and to further inform them that they may not offer, or mention, any evidence that is subject to
19 such an Order.

20 D. Trial counsel for all parties shall speak with the courtroom clerk, Ms. Kim Oates
21 (775) 328-3140 or Maureen Conway (775) 325-6593 no later than five (5) court days prior to
22 trial, to arrange a date and time to mark trial exhibits. All exhibits shall be marked in one
23 numbered series (Exhibit 1, 2, 3, etc.) and placed in binder(s) provided by counsel. Counsel
24 shall cooperate to insure that three identical sets of exhibits (one for the Court, one for the Clerk
25 and one for testifying witnesses) are provided to the Court. Once trial exhibits are marked by the
26 clerk, they shall remain in the custody of the clerk. When marking the exhibits with the clerk,
27 counsel should advise the clerk of all exhibits which may be admitted without objection and
28 those that may be admissible subject to reserved objections.

1 E. Any memorandum of costs and disbursements must comply with Bergman v.
2 Boyce, 109 Nev. 670, 856 P.2d 560 (1993) and Bobby Berosini v. PETA, 114 Nev. 1348, 971
3 P.2d 383 (1998).

4 F. All applications for attorney's fees shall state services rendered and fees incurred
5 for such services with sufficient specificity to enable an opposing party and the court to review
6 such application, and shall specifically address the factors set out in Schouweiler v. Yancy, 101
7 Nev. 827, 712 P.2d 786 (1985).

8 VII. CIVILITY

9 The use of language which characterizes the conduct, arguments or ethics of another is
10 strongly discouraged and is to be avoided. In the appropriate case, the Court will upon motion or
11 sua sponte, consider sanctions, including monetary penalties and/or striking the pleading or
12 document in which such improprieties appear, and may order any other suitable measure the
13 Court deems to be justified. This section of this order applies to written material exchanged
14 between counsel, briefs or other written materials submitted to the Court and conduct at
15 depositions, hearings, trial or meetings with the Court.

16 Failure to comply with any provision of this Pretrial Order may result in the imposition of
17 sanctions.

18 DATED this 30 day of April, 2012.

19
20 
21 PATRICK FLANAGAN
22 District Judge
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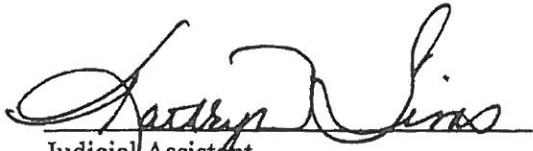
1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial
3 District Court of the State of Nevada, County of Washoe; that on this 30 day of April, 2012,
4 I electronically filed the following with the Clerk of the Court by using the ECF system which
5 will send a notice of electronic filing to the following:

6 Charles Kozak, Esq. for Estate of Neil Dechambeau, et al;

7 Margo Piscevich, Esq. and Mark Lenz, Esq. for Thorndal, Armstrong, et al.

8 I deposited in the Washoe County mailing system for postage and mailing with the
9 United States Postal Service in Reno, Nevada, a true copy of the attached document addressed
10 to:

11
12 
13
14 Judicial Assistant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ANGELA DECHAMBEAU, et al.,

Plaintiffs,

vs.

STEPHEN C. BALKENBUSH, ESQ., et al.,

Defendants.

Case No.: CV12-00571

Dept. No.: 7

APPLICATION FOR SETTING

TYPE OF ACTION: Legal Malpractice

MATTER TO BE HEARD: Trial

Date of Application: 05.29.12 Made by: Plaintiffs

COUNSEL FOR PLAINTIFF: Charles Kozak, Esq. - 622.0711

COUNSEL FOR DEFENDANT: Margo Piscevich, Esq. - 329.0958

Instructions: Check the appropriate box. Indicate who is requesting the jury.

☒ Jury Demanded by (Name): Defendants

Estimated Duration of Trial: 8 full days

[Appeared in Person - No Appl. provided]
Attorneys for Plaintiff

[Appeared in Person - No Appl. provided]
Attorneys for Defendant

MPTC - 1:15 p.m. on the 14th day of August, 2012.

PTC - 1:15 p.m. on the 26th day of September, 2013.

Trial - No. #1 Setting at 9:30 a.m. on the 14th day October, 2013.

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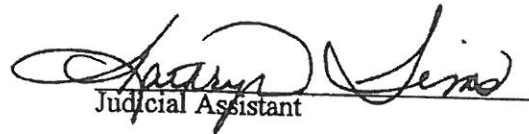
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 29 day of May, 2012, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Charles R. Kozak, Esq. for Angela Dechambeau, et al.; and

Margo Piscevich, Esq. for Stephen C. Balkenbush, Esq., et al.

I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:


Judicial Assistant

FILED

Electronically

08-17-2012:11:47:09 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3155672

1 1835

2 CHARLES R. KOZAK, ESQ.

3 Nevada State Bar No. 11179

4 1225 Tarleton Way

5 Reno, Nevada 89523

6 (775) 622-0711

7 Kozak131@charter.net

8 Attorney for the Plaintiffs

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF WASHOE

11
12 ANGLEA DECHAMBEAU and
13 JEAN-PAUL DECHAMBEAU, both
14 Individually and as SPECIAL
15 ADMINISTRATORS of the ESTATE
16 Of NEIL DECHAMBEAU,

Case No. CV12-00571

Dept. No. 7

17 Plaintiffs,

18 vs.

19 STEPHEN C. BALKENBUSH, ESQ.,
20 THORNDAL, ARMSTRONG, DELK,
21 BALKENBUSH and EISINGER,
22 A Nevada Professional Corporation,
23 And DOES I through X, inclusive,

24 Defendants.

25 NRCP 16.1 JOINT CASE CONFERENCE REPORT

26 DISCOVERY PLANNING/DISPUTE
27 CONFERENCE REQUESTED:

28 Yes _____ No XX

1 The parties, by and through their undersigned counsel, hereby submit this Joint
2 Case Conference Report, pursuant to NRCP 16.1.

3
4 **I.**

5 **PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT**

6 A. Date of filing of Complaint: March 6, 2012

7 B. Date of filing of Answer of each Defendant: March 28, 2012

8 C. Date of Early Case Conference and who attended: May 9, 2012 attended by
9 CHARLES R. KOZAK, ESQ., Counsel for Plaintiffs and MARGO PISCEVICH, ESQ.,
10 Counsel for Defendants.

11 **II.**

12 **BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND EACH CLAIM**
13 **FOR RELIEF OR DEFENSE [16.1(c)(1)]**

14 A. Description of the action: This is an action to obtain damages for legal
15 Malpractice.

16 **Plaintiff's Contention:** Attorney STEVEN BALKENBUSH, ESQ. committed
17 malpractice.

18
19 B. Claims for Relief: Damages as a result of mishandling the wrongful death of
20 Defendants' husband and father.

21 **Defendants; Contention:** Defendant BALKENBUSH did not commit legal
22 malpractice and handled the case appropriately. Also, please refer to the affirmative
23 defenses contained Defendants' Answer on file herein.

24 **III.**

25
26 **LIST OF ALL DOCUMENTS, DATA, COMPILATIONS AND TANGIBLE**
27 **THINGS IN THE POSSESSION, CUSTODY OR CONTROL OF EACH PARTY**
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4. Jean-Paul DeChambeau
c/o Charles R. Kozak
5. David Smith, MD
343 Elm Street, Suite 400
Reno, Nevada 89503
6. David Kang, MD
c/o Sierra Anesthesia
520 Hammill Lane
Reno, Nevada 8950
7. Fred Morady, M.D.
Professor of Internal Medicine
McKay Professor of Cardiovascular Disease
University Michigan
TC B1 140
1500 East Medical Center Drive
Ann Arbor, MI 48106-0311
8. William James Mazzei, M.D.
UCSD Medical Center
200 West Arbor Drive
San Diego, CA 92103-8770
9. Ronald Pearl, MD
Department of Anesthesia
Stanford, California
10. Rahul Doshi, MD
25262 Rockridge Road
Laguna Hills, CA 92653
11. Hugh G. Calkins, MD
The Johns Hopkins Hospital
Carnegie Building, Room 530
600 North Wolfe Street
Baltimore, Maryland 21287-0409
12. Anil K. Bhandari, MD
Los Angeles Cardiology Associates
1245 Wilshire Boulevard, Suite 703
Los Angeles, California 90017
13. Edward J. Lemons, Esq.
Lemons, Grundy & Eisenberg

6005 Plumas Street, Suite 300
Reno, Nevada 89519-6069

14. John H. Cotton, Esq.
Michael D. Navratil, Esq.
John H. Cotton & Associates, Ltd.
200 West Sahara Avenue, Suite 420
Las Vegas, Nevada 89102

15. Casey Blitt, MD
Old Pueblo Anesthesia
5700 East Pima, Suite E
Tucson, Arizona 85712

16. Douglas H. McConnell, MD
2650 Elm Avenue, Suite 318
Long Beach, California 90806

17. Thomas Vallas
Renown Health
1155 Mill Street
Reno, Nevada 89502-1474

V.

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

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

1. Plaintiffs' view: None.
2. Defendants' view: None at this time.

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

1. Plaintiffs' disclosures: All records provided STEVEN BALKENBUSH
2. Defendants' Disclosures: Same as above.

B. Subjects on which discovery may be needed:

1. Plaintiffs' view: Complete medical records from Renown Regional
Medical Center, Reno Heart Physicians, Sierra Anesthesiology and possibly others.

1 2. Defendants' view: Defendants have provided all documents from the
2 Defendants' law firm.

3 C. Should discovery be conducted in phases or limited to, or focused upon,
4 particular issues? None

5 The parties have agreed to the following discovery phases and dates: N/A

6 D. What changes, if any, should be made in limitations on discovery imposed
7 under these rules and what, if any, other limitations should be imposed? N/A

8 E. What, if any, other orders should be entered by Court under Rule 26(c) or Rule
9 16(b) and (c):

10 1. Plaintiffs' view: None at this time.

11 2. Defendants' view: None of this time.

12 F. Estimated time for Trial: Ten (10) days

13
14
15 VI.

16 DISCOVERY AND MOTION DATES [16.1(c)(5)-(8)]

17 A. Dates agreed by the parties:

18 1. Close of Discovery: Ninety (90) days prior to Trial or July 16, 2013

19 2. Final date to file motions to amend pleadings or add parties without a
20 further Court Order: One Hundred Twenty (120) days prior to trial of June 17, 2013

21 3. Final dates for expert disclosures: One Hundred Twenty (120) days
22 prior
23 to trial of June 17, 2013

24 4. Expert reports are waived

1 5. Rebuttal expert witnesses: Ninety (90) days prior to trial or July 16,
2 2013

3 6. Final date to file dispositive motions: Sixty (60) days prior to trial or
4 August 15, 2013

5
6 **VII.**

7 **JURY DEMAND [16.1(c)(10)]**

8 A jury demand has been filed by Defendants.

9 **VIII.**

10 **INITIAL DISCLOSURES/OBJECTIONS [16.1(a)(1)]**

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

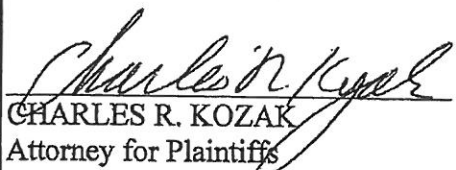
15
16 This report is signed in accordance with Rule 26(g)(1) of the Nevada Rules of Civil
17 Procedure. Each signature constitutes a certification that, to the best of the signers'
18 knowledge, information and belief, formed after a reasonable inquiry, the disclosures made
19 by the signers are complete and correct as of this time.

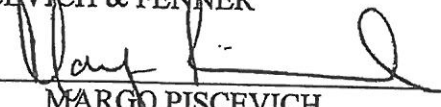
20 **AFFIRMATION**

21
22 The undersigned does hereby affirm that the preceding document **DOES NOT**
23 contain the Social Security number of any person.

24 DATED: August 17, 2012

DATED: August 16, 2012
PISCEVICH & FENNER

25 
26 CHARLES R. KOZAK
27 Attorney for Plaintiffs

By 
MARGO PISCEVICH
Attorneys for Defendants

ORIGINAL

FILED
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07-11-2013:11:49:46 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3847834

1 3980
2 MARGO PISCEVICH
3 Nevada State Bar No. 000917
4 MARK J. LENZ
5 Nevada State Bar No. 004672
6 PISCEVICH & FENNER
7 499 West Plumb Lane, Suite 201
8 Reno, Nevada 89509
9 775-329-0958
10 Attorneys for Defendants
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

ANGLEA DECHAMBEAU and
JEAN-PAUL DECHAMBEAU, both
Individually and as SPECIAL
ADMINISTRATORS of the ESTATE
OF NEIL DECHAMBEAU,

Plaintiffs,

vs. .

STEPHEN C. BALKENBUSH, ESQ.,
THORNDAL, ARMSTRONG, DELK,
BALKENBUSH and EISINGER,
A Nevada Professional Corporation,
And DOES I through X, inclusive,

Defendants.

Case No. CV12-00571

Dept. No. 7

STIPULATION AND ORDER TO AMEND JOINT CASE CONFERENCE
REPORT

The parties hereto, by and through their respective counsel, hereby stipulate to
amend the Joint Case Conference Report that was filed on August 17, 2012.

Piscevich & Fenner
499 West Plumb Lane, Suite 201
Reno, NV 89509 775.329.0958

1 Pursuant to the Joint Case Conference Report, the close of discovery is July 16,
2 2013.

3
4 There still remains approximately four (4) or five (5) depositions to be taken and it
5 is anticipated that the depositions can be completed before August 30, 2013.

6 Presently the following depositions have been scheduled:

7 July 23, 2013 - Deposition of Richard M. Teichner, one of plaintiffs' experts

8 July 31, 2013 - Deposition of Gerald Gillock, one of plaintiffs' experts

9 August 7, 2013 - Deposition of Peter Durney, one of defendants' experts

10
11 There appears to be remaining two lay witnesses disclosed by plaintiffs, namely,
12 Doris Stewart and Pastor Dave Smith and dates are being obtained by plaintiffs' counsel
13 for these depositions.

14
15 The parties hereby agree and stipulate that the above depositions may go forward
16 and that the remaining two depositions shall be scheduled before August 30, 2013.

17 **AFFIRMATION**

18 The undersigned does hereby affirm that the preceding document **DOES NOT** contain

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1 the Social Security number of any person.

2 DATED this 9 day of July, 2013.


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6 
7 CHARLES KOZAK, ESQ.
8 Attorney for Plaintiffs

9 PISCEVICH & FENNER
10 By: 
11 MARGO PISCEVICH
12 Attorneys for Defendants

13 ORDER

14 IT IS HEREBY SO ORDERED.

15 Dated this 11th day of July, 2013.

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18 DISTRICT JUDGE
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Joey Orduna Hastings
Clerk of the Court
Transaction # 4019076

CASE NO. CV12-00571

A. DECHAMBEAU et al. vs. STEPHEN BALKENBUSH et al.

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

09/24/13
HONORABLE
PATRICK
FLANAGAN
DEPT. NO. 7
K. Oates
(Clerk)
S. Koetting
(Reporter)

ORAL ARGUMENTS IN RE: DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

Charles Kozak, Esq., was present in Court on behalf of the Plaintiffs,
who were not present.

Margo Piscevich, Esq., was present in Court on behalf of the
Defendants, with Defendant Stephen Balkenbush being present.
1:54 p.m. – Court convened with Court, counsel and Defendant
Balkenbush present.

The Court provided a procedural history of this case, further advising
counsel that he would like them to begin with argument as to the
medical malpractice action. Further, the Court found that the
Plaintiffs' opposition does not state a claim for punitive damages, and
therefore, that claim is forfeited and dismissed.

Counsel for the Defendants addressed the Court and argued in
support of granting Defendants' Motion for Summary Judgment.
Counsel for the Plaintiffs addressed the Court and argued in support
of the Court denying the Defendants' Motion for Summary Judgment.
Counsel for the Defendants further argued in support of granting
Defendants' Motion for Summary Judgment.

Respective counsel presented additional argument.

COURT ORDERED: Defendants' Motion for Summary Judgment is
GRANTED. It is further ordered that counsel for the Defendants will
prepare the proposed order.

3:11 p.m. – Court stood in recess.

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2015-12-24 03:45:27 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5294172

IN THE SUPREME COURT OF THE STATE OF NEVADA

CV12-00571
No. 64463 07

FILED

NOV 24 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ANGELA DECHAMBEAU AND JEAN-PAUL DECHAMBEAU, BOTH INDIVIDUALLY AND AS SPECIAL ADMINISTRATORS OF THE ESTATE OF NEIL DECHAMBEAU,
Appellants,
vs.
STEPHEN C. BALKENBUSH, ESQ.; AND THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, A NEVADA PROFESSIONAL CORPORATION,
Respondents.

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court summary judgment in a legal malpractice action. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellants Angela and Jean-Paul DeChambeau sued respondents for legal malpractice, alleging in pertinent part that respondents, who represented the DeChambeaus in a medical malpractice action, breached their duty to the DeChambeaus by mismanaging the medical malpractice case and instead voluntarily dismissing the action without obtaining necessary discovery to move the case to trial.

Respondents moved for summary judgment, arguing that the DeChambeaus could not establish the elements of the underlying medical malpractice claim, namely the physician's breach of the standard of care

and causation, and that they likewise could not establish that any of the alleged negligent acts in the legal malpractice action caused the DeChambeaus damages, i.e., that if respondents had handled the medical malpractice case differently, the DeChambeaus would have prevailed in the medical malpractice case. The DeChambeaus opposed the motion, arguing that two disputed factual issues precluded summary judgment: (1) whether the defendant doctor in the medical malpractice action, David Smith, M.D., failed to timely perform a heart procedure on Neil DeChambeau, and thus breached the medical standard of care, and (2) whether respondent Stephen Balkenbush failed to identify and prosecute the medical malpractice given the weight of evidence that existed against the doctor, and thus breached the legal standard of care. The district court granted summary judgment, finding that the DeChambeaus failed to demonstrate the causation element of their cause of action, that is, whether Balkenbush's failure to engage in written discovery and move the case to trial caused any damages. This appeal followed.

A legal malpractice claim requires proof of "an attorney-client relationship; a duty owed to the client by the attorney, breach of that duty, and the breach as proximate cause of the client's damages." *Semenza v. Nev. Med. Liab. Ins. Co.*, 104 Nev. 666, 667-68, 765 P.2d 184, 185 (1988). Proof of such a claim generally requires expert evidence to establish the attorney's breach of care and "an expert witness may be required to prove the causation issue." *Allyn v. McDonald*, 112 Nev. 68, 71, 910 P.2d 263, 266 (1996). In a medical malpractice action, medical expert testimony regarding standard of care and causation must be stated to a reasonable

degree of medical probability. *Morsicato v. Sav-On Drug Stores, Inc.*, 121 Nev. 153, 158, 111 P.3d 1112, 1116 (2005).

Here, although respondents contend that the DeChambeaus' expert witness, Dr. Mark Seiffert, did not offer any testimony on causation, Dr. Seiffert opined that Dr. Smith breached the standard of care by not immediately performing a pericardiocentesis procedure following Neil's cardiac arrest, and more specifically, he testified that to a reasonable degree of medical certainty, Dr. Smith did not perform a pericardiocentesis until after the echocardiogram results were obtained, which was more than 10 minutes after the cardiac arrest. Dr. Seiffert testified that the medical records showed that an echocardiogram machine arrived about 10 minutes after Neil's cardiac arrest, his pulse was restored about 5 minutes later, and to a reasonable degree of medical certainty, the restoration of the pulse occurred immediately following the pericardiocentesis procedure, as that procedure removed the blood from the pericardial space, allowing the heart to pump again. While Dr. Seiffert did not use the word causation, there is no dispute that Neil's death was caused by an anoxic brain injury as a result of his pulse not being restored for about 15 minutes, and Dr. Seiffert opined that Dr. Smith breached the standard of care by not immediately performing the procedure necessary to restore Neil's pulse.

Although respondents also contend that the DeChambeaus' expert legal witness did not testify that Balkenbush's conduct was a proximate cause of any damages, their expert testified that there was a breach of the standard of care with regard to Balkenbush actively pursuing the case. In particular, the expert concluded that, given the

medical records indicating that Dr. Smith did not immediately perform the procedure necessary to restore Neil's pulse, Balkenbush breached his duty to the DeChambeaus in handling discovery, failing to take depositions of fact witnesses and defendants, failing to obtain a certain medical record for close to three years by subpoena or by seeking a court order while not engaging in any written discovery during that period, failing to get the case to a settlement conference, failing to communicate with expert witnesses, and failing to obtain an extension for retaining a new expert to replace an expert who changed his opinion. Without using the word causation, the expert indicated that these breaches led to the loss of a meritorious medical malpractice claim in that the medical malpractice action had sufficient issues to go to trial.

The DeChambeaus supported their arguments against summary judgment with admissible evidence, including transcripts of deposition testimony and medical records. Viewing the evidence in the light most favorable to the DeChambeaus, and drawing reasonable inferences in their favor, summary judgment should have been denied. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (providing that in reviewing a motion for summary judgment, "the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party" and recognizing that summary judgment is appropriate only when "the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains"); *Sprague v. Lucky Stores, Inc.*, 109 Nev. 247, 249, 849 P.2d 320, 322 (1993) (explaining that summary judgment is improper when "a reasonable jury could return a verdict for the nonmoving party"); see