

1 Code 3795
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11 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

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

13 ANGELA DECHAMBEAU, et al.,

14 Plaintiff

Case No.: CV12-00571

15 vs.

Dept. No.: 7

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

17 Defendants

18 **REPLY TO DEFENDANTS' OPPOSITION TO MOTION TO STRIKE**

19 On November 15, 2016, Plaintiffs' Motion to Strike was filed. On November 30, 2016,
20 Defendants filed their Opposition. Plaintiffs hereby reply. Plaintiffs' Reply is brought pursuant
21 to the following Points and Authorities along with the record herein.

22 **POINTS AND AUTHORITIES**

23 On April 30, 2012, this Court entered its Pretrial Order where it specifically stated that a
24 "continuance of trial does not extend the deadline for completing discovery" and any extension
25 for such must be made by Motion.

26 Subsequently, trial was set for October 14, 2013.
27
28

1 On August 17, 2012, the parties filed their Case Conference Report where they “agreed”
2 that the final date for “expert disclosures” would be 120 days prior to trial or June 17, 2013 and
3 that discovery would close 90 days prior to trial or July 16, 2013.
4

5 In a paper dated June 14, 2013, Defendants disclosed a total of five expert witnesses,
6 Fred Marady, M.D., David Smith, M.D., Edward Lemons, Esq., Michael Navratil, Esq. and
7 Peter Durney, Esq. (See Motion to Strike at Exhibit 1).
8

9 On August 14, 2013, Defendants filed their Motion for Summary Judgment.
10

11 In a letter to Defendants’ counsel dated September 4, 2013, Plaintiffs’ counsel
12 confirmed: “We will object to any experts being called in the trial on behalf of Mr. Stephen
13 Balkenbush or Dr. Smith, other than those designated in your expert witness designation filed
14 June 17, 2013... The discovery cut off has long passed for any discovery depositions of any
15 other medical experts.” (See Motion to Strike at Exhibit 2).
16

17 On September 3, 2013, Plaintiffs filed their Opposition to Motion for Summary
18 Judgment and on September 6, 2013, Defendants filed their Reply. Following oral argument
19 and on September 24, 2013, this Court granted Defendants’ Motion for Summary Judgment.
20 The Court’s Order came 20 days before the date set for trial.

21 Subsequently, Plaintiffs appealed. On November 24, 2015, the Nevada Supreme Court
22 entered its Order of Reversal and Remand. Nowhere in the Order did it state that discovery was
23 re-opened. A Supreme Court’s decision and remand does not alter discovery deadlines.
24 Discovery deadlines “remain in place absent a party’s motion to extend deadlines and a
25 subsequent order by the trial court.” Douglas v. Burley 134 So.3d 692, 697 (Miss 2012).
26

27 Although no such Motion was made by the Balkenbush Defendants, this Court would
28 enter a Scheduling Order on February 2, 2016 that “initial expert disclosures” be made “on or

1 before September 3, 2016” and that all discovery be completed by “December 2, 2016”. The
2 Court’s Scheduling Order clearly contradicts its Pretrial Order. Furthermore, “initial expert
3 disclosures” were made by Defendants on June 14, 2013, thirty-two months prior to the
4 Scheduling Order.
5

6 Attempting to capitalize on the Court’s inadvertence, Defendants submitted a Disclosure
7 on September 2, 2016 identifying six experts, Fred Morady, M.D., David Smith, M.D., Edward
8 Lemons, Esq., Michael Navratil, Esq., Peter Durney, Esq. and, for the first time, Hugh Calkins,
9 M.D. (See Motion to Strike at Exhibit 3).
10

11 Once Calkins was disclosed as an expert in CV12-00571, Plaintiffs’ counsel objected in
12 writing and gave his reasons why to Defendant. When Defendants’ counsel refused to withdraw
13 her designation of Calkins as an expert, Plaintiffs’ Motion to Strike was filed. Defendants’
14 Opposition followed.
15

16 Notably, in opposing the Motion, Defendants have cited no case law of their own but
17 instead offer their analogy of the cases cited by Plaintiffs.

18 Contrary to this analogy, Douglas is indeed directly on point. Following the completion
19 of discovery, Summary Judgment was entered against Burley and he appealed. The Supreme
20 Court reversed and remanded the case to the trial court. Upon remand, Burley designated
21 Rosenhan as an expert. A Motion to Strike was filed where it was argued that the designation of
22 Rosenhan was untimely and in violation of Rule 26. After hearing the Motion, the trial court
23 refused to strike Rosenhan and directed the parties to enter into a new agreed scheduling Order.
24 An Interlocutory Appeal was then filed.
25

26 On Appeal, the Supreme Court found the trial court abused its discretion in refusing to
27 strike the designation of Rosenhan. In rendering its Opinion, the Supreme Court stated “the
28

1 plaintiffs are incorrect that, when this Court remands a case, it completely starts over as with a
2 'clean slate.'" "Thus, upon remand, prior orders governing discovery remain in place absent a
3 party's motion to extend deadlines and a subsequent order by the trial court." Since there was
4 no such Motion, the Supreme "Court's decision and remand did not alter discovery deadlines".
5 Id at 697.

7 The Opinion goes on to point out "plaintiffs designated Rosenhan approximately six
8 years after filing the Complaint, five and a half years after the expert-designated deadline, and
9 five years after the close of discovery." Moreover, all discovery was completed at the time of
10 the first Appeal. Under Rule of Civil Procedure 26, a party has a duty to timely supplement its
11 responses respecting expert witness disclosures. Burley failed in this regard. As found, "the
12 plaintiffs presented no evidence of an excusable oversight." Id at 698.

14 With respect to the case at hand, NRCP 26(e) also provides that a party has a duty to
15 timely supplement its expert witness disclosures. The disclosure of Calkin as an expert comes
16 54 months after the Complaint was filed, 39 months after the agreed upon deadline for expert
17 disclosures, 38 months after the agreed upon deadline for discovery and 10 months after the
18 Supreme Court's Order of Reversal. At no time did Defendants file a Motion to extend the
19 deadline for expert disclosures set forth in the Joint Case Conference Report. When Summary
20 Judgment was granted on September 24, 2013, all discovery was completed, but for the
21 deposition of Dr. Morady, and the case was ready for trial.

24 In their Opposition, the Balkenbush Defendants have failed to address NRCP 26 or
25 refute Plaintiffs' argument that Calkins could have been disclosed on June 14, 2013 along with
26 Defendants' five other experts. Likewise, Defendants have failed to refute that Calkins' expert
27

1 “testimony would be merely cumulative” since they “have timely designated two other medical
2 experts upon which they can rely.” (See Plaintiff’s Motion to Strike at Exhibit 1, page 1,2).

3
4 As cited in Plaintiffs’ Motion to Strike, NRCP 37(c)(1) provides: “A party that without
5 substantial justification fails to disclose information required by Rule 16.1, 16.2 or 26 (e)(1), or
6 to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is
7 harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or
8 information not so disclosed.” A failure to timely disclose expert testimony is not substantially
9 justified where “the need for such testimony could reasonably have been anticipated.” Plumley
10 v. Mockett 836 F.Supp.2d 1053, 1064 (C.D. Cal. 2010). In their Opposition, the Balkenbush
11 Defendants failed to address Rule 37 or refute that the expert testimony of Calkin could have
12 reasonably been anticipated when they disclosed their experts in a paper dated June 14, 2013.

13
14 Defendants’ argument that Calkins was designated an expert in CV07-02028 is of no
15 consequence to the disclosure deadline in CV12-00571. Furthermore, Kozak and Lusiani were
16 not counsel for the DeChambeaus during litigation of CV07-02028 where the malpracticing
17 attorney Balkenbush appeared for them instead. Calkins could certainly have changed his
18 expert opinions since the 2007 case and Plaintiffs’ current counsel have the right to question
19 him in the manner they see fit.
20

21
22 Defendants’ argument that Calkins was previously disclosed as a “fact witness” in
23 CV12-00571 is also unavailing. As noted by the court in Wingates, LLC v. Commonwealth
24 Insurance 21 F.Supp.3d 206 (E.D.Ny. 2014), the fact that plaintiffs previously disclosed Hess as
25 a possible lay witness “does not cure their failure to disclose him as an expert”. Id at 215-216.

26
27 Defendants argue there will be no prejudice to the DeChambeaus because the deposition
28 of Calkins can be taken upon written questions. Such argument is also unavailing. If a party

1 has not been diligent in meeting disclosure deadlines, the court, when adjudicating a Motion on
2 the disclosure, generally will not consider any prejudice the dilatory party may experience or the
3 lack of prejudice his opponent may experience with the ruling. Marolf v. Aya Aguirre 2011
4 WL 6012203 *4 (D.Neb. Dec. 1, 2011). Nevertheless, Plaintiffs have a right to depose Calkins
5 in person instead of submitting written questions which he could solicit Defendants' counsel for
6 assistance in answering.
7

8 Despite the various analogies offered by the Balkenbush Defendants, the case cited by
9 Plaintiffs held that untimely disclosures will not be permitted. Defendants have failed to cite
10 any Rule or case law which supports their position.
11

12 As shown, an Order striking Calkins as an expert witness is well warranted. Plaintiff
13 request such Order issue from this honorable Court.
14

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

17 Dated this 6th day of December 2016.

18 /s/ R. Craig Lusiani, Esq.
19 R. CRAIG LUSIANI, ESQ.
20 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 December 6th, 2016, I electronically filed the **Reply to Defendants' Opposition to 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

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

ANGELA DECHAMBEAU, et al., Case No.: CV12-00571
Plaintiff, Dept. No.: 7
vs.
STEPHEN C. BALKENBUSH, ESQ.,
et al.,
Defendants.

ORDER

Currently before the Court is Plaintiff ANGELA DECHAMBEAU's (hereinafter "Plaintiff") *Motion to Strike*, filed on November 15, 2016. On November 30, 2016, Defendants STEPHEN C. BALKENBUSH ET AL. (hereinafter "Defendants") filed *Opposition to Plaintiff's Motion to Strike*. On December 6, 2016, Plaintiff filed *Reply to Defendants' Opposition to Motion to Strike* and submitted this matter to the Court for decision. On October 17, 2013, this Court issued an *Order* granting Defendants' *Motion for Summary Judgment*. Plaintiff appealed to the Nevada Supreme Court, whereby the Court issued an *Order of Reversal and Remand* on November 24, 2015. This matter was subsequently remanded back to this Court.

On February 1, 2016, the Court issued a *Scheduling Order* requiring the parties to make initial expert disclosures pursuant to NRCP 16.1(a)(2) on or before September 3, 2016 and rebuttal experts on or before October 3, 2016. On September 2, 2016, Defendants submitted a *Disclosure* identifying six experts, Fred Morady,

1 M.D., David Smith, M.D., Edward Lemons, Esq., Michael Navratil, Esq., Peter
2 Durney, Esq. and, Hugh Calkin, M.D. Plaintiff has filed the instant *Motion*
3 requesting the Court strike Defendants' expert disclosure, Hugh Calkin, M.D., as
4 untimely.

5 Plaintiff asserts that Defendants' expert disclosures are bound by the August
6 17, 2012, *Joint Case Conference Report*, requiring the disclosure of expert witness be
7 120 days prior to June 17, 2013. Therefore, Plaintiff argues that Defendants' expert
8 disclosure of Hugh Calkin, M.D., on September 2, 2016 is untimely and should be
9 stricken. The Court does not agree. As it stands, by entering its *Order* granting
10 *Defendants' Motion for Summary Judgement*, this Court dismissed Plaintiff's claims
11 set forth in their *Complaint*. Thus, the Court does not find that the parties should be
12 bound by the August 17, 2012 *Joint Case Conference Report* discovery deadline.
13 Therefore, the Court finds that the February 1, 2016, *Scheduling Order* is appropriate
14 and properly sets forth the discovery deadlines in this matter.

15 Accordingly, and good cause appearing, Plaintiff's *Motion to Strike* is DENIED.
16 IT IS SO ORDERED.

17 DATED this 21 day of December, 2016.

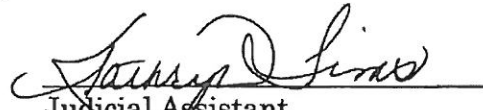
18 
19 PATRICK FLANAGAN
20 District Judge
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CERTIFICATE OF SERVICE

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 21 day of December, 2016, 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., attorney for Plaintiff; and
Dominique A. Pollara, Esq., attorney for Defendants.


Judicial Assistant

DS00000052

Defendants DAVID SMITH, M.D. and BERNDT, Electronic Filed
Dec 28 2016 08:58 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

2 DAVEE, GANCHAN, ICHINO, JUNEAU, NOBLE, SEHER, SMITH
3 SWACKHAMER, THOMPSON, WILLIAMSON and ZELICK, 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

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

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

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

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

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

DATED this 23rd day of March, 2010.

LEMONS, GRUNDY & EISENBERG
Attorney for Defendants
DAVID SMITH, M.D. and
BERNDT, CHANEY-ROBERTS,
DAVEE, GANCHAN, ICHINO,
JUNEAU, NOBLE, SEHER, SMITH,
SWACKHAMER, THOMPSON,
WILLIAMSON and ZEBRACK, LTD.

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

LEMONS, GRUNDY
& EISENBERG
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405 PLEASANT STREET
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DS00000054

CERTIFICATE OF SERVICE

Pursuant to NRC 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

☒ Hand Delivery
☐ U.S. Mail
☐ Overnight Mail
☐ Facsimile

DATED this 23rd day of March, 2010.

D. Hesse

INDEX OF EXHIBITS

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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

DS00000056

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 case 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.

DS00000058

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 the 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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CV12-00571
2016-11-30 05:50:48 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5830361 : pmsewell

EXHIBIT 6

EXHIBIT 6

5267-D

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

ANGELA DECHAMBEAU and) Case No. CV12-00571
JEAN-PAUL DECHAMBEAU, both)
Individually and as SPECIAL) Dept. No. 7
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.)

PLAINTIFFS' SECOND SUPPLEMENTAL 16.1 DISCLOSURES

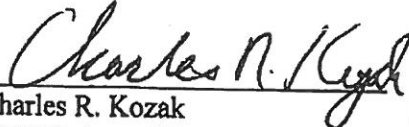
Plaintiffs, ANGELA DeCHAMBEAU, JEAN-PAUL DeCHAMBEAU and THE
ESTATE OF NEIL DeCHAMBEAU, by their Attorney of Record, CHARLES R. KOZAK,
ESQ., hereby provide the following list of documents as Plaintiffs' Second Supplemental
Disclosures in accordance with Rule 16.1:

I. DOCUMENTS

<u>DOCUMENT DESCRIPTION</u>	<u>BATES NUMBER</u>	<u>DATE</u>
1. Expert Witness Report of Ronald Pearl, M.D.	DS00428-32	3/18/10
2. Declaration of Huge G. Calkins, M.D.	DS00433-35	3/22/10
3. Declaration of Anil K. Bhandari, M.D.	DS00127-31	3/23/10
4. Expert Witness Report of Rahul N. Doshi, M.D.	DS00197	3/2010
5. Affidavit of Fred Morady, M.D.	SB02271	8/29/07
6. Affidavit of William Mazzei, M.D.	SB01729	9/1/07

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

DATED this 26th day of June, 2013.


Charles R. Kozak
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Reno, Nevada 89523
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Clerk of the Court
Transaction # 5830361 : pmsewell

EXHIBIT 7

EXHIBIT 7

5267

1 DISC
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10
11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
12
13 IN AND FOR THE COUNTY OF WASHOE

14 ANGLEA DECHAMBEAU and
15 JEAN-PAUL DECHAMBEAU, both Case No. CV12-00571
16 Individually and as SPECIAL
17 ADMINISTRATORS of the ESTATE Dept. No. 7
18 Of NEIL DECHAMBEAU

19 Plaintiffs,

20 vs.

21 STEPHEN C. BALKENBUSH, ESQ.,
22 THORNDAL, ARMSTRONG, DELK,
23 BALKENBUSH and EISINGER,
24 A Nevada Professional Corporation,
25 And DOES 1 through X, inclusive.

26 Defendants.

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1 Plaintiffs, ANGELA DECHAMBEAU and JEAN-PAUL DECHAMBEAU, both
2 individually and as SPECIAL ADMINISTRATORS of the ESTATE OF NEIL
3 DECHAMBEAU, by and through their counsel of record, CHARLES R. KOZAK, ESQ.,
4 hereby submits their pretrial disclosure of information in accordance with NRCP Rule
5 16.1(3).

1
2 **I. LIST OF PROSPECTIVE WITNESSES, INCLUDING REBUTTAL WITNESSES**

- 3 (a) Angela DeChambeau, c/o Charles R. Kozak, Attorney at Law LLC.
4 (b) Jean-Paul DeChambeau, c/o Charles R. Kozak, Attorney at Law LLC.
5 (c) Mark J. Seifert, M.D., 4037 Montebello Ave., Phoenix, AZ 85018
6 (d) Gerald I. Gillock, Esq.; Gerald I. Gillock & Associates, 428 South Fourth Street,
7 Las Vegas, Nevada 89101
8 (e) Richard M. Teichner, CPA; 3500 Lakeside Court, Reno, Nevada 89509
9 (f) Michael D. Navratil, Esq. by deposition; c/o Margo Piscevich, Piscevich &
10 Fenner
11 (g) Fred Morady, M.D., by deposition on written questions and by oral deposition:
12 c/o Margo Piscevich, Piscevich & Fenner
13

14
15 **II. LIST OF PROPOSED EXHIBITS AND DOCUMENTS, INCLUDING**
16 **REBUTTAL EXHIBITS**

- 17 (a) The file of Stephen Balkenbush, Bates stamped SB0001-SB02835, including
18 emails SB2836-SB2930 may be used in both the underlying medical malpractice
19 case as well as in the legal malpractice case. Likewise, medical records from
20 Reno Heart Physicians (SB01071-01230) and Renown Medical Center, f/k/a
21 Washoe Medical Center (SB01329-01501) may be used in the both the medical
22 malpractice and the legal malpractice portions of the case.
23 (b) Additionally, the following documents may be used in both the medical
24 malpractice and legal malpractice portions of the case:
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<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	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
14. Email Balkenbush to Morady re revised paragraph 2 of affidavit with affidavit attached	DS00252-256	8/27/07
15. Email from Atchley to Morady with affidavit attached (only pages 1-2)	DS00257-259	8/27/07
16. Letter from Balkenbush to Patricia	DS00260-262	10/24/06

1	Levan, M.D. re med records request		
2	17. Letter from Balkenbush to Reno	DS00263-265	10/24/06
3	Heart Physicians re med records request		
4	18. Letter from Balkenbush to St. Mary's	DS00266-268	10/24/06
5	re med records request		
6	19. Letter from Balkenbush to Washoe	DS00269-271	10/24/06
7	Medical Center re med records request		
8	20. Copy of Washoe Medical Center med	DS00272-273	10/23/06
9	records request		
10	21. Letter from Renown to Balkenbush re	DS00274	11/2/06
11	refusal due to documentation needed		
12	22. Copy of letter from Balkenbush to	DS00275	10/24/07
13	Washoe Medical Center re med records		
14	request		
15	23. Letter from Balkenbush to Morady re	DS00276	3/22/07
16	enclosing DeChambeau's med records		
17	24. Letter from White, Meany to	DS00277	3/28/07
18	Balkenbush re Balkenbush substituting		
19	back in as counsel		
20	25. Letter from Balkenbush to S. White with	DS00278-280	4/5/07
21	file-stamped appearance enclosed		
22	26. Letter from Vallas of Renown to	DS00281-283	4/6/07
23	Balkenbush with 2 pages of med records		
24	27. Letter from Balkenbush to Moray enclosing	DS00284-286	6/25/07
25	2 pages of med records from Renown		
26	28. Letter from Balkenbush to Blitt, M.D. re	DS00287-288	6/25/07
27	transferring Bates-stamped records		
28	D00001-D00350		
	29. Letter from Balkenbush to Mazzei, M.D.	DS00289-290	8/17/07
	Transferring Bates-stamped records		
	D00001-D00350		

1	30. Letter from Mazzei, M.D. to Balkenbush with statement for services (marked paid 9/18/07)	DS00291-292	9/1/07
2			
3	31. Copy of \$1,000 check paid by Thorndal to Mazzei, M.D.	DS00293	9/18/07
4			
5	32. Letter from Blitt, M.D. to Thorndal re billing	DS00294	11/1/07
6	33. Letter from Lemons to Renown re med records	DS00295- 296	11/7/07
7			
8	34. Letter from Lemons to Levan, M.D. re med records	DS00297-298	11/7/07
9			
10	35. Fax from Balkenbush to Navratil re affidavit of Mazzei (affidavit not attached to fax)	DS00299-300	11/14/07
11			
12	36. Letter from Balkenbush to Lemons re 16.1 production and medical releases	DS00301-305	11/8/07
13			
14	37. Letter from Balkenbush to Lemons re tax returns for 2003, 2004 and 2005 with returns attached	DS00306-309	11/19/07
15			
16	38. Letter from Balkenbush to Cotton re Plaintiffs' 16.1 production	DS00310-311	11/8/07
17			
18	39. Letter from Balkenbush to Cotton re med records authorizations and tax returns	DS00312-318	11/19/07
19			
20	40. Fax from Thorndal to Cotton re Summons and affidavit of service for Kang, M.D. and Rinehart, Ltd.	DS00319-328	9/19/07
21			
22	41. Letter from Lemons to Balkenbush re enclosing copy of the original Joint Case Conference Report (not attached)	DS00329	2/15/08
23			
24	42. Letter from Navratil to Balkenbush re scheduling Plaintiff's depositions	DS00330	9/19/08
25			
26	43. Letter from Navratil to Balkenbush re scheduling Plaintiff's deposition	DS00331	7/21/08
27	44. Letter from Navratil to Balkenbush re	DS00332	4/6/08
28			

1	scheduling Plaintiff's deposition		
2	45. Letter from Balkenbush to Navratil	DS00333	4/10/08
3	requesting additional time to respond		
4	to Navratil's discovery requests		
5	46. Letter from Balkenbush to Lemons	DS00334	4/10/08
6	requesting additional time to respond		
7	to Lemon's discovery requests		
8	47. Letter from Lemons to Balkenbush	DS00335	10/16/08
9	re conference call with all counsel re		
10	scheduling depositions		
11	48. Letter from Lemons to Balkenbush	DS00336-338	11/21/08
12	re Stipulation and Order Re: Discovery		
13	attached		
14	49. Letter from Lemons to Balkenbush re	DS00339	2/4/09
15	Stipulation and Order to Continue Trial		
16	Date and Re-Set Discovery deadlines		
17	50. Letter from Navratil to Balkenbush and	DS00340	2/2/09
18	Lemons re moving disclosure deadline back		
19	30 days as depositions of parties not done yet		
20	51. Letter from Navratil to Lemons enclosing	DS00341-344	2/2/09
21	proposed stipulation and order amending		
22	the discovery deadlines and trial date		
23	52. Letter from Balkenbush to Morady re trial	DS00345-346	3/35/10
24	on July 19, 2010 and enclosing defense		
25	expert reports		
26	53. Letter from Balkenbush to Morady re	DS00347-348	3/25/10
27	transmitting Prucka DVD and letter from		
28	Lemons re Prucka disk		
	54. Email Mazzei to Balkenbush re signing	DS00349	8/30/07
	affidavit		
	55. Fax from Balkenbush to Mazzei with	DS00350-354	8/30/07
	Mazzei's affidavit attached		

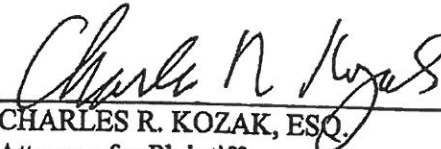
1	56. Email from Mazzei to Balkenbush re not having received revised report	DS00355	8/29/07
2	57. Settlement fund receipt for \$1,350.	DS00356	5/9/08
3	58. Letter from D. Meany to A. DeChambeau re AHP settlement check of \$1,350	DS00357	5/16/08
4	59. 2005 income tax return (2 pages) for Neil and Angela DeChambeau	DS00358-359	undated
5	60. Power of Attorney of Neil DeChambeau to Angela DeChambeau	DS00360-363	10/1/94
6	61. Picture of Angela and Neil DeChambeau	DS00364	undated
7	62. Picture of Neil, Angela and Jean-Paul DeChambeau	DS00365	undated
8	63. Handwritten notes of payments to Obrien, Rogers and Crosby Funeral Home	DS00366	undated
9	64. Social Security Benefit Statement for Angela	DS00367	undated
10	65. Medical bills for Neil DeChambeau	DS00368-399	various
11	66. GuideOne Life Insurance payout information	DS00400-427	various
12	67. Procedure Report of Dr. Smith	RRMC0050-52	9/7/06
13	68. Letter of Navratil to Balkenbush	SB02693-94	4/21/10
14	69. Expert Witness Report of Ronald Pearl, M.D.	DS00428-32	3/18/10
15	71. Expert Witness Report of Rahul N. Doshi, M.D.	DS00197	3/2010
16	72. Affidavit of Fred Morady, M.D.	SB02271	8/29/07
17	73. Affidavit of William Mazzei, M.D.	SB01729	9/1/07
18	74. Current Curriculum Vitae of Mark Seifert, M.D.		
19	75. Current Curriculum Vitae of Geral I. Gillock		
20	76. Current Curriculum Vitae of Richard M. Teichner		

1 77. The FICA summary of earnings for Angela and Neil DeChambeau

2 78. Stat echo photographs taken September 6, 2006 at Washoe Medical Center (just recently
3 received from Renown) and sent to Dr. Seifert 9/6/13.

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

5 DATED this 14th day of September, 2013.

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8 CHARLES R. KOZAK, ESQ.
9 Attorney for Plaintiffs
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Jacqueline Bryant
Clerk of the Court
Transaction # 5830361 : pmsewell

EXHIBIT 8

EXHIBIT 8

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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
12 vs.

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

3 DATED this 1st day of February, 2016.
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6 Patrick Flanagan
7 DISTRICT JUDGE
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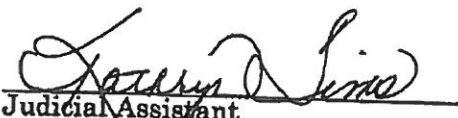
CERTIFICATE OF SERVICE

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 1st day of February, 2016, 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 Kozak, Esq. for Angela Dechambeau; and

I deposited in the Washoe 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:

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


Judicial Assistant

FILED
Electronically
CV12-00571
2016-11-30 05:50:48 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5830361 : pmsewell

EXHIBIT 9

EXHIBIT 9

1 [1610]

2 DOMINIQUE A. POLLARA, Nevada SBN 5742
3 POLLARA LAW GROUP
4 3600 American River Drive, Suite 160
5 Sacramento, California 95864
6 (916) 550-5880 - telephone
7 (916) 550-5066 - fax

8 KIM MANDELBAUM
9 Nevada Bar No. 318
10 MANDELBAUM ELLERTON & MCBRIDE
11 2012 Hamilton Lane
12 Las Vegas, Nevada 89106
13 (702) 367-1234
14 Email: filing@memlaw.net

15 Attorneys for Defendants STEPHEN C. BALKENBUSH, ESQ.
16 and THORNDAL ARMSTRONG DELK BALKENBUSH &
17 EISINGER

18
19 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
20
21 IN AND FOR THE COUNTY OF WASHOE

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

26 Plaintiffs,

27 vs.

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

Defendants.

CASE NO. CV-12-00571

Trial Date: January 17, 2017

DEFENDANTS' DISCLOSURE OF EXPERT WITNESSES

Pursuant to 26(b) Defendants, by and through their counsel, Pollara Law Group,
hereby disclose the names of witnesses who may be called as expert witnesses at the time
of trial:

\\

1 1. Fred Morady, MD, FACC
2 University of Michigan Cardiovascular Center
3 1500 East Medical Center Drive, SPC 5853
4 Ann Arbor, MI 48109-5853
5 Tel: 734-763-7141

6 Fred Morady, M.D., is a cardiologist in clinical practice in the State of Michigan,
7 board-certified in cardiology, clinical cardiac electrophysiology and in internal medicine.
8 Dr. Morady is McKay Professor of Cardiovascular Disease at the University of Michigan
9 School of Medicine, and was an expert for the Plaintiffs in the underlying medical
10 malpractice case, Case Number CV07-02028, *Angela DeChambeau, Jean-Paul DeChambeau v.*
11 *David, M.D., David Kang, M.D., et al.* Dr. Morady will testify regarding the underlying case
12 as to the medical care and treatment of decedent Neil DeChambeau, causation, and the
13 standard of care as to Defendant David Smith, M.D. Dr. Morady's expert information was
14 previously provided in the underlying case.
15

16
17 2. David Smith, M.D.
18 Renown Institute for Heart & Vascular Health
19 1500 E. 2nd Street, Suite 400, Center B
20 Reno, NV 89502
21 Tel: 775-982-2400

22 David Smith, M.D., a defendant in the underlying case, is a cardiologist in clinical
23 practice and licensed in the State of Nevada. Dr. Smith will testify as to his medical care
24 and treatment of Mr. DeChambeau. Dr. Smith's professional information was previously
25 provided in the underlying case.
26

27 \\

28 \\

1 3. Hugh Calkins, M.D.
2 Johns Hopkins Hospital
3 Carnegie Building, Room 530,
4 600 North Wolfe St., Baltimore, MD 21287-0409

5 Hugh Calkins, M.D., is a cardiologist in clinical practice in the State of Maryland,
6 board-certified in cardiology, in clinical cardiac electrophysiology and in internal medicine.
7 Dr. Calkins was an expert for the defendant David Smith, M.D. in the underlying medical
8 malpractice matter, Case No.: CV07-02028, *Angela DeChambeau, Jean-Paul DeChambeau v.*
9 *David Smith, M.D., David Kang, M.D., et al.* Dr. Calkins is anticipated to testify regarding
10 the underlying case as to the medical care and treatment of decedent Neil DeChambeau,
11 causation, and the standard of care as to defendant David Smith, M.D. Dr. Calkins current
12 curriculum vitae is attached hereto as Exhibit 1. Dr. Calkins charges \$485.00 per hour for
13 deposition with a 3 hour minimum and \$483.00 per hour for trial testimony.

14 4. Edward Lemons, Esq.
15 Lemons, Grundy & Eisenberg
16 6005 Plumas Street, Third Floor
17 Reno, NV 89519
18 Tel: 775-786-6868

19 Edward Lemons, Esq. is an attorney licensed and in practice in the State of Nevada who
20 represented Defendant David Smith, M.D. in the underlying case. He is anticipated to
21 testify regarding his representation of Dr. Smith in the underlying case as further set forth
22 in his previous deposition taken in this matter.

23 \\

1 5. Michael Navratil, Esq.
2 John H. Cotton & Associates, Ltd.
3 7900 West Sahara Avenue, Suite 200
4 Las Vegas, NV 89711
5 Tel: 702-791-0308

6 Michael Navratil, Esq., is an attorney licensed and in practice in the State of Nevada
7 who represented co-defendant David Kang, M.D. in the underlying case. He is anticipated
8 to testify regarding his representation of Dr. Kang in the underlying case as further set
9 forth in his previous deposition taken in this matter.
10

11
12 5. Peter Durney, Esq.
13 Durney & Brennan
14 190 West Huffaker Lane, Suite 406
15 Reno, NV 89511
16 Tel: 775-322-2923

17 Peter Durney is an attorney licensed and in practice in the State of Nevada since 1974.
18 Mr. Durney will testify as to the legal standard of care as to defendant Stephen C.
19 Balkenbush.

20 Mr. Durney's fees are \$400 per hour for review, consultation and deposition testimony,
21 with a two-hour minimum for deposition testimony, payable in advance.
22

23 6. Defendants reserve the right to call any expert witness or person identified by
24 any party in the instant case and the underlying case.

25 The above expert witnesses may not be the only ones called by defendants to testify at
26 the time of trial. Defendants reserve the right to later name other expert witnesses prior
27 to trial. Defendants also reserve the right to call to testify at trial experts not named whose
28

1 testimony is needed to aid in the trial of this action and/or to refute and rebut the
2 contentions and testimony of plaintiffs' experts and/or other witnesses.

3
4 7. Defendants reserve the right to identify rebuttal expert witnesses.

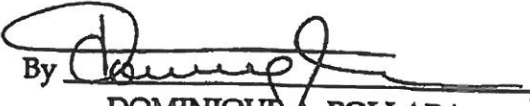
5 NOTICE: Defendants will object to plaintiffs calling any expert witness at trial who has
6 not been timely disclosed under strict compliance with NRCP 26(b)(5).
7

8 **AFFIRMATION**

9
10 The undersigned does hereby affirm that the preceding document does not
11 contain the Social Security number of any person.

12 Dated: September 1, 2016

13 **POLLARA LAW GROUP**

14
15 By 

16 DOMINIQUE A. POLLARA

17 Nevada Bar No. 5742

18 3600 American River Drive, Suite 160

19 Sacramento, CA 95864

20 Phone: (916) 550-5880

21 Attorneys for Defendant STEPHEN C.
22 BALKENBUSH, ESQ. and THORNDAL,
23 ARMSTRONG, DELK, BALKENBUSH and
24 EISINGER, a Nevada Professional
25 Corporation
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INDEX OF EXHIBITS

<u>No.</u>	<u>Description</u>	<u>Pages</u>
1.	Curriculum Vitae and fee schedule of Hugh Calkins, M.D.	81

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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'

DISCLOSURE OF EXPERT WITNESSES 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

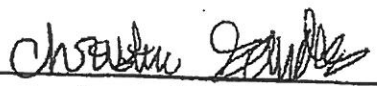
Representing

Phone/Fax/E-Mail

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

Plaintiffs

(775) 322-1239 - phone
(775) 800-1767 - fax
chuck@kozaklawfirm.com


An employee of RENO CARSON
MESSENGER