

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES D. BALODIMAS, M.D., and
JAMES D. BALODIMAS, M.D., P.C.,

Petitioners

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT of the STATE of NEVADA, in and
for CLARK COUNTY, NEVADA, and
THE HONORABLE JERRY A. WIESE,
District Court Judge,

Respondents,

And

REPUBLIC SILVER STATE DISPOSAL,
INC.; ANDREW M. CASH, M.D.;
ANDREW M. CASH, M.D., P.C. aka
ANDREW MILLER CASH, M.D., P.C.;
DESERT INSTITUTE OF SPINE CARE,
LLC, a Nevada Limited Liability Company;
LAS VEGAS RADIOLOGY, LLC, a
Nevada Limited Liability Company; BRUCE
A. KATUNA, M.D.; ROCKY MOUNTAIN
NEURODIAGNOSTICS, LLC, a Colorado
Limited Liability Company; DANIELLE
MILLER aka DANIELLE SHOPSHIRE;
NEUROMONITORING ASSOCIATES,
INC.,

Real Parties in Interest

Supreme Ct. Case #: 72123

District Ct. Case #: 16-A738123-C

Electronically Filed
Apr 07 2017 11:18 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**APPENDIX of REAL PARTY IN INTEREST/RESPONDENT
REPUBLIC SILVER STATE DISPOSAL, INC.**

VOLUME I

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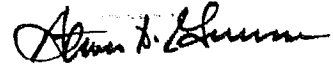
Attorneys for Real Party in Interest/Respondent Republic Silver State Disposal, Inc.

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

REPUBLIC SILVER STATE DISPOSAL, INC., Case No.: A-16-738123-C
a Nevada Corporation,

Dept No.: XXIII

Plaintiff

vs.

AMENDED COMPLAINT for MEDICAL
NEGLIGENCE and MEDICAL
MALPRACTICE & JURY DEMAND

ANDREW M. CASH, M.D.; ANDREW M.
CASH, M.D., P.C. aka ANDREW MILLER
CASH, M.D., P.C.; DESERT INSTITUTE OF
SPINE CARE, LLC, a Nevada Limited Liability
Company; JAMES D. BALODIMAS, M.D.;
JAMES D. BALODIMAS, M.D., P.C.; LAS
VEGAS RADIOLOGY, LLC, a Nevada Limited
Liability Company; BRUCE A. KATUNA, M.D.;
ROCKY MOUNTAIN NEURODIAGNOSTICS,
LLC, a Colorado Limited Liability Company;
DANIELLE MILLER aka DANIELLE
SHOPSHIRE; NEUROMONITORING
ASSOCIATES, INC., a Nevada Corporation;
DOES 1-10 inclusive; and ROE
CORPORATIONS 1-10 inclusive

Defendants.

Plaintiff REPUBLIC SILVER STATE DISPOSAL, INC., by and through its attorneys,
BARRON & PRUITT, LLP, complains and alleges against Defendants as follows:

PARTIES

1. Plaintiff REPUBLIC SILVER STATE DISPOSAL, INC. is and was at all relevant
times a Nevada corporation doing business in Clark County, Nevada.

2. Defendant ANDREW M. CASH, M.D. (CASH) is and was at all times relevant a

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1 resident of the state of Nevada; a physician licensed to practice medicine in Nevada as defined by
2 NRS 630.014 and NRS 630.020; and doing business as a practicing physician in Clark County,
3 Nevada, holding himself out as board certified and specializing in the field of orthopedic and spinal
4 surgery.

5 3. Defendant ANDREW M. CASH, M.D., P.C. (CASH P.C.), is a Nevada professional
6 corporation doing business as ANDREW M. CASH, M.D. On information and belief, Defendant
7 CASH P.C. may also be or have been known as "ANDREW MILLER CASH, M.D., P.C." in filings
8 with Nevada Secretary of State.

9 4. Defendant DESERT INSTITUTE OF SPINE CARE, LLC, is a Nevada limited
10 liability company providing surgical and health care services in Clark County, Nevada.

11 5. Defendants ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. or
12 ANDREW MILLER CASH, M.D., P.C.; or all of them is a member of Defendant DESERT
13 INSTITUTE OF SPINE CARE, LLC. Moreover Defendants CASH; CASH P.C.; and DESERT
14 INSTITUTE OF SPINE CARE are the agents, partners, joint venturers, employees and alter-egos of
15 the others.

16 6. Defendants CASH and/or CASH P.C. were at all times relevant employees and/or
17 agents of Defendant DESERT INSTITUTE OF SPINE CARE, LLC and in all acts or omissions
18 complained of in this Amended Complaint, were acting within such employment and/or agency.

19 7. Defendant JAMES D. BALODIMAS, M.D. (BALODIMAS) was at all times relevant
20 a resident of the state of Nevada; a physician licensed to practice medicine in Nevada as defined by
21 NRS 630.014 and NRS 630.020; and doing business as a practicing physician in Clark County,
22 Nevada, holding himself out as board certified and specializing in the field of radiology.

23 8. Defendant LAS VEGAS RADIOLOGY, LLC, is a Nevada limited liability company
24 providing radiological services in Clark County, Nevada.

25 9. Defendant JAMES D. BALODIMAS, M.D., PC (BALADIMAS P.C.) is a Nevada
26 professional corporation doing business as JAMES D. BALODIMAS, M.D.

27 10. Defendants BALODIMAS and/or BALADIMAS P.C. were at times relevant
28 employees and/or agents of Defendant LAS VEGAS RADIOLOGY, LLC, and in all acts or
omissions complained of in this Amended Complaint, were acting within such employment and/or

1 agency.

2 11. Defendant BRUCE A. KATUNA, M.D. (KATUNA) is and was at times relevant a
3 resident of the state of Colorado. It is further alleged that Defendant KATUNA is and was at all
4 times relevant a physician licensed to practice medicine in Nevada as defined by NRS 630.014 and
5 NRS 630.020 and that all acts, errors and omissions complained of against Defendant KATUNA
6 occurred in or were directed into the state of Nevada. It is further alleged on information and belief
7 that Defendant KATUNA holds himself out as board certified and a specialist in the field of
8 neurology, and intra-operative neuro-monitoring.

9 12. On information and belief, Defendant KATUNA is a member of Defendant ROCKY
10 MOUNTAIN NEURODIAGNOSTICS, LLC is a Colorado limited liability company. In all acts or
11 omissions complained of in this Amended Complaint, Defendant ROCKY MOUNTAIN
12 NEURODIAGNOSTICS' conduct occurred in, or was directed into the state of Nevada.

13 13. On information and belief, Defendant KATUNA was at times relevant an employee
14 and/or agent of Defendant ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC and in all acts or
15 omissions complained of in this Amended Complaint was acting within such employment and/or
16 agency.

17 14. Defendant DANIELLE MILLER aka Danielle Shopshire (MILLER) at all times
18 relevant was a neuromonitoring technician practicing in Clark County, Nevada.

19 15. Defendant NEUROMONITORING ASSOICATES, INC. is a Nevada corporation
20 providing neuromonitoring personnel and services in Clark County, Nevada.

21 16. On information and belief Defendant MILLER, in all acts or omissions complained
22 of in this Amended Complaint, was acting as an employee and/or agent of Defendant
23 NEUROMONITORING ASSOICATES.

24 17. The true names and capacities, whether individual, corporate, association or
25 otherwise of Defendants DOES 1-10, inclusive, and ROE CORPORATIONS 1-10 inclusive, are
26 unknown to Plaintiff, who therefore sues those Defendants by fictitious names.

27 18. REPUBLIC is informed, believes, and thereupon alleges that each of the Defendants
28 designated as DOE 1-5 and ROE CORPORATION 1-5, and each of them, is an individual or
business entity who is a "health care provider" as defined in NRS 41A.017. Each such fictitiously

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1 named Defendant caused the events and damages complained of; and each is negligently, vicariously
2 or otherwise responsible for the breach of a legal duty which proximately caused the injuries and
3 damages alleged. Alternatively, DOES 1-5 and ROE CORPORATIONS 1-5 are the owners,
4 operators, employers, employees, joint venturers, alter egos, principals, servants, and/or agents of
5 any or all of the Defendants named herein.

6 19. DOE 6-10 and ROE CORPORATION 6-10, and each of them, is an individual or
7 business entity who is not a "health care provider" as defined in NRS 41A.017. Each such
8 fictitiously named Defendant caused the events and damages complained of; and each is negligently,
9 vicariously, or otherwise responsible for the breach of a legal duty which proximately caused the
10 injuries and damages alleged. Alternatively, DOES 6-10 and ROE CORPORATIONS 6-10 are the
11 owners, operators, employers, employees, joint venturers, alter egos, principals, servants, and/or
12 agents of any or all of the Defendants named herein.

13 20. REPUBLIC will seek leave of this court to amend this Complaint to insert the true
14 names and capacities of DOES 1-10 and/or ROE CORPORATIONS 1-10, inclusive, when the same
15 have been ascertained, together with the appropriate charging allegations, and to join such
16 Defendants in this action.

17 21. Defendants CASH; CASH P.C.; BALADIMAS; BALADIMAS P.C.; LAS VEGAS
18 RADIOLOGY; KATUNA; ROCKY MOUNTAIN NEURODIAGNOSTICS; MILLER; and
19 NEUROMONITORING ASSOCIATES; and DOES 1-10 and ROE CORPORATIONS 1-10, each
20 of them, were physicians, health care institutions, or other medical treatment providers who treated
21 or performed services on behalf of Marie Gonzalez on or about January 29, 2013 and at times
22 relevant thereafter for injuries she claimed to have resulted from a traffic accident with a commercial
23 garbage truck owned and operated by REPUBLIC and driven by its then-employee, Deval Hatcher,
24 occurring on or about January 14, 2012 in Clark County, Nevada. Gonzalez filed a legal action for
25 injuries allegedly sustained in the aforementioned motor vehicle accident against REPUBLIC and
26 Hatcher, entitled *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* (Eighth Judicial District
Court Case No. A687931).

27 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

28 22. All the facts, circumstances, errors and omissions giving rise to the instant lawsuit

1 occurred in Clark County, Nevada.

2 23. On or about April 4, 2012, Gonzalez, began treating with Defendant CASH for
3 injuries to her low back allegedly sustained in the motor vehicle accident of January 14, 2012.

4 24. On or about December 19, 2012, Defendant CASH recommended that Gonzales
5 undergo reconstructive spinal surgery at L4-5, L5-S1.

6 25. On or about January 29, 2013, Gonzalez underwent spinal surgery performed by
7 Defendant CASH known as an "oblique lateral lumbar interbody fusion" (referred to below as
8 "OLIF" or "OLIF procedure").

9 26. Defendant CASH's OLIF procedure on Gonzales was performed at the L4-5 and L5-
10 S1 levels on the left.

11 27. The described OLIF procedure at L4-5, L5-S1 involved placement by Defendant
12 CASH of so-called "pedicle screws."

13 28. Prior to the OLIF procedure Defendant CASH requested DOE 1 and/or ROE
14 CORPORATION 1 to hire, retain or otherwise obtain intraoperative neurophysiological monitoring
15 services for the Gonzales OLIF.

16 29. The neurophysiological monitoring services referenced in the preceding paragraph
17 were provided by Defendants KATUNA and ROCKY MOUNTAIN NEURODIAGNOSTICS, and
18 Defendants MILLER and NEUROMONITORING ASSOICATES.

19 30. On information and belief, Defendant KATUNA remotely conducted the
20 neurophysiological monitoring of the Gonzales OLIF from the state of Colorado. In so doing his
21 actions were purposefully directed to the state of Nevada.

22 31. A true and correct copy of a March 6, 2013 "Intraoperative Neurophysiological
23 Monitoring Report" from Defendant ROCKY MOUNTAIN NEURODIAGNOSTICS, signed by
24 Defendant KATUNA, is attached as **EXHIBIT 1**. The neuromonitoring report (**EXHIBIT 1**) states
25 that it is for intraoperative neuromonitoring of Gonzales' central and peripheral nervous systems,
26 and that "Monitored responses showed no significant changes throughout the procedure, and the
27 surgeon was so informed. Pedicle screw testing demonstrated thresholds suggesting low likelihood
28 of pedicle breach."

32. Defendant MILLER was retained to perform, or alternatively assigned to perform as

1 the agent Defendant NEUROMONITORING ASSOICATES; DOES 1 and 6, or either of them ;
2 and/or ROE CORPORATIONS 1 and 6, or either of them, neurophysiological monitoring services
3 in connection with the OLIF procedure described in the preceding paragraphs.

4 ✓ 33. Defendant MILLER was at all times relevant present in the operating room at Spring
5 Valley Hospital in Clark County, Nevada, providing neurophysiological monitoring services during
6 the described OLIF procedure as it was being performed by Defendant CASH at Spring Valley
7 Hospital on January 29, 2013.

8 ✓ 34. On information and belief, Defendant MILLER prepared, or had prepared at her
9 direction, a document entitled "Neuromonitoring Report," dated January 29, 2013 concerning the
10 neurophysiological monitoring of Gonzales during the described OLIF procedure. A true and correct
11 copy of the described "Neuromonitoring Report," as currently available to REPUBLIC after good
12 faith efforts to obtain the same, is attached as **EXHIBIT 2**.

13 ✓ 35. The "Neuromonitoring Report," **EXHIBIT 2**, states in part:

14 [Pedicule Screw Testing (PTS)] was requested by [Defendant Cash] to verify
15 accuracy of screw position and confirm that the respective nerve root is not at risk
16 from the screw placement. PST can detect subtle breaches in the pedicle wall that
17 cannot be visualized with x-rays thereby providing a higher standard of safety and
18 avoiding iatrogenic injury. Pedicle screws that do not elicit [Compound Muscle
19 Action Potential (CMAP)] to stimulation less than 4 [milliamps (mA)] are
20 deemed safe. The surgeon was handed a ball tip probe which is connected to our
21 stimulator. Stimulation was started at 0 mA and slowly went up to 4 mA in 1 mA
22 increments. If a screw was positioned close to a nerve root, we would see a
23 response on our EMG window in the muscle that correlates to the level we are
24 testing. 6 nerve prox were tested (L4, L5, and S1 screws on the right and left
25 side). Pedicles screw testing (PST) yielded no CMAPs to stimulation below 4
26 mA. The surgeon was satisfied with the PST responses and felt no need to
27 reposition any of the placed screws. After PST was completed, rods were placed
28 and the surgeon began to close, Final x-rays further confirmed safe screw
placement.

1 Emphasis is in the original.

2 36. In fact, the intraoperative neurophysiological monitoring performed and assessed by
3 Defendants KATUNA and ROCKY MOUNTAIN NEURDIAGNOSTICS, and Defendants
4 MILLER and NEUROMONITORING ASSOICATES was in error and below the standard of care,
5 and failed to detect and accurately report pedicle screw breaches at L4-5, L5-S1, or either of them.

6 37. Attached as **EXHIBIT 3** is a true and correct copy of the operative report authored
7 by Defendant CASH regarding the Gonzales OLIF procedure. **EXHIBIT 3** states in part that "All
8 [pedicle] screws were carefully placed into the center of the pedicle and no bony breach of any
9 pedicle was felt to occur." In fact, the operative report and opinion of Defendant CASH was in error
10 and pedicle screw breaches had occurred at L4-5, L5-S1, or either of them.

11 38. Immediately after the OLIF surgery, Gonzalez reported severe back and left leg pain,
12 and remained at Spring Valley Hospital as an in-patient for pain control until discharged on
13 February 2, 2013. Prior to discharge from Spring Valley Hospital, Gonzales did not undergo
14 electrodiagnostic, or CT or MRI imaging studies to assess whether the pain was caused by, or related
15 to surgical complications, including breach of the pedicle screws.

16 39. Gonzales continued to experience pain after discharge from Spring Valley Hospital
17 into her left hip and leg and returned to Defendant CASH for postsurgical follow-up on or about
18 February 6, 2013. Defendant CASH then ordered a CT study of Gonzales' lumbar spine.

19 40. On February 12, 2013, a CT study of Gonzales' lumbar spine was performed at the
20 facilities of Defendant LAS VEGAS RADIOLOGY.

21 41. A true and correct copy of Defendant LAS VEGAS RADIOLOGY's February 12,
22 2013 report for the CT study of Gonzales' lumbar spine is attached as **EXHIBIT 4**. **EXHIBIT 4**
23 was signed by Defendant BALODIMAS who diagnosed "no evidence of significant mass effect
24 upon the neural foramina by the pedicle screws," and that the "[c]ase was discussed with [Defendant
25 CASH] at time of dictation."

26 42. On December 3, 2014, Defendant CASH testified under oath during his deposition as
27 a treating physician in the *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* matter that, on
28 or about February 12, 2013, he had reviewed the CT scan and Defendants LAS VEGAS
RADIOLOGY and BALODIMAS's report (**EXHIBIT 4**), and that:

1 It said there might be some scar tissue versus disk material encroaching on the left
2 foramina at L4-5, L5-S1. When I evaluated the patient on 12/12/13 (sic), I
3 actually saw the CT scan, reviewed the report, [and] spoke with the radiologist
4 [Dr. Balodimas]. He confirmed that on his report of the study and found that
5 there was no neural impingement, meaning no compression on the nerve to be
6 decompressed surgically and no complication or malfunction in the hardware to
7 be addressed surgically.

8 Deposition of Andrew Cash, M.D., December 4, 2014, pg. 62, ln.2-11. A copy of the excerpted
9 testimony is attached as **EXHIBIT 5**.

10 43. In fact, Defendants CASH and BALODIMAS were in error, and their assessments of
11 the February 12, 2013 CT lumbar study were below their respective standard of care as the CT study
12 demonstrated breach of the pedicle screws at L4-5, L5-S1, or either of them, where they displaced
13 the nerve root(s).

14 44. After February 12, 2013, Gonzales' post-surgical pain continued notwithstanding
15 additional treatment that included follow-up visits with Defendant CASH, and other health care
16 providers, including those providing physio-therapy; spinal injections; and implantation of a trial
17 spinal cord stimulator. At no time after the OLIF procedure did Defendant CASH recommend
18 additional surgery to determine the cause of, or to rectify Gonzales' post-operative pain.

19 45. On or about June 7, and July 12, 2013, Gonzales consulted with Drs. Jason Garber
20 and Stuart Kaplan of Western Regional Center for Brain & Spine Surgery for continued debilitating
21 post-surgical pain. It was the opinion of Drs. Garber and Kaplan that the pain was in the L5 and S1
22 nerve distributions and that the pedicle screws on the left at L4-5, L5-S1 had breached the pedicles.
23 To alleviate Gonzales' post-operative pain in her back and left leg it was recommended that she
24 undergo an anterior fusion at L4-5, L5-S1, and that the existing hardware and pedicle screws on the
25 left be replaced on the right at the same levels. The recommended surgery was performed by Dr.
26 Kaplan at Spring Valley Hospital on July 15, 2013.

27 46. Notwithstanding the surgery of July 15, 2013, Gonzales suffered lasting injury to the
28 L5 and S1 nerve roots, and developed chronic pain syndrome directly because of the failure of
Defendants, and each of them, to have properly detected or diagnosed the pedicle screw breach,

1 and/or to have rendered medical treatment to address the surgical complication in a timely fashion so
2 as to avoid permanent pain, disability and impairment.

3 47. On or about February 10, 2015, Dr. Kaplan implanted a spinal cord stimulator for
4 Gonzales' chronic back and leg pain, and on information and belief Gonzales will require battery
5 replacements and further expense into the future in connection with the spinal cord stimulator.

6 48. On or about September 3, 2013, Gonzalez filed her Complaint in *Gonzalez v.*
7 *Hatcher, Republic Silver State Disposal, Inc.*, (Case No. A687931) against REPUBLIC and Deval
8 Hatcher.

9 49. Gonzales' computation of damages pursuant to NRCP 16.1 (a) (1) (C) in the
10 *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* matter, as supported by expert opinion,
11 through June 15, 2015 included the following economic damages:

- 12 a. Past medical expenses (inclusive of all billings before and after January 29,
13 2013)—\$ 1,108,510.16
- 14 b. Future medical expenses—\$2,980,907.34 to \$3,502,858.34
- 15 c. Loss of future earning capacity—\$297,040.00 to \$549,512.00
- 16 d. Loss of household services—\$431,656.00

17 50. All or substantial portions Gonzales' claimed damages, including past and future
18 pain, suffering and disability, and past and future costs of medical treatment and care and other
19 "economic" damages as defined by NRS 41A.007, were due to the medical negligence and
20 malpractice of the Defendants, and each of them, in their failure to have properly diagnosed the
21 pedicle screw breach and/or to have rendered timely medical treatment to Gonzales to remove the
22 pedicle screws and avoid permanent neurological damage.

23 51. On July 6, 2015, REPUBLIC settled *Gonzalez v. Hatcher, Republic Silver State*
24 *Disposal, Inc.*, resolving all claims against itself, Deval Hatcher, and all Gonzales' health care
25 providers, including but not limited to the Defendants herein, for \$2,000,000.00.

26 52. REPUBLIC is entitled, as a matter of law, to seek contribution from the Defendants,
27 and each of them, pursuant to the provisions of the *Uniform Contribution Among Tortfeasors Act*,
28 NRS 17.225, et seq., and receive all sums in excess of REPUBLIC's equitable share of the common
liability from the Defendants, and each of them.

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53. REPUBLIC should also receive from the Defendants, and each of them, in amounts proportionate to the Defendants' shares of the common liability, reimbursement of REPUBLIC's fees and costs incurred in addressing and defending claims asserted in *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* arising from the Defendants' medical malpractice or medical negligence.

FIRST CAUSE OF ACTION

(Medical Malpractice and/or Medical Negligence Against All Defendants)

54. Plaintiff incorporates each and every allegation stated above as though fully set forth herein.

55. During the course of treatment and services rendered to Marie Gonzalez, Defendants and each of them, failed to exercise the degree of skill, care and expertise normally exercised by comparable physicians, physician assistants, nurses, neuromonitoring technicians and/or "health care providers" as defined by NRS 41A.017 having similar skills, education, training, experience or otherwise similarly situated, and in so doing, fell below the standard of care as providers of such healthcare services. Such breach of the Defendants' respective standards of care was negligence, gross negligence, and/or recklessness.

56. Attached as **EXHIBIT 6** in support of REPUBLIC's allegations is the true and correct declaration under penalty perjury pursuant to NRS 41A.071 of Howard Tung, M.D., in which Dr. Tung states that in his professional opinion Defendant CASH's treatment of Marie Gonzales was below the standard of care for a spinal surgeon, and gives the reasons therefor. Dr. Tung also opines that the neuromonitoring services of Defendant KATUNA were below the standard of care, and gives the reasons therefor. The Tung declaration is incorporated by reference as if fully set forth herein.

57. Attached as **EXHIBIT 7** in support of REPUBLIC's allegations is the true and correct declaration under penalty perjury pursuant to NRS 41A.071 of David Seidenwurm, M.D., in which Dr. Seidenwurm states that in his professional opinion Defendant BALODIMAS' treatment of Marie Gonzales was below the standard of care for a radiologist, and gives the reasons therefor. The Seidenwurm declaration is incorporated by reference as if fully set forth herein.

58. Attached as **EXHIBIT 8** in support of REPUBLIC's allegations is the true and

1 correct declaration under penalty perjury pursuant to NRS 41A.071 of Gerald Saline, Ph.D., in
2 which Dr. Saline states that in his professional opinion professional and technical neuromonitoring
3 services rendered by Defendants KATUNA and MILLER in the treatment of Marie Gonzales were
4 below the standard of care, and gives the reasons therefor. The Saline declaration is incorporated by
5 reference as if fully set forth herein.

6 59. As a direct and proximate result of Defendants' negligence, gross negligence,
7 recklessness, and failure to use due care, Gonzalez suffered new and different injuries from those
8 allegedly suffered in the motor vehicle accident of January 14, 2012.

9 60. As a direct and proximate result of the breach of the applicable standards of care
10 imposed upon the Defendants, and each of them, REPUBLIC is entitled to recover damages for
11 payment REPUBLIC made to Gonzalez for injuries directly and proximately caused by Defendants'
12 negligent administration of medical care, diagnoses, treatment, and services, all of which caused
13 new and different injuries from those allegedly suffered in the motor vehicle accident of January 14,
14 2012. REPUBLIC has thereby been damaged by paying more than its equitable share of a common
15 liability in an amount in excess of \$10,000.00.

16 61. It was necessary for REPUBLIC to retain the services of an attorney to defend against
17 Gonzales' claims, including defense against damages caused exclusively by the negligence, gross
18 negligence and recklessness of the Defendants, and each of them. REPUBLIC should also receive
19 from the Defendants, and each of them, in amounts proportionate to the Defendants' shares of the
20 common liability, reimbursement of REPUBLIC's fees and costs incurred in addressing and
21 defending claims asserted in *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* arising from
22 the Defendants' medical malpractice or medical negligence.

23 62. It was also necessary for REPUBLIC to bring this action for contribution, and
24 REPUBLIC is therefore entitled to recover attorney's fees and costs incurred.

25 SECOND CAUSE OF ACTION

26 (Respondeat Superior/Vicarious Liability: Defendants Cash; Desert Institute of Spine Care,
27 LLC; KATUNA; Rocky Mountain Neurodiagnostics, LLC; Neuromonitoring Associates; Las
28 Vegas Radiology, LLC; Does 1 & 6, and Roe Corporations 1 & 6)

63. Plaintiff incorporates each and every allegation stated above as though fully set forth
herein.

1 64. Defendant CASH was acting within the course and scope of his employment with
2 Defendant DESERT INSTITUTE OF SPINE CARE, LLC while providing medical treatment to
3 Marie Gonzales, during and after the OLIF procedure performed on January 29, 2013, and all
4 treatment thereafter.

5 65. Defendant DESERT INSTITUTE OF SPINE CARE, LLC is therefore liable for the
6 injury and damages negligently caused by Defendant CASH pursuant to NRS 41.130.

7 66. Defendant KATUNA was acting within the course and scope of his employment with
8 ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC while providing neuromonitoring services in
9 connection with Gonzales' OLIF procedure performed on January 29, 2013, and related professional
10 services thereafter.

11 67. Defendant ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC is therefore liable
12 for the injury and damages negligently caused by Defendant KATUNA pursuant to NRS 41.130.

13 68. Defendant BALODIMAS was acting in the course and scope of his employment with
14 LAS VEGAS RADIOLOGY, LLC in connection with conducting, and the interpretation of the
15 February 12, 2013 CT studies of Gonzales' lumbar spine.

16 69. Defendant LAS VEGAS RADIOLOGY, LLC is therefore liable for the injury and
17 damages negligently caused by Defendant BALODIMAS pursuant to NRS 41.130.

18 70. Defendant MILLER was acting within the course and scope of her employment with
19 NEUROMONITORING ASSOICATES while providing neuromonitoring services in connection
20 with Gonzales' OLIF procedure performed on January 29, 2013.

21 71. Defendant NEUROMONITORING ASSOICATES is therefore liable for the injury
22 and damages negligently caused by Defendant MILLER pursuant to NRS 41.130.

23 72. Defendant MILLER was acting within the course and scope of her retention by
24 Defendants CASH and DESERT INSTITUTE OF SPINE CARE, LLC; KATUNA and ROCKY
25 MOUNTAIN NEURODIAGNOSTICS, LLC; DOES 1 and 6; and ROE CORPORATIONS 1 and 6,
26 or any or all of them, while providing neuromonitoring services in connection with Gonzales' OLIF
27 procedure performed on January 29, 2013.

28 73. Defendants CASH and DESERT INSTITUTE OF SPINE CARE, LLC; KATUNA
and ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC; Defendants and DOES 1 and 6; and

BARRON & PRUITT, LLP
ATTORNEYS AT LAW
3890 WEST ANN ROAD
NORTH LAS VEGAS, NEVADA 89031
TELEPHONE (702) 870-3940
FACSIMILE (702) 870-3950

1 ROE CORPORATIONS 1 and 6, or any or all of them, are therefore vicariously liable for the
2 professional negligence, errors and omissions of Defendant MILLER.

3 74. As a direct and proximate result of the negligence of the Defendants, and each of
4 them, and REPUBLIC paid more than its equitable share of a common liability in resolving claims
5 asserted by Gonzales against REPUBLIC and Hatcher, and REPUBLIC was thereby damaged in an
6 amount in excess of \$10,000.00.

7 75. It was necessary for REPUBLIC to retain the services of an attorney to defend against
8 Gonzales' claims, including defense against damages caused exclusively by the negligence, gross
9 negligence and recklessness of the Defendants, and each of them. REPUBLIC should also receive
10 from the Defendants, and each of them, in amounts proportionate to the Defendants' shares of the
11 common liability, reimbursement of REPUBLIC's fees and costs incurred in addressing and
12 defending claims asserted in *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* arising from
13 the Defendants' medical malpractice or medical negligence.

14 76. It was also necessary for REPUBLIC to bring this action for contribution, and
15 REPUBLIC is therefore entitled to recover attorney's fees and costs incurred.

16 **THIRD CAUSE OF ACTION**
17 **(Negligent Supervision and Retention)**

18 77. Plaintiff incorporates each and every allegation stated above as though fully set forth
19 herein.

20 78. Defendant MILLER was at all times relevant was retained, directed, supervised, and
21 acting under the authority of Defendants CASH; KATUNA; DOES 1 and 6; any or all of whom had
22 non-delegable duties to control the details of Defendant MILLER's activities in connection with her
23 rendering neuromonitoring services regarding Marie Gonzales.

24 79. Defendants CASH; KATUNA; DOES 1 and 6; and ROE CORPORATION 1 and 6
25 breached their non-delegable duties to determine the suitability and professional qualifications of
26 Defendant MILLER, and to supervise and control the details of MILLER's activities.

27 80. Because of such breaches of the Defendants' non-delegable duties, pedicle screws
28 implanted as part of the OLIF procedure were allowed to breach the pedicles at L5, S1 and enter the
neuroforamina causing the injuries and damages complained of.

81. As a direct and proximate result of the negligence of the Defendants, and each of

1 them, REPUBLIC paid more than its equitable share of a common liability in resolving claims
2 asserted by Gonzales against REPUBLIC and Hatcher, and REPUBLIC was thereby damaged in an
3 amount in excess of \$10,000.00.

4 82. It was necessary for REPUBLIC to retain the services of an attorney to defend against
5 Gonzales' claims, including defense against damages caused exclusively by the negligence, gross
6 negligence and recklessness of the Defendants, and each of them. REPUBLIC should also receive
7 from the Defendants, and each of them, in amounts proportionate to the Defendants' shares of the
8 common liability, reimbursement of REPUBLIC's fees and costs incurred in addressing and
9 defending claims asserted in *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* arising from
10 the Defendants' medical malpractice or medical negligence.

11 83. It was also necessary for REPUBLIC to bring this action for contribution, and
12 REPUBLIC is therefore entitled to recover attorney's fees and costs incurred.

13 **FOURTH CAUSE OF ACTION**
14 **(Contribution Against All Defendants)**

15 84. Plaintiff incorporates each and every allegation stated above as though fully set forth
16 herein.

17 85. Because REPUBLIC made payment to Marie Gonzales in settlement for injuries that
18 were due to the fault, negligence and carelessness of Defendants, and each of them, REPUBLIC
19 should be required to pay no more than its equitable share of the common liability to Gonzales, as
20 provided by NRS 17.225, et. seq., and thus receive contribution from the Defendants, and each of
21 them in accordance with their equitable shares of that common liability.

22 86. Because the Defendants have not paid their equitable share of the common liability,
23 REPUBLIC is damaged in an amount in excess of \$10,000.00.

24 87. It was necessary for REPUBLIC to retain the services of an attorney to defend against
25 Gonzales' claims, including defense against damages caused exclusively by the negligence, gross
26 negligence and recklessness of the Defendants, and each of them. REPUBLIC should also receive
27 from the Defendants, and each of them, in amounts proportionate to the Defendants' shares of the
28 common liability, reimbursement of REPUBLIC's fees and costs incurred in addressing and
defending claims asserted in *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* arising from

1 the Defendants' medical malpractice or medical negligence.

2 88. It was also necessary for REPUBLIC to bring this action for contribution, and
3 REPUBLIC is therefore entitled to recover attorney's fees and costs incurred.

4 **JURY DEMAND**

5 REPUBLIC SILVER STATE DISPOSAL, INC. demands a jury as preserved by the U.S.
6 and Nevada Constitutions, and NRCP 38.

7 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as follows:

- 8 1. For general damages in excess of TEN THOUSAND DOLLARS (\$10,000.00);
9 2. For special damages in excess of TEN THOUSAND DOLLARS (\$10,000.00);
10 3. For pre-judgment and post-judgment interest;
11 4. For reasonable attorney fees;
12 5. For costs of suit; and
13 6. For such other and further relief as this Court may deem just and proper.

14 BARRON & PRUITT, LLP

15 

16 DAVID BARRON
17 Nevada Bar No. 142
18 JOHN D. BARRON
19 Nevada Bar No. 14029
20 3890 West Ann Road
21 North Las Vegas, Nevada 89031
22 *Attorneys for Plaintiff*
23 *Republic Silver State Disposal, Inc.*

24
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28
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TELEPHONE (702) 870-3940
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EXHIBIT 1

EXHIBIT C

AFFIDAVIT OF AUTHENTICITY OF RECORDS

STATE OF Colorado)
COUNTY OF Boulder) ss.

NOW COMES Bruce Katuna, who after first being duly sworn states:

1. That the Affiant is employed as a physician with Rocky Mountain Neurodiagnosites and in that capacity is a custodian of the records of Rocky Mountain Neurodiagnosites.

2. That on the 18th day of May, 2015, the Affiant was served with a subpoena in connection with the above entitled cause, calling for production of all records, written, electronic or otherwise, for MARIE GONZALEZ (DOB: [REDACTED] SSN: [REDACTED]) from 01/01/2005 to the Present, including, but not limited to

11. All medical records;
12. All charts;
13. All notes including those made by or at the direction of a doctor/physician, physician assistant, nurse, orderly, lab technician, or specialist;
14. All test requests and results;
15. All diagnostic films/videos/images/reels and reports;
16. All pharmacy and prescription records;
17. All communication records including email and written correspondence;
18. All billing and payment records;
19. All insurance, Medicaid or Medicare records;
20. All records related to information submitted to insurance, Medicaid or Medicare.

3. That Affiant:

☐ (a) has made a diligent search of the records of Rocky Mountain Neurodiagnosites and found no records responsive to the Subpoena Duces Tecum.


OR

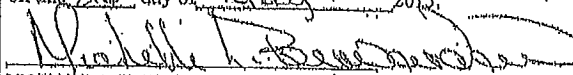
☒ (b) has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

BARRON & BERNARDONI, P.C.
ATTORNEYS AT LAW
380 WEST ANCHORAGE
NORTH LAS VEGAS, NEVADA 89102
TELEPHONE (702) 571-1998
FACSIMILE (702) 571-3551

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4. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the Affiant or Rocky Mountain Neurodiagnosites.


Signature
Bruce A. Kaduna
Print

Subscribed and sworn before me, a Notary Public,
on this 26 day of May, 2015.

NOTARY PUBLIC
My commission expires: 1-14-18

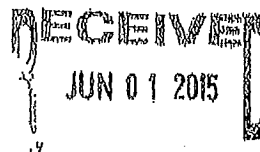
MICHELLE L. BERNARDONI
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20114001886
MY COMMISSION EXPIRES JANUARY 14, 2018



Bruce Katuna, M.D. 2217 Harvard Ct. Longmont, CO 80508 (303) 776-6298

INTRAOPERATIVE NEUROPHYSIOLOGIC MONITORING REPORT

Patient Name: Marla Gonzales
Medical Record #: 904944162-35294896
Surgeon: Dr. Cash
Technician: Danielle Miller
Date of Monitoring: January 29, 2013
Beginning Time: 0738
Ending Time: 0956
Date of Report: March 6, 2013



On January 29, 2013 Intraoperative monitoring of the central and peripheral nervous system of Marla Gonzales was performed during an OLIF of L4-S1.

Real-time neurophysiologist oversight was provided. Tested modalities included upper and lower extremity somatosensory evoked potentials (SSEPs), and free-running electromyography (FR-EMG).

Baseline responses were interpreted and were within normal limits.

Monitored responses showed no significant changes throughout the procedure, and the surgeon was so informed. Pedicle screw testing demonstrated thresholds suggesting low likelihood of pedicle breach.

Impression: Normal Intraoperative neurophysiologic monitoring study.

Bruce A. Katuna, M.D.

Board Certified in Neurology (American Board of Psychiatry and Neurology, 1993)

Board Certified in Clinical Neurophysiology (American Board of Psychiatry and Neurology, 1996, 2010)

DEF 003906

EXHIBIT 2

Neuromonitoring Report

Patient: Gonzales, Maria ID#: 904944162-35294396
 DOB: 12/26/1937 (35) Sex: Female
 Diagnosis: Radiculopathy
 Surgeon: Cash, Andrew MD Anesthetist:
 Assistant: Technician: Miller, Danielle
 OR# 6
 Procedure Date: 1/29/2013 Procedure: Lateral L4-S1 OLIF

Parameters and Stimulus parameters:

Surgeon Cash, Andrew MD requested intraoperative neurophysiological monitoring for patient Gonzales, Maria. The main objective of this monitoring is to preserve the existing neurological functions and to report any significant changes in sensory and EMG signals.

95941: Latency online

IONM time: Patient in OR: 7:09 am Incision Time: 7:58 am Close: 9:56 am Patient out of OR: 10:15 am 3 hrs

95938, 95927: Upper and Lower Extremity SSEP: gain 20uV, band pass: 30-500 Hz, Digital Filters implemented as desired. Nerve stimulation initiated at 25 and 45 mA (adjusted as necessary) applied to the ulnar and tibial nerves at the wrists and ankles, respectively, with interleaved excitation = 2.18/sec. Somatosensory evoked potentials are commonly used to monitor the sensory pathways of the spine; the signals that bring information to the brain. They were tested by using electrical stimulation at the peripheral nerves, the posterior tibial nerve (ankle) and the ulnar nerve (wrist). The stimulus was then recorded from the patient's sensory cortex (brain). During surgery, compression and distraction of nerves and spinal cord tissue were monitored by watching for changes in the conduction frequency and amplitude.

95885 EMG: Free-running and triggered/captured: threshold 30uV; gain 50uV, band pass 30-3000 Hz. Recorded from muscles bilaterally. Electromyography involves testing the electrical activity of muscles. Because the muscles are innervated by nerves, EMGs were used to protect the integrity of the spinal nerves. When a patient is asleep, the muscle activity is quiet. With mechanical, thermal, or electrical irritation, IONM will see muscle firing or bursts of activity. 1. vastus lateralis, 2. vastus medialis, 3. tibialis anterior, 4. EHL, 5. gastroc

95937 NMT: Neuromuscular transmission testing (abductor pollicis brevis-abductor digiti minimi), amplifier and display gain adjustable. Band pass = 30-3000 Hz. Ulnar nerve stimulation initiated at 15 mA and adjusted as necessary. Train of Four was tested throughout to confirm patient had 4/4 twitches before monitoring EMG responses. This confirms that anesthesia did not give relaxation drugs to the patient and that we will be able to properly detect nerve root injury.

95909: Nerve Conduction Study for PST (Pedicle Screw Testing). PST was requested by the surgeon to verify accuracy of screw position and confirm that the respective nerve root is not at risk from the screw placement. PST can detect subtle breaches in the pedicle wall that cannot be visualized with x-rays thereby providing a higher standard of safety and avoiding iatrogenic injury. Pedicle screws that do not elicit CMAPs to stimulation less than 4mA are deemed safe. The surgeon was handed a ball tip probe which is connected to our stimulator. Stimulation was started at 0mA and slowly went up to 4 mA in 1mA increments. If a screw was positioned close to a nerve root, we would see a response on our EMG window in the muscle that correlates to the level we are testing. 6 nerve prox were tested (L4, L5, and S1 screws on the right and left side). Pedicle screw testing (PST) yielded no CMAPs to stimulation below 4 mA. The surgeon was satisfied with the PST responses and felt no need to reposition any of the placed screws. After PST was completed, rods were placed and the surgeon began to close. Final x-rays further confirmed safe screw placement.

Procedures:

Prior to surgery the patient was interviewed and IOM explained. In the OR, the Monitoring protocols for SSEP and EMG and TOR were implemented. Following anesthetic intubation, subdermal needle electrodes were applied at the scalp (Fpz, Cz, C3', C4', and M1, M2 or C7, International 10-20 co-ordinate system) specified muscles, and stimulation sites, and recorded in bipolar pairs. Intraoperative baseline SSEPs and EMGs were recorded just after final positioning of the patient. Electrode impedance was maintained and appropriately balanced. Data acquisition commenced as soon as possible following intubation and continued throughout the surgical procedure.

Baseline Recordings:

Intraoperative baseline SSEPs and EMGs recorded just after final positioning of the patient for the Lateral L4-S1 OLIF

EXHIBIT 3

OBLIQUE/POSTERIOR INTERBODY FUSION L4L5, L5S1

PATIENT: Gonzales, Marie
DATE OF OPERATION: 01/29/2013
HOSPITAL: Spring Valley
HOSPITAL MRN: 35294396
HOSPITAL ACCT: 904944162
SURGEON: Andrew M. Cash, M.D.
ASSISTANT: Wes Smith, PA-C

PREOPERATIVE DIAGNOSIS:
Traumatically induced lumbar radiculopathy
Internal disc disruption at L4-5 and L5-S1, MVA

POSTOPERATIVE DIAGNOSIS:
Traumatically induced lumbar radiculopathy
Internal disc disruption at L4-5 and L5-S1, MVA

OPERATIVE PROCEDURE:

1. Far Lateral Discectomy L4-5.
2. Far Lateral Discectomy L5-S1.
3. Posterolateral arthrodesis, bilateral L4-5.
4. Posterolateral arthrodesis, bilateral L5-S1.
5. Anterior Lumbar arthrodesis L4-5.
6. Anterior Lumbar arthrodesis L5-S1.
7. Segmental Posterior Lumbar spinal instrumentation L4-S1.
8. Application of intervertebral biomechanical device L4-5.
9. Application of intervertebral biomechanical device L5-S1.

ANESTHESIA: General endotracheal
ANESTHESIOLOGIST: Timothy Beckett, M.D.
ESTIMATED BLOOD LOSS: 100cc
COMPLICATIONS: None
DRAINS: None
SPECIMEN: None

DEF 002527

PATIENT:
HOSPITAL MRN:
HOSPITAL ACCT:

Gonzales, Marie
35294396
904944162

HARDWARE USED:

(1)28mmx11mmPeek(Interbody)
(1)28mmx14mmPeek(Interbody)
(1)6.5x35mmPercScrew
(2)6.5x40mmPercScrew
(3)SetScrews
(1)80mmCurvedNotchedRod

Indications for Surgery:

The patient has clinical and radiographic signs and symptoms consistent with the preoperative diagnosis. The diagnoses and prognosis have been explained the patient. The risks and potential complications associated with the operation have been explained. The patient is aware that this procedure may not meet expectation and that other procedures may be required in the future. The advantages and disadvantages of alternative methods of treatment have been explained to the patient. The patient has agreed to the procedure and signed the operative consent.

Description of the Operative Procedure:

The patient was taken to the operating room and placed under general anesthesia. Preoperative antibiotics were given prior to incision. A Foley catheter was placed.

The patient was then turned carefully into the modified prone position. Jelly rolls and foam pads were then used to position the patient in some lumbar lordosis and carefully pad all body parts.

Intraoperative monitoring was utilized during the entire case with real time interpretation of motor and sensory evoked potentials.

Two fluoroscopic x-ray machines were then positioned to provide AP and lateral visualization of the appropriate segment. Extensive time and careful stereotactic planning was then carried out at this time to determine incision location, incision size, pedicle screw length and diameter, and the angle of surgical approach to the anterior aspect of the affected interspace. A sterile marker was used to mark this planned incision site.

A wide surgical prep was made of the thoracolumbar area and the surgical field was then draped in the usual sterile fashion.

The patient was then turned using the rotation of the surgical table so that a near direct approach to the lumbar spine could be achieved anterior to the transverse process. A 4-mm stab incision was then made superior to the mid iliac crest and then using biplanar fluoroscopic visualization, a neuromonitoring probe was then passed sequentially through the retroperitoneal space and muscle layers into the desired disc anterior to the transverse process. Electrical stimulation was performed during placement of the probe into the desired disc space. There was no burst of electrical activity seen at less than 4 millamps of stimulation. A dilating tube was then passed

DEF 002528

EXHIBIT 4

Las Vegas Radiology

TOMORROW'S RADIOLOGY IMAGING... TODAY

7500. Smoke Ranch Road, Suite 100
Las Vegas, Nevada 89128
Phone: 702-254-5004 Fax: 702-432-4005

Exam Date: February 12, 2013

REFERRED BY
ANDREW CASH, MD,

PATIENT INFORMATION

Patient: GONZALES, MARTIN G DOB: [REDACTED]
MRN: 100475-1 Accession #: 231599
Exam: CT LUMBAR W/O

CT OF THE LUMBAR SPINE WITHOUT CONTRAST

CLINICAL HISTORY: Back pain, postoperative.

COMPARISON STUDY: 12/07/2012.

TECHNIQUE: Serial axial views through the lumbar spine performed. Coronal, sagittal and 3-D reconstructed images obtained.

FINDINGS:

There is left posterior fixation hardware at L4, L5, and S1. Spacer material is identified at L4-5 and L5-S1. Facet hypertrophic changes are identified at these levels.

There is no evidence of significant mass effect upon the neural foramina by the pedicle screws.

The metallic hardware at the interspaces yields artifact at the left neural foramen of L5-S1 and L4-5. Cannot rule out scar tissue versus disc material encroaching upon the left foramina at these levels. Case discussed with physician at time of dictation.

IMPRESSION:

1. There is no evidence of acute fracture.

GONZALES, MARTIN G MRN: 100475-1 Exam Date: February 12, 2013 (page 1 of 2)

DEF 002428

2. Cannot rule out disc protrusion or scar tissue at the left foramina of the L4-5 and L5-S1. Spacer material at these interspaces is associated with metallic artifact.

JB/emr

Electronically signed by:

JAMES BALDWIN, MD

Date:

02/12/13

Time:

12:19

EXHIBIT 5

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 MARIE GONZALEZ,)
5 Plaintiff,)
6 Case No. A687931
7 vs.)
8 DEVAL M. HATCHER, an)
9 individual; REPUBLIC SILVER)
10 STATE DISPOSAL, INC., a)
11 Nevada Corporation; DOE)
12 OWNERS I through V,)
13 inclusive, DOE DRIVER, ROE)
14 EMPLOYER and ROE COMPANIES,)
15 Defendants.)
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24 DEPOSITION OF ANDREW CASH, M.D.
25 LAS VEGAS, NEVADA
DECEMBER 3, 2014

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1 evaluation.

2 It said there might be some scar tissue
3 versus disk material encroaching on the left
4 foramina at L4-5 and L5-S1. When I evaluated the
5 patient on 12/12/2013, I actually saw the CT scan,
6 reviewed the report, spoke with the radiologist.
7 He confirmed that on his report of the study and
8 found there was no neural impingement, meaning no
9 compression on the nerve to be decompressed
10 surgically and no complication or malfunction in
11 the hardware to be addressed surgically.

12 Going to the next note, which is
13 2/20/2013 --

14 Q. Can we stay on that --

15 A. Absolutely.

16 Q. -- radiology report. Sorry.

17 I'm looking at it, and the findings are
18 described, of course, toward the bottom of the
19 page. I think the middle of the three paragraphs
20 on this page says, There is no evidence of
21 significant mass effect upon the neural foramina --

22 A. That is correct.

23 Q. -- by the pedicle screws.

24 And what specifically is that describing?

25 A. Okay. So specifically where the nerve

1 REPORTER'S DECLARATION

2 STATE OF NEVADA)

3 COUNTY OF CLARK)

4 I, Lisa Makowski, CCR No. 345, declare as
5 follows:

6 That I reported the taking of the deposition
7 of the witness, ANDREW CASH, M.D., commencing on
8 Wednesday, December 3, 2014 at the hour of 4:03
9 p.m.

10 That prior to being examined, the witness was
11 by me duly sworn to testify to the truth, the whole
12 truth, and nothing but the truth; that, before the
13 proceedings' completion, the reading and signing of
14 the deposition has been requested by the deponent
15 or a party.

16 That I thereafter transcribed said shorthand
17 notes into typewriting and that the typewritten
18 transcript of said deposition is a complete, true
19 and accurate transcription of said shorthand notes
20 taken down at said time.

21 I further declare that I am not a relative or
22 employee of any party involved in said action, nor
23 a person financially interested in the action.

24 Dated at Las Vegas, Nevada this 15th day of
25 December, 2014.

Lisa Makowski

Lisa Makowski, CCR 345

EXHIBIT 6

I, Howard Tung, M.D., do declare and state as follows:

1. I am a licensed physician currently practicing medicine in the State of California and am licensed to practice medicine in the State of Nevada. I have knowledge of the matters set forth hereby and, if called as a witness, would and could competently testify to the following facts:

2. I am a Diplomate of the American Board of Neurological Surgery and Clinical Professor of Neurological Surgery at the University of California, San Diego. I have been licensed and certified during all pertinent times of my review of records in this case. My background and qualifications are more fully described in my Curriculum Vitae.

3. Based upon my education, training, and experience, I am familiar with the diagnosis, care, and management of patients presenting with symptoms similar to those of Marie Gonzalez. I am aware of the standards of care required for medical providers practicing in the community for the evaluation and treatment of physical conditions presented by Ms. Gonzalez, as well as the standards of care in medical clinics in the United States.

4. Based upon my education, training, and experience, I have reached certain opinions regarding Marie Gonzalez's care and treatment based on my review of medical records, including those from Andrew Cash, M.D., Stuart Kaplan, M.D., Bruce Katana, M.D. of Rocky Mountain Neurodiagnostics, and various radiological studies of Ms. Gonzalez's spine. I have also reviewed the depositions of Andrew Cash, M.D. and Stuart Kaplan, M.D. taken in association with Gonzalez v. Republic Silver State Disposal, Inc., Eighth District Court Case No. A-13-687931-C. Based upon my review of these materials, I note the following:

5. It is my understanding that Andrew Cash, M.D. made the recommendation that Marie Gonzalez undergo a lumbar fusion procedure on the basis of results from a December 7, 2012 discography study. It is well-known from an evidence-based standpoint that discography has not been shown to be useful in selection of patients for surgery and improvement of surgical outcomes. This recommendation has been endorsed by a number of professional medical societies. While the decision to proceed with surgical intervention with lumbar fusion approaches a breach in the standard of medical care, it does not fall below this.

6. It is my understanding that Andrew Cash, M.D. performed a lumbar fusion surgery on Ms. Gonzalez at the L5-S1 level on January 29, 2013. Ms. Gonzalez is noted to have immediate postsurgical onset of severe left leg pain. Despite the clinical change in Ms. Gonzalez's medical status, it is my understanding on information and belief that she did not receive radiologic imaging when she was admitted to the hospital. Subsequent to the initial follow-up visit with Andrew Cash, M.D., a CT scan was obtained on February 12, 2013. I have reviewed the CT scan and it unequivocally shows an obvious breach of the left L5 pedicle screw with root compression. It is my understanding that revision surgery was not completed by Andrew Cash, M.D. and the medical records indicate a delay of several months until the revision surgery of Stuart Kaplan, M.D. on July 15, 2013.

7. It is my opinion that, given her correlative severe neurological symptoms, the standard of care for a spine surgeon would require removal and/or replacement of the offending pedicle

screw and Andrew Cash, M.D., fell below this standard. It is my understanding that Andrew Cash, M.D. indicated that he reviewed the February 12, 2013 CT scan of Marie Gonzalez. It is my opinion that a prudent spine surgeon would have recognized this breach of the pedicle and associated the breach of the malpositioned pedicle screw with Ms. Gonzalez's worsening postoperative left leg pain. Nevertheless, it is also my understanding that Andrew Cash, M.D., concluded that there was "no compression of the nerve to be decompressed surgically and no complication or malfunction in the hardware to be addressed surgically."

8. It is my opinion that Andrew Cash, M.D.'s conclusions with respect to the positioning of the surgical hardware placement in Marie Gonzalez were erroneous. Further validating the malpositioned left L5 pedicle screw and its association with Ms. Gonzalez's worsening and severe left leg pain is her improvement following the revision surgery performed by Stuart Kaplan, M.D. in July 2013. It is my understanding that Stuart Kaplan, M.D. also indicated in his deposition that the pedicle screw was causing irritation and compression of the left L5 nerve root.

9. From my review of the Operative Report of Andrew Cash, M.D. and the Neuromonitoring Report by Bruce Katuna, M.D. from Rocky Mountain Neurodiagnostics, it is my understanding that remote monitoring was completed given that Rocky Mountain Neurodiagnostics is located in Colorado. The Neuromonitoring Report indicates pedicle screw testing was completed up to 4 milliamps. Stimulation was started at 0 milliamps and slowly went up to 4 milliamps in 1 millamp increments. It is my understanding that Rocky Mountain Neurodiagnostics' conclusion was that the pedicle screw testing up to 4 milliamps deemed the pedicle screw to be safe.

9. It is my opinion that the Bruce Katuna, M.D.'s conclusion with respect to pedicle screw testing is not consistent with the literature and the pedicle screw testing and failure to reposition the screw at the time of surgery falls below the standard of care. Studies show that the average value for an acceptable screw using pedicle screw testing was greater than 7.5 milliamps and thresholds less than 5 milliamps have generally resulted in screw removal.

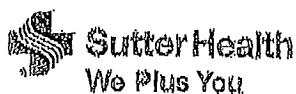
10. Based on my review of the pertinent medical records and my experience and training, it is my opinion, to a reasonable degree of probability, that Marie Gonzalez's clinical condition has been irretrievably altered. It is my opinion, to a reasonable degree of medical probability, that had the malpositioned pedicle screw been determined at surgery or shortly after the February 12, 2013 CT scan, Ms. Gonzalez's current severe radicular symptoms would be improved from her current status. Furthermore, it is my opinion to a reasonable degree of medical probability that it is more likely than not that Ms. Gonzalez's need for future medical care would be improved and she would not likely be in chronic pain. Finally, it is my opinion, to a reasonable degree of medical probability, that Ms. Gonzalez would not have required placement of a spinal cord stimulator for chronic pain and radiculopathy to which the malpositioned placement of the pedicle screw contributed.

This affidavit is not intended to, and does not, contain all of my findings and opinions reached on the care and treatment of Marie Gonzalez by Andrew Cash, M.D. and Bruce Katuna, M.D. I

declare under penalty of perjury under the laws of the State of Nevada the foregoing is true and correct.

Howard Tung
HOWARD TUNG, M.D.

EXHIBIT 7



Sutter Imaging
1600 Expo Parkway
Sacramento, CA 95816

I, David Seldenwurm, M.D., do declare and state the following:

1. I am a licensed physician in the State of California, Nevada and Texas, and practice exclusively in the field of radiology and neuroradiology. I have personal knowledge regarding the matters set forth herein, and if called upon to testify, would competently do so, except as to those matters stated on understanding, information or belief, and as to those matters, I believe them to be true. I state as well any medical opinions set forth below to a reasonable degree of medical probability.
2. I am certified by the American Board of Radiology, and hold memberships and leadership positions in several medical societies and professional groups, among them the American Society of Neuroradiology and the American College of Radiology. My background and professional qualifications are more fully set forth in my attached Curriculum Vitae.
3. I was retained as an expert witness in my field of neuroradiology in the matter *Marle Gonzales v. Deval Hatcher and Republic Silver State Disposal, Inc.* (District Court, Clark County, Nevada, Case #A-887931). Through that retention I became familiar with Ms. Gonzales' treatment records and diagnostic imaging for injuries to her lower back which she claimed to have sustained in a traffic accident that formed the basis of the *Gonzales v. Hatcher* lawsuit. Such treatment was provided to Ms. Gonzales by, among others, Andrew Cash, M.D. and one or more radiologists practicing in association with or as part of Las Vegas Radiology, including James Balodimas, M.D.
4. On or about January 29, 2013, Andrew Cash, M.D. performed lumbar fusion surgery on Ms. Gonzales at L5-S1. Fixation hardware implanted by Dr. Cash included pedicle screws on the left at L5 and S1.
5. Ms. Gonzales' medical records confirm that she experienced severe post-operative pain into the left leg after the January 29, 2013 operation.
6. It is my understanding from the Gonzales medical records, and the December 3, 2014 deposition testimony of Dr. Cash taken in *Gonzales v. Hatcher*, post-surgical imaging studies were performed regarding Ms. Gonzales' lumbar spine approximately two weeks after the January 29, 2013 surgery.
7. Because of Ms. Gonzales' continuing post-operative pain, Dr. Cash ordered a CT scan of her lumbar spine, which was performed by Las Vegas Radiology on February 12, 2013. A report regarding the CT study of Ms. Gonzales' lumbar spine was dictated and signed by James Balodimas, M.D.
8. I have personally reviewed the February 12, 2013 report of Dr. Balodimas and the described CT images themselves. The imaging study demonstrates the pedicle screws at L5 and S1 positioned within the neural foramina, where they appear to displace the left L5 and left S1 nerve roots. The positioning of the pedicle screws within the neural foramina in a manner that produces neural displacement and likely clinical impingement upon neural structures is not mentioned in the Las Vegas Radiology/Balodimas radiology report. Rather, the report states "there is no evidence of significant mass effect upon the neural foramina by the pedicle screws". The report

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describes a discussion of the radiological findings with Dr. Cash "at the time of the dictation."

9. With respect to the radiological interpretation, a prudent radiologist should reasonably be expected to detect the position of pedicle screws on the majority of similar studies. The screws and interbody hardware do produce some artifact in the February 12, 2013 CT Imaging, but the degree of artifact is relatively small, as modern CT techniques and modern hardware had been employed. It is my professional opinion that Dr. Balodimas' failure to have detected entry of the L5 and S1 pedicle screws into the neural foramina; to have identified the screws' displacement of the nerve roots at their respective levels; and eventual failure to report such findings was below the standard of care for a prudent radiologist.
10. Correlating the clinical and imaging findings with respect to Ms. Gonzales' post-operative symptoms and the mal-positioned pedicle screws by the surgeon who placed them would also have been reasonably expected, as noted in the affidavit of neurosurgeon, Dr. Howard Tung. While I defer to the expertise of Dr. Tung regarding spinal surgery, I fully concur, and can state to a reasonable degree of medical probability in my specialty, that Dr. Cash—who testified in his December 2014 deposition (referenced previously) that he personally reviewed the post-operative CT scan and spoke with the radiologist regarding the study—erroneously concluded the surgical hardware, especially the pedicle screws at L5 and S1, had been properly placed when in fact they had breached their pedicles, entered into the neuroforamina, and had displaced the left S1 and left L5 nerve roots. Based on my experience and training, the surgeon would ordinarily recognize the intended anatomical result of his or her surgical procedure. This is particularly the case with respect to hardware placement. Since pedicle screws are intended for placement within the pedicle, and not for placement within the spinal canal or neural foramina, a spine surgeon in the ordinary course of clinical practice may be expected to recognize this abnormal imaging finding. This is especially true when there is correlation of the clinical and imaging findings and the anatomical and clinical operative result.
11. This affidavit is not intended to state all my findings, conclusions and opinions regarding all of Ms. Gonzales' radiological imaging and their interpretation by Dr. Cash, Dr. Balodimas, or others involved in Ms. Gonzales' treatment. I therefore reserve my right and opportunity to expand upon the matters set forth above, or address other or additional matters as the need may arise.

I declare under penalties of perjury under the laws of the State of Nevada that the foregoing is true and correct except as to any matters stated upon understanding, information or belief, and as to those I believe them to be true.



3/28/16

David Seldenwurm, M.D.

EXHIBIT 8

I, Jerry Saline, Ph.D., do declare and state as follows:

1. I am a licensed audiologist with a subspecialty in Neurophysiology, currently practicing in the State of California. I have knowledge of the matters set forth herein and, if called as a witness, would and could competently testify to the following facts:
2. I am a Diplomate of the American Board of Audiology and am licensed to practice clinical and surgical Neurophysiology by the Board of Medical Quality Assurance in the State of California. I have been licensed and certified during all pertinent times of my review of records in this case. My background and qualifications are more fully described in my Curriculum Vitae.
3. Based upon my education, training, and experience, I am familiar with the diagnosis, surgical methods, and neurophysiologic methodologies and standards for patients undergoing surgical intervention similar to Ms. Gonzalez' surgery. I am aware of the standards of care required for Neurophysiology providers, practicing in the community as related to surgical intervention of physical conditions presented by Ms. Gonzalez, as well as the standards of care in medical facilities in the United States.
4. Based upon my education, training, and experience, I have reached certain opinions regarding the intraoperative neurophysiologic care of Ms. Gonzalez following my review of medical records, including those from Andrew Cash, M.D., Stuart Kaplan, M.D., Bruce Katuna, M.D. of Rocky Mountain Neurodiagnostics, anesthesia records, and various other medical records related to Ms. Gonzalez' surgical spine procedures. I have also reviewed the depositions of Andrew Cash, M.D. and Stuart Kaplan, M.D., taken in association with Gonzalez v. Republic Silver State Disposal, Inc., Eighth District Court Case No. A-13-687931-C. Based upon my review of the materials made available to me, I note the following:
5. Other than a short narrative summary report by Dr. Bruce Katuna, of Rocky Mountain Neurodiagnostics, no intraoperative neurophysiology data, records, or report were presented in any records for my review. If, in fact, the only report regarding the surgical intraoperative data and records was that provided by Dr. Katuna, then the process and methodology for performing surgical spine monitoring, presentation of data, and reporting falls well below the community standards of care. It is widely accepted among professional Neurophysiology practitioners, hospitals, and professional societies, including the American Clinical Neurophysiology Society, that a complete record of averaged waveforms should be stored. If, due to technical and storage constraints, a complete record is either not possible or is impractical, then representative averaged waveform samples should be preserved in long-term storage. It is further recognized that any unaveraged data, including free electromyographic (EMG) data, should be included in the long-term storage of patient records, as required by law and should include the times of surgical events and procedures. Any Alerts that were issued directly to the surgeon or anesthesiologist should be noted. The anesthetics and various drugs used should be recorded in the long-term neurophysiology records, and any significant changes in medications or dosages should be noted. Additionally, the monitoring records should contain any significant changes in the

patient's physiological parameters, including blood pressure and patient temperature. The above information, along with stored averaged and unaveraged waveforms should be maintained in the long-term patient records and available for review as required by law. Finally, a final report summarizing the monitoring records should include peak latency and amplitude values and should be filed in the patient's medical records chart.

6. From my review of the operative report of Andrew Cash, M.D., in context with the neuromonitoring report by Bruce Katuna, M.D. of Rocky Mountain Neurodiagnostics, it is my conclusion that remote monitoring was performed with the technical components being conducted by Danielle Miller, affiliated with Neuromonitoring Associates, in the operating room. The professional interpretive component was performed by Dr. Katuna at a remote reading site in Colorado. The report by Dr. Cash, spine surgeon, indicates that some type of probe was used within the disc space to identify nerve roots. The report, in context with Dr. Katuna's neuromonitoring report, indicates that pedicle screw testing was completed up to 4 milliamps only. It is my understanding that Drs. Cash and Katuna concluded that the probe testing of pedicle screw continuity and electrical impedances of up to 4 milliamps indicated satisfactory placement of the L5 and S1 pedicle screws.

7. It is my opinion that the conclusions of Dr. Cash and Dr. Katuna, with respect to satisfactory L5/S1 pedicle screw placement during Ms. Gonzalez' surgery are inconsistent with the literature regarding intraoperative spinal nerve root stimulation in general, and pedicle screw stimulation protocols specifically. Furthermore, failure to identify and reposition a mal-positioned pedicle screw, based upon a stimulus threshold determinant of only 4 milliamps, falls below the standard of care. It is widely reported in the related literature that the lowest value for an acceptable placement of a screw, using pedicle screw electrical probe testing without eliciting any EMG activity, is at or above 7.5 milliamps, and thresholds less than 5 milliamps generally resulted in screw removal and repositioning.

This affidavit is not intended to, and does not, contain all of my findings and opinions reached regarding the case and treatment of Marie Gonzalez by Andrew Cash, M.D., Bruce Katuna, M.D. and others. I declare under penalty of perjury, under the laws of the State of Nevada, that the foregoing is true and correct.


Jerry W. Saline, Ph.D. CCC-A

PATIENT:
HOSPITAL MRN:
HOSPITAL ACCT:

Gonzales, Marie
35294396
904944162

along this same route. Following this, a 7-mm working channel was then passed sequentially into the disc space. The working channel was manually held in position while a series of disc cleaning tools was passed through the channel to remove the affected disc, decompress the nerve roots in the neural foramina, and decorticate the vertebral endplates at that segment.

Arthrodesis of the intervertebral space via an anterior retroperitoneal exposure and application of an intervertebral biomechanical device was then accomplished by using the working channel that had been placed in the retroperitoneal space anterior to the transverse processes. A customized PEEK vertebral body replacement device was then inserted into the mid portion of the intervertebral discs and then packed tightly with allograft bone for stabilization and arthrodesis of the intervertebral spaces. This was done under biplanar fluoroscopic guidance. All bone was confined to the borders of the disc space. The working channel was then removed.

The patient was then turned into a true prone position and two parallel incisions were made approximately 2 cm on side of the midline in the previously stereotactically determined locations. The incisions were just through the lumbodorsal fascia and further dissection was then carried down bluntly to expose the bone above the pedicles in a Wiltse type approach.

Using biplanar fluoroscopy and percutaneous techniques, the desired pedicles were then cannulated using an awl and then stereotactically sized screws were then inserted segmentally under direct fluoroscopic visualization. All screws were carefully placed into the center of the pedicle and no bony breach of any pedicle was felt to occur. An interconnecting rod was applied to both sides.

The remaining exposed bony surfaces were then decorticated using the Cobb periosteal, and allograft bone combined with a bone marrow aspiration were then placed along the posterolateral surfaces for arthrodesis.

The subcutaneous tissue was closed with 2-0 Vicryl and then a running subcuticular stitch was placed. Steri-Strips were applied and Xeroform, sterile 4x4 gauze and a Tegaderm were placed.

All sponge, needle and cottonoid counts were correct. There were no significant permanent changes from baseline with neuromonitoring. Following awakening from anesthesia, the patient was extubated. The patient could voluntarily move all

Electronically signed,

Andrew M. Cash, M.D.

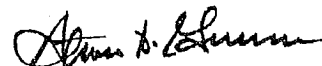
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CLERK OF THE COURT

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **REPUBLIC SILVER STATE DISPOSAL, INC.,**
11 **a Nevada Corporation,**

12 **Plaintiff**

13 **vs.**

14 **ANDREW M. CASH, M.D.; ANDREW M.**
15 **CASH, M.D., P.C. aka ANDREW MILLER**
16 **CASH, M.D., P.C.; DESERT INSTITUTE OF**
17 **SPINE CARE, LLC, a Nevada Limited Liability**
18 **Company; JAMES D. BALODIMAS, M.D.;**
19 **JAMES D. BALODIMAS, M.D., P.C.; LAS**
20 **VEGAS RADIOLOGY, LLC, a Nevada Limited**
21 **Liability Company; BRUCE A. KATUNA, M.D.;**
22 **ROCKY MOUNTAIN NEURODIAGNOSTICS,**
23 **LLC, a Colorado Limited Liability Company;**
24 **DANIELLE MILLER aka DANIELLE**
25 **SHOPSHIRE; NEUROMONITORING**
26 **ASSOCIATES, INC., a Nevada Corporation;**
27 **DOES 1-10 inclusive; and ROE**
28 **CORPORATIONS 1-10 inclusive**

Defendants.

Case No.: A-16-738123-C

Dept No.: XXX

**REPUBLIC'S BRIEF RE EVIDENTIARY
HEARING**

Hearing Date: 11/9/16
Hearing Time: 9:00AM

22 Plaintiff REPUBLIC SILVER STATE DISPOSAL, INC., by and through its counsel
23 BARRON & PRUITT, LLP, hereby submits the following Brief and General Objection to the Court's
24 Minute Order of Oct. 13, 2016.

25 ///

26 ///

27 ///

28 ///

MEMORANDUM OF POINTS AND AUTHORITIES

Because of the extensive briefing the Court has already received and reviewed, it will hopefully suffice that this is a case seeking the statutory remedy of contribution. See *Uniform Contribution Among Tortfeasors Act*, NRS 17.225 et seq. Contribution is sought for amounts Republic Silver State Disposal paid in excess of its "equitable share" of a common liability when it settled a lawsuit brought by Marie Gonzales against Republic and its former employee, Deval Hatcher. Ms. Gonzales filed her suit against Republic and Mr. Hatcher on September 3, 2013 for injuries she claimed from a January 14, 2012 traffic accident in Clark County.

That lawsuit was settled, and a release was executed on July 6, 2015. Contribution is appropriately sought because the release affirmatively discharged—in addition to Republic and Mr. Hatcher—Ms. Gonzales' claims against all health care professionals who treated her for injuries she allegedly sustained in the January 2012 accident. Republic has alleged, and will be prepared to prove to the finder of fact, that those health care professionals named as defendants in this lawsuit were negligent in their treatment of injuries suffered by Ms. Gonzales, which her principal physician, Dr. Andrew Cash, opined were the directly caused by the January 14, 2012 accident. See medical record of Andrew Cash, dated February 20, 2013, attached as **EXHIBIT 1**.

In its Minute Order of October 13, 2016, this Court has set a November 9, 2016 evidentiary hearing to consider two issues prior to disposition of three Rule 12 motions:

- 1) Do the terms of the settlement agreement between Gonzales and Republic extinguish the liability of the Defendants named in the present litigation?
- 2) If the statute of limitations set forth in NRS 41A.097 applies, is there sufficient evidence to determine, for purposes of the pending Motions, when the statute of limitations expired as it relates to each Defendant?

With all deference, Republic objects to an evidentiary hearing for two reasons discussed below.

1. *Rule 12 motions attacking the sufficiency of a pleading should, as a matter of law, be based on the face of the pleading, and without consideration of matter outside the pleading.*

1 The first objection is that the motions currently before the Court are brought either under
2 NRCP 12(b)(5) for failure to state a claim, or subsection (c) of the same rule for judgment on the
3 pleadings. Both forms of a Rule 12 motion address a complaint's legal sufficiency.¹ Using the "beyond
4 a doubt" standard, see *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228 n. 6, 181 P.3d
5 670, 672 n. 6 (2008), a Rule 12(b)(5) motion asks this question: from the face of the pleading, is the
6 plaintiff is entitled to no relief under any set of facts that could be proven in support of the claim? *Id.*,
7 124 Nev. at 228, 181 P.3d at 672. In answering this question, the court must accept the pleading's
8 allegations as true, and extend to the non-moving party all reasonable inferences that can be drawn
9 from the pleading. *Id.*

10 Although the October 13 Minute Order is couched as a "request," Republic reads the directive
11 as an order, to which Republic will comply in good faith, though under the protest of this objection.
12 By coupling its decisions on the Rule 12 motions to evidentiary matters outside of the assailed
13 complaint, the Court has effectively converted the Rule 12 motions into motions for summary
14 judgment under Rule 56, where, as succinctly put by the Nevada Civil Practice Manual, "the pleadings
15 play a limited role." *Id.*, Ch. 17 ("Summary Judgment") §17.12 [1]. Simply put, whether brought by a
16 "claimant" or "defending party," a motion for summary judgment under NRCP 56 presupposes the
17 existence of a "claim." *Id.*, (a) and (b). And whether Republic's amended complaint states a "claim"
18 is the very point of the pending motions.

19 The second objection is to the production at this juncture of the Gonzales-Republic release,
20 and its consideration in deciding the pending motions. Republic's amended complaint at ¶51 alleges
21 in full:

22 On July 6, 2015, REPUBLIC, settled *Gonzales v. Hatcher, Republic Silver state*
23 *Disposal, Inc.*, resolving all claims against itself, Deval Hatcher, and all of
24 Gonzales' health care providers, including but not limited to the Defendants herein
25 for \$2,000,000.00.

26 ¹ As stated in prior briefing the Rule 12(c) motion is facially defective since the pleadings are not yet "closed" since the
27 movant, Defendant Balodimas, has not filed an answer. See Motions for judgment are also typically plaintiffs' motions,
28 relying on the admissions of the responding party; for this reason a Rule 12(c) motion can be defeated by the denials and
affirmative defenses since a court may not go beyond the face of a pleading. See *Bernard v. Rockhill Development Co.*,
10 Nev.132, 135, 734 P.2d 1238, 1241 (1987). Nor will a defendant "succeed on a motion under Rule 12(c) if there are
allegations in the plaintiff's pleadings that, if proved, would permit recovery." *Id.*

1 While Republic's allegations at ¶1 of the amended complaint should, as a matter of law, be
2 taken as true, *Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 873, 8 P.3d 837, 839 (2000); see
3 also *Buzz Stew*, supra, 124 Nev. at 228, 181 P.3d at 672², Republic is attaching the Release as relevant
4 predicate to a right of contribution under NRS 17.225(3) and 17.245(1)(a). It should not go unnoticed,
5 however, that by demanding access to the release all the defendants have taken the same inconsistent
6 position: On the one hand they contend the Republic claim is barred by a limitations exclusively
7 applicable to claims of medical malpractice and negligence under NRS Ch. 41A. On the other hand
8 they acknowledge Republic is asserting a contribution claim—subject to its own 1-year limitation
9 period under NRS 17.285(4)(b); otherwise, what difference does the release make?

10 Though the release is not the subject of any pending motion, the scope and effect of the
11 Gonzales-Republic release begins with a discussion of Nevada's controlling authority regarding
12 whether a release may be read to include third parties to the settlement agreement.

13 *2. The Gonzales-Republic release for injuries allegedly resulting from the January 14,*
14 *2012 accident was intended and drafted to extinguish Gonzales's claims against all her*
15 *health care providers.*

16 At common law, the rule was "release of one, release of all." This led to harsh results—by
17 signing a "general" release, a claimant could unwittingly extinguish claims against third-parties also
18 potentially liable for his or her damages. Nevada has broken from the common law rule, and the intent
19 of the parties to the release controls who is released from liability.

20 In *Russ v. General Motors Corp.*, 111 Nev. 1431, 906 P.2d 718 (1995), Laura Russ, was
21 severely injured in a traffic accident when the van she was driving collapsed, and its engine entered
22 the passenger compartment. Russ signed a release foregoing her claim against the adverse driver, Scott
23 Haight, in exchange for Haight's auto liability policy limits.³ The verbiage of the release also had
24 boilerplate purporting to release "all other persons, firms or corporations" for claims arising from the
25 same accident. The injured driver and her husband then sued the manufacturer of her vehicle, GM,
26 and the dealership that sold it to her, Fairway Chevrolet. *Id.*, 111 Nev. at 1432-1433; 906 P.2d at 719.

27 ² The same applies to a Rule 12(c) motion. See *Bernard v. Rockhill Development Co.*, discussed at n.1, above.

28 ³ The undersigned can speak with some authority on this point since he represented the adverse driver and the auto insurer, Hawkeye Security.

1 The manufacturer and dealership moved for summary judgment contending the release
2 extinguished claims against them as well. In opposition the plaintiff submitted the declaration of her
3 attorney's assistant, Guy Potter, who negotiated with the adverse driver's insurer, Hawkeye Security.
4 The upshot of Potter's declaration was that it was not the intention of the Russ or Hawkeye to release
5 GM or Fairway, and that at the time the release was signed, no lawsuit against GM and Fairway was
6 pending, or even contemplated. *Id.*, 111 Nev. at 1434; 906 P.2d at 720. The Potter declaration was
7 largely disregarded by the district court as beyond Potter's personal knowledge or hearsay, and was
8 "insufficient to raise a genuine issue of fact as to the liability of [GM] or Fairway." Instead, the district
9 court granted summary judgment, holding the release "clear and unambiguous" and that "the class of
10 released entities defined in the release included not only [GM] and Fairway but all other firms and
11 corporations." *Id.* An appeal was taken.

12 The *Russ* decision reviewed in considerable detail Nevada's law of release. In substance the
13 *Russ* court found the harshness of the common rule was legislatively overturned by both the *Uniform*
14 *Joint Obligor's Act*, NRS Ch. 101, and *Uniform Contribution Among Tortfeasors Act*, NRS 17.225, et
15 seq.:

16 The Nevada Legislature adopted the Uniform Contribution Among Tortfeasors Act
17 ("UCATA") in 1973. The UCATA was drafted to specifically address the
18 inequities that resulted from adherence to the traditional common law rule. *Neves*
19 [*v. Potter*, 769 P.2d 1047 (Colo. 1989)] at 1050. In pertinent part, the UCATA
20 states:

21 When a release or a covenant not to sue or not to enforce judgment is given in
22 good faith to one of two or more persons liable in tort for the same injury ...:

- 23 1. It does not discharge any of the other tortfeasors from liability for the injury
24 ... unless its terms so provide....

25 111 Nev. at 1436; 906 P.2d at 721.

26 Our Supreme Court then surveyed the three schools of thought regarding the law of release.
27 First, "[s]ome jurisdictions hold that all possible tortfeasors are released by a general, boilerplate
28 release." *Id.* Second, "[o]ther jurisdictions narrowly construe the 'unless its terms so provide'
requirement [as found in, e.g., NRS 17.245] only to discharge a tortfeasor who is named in the release

1 or identifiable from the face of the release.” *Id.* Finally, “[a] third view probes the intentions of the
2 parties by holding that a boilerplate release can only discharge an unnamed tortfeasor if the parties to
3 the release *intended* such a result.” *Id.* (emphasis original).

4 The *Russ* Court definitively held that “[o]ur cases that address the issue at bar adhere to the
5 latter view because it is the more reasoned approach” and frowned upon the “absolute bar view”
6 because it “frustrate[s] the intent of the UCATA to abrogate the common law” rule that a release of
7 one tortfeasor automatically released all others. *Id.*, 111 Nev. at 1436-7; 906 P.2d at 721.

8 The court also found unpersuasive “[t]he view that a release only discharges tortfeasors who
9 are named in the release, or identifiable from the release.” *Id.* 111 Nev. at 1438; 906 P.2d at 721-2.
10 The thrust of *Russ*, therefore, is that “a release does not, in and of itself, release a party unless it was
11 the intention of the injured person to release that party”; that “determining an injured party’s intentions
12 depends upon proof and is not susceptible to resolution as a matter of law”; and that “[s]uch a
13 determination is appropriately a jury question.” *Id.* 111 Nev. at 1438; 906 P.2d at 722.

14 Perhaps important for the Court’s evidentiary hearing, as an evidentiary matter *Russ* also held
15 that the district court “was required to accept the Potter declaration, and any inferences drawn from it,
16 as true during the summary judgment proceeding,” and that:

17 a court should provisionally receive all credible evidence concerning a party’s
18 intentions to determine whether the language of a release is reasonably susceptible
19 to the interpretation urged by the party. (Citation.) If the court decides that the
20 extrinsic evidence makes the language in the release reasonably susceptible to the
21 interpretation urged, the extrinsic evidence should be admitted to aid the court’s
22 interpretation of the contract.

23 111 Nev. at 1438-1439; 906 P.2d at 723.

24 As is now discussed, the Gonzales-Republic release was fashioned to exonerate from any
25 potential liability of “any [of Mrs. Gonzales’] medical treatment providers.”

26 a. *The intent of the parties to the Gonzales-Republic release was clearly
27 established during the negotiation process and in the Release’s language.*

28 During discovery in *Gonzales*, it was reasonably certain Dr. Cash’s operation on January 29,
2013 had led directly to Dr. Kaplan’s complete revision of Cash’s “work” on July 15, 2013. Whether

1 Cash had committed malpractice was unclear, however—certainly the term had not crossed Dr.
2 Kaplan's lips when he was deposed in late 2014, and Dr. Cash's testimony downplayed the need for
3 the revision altogether. In fact, when deposed, Dr. Cash effectively placed the blame for not
4 identifying the pedicle screws entering Mrs. Gonzales' neuroforamina on the radiologist, Dr.
5 Balodimas. When asked about the Balodimas CT study performed on February 12—just two weeks
6 after his operation—Dr. Cash testified:

7 It said there might be some scar tissue versus disk material encroaching on the left
8 foramina at L4-5, L5-S1. When I evaluated the patient on 12/12/13 (sic), I actually
9 saw the CT scan, reviewed the report, [and] spoke with the radiologist [Dr.
10 Balodimas]. He confirmed that on his report of the study and found that there was
11 no neural impingement, meaning no compression on the nerve to be decompressed
12 surgically and no complication or malfunction in the hardware to be addressed
13 surgically.

14 See Amended Complaint ¶35.

15 The larger point, however, is that when settlement negotiations were occurring in June 2015,
16 there were irregularities in Mrs. Gonzales' treatment by Drs. Cash and Balodimas, but whether they
17 rose to actionable professional negligence was uncertain. That is why, as condition of settlement,
18 Republic wanted to preserve its rights to seek contribution—a condition to which Mrs. Gonzales'
19 counsel agreed.

20 Attached as **EXHIBIT 2** is a copy of email correspondence between counsel making it plain-
21 as-day their intent to have Mrs. Gonzales' release cover Dr. Cash, and her other health care
22 professionals in who provided her treatment for the January 14, 2012 accident:

23 Because we wish to preserve all rights of contribution and equitable
24 indemnification, our form of release will be inclusive of all medical providers,
25 including Dr. Cash and any other potentially responsible health care providers
26 or third- parties. So long as that is fully understood, I think we can move
27 forward to finalize the settlement.

28 /S/ David Barron

Mrs. Gonzales' counsel's response was brief but unquestionable:

1 We agree to those conditions...

2 /S/ Ryan Anderson

3 Because of that understanding the Release, attached as **EXHIBIT 3**, has the following
4 language, in which Mrs. Gonzales clearly agreed that:

5 As a part of their settlement and their mutual consideration stated above, this
6 SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE
7 shall discharge and extinguish any and all claims or liabilities, including those
8 for "economic" and "noneconomic" damages as set forth in NRS ch. 41A,
9 RELEASOR [Ms. Gonzalez] may possess against any of her medical treatment
10 providers for injuries she alleges to have sustained in the described incident of
11 January 14, 2012.

12 The foregoing is found at page 2 of the Release. Reiterating the intent to preserve contribution rights,
13 it was

14 acknowledge[d] this SETTLEMENT AGREEMENT; RELEASE and
15 COVENANT NOT TO SUE represents a good faith settlement of the
16 RELEASORS' claims, and preserves RELEASEES' rights under The Uniform
17 Contribution Among Tortfeasor's Act, NRS 17.225, et seq.

18 Release at p. 9.

19 Simply put, the Gonzales-Republic release passes muster under *Russ* since its intention to
20 release Mrs. Gonzales' medical treatment providers, and preserve Republic's rights of contribution
21 are plainly stated. The court, however, has asked how the Gonzales-Republic release compares to the
22 unreported Nevada Supreme Court's decision in *McNulty v. District Court*, 127 Nev. 1159, 373 P.3d
23 942 (2011). *McNulty* actually supports that the Gonzales-Republic release extinguished the liability
24 of Mrs. Gonzales' treatment providers.

25 *b. Distinguishing McNulty v. District Court*

26 In simplest terms, *McNulty* involved a settlement agreement that did not release a plaintiff's
27 treatment providers from liability, and as such, the *McNulty* court issued a writ of mandamus that the
28

1 settling defendant could not proceed against the plaintiff's supposedly negligent physicians for
2 contribution.

3 The settlement agreement was between a passenger and a cab company for accident-related
4 injuries. Several physicians (and their practice) were sued for contribution after the cab company and
5 its insurer paid over \$1 million to the passenger-plaintiff. Basis for the cab company's post-settlement
6 contribution claim—and a parallel medical malpractice action also brought by the passenger-plaintiff
7 after settlement—was that the physicians had “performed post-accident back surgery on [the plaintiff].
8 The surgery allegedly aggravated the injuries [the plaintiff] suffered in the accident and left [the
9 plaintiff] partially paralyzed.” *Id.* *1.

10 While the settlement agreement extinguished the cab company's liability, it scrupulously
11 craved out an exception for a claim of medical malpractice based on a mutual understanding of the
12 settling parties that the accident was not the cause of the back surgery. It did this by stating that the
13 payment in exchange for the release

14 is not, nor is it intended to be construed as, an admission of cause of the need for
15 surgery of any kind. The parties to this Release expressly agree that the subject
16 motor vehicle accident did not cause the need for surgery of any kind. Accordingly,
17 the parties stipulate that neither the lumbar surgery nor complications related
18 thereto are proximately or casually related to the subject motor vehicle accident.

19 *Id.*

20 The plaintiff's post-settlement claim against his doctors was his own for medical malpractice;
21 the cab company's claim was for contribution and equitable indemnity. The physician-defendants in
22 the cab company's lawsuit moved for summary judgment. The motion was denied. The physicians
23 petitioned for a writ of mandamus compelling the district court to grant summary judgment. While the
24 Supreme Court found the indemnity claim required factual determinations, it agreed that a writ of
25 mandamus was appropriate for the contribution claim:

26 Here, we conclude that McNulty is entitled to a writ of mandamus compelling the
27 district court to dismiss [the cab company's] contribution claim because clear
28 statutory authority requires dismissal. By its terms, the release did not extinguish
McNulty's liability to [the passenger-plaintiff]. Under NRS 17.225(3):

1 A tortfeasor who enters into a settlement with a claimant is not entitled to
2 recover contribution from another tortfeasor whose liability for the injury or
3 wrongful death is not extinguished by the settlement....

4 The statute's wording is plain and its application clear: [the cab company] has no
5 contribution claim against McNulty. Accordingly, we grant the petition for a writ
6 of mandamus requiring the district court to dismiss [the cab company's]
7 contribution claim.

8 *Id.* *2.

9 Contrasting the *McNulty* and Gonzales-Republic releases, the plaintiff in *McNulty* wanted to
10 preserve his right to pursue his malpractice action against his physicians; Mrs. Gonzales did not and
11 agreed to extinguish her medical treatment providers' liability as part of the \$2 million settlement
12 consideration, knowing that Republic was preserving rights to seek contribution from them.

13 It is also worth a brief mention that *McNulty* dealt with a post-settlement contribution action.
14 And contrary to previous argument in the Rule 12 motions, nowhere in the Supreme Court's decision
15 is there a suggestion that a contribution action based on medical malpractice must be brought as a
16 third-party action under Rule 19 while the plaintiff's lawsuit is still pending.

17 *c. In determining the appropriate limitations period, the gravamen of the complaint*
18 *controls.*

19 If the medical malpractice statute of limitation were to apply here—which would be directly
20 contrary to the Nevada Supreme Court' rulings in *Saylor v. Arcotta*, 126 Nev. ___, 225 P.3d 1276
21 (2012) and *Pack v. LaTourette*, 128 Nev. ___, 277 P.3d 1246 (2012)—the Court has asked for
22 evidence “as to when the statute of limitations expired as it relates to *each* Defendant.” Minute Oder,
23 10/13/16, emphasis added.

24 Defendants in this matter are fixed on the idea that this is a medical malpractice action for
25 Marie Gonzalez' injures. As was briefed extensively in Plaintiffs' Oppositions to Defendants' Rule 12
26 Motions, a contribution claim is a stand-alone cause of action. But since the contribution claim is based
27 on allegations of medical errors and omissions, Republic must prove medical malpractice as an
28 element of its claim. *Pack* at 1250 (“to establish a right of contribution, Sun Cab would have to
establish that LaTourette committed medical malpractice”). Republic must also comply (and has) with

1 the medical expert declaration requirement found in NRS 41A.071. *Id.* But neither statutory predicate
2 to a contribution action based on medical malpractice converts the contribution claim *into* a medical
3 malpractice claim, making it subject to NRS Ch. 41A's limitations provisions. Cf. *Aetna Casualty &*
4 *Surety v. Aztec Plumbing*, 106 Nev. 474, 796 P.2d 227(1990) ("[a] cause of action for indemnity or
5 contribution accrues when payment has been made"). Whether the medical malpractice statute or
6 contribution statute of limitations applies is answered by determining the nature of the action.

7 *State Farm Mutual Automobile Insurance Company v. Wharton*, 88 Nev. 183, 495 P.2d 359
8 (1972) establishes that "one must look to the real purpose of the complaint" in determining which of
9 two or more conflicting limitations periods ought to be applied. *Id.* at 186, 361. There, the Nevada
10 Supreme Court considered competing statutes of limitations—a shorter tort statute and a longer
11 contract statute—to determine if a plaintiff/subrogee insurance company's claim was time-barred. The
12 Court held that "[i]n determining whether an action is on the contract or in tort, we deem it correct to
13 say that it is the nature of the grievance rather than the form of the pleadings that determines the
14 character of the action." *Id.* (citations omitted). In *State Farm* the insurer was subrogating on an
15 underlying bodily injury, and the court found the 2-year statute was therefore applicable. The rule
16 upon which it relied is that "it is the object of the action, rather than the theory upon which recovery
17 is sought (,) that is controlling." *Id.*, quoting *Automobile Ins. Co. v. Union Oil Co.*, 193 P.2d 48, 50-
18 51 (Cal. App. 1948).

19 Looking at the Amended Complaint, the object of the action is clear: it is for contribution to
20 ensure that Republic paid no more than its equitable share of a common liability. The Amended
21 Complaint does this by raising claims for professional negligence/medical malpractice, respondeat
22 superior/vicarious liability, and negligent hiring/retention as torts underlying Republic's contribution
23 claim. (For good measure, the Amended Complaint includes the phrase "It was also necessary for
24 REPULIC to bring this action for contribution" as part of each cause of action.) Not only is the term
25 "contribution," and the *Uniform Contribution Among Tortfeasors Act* mentioned far more often in the
26 Amended Complaint than medical malpractice, Marie Gonzalez' damages are not discussed, alleged
27 or being sought. The only damages claimed are Republic's, and its entitlement to its damages is by
28 proceeding under NRS 17.225 et seq. to assure it has paid not more than its equitable share of the

1 common liability. Accordingly the 1-year limitation from the date of the settlement payment for
2 contribution actions is clearly the applicable law. NRS 17.285(4)(b).

3 As noted, the Nevada Supreme court has held that NRS 41A.097 does not govern contribution
4 actions. The question to be addressed at this Court's request, however, is if the supposedly expired
5 medical malpractice statute of limitations in NRS 41A.097 applies, how would it effect each
6 defendant?

7 *3. Even if NRS 41A.097 did apply when the statute was triggered presents questions of*
8 *fact.*

9 Defendant Danielle Miller has recently filed a supplemental brief that NRS 41A.097(2) would
10 bar Republic's claim (even though it would not have even arisen by then under *Aztec Plumbing*) no
11 later when Dr. Kaplan performed his revision on the Cash operation on July 15, 2013. The practical
12 consequence is that Republic needed to have brought its claim by July 15, 2014 at the latest. Naturally
13 Republic disagrees.

14 NRS 41A.097(2) is the limitation for injuries or death after October 1, 2002 arising from
15 medical malpractice. It reads in pertinent part:

16 Except as otherwise provided in subsection 3, an action for injury or death
17 against a provider of health care may not be commenced more than 3 years
18 after the date of injury or 1 year after the plaintiff discovers or through the use
19 of reasonable diligence should have discovered the injury, whichever occurs
20 first[.]

21 NRS 41A.097(3) is a tolling provision providing "[t]his time limitation is tolled for any period
22 during which the provider of health care has concealed any act, error or omission upon which the
23 action is based and which is known or through the use of reasonable diligence should have been known
24 to the provider of health care."

25 Subsections 2 and 3 of NRS 41A.097 raise three pertinent questions: First, what is the "date of
26 injury" triggering the 3-year limitations period? Second, using the "knew or should have known"
27 standard, when should Mrs. Gonzales have reasonably discovered the injury triggering the statute's 1-
28 year limitation period? And third, was there concealment by any health care provider who either knew,
or through reasonable diligence should have known of the injury? All these inquiries are fact-intensive.

///

///

1) *Date of injury*

Beginning with the "date of injury," the common presumption has been that the injury was incurred on January 29, 2013; that was when the pedicle screws were improperly placed; *ergo*, January 29, 2013 is the earliest time point for a date of injury. This, however, ignores the progressive nature of the harm.

When Dr. Kaplan was deposed in *Gonzales* he declined to criticize Dr. Cash's misplacement of the pedicle screws on January 29, 2013. Indeed, Dr. Kaplan testified that he himself has overshot the mark and put pedicle screws through a patient's neuroforamen. But to avoid lasting nerve injury, such as that suffered by Mrs. Gonzales, Dr. Kaplan also testified it is imperative that the surgical complication be addressed promptly. So to be perfectly clear, the pedicle screws penetrating Ms. Gonzalez' neuroforamina, while a surgical complication, was "fixable" had it been surgically addressed in time.

Defendant Cash's professional negligence was not just improper placement of the screws. It was that he failed to order a work up when Ms. Gonzalez awoke in the recovery room in excruciating pain, and his ongoing inability—or refusal—to recognize the need for a surgical revision thereafter. We know he waited 2 weeks to order a CT scan. And then he and Dr. Balodimas conferred about what the CT scan showed. Although the CT study demonstrated an obvious breach of the pedicle screws, both Drs. Cash and Balodimas agreed that it showed nothing of requiring immediate intervention—apparently a joint conclusion, memorialized in Defendant Balodimas' radiology report (which did little other than reinforce Defendant Cash's erroneous conclusion that Ms. Gonzalez was experiencing nothing but postoperative pain).

Instead of accurately assessing Mrs. Gonzales' progressively deteriorating condition caused directly by the pedicle screws' irritation of her affected nerve roots, Dr. Cash perpetuated his poor professional judgment by referring Mrs. Gonzales to a "pain management" specialist, Dr. Alain Coppel. Between February 11 and June 1, 2013, Mrs. Gonzales underwent three rounds of epidural steroid injections, and a "trial" spinal cord stimulator, with no significant improvement. By then Mrs. Gonzales had reached her limit and effectively "fired" Dr. Cash and sought help from Dr. Stuart Kaplan.

1 Dr. Kaplan's complete revision of the Cash operation was on July 15, 2013. But by then the
2 permanent damage had been done; she was now suffering from chronic radiculopathy that eventually
3 necessitated Dr. Kaplan's implantation of a permanent spinal cord stimulator in early 2015.

4 *2) "Inquiry" notice*

5 Using July 15, 2013 as the rational date of injury—after all, that was the date when the surgical
6 option was proven to have been exercised too late—what “inquiry” notice was there that Dr. Cash, or
7 any other named defendant for that matter, had committed malpractice? Again, this a fact-based
8 inquiry.

9 The only physician Mrs. Gonzales could have relied upon to tell her that her post-operative
10 suffering was the result of malpractice, and not just an unfortunate (though not uncommon) surgical
11 complication, was Dr. Kaplan. Yet as late as his deposition in December 2014, Dr. Kaplan declined to
12 typify Dr. Cash's performance as malpractice. And it's also worth noting that when Mrs. Gonzales
13 presented to Dr. Kaplan in mid-2013 it was not that that she suspected malpractice had been
14 committed—after all, she saw Kaplan to treat her, not assess Dr. Cash's work. And even after Dr.
15 Kaplan completely revised the Cash surgery, there is no indication that Mrs. Gonzales was aware that
16 her surgical complication rose to the level of professional negligence. Certainly Dr. Kaplan never told
17 her so. Inquiry notice under these facts regarding Dr. Cash simply is not present as a forgone
18 conclusion. And there's no indication Mrs. Gonzales was even aware of the three neuromonitoring
19 defendants, or whether her injury could have been attributable—as Dr. Cash was quick to contend—
20 to Dr. Balodimas' misreading the post-operative CT scan.

21 The next question is whether these defendants were forthcoming in their respective roles in
22 Mrs. Gonzales' treatment, or whether there was concealment of errors in Gonzales' treatment “which
23 [were] known or through the use of reasonable diligence should have been known to the provider[s]
24 of health care.” NRS 41A.097(3).

25 *3) Tolling due to concealment*

26 We don't know what Dr. Balodimas and Dr. Cash said to one another as they discussed the
27 post-operative CT. But Dr. Cash's testimony that Dr. Balodimas was the one actively at fault raises
28 suspicion about whether the intent of the Balodimas CT report all along was to provide plausible cover
for concealing the surgical complication. If Dr. Balodimas is deposed, will he take the blame for failing

1 to properly read the CT study, and concede that Dr. Cash was reasonably relying on his mistake as a
2 radiologist? Or did Dr. Balodimas shade his CT report at Dr. Cash's behest? Whether the pedicle
3 breach was concealed—and if so, why—are fact questions implicating the tolling aspects of NRS
4 41A.097(3) as to both Drs. Cash and Balodimas.

5 Nor were the neuromonitoring defendants candid in disclosing their records and intraoperative
6 data. Republic conducted extensive discovery in the course of the underlying case and obtained a
7 HIPPA compliant release from Mrs. Gonzalez to acquire her medical records. Republic played by the
8 rules, and that authorization and the court's process were used in gathering the Gonzales treatment
9 records. It was not until after the Gonzales-Republic settlement it became clear that the records
10 received from the neuromonitoring defendants were woefully incomplete.

11 *a) The Katuna/Rocky Mountain Neuromonitoring records*

12 A records request to Defendant Katuna/Rocky Mountain Neurodiagnostics yielded a single
13 page "report" signed by Defendant Katuna, dated March 6, 2013. This report stated that "[m]onitored
14 responses showed no significant changes throughout the procedure and the surgeon was so informed.
15 Pedicle screw testing demonstrated thresholds suggesting low likelihood of pedicle breach." A copy
16 of the Records Request and Intraoperative Neurophysiologic Monitoring Report is attached as **Exhibit**
17 **4.**

18 Defendant Katuna produced no intraoperative neuromonitoring data, which is required to be
19 retained under Nevada's medical record keeping statute. Importantly, these records are the only
20 objective means by which his report could be verified. Notably, Dr. Katuna himself signed the
21 Affidavit of Authenticity of Records dated May 18, 2015, but gave no explanation for the absence of
22 the intraoperative data, or even a hint of their existence. Also, Dr. Katuna's report does not appear in
23 Defendant Cash's records, nor are any documents from Dr. Katuna in any other provider's records
24 produced during *Gonzales*.

25 Republic first became aware of the existence of the Katuna report as an exhibit to a settlement
26 demand dated December 13, 2013, about 3 months after suit was filed. It is, of course, the only
27 document ever produced by Dr. Katuna and Rocky Mountain Neurodiagnostics. It is plainly
28 insufficient to have placed Mrs. Gonzales on notice that the intraoperative neuromonitoring in her case

1 was below the standard of care, and prompts the question of whether these records were innocently or
2 deliberately withheld.

3 *b) The Neuromonitoring Associates/Danielle Miller records*

4 A pair of requests dated February 14, 2014 and May 14, 2014 to Defendant Neuromonitoring
5 Associates yielded *no* records for the January 29, 2013 procedure; the only records produced pertained
6 to the July 15, 2013 revision surgery performed by Dr. Kaplan. The requests and records received
7 from Neuromonitoring Associates are attached as **EXHIBIT 5**.

8 Like Defendant Katuna's conclusory report, Republic first became aware of Neuromonitoring
9 Associates' and Danielle Miller's involvements in Ms. Gonzalez' treatment from the December 2013
10 settlement demand. Included was a single page "Neuromonitoring Report," which lacked the
11 signature page. Interestingly, the "Neuromonitoring Report" listed Defendant Miller as an "anesthesia
12 technician"; no intraoperative neuromonitoring technician is even identified.

13 The Neuromonitoring Report is attached as **EXHIBIT 5**, and raises questions of fact and law.
14 What, for example, was the precise scope of Defendant Miller's role in the January 29, 2013 surgery?
15 From the face of this document, can Mrs. Gonzales have been on reasonable notice of Defendant
16 Miller even had a role in the intraoperative neuromonitoring? Or even read to have placed Mrs.
17 Gonzales on "inquiry" notice that the low amperage passing through the pedicles screws during the
18 Cash surgery in fact indicated a pedicle screw breach? Moreover, that is no indication Defendant
19 Miller was properly credentialed as Certified in Neurophysiological Intraoperative Monitoring
(CNIM).

20 Clearly, Defendant Katuna did not produce the full extent of the records he ought to have
21 retained, and Defendants Miller and Neuromonitoring Associates failed to disclose *any* records
22 pertaining to the January 29, 2013 procedure. This gives rise to at least a question of fact as to whether
23 the failure to produce pertinent records was an innocent oversight or volitional concealment. If that
24 were found to be the case, the statute of limitations would in fact be tolled under NRS 41A.097(3) as
25 to each of these neuromonitoring defendants. But unquestionably, the failure to produce pertinent
26 records kept Mrs. Gonzales from learning that the intraoperative neuromonitoring was improperly
27 performed.


28 ///

CONCLUSION

The consequence of the preceding discussion is that *even if this were Ms. Gonzalez' medical malpractice claim*—which it is most certainly not—there is a trove of disputed facts about the viability of such a suit. Accordingly, dismissal of this action as time-barred by NRS 41A.097 would be doubly inappropriate, first because it is not Ms. Gonzalez' medical malpractice claim; and second, even if it were, the facts show that all Defendants were amenable to suit under NRS Ch. 41A.097(2) for at least three years after the “date of injury,” or no later than July 15, 2016. See *Libby v. District Court*, 130 Nev. ___, 325 P.3d 1276, 1277 (2014) (“NRS 41A.097(2)’s three-year limitation period begins to run when a plaintiff suffers appreciable harm, regardless of whether the plaintiff is aware of the injury’s cause”). Of course, Republic’s complaint was filed several weeks before the three-year anniversary of Dr. Kaplan’s operation. And it was only then that Mrs. Gonzales’ “appreciable harm”—in the form chronic radiculopathy resulting from leaving the pedicle screws in her neuroforamina for several months—was learned.

Based on the foregoing, and previous briefing, all Rule 12 motions should be denied.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of November, 2016, I served the foregoing as follows:

☐ US MAIL: by placing the document(s) listed above in a sealed envelope, postage prepaid, in the United States Mail at Las Vegas, Nevada, addressed to the following:

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/s/ MaryAnn Dillard

An Employee of BARRON & PRUITT, LLP

Exhibit 1

SUBP

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*Attorneys for Defendants Hatcher &
Republic Silver State Disposal*

DISTRICT COURT
CLARK COUNTY, NEVADA

MARIE GONZALEZ,
Plaintiff,

Case No: A-13-687931-C
Dept.: XX

COORDINATED FOR DISCOVERY ONLY

vs.

DEVAL M. HATCHER, an individual;
REPUBLIC SILVER STATE DISPOSAL,
INC., a Nevada Corporation; DOE
OWNERS I through V, inclusive, DOE
DRIVER, ROE EMPLOYER and ROE
COMPANIES,

Case No.: A-13-692547-C
Dept.: XVII

SUBPOENA

☒ Regular. Duces Tecum

Defendants.

DATE: DECEMBER 3, 2014

TIME: 4:00 P.M.

AND ALL RELATED ACTIONS

THE STATE OF NEVADA SENDS GREETINGS TO:

ANDREW CASH, MD
Desert Institute of Spine Care
9339 W. Sunset Road
Las Vegas, Nevada 89148

YOU ARE HEREBY COMMANDED, that all and singular, business and excuses
being set aside, you appear and attend on December 3, 2014, at the hour of 4:00 p.m., at the
offices of Desert Institute of Spine Care, 9339 W. Sunset Road, Las Vegas, Nevada 89148,

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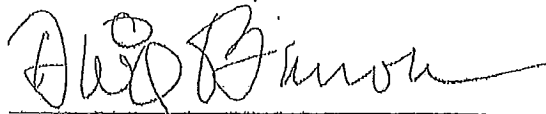
1 for the purpose of taking your deposition. If you fail to attend you will be deemed guilty of
2 contempt of Court and liable to pay all losses and damages caused by your failure to appear
3 and in addition forfeit One Hundred Dollars [\$100.00].

4 You are required to provide testimony regarding your care and treatment of Marie
5 Gonzalez. Please bring with you to the deposition your complete file regarding Marie
6 Gonzalez, including all medical records, diagnostic films, correspondence and any and all
7 other records in your possession regarding Marie Gonzalez.

8 Please see "Exhibit A" attached hereto for information regarding the rights of the
9 person subject to this Subpoena.

10 DATED this 12th day of November, 2014.

11
12 BARRON & PRUITT, LLP

13 

14 David Barron
15 Nevada Bar No. 142
16 3890 West Ann Road
17 North Las Vegas, NV 89031
18 Attorneys for Defendants Hatcher &
19 Republic Silver State Disposal
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28

EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

[As amended; effective January 1, 2005.]

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

[As amended; effective January 1, 2005.]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of November, 2014, I served the foregoing
SUBPOENA TO ANDREW CASH, M.D. as follows:

☐ US MAIL: by placing the document(s) listed above in a sealed envelope, postage
prepaid, in the United States Mail at Las Vegas, Nevada, addressed to the following:

☐ BY FAX: by transmitting the document(s) listed above via facsimile transmission to
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address(es) set forth below.

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forth below.

☒ BY ELECTRONIC SERVICE: by electronically filing and serving the document(s)
listed above with the Eighth Judicial District Court's WizNet system.

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RANALLI & ZANIEL, LLC
2400 W. Horizon Ridge Parkway
Henderson, Nevada 89052
Facsimile: (702) 477-7778
Email: GMRanalli@RanalliLawyers.com
Attorneys for Defendants Ace Cab Inc./Frias Transportation


An Employee of BARRON & PRUITT, LLP

Follow up Andrew M Cash - 02/20/2013



Desert Institute of Spinal Care

9329 W. Sunset Rd., #100

Las Vegas, NV 89148

Phone: (702) 639-5472 Facsimile: (702) 946-5116

GONZALES, MARIE

Cash, Andrew M.
02/20/2013
Follow up

CHIEF COMPLAINT: Back pain 9/10 with intermittent numbness and tingling down the posterior thigh and lateral leg. The patient feels better when lying down, but after she has been immobile for two hours she feels worse. She has been undergoing physical therapy and feels like she is not feeling better and is actually causing worse pain in her leg. The patient is on Lyrica and Percocet.

Past medical history, family history and social history are unchanged since last visit. Tobacco: None. Review of systems is unremarkable. The patient underwent an injection by Dr. Coppel and had some significant temporary relief.

On physical examination, the patient has no chest pain or shortness of breath. The patient has decreased sensation in the left lower extremity with bilateral lumbar spasms and tenderness.

CT scan shows no hardware complication. The patient has a disc protrusion and/or scar tissue at the left foramen at L4-5 and L5-S1.

IMPRESSION:

1. Post lumbar fusion.
2. Lumbar radiculopathy.

RECOMMENDATIONS:

1. The patient is a candidate for repeat transforaminal epidural injections left L4-5 and L5-S1.
2. The patient will hold off on physical therapy at this time.

DISABILITY:

Temporarily, totally disabled.

PROGNOSIS:

Guarded.

DEF 002721

Follow up Andrew M Cash - 02/20/2013

CAUSATION:

It is my opinion to a reasonable degree of medical probability that all treatment provided has been and will be reasonable, necessary and directly related to the 1/14/2012 motor vehicle collision unless I have stated otherwise above. The charges are usual, customary and also related. I welcome the opportunity to review any and all medical records regarding past or present treatment of the patient which could possibly reinforce or otherwise affect the above opinions.

Andrew M. Cash, MD/lam

DR: 02/21/13-1233

DT: 02/21/13

#CASH5828

The risks of opioid medications were explained to the patient. The patient understands and agrees to use these medications only as prescribed. The patient agrees to obtain pain medications from this practice only. We have fully discussed the potential side effects of the medication with the patient. These include, but are not limited to, constipation, drowsiness, addiction, nausea, vomiting, impaired judgment and the risk of fatal overdose if not taken as prescribed. We have warned the patient that sharing medications is a felony. We have warned the patient against driving while taking sedating medications.

Electronically signed on 02/22/2013 by A.M.C.,M.D.

DEF 002722

Exhibit 2

From: Ryan Anderson
To: David Barron
Subject: Re: Marie Gonzales Settlement
Date: Friday, June 12, 2015 11:49:12 AM
Attachments: Image001.png

David,

We agree to those conditions. I am nearly certain there are not any Medicare liens, but I'll confirm that.

Again, nice to work with you and I'll look forward to receiving the release and closing documents.

Ryan.

On Fri, Jun 12, 2015 at 11:42 AM, David Barron <DBarron@lynvlaw.com> wrote:

Thank you, Ryan. I have advised my principal and sent her your email below. Because we wish to preserve all rights of contribution and equitable indemnification, our form of release will be inclusive of all medical providers, including Dr. Cash and any other potentially responsible health care providers or third parties. So long as that is fully understood I think we can move forward to finalize the settlement. And of course, I'm sure you will be advising CMS to obtain a letter from Medicare/Medicaid that they are asserting no liens on the recovery.

Your call yesterday was appreciated. Please call or write if there are questions.

Regards, Dave

David Barron
barronpruitt.com | dbarron@lynvlaw.com
p 702.870.3940 | f 702.870.3950

3890 West Ann Road

North Las Vegas NV 89031

Barron & Pruitt, LLP
L A W Y E R S

From: Ryan Anderson [mailto:ryan@morrisonandersonlaw.com]
Sent: Thursday, June 11, 2015 9:50 PM
To: David Barron
Cc: Jacqueline Bretell; Marie Gonzales 1/14/12; Ashley Atton
Subject: Marie Gonzales Settlement

Exhibit 3

SETTLEMENT AGREEMENT, RELEASE and COVENANT NOT TO SUE

This SETTLEMENT AGREEMENT, RELEASE and COVENANT NOT TO SUE is made between MARIE GONZALES ("RELEASOR") and DEVAL HATCHER, REPUBLIC SILVER STATE DISPOSAL, INC., REPUBLIC SERVICES, INC., and their insurers, agents, employees heirs, and assigns ("RELEASEES").

This Agreement is made with reference to the following:

WHEREAS, the RELEASOR has asserted certain claims against RELEASEES, as set forth in that certain action pending in District Court, Clark County, Nevada, entitled *Gonzales v. Hatcher, Republic Silver State Disposal et al.*, (Case # A687931; consolidated for discovery with Case #A692547), based upon and arising out of that certain accident, casualty, incident or event that occurred on or about the 14th day of January, 2012, in the County of Clark, State of Nevada, occurring at or near the intersection of Hacienda Boulevard and in North Las Vegas, Nevada;

WHEREAS, RELEASEES have denied, defended and disputed the allegations and claims asserted by RELEASOR ("claims");

WHEREAS, the parties desire to avoid further litigation, and to settle and resolve all claims arising from the described event and which have been or could be asserted by the RELEASOR against the RELEASEES in the described litigation or otherwise; and

THEREFORE, for and in consideration of this SETTLEMENT AGREEMENT, RELEASE and COVENANT NOT TO SUE, covenants and undertakings hereinafter set forth, and for other good and valuable consideration, the RELEASEES AND RELEASOR agree as follows:

1. **Release and Discharge.** In consideration of a total payment in the sum of TWO MILLION DOLLARS (\$2,000,000.00), RELEASOR does hereby fully release and forever discharge the RELEASEES, and each of them, their heirs, assigns, affiliates, subsidiaries, franchisees, parent corporations and their respective agents, related entities, present and former directors, officers, executives, employees, predecessors and/or successors in interest, attorneys, and insurers, of all claims known and unknown, actions, causes of action and suits for damages,

at law and in equity, filed or otherwise, including any claim or claims for bodily injury; loss of compensation, profits, interest or use of any property; for services, society, consortium, contribution and support, which they have has or may hereafter acquire; and for damages against RELEASEES for any damage arising from the incident described above. As a part of their settlement and their mutual consideration stated above, this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE shall discharge and extinguish any and all claims or liabilities, including those for "economic" and "noneconomic" damages as set forth in NRS ch. 41A, RELEASOR may possess against any of her medical treatment providers for injuries she alleges to have sustained in the described incident of January 14, 2012.

2. **Taxes.** The RELEASOR under this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE will be responsible for all taxes, if any, that they are legally responsible to pay as a result of such settlement.
3. **Liens.** RELEASOR agrees that if any lien, reimbursement right or interest is asserted by any hospital; ambulance service; pharmacy; physician; hospital, or other medical treatment or service provider; Medicare; Medicaid; any insurance company; health maintenance organization; attorney; lien holder; or any other third-party to this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE against the proceeds of this settlement, and/or against the RELEASEES, or other persons, firms, or corporations making payment on behalf of the RELEASEES, RELEASOR agrees to pay and satisfy such lien, reimbursement right or interest; and to indemnify and hold harmless RELEASEES, their insurers, heirs and assigns from any costs, expenses, attorney fees, claims, actions, judgments, or settlements resulting from the assertion or enforcement of any such lien, reimbursement right or interest by any entity having such lien or reimbursement right.
4. **Medicare.** In further consideration for this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, RELEASEES, their attorneys and insurers rely on the following representations and warranties made by RELEASOR and her counsel:

- a. RELEASOR and her counsel and RELEASEES agree that all representations and warranties made herein shall survive settlement.
- b. Pursuant to 42 U.S.C. 1395y et seq. and 42 C.F.R. §411.10 et seq, the parties acknowledge their duty to adequately consider Medicare's future interest in settlements by not unreasonably shifting the health care burden of claims to Medicare, and that the parties hereto have taken reasonable steps from the beginning of this action to comply with the requirements of 42 U.S.C. § 1395y (b) and the rules and regulations promulgated thereunder (hereinafter collectively "MSP").
- c. RELEASOR, MARIE GONZALES, represents and warrants that, as of the date of execution of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, she has not received Medicare or Medicaid benefits for injuries she claims to have suffered in the incident of January 14, 2012, described above, nor is she eligible to receive Medicare benefits under the law, and has not reached the age of 65; she is not a disabled person entitled to receive Social Security Disability, or other benefits from the Social Security system for injuries or damages arising from the described incident; she is not entitled to receive railroad retirement benefits; nor does she have end-stage renal disease.
- d. While it is impossible to accurately predict the need for future treatment, this settlement was based upon a good faith determination of the parties in order to resolve a questionable claim or claims. During the course of the litigation In the event Medicare requires reimbursement related to any past or future medical treatment or cost, this will be the sole responsibility of RELEASOR.
- e. In addition to and without limiting any other language in this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, RELEASOR agrees to indemnify and hold harmless RELEASEES, their attorneys and insurers

from any and all Medicare Claims that have been or may in the future be related to, arise from, or are in connection with the incident described herein.

- f. RELEASOR represents and warrants that she, or her counsel, have notified Medicare and/or its Coordination of Benefits Contractor of the accident, injury, or illness giving rise to this settlement; acknowledges and agrees that it is her responsibility, and not the responsibility of RELEASEES, their attorneys or insurer(s), to reimburse Medicare for conditional payments, if any, made by Medicare. RELEASOR also agrees to provide RELEASEES' counsel with a copy of any correspondence from CMS stating Medicaid/Medicare has no lien or interest in RELEASOR'S recovery.

g. Reliance on Representations and Warranties:

- i. In agreeing to this SETTLEMENT AGREEMENT, RELEASE and COVENANT NOT TO SUE, RELEASEES, their attorneys and insurers are relying on the representations and warranties of the RELEASOR regarding RELEASOR'S Medicare status, and the actions RELEASOR and her Counsel have represented they have taken and/or will take to satisfy any and all Medicare Claims, liens and interests pertaining to the matters forming the basis of RELEASOR'S claims.
- ii. In addition, RELEASOR shall indemnify RELEASEES, their attorneys and/or insurers for any damages, legal fees and costs or expenses for their failure to adhere to the representations and warranties contained herein.

- 5. **Costs and Fees.** Each party hereto shall bear his, her or its own attorneys' fees and costs incurred arising from or in connection with the described incident of January 12, 2012.
- 6. **Mutual Non-Admission.** It is also understood and agreed and made a part hereto that: The issuance of such settlement proceeds is not, nor is it intended to be construed as an admission of liability on the part of RELEASEES, or any of them, but is in compromise, settlement,

accord and satisfaction and discharge of loss, damage, claims, actions, causes of action, suits and liability which are each an all uncertain, doubtful and disputed. It is also understood and agreed that nothing herein shall be construed as an admission by RELEASOR or RELEASEES of any wrongdoing, liability or violation of any applicable law, and that nothing in this Release shall be so construed by any other person.

7. **Warranty of Capacity to Execute Release.** RELEASOR represents and warrants that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, except as otherwise set forth herein, and that the RELEASOR has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to herein.
8. **Consultation with Attorney.** The RELEASOR acknowledges that she has a right to consult an attorney and that she has specifically consulted with her attorneys with respect to the terms and conditions of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, and acknowledges that she fully understands its terms and the effect of signing and executing it.
9. **Choice of Law.** This SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE shall be deemed to have been executed and delivered within the State of Nevada, and the rights and obligations of the Settling Parties hereto shall be construed and enforced in accordance with and governed by the laws of the State of Nevada.
10. **Modification.** This SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE is the entire agreement between the RELEASOR and RELEASEES with respect to any and all claims RELEASOR has or may have against RELEASEES, and supersedes all prior and contemporaneous oral and written agreements and discussions. The terms of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE may not be modified, amended, supplemented, or waived except through a writing signed by the RELEASOR and RELEASEES. RELEASOR and RELEASEES acknowledge and agree that

they will make no claim that this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE has been orally altered or modified in any respect; nor will they claim that this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE has been altered, modified, or otherwise changed by oral communication of any kind or character. It is expressly acknowledged and recognized by the RELEASOR and RELEASEES that there are no oral or written collateral agreements between them in connection with the subject matter of this Agreement.

11. **Severability.** If any term or provision of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE is determined to be illegal, invalid, or otherwise unenforceable through arbitration or through a court of competent jurisdiction, then to the extent necessary to make such provision or this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE legal, valid, or otherwise enforceable, such term or provision will be limited, construed, or severed and deleted, and the remaining portions, if any, shall survive, remain in full force and effect, continue to be binding, and will be interpreted to give effect to the intention of the RELEASOR and RELEASEES hereto insofar as possible.

12. **Waiver:** RELEASOR and RELEASEES hereby waive any and all rights that they may have under the provisions of any rule of law that may be adopted by the State of Nevada that provides that a release does not extend to claims that are unknown or unsuspected at the time of executing the SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, which if known would have materially affected its provisions. RELEASOR and RELEASEES acknowledge and agree that this waiver is an essential and material term and without such waiver the Settlement payments and releases that constitute the consideration for the SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE would not have been made. The delay or failure of any party to exercise any of his or her rights herein shall not be deemed by any other party to constitute a waiver of such rights, unless the party possessing such rights has clearly and expressly given notice in writing to the contrary

to all other parties hereto. The waiver by any party of any breach of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE by another party shall not operate as a waiver of any subsequent breach.

13. **Confidentiality:** Subject to RELEASEES' right to pursue rights of reimbursement and/or contribution against RELEASOR'S medical treatment providers, as set out in ¶ 1, in which case this "Confidentiality" provision may be considered to have been waived by RELEASEES, RELEASOR and RELEASEES agree that they, their attorneys, agents and representatives, will maintain in strict confidence regarding any and all information obtained or disclosed in the course of settlement negotiations; settlement consideration and payments; and any and all information contained in this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE. Furthermore, they will take every reasonable precaution to prevent disclosure of such information to third parties except as necessary to tax preparers, lien holders, accountants, financial advisors and otherwise required by law or court order. In the event that the law requires disclosure of any information, they and/or their attorneys shall notify the other parties to this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE, and/or their attorneys, of the necessity to make such a disclosure. They and/or their attorneys will refrain from making, causing to be made, or participating in the making of any public announcement, press release, written or oral statement to any trial or settlement reporter, legal journal, trial lawyers journal, or the like regarding the subject matter of this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE. This confidentiality provision contemplates both the amount of settlement and the existence of settlement and is an integral part of this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE and cannot be waived, breached or otherwise circumvented without the express prior written permission of all Parties. In the event of any breach of the confidentiality provision of this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE, a damaged party shall be entitled to recover all costs and reasonable attorneys fees from a breaching party or attorney.

that are incurred to address any breach of, or to enforce, this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE and this confidentiality provision. No monetary consideration was paid for confidentiality; rather the parties hereby agree to reciprocal confidentiality as the sole and entire consideration.

14. Miscellaneous Provisions:

- a. Except and unless otherwise provided in this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, nothing herein expressed or implied is intended, nor shall be construed, to confer upon or give any person, other than the RELEASOR and RELEASEES, any rights or remedies, under or by reason of, any term, provision, condition, undertaking, warranty, representation, or agreement herein contained. All rights not expressly resolved herein are reserved to the RELEASOR and RELEASEES.
- b. Neither the RELEASOR and RELEASEES, or officer, agent, partner, employee, representative, trustee or attorney of or for any party has made any statement or representation to any other party regarding any fact relied upon in entering into this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE; and each party does not rely upon any statement, representation or promise of any other party or any officer, agent, partner, employee, representative, trustee or attorney for any other party in executing this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, or in making the settlement provided for herein, except as expressly stated herein.
- c. In entering into this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, and the settlement provided for herein, both the RELEASOR and RELEASEES assume the risk of any misrepresentation or mistake. This SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE is intended to be, and is final and binding between the parties hereto, regardless of any

claims of misrepresentation, promises made without intent to perform, concealment of fact, mistake of fact or law, or of any other circumstance whatsoever.

- d. RELEASOR and RELEASEES warrant and represent that (i) this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE in its reduction to final written form is a result of extensive good faith negotiations between the parties through their respective counsel; (ii) said counsel have carefully reviewed and examined this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE for execution by said parties, or any of them; and (iii) any statute or rule of construction which provides that ambiguities are to be resolved against the drafting party shall not be employed in its interpretation.
 - e. RELEASOR and RELEASEES acknowledge this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE represents a good faith settlement of the RELEASORS' claims, and preserves RELEASEES' rights under The Uniform Contribution Among Tortfeasors Act, NRS 17.225, et seq.
 - f. In the event that it becomes necessary for either RELEASOR and RELEASEES, or either's authorized representative, successor, or assign, to institute suit to compel performance of any of the obligations stated herein or to preclude a purported violation of the terms of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, the prevailing party in such action shall be entitled to reimbursement from the losing party/parties for reasonable costs, expenses, and attorneys fees incurred by it in preparation for and in connection with such action.
- The headings contained in this Agreement are solely for convenience and shall not be used to define or construe any of the terms or provisions hereof.

BY SIGNING THIS SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE RELEASE RELEASOR HEREBY ACKNOWLEDGES AND WARRANTS:

This SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE was first carefully read in its entirety by RELEASOR and was and is understood and known to be a

full and final compromise, settlement, release, accord and satisfaction and discharge of all claims, actions, and causes of action and suits, as above stated; was signed and executed voluntarily and without reliance upon any statement or representation of or by any RELEASEES, or any representative, agent or representative of same, concerning the nature, degree and extent of said damages, loss or injuries, or legal liability therefore; and that it contains the entire agreement of and between all of the parties mentioned herein, and all of its terms and provisions are contractual and not a mere recital; moreover RELEASOR is of legal age and capacity and competent to sign and execute this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE and each accepts full responsibility therefor.

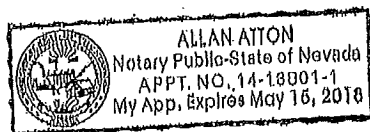
READ and SIGNED this 6th day of July

Marie Gonzales
MARIE GONZALES

VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On the 6 day of July, 2015, before me, a Notary Public in and for said County and State, personally appeared Marie Gonzales, known to me (or proved on the basis of satisfactory evidence) to be the person who executed the above and foregoing instrument, and who acknowledged to me that she did so freely and voluntarily and for the purposes therein mentioned.



[Signature]
NOTARY PUBLIC

Exhibit 4

SUBP
1 DAVID BARRON
Nevada Bar No. 142
2 BARRON & PRUITT, LLP
3890 West Ann Road
3 North Las Vegas, Nevada 89031
Telephone: 702-870-3940
4 Facsimile: 702-870-3950
E-Mail: dbarron@lvnvlaw.com
5 Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

6
7
8 MARIE GONZALEZ,
9 Plaintiff,

Case No: A-13-687931-C
Dept.: XX

10 vs.

COORDINATED FOR DISCOVERY ONLY

11 DEVAL M. HATCHER, an individual;
12 REPUBLIC SILVER STATE
DISPOSAL, INC., a Nevada
13 Corporation; DOE OWNERS I through
V, inclusive, DOE DRIVER, ROE
14 EMPLOYER and ROE COMPANIES,
15 Defendants.

Case No.: A-13-692547-C
Dept.: XVII

SUBPOENA - CIVIL
☐ REGULAR ☒ DUCES TECUM

Date: June 8, 2015

Time: 9:00 a.m.

16 AND ALL RELATED ACTIONS
17

18 THE STATE OF NEVADA SENDS GREETINGS TO:

19 Custodian of Records or Other Qualified Person for
20 Rocky Mountain Neurodiagnostics
2217 Harvard Court
21 Longmont, CO 80503
303-776-5298

22 YOU ARE HEREBY COMMANDED, pursuant to Rule 45 of the Nevada Rules of Civil
23 Procedure, to produce and permit inspection and copying of the medical records, documents, or
24 tangible things set forth in the attached Exhibit "A" that are in your possession, custody, or control,
25 by delivering a true, legible, and durable copy of the records to the requesting attorney, by United
26 States mail, or similar delivery service or electronic transmission, no later than 9:00 a.m. on June 8,
27 2015 at the law office of Barron & Pruitt, LLP, 3890 West Ann Road, North Las Vegas, Nevada
28 89031, (702) 870-3940. All documents shall be produced as they are kept in the usual course of

BARRON & PRUITT, LLP
ATTORNEYS AT LAW
3890 WEST ANN ROAD
NORTH LAS VEGAS, NEVADA 89051
TELEPHONE (702) 870-3940
FACSIMILE (702) 870-3950

BARRON & PRUITT, LLP
ATTORNEYS AT LAW
3890 WEST ANN ROAD
NORTH LAS VEGAS, NEVADA 89031
TEL: (702) 870-3940
FACSIMILE: (702) 870-3950

1 business or shall be organized and labeled to correspond with the categories listed. N.R.C.P.
2 45(d)(1). When feasible, please produce documents on an electronic medium such as flash drive or
3 CD and in Portable Document Format (PDF).

4 This Subpoena Duces Tecum complies with 45 C.F.R. 164.512(e)(1) which permits
5 disclosure of Protected Health Information pursuant to subpoena or court order under the Health
6 Insurance Portability and Accountability Act of 1996 (HIPAA). In accordance with 45 C.F.R.
7 164.512(e)(1)(ii)(A) and 164.512(e)(1)(iii), Barron & Pruitt, LLP has served a copy of this Subpoena
8 Duces Tecum upon the attorney of record for Marie Gonzalez as evidenced by the Certificate of
9 Service attached hereto. Ms. Gonzalez must serve any objection to this Subpoena Duces Tecum not
10 later than fourteen (14) days after receiving notice of the same. See N.R.C.P. 45(d)(2)(B). Therefore,
11 if no objection has been served by May 28, 2015, you are required to produce all medical records,
12 documents or tangible things described in Exhibit "A" by the date specified herein. See Humana Inc.
13 v. Eighth Jud. Dist. Ct., 110 Nev 121, 123, 867 P2d 1147, 1148-49 (1994).

14 Failure by any person without adequate excuse to obey a subpoena served upon that person
15 may be deemed a contempt of the court. N.R.C.P. 45(e). If you fail to obey, you may be liable to pay
16 \$100.00, plus all damages caused by your disobedience. Nev. Rev. Stat. § 50.195. Please see the
17 attached Exhibit "B" for information regarding your rights and responsibilities related to this
18 Subpoena Duces Tecum.

19 **YOU ARE FURTHER ORDERED** to authenticate the records produced pursuant to Nev.
20 Rev. Stat. § 52.260, and to provide with your production a complete Certificate of Custodian of
21 Records in substantially the form attached as Exhibit "C."

22 DATED this 18th of May, 2015.

23 BARRON & PRUITT, LLP

24 

25 DAVID BARRON
26 Nevada Bar No. 142
27 3890 West Ann Road
28 North Las Vegas, Nevada 89031-4416
Attorneys for Defendants

EXHIBIT A

ITEMS TO BE PRODUCED

All records, written, electronic or otherwise, for MARIE GONZALEZ (DOB: [REDACTED]
SSN: [REDACTED] from 01/01/2005 to the Present, including, but not limited to

1. All medical records;
2. All charts;
3. All notes including those made by or at the direction of a doctor/physician, physician assistant, nurse, orderly, lab technician, or specialist;
4. All test requests and results;
5. All diagnostic films/videos/images/reels and reports;
6. All pharmacy and prescription records;
7. All communication records including email and written correspondence;
8. All billing and payment records;
9. All insurance, Medicaid or Medicare records;
10. All records related to information submitted to insurance, Medicaid or Medicare

Pursuant to Nev. Rev. Stat. § 629.061(4), Barron & Pruitt, LLP will pay the reasonable costs associated with producing the requested records, not to exceed \$0.60 per page. No administrative or service fees are permitted. When feasible, please produce documents on an electronic medium such as flash drive or CD and in Portable Document Format (PDF).

BARRON & PRUITT, LLP
ATTORNEYS AT LAW
3880 WEST ANN ROAD
NORTH LAS VEGAS, NEVADA 89031
TELEPHONE (702) 870-3540
FACSIMILE (702) 870-3550

EXHIBIT B

NEVADA RULES OF CIVIL PROCEDURE -- RULE 45

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

BARRON & PRUITT, LLP
ATTORNEYS AT LAW
3890 WEST ANN ROAD
NORCROSS, GEORGIA 30051
TELEPHONE (770) 870-3940
FACSIMILE (770) 870-3950

1 EXHIBIT C

2 AFFIDAVIT OF AUTHENTICITY OF RECORDS

3 STATE OF _____)
4) ss.
5 COUNTY OF _____)

6 NOW COMES _____, who after first being duly sworn states:

7 1. That the Affiant is employed as a _____ with Rocky Mountain
8 Neurodiagnosites and in that capacity is a custodian of the records of Rocky Mountain
9 Neurodiagnosites.

10 2. That on the _____ day of _____, 2015, the Affiant was served with a
11 subpoena in connection with the above entitled cause, calling for production of all records, written,
12 electronic or otherwise, for MARIE GONZALEZ (DOB: _____ SSN: _____) from
13 01/01/2005 to the Present, including, but not limited to

- 14 11. All medical records;
15 12. All charts;
16 13. All notes including those made by or at the direction of a doctor/physician,
17 physician assistant, nurse, orderly, lab technician, or specialist;
18 14. All test requests and results;
19 15. All diagnostic films/videos/images/reels and reports;
20 16. All pharmacy and prescription records;
21 17. All communication records including email and written correspondence;
22 18. All billing and payment records;
23 19. All insurance, Medicaid or Medicare records;
24 20. All records related to information submitted to insurance, Medicaid or Medicare

25 3. That Affiant:

26 ☐ (a) has made a diligent search of the records of Rocky Mountain
27 Neurodiagnosites and found no records responsive to the Subpoena Duces Tecum.

28 OR

☐ (b) has examined the original of those records and has made or caused to
be made a true and exact copy of them and that the reproduction of them attached hereto is true and
complete.

///

///

///

4. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the Affiant or Rocky Mountain Neurodiagnostes.

Signature

Print

Subscribed and sworn before me, a Notary Public,
on this _____ day of _____ 2015.

NOTARY PUBLIC

My commission expires:

BARRON & PRUITT, LLP
ATTORNEYS AT LAW
3890 WEST ANN ROAD
NORTH LAS VEGAS, NEVADA 89051
TELEPHONE (702) 870-3940
FACSIMILE (702) 870-3950

BARRON & PRUITT, LLP
ATTORNEYS AT LAW
3890 WEST ANN ROAD
NORTH LAS VEGAS, NEVADA 89051
TELEPHONE (702) 870-3540
FACSIMILE (702) 870-3550

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of May, 2015, I served the foregoing
SUBPOENA DUCES TECUM TO ROCKY MOUNTAIN NEURODIAGNOSTICS as follows:

☐ US MAIL: by placing the document(s) listed above in a sealed envelope, postage
prepaid, in the United States Mail at Las Vegas, Nevada, addressed to the following.

☐ BY FAX: by transmitting the document(s) listed above via facsimile transmission to
the fax number(s) set forth below.

☐ BY HAND-DELIVERY: by hand-delivering the document(s) listed above to the
address(es) set forth below.

☐ BY EMAIL: by emailing the document(s) listed above to the email address(es) set
forth below.

☒ BY ELECTRONIC SERVICE: by electronically filing and serving the document(s)
listed above with the Eighth Judicial District Court's WizNet system.

Ryan M. Anderson, Esq.
Kimball Jones, Esq.
MORRIS ANDERSON LAW
2001 S. Maryland Pkwy.
Las Vegas, NV 89104
Facsimile: (702) 507-0092
E-Mail: info@MorrisAndersonLaw.com
Attorneys for Plaintiff Gonzalez

/s/ MaryAnn Dillard
An Employee of BARRON & PRUITT, LLP

RETURN OF SERVICE

STATE OF COLORADO
COUNTY OF BOULDER

I declare under oath that I served this: Subpoena to Produce on
Rocky Mountain Neurodiagnostics

in Boulder county on May 21st, 2015 at 08:14 am/pm, at the
following location: 1511 10th Ave. Longmont, Co.

by the following manner of service: Handed to Brian Kattura M.D.
a person By Hand Personally

☒ I am over the age of 18 years and am not interested in nor a party to this case.

Date: 5-21-2015
Sign: [Signature]
Print: TRICK TAYLOR

Signed under oath before me on 5-21-15

Notary Public:

My commission expires on:

Katie H
2/18/2019

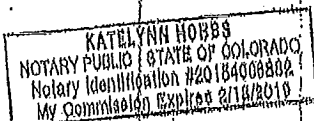


EXHIBIT C

AFFIDAVIT OF AUTHENTICITY OF RECORDS

STATE OF Colorado)

COUNTY OF Boulder) ss.

NOW COMES Bruce Katuna, who after first being duly sworn states:

1. That the Affiant is employed as a physician with Rocky Mountain Neurodiagnosites and in that capacity is a custodian of the records of Rocky Mountain Neurodiagnosites.

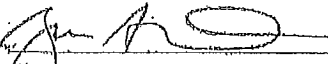
2. That on the 18th day of May, 2015, the Affiant was served with a subpoena in connection with the above entitled cause, calling for production of all records, written, electronic or otherwise, for MARIE GONZALEZ (DOB: [REDACTED] SSN: [REDACTED] from 01/01/2005 to the Present, including, but not limited to

11. All medical records;
12. All charts;
13. All notes including those made by or at the direction of a doctor/physician, physician assistant, nurse, orderly, lab technician, or specialist;
14. All test requests and results;
15. All diagnostic films/videos/images/reels and reports;
16. All pharmacy and prescription records;
17. All communication records including email and written correspondence;
18. All billing and payment records;
19. All insurance, Medicaid or Medicare records;
20. All records related to information submitted to insurance, Medicaid or Medicare.


3. That Affiant:
☐ (a) has made a diligent search of the records of Rocky Mountain Neurodiagnosites and found no records responsive to the Subpoena Duces Tecum.

OR
☒ (b) has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

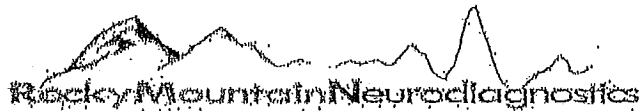
4. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the Affiant or Rocky Mountain Neurodiagnostes.


Signature
Bruce A. Katona
Print

Subscribed and sworn before me, a Notary Public,
on this 22 day of May, 2015.


NOTARY PUBLIC
My commission expires 1.14.15

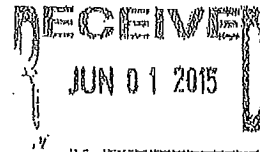
MICHELLE L. BERNARDONI
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20114001886
MY COMMISSION EXPIRES JANUARY 14, 2019



Bruce Katuna, M.D. 2217 Harvard Ct. Longmont, CO 80508 (303) 776-6298

INTRAOPERATIVE NEUROPHYSIOLOGIC MONITORING REPORT

Patient Name: Marla Gonzales
Medical Record #: 904944162-85294896
Surgeon: Dr. Cash
Technician: Danielle Miller
Date of Monitoring: January 29, 2013
Beginning Time: 0758
Ending Time: 0956
Date of Report: March 6, 2013



On January 29, 2013 Intraoperative monitoring of the central and peripheral nervous system of Marla Gonzales was performed during an OLIF of L4-S1.

Real-time neurophysiologist oversight was provided. Tested modalities included upper and lower extremity somatosensory evoked potentials (SSEPs), and free-running electromyography (FR-EMG).

Baseline responses were interpreted and were within normal limits.

Monitored responses showed no significant changes throughout the procedure, and the surgeon was so informed. Pedicle screw testing demonstrated thresholds suggesting low likelihood of pedicle breach.

Impression: Normal Intraoperative neurophysiologic monitoring study.

Bruce A. Katuna, M.D.
Board Certified In Neurology (American Board of Psychiatry and Neurology, 1999)
Board Certified In Clinical Neurophysiology (American Board of Psychiatry and Neurology, 1996, 2010)

Exhibit 5

Barron & Pruitt, LLP
L A W Y E R S

DAVID BARRON*
WILLIAM H. PRUITT
PETER MAZZO
CHRISTOPHER P. PYASECKI
JOSHUA A. SLIKER
Also admitted to the State Bar of
California
New York
Oregon
Utah

February 14, 2014

Neuromonitoring Associates
9811 W. Charleston Blvd, #2-641
Las Vegas, NV 89117

Re: Republic Services adv. Gonzales, Marie
Patient: Marie Gonzales
Date of Birth: [REDACTED]
SSN: [REDACTED]
Our File No.: 638.06


Dear Custodian of Records:

Pursuant to NRS 629.061 and the enclosed medical consent form executed by the above-named patient, we are requesting copies of any and all medical records, including:

1. The patient's complete chart,
2. Billing history,
3. Diagnostic reports, and
4. List of films and/or X-rays.

This request is for records currently available and no additional report is solicited at this time. If you will enclose your bill for the cost of the reproduction of the documents when you forward us these records, along with the Affidavit of Authenticity of Records, we will promptly remit payment to you. If the cost of the records exceeds \$100, please send us a pre-bill indicating the number and cost of the records and we will determine the necessity of the records. Thank you for your cooperation and assistance in this matter.

Very truly yours,


Tara Easley
Paralegal
Barron & Pruitt, LLP

ite
Enclosure

NEVADA
3890 West Ann Road
North Las Vegas, NV 89031
P (702) 870-3840 F (702) 870-3850

www.barronpruit.com

UTAH
204 East 860 South
Orem, UT 84058
P (801) 802-6363 F (702) 870-3850

MORRIS ANDERSON
2001 S. Maryland Parkway, Las Vegas, NV 89104 ph: (702) 333-4111 fax: (702) 507-0092

**AUTHORIZATION FOR USE AND DISCLOSURE OF
PROTECTED HEALTH INFORMATION (PHI)**

This document authorizes Neuromonitoring Associates to release to Barron & Pruitt, LLP or its representatives at their request, for the purpose of investigating a claim I have made, all medical records and Protected Health Information ("PHI") from 01/14/12 to present, including but not limited to, medical history & physicals, consultation reports, operative reports, lab reports, imaging/radiology reports and films, cardiac studies, x-ray sheets, nursing notes, medication records, progress notes, physician orders, and/or the like. I acknowledge and hereby consent to such, that the released information may contain alcohol, drug abuse, psychiatric, HIV testing, HIV results and/or AIDS information and genetic testing records. Uses and disclosures of PHI will be consistent with Nevada and Federal law concerning the privacy of PHI. Failure to provide all information requested will delay action on this Authorization.

This authorization does NOT authorize the bearer to discuss my care with you, and is expressly given for the release of written records only. I have fully read and understand what information will be disclosed and affirm that Barron & Pruitt, LLP is NOT authorized by me to use or disclose my PHI for a purpose other than treatment, payment or health care operations.

I understand that I can revoke this authorization by writing a letter to the above-named healthcare provider or by completing and submitting a Revoke Authorization Form to the Privacy Secretary Department of the above named facility. The letter must state that I want to revoke my authorization to disclose the patient's healthcare information. The letter must include the name or other specific identification of the person(s) that I no longer want to receive information. I (or my authorized representative for healthcare) must sign and date the letter or form. The information used or disclosed pursuant to this authorization may be subject to redisclosure by the recipient and no longer protected. Fees/charges will comply with all laws and regulations applicable to release of information (i.e. 60 cents per page except for continuing care requests). A photocopy of this authorization will have the same force and effect as the original.

I understand that I may refuse to sign this Authorization. I understand that my refusal will not affect my ability to obtain treatment, payment, or eligibility for benefits. I understand that I have the right to receive a copy of this authorization. I may inspect or obtain a copy of the health information that I am being asked to use or disclose.

This authorization is given on the condition that Barron & Pruitt, LLP or its representatives, must forward: (1) a copy of any request for medical records or PHI using this authorization at the time of the request and (2) a copy of any medical records or PHI received using this authorization within 1 week of receipt to MORRIS ANDERSON at 2001 S. Maryland Parkway, Las Vegas, NV 89104.

This authorization shall expire upon this expiration date or event: 12/01/14

DATED 02/12/2014

Date of Loss 01/14/12

Marie Gonzalez
Client Signature

Marie Gonzalez
Name Printed

SSN

DOB

(13) *This authorization is made in compliance with the Health Insurance Portability and Accountability Act (HIPAA).

STATE OF ALC)
COUNTY OF _____) ss.

1. That affiant is the Custodian of Records, and in such capacity, is the Custodian of Records of Neuromonitoring Associates,

3. That affiant has examined the original of those records and has made true and exact copies of them and that the reproduction of them attached hereto is true and complete.

4. That the original of those records was made at or near the time of the acts, events, condition or opinions recited therein by or from information transmitted by a person with knowledge in the course of a regularly conducted activity of affiant or the office or institution in which affiant is engaged.

S. : No records found on this patient. Initials

Further Affiant sayeth not.

(AFFIANT)

SUBSCRIBED and SWORN to before me this

day of 11/11/2014.

NOTARY PUBLIC in and for the
County and State

History not available

DEF000552

Neuromonitoring Associates

Readert Morton Hyson, M.D.

Medical Rec. #: 36294396

Insurance Superbill

PID: 84773

Print Time Stamp: 17-07-2018 09:11 PM

Patient Information

MARIE GONZALES

Date Of Surgery

18-JUL-13

Hospital

Spring Valley Hospital

Surgeon

STUART S KAPLAN

IONM Technologist

Melina Lewis, CNIM

6151 MORRIS ST

Date Of Birth

Age

56

Sex

Female

Home

(702) 202-1288

Work Phone

Cell

LAS VEGAS, NV 89122

Procedure: PLIF L4-S1.

Diagnosis: 724.2724.4

ICD-9

724.2

ICD-9

ICD-9

724.4

ICD-9

ICD-9

ICD-9

ICD-9

ICD-9

95940 - Intraoperative Neurophysiology Monitoring, Units:14

95938 - Upper and Lower Extremities SSEP, Units:1

95927 - Upper and Lower Extremities SSEP, Units:1

95885 - Lower EMG, Units:1

95909 - Pedicle Stimulation, Units:1

95937 - Neuromuscular Junction Test (TO4), Units:1

A4290 - Probe, Units:1

A4556 - DISK ELECTRODES, Units:8

A4557 - NEEDLE ELECTRODES, Units:22

Supplies Used	Quantity	Dr. Code
A4557 NEEDLES	22	A4557
A4556 Sticks	8	A4556
A4290 Probe	1	A4290

1500

HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNION CLAIM COMMITTEE (NUCC)

DCF SERVICES

10300 W. CHARLESTON BLVD.

LAS VEGAS, NV, 89136

Payer ID:

1. MEDICARE <input type="checkbox"/> MEDICAID <input type="checkbox"/> OTHER <input checked="" type="checkbox"/> (If other, specify)		2. INSURER'S ID. NUMBER (If or Program is Item 1)	
3. PATIENT'S NAME (Last, First, Middle Initial)		4. INSURER'S NAME (Last, First, Middle Initial)	
5. PATIENT'S ADDRESS (No. & Street)		6. INSURER'S ADDRESS (No. & Street)	
7. CITY		8. CITY	
9. STATE		10. STATE	
11. ZIP CODE		12. ZIP CODE	
13. TELEPHONE (Include Area Code)		14. TELEPHONE (Include Area Code)	
15. OTHER INSURER'S NAME (Last, First, Middle Initial)		16. PATIENT'S CONDITION RELATED TO	
17. OTHER INSURER'S POLICY OR GROUP NUMBER		18. EMPLOYMENT (Current or Previous)	
19. OTHER INSURER'S DATE OF BIRTH		20. DATE OF ACCIDENT	
21. EMPLOYER'S NAME OR SCHOOL NAME		22. PLACE (City)	
23. INSURANCE PLAN NAME OR PROGRAM NAME		24. RECEIVED FOR LOCAL USE	
25. IS THERE ANOTHER HEALTH BENEFIT PLAN?		26. REQUIRED TO WORK IN CURRENT OCCUPATION	
27. YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> If yes, when to end complete form 9 and 10.		28. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES	
29. REQUIRED TO OR AUTHORIZED PERSON'S SIGNATURE (Indicate payment of medical benefits to the undersigned physician or supplier for services described below)		30. OUTSIDE LABS	
31. SIGNED		32. MEDICATED REBUNDION	
33. DATE: 07/15/13		34. PHYSICIAN AUTHORIZATION NUMBER	
35. NAME OF RECEIVING PROVIDER OR OTHER SOURCE		36. PATIENT HAS HAD NAME ON SIMILAR ILLNESS	
37. STUART S KAPLAN, M.D.		38. FIRST DATE: MM DD YY	
39. RECEIVED FOR LOCAL USE		39. DATE: 07/15/2013	
40. PLIF L4 - S1		41. DATE: 07/15/2013	
42. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY (Specify Item 1, 2, 3 or 4 to Item 24B by L4)		43. MEDICATED REBUNDION	
44. L 724, 2		45. MEDICATED REBUNDION	
46. L 724, 4		47. MEDICATED REBUNDION	
48. DATE OF SERVICE		49. PHYSICIAN'S SIGNATURE OR SUPPLIER	
50. PLACE OF SERVICE		51. PHYSICIAN'S SIGNATURE OR SUPPLIER	
52. DATE		53. PHYSICIAN'S SIGNATURE OR SUPPLIER	
54. DATE		55. PHYSICIAN'S SIGNATURE OR SUPPLIER	
56. DATE		57. PHYSICIAN'S SIGNATURE OR SUPPLIER	
58. DATE		59. PHYSICIAN'S SIGNATURE OR SUPPLIER	
60. DATE		61. PHYSICIAN'S SIGNATURE OR SUPPLIER	
62. DATE		63. PHYSICIAN'S SIGNATURE OR SUPPLIER	
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72. DATE		73. PHYSICIAN'S SIGNATURE OR SUPPLIER	
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76. DATE		77. PHYSICIAN'S SIGNATURE OR SUPPLIER	
78. DATE		79. PHYSICIAN'S SIGNATURE OR SUPPLIER	
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96. DATE		97. PHYSICIAN'S SIGNATURE OR SUPPLIER	
98. DATE		99. PHYSICIAN'S SIGNATURE OR SUPPLIER	
100. DATE		101. PHYSICIAN'S SIGNATURE OR SUPPLIER	

NUCC Instruction Manual available at: www.nucc.org

PLEASE PRINT OR TYPE

APPROVED OMB-093-0099 FORM CMS-1500 (08/05)

DEF000558

INTRAOPERATIVE NEUROPHYSIOLOGY

Print Time Stamp: 07-17-2013 04:11 PM

Surgery Date: 07-16-13

Medical Rep. #: 36294396

Patient: MARIE GONZALES

DOB: [REDACTED]

Age: 55 Sex: Female

Surgeon: STUART S KAPLAN, M.D.

Post-Baseline Time: 10:05

Final Trace Time: 11:00

Total Professional Time: 00:55

Anesthesiologist:

IONM Technologist: Mallia Lewis, CNIM

Hospital: Spring Valley Hospital

Diagnosis: 724.2 724.4

Procedure: PLIF L4-S1

Conditions of the Recording:

Conditions of the Recording: All studies were performed on the aforementioned patient under real-time physician direct supervision via Internet communication allowing continuous or immediate contact between the interpreting neurologist and surgeon. Please see tech notes for details of stimulation and recording.

Description of the Recording:

Somatosensory Evoked Potentials (SSEPs) were performed to monitor the sensory system by stimulating nerves in the upper and lower extremities. Baseline responses were recorded prior to the start of the procedure and subsequent responses were compared to baseline.

Upper SSEP Stim Site(s): Ulnar Nerve.

Lower SSEP Stim Site(s): Posterior Tibial.

Lower extremity Free running Electromyography (EMG) was performed to monitor the integrity of the motor system and for nerve/root irritability. Recording electrodes were placed in muscles appropriate to the site of the procedure.

Lower Muscles: Ext. Hallucis Longus L4-S1, Flexor Hallucis Brevis, Gastroc S1, Tib. Ant. L5, Tibialis Anterior, Vast. Med. L2-L4, Vastus Lateralis L2-L4, Vastus Lateralis/medialis (L3-L4), Vastus Lateralus.

Electrical Stimulation of the pedicle screws were evaluated by using triggered EMG performed by stimulating each screw and recording a compound muscle action potential response in the appropriate muscles. A response to stimulus intensities of 10.0 mA or less in lumbar levels or 6.0 mA or less in thoracic levels raises concern for improper screw placement and potential breach in the pedicle wall. Corresponding thresholds were noted and communicated to the surgeon.

Train-of-Four Neuromuscular Junction (TO4) testing was performed to verify the validity of monitoring procedures dependent upon active motor neuronal firing, such as EMG and MEP monitoring and/or Pedicle stimulation. A response of 2 out of 4 or better is advisable.

Summary:

Description of the Recording: Under direct physician supervision, SSEP latencies were measured during the procedure. The latencies were compared to baseline values. No significant variations were noted by the technician. Free-running EMG was performed during the procedure and is unremarkable. Train-of-Four Neuromuscular Junction testing produced 4 out of 4 stimulus responses. EEG is unremarkable throughout the case.

Impression:

Impression: This intraoperative monitoring study was unremarkable, as described above.

Morton Hyson, M.D.

NOTE: This report was signed via Electronic Signature by Morton Hyson, M.D. on 07/16/2013 09:47 AM

1500

HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNION CLAIM COMMITTEE 01/05

DCP SERVICES

10300 W. CHARLESTON BLVD.

LAS VEGAS, NV, 89135

Payer ID:

1. MEDICARE <input type="checkbox"/> MEDICAID <input type="checkbox"/> OTHER		2. PATIENT'S NAME (Last Name, First Name, Middle Initial) GONZALES, MARIE		3. PATIENT'S BIRTH DATE MM DD YY 07 15 1973		4. INSURER'S NAME (Last Name, First Name, Middle Initial) GONZALES, MARIE	
5. PATIENT'S ADDRESS (No., Street) 5181 MORRIS ST.		6. PATIENT'S STATUS Single <input type="checkbox"/> Married <input checked="" type="checkbox"/> Other <input type="checkbox"/>		7. INSURER'S ADDRESS (No., Street) 5181 MORRIS ST.		8. INSURER'S CITY, STATE, ZIP CODE LAS VEGAS NV 89122	
9. OTHER INSURER'S NAME (Last Name, First Name, Middle Initial)		10. IS PATIENT'S CONDITION RELATED TO: a. EMPLOYMENT? (Current or Former) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> b. AUTO ACCIDENT? (Place of Injury) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> c. OTHER ACCIDENT? (Place of Injury) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		11. INSURER'S POLICY GROUP OR PEGA NUMBER		12. INSURER'S DATE OF BIRTH MM DD YY 07 15 1973	
13. INSURANCE PLAN NAME OR PROGRAM NAME		14. DATE OF CURRENT ILLNESS (First Symptom) OR INJURY (Accident) OR PREGNANCY (UMP) MM DD YY 07 15 1973		15. DATE PATIENT UNABLE TO WORK IN CURRENT OCCUPATION MM DD YY 07 15 2013		16. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES MM DD YY 07 15 2013	
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE STUART S. KAPLAN, M.D.		18. RESERVED FOR LOCAL USE PL 14-81		19. OUTPATIENT LAB? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		20. MEDICAL RECOMMENDATION ORIGINAL REF. NO.	
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY (Include ICD-9, 2, 3 or 4 for ICD-9 CM by ICD-10)		22. PRIOR AUTHORIZATION NUMBER		23. PRIOR AUTHORIZATION NUMBER		24. CHARGES	
25. DATE OF SURVIVAL MM DD YY 07 15 13		26. PROCEDURE, SERVICE, OR SUPPLIER (Specify Universal Procedure Code) ICD-9-CM 95940		27. DIAGNOSIS ICD-9-CM 12		28. CHARGES \$ 3,332.00	
29. DATE OF SURVIVAL MM DD YY 07 15 13		30. PROCEDURE, SERVICE, OR SUPPLIER (Specify Universal Procedure Code) ICD-9-CM 95938		31. DIAGNOSIS ICD-9-CM 12		32. CHARGES \$ 1,200.00	
33. DATE OF SURVIVAL MM DD YY 07 15 13		34. PROCEDURE, SERVICE, OR SUPPLIER (Specify Universal Procedure Code) ICD-9-CM 95927		35. DIAGNOSIS ICD-9-CM 12		36. CHARGES \$ 680.00	
37. DATE OF SURVIVAL MM DD YY 07 15 13		38. PROCEDURE, SERVICE, OR SUPPLIER (Specify Universal Procedure Code) ICD-9-CM 95888		39. DIAGNOSIS ICD-9-CM 12		40. CHARGES \$ 228.00	
41. DATE OF SURVIVAL MM DD YY 07 15 13		42. PROCEDURE, SERVICE, OR SUPPLIER (Specify Universal Procedure Code) ICD-9-CM 95909		43. DIAGNOSIS ICD-9-CM 12		44. CHARGES \$ 268.00	
45. DATE OF SURVIVAL MM DD YY 07 15 13		46. PROCEDURE, SERVICE, OR SUPPLIER (Specify Universal Procedure Code) ICD-9-CM 95937		47. DIAGNOSIS ICD-9-CM 12		48. CHARGES \$ 296.00	
49. PROPORTAL TAX ID NUMBER 61-0663972		50. PATIENT'S ACCOUNT NO. 84773		51. ACCEPT ASSIGNMENT? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		52. TOTAL CHARGE \$ 6,491.20	
53. SIGNATURE OF PHYSICIAN OR SUPPLIER (Include a legible signature of the physician or supplier) Roberta Gilman, MD 07/16/2013		54. SERVICE FACILITY LOCATION INFORMATION Spring Valley Hospital 6400 S. Rainbow Blvd. Las Vegas, NV 89118-1000		55. BILLING PROVIDER INFORMATION Norton on Letting Association 101 N. 30th Street Moon, AZ 85506		56. AMOUNT PAID \$ 2,271.00	
57. DATE 07/16/2013		58. DATE 07/16/2013		59. DATE 07/16/2013		60. DATE 07/16/2013	

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DEF000561

Neuromonitoring Associates

Technical Report

Medical Reg. #: 36294396

Print Time Stamp: 07/17/18 04:11 PM

PID: 84779

Patient Information	Date Of Surgery	Hospital	Surgeon	INOM Technologist
MARIE GONZALES	16-Jul-18	Spring Valley Hospital	STUART S KAPLAN, M.D.	Melina Layla; CNIM
6101 MORRIS ST LAS VEGAS, NV 89122	Date Of Birth	Age	Sex	Home Phone Work Phone Cell
		65	Female	(702) 292-1280

Procedure: PLW/LA - SL
Diagnosis: 724.2 724.4

Reader	Anesthesiologist	INOM System	MONITORING EQUIPMENT	POST-ANESTHESIA MONITORING	PRE-ANESTHESIA MONITORING
Morton, Hyson, M.D.			07/16/18 07:30 AM 29	07/16/18 07:30 AM 29	07/16/18 07:30 AM 29

Introduction
MULTI-MODALITY INTRAOPERATIVE NEUROPHYSIOLOGICAL MONITORING WAS CONTINUOUSLY CARRIED OUT IN AN EFFORT TO SAFEGUARD THE PATIENT, UTILIZING THE MODALITIES LISTED BELOW. AFTER THE PATIENT WAS INTUBATED SUBDERMAL NEEDLES AND STICKY PAD ELECTRODES WERE PLACED. POST INDUCTION, SUBDERMAL NEEDLE ELECTRODES WERE PLACED IN THE SCALE AT T2-C2, C2-C3, C3-C4 AND C4-C5 FOR SSEP RECORDING. ALL STIMULATION ELECTRODES WERE CONNECTED TO THE STIMULATION BOX. ALL RECORDING ELECTRODES WERE CONNECTED TO THE PRE-AMPLIFIER. IMPEDANCES WERE CHECKED AND FOUND TO BE ACCEPTABLE. MONITORING BEGAN AND BASELINES WERE TAKEN PRIOR TO EXPOSURE.

Upper Somatosensory
5598 Stim Sites: Ulnar Nerve.
Results: BILATERAL ULNAR NERVE SSEP BASELINES WERE REPRODUCIBLE AND RELIABLE. CORTICAL AND SUB-CORTICAL WAVIFORMS WERE RECORDED FROM THE SENSORY AND SUB-THALAMIC GENERATORS. THERE WERE NO SIGNIFICANT CHANGES IN EITHER THE LATENCY (>10%) OR AMPLITUDE (>50%) FROM BASELINES THROUGHOUT THE CASE. DR. WAS INFORMED AND HE ACKNOWLEDGED.

Lower Somatosensory
5598 Stim Sites: Posterior Tibial.
Results: BILATERAL POSTERIOR-TIBIAL NERVE SSEP BASELINES WERE REPRODUCIBLE AND RELIABLE. CORTICAL AND SUB-CORTICAL WAVIFORMS WERE RECORDED FROM THE SENSORY AND SUB-THALAMIC GENERATORS. THERE WERE NO SIGNIFICANT CHANGES IN EITHER THE LATENCY (>10%) OR AMPLITUDE (>50%) FROM BASELINES THROUGHOUT THE CASE. DR. WAS INFORMED AND HE ACKNOWLEDGED.

Lower EMG
5583 - Recording Sites: Lat. Hallux, Longus, L4-S1, Pector Hallux, Biceps, Caudus S1, Tib. Ant. L5, Tibialis Anterior, Vast. Med. L2-L4, Vastus Lateralis L2-L4, Vastus Lateralis L3-L4, Vastus Lateralis L4-L5, Vastus Lateralis L5-S1.
Results: THE FOLLOWING LOWER EMG WAS QUITE THROUGHOUT THE PROCEDURE.

Train-of-Four (TO4)

5597 - Neuromuscular Junction Test - Train-of-Four (TO4)
Results: AFTER THE INITIAL SHORT-ACTING INTUBATION MUSCLE RELAXANTS WERE OFF, TRAIN OF FOUR (TO4) NEURO-MUSCULAR JUNCTION TESTING CONSISTENTLY PRODUCED AT LEAST 2 OUT OF 4 RESPONSES WHICH HELPS TO VALIDATE THE SENSITIVITY OF ALL OTHER EMG AND/OR MOTOR FUNCTION MONITORING.

TO4 Response	TO4 TIME	TO4 Reliability
4	100%	Good

Pedicle Testing Data

ALL SCREW STIMULATION VALUES WERE WNL, 9ASA. NORMAL STIMULATION THRESHOLDS SUGGEST INTACT PEDICLE WALLS.

Pedicle	Stim	Response	Stim	Response
L4	20	47	L5	16
S1	17	18		

Summary

SSEPs WERE REPEATABLE AND REPRODUCIBLE. EMGS WERE QUITE THROUGHOUT THE CASE. TRAIN OF FOUR RESULTS SHOWED 4 OUT OF 4 TWITCHES. ANY CHANGES THAT OCCURRED THROUGHOUT WERE RELAYED TO THE SURGEON AND ACKNOWLEDGED.

NOTE: This report was signed via Electronic Signature by Malina Lewis, CNIM on 07/16/2013 02:03 PM

DEF000563

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
12/13/2016 06:27:30 AM

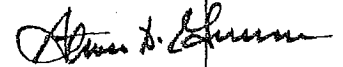
REPUBLIC SILVER STATE DISPOSAL,
INC., a Nevada Corporation,

Plaintiff,

vs.

ANDREW M. CASH, M.D.; ANDREW M.
CASH, M.D., P.C., aka ANDREW MILLER
CASH, M.D., P.C.; DESERT INSTITUTE OF
SPINE CARE, LLC., a Nevada Limited Liability
Company; JAMES D. BALODIMAS, M.D.;
JAMES D. BALODIMAS, M.D., P.C.; LAS
VEGAS RADIOLOGY, LLC, a Nevada Limited
Liability Company; BRUCE A. KATUNA, M.D.;
ROCKY MOUNTAIN NEURODIAGNOSTICS,
LLC, a Colorado Limited Liability Company;
DANIELLE MILLER aka DANIELLE
SHOPSHIRE; NEUROMONITORING
ASSOCIATES, INC., a Nevada Corporation;
DOES 1-10 inclusive; and ROE
CORPORATIONS 1-10 inclusive,

Defendants.



CLERK OF THE COURT

CASE NO.: A-16-738123-C
DEPT. XXX

ORDER RE: THE CASH
DEFENDANTS' MOTION TO
DISMISS, THE BALODIMAS
DEFENDANTS' MOTION FOR
JUDGMENT ON THE
PLEADINGS, AND DANIELLE
MILLER'S MOTION TO
DISMISS, AND ALL JOINDERS

The above-captioned matter came on for hearing before Judge Jerry A. Wiese II, on Tuesday, October 4, 2016, with regard to the Cash Defendants' Motion to Dismiss, the Balodimas Defendants' Motion for Judgment on the Pleadings, and Danielle Miller's Motion to Dismiss, and all related Joinders. The Court having reviewed the briefs submitted by all parties, entertained oral argument by counsel for all parties. Following oral argument, the Court indicated that it would enter a written decision from chambers. The Court then issued a Minute Order on October 13, 2016, setting an Evidentiary Hearing for November 9, 2016. Various parties submitted supplemental briefing, and an Evidentiary Hearing occurred on November 9, 2016. The Court indicated that an Order would issue, and this Order follows:

This case stems from a motor vehicle accident which occurred on or about January 14, 2012, involving Marie Gonzales and a commercial garbage truck owned

1 and operated by Republic, and driven by its employee Deval Hatcher. As a result of the
2 accident, Marie Gonzales allegedly suffered personal injuries, and treated with various
3 medical care providers, including those named as Defendants herein. On or about
4 September 3, 2013, Marie Gonzales filed a lawsuit against Republic and its driver,
5 alleging negligence, and seeking compensation for her injuries. On or about July 6,
6 2015, Republic settled the underlying case with Ms. Gonzales, and paid the amount of
7 \$2,000,000.00. Republic thereafter filed a Complaint in this separate litigation,
8 alleging that from January 29, 2013 forward, Ms. Gonzales' damages were the direct
9 result of the professional negligence of the Defendants named herein.

10 All pending motions and joinders essentially make the same arguments – 1) that
11 the Plaintiff does not have standing to assert a direct claim for medical malpractice or
12 medical negligence (now known in Nevada as “professional negligence”); 2) that the
13 Plaintiff failed to bring its claims for professional negligence, respondeat superior, and
14 negligent supervision and retention, within the applicable statutes of limitations; and
15 3) that Plaintiff's contribution claim fails pursuant to NRS 17.225(3), as Plaintiff's
16 settlement with Maria Gonzales did not extinguish any liability on the part of the
17 Defendants in this case.

18 With regard to the first argument, that the Plaintiff does not have standing, even
19 the Plaintiff's Opposition concedes that Plaintiff has “no stand-alone right under NRS
20 Ch.41A to pursue Marie Gonzales' – or anyone else's – claim of medical malpractice.”
21 (See Plaintiff's Opposition to the Cash Motion to Dismiss at pg. 7). Plaintiff simply
22 argues that its claim is for contribution, based upon claims for professional negligence,
23 respondeat superior, and negligent supervision and retention. With this
24 understanding, this Court agrees that the Plaintiff does not have standing to bring these
25 claims directly against the Defendants. The Court acknowledges that the Plaintiff's
26 claim for contribution is based upon the Defendants' alleged professional negligence,
27 respondeat superior, and negligent supervision and retention. As noted by the
28 Plaintiff, Nevada law obligates a Plaintiff seeking contribution from health care
providers, asserting claims for professional negligence, to satisfy the requirements of
NRS Chapter 41A. (See Plaintiff's Opposition to the Cash Motion to Dismiss at pg. 8).

Having concluded that the Plaintiff's claims for professional negligence,
respondeat superior, and negligent supervision and retention are all subsumed within

1 and are part of, and the premise of the Plaintiff's claim for contribution, the more
2 difficult issue is whether the Plaintiff's claim for contribution fails under NRS
3 17.225(3).

4 NRS 17.225 reads as follows:

5 **NRS 17.225 Right to contribution.**

6 1. Except as otherwise provided in this section and NRS 17.235 to 17.305, inclusive,
7 where two or more persons become jointly or severally liable in tort for the same injury
8 to person or property or for the same wrongful death, there is a right of contribution
9 among them even though judgment has not been recovered against all or any of them.

10 2. The right of contribution exists only in favor of a tortfeasor who has paid more than
11 his or her equitable share of the common liability, and the tortfeasor's total recovery is
12 limited to the amount paid by the tortfeasor in excess of his or her equitable share. No
13 tortfeasor is compelled to make contribution beyond his or her own equitable share of
14 the entire liability.

15 3. *A tortfeasor who enters into a settlement with a claimant is not*
16 *entitled to recover contribution from another tortfeasor whose liability for*
17 *the injury or wrongful death is not extinguished by the settlement* nor in
18 respect to any amount paid in a settlement which is in excess of what was reasonable.
19 (Added to NRS by 1973, 1303; A 1979, 1355, emphasis added).

20 NRS 17.285, also dealing with contribution, reads as follows:

21 **NRS 17.285 Enforcement of right of contribution.**

22 1. Whether or not judgment has been entered in an action against two or more
23 tortfeasors for the same injury or wrongful death, contribution may be enforced by
24 separate action.

25 2. Where a judgment has been entered in an action against two or more tortfeasors for
26 the same injury or wrongful death, contribution may be enforced in that action by
27 judgment in favor of one against other judgment defendants by motion upon notice to all
28 parties to the action.

3. If there is a judgment for the injury or wrongful death against the tortfeasor seeking
contribution, any separate action by the tortfeasor to enforce contribution must be
commenced within 1 year after the judgment has become final by lapse of time for
appeal or after appellate review.

4. If there is no judgment for the injury or wrongful death against the tortfeasor
seeking contribution, the tortfeasor's right of contribution is barred unless the tortfeasor
has:

(a) Discharged by payment the common liability within the statute of limitations period
applicable to claimant's right of action against him or her and has commenced an action
for contribution within 1 year after payment; or

(b) Agreed while action is pending against him or her to discharge the common liability
and has within 1 year after the agreement paid the liability and commenced an action for
contribution.

5. The judgment of the court in determining the liability of the several defendants to
the claimant for an injury or wrongful death shall be binding as among such defendants
in determining their right to contribution.

(Added to NRS by 1973, 1304)

29 The Defendants argue that since the professional negligence statute of
30 limitations set forth in NRS 41A.097, expired prior to the settlement between Maria
Gonzales and Republic, there was no liability on the part of the doctors that could have

1 been extinguished by such settlement, and consequently, pursuant to 17.225(3), the
2 Plaintiff has no claim for contribution.

3 In order to evaluate the applicable statute of limitations, the Court must briefly
4 analyze each of the Defendants' involvement in the care and treatment of Ms. Gonzales.
5 In Plaintiff's Amended Complaint, filed on 6/27/16, the Plaintiff alleges that Maria
6 Gonzales began treating with Dr. Cash on 4/4/12, who performed an OLIF procedure
7 on or about 1/29/13, which procedure involved the placement of pedicle screws. (See
8 Amended Complaint at ¶23-27). Plaintiff alleges that Katuna and Rocky Mountain
9 Neurodiagnostics and Miller and Neuromonitoring Associates were involved in
10 neurophysiological monitoring prior to the OLIF procedure. (See Amended Complaint
11 ¶28-29). Plaintiff alleges that Defendant Miller was present and providing
12 neurophysiologic monitoring services during the procedure on 1/29/13. (See Amended
13 Complaint ¶33). Ms. Gonzales was apparently discharged from Spring Valley Hospital
14 on 2/2/13. (Id., at ¶38). A CT study was apparently performed by Las Vegas Radiology
15 on 2/12/13. (Id., at ¶40-41). On or about June 7 and July 12, 2013, Gonzales consulted
16 with Drs. Jason Garber and Stuart Kaplan, and on 7/15/13, Dr. Kaplan performed an
17 anterior fusion surgery at Spring Valley Hospital. (Id., at ¶45). Ms. Gonzales allegedly
18 continued to have back problems and on or about 2/10/15, Dr. Kaplan implanted a
19 spinal cord stimulator. (Id., at ¶46-47). On 9/3/13, Gonzales filed her Complaint in
20 *Gonzales v. Hatcher* (Case No.: A687931) against Republic and Hatcher. (Id., at ¶48).
21 On 7/6/15, Republic settled that case with Gonzales for \$2,000,000.00. (Id., at ¶51).

22 Based upon the foregoing chronology, it appears that the medical care providers
23 named as Defendants in the present litigation were involved in the care of Ms. Gonzales
24 from 4/4/12 through approximately 2/12/13. Plaintiff's original Complaint in this
25 matter was filed on 6/8/16. If NRS 41A.097 applies, the statute reads as follows:

26 **NRS 41A.097 Limitation of actions; tolling of limitation.**

27 1. Except as otherwise provided in subsection 3, an action for injury or death against a
28 provider of health care may not be commenced more than 4 years after the date of injury
or 2 years after the plaintiff discovers or through the use of reasonable diligence should
have discovered the injury, whichever occurs first, for:

(a) Injury to or the wrongful death of a person occurring before October 1, 2002, based
upon alleged professional negligence of the provider of health care;

(b) Injury to or the wrongful death of a person occurring before October 1, 2002, from
professional services rendered without consent; or

(c) Injury to or the wrongful death of a person occurring before October 1, 2002, from
error or omission in practice by the provider of health care.

2. Except as otherwise provided in subsection 3, *an action for injury or death
against a provider of health care may not be commenced more than 3*

1 *years after the date of injury or 1 year after the plaintiff discovers or*
2 *through the use of reasonable diligence should have discovered the injury,*
3 *whichever occurs first, for:*

4 (a) Injury to or the wrongful death of a person occurring on or after October 1, 2002,
5 based upon alleged professional negligence of the provider of health care;

6 (b) Injury to or the wrongful death of a person occurring on or after October 1, 2002,
7 from professional services rendered without consent; or

8 (c) Injury to or the wrongful death of a person occurring on or after October 1, 2002,
9 from error or omission in practice by the provider of health care.

10 3. This time limitation is tolled for any period during which the provider of health care
11 has concealed any act, error or omission upon which the action is based and which is
12 known or through the use of reasonable diligence should have been known to the
13 provider of health care.

14 4. For the purposes of this section, the parent, guardian or legal custodian of any
15 minor child is responsible for exercising reasonable judgment in determining whether to
16 prosecute any cause of action limited by subsection 1 or 2. If the parent, guardian or
17 custodian fails to commence an action on behalf of that child within the prescribed
18 period of limitations, the child may not bring an action based on the same alleged injury
19 against any provider of health care upon the removal of the child's disability, except that
20 in the case of:

21 (a) Brain damage or birth defect, the period of limitation is extended until the child
22 attains 10 years of age.

23 (b) Sterility, the period of limitation is extended until 2 years after the child discovers
24 the injury.

25 (Added to NRS by 1971, 366; A 1975, 407; 1977, 857, 954, 1082; 1985, 2011; 1989, 424;
26 1991, 1131; 1993, 2224; 1995, 2350; 1999, 5; 2001, 1107; 2002 Special Session, 8; 2004
27 initiative petition, Ballot Question No. 3, emphasis added).

28 Defendants argue that the Plaintiff's claims are barred because the Complaint
was filed more than 3 years after the date of injury (date of any treatment), and more
than 1 year since the Plaintiff discovered or through the use of reasonable diligence
should have discovered the injury. Since the Plaintiff's treatment with the Defendants
concluded on or about 2/12/13, and the Plaintiff's Complaint was not filed until 6/8/16,
it appears that more than 3 years elapsed since any treatment by any Defendant, and
consequently, the statute would have expired.

In a case very similar to the present case, the Nevada Supreme Court has
recently held that a claim for contribution carries a fixed limitation period pursuant to
NRS 17.285, and arises "[w]here a judgment has been entered in an action against two
or more tortfeasors for the same . . . wrongful death."¹

In *Saylor v. Arcotta*, a motor vehicle accident occurred in which a passenger in a
cab was injured. Two weeks after the accident, the passenger was hospitalized for a
heart attack and died during surgery. The heirs sued the taxi cab driver and the cab
company. Through discovery, the cab company learned that the death may have been

¹ *Saylor v. Arcotta*, 126 Nev. 92, 225 P.3d 1276 (2010).

1 caused by medical negligence, and they subsequently filed a third-party complaint
2 against the passenger's treatment physicians for equitable indemnity and contribution.
3 The doctors moved for summary judgment arguing that the claims were time-barred by
4 the medical malpractice statute of limitations contained in NRS 41A.097. The district
5 court agreed and dismissed the case. On appeal, the Nevada Supreme Court held that
6 "equitable indemnity claims are not governed by the limitations period applicable to
7 the underlying tort." ² The Court held that "equitable indemnity claims that arise out of
8 medical malpractice allegations are not subject to NRS 41A.097(2)'s limitations period
9 for medical malpractice claims, but are instead subject to NRS 11.190(2)(c)'s limitations
10 period for actions on implied contracts."³ The Supreme Court's analysis of the
11 "contribution" claim was separate, and in that regard the Court stated the following:

12 In Nevada, a claim for contribution is preserved by statute – NRS 17.225
13 – and carries a fixed limitations period under NRS 17.285. Pursuant to NRS
14 17.285(2), a contribution claim arises "[w]here a judgment has been entered in
15 an action against two or more tortfeasors for the same ... wrongful death." The
16 contribution claim must be filed "within 1 year after the judgment has become
17 final by lapse of time for appeal or after appellate review." Thus, once a
18 contribution claim arises, it is subject to a one-year statute of limitations.⁴

19 Two years later, in 2012, the Nevada Supreme Court addressed another similar
20 case, in *Pack v. Latourette*.⁵ In that case, David Zinni was injured in a motor vehicle
21 accident and brought an action against a taxi cab driver who caused the accident, and
22 the cab company. The cab company brought a third-party complaint against the
23 doctors who treated Zinni, asserting claims for equitable indemnity and contribution,
24 based on medical malpractice. Dr. LaTourette moved to dismiss the third-party
25 complaint, alleging that it was time-barred by NRS 41A.097. Dr. LaTourette argued
26 alternatively that the Complaint should be dismissed because the cab company failed to
27 attach an expert affidavit as required by NRS 41A.071. The district court concluded
28 that the cab company's claims were time-barred by NRS 41A.097's medical malpractice
statute of limitations, and didn't address the alternative arguments.

² Saylor at pg. 95, citing to *Reggio v. E.T.I.* 15 So.3d 951, 955 (La. 2008).

³ Saylor at pg. 95.

⁴ Saylor at pg. 96, citing to *Aetna Casualty & Surety v. Aztec Plumbing*, 106 Nev. 474, 476, 796 P.2d 227, 229, and NRS 17.285(3).

⁵ *Pack v. LaTourette*, 128 Nev.Adv.Op. 28, 277 P.3d 1246 (2012).

1 The Supreme Court noted that while the appeal was pending in the Pack case,
2 the Court decided the Saylor case, and the Court stated:

3 In *Saylor*, we clarified that “**NRS 41A.097(2)’s limitations period does**
4 **not apply to equitable indemnity and contribution claims,”** and that
5 such claims are instead subject to the limitations period laid out in NRS
6 11.190(2)(c) and NRS 17.285, respectively.⁶

7 Dr. LaTourette argued that because the cab company had not yet “paid” Zinni
8 more than its fair share of liability, the contribution claim was premature. The
9 Supreme Court did not agree. The Court indicated that NRS 17.285 sets forth two
10 methods for enforcing a claim for contribution – “either by a separate action following
11 entry of judgment or ‘in the same action in which [the] judgment is entered against two
12 or more tortfeasors.’”⁷ The Court further indicated that because the cab company’s
13 complaint rested upon the theory that Dr. Lautorette committed medical malpractice,
14 the cab company was required to satisfy the statutory prerequisites in place for
15 malpractice cases before bringing its contribution claim. Because the cab company
16 failed to attach an expert affidavit to its claim for contribution, the complaint in that
17 regard was void ab initio and should have been dismissed without prejudice.⁸

18 This Court notes that the facts underlying both the *Saylor* and *Pack* cases, are
19 almost identical to the facts underlying the present case. Significantly, however, in
20 neither *Saylor* nor *Pack*, did the Nevada Supreme Court address sub-paragraph (3) of
21 NRS 17.225. In the present case, the Defendants contend that the Plaintiff is not
22 entitled to recover contribution from the doctors, because their liability for the injury to
23 Ms. Gonzales was not extinguished by the settlement, because Ms. Gonzales’ statute of
24 limitations for any claims against the doctors had expired prior to the settlement.

25 In *McNulty v. Eighth Jud. Dist. Ct.*,⁹ the Nevada Supreme Court did have an
26 opportunity to consider sub-paragraph (3) of NRS 17.225. That case stemmed from a
27 motor vehicle accident, in which a cab passenger, Michael Cicchini, suffered injuries.
28 Subsequent to the accident, McNulty and others were involved in performing a back

⁶ *Pack* at 1248, citing *Saylor v. Arcotta*, 126 Nev. __, 225 P.3d 1276, 1278-79 (2010), emphasis added.
⁷ *Pack* at pg. 1249-1250, citing *Bell & Gossett Co. v. Oak Grove Investors*, 108 Nev. 958, 963, 843 P.2d
351, 354 (1992), and NRS 17.285(1),(2).

⁸ *Pack* at pg. 1250, citing to *Fierle v. Perez*, 125 Nev. 728, 736-38, 219 P.3d 906, 911-12 (2009), and
Washoe Med. Ctr., 122 Nev. 1298, 1300, 148 P.3d 790, 792 (2006).

⁹ *McNulty v. Eighth Jud. Dist. Ct.*, 127 Nev. 1159, 373 P.3d 942 (unpublished 2011),

1 surgery on Mr. Cicchini, which allegedly left him partially paralyzed. Cicchini sued the
2 cab company, and settled his claim for \$1,150,000.00. Cicchini signed a release, but it
3 did not extinguish McNulty's liability. The release actually included specific language
4 that indicated that the subject accident did not cause the need for surgery, and neither
5 the surgery nor any complications relating to it were caused by the accident. After
6 settling, both Cicchini and the cab company each sued Dr. McNulty. Cicchini's suit
7 sought damages for alleged medical malpractice. The cab company sued for
8 contribution and indemnity, based on the contention that the surgery, not the accident,
9 caused Cicchini's damages. Dr. McNulty moved for dismissal, and the district court
10 denied the motion. McNulty then filed a writ with the Nevada Supreme Court. The
11 Supreme Court concluded that McNulty was entitled to a writ of mandamus compelling
the dismissal of the case, based upon the clear statutory language of NRS 17.225(3):

12 A tortfeasor who enters into a settlement with a claimant is not entitled to
13 recover contribution from another tortfeasor whose liability for the injury or
wrongful death is not extinguished by the settlement . . . ¹⁰

14 The Court held that "the statute's wording is plain and its application clear:
15 VWC [the cab company] has no contribution claim against McNulty."¹¹

16 In *McNulty*, the Nevada Supreme Court held that because McNulty's liability
17 had not been extinguished by the settlement between Cicchini and the cab company,
18 the cab company had no claim for contribution against McNulty. In the present case,
19 Plaintiff's counsel offered during oral argument to make the settlement agreement
20 available, but neither party attached a copy of the settlement agreement to the original
21 pleadings. Following the October 4, 2016, hearing with regard to the foregoing, this
22 Court issued a Minute Order, and scheduled an Evidentiary Hearing, asking the parties
to respond to the following two specific issues:

- 23 1) Do the terms of the settlement agreement between Gonzales and Republic
24 extinguish the liability of the Defendants named in the present litigation?
25 (See *Saylor v. Arcotta*, 126 Nev. 92, 225 P.3d 1276 [2010]; *Pack v.*
26 *LaTourette*, 128 Nev. Adv. Op. 25, 277 P.3d 1246 [2012]; and *McNulty v.*
Eighth Judicial Dist. Ct., 127 Nev. 1159, 373 P.3d 942 [2011]).

10 McNulty at pg. 2, citing NRS 17.225(3).
11 Id.

1 2) If the statute of limitations set forth in NRS 41A.097 applies, is there
2 sufficient evidence to determine, for purposes of the pending Motions, when
3 the statute of limitations expired as it relates to each Defendant?

4 Prior to the November 9, 2016, Evidentiary Hearing, counsel for the Plaintiff
5 submitted to the Court a copy of the subject Release between Marie Gonzales and
6 Republic Silver State Disposal. The Release specifically includes the following
7 language:

8 . . . this SETTLEMENT AGREEMENT, RELEASE and COVENANT NOT TO SUE
9 **shall discharge and extinguish any and all claims or liabilities,**
10 including those for "economic" and "noneconomic" damages as set forth in NRS
11 ch. 41A, RELEASOR may possess **against any of her medical treatment**
12 **providers** for injuries she alleges to have sustained in the described incident of
13 January 14, 2012.¹²

14 Although Defense Counsel noted that the Release was not specific as to which
15 "medical treatment providers" liability would be extinguished, this Court finds that the
16 Release is very clear that it was the intent of the parties that the Release would
17 extinguish any claims or liabilities that Ms. Garcia had against her medical treatment
18 providers, relating to the injuries she alleged as a result of the subject accident.
19 Consequently, the Court concludes that the terms of the settlement agreement do
20 extinguish the liability of the Defendants named in the present litigation, pursuant to
21 *Saylor, Pack, and McNulty*.¹³

22 The next issue the Court must address, is whether any of the medical treatment
23 providers (particularly those named as Defendants in the present case) had any liability
24 to Ms. Gonzales that could have been extinguished on July 6, 2015. NRS 41A.079
25 provides that "an action for injury or death against a provider of health care may not be
26 commenced more than 3 years after the date of injury or 1 year after the plaintiff
27 discovers or through the use of reasonable diligence should have discovered the injury,
28 whichever occurs first."¹⁴ Defendants argue that any claim that Ms. Gonzales had
against the treating doctors, expired prior to the July 6, 2015, Release, and
consequently, she had no claims against these Defendants which could have been
extinguished on that date. Plaintiff argues that the NRS 41A.079 Limitation of Action

¹² See Exhibit 3 to Plaintiff's Brief Re: Evidentiary Hearing, at pg. 2 of 10 (emphasis added).
¹³ *Saylor v. Arcotta*, 126 Nev. 92, 225 P.3d 1276 [2010]; *Pack v. LaTourette*, 128 Nev. Adv. Op. 25, 277 P.3d
1246 [2012]; and *McNulty v. Eighth Judicial Dist. Ct.*, 127 Nev. 1159, 373 P.3d 942 [2011]).
¹⁴ NRS 41A.079.

1 does not apply, because this is a claim for "contribution," and in the *Saylor* and *Pack*
2 cases, the Nevada Supreme Court indicated that the NRS 41A.079 limitation of actions
3 does not apply to a claim for equitable indemnity or contribution.

4 If this Court were to agree with Defendants, the result would be the following: If
5 the parties to the underlying negligence case "settle" their claims, after the statute of
6 limitations set forth in NRS 41A.079 has expired, then the settling Defendant cannot
7 bring a claim for contribution because pursuant to NRS 17.225(3), there would be no
8 liability from the alleged tortfeasor (doctor) to be extinguished. On the other hand, if
9 the parties to the underlying negligence case do not "settle" their case, but instead go to
10 trial and obtain a "Judgment," against a Defendant, that Defendant can bring a claim
11 for contribution against an alleged tortfeasor (doctor), even if the statute of limitations
12 set forth in NRS 41A.079 has expired, because NRS 17.285(3) would apply instead of
13 NRS 17.225(3). This would seem to provide a disincentive to the parties to settle, and
cannot be the intent of the legislature.

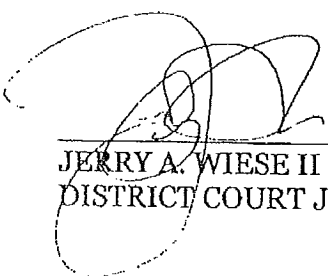
14 The Nevada Supreme Court has made it clear in *Saylor* and *Pack*, that in a claim
15 for contribution, NRS 41A.079 does not apply.¹⁵ This Court finds and concludes that
16 the language in NRS 17.225(3), (*whose liability for the injury or wrongful death is not*
17 *extinguished by the settlement*), refers to the need for the parties to extinguish liability
18 in the Settlement Agreement, and that was done in this case. This Court finds and
19 concludes that the liability of the Defendant Doctors was extinguished by the
20 underlying Settlement Agreement, and consequently, pursuant to NRS 17.225 and
21 17.285, as well as the above-referenced case law, the Plaintiff in this case has preserved
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¹⁵ *Saylor v. Arcotta*, 126 Nev. 92, 225 P.3d 1276 [2010]; *Pack v. LaTourette*, 128 Nev. Adv. Op. 25, 277 P.3d 1246 [2012].

1 its right to assert a claim for contribution, and in that regard, the Defendants' Motions
2 must be Denied.

3 Based upon the foregoing, the pending Motions are GRANTED, as they relate to
4 all claims other than the claim for Contribution, but they are DENIED as they relate to
5 the Plaintiff's claim for Contribution.

6 DATED this 2nd day of December, 2016.

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10 JERRY A. WIESE II
11 DISTRICT COURT JUDGE, DEPT. 30
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