

IN THE SUPREME COURT OF THE STATE OF NEVADA

O.P.H. OF LAS VEGAS, INC.,

Appellants,

v.

OREGON MUTUAL INSURANCE COMPANY;
DAVE SANDIN; AND SANDIN & CO.,

Respondents.

Supreme Court No. 76966

Electronically Filed
District Court No. A-12-972158
Oct 15 2018 02:49 p.m.

Elizabeth A. Brown
Clerk of Supreme Court

**ATTACHMENTS TO
DOCKETING
STATEMENT CIVIL
APPEALS**

Clark County, Nevada

XXVII

Case No. _____

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone):

1. O.P.H. of Las Vegas Inc. / 4833 West Charleston Boulevard / Las Vegas, Nevada 89146 / (702) 870-1500

Attorney (name/address/phone):

Margaret A. McLetchie / 616 S. Eighth St. / Las Vegas, NV 89101 / (702) 471-6565

Defendant(s) (name/address/phone):

1. Oregon Mutual Insurance Company / P.O. BOX 808 / McMinnville, Oregon 97128 / (800) 888-2912 Ext. 2818
2. Dave Sandin / 46 Da Vinci Street / Lake Oswego, Oregon 97035 / (503) 381-8583
3. Sandin & Co. / 46 Da Vinci Street / Lake Oswego, Oregon 97035 / (503) 381-5570

Attorney (name/address/phone):

Clarke B. Holland / 5858 Horton Street / Suite 370 / Emeryville, California 94608 / (510) 841-7777

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Dcfamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input checked="" type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input checked="" type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

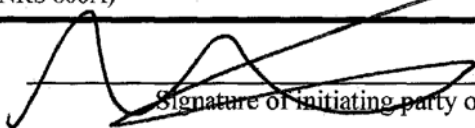
☐ NRS Chapters 78-88
☐ Commodities (NRS 90)
☐ Securities (NRS 90)

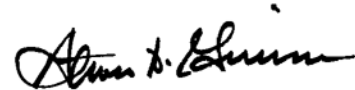
☐ Investments (NRS 104 Art. 8)
☐ Deceptive Trade Practices (NRS 598)
☐ Trademarks (NRS 600A)

☐ Enhanced Case Mgmt/Business
☐ Other Business Court Matters

11/19/2012

Date


Signature of initiating party or representative



CLERK OF THE COURT

COMJD
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Nevada State Bar No. 10931
ROBERT L. LANGFORD
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DISTRICT COURT

CLARK COUNTY NEVADA

O.P.H. of Las Vegas Inc.,

Plaintiff

vs.

Oregon Mutual Insurance Company, Dave
Sandin, and Sandin & Co.,

Defendants.

Case No.: A - 1 2 - 6 7 2 1 5 8 - C

Dept. No.: XXVII

COMPLAINT

JURY TRIAL DEMAND

**Arbitration Exemption Claimed:
Damages in Excess of \$50,000**

This is a civil action for damages. Plaintiff O.P.H. of Las Vegas Inc.
("PLAINTIFF") hereby alleges and complains as follows:

Jurisdiction

1. Jurisdiction in this case is proper pursuant to Nev. Rev. Stat.
§ 14.065.

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Parties

2. Plaintiff O.P.H. of Las Vegas Inc. ("OPH INC." or "PLAINTIFF") owns the Original Pancake House Restaurant which was previously located and operated at 4833 West Charleston Boulevard.

3. Defendant OREGON MUTUAL INSURANCE COMPANY ("OREGON MUTUAL") is, and at all relevant times was, an insurance company headquartered in McMinnville, Oregon that does business in Nevada.

4. Defendant SANDIN & CO., also known as SANDIN INSURANCE GROUP ("SANDIN INSURANCE"), is, and at all relevant times was, an insurance group with headquarters at 46 Da Vinci Street, Lake Oswego, Oregon that does business in Nevada.

5. Defendant DAVE SANDIN is an insurance agent who is affiliated with Defendant SANDIN INSURANCE and, on information and belief, Defendant OREGON MUTUAL.

6. Defendant OREGON MUTUAL appointed Defendant SANDIN INSURANCE as one of its agents for Casualty and Property Insurance in Nevada, effective May 17, 2010.

7. Defendant OREGON MUTUAL's agency appointment on file with the State of Nevada does not include Defendant DAVE SANDIN.

8. On information and belief, Defendant OREGON MUTUAL was aware that Defendant DAVE SANDIN acted as an agent for and sold OREGON MUTUAL insurance in the State of Nevada.

9. DOE DEFENDANTS I-X are natural persons who work for or are

1 affiliated with Defendants OREGON MUTUAL, SANDIN INSURANCE, and/or DAVE
2 SANDIN. ROE BUSINESS ENTITIES I-X directed, assisted in, or ratified the wrongful
3 actions of the named Defendants and/or are, without limitation, predecessor entities,
4 successor entities, parent or subsidiary corporations, or other kinds of business
5 organizations, which are related to, connected to, control or operate DEFENDANTS. DOE
6 DEFENDANTS and ROE BUSINESS ENTITIES are co-owners, agents, servants,
7 employees, employers, joint venturers, managers, and/or partners of the named Defendants
8 and the DOE DEFENDANTS and ROE BUSINESS ENTITIES, and/or each other.
9

10
11 10. The real names of the DOE DEFENDANTS and ROE BUSINESS
12 ENTITIES are unknown to PLAINTIFF at this time. PLAINTIFF will seek leave to amend
13 this Complaint and substitute the true names of the DOE DEFENDANTS and ROE
14 BUSINESS ENTITIES as soon as their true identities are revealed.
15

16 **Factual Allegations Generally Applicable to All Claims**

17 **Relationship between the Sandin Defendants and Plaintiff**

18 11. Defendant DAVE SANDIN of Defendant SANDIN INSURANCE
19 (collectively, the "SANDIN DEFENDANTS") has sold a number of business insurance
20 policies over the past ten years to PLAINTIFF and/or agents, employees, or directors of
21 PLAINTIFF and/or entities acting on behalf of PLAINTIFF and/or related entities.
22

23 12. PLAINTIFF had a long-standing relationship of trust and reliance
24 with the SANDIN DEFENDANTS.

25 13. Throughout the course of dealing with the SANDIN
26 DEFENDANTS, PLAINTIFF relied on Defendant DAVE SANDIN to warn when
27 premium payments were late.
28

1 14. Throughout the course of dealing with the SANDIN
2 DEFENDANTS, PLAINTIFF relied on Defendant DAVE SANDIN to recommend suitable
3 insurance for its business needs.

4
5 15. PLAINTIFF in good faith believed that Defendant DAVE SANDIN
6 was duly qualified and licensed to sell insurance in Nevada, and that Defendant SANDIN
7 INSURANCE had provided it with a properly licensed agent.

8 **The Contract**

9
10 16. In or around December of 2011, Defendant DAVE SANDIN
11 recommended Oregon Mutual insurance to PLAINTIFF and represented that Defendant
12 OREGON MUTUAL was an insurance company that met PLAINTIFF's needs.
13 PLAINTIFF relied on Defendant DAVE SANDIN's recommendations and representations.

14 17. With Defendant DAVE SANDIN acting as the agent, in December
15 of 2011 Defendant OREGON MUTUAL issued a Businessowner Protector Policy to
16 PLAINTIFF, and PLAINTIFF and Defendant OREGON MUTUAL thereby entered an
17 insurance contract which protected OPH INC. and the Original Pancake House restaurant
18 located at 4170 South Fort Apache Road, Las Vegas, Nevada (the "CONTRACT").
19

20
21 18. Consistent with Nevada law, the CONTRACT provides that
22 Defendant OREGON MUTUAL, the insurer, must provide a copy of any cancellation
23 notice to the agent as well as to the insured, PLAINTIFF.

24 19. The CONTRACT's policy period was December 26, 2011 through
25 December 26, 2012.

26
27 ///

28 ///

Licensing

20. Defendant DAVE SANDIN was not licensed to sell insurance in Nevada in December of 2011.

21. On information and belief, Defendant DAVE SANDIN sold insurance to PLAINTIFF without the required license with the knowledge and consent of Defendant SANDIN INSURANCE.

22. On information and belief, Defendant OREGON MUTUAL was aware that Defendant DAVE SANDIN acted as the agent for the CONTRACT and sold OREGON MUTUAL insurance to PLAINTIFF.

23. On information and belief, Defendant OREGON MUTUAL was aware that Defendant DAVE SANDIN was not licensed to sell insurance in Nevada in December of 2011.

Defendants' failures to provide notice of cancellation

24. PLAINTIFF mistakenly failed to pay one month's premium due on July 26, 2012.

25. Defendant OREGON MUTUAL claims that it sent a cancellation notice to PLAINTIFF on August 1, 2012 with an effective cancellation date of August 16, 2012.

26. PLAINTIFF did not in fact receive any August 1, 2012 cancellation notice or any other notice of cancellation until after August 16, 2012, the date OREGON MUTUAL cancelled the insurance.

27. Defendant OREGON MUTUAL did not send a cancellation notice to Defendant DAVE SANDIN.

1 28. Defendant DAVE SANDIN did not receive a cancellation notice.

2 29. The SANDIN DEFENDANTS did not advise PLAINTIFF that its
3 payment was late, or that Defendant OREGON MUTUAL intended to cancel the
4 CONTRACT.
5

6 30. Sometime overnight between August 10, 2012 and August 11, 2012,
7 a break-in occurred at the Original Pancake House located and operated at 4833 West
8 Charleston Boulevard. The break-in was reported by Linda Snyder, PLAINTIFF's office
9 manager, to Defendant DAVE SANDIN of Defendant SANDIN INSURANCE on August
10 13, 2012.
11

12 31. Defendant OREGON MUTUAL takes the position that the
13 CONTRACT was properly cancelled effective at 12:01 a.m. on August 16, 2012.
14

15 32. Had PLAINTIFF been warned before August 16, 2012 that its
16 payment was late and its insurance was scheduled to be cancelled, PLAINTIFF would have
17 remedied the deficiency.
18

19 33. Ms. Snyder called and emailed Defendant DAVE SANDIN again on
20 August 16, 2012, the day the cancellation went into effect at 12:01 a.m., to request a claim
21 number for the break-in. Defendant DAVE SANDIN called Ms. Snyder with a claim
22 number later that same day and spoke with Ms. Snyder.
23

24 34. At no time during his contact with Ms. Snyder regarding the break-in
25 did Defendant DAVE SANDIN mention any late payment or cancellation of PLAINTIFF's
26 policy.
27

28 35. Had PLAINTIFF been warned that Defendant OREGON MUTUAL
intended to or had in fact cancelled its policy, PLAINTIFF would have immediately made

1 payment, sought to have the policy reinstated, and/or obtained new insurance.

2 **The Loss**

3 36. Early on the morning of August 17, 2012 there was a fire at the
4 Original Pancake House Restaurant located and operated at 4833 West Charleston
5 Boulevard. The Original Pancake House Restaurant suffered extensive damage as a result
6 and PLAINTIFF lost income and suffered other harm that the CONTRACT protected
7 against (the "LOSS").
8

9 37. On behalf of PLAINTIFF, Ms. Snyder reported the fire to Defendant
10 DAVE SANDIN on the morning of August 17, 2012.
11

12 38. Jerry Masonheimer, an insurance adjustor with Defendant OREGON
13 MUTUAL called Stephan Freudenberger, President of OPH INC., mid-day on August 17,
14 2012 to discuss the break-in and fire. Mr. Masonheimer did not mention to Mr.
15 Freudenberger that the CONTRACT had been cancelled. Mr. Masonheimer then spoke
16 with Ms. Snyder. Mr. Masonheimer told Ms. Snyder the fire damage claim was likely to be
17 consolidated with the claim for the break-in since he believed they were related.
18

19 39. Throughout their communications with Ms. Snyder and Mr.
20 Freudenberger regarding the fire, agents and/or representatives of Defendant SANDIN
21 INSURANCE, including Defendant DAVE SANDIN, never mentioned the missing
22 payment or the cancellation of the CONTRACT.
23

24 40. Throughout their communications with Ms. Snyder and Mr.
25 Freudenberger regarding the fire, agents and/or representatives of Defendant OREGON
26 MUTUAL, including Mr. Masonheimer, never mentioned the missing payment or the
27 cancellation of the CONTRACT.
28

41. Defendant OREGON MUTUAL has denied coverage for the LOSS.

42. PLAINTIFF has suffered extensive damages including (but not limited to) lost income, which have been exacerbated by Defendant OREGON MUTUAL's bad faith refusal to honor the CONTRACT.

FIRST CAUSE OF ACTION

**Breach of Contract
(Against Defendant Oregon Mutual)**

43. PLAINTIFF repleads, realleges and incorporates by reference each and every allegation set forth above in paragraphs 1 through 42 as if fully set forth herein.

44. Defendant OREGON MUTUAL breached the CONTRACT by cancelling the insurance policy without giving notice to either PLAINTIFF or the SANDIN DEFENDANTS, as required by law, and by failing to honor coverage of the LOSS incurred by PLAINTIFF.

45. As a direct and proximate result of the breach by Defendant OREGON MUTUAL, PLAINTIFF was deprived of the benefit of the CONTRACT and has been substantially and significantly damaged.

SECOND CAUSE OF ACTION

**Breach of the Covenant of Good Faith & Fair Dealing / Bad Faith
(Against Defendant Oregon Mutual)**

46. PLAINTIFF repleads, realleges and incorporates by reference each and every allegation set forth above in paragraphs 1 through 45 as if fully set forth herein.

47. Every contract in Nevada contains an implied covenant of good faith and fair dealing and insurance companies are required to operate in good faith with respect to claims by their insureds.

1 48. Defendant OREGON MUTUAL denied PLAINTIFF's claim for the
2 LOSS, had no reasonable basis for doing so, and was aware that there was no reasonable
3 basis for doing so.

4 49. Defendant OREGON MUTUAL also acted in bad faith by failing to
5 provide proper cancellation notices as required by the CONTRACT.

6 50. As a direct and proximate result of these bad faith breaches of the
7 implied covenant of good faith and fair dealing, PLAINTIFF has been substantially and
8 significantly damaged.
9

10
11 **THIRD CAUSE OF ACTION**

12 **Fraud in the Inducement**
13 **(Against All Defendants)**

14 51. PLAINTIFF repleads, realleges, and incorporates by reference each
15 and every allegation set forth above in paragraphs 1 through 50 as if fully set forth herein.

16 52. Prior to PLAINTIFF's decision to enter into the CONTRACT,
17 Defendant DAVE SANDIN, misrepresented material facts, including but not limited to
18 whether he was licensed in Nevada and that Oregon Mutual Insurance would meet
19 Plaintiff's needs.
20

21 53. On information and belief, Defendant DAVE SANDIN knew or
22 believed these representations to be false, or had insufficient bases for making the
23 representations.
24

25 54. Defendant SANDIN INSURANCE knew of Defendant DAVE
26 SANDIN's misrepresentations and allowed him to illegally sell insurance as an employee
27 of Defendant SANDIN INSURANCE.
28

1 55. Prior to PLAINTIFF's decision to enter into the CONTRACT,
2 Defendant OREGON MUTUAL misrepresented material facts, including that it would
3 provide notice to both PLAINTIFF and to Defendant SANDIN INSURANCE before
4 cancelling the CONTRACT.
5

6 56. On information and belief, Defendant OREGON MUTUAL also
7 misrepresented the fact that Defendant DAVE SANDIN was unlicensed and unqualified to
8 sell insurance in Nevada by allowing him to act as an Oregon Mutual agent.
9

10 57. On information and belief, Defendant OREGON MUTUAL knew or
11 believed these representations to be false, or had insufficient bases for making the
12 representations.
13

14 58. These misrepresentations were made with the purpose of inducing
15 PLAINTIFF to enter into the CONTRACT, and obtaining payments from PLAINTIFF.
16

17 59. PLAINTIFF justifiably relied on the misrepresentations made by
18 DEFENDANTS, and chose to buy an OREGON MUTUAL policy from the SANDIN
19 DEFENDANTS for its business insurance needs.
20

21 60. As a direct and proximate result of PLAINTIFF's justifiable reliance
22 on DEFENDANTS' misrepresentations, PLAINTIFF paid premiums to Defendant
23 OREGON MUTUAL and depended on Defendant OREGON MUTUAL to compensate for
24 losses, which it failed to do. As a result, PLAINTIFF was significantly and substantially
25 damaged.
26

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28 ///

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FOURTH CAUSE OF ACTION

**Fraud
(Against the Sandin Defendants)**

61. PLAINTIFF repleads, realleges, and incorporates by reference each and every allegation set forth above in paragraphs 1 through 60 as if fully set forth herein.

62. Prior to PLAINTIFF's decision to enter into the CONTRACT, Defendant DAVE SANDIN misrepresented whether he was licensed in Nevada and an appointed agent for Defendant OREGON MUTUAL by acting as such.

63. Prior to PLAINTIFF's decision to enter into the CONTRACT, Defendant SANDIN INSURANCE, by and through its agent Defendant DAVE SANDIN, misrepresented that Defendant OREGON MUTUAL was a reliable and appropriate insurance company for PLAINTIFF's needs, and that Defendant OREGON MUTUAL would provide notice to PLAINTIFF and to Defendant DAVE SANDIN before cancelling the CONTRACT.

64. On information and belief, Defendants DAVE SANDIN and SANDIN INSURANCE knew or believed these representations to be false, or had insufficient bases for making them.

65. These misrepresentations were made intending for PLAINTIFF to rely on them and were material.

66. PLAINTIFF justifiably relied on the material misrepresentations made by the SANDIN DEFENDANTS.

67. As a direct and proximate result of the material misrepresentations made by the SANDIN DEFENDANTS, PLAINTIFF has been significantly and

1 substantially damaged.

2 **FIFTH CAUSE OF ACTION**

3 **Breach of Fiduciary Duty**
4 **(Against Sandin Defendants)**

5 68. PLAINTIFF repleads, realleges and incorporates by reference each
6 and every allegation set forth above in paragraphs 1 through 67 as if fully set forth herein.

7 69. The SANDIN DEFENDANTS had a duty to recommend an
8 appropriate insurer and coverage to PLAINTIFF, and to ensure that PLAINTIFF was
9 warned regarding notices of cancellation.
10

11 70. The SANDIN DEFENDANTS failed to recommend an appropriate
12 insurer and coverage to PLAINTIFF and to ensure notices of cancellation were provided to
13 PLAINTIFF, and deviated from the standard of care of a reasonably competent insurance
14 agent.
15

16 71. As a direct and proximate result of the breaches of the SANDIN
17 DEFENDANTS fiduciary duties, PLAINTIFF has been significantly and substantially
18 damaged.
19

20 **SIXTH CAUSE OF ACTION**

21 **Violations of Nev. Rev. Stat. § 686A.310**
22 **(Against All Defendants)**

23 72. Plaintiff repleads, realleges and incorporates by reference each and
24 every allegation set forth above in paragraphs 1 through 71 as if fully set forth herein.

25 73. Nev. Rev. Stat. § 686A.310 prohibits DEFENDANTS from
26 engaging in unfair practices in settling claims.
27

28 ///

1 74. Defendant OREGON MUTUAL engaged in unfair insurance
2 practices by, among other things:

- 3 • Misrepresenting to PLANTIFF pertinent facts relating to coverage
4 at issue, including whether it would provide the notice required and
5 whether Defendant DAVE SANDIN was legally permitted to sell
6 insurance in Nevada, which is prohibited by Nev. Rev. Stat.
7 § 686A.310(1)(a).
8
- 9 • Failing to act reasonably promptly upon communications from
10 PLAINTIFF with respect to its claim for the LOSS, which is required
11 by Nev. Rev. Stat. § 686A.310(1)(b).
12
- 13 • On information and belief, failing to adopt and implement
14 reasonable standards for processing claims as required by Nev. Rev.
15 Stat. § 686A.310(1)(c).
16
- 17 • Failing to effectuate prompt, fair and equitable settlement of the
18 claim for the LOSS, given that its liability is reasonably clear. Nev.
19 Rev. Stat. § 686A.310(1)(e).
20
- 21 • Failing to comply with the notice requirements for a midterm
22 cancellation set forth in Nev. Rev. Stat. § 687B.320. Nev. Rev. Stat. §
23 686A.310(1)(m).
24

25 75. Defendant DAVE SANDIN engaged in unfair insurance practices,
26 for example, when he misrepresented to PLANTIFF pertinent facts relating to coverage at
27 issue, including whether Defendant OREGON MUTUAL would provide the notice
28

1 required and whether he was legally permitted to sell insurance in Nevada, which is
2 prohibited by Nev. Rev. Stat. § 686A.310(1)(a).

3 76. Defendant SANDIN INSURANCE is responsible for the acts and/or
4 omissions of Defendant DAVE SANDIN.

5
6 77. Nev. Rev. Stat. § 686A.310(2) provides a private right of action
7 against those engaging in unfair practices outlined in Nev. Rev. Stat. § 686A.310(1).

8 78. PLAINTIFF has suffered damages as a result of the
9 DEFENDANTS' violations of Nev. Rev. Stat. § 686A.310.
10

11 **SEVENTH CAUSE OF ACTION**

12 **Negligence**
13 **(Against All Defendants)**

14 79. Plaintiff repleads, realleges, and incorporates by reference each and
15 every allegation set forth above in paragraphs 1 through 78 as if fully set forth herein.

16 80. Under Nevada law (Nev. Rev. Stat. § 598.0923), a corporation
17 engages in a deceptive trade practice when it, among other things, knowingly:

- 18 • "Conducts the business or occupation without all required state,
19 county or city licenses." Nev. Rev. Stat. § 598.0923(1).
- 20 • "Fails to disclose a material fact in connection with the sale or
21 lease of goods or services." Nev. Rev. Stat. § 598.0923(2).
- 22 • "Violates a state or federal statute or regulation relating to the sale
23 or lease of goods or services." Nev. Rev. Stat. § 598.0923(3).

24
25 81. Defendant OREGON MUTUAL conducted business in Nevada
26 using an unlicensed agent, which is prohibited by Nevada law, and also violated state law
27 and regulations regarding the sale of insurance in Nevada.
28

1 82. On information and belief, Defendant OREGON MUTUAL
2 knowingly made false representations in a transaction, for instance failing to disclose the
3 material fact that Defendant DAVE SANDIN was not licensed and that it would provide
4 copies of cancellation notices to the agent.

5
6 83. Defendant OREGON MUTUAL violated federal and state statutes,
7 including (but not limited to) Nev. Rev. Stat. § 686A.310 and Nevada Administrative Code
8 687B.530, which requires that “[e]ach insurer shall also provide a copy of the notice of
9 cancellation of a policy to the agent who wrote the policy.”

10
11 84. Defendant DAVE SANDIN conducted business in Nevada as an
12 insurance agent without being licensed as such, in violation of Nev. Rev. Stat. § 683A.201,
13 and state regulations regarding the sale of insurance in Nevada. Nev. Rev. Stat.
14 § 683A.201 mandates that no person shall “sell, solicit, or negotiate insurance in this state
15 for any class of insurance unless the person is licensed for that class of insurance.”

16
17 85. Defendant DAVE SANDIN also knowingly failed to disclose that
18 material fact to PLAINTIFF and the related fact that he was not qualified to sell insurance
19 in Nevada and follow Nevada law (including Nevada’s notice requirements), and thus
20 knowingly made false representations in a transaction.

21
22 86. Defendant DAVE SANDIN also violated federal and state statutes
23 and regulations, including (but not limited to) Nev. Rev. Stat. § 686A.310.

24 87. Defendant SANDIN INSURANCE is liable for the acts and/or
25 omissions of Defendant DAVE SANDIN.

26 ///

27 ///

89. PLAINTIFF belongs to the class of persons that Nevada's Deceptive Trade Practices Act was designed to protect.

PRAYER FOR RELIEF

B. Judgment against Defendants:

- 16

1 called upon to pay in relation to awards made herein; and

- 2 • For the costs of this action together with reasonable attorney's fees and
3 costs.
4

5 C. For declaratory relief making clear that the policy issued to Plaintiff by
6 Oregon Mutual is in full effect and the claim for the Loss must be honored;

7 D. For injunctive relief and for such other and further relief as the Court shall
8 deem just and proper.
9

10 Respectfully submitted this, the 19th day of November, 2012.

11 By: 

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10 *Dave Sandin and Sandin & Co.*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 O.P.H. OF LAS VEGAS, INC.,
14
15 Plaintiff,

Case No.: A-12-672158-C

Dept. No.: XXVI

16 v.

17 OREGON MUTUAL INSURANCE
18 COMPANY, DAVE SANDIN, and
19 SANDIN & CO.,

**FINDING OF FACTS, CONCLUSIONS
OF LAW AND JUDGMENT IN
FAVOR OF DAVE SANDIN AND
SANDIN & CO. ON THEIR MOTION
FOR ATTORNEYS' FEES AND
COSTS**

20 Defendants.

21 Defendants Dave Sandin's and Sandin & Co.'s Motion for Decision on Attorneys' Fees
22 and Motion for Additional Attorneys' Fees and Costs associated with Appeal came before this
23 Court on February 6, 2018 at 9:30 a.m. Patricia Lee of the firm Hutchison & Steffen, PLLC
24 appeared on behalf of Dave Sandin and Sandin & Co, (together the "Sandin Defendants").
25 Priscilla O'Briant of Lewis Brisbois Bisgaard & Smith, LLP., appeared on behalf Oregon
26 Mutual Insurance Company, ("OMI") and Gabriel Blumberg of the firm Dickinson Wright,
27 PLLC appeared on behalf of Plaintiff, O.P.H. of Las Vegas, Inc. ("OPH").

Having reviewed all papers and pleadings on file and entertained oral arguments
presented by all counsel, this Court makes the following findings of fact, conclusions of law and

1 judgment with respect to the Sandin Defendants' Motion for Decision on Attorneys' Fees and
2 Motion for Additional Attorneys' Fees and Costs associated with Appeal:

3 **FINDINGS OF FACT**

4 1. OPH commenced this action on November 11, 2012, by filing claims against
5 OMI and the Sandin Defendants based on the denial of insurance coverage from a fire on
6 August 17, 2012 that destroyed OPH's restaurant located at 4833 West Charleston Boulevard in
7 Las Vegas, Nevada.

8 2. OPH asserted claims for fraud in the inducement (third cause of action), fraud
9 (fourth cause of action), breach of fiduciary duty (fifth cause of action), violations of NRS
10 §686A.310 (sixth cause of action), and negligence (seventh cause of action) against the Sandin
11 Defendants.

12 3. On December 26, 2012, the Sandin Defendants filed a motion to dismiss seeking
13 to dismiss all of the claims against them for failure to state a claim pursuant to NRCP 12(b)(5).

14 4. The Sandin Defendants' motion to dismiss was denied without prejudice orally at a
15 hearing on February 13, 2013 and by written order on March 12, 2013.

16 5. On February 14, 2013, the Sandin Defendants served an Offer of Judgment to
17 OPH offering to settle all claims for the sum of Two Thousand Dollars and No Cents
18 (\$2,000.00) pursuant to NRCP 68 and/or NRS 17.115.

19 6. OPH rejected the offer by failing to respond within the time proscribed.

20 7. At the time the offer was made, this matter was in the court annexed arbitration
21 program in which the maximum amount of recovery would have been \$50,000.00 and the
22 maximum amount of attorneys' fees recoverable would have been \$3,000.00.
23
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1 8. Six months after the offer of judgment was made, OPH filed a Request for
2 Exemption from Arbitration which request was granted on September 17, 2013.

3 9. On March 17, 2015, the Sandin Defendants filed their motion for summary
4 judgment, seeking judgment on all of OPH's claims against them.

5 10. On May 14, 2015, a hearing was held before this Court on the Sandin
6 defendants' motion for summary judgment.¹

7 11. At the hearing, the Court granted the Sandin Defendants' motion for summary
8 judgment.

9 12. An order was entered on July 1, 2015, granting the Sandin Defendants' motion
10 for summary judgment.

11 13. On August 13, 2015, judgment was entered in favor of the Sandin Defendants
12 and against OPH an all of OPH's claims against the Sandin Defendants.

13 14. Thereafter on September 2, 2015, the Sandin Defendants brought a Motion for
14 Attorneys' Fees and Costs.

15 15. The matter came before the Court for oral argument on November 17, 2015, at
16 which the time the Court granted the Sandin Defendants' Motion for Costs² and took their
17 Motion for Attorneys' Fees under advisement.

18 16. In the meantime and following the notice of entry of judgment in favor of the
19 Sandin Defendants, OPH appealed this Court's granting of the Sandin Defendants' Motion for
20 Summary Judgment to the Nevada Supreme Court on July 30, 2015.

21
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25 ¹ Also on hearing that day was OMI's Motion for Summary Judgment.

26 ² The Court first re-taxed the costs to adjust expert witness fees down to the maximum statutory cap. Ultimately,
27 Sandin Defendants were awarded a total of \$7,448.63 in costs.

17 On September 14, 2017, the Nevada Supreme Court affirmed the ruling of this Court as to the summary disposition of OPH's claims against the Sandin Defendants and a remittur was issued on October 9, 2017.³

CONCLUSIONS OF LAW

18. Under NRCp 68(a), “[a]t any time more than 10 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions.”

19. If the offeree rejects an offer and fails to obtain a more favorable judgment, “the offeree shall pay the offeror’s post-offer costs, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney’s fees, if any be allowed, actually incurred by the offeror from the time of the offer.” NRCP 68(f)(2).

20. NRS 17.115 provides, in relevant part:

1. At any time more than 10 days before trial, any party may serve upon one or more other parties a written offer to allow judgment to be taken in accordance with the terms and conditions of the offer of judgment.

• • •

4. Except as otherwise provided in this section, of a party who rejects an offer of judgment fails to obtain a more favorable judgment, the court:

...

(c) Shall order the party to pay the taxable costs incurred by the party who made the offer; and

(d) May order the party to pay to the party who made the offer any or all of the following:

³ The Nevada Supreme Court reversed this Court's ruling against OMI.

1
2 (2) Any applicable interest on the judgment for the period from the
date of service of the offer to the date of entry of the judgment.

3 (3) Reasonable attorney's fees incurred by the party who made the
4 offer for the period from the date of service of the offer to the date of entry of the judgment.

5 NRS 17.115(1) & (4).

6 21. The Sandin Defendants timely served their offer of judgment, which offer was
7 rejected by OPH.

8 22. The Court must consider various factors when determining whether to award
9 attorney's fees and costs under NRCP 68. The factors are as follows: (1) whether the offeree's
10 claims were brought in good faith; (2) whether the offeror's offer of judgment was reasonable
11 and in good faith in both its timing and amount; (3) whether the offeree's decision to reject the
12 offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees
13 sought by the offeror are reasonable and justified in amount. *See RTTC Commc'ns., LLC v.*
14 *Saratoga Flier, Inc.*, 121 Nev. 34, 41, 110 P.3d 24, 28 (2005) (citing *Beattie v. Thomas*, 99 Nev.
15 579, 588-89, 668 P.2d 268, 274 (1983)).

16
17 23. The Sandin Defendants' offer was brought in good faith, was reasonable and in
18 good faith both in timing and amount and the fees sought by the Sandin Defendants are
19 reasonable and justified in amount.

20
21 24. The fourth *Beattie* factor (whether the fees sought by the offeror are reasonable
22 and justified in amount) implicates *Brunzell*, the 1969 Nevada Supreme Court case that sets
23 forth factors for courts to consider in rendering attorneys' fees awards. *See Gunderson v. D.R.*
24 *Horton, Inc.*, — Nev. —, 319 P.3d 606, 616 (2014), *reh'g denied* (Apr. 23, 2014) (concluding
25 that the district court's failure to consider the *Brunzell* factors within its *Beattie* analysis
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1 constitutes an abuse of discretion); see also *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345,
2 349, 455 P.2d 31, 33 (1969).⁴

3 25. *Brunzell* establishes that the trial court must consider:

- 4 (1) the character and difficulty of the work performed;
5 (2) the work actually performed by the attorney;
6 (3) the qualities of the advocate; and
7 (4) the result obtained.
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9 See *Brunzell*, 85 Nev. at 350, 455 P.2d at 33.

10 26. All of the *Brunzell* factors weigh in favor of granting the Sandin Defendants'
11 Motion for Attorneys' Fees pre-appeal.

12 27. The Nevada Supreme Court has recognized that these statute and rules governing
13 offers of judgment, permitting fee-shifting penalties to be assessed against an offeree who
14 "rejects an offer and fails to obtain a more favorable judgment," extend to fees incurred on and
15 after appeal. *In re: The Estate and Living Trust of Miller*, 125 Nev. 550, 555 (2009).
16

17 28. Weighing all of the factors articulated in *Beattie* and *Brunzell*, an award of post
18 appeal attorneys' fees and costs in favor of the Sandin Defendants is warranted.

19 29. Because the offer was made while this matter was in the court annexed
20 arbitration program in which the maximum recovery for attorneys' fees would have been
21

22 ⁴ ~~Error! Main Document Only~~ The Nevada Supreme Court has also ruled that other accepted methods may be
23 used to calculate attorneys' fees, provided that the *Brunzell* factors are still considered. See *Haley v. Eighth*
24 *Judicial Dist. Ct.*, — Nev. —, 273 P.3d 855, 860 (2012) ("[I]n determining the amount of fees to award, the court
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26 reasonable amount,' so long as the requested amount is reviewed in light of the factors set forth in *Brunzell* . . .")
27 (quoting *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864-65, 124 P.3d 530, 549 (2005))).

1 \$3,000.00, the amount of attorneys' fees and costs incurred during this period should be
2 discounted by the amount of attorneys' fees accrued in excess of \$3,000, i.e., by \$32,000.00.
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JUDGMENT

IT IS THEREFORE ORDERED that the Sandin Defendants' Motion for Attorneys' Fees and Costs is hereby GRANTED and that judgment be entered against OPH and in favor of the Sandin Defendants accordingly:

Total Attorneys' Fees pre- and post appeal: (\$140,857 pre-appeal + \$18,385 post-appeal) = **\$159,242.00**

Less arbitration discount: (\$159,242.00 - \$32,000.00) = **(\$127,242.00)**

Costs: (\$7,448.63 pre appeal + \$97.92 post appeal) = **\$7,546.55**


TOTAL AMOUNT OF JUDGMENT: \$134,788.55

IT IS SO ORDERED this 8th day of March, 2018.



HONORABLE JUDGE GLORIA STURMAN

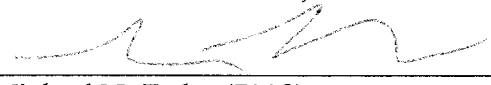
HUTCHISON & STEFFEN, PLLC,



Patricia Lee (8287)
10080 W. Alta Drive, Suite-200
Las Vegas, Nevada 89129
E-Mail: plee@hutchlegal.com

Attorneys for Dave Sandin and Sandin & Co.


DICKINSON WRIGHT, PLLC



Michael N. Feder (7332)
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8363 W. Sunset Rd., Suite 200
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E-Mail: mfeder@dickinson-wright.com
gblumberg@dickinson-wright.com

Respectfully submitted by:

HUTCHISON & STEFFEN, LLC



Patricia Lee (8287)
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN,
3 LLC. and that on this ~~22~~²⁹ day of February, 2018~~February, 2018~~, I caused the above and
4 foregoing document entitled **FINDING OF FACTS, CONCLUSIONS OF LAW AND**
5 **JUDGMENT IN FAVOR OF DAVE SANDIN AND SANDIN & CO. ON THEIR**
6 **MOTION FOR ATTORNEYS' FEES AND COSTS**
7 to be served as follows:

- 8 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed
9 envelope upon which first class postage was prepaid in Las Vegas,
10 Nevada; and/or
11 ☒ to be served via electronic mail pursuant to the parties' consents to electronic
12 service; and/or
13 ☐ pursuant to Administrative Order 14-2, N.E.F.C.R. 9, EDCR 8.05(a) and 8.05(f),
14 to be electronically served through the Eighth Judicial District Court's
15 electronic filing system, with the date and time of the electronic service
16 substituted for the date and place of deposit in the mail; and/or
17 ☐ to be hand-delivered;

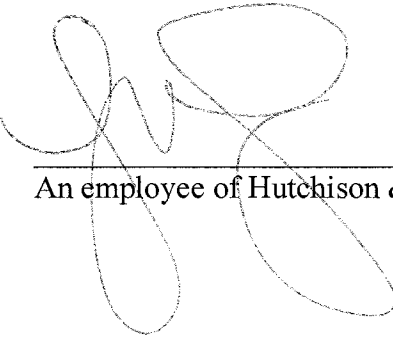
18 to the attorneys listed below at the address and emails indicated below:

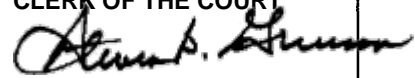
19 Michael N. Feder, Esq.
20 Gabriel Blumberg, Esq.
21 DICKINSON WRIGHT, PLLC
22 8363 W. Sunset Rd., Suite 200
23 Las Vegas, NV 89113

24 *Attorneys for plaintiff*
25 *O.P.H. of Las Vegas Inc.*

26 Robert Freeman, Esq.
27 Priscilla O'Briant, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Blvd., Ste. 600
Las Vegas, NV 89118

*Attorneys for Oregon Mutual Insurance
Company*

28 
29 _____
30 An employee of Hutchison & Steffen, LLC



1 **NEFF**
Patricia Lee (8287)
2 HUTCHISON & STEFFEN, PLLC
Peccole Professional Park
3 10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
4 Telephone: (702) 385-2500
Facsimile: (702) 385-2086
5 plee@hutchlegal.com

6 *Attorneys for Defendants*
7 *Dave Sandin and Sandin & Co.*

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

10 O.P.H. PF LAS VEGAS, INC.,

11 Plaintiff,

12 v.

13 OREGON MUTUAL INSURANCE
COMPANY, DAVE SANDIN, and
14 SANDIN & CO.;

15 Defendants.

) Case No. A-12-672158-C

) Dept. No. XXVI

) **NOTICE OF ENTRY OF ORDER OF**
) **FINDING OF FACTS, CONCLUSIONS**
) **OF LAW AND JUDGMENT IN FAVOR**
) **OF DAVE SANDIN AND SANDIN &**
) **CO. ON THEIR MOTION FOR**
) **ATTORNEYS' FEES AND COSTS**

16
17 PLEASE TAKE NOTICE that an Order Granting the of Findings of Facts, Conclusions of
18 Law and Judgment in Favor of Dave Sandin and Sandin & Co., on their Motion for attorneys' Fees
19 and Costs was entered in the above-entitled action on 8th day of March, 2018, a copy of which is
20 attached hereto.

21 DATED this 16th day of March, 2018

22 HUTCHISON & STEFFEN, PLLC

23
24 /s/ Patricia Lee

25 Patricia Lee (8287)
HUTCHISON & STEFFEN, PLLC
Peccole Professional Park
26 10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145

27 *Attorneys for Defendants*
28 *Dave Sandin and Sandin & Co.*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Hutchison & Steffen,
3 PLLC and that on this 16th day of March, 2018, I caused the above and foregoing document
4 entitled **NOTICE OF ENTRY OF ORDER OF FINDING OF FACTS, CONCLUSIONS OF**
5 **LAW AND JUDGMENT IN FAVOR OF DAVE SANDIN AND SANDIN & CO. ON THEIR**
6 **MOTION FOR ATTORNEYS' FEES AND COSTS** to be served as follows:

- 7 ☐ by placing same to be deposited for mailing in the United States Mail, in
8 a sealed envelope upon which first class postage was prepaid in Las
9 Vegas, Nevada; and/or
10 ☐ pursuant to EDCR 7.26, to be sent via facsimile; and/or
11 ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served
12 through the Eighth Judicial District Court's electronic filing system, with
13 the date and time of the electronic service substituted for the date and
14 place of deposit in the mail; and/or
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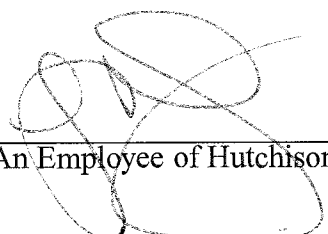
16 to the attorney(s) listed below at the address and/or facsimile number indicated below:

17 Margaret A. McLetchie, Esq.
18 Matthew J. Rashbrook, Esq.
19 MCCLECHIE SHELL, LLC
20 701 East Bridger Ave., Ste. 520
21 Las Vegas, NV 89101

22 *Attorneys for plaintiff*
23 *O.P.H. of Las Vegas Inc.*

24 Robert Freeman, Esq.
25 Priscilla O'Briant, Esq.
26 LEWIS BRISBOIS BISGAARD & SMITH,
27 LLP
28 6385 S. Rainbow Blvd., Ste. 600
Las Vegas, NV 89118

*Attorneys for Oregon Mutual Insurance
Company*

29 
30 _____
31 An Employee of Hutchison & Steffen, PLLC

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EXHIBIT PAGE ONLY

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 1



1 **JGMT**
2 Patricia Lee (8287)
3 HUTCHISON & STEFFEN, LLC
4 10080 West Alta Drive, Suite 200
5 Las Vegas, NV 89145
6 Tel: (702) 385-2500
7 Fax: (702) 385-2086
8 plee@hutchlegal.com

9 *Attorneys for defendants*
10 *Dave Sandin and Sandin & Co.*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 O.P.H. OF LAS VEGAS, INC.,
14
15 Plaintiff,

Case No.: A-12-672158-C

Dept. No.: XXVI

16 v.

17 OREGON MUTUAL INSURANCE
18 COMPANY, DAVE SANDIN, and
19 SANDIN & CO.,

**FINDING OF FACTS, CONCLUSIONS
OF LAW AND JUDGMENT IN
FAVOR OF DAVE SANDIN AND
SANDIN & CO. ON THEIR MOTION
FOR ATTORNEYS' FEES AND
COSTS**

20 Defendants.

21 Defendants Dave Sandin's and Sandin & Co.'s Motion for Decision on Attorneys' Fees
22 and Motion for Additional Attorneys' Fees and Costs associated with Appeal came before this
23 Court on February 6, 2018 at 9:30 a.m. Patricia Lee of the firm Hutchison & Steffen, PLLC
24 appeared on behalf of Dave Sandin and Sandin & Co, (together the "Sandin Defendants").
25 Priscilla O'Briant of Lewis Brisbois Bisgaard & Smith, LLP., appeared on behalf Oregon
26 Mutual Insurance Company, ("OMI") and Gabriel Blumberg of the firm Dickinson Wright,
27 PLLC appeared on behalf of Plaintiff, O.P.H. of Las Vegas, Inc. ("OPH").

Having reviewed all papers and pleadings on file and entertained oral arguments
presented by all counsel, this Court makes the following findings of fact, conclusions of law and

1 judgment with respect to the Sandin Defendants' Motion for Decision on Attorneys' Fees and
2 Motion for Additional Attorneys' Fees and Costs associated with Appeal:

3
4 **FINDINGS OF FACT**

5 1. OPH commenced this action on November 11, 2012, by filing claims against
6 OMI and the Sandin Defendants based on the denial of insurance coverage from a fire on
7 August 17, 2012 that destroyed OPH's restaurant located at 4833 West Charleston Boulevard in
8 Las Vegas, Nevada.

9 2. OPH asserted claims for fraud in the inducement (third cause of action), fraud
10 (fourth cause of action), breach of fiduciary duty (fifth cause of action), violations of NRS
11 §686A.310 (sixth cause of action), and negligence (seventh cause of action) against the Sandin
12 Defendants.

13
14 3. On December 26, 2012, the Sandin Defendants filed a motion to dismiss seeking
15 to dismiss all of the claims against them for failure to state a claim pursuant to NRCP 12(b)(5).

16 4. The Sandin Defendants' motion to dismiss was denied without prejudice orally at a
17 hearing on February 13, 2013 and by written order on March 12, 2013.

18 5. On February 14, 2013, the Sandin Defendants served an Offer of Judgment to
19 OPH offering to settle all claims for the sum of Two Thousand Dollars and No Cents
20 (\$2,000.00) pursuant to NRCP 68 and/or NRS 17.115.

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22 6. OPH rejected the offer by failing to respond within the time proscribed.

23 7. At the time the offer was made, this matter was in the court annexed arbitration
24 program in which the maximum amount of recovery would have been \$50,000.00 and the
25 maximum amount of attorneys' fees recoverable would have been \$3,000.00.
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1 8. Six months after the offer of judgment was made, OPH filed a Request for
2 Exemption from Arbitration which request was granted on September 17, 2013.

3 9. On March 17, 2015, the Sandin Defendants filed their motion for summary
4 judgment, seeking judgment on all of OPH's claims against them.

5 10. On May 14, 2015, a hearing was held before this Court on the Sandin
6 defendants' motion for summary judgment.¹

7 11. At the hearing, the Court granted the Sandin Defendants' motion for summary
8 judgment.

9 12. An order was entered on July 1, 2015, granting the Sandin Defendants' motion
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11 13. On August 13, 2015, judgment was entered in favor of the Sandin Defendants
12 and against OPH an all of OPH's claims against the Sandin Defendants.

13 14. Thereafter on September 2, 2015, the Sandin Defendants brought a Motion for
14 Attorneys' Fees and Costs.

15 15. The matter came before the Court for oral argument on November 17, 2015, at
16 which the time the Court granted the Sandin Defendants' Motion for Costs² and took their
17 Motion for Attorneys' Fees under advisement.

18 16. In the meantime and following the notice of entry of judgment in favor of the
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20 Summary Judgment to the Nevada Supreme Court on July 30, 2015.

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26 ² The Court first re-taxed the costs to adjust expert witness fees down to the maximum statutory cap. Ultimately,
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17 On September 14, 2017, the Nevada Supreme Court affirmed the ruling of this Court as to the summary disposition of OPH's claims against the Sandin Defendants and a remittur was issued on October 9, 2017.³

CONCLUSIONS OF LAW

18. Under NRCP 68(a), “[a]t any time more than 10 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions.”

19. If the offeree rejects an offer and fails to obtain a more favorable judgment, “the offeree shall pay the offeror’s post-offer costs, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney’s fees, if any be allowed, actually incurred by the offeror from the time of the offer.” NRCP 68(f)(2).

20. NRS 17.115 provides, in relevant part:

1. At any time more than 10 days before trial, any party may serve upon one or more other parties a written offer to allow judgment to be taken in accordance with the terms and conditions of the offer of judgment.

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4. Except as otherwise provided in this section, of a party who rejects an offer of judgment fails to obtain a more favorable judgment, the court:

• • •

(c) Shall order the party to pay the taxable costs incurred by the party who made the offer; and

(d) May order the party to pay to the party who made the offer any or all of the following:

³ The Nevada Supreme Court reversed this Court's ruling against OMI.

1
2 (2) Any applicable interest on the judgment for the period from the
date of service of the offer to the date of entry of the judgment.

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4 offer for the period from the date of service of the offer to the date of entry of the judgment.

5 NRS 17.115(1) & (4).

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8 22. The Court must consider various factors when determining whether to award
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1 constitutes an abuse of discretion); see also *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345,
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9 See *Brunzell*, 85 Nev. at 350, 455 P.2d at 33.

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17 28. Weighing all of the factors articulated in *Beattie* and *Brunzell*, an award of post
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JUDGMENT

IT IS THEREFORE ORDERED that the Sandin Defendants' Motion for Attorneys' Fees and Costs is hereby GRANTED and that judgment be entered against OPH and in favor of the Sandin Defendants accordingly:

Total Attorneys' Fees pre- and post appeal: (\$140,857 pre-appeal + \$18,385 post-appeal) = **\$159,242.00**

Less arbitration discount: (\$159,242.00 - \$32,000.00) = **(\$127,242.00)**

Costs: (\$7,448.63 pre appeal + \$97.92 post appeal) = **\$7,546.55**

TOTAL AMOUNT OF JUDGMENT: \$134,788.55

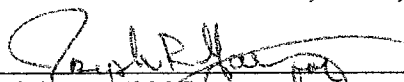
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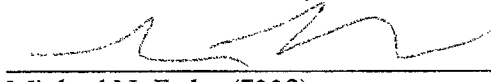
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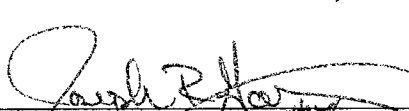


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Respectfully submitted by:

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN,
3 LLC. and that on this ~~22~~²³ day of February, 2018~~February, 2018~~, I caused the above and
4 foregoing document entitled **FINDING OF FACTS, CONCLUSIONS OF LAW AND**
5 **JUDGMENT IN FAVOR OF DAVE SANDIN AND SANDIN & CO. ON THEIR**
6 **MOTION FOR ATTORNEYS' FEES AND COSTS**
7 to be served as follows:

8 ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed
9 envelope upon which first class postage was prepaid in Las Vegas,
10 Nevada; and/or

11 ☒ to be served via electronic mail pursuant to the parties' consents to electronic
12 service; and/or

13 ☐ pursuant to Administrative Order 14-2, N.E.F.C.R. 9, EDCR 8.05(a) and 8.05(f),
14 to be electronically served through the Eighth Judicial District Court's
15 electronic filing system, with the date and time of the electronic service
16 substituted for the date and place of deposit in the mail; and/or

17 ☐ to be hand-delivered;

18 to the attorneys listed below at the address and emails indicated below:

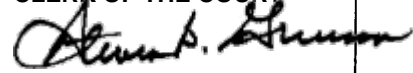
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25 *O.P.H. of Las Vegas Inc.*

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Company

28 
29 _____
30 An employee of Hutchison & Steffen, LLC



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**IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

O.P.H. OF LAS VEGAS, INC.,

Plaintiff,

v.

OREGON MUTUAL INSURANCE
COMPANY, DAVE SANDIN, AND SANDIN
& Co.

Defendants.

CASE NO. A-12-672158-C
DEPT. NO. XXVI

**PLAINTIFF O.P.H. OF LAS VEGAS
INC.'S MOTION TO RECONSIDER
AND/OR AMEND JUDGMENT**

Plaintiff O.P.H. OF LAS VEGAS, INC. ("OPH"), by and through its counsel, the law firm of Dickinson Wright PLLC, hereby files its Motion to Reconsider and/or Amend this Court's March 14, 2018 Findings of Facts, Conclusions of Law and Judgment in Favor of Dave Sandin and Sandin & Co. (the "Sandin Defendants") on their Motion for Attorneys' Fees and Costs (the "Judgment").

This motion is based on the following Memorandum of Points and Authorities; the declaration of Gabriel A. Blumberg attached hereto as Exhibit 1 and the exhibits attached thereto; the papers and pleading already on file herein; and any oral argument the Court may permit at the hearing of this matter.

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NOTICE OF MOTION

YOU, AND EACH OF YOU, will please take notice that the undersigned will bring the above and foregoing **PLAINTIFF O.P.H. OF LAS VEGAS INC.'S MOTION TO RECONSIDER AND/OR AMEND JUDGMENT** on for hearing before this Court on the 01 day of May 2018, at the hour of 9:00 o'clock A.m. of said day, or as soon thereafter as counsel can be heard in Department No. XXVI.

DATED this 30th day of March 2018.

DICKINSON WRIGHT PLLC


Michael N. Feder
Nevada Bar No. 7332
Gabriel A. Blumberg
Nevada Bar No. 12332
8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113-2210
Attorneys for Plaintiff O.P.H. of Las Vegas, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

The Court should reconsider its prior ruling and vacate the Judgment because it erred in analyzing and applying the *Beattie* factors. In Nevada, a party can only recover attorneys' fees pursuant to an offer of judgment if the Court finds that the *Beattie* factors are satisfied. The *Beattie* factors hone in on the reasonableness of the plaintiff in pursuing claims and rejecting an offer of judgment, as well as the reasonableness in timing and amount of any offer of judgment made by the defendant.

A review of the facts in this matter indicates that the Court erred in applying the *Beattie* factors and awarding attorneys' fees to the Sandin Defendants. As the Court recognized, OPH reasonably and in good faith pursued claims against the Sandin Defendants in this matter. Indeed, OPH even defeated the Sandin Defendants' motion to dismiss its claims.

///

1 Then, OPH reasonably rejected the Sandin Defendants' offer of judgment, which was
2 made in bad faith the day after OPH defeated the motion to dismiss and before any discovery
3 had commenced. Not only was the Sandin Defendants' offer unreasonable in terms of its timing,
4 but it was also grossly unreasonable in amount. The Sandin Defendants were offering only
5 \$2,000, despite the fact that the parties had already incurred fees and costs far in excess of that
6 amount when the offer was made and, further, OPH alleged on the face of its Complaint that its
7 damages were in excess of \$50,000 relating to a fire that totally destroyed OPH's restaurant.

8 When the parties' actions are scrutinized, it is unmistakable that OPH acted reasonably
9 and in good faith throughout the proceedings. OPH's admirable conduct is sharply contrasted by
10 that of the Sandin Defendants, who merely made a token offer of judgment after their motion to
11 dismiss was denied in an effort to spring over one hundred thousand dollars of attorneys' fees on
12 OPH as it pursued its claims in good faith. This bad faith conduct by the Sandin Defendants is
13 the exact type of behavior the Nevada Supreme Court attempted to guard against by requiring the
14 *Beattie* analysis and therefore the Court's decision to award attorneys' fees to the Sandin
15 Defendants should be reconsidered and the Judgment should be vacated.

16 II. STATEMENT OF FACTS

17 OPH commenced this action on November 11, 2012, by filing claims against Oregon
18 Mutual Insurance ("OMI") and the Sandin Defendants based on the denial of insurance coverage
19 from a fire on August 17, 2012 that destroyed OPH's restaurant located at 4833 West Charleston
20 Boulevard in Las Vegas, Nevada. Judgment at ¶ 1. OPH asserted claims for fraud in the
21 inducement (third cause of action), fraud (fourth cause of action), breach of fiduciary duty (fifth
22 cause of action), violations of NRS §686A.310 (sixth cause of action), and negligence (seventh
23 cause of action) against the Sandin Defendants. *Id.* at ¶ 2. In the caption of the Complaint itself,
24 OPH alleged in bold font that it was seeking damages in excess of \$50,000. *See* Complaint, on
25 file herein.

26 On December 26, 2012, the Sandin Defendants filed a motion to dismiss seeking to
27 dismiss all of the claims against them for failure to state a claim pursuant to NRCP 12(b)(5).
28 Judgment at ¶ 3. OPH's counsel prepared an opposition to the motion to dismiss and also

1 prepared for and attended the hearing on the motion to dismiss that was held on February 13,
2 2013. At the hearing, this Court orally denied the Sandin Defendants' motion to dismiss.¹ *Id.* at
3 ¶ 4.

4 The very next day, on February 14, 2013, the Sandin Defendants served an offer of
5 judgment on OPH offering to settle all claims for the sum of Two Thousand Dollars and No
6 Cents (\$2,000.00) pursuant to NRC 68 and/or NRS 17.115. *Id.* at ¶ 5. OPH, who had just
7 prevailed on the Sandin Defendants' motion to dismiss, had already expended more than \$2,000
8 in attorneys' fees, and was seeking hundreds of thousands of dollars in damages, reasonably
9 rejected the offer of judgment. *Id.* at ¶ 6.

10 A little more than a year later, on March 17, 2015, the Sandin Defendants filed their
11 motion for summary judgment, seeking judgment in their favor on all of OPH's claims against
12 them. *Id.* at ¶ 9. The Court granted the Sandin Defendants' motion for summary judgment at a
13 hearing on May 14, 2015. *Id.* at ¶¶ 10-11.

14 The written summary judgment order was entered on July 1, 2015 and, on August 13,
15 2015, judgment was entered in favor of the Sandin Defendants and against OPH on all of OPH's
16 claims against the Sandin Defendants. *Id.* at ¶¶ 12-13.

17 On September 2, 2015, the Sandin Defendants brought a Motion for Attorneys' Fees and
18 Costs seeking to recover attorneys' fees as the prevailing party on their token \$2,000 offer of
19 judgment. *Id.* at ¶ 14. The matter came before the Court for oral argument on November 17,
20 2015, at which the time the Court granted the Sandin Defendants' Motion for Costs and took
21 their Motion for Attorneys' Fees under advisement. *Id.* at ¶ 15.

22 In the meantime and following the notice of entry of judgment in favor of the Sandin
23 Defendants, OPH appealed this Court's granting of the Sandin Defendants' motion for summary
24 judgment. *Id.* at ¶ 16. On September 14, 2017, the Nevada Supreme Court affirmed the ruling
25 of this Court as to the summary disposition of OPH's claims against the Sandin Defendants and a
26 remittur was issued on October 9, 2017. *Id.* at ¶ 17.

27 ///

28 ¹ The written order was entered on March 12, 2013. Judgment at ¶ 4.

This Court then held another hearing on the Sandin Defendants' Motion for Attorneys' Fees on February 6, 2018. *See* Ex. 1-A. At the hearing, this Court found that "it wasn't unreasonable [for OPH] to proceed" and OPH was acting "in good faith here." *Id.* at 14:20; 15:2. The Court further found that Nevada Supreme Court precedent dictated that if a party rejected an offer of judgment, such rejection "had to be grossly unreasonable" to justify awarding attorneys' fees. *Id.* at 14:18-19. In addressing this issue, the Court specifically held that OPH's decision to reject the offer of judgment was not grossly unreasonable. *Id.* at 14:18-21. Despite making these findings and observing that the Court "can't just award everything just based on reasonableness [of the offer]," the Court then granted the Sandin Defendants' motion for attorneys' fees.² *Id.* at 15:12-13.

III. LEGAL ARGUMENT

A. Legal Standard for Reconsideration

A court has the inherent authority to reconsider its prior orders. *Trail v. Farretto*, 91 Nev. 401, 536 P.2d 1026 (1975)("[A] trial court may, for sufficient cause shown, amend, correct, resettle, modify or vacate, as the case may be, an order previously made and entered on the motion in the progress of the cause or proceeding"). This authority is also provided by Eighth Judicial District Court Rule ("EDCR") 2.24, which provides, in pertinent part:

A party seeking reconsideration of a ruling of the court ... must file a motion for such relief within 10 days after service of the written order or judgment unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed and heard as is any other motion.

EDCR 2.24(b); *see also* *N. Main, LLC v. Eighth Judicial Dist. Court of State ex rel. Cty. of Clark*, 128 Nev. 922, 381 P.3d 646 (2012) (citing *Masonry and Tile v. Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997)) ("a district court may consider a motion for reconsideration concerning a previously decided issue if the decision was clearly erroneous."³)³. For the reasons set forth more fully herein, reconsideration is appropriate and the Judgment should be vacated.

² The Court reduced the Sandin Defendants' requested attorneys' fees by \$32,000 to account for the fact that attorneys' fees are capped at \$3,000 while a matter is in the court-annexed arbitration.

³ The standard for amending a judgment under NRCP 59(e) is similar to that of a motion for reconsideration under EDCR 2.24(b). *See, e.g., AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010).

B. Reconsideration is Warranted Because the Court Misapplied the *Beattie* Factors

An offer of judgment made pursuant to NRCP 68 may be made at any time more than ten days prior to trial. NRCP 68(a). If the offeree rejects an offer and fails to obtain a more favorable judgment, “the offeree shall pay the offeror’s post-offer costs, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney’s fees, if any be allowed, actually incurred by the offeror from the time of the offer.” NRCP 68(f)(2). An offer is rejected if it is not accepted within ten days of the offer being made. NRCP 68(e).

In addition to the mandates of NRCP 68, the Nevada Supreme Court has set forth several factors to be considered in determining when and how the Court may exercise its discretion in awarding attorneys’ fees after entry of judgment, including:

- (1) whether OPH’s claims were brought in good faith;
- (2) whether the Sandin Defendants’ Offer of Judgment was reasonable and in good faith in both its timing and amount;
- (3) whether OPH’s decision to reject the offer was grossly unreasonable or in bad faith; and
- (4) whether the attorneys’ fees sought by the Sandin Defendants are reasonable and justified in amount.

See Beattie v. Thomas, 99 Nev. 579, 588-89; 668 P.2d 268, 274 (1983); *see also Ozawa v. Vision Airlines*, 216 P.3d 788, 792 (Nev. 2009). Where the first three factors weigh in favor of denying attorneys’ fees, “the reasonableness of the fees requested by the offeror becomes irrelevant, and cannot, by itself, support a decision to award attorney fees to the offeror.”⁴ *Frazier v. Drake*, 131 Nev. Adv. Op. 64, 357 P.3d 365, 373 (Nev. Ct. App. 2015).

Here, the Court unambiguously found in favor of OPH on the first and third *Beattie* factors, but clearly erred in concluding that the second factor alone supported awarding attorneys’ fees.⁵ As a result, reconsideration of the attorneys’ fees award is warranted.

///

⁴ Given this holding in *Drake*, OPH does not address the Court’s *Brunzell* analysis.

⁵ *See* Ex. 1-A at 14:18-21; 15:2.

1 **1. OPH Filed Its Claims in Good Faith**

2 The first *Beattie* factor considers whether OPH brought its claims in good faith. *Beattie*
3 *v. Thomas*, 99 Nev. at 588-89. In evaluating this factor, it is important to note that “[c]laims may
4 be unmeritorious and still be brought in good faith.” *Max Baer*, 2012 WL 5944767, *3. In fact,
5 a party can pursue claims in good faith even if the plaintiff’s belief that it will prevail on its
6 claims turns out to be incorrect in hindsight. *Assurance Co. of America v. National Fire &*
7 *Marine Ins. Co.*, 2012 WL 6626809, *3 (D. Nev. Dec. 19, 2012).

8 Here, the Court found that OPH was acting “in good faith here” and “it wasn’t
9 unreasonable to proceed.”⁶ Ex. 1-A at 14:20; 15:2. As a result, the first factor undoubtedly
10 favors OPH and denying attorneys’ fees to the Sandin Defendants.

11 **2. The Offer of Judgment Was Unreasonable and in Bad Faith in Both**
12 **Timing and Amount**

13 The Court clearly erred in finding that the Sandin Defendants made a good faith offer of
14 judgment and that the offer was reasonable in amount and timing. The purpose of an offer of
15 judgment “is to promote settlement of suits by rewarding defendants who make reasonable
16 offers.” *See Muije v. A North Las Vegas Cab Co., Inc.*, 106 Nev. 664, 667, 799 P.2d 559, 561
17 (1990). It is not intended to be used “as a mechanism to unfairly force plaintiffs to forego
18 legitimate claims,” nor is it supposed to be used as a trap by defendants to force attorneys’ fees
19 upon plaintiffs who seek to pursue colorable claims in good faith.⁷ *Drake*, 357 P.3d at 373;

20
21 ⁶ When this Court denied the Sandin Defendants’ motion to dismiss, the only reasonable belief OPH could have was
22 that it was pursuing meritorious claims in good faith. Had that not been the case, then the claims against the Sandin
23 Defendants should have been dismissed. If they were dismissed, the Sandin Defendants never would have incurred
24 six figures worth of attorneys’ fees that OPH is now on the hook for paying. Simply put, it is fundamentally unfair
25 to penalize OPH, a party who prevailed on the Sandin Defendants’ motion to dismiss, solely because the Court in
26 retrospect may believe that the motion to dismiss maybe should have been granted. Ex. 1-A at 17:19-23.

27 ⁷ By imposing a penalty of over one hundred thousand dollars in attorneys’ fees on OPH based on the Sandin
28 Defendants’ nominal \$2,000 offer of judgment, the Court contradicted this governing precedent and even its own
admission that OPH was “entitled to try to prove [its] case.”⁷ Ex. 1-A at 17:20-21. Indeed, the Court effectively is
telling future litigants that they will be assessed attorneys’ fees if they ultimately cannot prevail on their claims,
regardless of the reasonableness (or unreasonableness) of the offer of judgment made by a defendant or the
reasonableness of the plaintiff pursuing its case. This is directly contrary to Nevada’s controlling precedent, which
focuses on using *Beattie* to avoid the exact outcome that the Court implemented in this case. *See e.g. Drake*, 357
P.3d at 371; *see also Scrima*, 126 Nev. 702, *3, n. 1 (holding that courts should not “encourage defendants to submit
small, token offers of judgment so they can obtain attorney fees and costs every time the jury gives a verdict in their
favor”).

1 *Costco Wholesale Corp. v. Scrima*, 126 Nev. 702, 367 P.3d 760, *3 n.1 (2000).

2 Indeed, Nevada courts have routinely looked with disfavor upon small, token offers of
3 judgment. *Scrima*, 126 Nev. 702, *3 n.1 (finding \$1,000 offer of judgment “not reasonable or
4 made in good faith”); *Max Baer*, 2012 WL 5944767, *3 (finding \$1,000 token offer at the outset
5 of the case to be unreasonable). The fact pattern in *Max Baer* is particularly instructive. In *Max*
6 *Baer*, the defendant made a \$1,000 offer of judgment to the plaintiff after the close of discovery.
7 *Id.* The plaintiff rejected the offer by failing to respond. *Id.* Ultimately, the plaintiff’s claims
8 were dismissed and the defendant moved for an award of attorneys’ fees based on its offer of
9 judgment. *Id.*

10 The Court was indecisive as to whether the plaintiff brought its claims in good faith and
11 concluded that the timing of the offer reflected good faith because the offer was made after the
12 close of discovery, thereby allowing the plaintiff “to better assess his chances of success when
13 the offer was made, *as opposed to the situation where a Defendant makes a token offer at the*
14 *outset of a case.*” *Id.* (emphasis added). The court further found that plaintiff’s rejection of the
15 offer was not grossly unreasonable because the “offer was made for a token amount after
16 Plaintiff had already expended many times the offer in legal fees.” *Id.* (“Plaintiff’s decision to
17 await dispositive motion rulings rather than accept the token offer was not unreasonable in-and-
18 of-itself under the circumstances”). The court also determined that the attorneys’ fees and costs
19 sought by defendant were reasonable. *Id.* Thus, after conducting this analysis and finding that
20 factors two and four weighed in favor of awarding fees, factor one was neutral, and factor three
21 weighed against awarding attorneys’ fees, the court ultimately held that “the second and third
22 factors are most important, and that fees and costs should not be permitted because of the
23 reasonableness of the rejection of the offer in light of the amount and timing.” *Id.* at *4.

24 Here, the factors weigh noticeably more in favor of OPH than the plaintiff in *Max Baer*
25 who was not penalized with attorneys’ fees. Similar to the plaintiff in *Max Baer*, the Court here
26 concluded that OPH acted reasonably in rejecting the offer of judgment. Ex. 1-A at 14:18-21.
27 Unlike the plaintiff in *Max Baer*, however, the Court here also concluded that OPH brought its
28 claims in good faith. Ex. 1-A at 14:20; 15:2. Furthermore, in contradiction to *Max Baer* where

1 the court found the timing of the offer of judgment to be reasonable because it was made after
2 discovery closed, the timing of the Sandin Defendants' offer was unreasonable and in bad faith
3 because it was made *prior to any discovery and the day after OPH had defeated the Sandin*
4 *Defendants' motion to dismiss*, for an amount far less than what the parties had already expended
5 on the Sandin Defendants' unsuccessful motion to dismiss. Based on these facts, it is apparent
6 that the award of attorneys' fees to the Sandin Defendants based solely on the second *Beattie*
7 factor contravened well-established case law in Nevada analyzing and implementing the *Beattie*
8 factors.

9 **3. OPH's Decision to Reject the Offer Was Not Grossly Unreasonable or**
10 **in Bad Faith**

11 The third *Beattie* factor also suggests that an award of attorneys' fees was improper
12 because OPH was not grossly unreasonable in rejecting the offer of judgment. "Grossly
13 unreasonable or bad faith rises to a much higher level than poor judgment or incorrect tactical
14 decisions." *Assurance Co. of America v. National Fire & Marine Ins. Co.*, 2012 WL 6626809,
15 *3 (D. Nev. Dec. 19, 2012). As noted above, a plaintiff's rejection of an offer of judgment is
16 not grossly unreasonable when the "offer was made for a token amount after Plaintiff had
17 already expended many times the offer in legal fees." *Max Baer*, 2012 WL 5944767, *3.

18 Here, the Court specifically found that OPH's decision to reject the offer of judgment
19 was not grossly unreasonable. Ex. 1-A at 14:18-21. This finding was corroborated by the fact
20 that OPH pursued its claims in good faith and had already expended more than the offer in legal
21 fees by the time the offer was made. Ex. 1-A at 14:20; 15:2. Thus, in addition to the first and
22 second factors, the third *Beattie* factor also indicates that the Sandin Defendants' request for
23 attorneys' fees should have been denied.

24 Given that all three of these *Beattie* factors disfavor an award of attorneys' fees, the Court
25 should reconsider its prior ruling and vacate its Judgment.

26 ///

27 ///

28 ///

IV. CONCLUSION

Based on the foregoing, OPH respectfully requests that this Court reconsider its prior ruling, vacate the Judgment, and deny the Sandin Defendants' request for attorneys' fees.

DATED this 30th day of March 2018.

DICKINSON WRIGHT PLLC



Michael N. Feder
Nevada Bar No. 7332
Gabriel A. Blumberg
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Attorneys for Plaintiff O.P.H. of Las Vegas, Inc.

CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 30th day of March 2018, she caused a copy of the **PLAINTIFF O.P.H. OF LAS VEGAS INC.'S MOTION TO RECONSIDER AND/OR AMEND JUDGMENT** to be transmitted via Odyssey E-Filing System pursuant to Rule 5(b)(2)(D) of the Nevada Rules of Civil Procedure and Rule 8.05 of the Eighth Judicial District Court Rules as follows:

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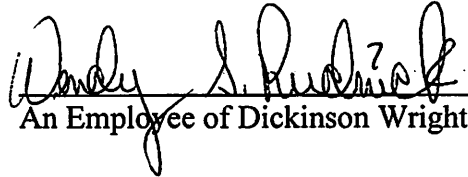

An Employee of Dickinson Wright PLLC

EXHIBIT 1

EXHIBIT 1

DICKINSON WRIGHT PLLC
8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113-2210


GABRIEL A. BLUMBERG, ESQ.

EXHIBIT 1-A

EXHIBIT 1-A

1 **RTRAN**

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 O.P.H. OF LAS VEGAS, INC.,)
8)

9 Plaintiff,)

10 vs.)

11 OREGON MUTUAL)
12 INSURANCE COMPANY,)

13 Defendant.)

CASE#: A-12-672158-C

DEPT.: CIVIL

14 BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

15 TUESDAY, FEBRUARY 6, 2018

16 ***RECORDER'S TRANSCRIPT OF HEARING***
17 **MOTION FOR ATTORNEY'S FEES AND COSTS**

18 **APPEARANCES:**

19 For the Plaintiff:

GABRIEL A. BLUMBERG, ESQ.

20
21 For the Defendant:

PATRICIA LEE, ESQ.

22 PRISCILLA L. O'BRIANT, ESQ.

23
24
25 RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, February 6, 2018

2
3 [Case called at 11:16 a.m.]

4 THE COURT: O.P.H. v Oregon Mutual Insurance.

5 MS. LEE: Good morning, Your Honor. Patricia Lee, bar
6 number 8287, on behalf of the Sandin defendants.

7 THE COURT: Okay.

8 MR. BLUMBERG: Good morning, Your Honor. Gabriel
9 Blumberg, 12332, on behalf of O.P.H.

10 MS. O'BRIANT: Priscilla O'Briant, bar number 10171, on
11 behalf of Oregon Mutual Insurance.

12 THE COURT: So this motion for fees had been brought
13 previously, then the appeal happened. What the Court had wanted to
14 look at was these arguments that the fees were excessive during the
15 arbitration phase of the case where their fees would have been limited to
16 \$3,000. So is that unreasonable to have failed to accept the offer of
17 judgment at that point in time, or if it wasn't, should they be entitled to
18 the fees based on \$38,000 being incurred in a phase when there's only
19 \$3,000? And the reason that was significant was the Court of Appeals
20 had just, a month or two earlier, decided *Frazier v Drake*, 357 P.3d 365,
21 September 3rd, 2015, which went to this whole issue of offers of
22 judgments and awarding attorney's fees under them. So that was really
23 the case that was of interest to me. And I don't think anything new in the
24 intervening period of time has really been decided.

25 So since this is kind of the last word on -- on appeals, you did

1 have -- oh, the only other one that was particularly significant, and this
2 one is unpublished, but it's a Supreme Court unpublished, is a decision
3 on -- it really kind turned on whether attorney's fees could be awarded
4 for block billed entries. And the Supreme Court said you can -- you can
5 award block billed fees if you can tell what portion of each block billing
6 entry was attributed to which part of the amount claimed.

7 So those were the cases that are of interest to me. So if
8 there's anything further, then,

9 Ms. Lee?

10 MS. LEE: Yes, Your Honor, and thank you. As you know, we
11 were here a couple of years ago on this motion for attorney's fees, so
12 we are trying to get rolling on that initial motion. I know Your Honor did
13 have a curiosity about this whole arbitration issue. I hope that your
14 research has satisfied your inquiries in that regard.

15 We still maintain that the offer was reasonable, both in its
16 timing and amount again, at the time it was in arbitration, which would
17 have limited their damages to \$50,000. The experts have ultimately
18 opined that the damages ranged between \$10,000 and \$14,000,
19 depending on whether or not this lease would have continued for
20 O.P.H., or if the landlord were to cancel the lease. Also, those damages
21 were not apportioned. We would have said that our, as the broker, our
22 liability would have been substantially less than the actual insured.

23 And, Your Honor, and I won't belabor the points. We've gone
24 through the *Brunzell* and *Beattie* factors ad nauseam, you've heard them
25 before. We have some new arguments, just in terms of the appeal,

1 which we are entitled to ask for under the relevant case law we cited.

2 THE COURT: And so --

3 MS. LEE: But --

4 THE COURT: -- in your Exhibit F, this is the attorney's fees
5 from the appeal --

6 MS. LEE: Is that for the --

7 THE COURT: -- from the motion for fees and costs forward.
8 It's after the summary judgment was granted --

9 MS. LEE: Yes.

10 THE COURT: -- going forward.

11 MS. LEE: Correct.

12 THE COURT: So --

13 MS. LEE: So and that -- that totaled about \$18,000 for the
14 entirety of the appellate process, which we would -- we would submit is
15 fairly reasonable given the -- the complexity of the appeal, having to go
16 back and review the entire record. You know, I don't know, Michael Wall,
17 who is the attorney from my office who handled that appeal, he usually
18 doesn't roll out of bed for less than 25 grand on an appeal.

19 THE COURT: Um-hmm.

20 MS. LEE: However, this client does have special rates for us.
21 So the -- so the amount of fees are more than reasonable, we would
22 argue, Your Honor.

23 And the only thing that I would like to just kind of put on the
24 record orally is the timing. I think the timing was the biggest issue that I
25 saw raised in the opposition. Granted, the offer of judgment was made

1 the day after Your Honor denied our motion to dismiss without
2 prejudice --

3 THE COURT: Um-hmm.

4 MS. LEE: -- and with reservation, I might add. Your Honor
5 was, you know, kind of lamenting the fact that we don't apply the more
6 stringent *Iqbal* standard here. And perhaps if that were the case, Your
7 Honor would have granted that motion. And ultimately Your Honor went
8 back at that motion for summary judgment phase and said: You know, I
9 really can't see this being more than just a contract that was frustrated
10 by the insured not paying their premiums on time.

11 So when we talk about timing, Your Honor, and I looked
12 carefully at their motion -- their opposition --

13 THE COURT: Um-hmm.

14 MS. LEE: -- and I see where they are conflating newly
15 discovered facts that happened six months down the road after, you
16 know, we had started this case. You know, we had not filed a response
17 to the pleading. They didn't know what our answer was going to be or
18 our affirmative defenses or, you know, an exculpatory allegations.

19 However, what they -- this is what they did know before filing
20 the Complaint. First, they knew that our clients as the insurance brokers
21 did not receive notice of the cancellation, of the pending cancellation.
22 They put that right into their Complaint as an affirmative allegation.
23 Paragraphs 26 and 27 of their Complaint says that the Sandin
24 defendants were never provided notice of the cancellation, and they did
25 not know about the notice of cancellation.

1 So just as a practical matter, Your Honor, even if there was
2 some kind of duty, some strained, tenuous duty, which the Supreme
3 Court has said doesn't exist, which Your Honor said doesn't exist, which
4 case law, statute, and every jurisdiction says doesn't exist, there is no
5 duty, but even if there was this duty, it was factually impossible for my
6 client to give them notice of a pending cancellation because they
7 themselves never had notice. So they knew that before they filed the
8 Complaint.

9 Another thing that they knew, the whole reason why Your
10 Honor actually allowed this case to move forward is because they made
11 this course and conduct argument. Well, the Sandin defendants had
12 done this in the past. They had warned us that our policy was going to
13 terminate, and so they had a duty to continue this course of conduct.
14 Well turns out when we had deposed their person most knowledgeable
15 on this issue, she said: Well, the three previous times that they gave us
16 notice were on these three specific dates. And she gave very specific
17 dates.

18 Well, that date span that she gave, my client wasn't even their
19 broker of record at the time. He was working at another company under
20 a noncompete. In fact, he could not have been their broker. And then
21 Nevada Supreme Court acknowledged that fact and said out of two out
22 of the three times that they touted, my client wasn't even their broker of
23 record during that time. So they knew that before they filed the
24 Complaint.

25 Another thing that they knew, Your Honor, is that they knew

1 that they actually knew about the termination prior to the termination
2 term. They wrote a check. They realized that they were late on their
3 July payment. They wrote a check and for whatever reason, they never
4 sent it. So they were well aware.

5 So, you know, Your Honor, it's just -- it's just, you know, this
6 whole climate of let's blame everybody else for our things that we were
7 supposed to take responsibility for. If I don't pay my mortgage and my
8 home gets foreclosed on, I can't go sue my real estate broker for not
9 giving me notice that I didn't pay my mortgage.

10 THE COURT: Okay.

11 MS. LEE: It's not -- it's not her responsibility. So they knew
12 that as well.

13 And, in fact, I wanted to point out that as far as the payment
14 being missed, Steven Freudenberger testified during his deposition, 1 of
15 16 that was taken in this case, 11 of which were out of state, he said:
16 Had I done my work that I'm paying myself to do -- and he's the
17 president of O.P.H. or he was at the time -- that I'm paying myself to do
18 to make sure that all this stuff gets paid in a timely manner, we wouldn't
19 be sitting here either.

20 So that is the procedure. I didn't do my job in that moment.
21 That's all I can say about that. I mean, it's a mishap in the company.
22 There is no -- I'm not trying to blame anybody for that payment not being
23 made on July 26th.

24 Well, they are trying to blame someone for that payment not
25 being made. And it looks here Mr. Freudenberger is trying to take

1 responsibility for it, but legally they're doing the exact opposite. They're
2 trying to put the blame on an insurance broker. There was no basis in
3 law.

4 THE COURT: Well, I don't understand why we're talking
5 about because that doesn't really have anything to do with this whole
6 issue of, as you point out, the *Beattie* -- first you look at *Beattie*, and
7 then you look at *Brunzell*. So how does that contribute --

8 MS. LEE: It goes to the --

9 THE COURT: -- to the analysis of the attorney's fee?

10 MS. LEE: The first *Beattie* factor, Your Honor, is whether or
11 not they brought the claims in good faith. And that ties to and informs
12 the timing of our offer of judgment. They brought the claims initially in
13 bad faith. So our bringing of an offer of judgment at the initiation of the
14 case makes sense. It was a bad case. They brought the claims in bad
15 faith. So it informs the timing of our motion, and that's why I bring that
16 up, Your Honor.

17 And I would also like to point out, under the -- the -- the offer
18 of judgment rule is that the Nevada Supreme Court allows you to bring it
19 at any point, at every possible juncture where the rules allow.

20 THE COURT: Okay.

21 MS. LEE: So we were not precluded. So you can bring it as
22 early as -- before you even answer the Complaint, as long as it's not
23 brought within ten days. So there's no hard and fast rule that says that
24 just because they won a motion to dismiss, barely, that does not then
25 translate into good faith, that they brought these claims in good faith. So

1 we would say that it was reasonable in both its timing --

2 THE COURT: Okay.

3 MS. LEE: -- and its amount. And I just bring up the timing
4 because that was the primary basis for the opposition, as far as I could
5 tell.

6 THE COURT: Thank you.

7 Ms. O'Briant, your client takes -- this is not relevant to your
8 client.

9 MS. O'BRIANT: No. The only reason we appeared today is
10 because they have new counsel and we wanted to make sure if there
11 was any discussion about the procedural posture, that we were a part of
12 it.

13 THE COURT: Okay. Thank you.
14 Counsel?

15 MR. BLUMBERG: And we'd agree that Oregon Mutual has no
16 role in this motion, Your Honor.

17 I think Your Honor has hit the nail right on the head. We have
18 to look at the *Beattie* factors and the *Brunzell* factors. It's not just the
19 fact that they beat their offer of judgment.

20 THE COURT: Uh-huh.

21 MR. BLUMBERG: And we think the *Beattie* factors actually
22 show that this was unreasonable in every single manner.

23 THE COURT: Uh-huh.

24 MR. BLUMBERG: First, the good faith claim is the first factor.
25 And I think opposing Counsel somewhat misrepresented the Supreme

1 Court's holding, which I have right here, wherein they say: --

2 THE COURT: Uh-huh.

3 MR. BLUMBERG: -- We recognize that an insurance broker
4 may assume additional duties to its insured client in special
5 circumstances.

6 Fortunately we found here we didn't quite get there, but that
7 doesn't mean the claim was unreasonable when we brought it. And it
8 shows that it is actually possible to succeed on such a claim.

9 And then the second factor is the unreasonableness of the
10 timing and the amount, and we think that's where they have a huge
11 issue in this case, the timing. Opposing Counsel mentioned it. Before
12 they filed an answer, before any discovery was conducted, the only
13 information we had was that we had won on a motion -- their motion to
14 dismiss. So there was some legs for our case and we didn't see any
15 reason why a \$2,000 offer of judgment, when we had damages in the
16 hundreds of thousands, if not more, was reasonable at all. And we
17 know that the amount is not reasonable based on the amount of work
18 they put into this case. In just the arbitration period, where if they're
19 claiming they believe this was actually subject to only a \$50,000 cap
20 despite our Complaint, our initial Complaint saying damages in excess
21 of \$50,000, they spent over thirty-five -- \$35,000 defending a claim
22 which they're now going to claim should have only been valued at
23 \$2,000.

24 THE COURT: Uh-huh.

25 MR. BLUMBERG: It shows that's disingenuous at best. Even

1 they understood the claim wasn't properly valued at \$2,000. It would not
2 have been reasonable to expect O.P.H. to accept such an offer,
3 especially that early in the case.

4 And then we also see, when we look at the *Brunzell* factors,
5 that they actually ended up spending over a thousand hours on this
6 case. And if you look at that and then have them come back and say,
7 you know, \$2,000 was probably a very reasonable offer when we've now
8 expended over a thousand hours defending this case, if the claim was
9 as meritless as they say, it never should have taken a thousand hours of
10 work.

11 And I think that also goes to, if Your Honor somehow does find
12 the *Beattie* factors weigh in their favor that the *Brunzell* factors mandate
13 that this award must be substantially reduced. There's no way that this
14 case should have taken a thousand hours to defend if the claim was as
15 meritless as they believe. We had filed that in the initial opposition a
16 couple years ago. And I think we highlight another few points in our
17 opposition to their attorney -- appellate attorney's fees motion --

18 THE COURT: Right.

19 MR. BLUMBERG: -- that we think there was some excessive
20 billing that was incurred. And while we agree that the hourly rate was
21 reasonable, of course, it was discounted, it doesn't mean that they can
22 make up for the discount in the hourly rate by then charging a thousand
23 hours throughout the duration of the case.

24 THE COURT: Okay. Thank you. Originally the Court had
25 found -- it's my recollection, is I didn't have my problem so much with the

1 *Beattie* factors as to the timing of the offer. I mean, you can make an
2 offer immediately after appearing. One of the problems is how much is
3 reasonable? So that was my -- more my concern, was it reasonable at
4 that point in time to offer \$2,000?

5 But my real issue was more with the *Brunzell* factors. And
6 that kind of ties into this whole thing of if you're really making a
7 legitimate \$2,000 offer, why would you then spend \$35,000 when you
8 know the most you can recover if you win at arbitration is \$3,000? So
9 that was a problem for me. And where we -- that's why I got into these
10 two cases that had just been decided earlier in 2015, I think like literally
11 weeks on *Frazier v Drake*, before we had our hearing.

12 The first one is this whole concept of block billing. I know this
13 is an unpublished decision, and for some reason an unpublished order
14 shall not be regarded as precedent and shall not be set as legal
15 authority, but that's after the rule change, so I don't know why they have
16 that on there. I think this can be decided. And this is this concept of one
17 problem with billing is block billing. How, when you're awarding
18 attorney's fees, can you, if it's just like a big block of billing, say that's
19 reasonable or not?

20 But -- so when I went back and looked through all these bills,
21 just because the word and appears in a billing entry, it doesn't mean
22 you're doing two completely separate and unrelated things and billing
23 one amount for it. I mean, there's one in here where it's like, more
24 recently, receive notice of substitution of counsel, and think something
25 changed some database entry. That's not really two different things,

1 that's one thing, they go together.

2 So in looking for, you know, do we have block billing problems
3 here? You know, I didn't really see that that was a problem for us in this
4 case. It's pretty clearly broken out and you can tell what was billed in
5 the different entries. So I didn't, in the end, really think that with respect
6 to the reasonableness of their bills and, you know, were they something
7 the Court could look at and say, yes, I think that's all reasonable and
8 necessary.

9 Under this case, I ended up in the end not seeing any real
10 concern. And that's the Margaret Mary Adams 2006 Trust. That's why
11 I -- that's why I know about this case is it's a trust case which was dated
12 March 26th, 2015. It is an unpublished Supreme Court decision, so I
13 think that one was significant. So I looked at -- first, I looked at it for
14 that. You know, you could maybe go through, if you want, the entire
15 billing statement and pick and choose a couple of little entries. But
16 when I look at them, they're like 0.2, so really, is it worth the time to go
17 through and say, well, I can't award this because it's block billing when
18 it's 0.2. I mean, it's going to be more time to review for maybe a couple
19 of hours of time than you're going to -- you're going to find. It's not cost
20 effective. There's not enough of it.

21 This isn't true block billing. I mean, for true block billing,
22 you're looking at lengthy entries of, you know, I went to a deposition and
23 I prepared for motion for summary judgment, and then I wrote a letter,
24 eight hours, that's block billing. And I just didn't see it. So that -- my first
25 concern there was gone.

1 And then under *Frazier v Drake*, which was decided on
2 September 3, 2015 and is reported, 357 P.3d 365, this is a Court of
3 Appeals case. This is the one that had just -- I don't know, I think our
4 hearing was in October and this had just been decided September 3rd,
5 2015, so this was the one that was really of interest to me. And again,
6 they did do the analysis. You look first at your *Beattie* factors, then you
7 look at your *Brunzell* factors. And what most people know this case for,
8 and that's what I had done, is reduce the expert fees to \$1500 because
9 this is the case that gives our authority to say, you know, really, unless
10 they testify, it's unreasonable to charge more than \$1500.

11 But there's other stuff in here about the timing of the offer of
12 judgment. The District Court found that the offers of judgment were
13 brought in good faith, that the -- the *Frazier*, *Keys* offers. *Drake's* offers
14 were not reasonable or made in good faith in either timing or amount,
15 and that the decisions to reject those offers were not grossly
16 unreasonable or in bad faith.

17 So that's kind of what was new in *Frazier v Drake* was this
18 concept that if you decide to reject -- if your client decided to reject not in
19 good faith, it had to be grossly unreasonable. And that's -- I mean, I
20 thought pretty much everybody was operating in good faith here.
21 Nobody -- it's just you guys didn't agree. Your clients were relying on
22 this course of conduct that they felt they had with their real estate
23 agent -- insurance agent, which was what Ms. Lee was talking about,
24 this course of conduct. You know, ultimately the Court didn't find that
25 that standard was met. That's a very unusual and way outside normal

1 duties of insurance agents.

2 So, I mean, it wasn't unreasonable to proceed, but on the
3 other hand, it was certainly a reasonable offer from them because they
4 just -- there is no such -- there is no such global duty. It's not a duty. It's
5 just this exception from the failure to have a duty that is just a course of
6 conduct if you can establish it. It's not technically a duty. The point is
7 there is no duty, but there is an exception. And it's a high burden to
8 carry that the exception should apply.

9 So the problem that they found was with the -- what the
10 District Court found that reasonable -- that the reasonableness of the
11 offer alone supported the award of attorney's fees, and they said that's
12 not enough. You can't just award everything just based on
13 reasonableness, you have to go back and look at it all. So that was the
14 point in saying I'm going to -- I have to take another look at it under
15 *Frazier v Drake*. But it didn't really -- it didn't really change my opinion
16 about overall, as we pointed out, that you can't argue with the fee. It's a
17 discounted fee, much lower than what they would normally charge.

18 But that I -- my one problem is, is with the arbitration phase.
19 You know, I agree with you on the arbitration phase. I just think if you
20 make an offer of judgment for \$2,000 at the arbitration phase and you
21 insist it's only -- an arbitration case, you're only going to get \$3,000 at
22 the end of the process. It just doesn't make any sense to me. That's
23 the only problem I ever had with it.

24 And after looking at it all over again, it's still the only problem I
25 have with it, because I looked at everything else. I don't see block

1 billing. I don't see overbilling. It's a discounted rate. I just didn't have
2 any problems with any of the rest of it. The only thing, and unfortunately
3 neither of these cases address it, they only address the other factors,
4 they don't address this whole concept of is it really reasonable once
5 you've made a \$2,000 offer of judgment during a phase when you're
6 only going to get \$3,000 if it stays where it is, that to me was -- that to
7 me showed they really were intending to litigate the whole time. And
8 that's fine. That was their choice. I think that everybody realized that it
9 was a big claim.

10 And it was -- it was -- this was difficult. This went on for
11 months and months and months, going all over the country on
12 depositions -- I just didn't see anywhere where any of that was inflated.
13 That's what it took to get to the point where they could file the motion.
14 And for me, it was a very arduous process, and it was hard fought the
15 whole time.

16 So I can't say that for either side the discovery phase of this
17 thing was handled in any way inappropriately. Those -- every one of
18 those depositions, I thought they were relevant. I mean, we looked at all
19 of them in these motions because some of them were relevant to
20 Ms. O'Briant, some of them were relevant to Ms. Lee. They had to do
21 the whole thing. They had to be present for them. They couldn't pick
22 and choose which ones they'd go to, it was because it was all one case.
23 So for that reason, I did not see anything unreasonable. As I said, my --
24 and they have every right to seek their appeal fees and costs. I don't
25 think anybody really disputes that.

1 So at this point, like I said, years later we come back
2 around to it and I still feel the same way about it. I don't -- I didn't see
3 anything in these cases. I'm -- as I said, I don't -- I think this is kind of
4 the last word. I haven't seen any significant new offer of judgment cases
5 come down. *Frazier v Drake* is the last reported one that I could find.
6 And these others are -- these other issues, like this unpublished
7 Supreme Court decision on block billing, which nobody seems to know
8 about, but I guess I do because it's a trust case. But I looked at the
9 other things that they've raised that were problems, and I just -- I don't
10 see anything but the initial thing that was raised by your client initially, is
11 why would you make an offer of judgment and then proceed to bill
12 \$35,000 when you knew you were only going to get back three? I think
13 that's a legitimate question, and that's really only ever been my problem
14 with it.

15 So that would be the only amount I would be willing to take a
16 look at. And I think that they stuck with the \$3,000, but anything over
17 that, until that phase is over, that arbitration phase is over going forward,
18 it was all necessary, every bit of it. And it's unfortunate. This was --
19 that's what I've said all along, it's so unfortunate that we have this
20 relatively low standard for motions to dismiss. You're entitled to try to
21 prove your case and, unfortunately, this one just -- it was one of those
22 cases that you just -- there's no way to do it, but to go forward on all of
23 these issues. And everybody else was out of state. I mean, I just -- I
24 don't think there's any other way to do it. It had to be done.

25 So I'm only reducing this by the -- I think it's \$32,000 from the

1 arbitration phase. The rest of it, plus the appeal fees, I think are all
2 perfectly warranted because, like I said, the only real case that picks
3 around at offers of attorney's fees after offers of judgment is this block
4 billing case, and I didn't see that was a problem for us here. They didn't
5 block bill.

6 So since that's about the only thing I think you can reduce
7 fees by now, I mean, that's the only -- in years that it's come up is this
8 objection to block billing. Not relevant here, so nothing else I could
9 really reduce it for.

10 So as we -- I would say they otherwise meet *Brunzel*. Every
11 other factor is fully satisfied under *Brunzell*. And the only thing that they
12 tell us to take a look at is block billing and, you know, it's just not a
13 problem for us.

14 So I don't see anywhere else I could make any reductions with
15 all -- and I read it. You know, I did the -- I did not come in to be a judge
16 in order to read other people's billing statements, but it's so important to
17 the Supreme Court that we do a lot of it. And under the guidance
18 they've given us, I just don't see anywhere else to reduce it but by the
19 arbitration phase that I see as a legitimate question. So I'll take that
20 reduction, but everything else up through the appeal is awarded. I just
21 didn't see anywhere else to take a deduction.

22 MS. LEE: Thank you, Your Honor. I'll prepare the order.

23 THE COURT: Okay. Thank you.

24 MR. BLUMBERG: Thank you, Your Honor.

25 THE COURT: And if you'd please direct it to Counsel.

1 Do you even want to see it, Ms. O'Briant? Do you want to
2 review the --

3 MS. O'BRIANT: No, I don't need to see it.

4 THE COURT: Okay.

5 MS. LEE: Okay. All right.

6 THE COURT: All right.

7 MS. LEE: Thanks, Priscilla.

8 THE COURT: Because I didn't think you cared, but. Okay.
9 Thanks very much.

10 MS. LEE: Thank you, Your Honor.

11 THE COURT: Then we'll see you guys back here. And then
12 just the only thing we have left is a calendar call in July. I think we're
13 otherwise --

14 MS. O'BRIANT: Well, Your Honor, we discussed at the last
15 hearing we need to --

16 MS. LEE: I'm sorry, Your Honor. I have an appointment.

17 THE COURT: You can leave. Yeah. Sorry

18 MS. LEE: I'm going to just head out.

19 MS. O'BRIANT: -- resubmit the motions in limines --

20 THE COURT: Uh-huh.

21 MS. O'BRIANT: -- and motion for summary judgment
22 because they have changed a little --

23 THE COURT: Okay.

24 MS. O'BRIANT: -- with the remand back from the Supreme
25 Court.

1 THE COURT: Right. Yeah. Yeah.
2 They told us to focus on some other things, yeah.
3 MS. O'BRIANT: So I know we did set a deadline for MILs.
4 THE COURT: Uh-huh.
5 MS. O'BRIANT: I didn't -- I reviewed all the calendar dates. I
6 didn't see one for the motion for summary judgment, but we can get that
7 on file --
8 THE COURT: Okay.
9 MS. O'BRIANT: -- whenever.
10 THE COURT: Yes. Just working back from the calendar call
11 date, we like, like 60 days in advance, if we can. If not, 60 days before
12 the actual trial start date. We just need some time to get everything
13 briefed and have a chance to have a hearing before the actual --
14 MS. O'BRIANT: Is that for the motion --
15 THE COURT: -- deadline.
16 MS. O'BRIANT: -- for summary judgment?
17 THE COURT: On the summary judgment motion.
18 MS. O'BRIANT: Okay.
19 THE COURT: So we need, you know, we need 60 days --
20 MS. O'BRIANT: Two months, no problem.
21 THE COURT: -- to look at -- to get that all through the
22 process, so we don't have to be doing a whole bunch on order
23 shortening time. So if you can just work on that --
24 MS. O'BRIANT: Okay. Thank you, Your Honor.
25 THE COURT: -- for your schedule.

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MR. BLUMBERG: Thank you.

THE COURT: Thank you, guys.

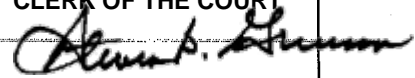
[Hearing concluded at 11:42 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Martha Nelson
Court Recorder/Transcriber



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7 *Dave Sandin and Sandin & Co.*

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

10
11 O.P.H. OF LAS VEGAS, INC.,
12 Plaintiff,

13 v.

14 OREGON MUTUAL INSURANCE
15 COMPANY, DAVE SANDIN, and SANDIN
& CO.,

16 Defendants.
17

Case No.: A-12-672158-C

Dept. No.: XXVI

**ORDER DENYING PLAINTIFF
O.P.H. OF LAS VEGAS INC.'S
MOTION TO RECONSIDER
AND/OR AMEND JUDGMENT**

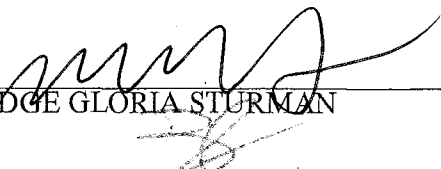
18 Plaintiff O.P.H. OF LAS VEGAS, INC.'s Motion to Reconsider and/or Amend
19 Judgment came before this Court on May 1, 2018 at 9:00 a.m. Patricia Lee of the firm
20 Hutchison & Steffen, PLLC appeared on behalf of Dave Sandin and Sandin & Co, (together the
21 "Sandin Defendants") and Gabriel Blumberg of the firm Dickinson Wright, PLLC appeared on
22 behalf of Plaintiff, O.P.H. of Las Vegas, Inc. ("OPH").

23 Having reviewed all papers and pleadings on file and entertained oral arguments
24 presented by all counsel, this Court makes the following Order:

25 For the reasons set forth on the record at the hearing, the Court believes it has properly
26 considered and weighed all factors articulated in *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668
27 P.2d 268, 274 (1983) and *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d
28 31, 33 (1969), IT IS HEREBY ORDERED that Plaintiff O.P.H. OF LAS VEGAS, INC.'s

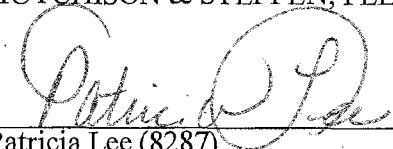
1 Motion to Reconsider and/or Amend Judgment is hereby DENIED.


2 IT IS SO ORDERED this 7th day of June, 2018.

3
4 
5 HONORABLE JUDGE GLORIA STURMAN

6 HUTCHISON & STEFFEN, PLLC

DICKINSON WRIGHT, PLLC

7 
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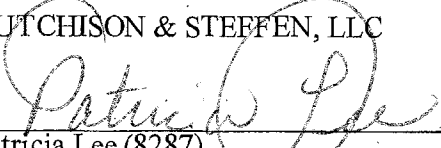

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12 *Attorneys for Dave Sandin and Sandin & Co.*

*Attorneys for plaintiff
O.P.H. of Las Vegas Inc.*

13
14 Respectfully submitted by:

15 HUTCHISON & STEFFEN, LLC

16 
17 Patricia Lee (8287)
18 10080 West Alta Drive, Suite 200
19 Las Vegas, NV 89145

20 *Attorneys for Dave Sandin and Sandin & Co.*

*Attorneys for Defendants
Dave Sandin and Sandin & Co.*

Case Number: A-12-672158-C

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Hutchison & Steffen,
3 PLLC and that on this 11th day of June, 2018, I caused the above and foregoing document entitled
4 **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF O.P.H. OF LAS VEGAS INC.'S**
5 **MOTION TO RECONSIDER AND/OR AMEND JUDGMENT** to be served as follows:

- 6 ☐ by placing same to be deposited for mailing in the United States Mail, in
7 a sealed envelope upon which first class postage was prepaid in Las
8 Vegas, Nevada; and/or
9 ☐ pursuant to EDCR 7.26, to be sent via facsimile; and/or
10 ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served
11 through the Eighth Judicial District Court's electronic filing system, with
12 the date and time of the electronic service substituted for the date and
13 place of deposit in the mail; and/or
14 ☐ to be hand-delivered;

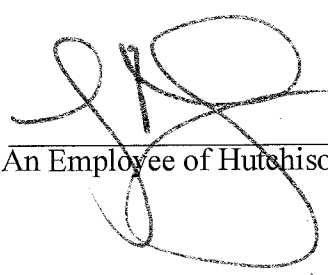
15 to the attorney(s) listed below at the address and/or facsimile number indicated below:

16 Michael N. Feder, esq.
17 Gabriel Blumberg, Esq.
18 DICKISON WRIGHT, PLLC
19 8363 W. Sunset rd., Ste. 200
20 Las Vegas, Nv 89113

21 *Attorneys for plaintiff*
22 *O.P.H. of Las Vegas Inc.*

Robert Freeman, Esq.
Priscilla O'Briant, Esq.
LEWIS BRISBOIS BISGAARD & SMITH,
LLP
6385 S. Rainbow Blvd., Ste. 600
Las Vegas, NV 89118

Attorneys for Oregon Mutual Insurance
company


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28

An Employee of Hutchison & Steffen, PLLC

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EXHIBIT PAGE ONLY

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

EXHIBIT 1



1 **ORDD**

2 Patricia Lee (8287)
3 HUTCHISON & STEFFEN, LLC
4 10080 West Alta Drive, Suite 200
5 Las Vegas, NV 89145
6 Tel: (702) 385-2500
7 Fax: (702) 385-2086
8 plee@hutchlegal.com

9 *Attorneys for defendants*
10 *Dave Sandin and Sandin & Co.*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 O.P.H. OF LAS VEGAS, INC.,

14 Plaintiff,

15 v.

16 OREGON MUTUAL INSURANCE
17 COMPANY, DAVE SANDIN, and SANDIN
18 & CO.,

19 Defendants.

Case No.: A-12-672158-C

Dept. No.: XXVI

**ORDER DENYING PLAINTIFF
O.P.H. OF LAS VEGAS INC.'S
MOTION TO RECONSIDER
AND/OR AMEND JUDGMENT**

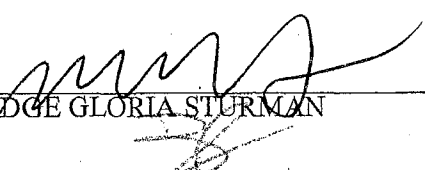
20 Plaintiff O.P.H. OF LAS VEGAS, INC.'s Motion to Reconsider and/or Amend
21 Judgment came before this Court on May 1, 2018 at 9:00 a.m. Patricia Lee of the firm
22 Hutchison & Steffen, PLLC appeared on behalf of Dave Sandin and Sandin & Co, (together the
23 "Sandin Defendants") and Gabriel Blumberg of the firm Dickinson Wright, PLLC appeared on
24 behalf of Plaintiff, O.P.H. of Las Vegas, Inc. ("OPH").

25 Having reviewed all papers and pleadings on file and entertained oral arguments
26 presented by all counsel, this Court makes the following Order:

27 For the reasons set forth on the record at the hearing, the Court believes it has properly
28 considered and weighed all factors articulated in *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668
P.2d 268, 274 (1983) and *Brunzell v. Golden Gate National Bank*, 85 Nev. 343, 349, 455 P.2d
31, 33 (1969), IT IS HEREBY ORDERED that Plaintiff O.P.H. OF LAS VEGAS, INC.'s

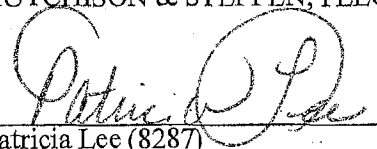
1 Motion to Reconsider and/or Amend Judgment is hereby DENIED.

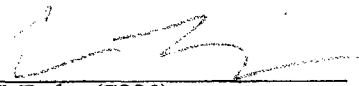
2 IT IS SO ORDERED this 7th day of June, 2018.

3
4 
5 HONORABLE JUDGE GLORIA STURMAN

6 HUTCHISON & STEFFEN, PLLC

DICKINSON WRIGHT, PLLC

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8 Patricia Lee (8287)
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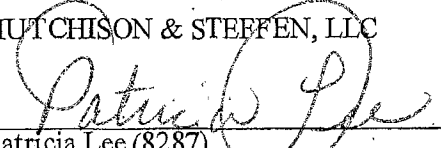

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12 *Attorneys for Dave Sandin and Sandin &*
13 *Co.*

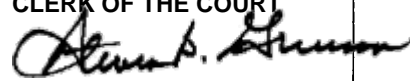
Attorneys for plaintiff
O.P.H. of Las Vegas Inc.

14 Respectfully submitted by:

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**IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

O.P.H. OF LAS VEGAS, INC.,

Plaintiff,

v.

OREGON MUTUAL INSURANCE
COMPANY, DAVE SANDIN, AND SANDIN
& Co.

Defendants.

CASE NO. A-12-672158-C
DEPT. NO. XXVI

**NOTICE OF ENTRY OF STIPULATION
AND ORDER FOR DISMISSAL WITH
PREJUDICE**

Please take notice that a STIPULATION AND ORDER FOR DISMISSAL WITH
PREJUDICE was entered on September 7, 2018, a copy of which is attached hereto.

DATED this 11th day of September 2018.

DICKINSON WRIGHT PLLC



Michael N. Feder, Nevada Bar No. 7332

mfeder@dickinson-wright.com

Gabriel A. Blumberg, Nevada Bar No. 12332

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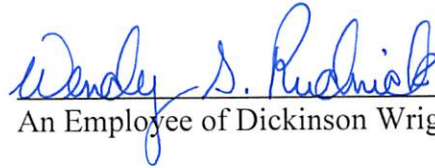
Las Vegas, Nevada 89113-2210

CERTIFICATE OF SERVICE

The undersigned, an employee of Dickinson Wright PLLC, hereby certifies that on the 11th day of September 2018, she caused a copy of the **NOTICE OF ENTRY OF STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE** to be transmitted via Odyssey E-Filing System pursuant to Rule 5(b)(2)(D) of the Nevada Rules of Civil Procedure and Rule 8.05 of the Eighth Judicial District Court Rules as follows:

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Priscilla O'Briant, Esq.
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An Employee of Dickinson Wright PLLC

Steven D. Grierson

SODW
DICKINSON WRIGHT PLLC
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Attorneys for Plaintiff O.P.H. of Las Vegas, Inc.

**IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

O.P.H. OF LAS VEGAS, INC.,

Plaintiff,

v.

OREGON MUTUAL INSURANCE
COMPANY, DAVE SANDIN, AND SANDIN
& Co.

Defendants.

CASE NO. A-12-672158-C
DEPT. NO. XXVI

**STIPULATION AND ORDER FOR
DISMISSAL WITH PREJUDICE**

It is hereby stipulated to between Plaintiff O.P.H. of Las Vegas, Inc. ("OPH"), by and through its counsel, the law firm of Dickinson Wright PLLC, and Defendant Oregon Mutual Insurance Company ("OMI"), by and through its counsel, the law firm of Lewis Brisbois Bisgaard & Smith, LLP, that all claims asserted by OPH against OMI in the above-captioned matter shall be dismissed with prejudice.

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

Each party to bear their own costs and attorneys' fees.

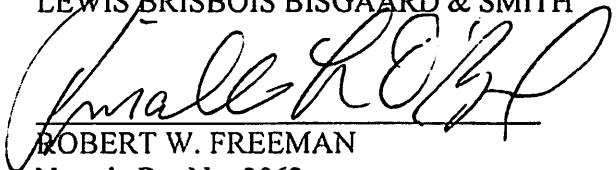
Dated this 4th day of ~~August~~ ^{September}, 2018

Dated this 14 day of August, 2018

DICKINSON WRIGHT PLLC

LEWIS BRISBOIS BISGAARD & SMITH


MICHAEL N. FEDER


ROBERT W. FREEMAN

Nevada Bar No. 7332

Nevada Bar No. 3062

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Attorneys for Plaintiff O.P.H. of Las Vegas, Inc.

Attorneys for Defendant Oregon Mutual Insurance Company

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that all claims asserted by OPH against OMI in the above-captioned matter shall be dismissed with prejudice, with each party to bear their own costs and attorneys' fees. The November trial date and all scheduled hearings are hereby vacated.

Dated this 6th day of ~~August~~ ^{Sept}, 2018.


DISTRICT COURT JUDGE

Respectfully submitted by:
DICKINSON WRIGHT PLLC


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