

1       that's the only issue before the Court on the summary  
2       judgment.

3               I'm reminded by co-counsel with respect to  
4       the one allegation she made that she testified that she  
5       was supposedly a witness and that was the snowplow  
6       assault and battery of Egon Klementi, she was the only  
7       corroborating witness. The only one. There was no other  
8       witness in the trial that said that other than Egon  
9       Klementi himself. What Elfride testified to was simply  
10      what her husband told her, which is hearsay.

11              So I would submit, Your Honor, that the  
12      summary judgment can't be ordered based upon all of these  
13      material issues of disputed fact which, as a matter of  
14      law, go to the jury.

15              MR. ROUTSIS: Thank you. I --

16              THE COURT: I'm going to ask for a reply, and  
17      then make a decision on the amendment and the summary  
18      judgment.

19              MR. PINTAR: Malicious prosecution talks  
20      about initiation of the charges. We know that Miss  
21      Kinion had nothing to do with the initiation of the  
22      charges. Ms. Pence confirmed again today she had nothing  
23      to do with the amending of the charges, so I don't know  
24      what -- there's no question of fact about that. It's

1 undisputed, and now they're talking about what happens at  
2 the criminal trial.

3 Well, as the Court well knows, anything is  
4 going to be privileged. I mean, there's that judicial  
5 immunity whole thing. And plus, the charges have already  
6 been brought by that point. So with that, I would submit  
7 the motion.

8 THE COURT: Yeah, but what about the other  
9 allegations? I mean --

10 MR. PINTAR: What?

11 THE COURT: Defamation, conspiracy?

12 MR. PINTAR: That's not before the Court. I  
13 mean, when we filed this motion two years after the fact,  
14 they filed an amended complaint. I mean, we're talking  
15 about the complaint that was on file claims malicious  
16 prosecution. As Ms. Capers said, the Shaws are not in  
17 yet. This second amended complaint is not in yet. And  
18 the defamation, I mean, then you go right to everything  
19 that she said is privileged. I mean, there's no basis  
20 for a defamation. It's all immune.

21 THE COURT: All right. Now I'm starting to  
22 see exactly -- you know, I've read this stuff, but what I  
23 parse this, as Mr. Moore said, when I'm trying to eat one  
24 bite of the elephant at a time, we're talking only about

1 the malicious -- if we're talking only about the  
2 malicious prosecution defense and plaintiff is talking --  
3 counter claimant is talking about all of the other  
4 allegations, that has to do with the amendment.

5 MR. PINTAR: Correct. The operative  
6 counterclaim only pleads malicious prosecution and  
7 conspiracy to commit malicious prosecution.

8 MR. ZANIEL: Your Honor, not to add to the  
9 problems, but the plaintiffs have filed an amended  
10 complaint that was granted, and nobody had responded to  
11 that yet. There's not an answer on file to the  
12 plaintiff's amended complaint, so I'm not sure how that  
13 -- that's a law school failure question again.

14 MR. MOORE: Well, we won't fault you.

15 MR. ZANIEL: No. I see whatever your ruling  
16 is today, it's going to have to incorporate something to  
17 the fact that we're going to have to file an answer to  
18 the amended complaint. When we file an answer to that  
19 amended complaint, are we going to see counterclaims to  
20 that as well? And what are those counterclaims going to  
21 be? And who are the parties going to be to that? And  
22 then I don't know where we're going to stand four months  
23 down the road when all of that is completed.

24 THE COURT: Well, okay. If this motion for

1 summary judgment has only to do with the malicious  
2 prosecution, that is exactly why I asked Ms. Pence to be  
3 here. I do not believe -- I believe Ms. Pence. I do not  
4 believe that the charge was enhanced by anything that  
5 Ms. Kinion did in regards to the gross misdemeanor going  
6 to a felony. That is very clear to me that it was based  
7 on medical records. The exploitation charge was  
8 original. Miss Kinion -- she didn't influence the  
9 district attorney, Ms. Kinion did not, because that was  
10 charged January. Miss Kinion's letter was February. I  
11 don't see that, and Miss Kinion had nothing to do with  
12 the malicious prosecution charge itself.

13 The motion for summary judgment is granted as  
14 to Ms. Kinion as to the malicious prosecution. Now we  
15 get to the amendments. That is exactly why I asked, just  
16 rhetorically, why in the hell didn't you just sue all of  
17 the neighbors? And I think the answer is we got one,  
18 they wrote a letter, we got one that said something, we  
19 got one that's got video. So I think we have to sort it  
20 out by me granting the motion to amend and having  
21 everybody either go over again or having everybody  
22 respond to the amended complaint. So I'm granting the  
23 amended complaints, but Miss Kinion is out of the  
24 malicious prosecution allegation.



1                   Now, I want you to write -- to draft an  
2                   order, Mr. Pintar, in regards to the malicious  
3                   prosecution summary judgment.

4                   MR. PINTAR: A point of clarification, Your  
5                   Honor. In the amended complaint, does that mean they  
6                   cannot refile the malicious prosecution against anybody?

7                   THE COURT: I'm saying Ms. Kinion.

8                   MR. PINTAR: Okay.

9                   THE COURT: I'm saying just Miss Kinion. I  
10                  haven't heard anything about the Shaws. I haven't -- we  
11                  might come back again, Ms. Capers, but --

12                 MS. CAPERS: Well, we would have to unless  
13                 we're going to call the DA --

14                 THE COURT: Are you going to join in the  
15                 motion?

16                 MS. CAPERS: I did join in the motion.

17                 THE COURT: We're going to have to come back.

18                 MS. CAPERS: Are we going to have the DA back  
19                 again?

20                 THE COURT: No, we don't need the DA back.

21                 MS. CAPERS: Because I don't see any of the  
22                 facts changing regarding the malicious prosecution for my  
23                 clients.

24                 THE COURT: Well, I agree with that except

1 for the fact that when Ms. Pierce was reciting fact after  
2 fact after fact, that had everything to do with the  
3 amendment, in my mind. So you go ahead and amend. Well,  
4 the amendment. We have to answer the amended complaint.

5 MR. ZANIEL: Your Honor, wouldn't it be  
6 procedurally more sound if we filed an answer to the  
7 plaintiff's amended complaint that's on file now --

8 THE COURT: Yes.

9 MR. ZANIEL: -- and then add the counterclaims  
10 and whatever complaints the counter claimant wants to add  
11 with the exclusion of Mary Ellen Kinion's malicious  
12 prosecution claim? Then they could add whatever other  
13 claims they want. As opposed to amending the  
14 counterclaim to the old complaint, let's just to clean it  
15 up and we'll all answer the same amended complaint.

16 MR. MOORE: And in fact, we are on the same  
17 wavelength on that, Your Honor. That's why we have not  
18 been pushing for an answer because we thought the last  
19 thing this case needed was another pleading floating out  
20 there. So I do agree with Mr. Zaniel's suggestion. What  
21 Mr. Pintar, following up on your order, can do, is go  
22 ahead and reflect the motion is granted as to the motion  
23 for summary judgment on Kinion on malicious prosecution.  
24 The Court has clearly ordered on that.

1                   With that being issued at the same time,  
2                   counsel for the Spencers can discuss among themselves the  
3                   responsive pleading that they should file to my client's  
4                   amended complaint, which has been filed some time ago.  
5                   And what I would just ask is if we can just have a time  
6                   limit for that so that then the Court will have things in  
7                   order.

8                   THE COURT: Can you respond in 20 days to the  
9                   amended complaint?

10                  MR. ZANIEL: Yes, Your Honor. My answer is  
11                  going to stay the same. There's very little procedurally  
12                  different with the amended complaint, so as the  
13                  defendant, Jeff Spencer, I can be done with mine in a day  
14                  and then it would just be the counterclaim issues.

15                  MS. PIERCE: I would just like to put one  
16                  thing on the record. I'm still not getting all of the  
17                  e-mails and documents. I've never seen the service, so  
18                  if we could please be sure that everybody is listed?

19                  MR. ZANIEL: That was my fault.

20                  THE COURT: Yeah, when --

21                  MS. PIERCE: My current address is 515 Court  
22                  Street.

23                  THE COURT: Now, what I'd like to do -- when  
24                  I leave, get the addresses straightened out among

1       yourselves. But what I'd like to do is you have 30 days  
2       from -- well, by March 1st, answer the amended complaint.  
3       Okay? And do whatever you have to do in regards to  
4       responding to the amended complaint. That's all parties.  
5       Okay? Yes, we will be back here again, but I'll wait for  
6       the pleading, but I'd like to set a trial date, and that  
7       depends on this, on Douglas County, the two district  
8       courts here as far as availability. Towards the end of  
9       the year, October, November, that kind of thing. And how  
10      long will trial be?

11               When I first saw this thing, I saw two weeks,  
12      but I don't know if we really -- I don't know. So that  
13      is up to you. I've got a calendar here, and the clerk  
14      can ask as far as availability.

15               MR. ZANIEL: Your Honor, I don't know about  
16      two weeks anytime the rest of the year.

17               MR. MOORE: If I may be heard. I don't mean  
18      to interrupt you, Counsel, because I know you're working  
19      here, but I think I'd better put something right out  
20      there right away for everyone to know. My client is over  
21      80 years old. I have the ability, if need be --

22               THE COURT: Opportunity.

23               MR. MOORE: -- to file a motion for  
24      preferential trial setting. I would much rather have

1 everyone work and coordinate their calendars. That's  
2 much better for everyone, and hopefully we'll do that,  
3 but I point that out to hopefully encourage people to  
4 recognize we need to have a trial date this year.

5 MR. ZANIEL: Your Honor, I think if you order  
6 that a preferential trial setting be done, then I can  
7 attach that to a motion to continue on one of my other  
8 trials.

9 MR. MOORE: That sounds reasonable and we  
10 might do that. Maybe we should control our fate by  
11 identifying a trial date that we think would work, and  
12 then I can follow up with an appropriate motion practice.

13 THE COURT: All right. Let's start shooting  
14 some dates. I'm going to go into October. I'm kind of  
15 deferring to the clerk.

16 MR. MOORE: Judge, we're talking about 60  
17 days with a senior.

18 THE COURT: Oh, sorry. Very sorry.  
19 Absolutely.

20 MR. MOORE: If need be, we don't want to pull  
21 the trigger if we can find a date that works for people  
22 this year. I mean, my client is trying to see what's  
23 doable.

24 MR. PINTAR: We could bifurcate the trial,



1 too.

2 THE COURT: So when would the 60 days start?

3 MR. MOORE: When we file it and when the  
4 Court issues the order, really. So we'd have to think  
5 down the road. Let's say we filed it by March 1, just  
6 for the sake of discussion. The Court can rule maybe in  
7 two weeks. Well, we'd have to see if it's opposed. So  
8 I'm just thinking out loud, Your Honor. I'm thinking  
9 okay, filed March 1. That gets us to April. Then 60  
10 days after that, May, June. I think we're talking about  
11 really the summer, Your Honor.

12 MS. CAPERS: I'm out of the country in July.

13 THE COURT: See, that's where we're going.

14 MS. CAPERS: Right. I just put that out  
15 there.

16 MR. MOORE: We want to work with people, and  
17 I don't know what the Court's calendar is. The  
18 preferential setting may dictate that, but I understand  
19 this is being shared and this is complicated. I get  
20 that.

21 MR. ZANIEL: What about August 1st, Your  
22 Honor, or Ms. Capers is out the entire month or July  
23 31st?

24 MS. CAPERS: Yeah. I don't get back until

1 the 25th. I'll have no access. I'm in Haiti, so maybe  
2 even the second week in August.

3 MR. PINTAR: Judge, the PI case will take  
4 three days. That's pretty simple. And then we could do  
5 our case in a year, which is going to take more time.

6 THE COURT: Well, I'm open.

7 MR. MOORE: We're not going to bifurcate this  
8 case. It's time and resources, but that --

9 MR. ZANIEL: August 7th, Your Honor. That  
10 week, I do not have a trial. I do have a trial the  
11 following week, but if your order says expedite a trial,  
12 I file a motion to continue on that one, and we're good.

13 THE COURT: What about trying the case in  
14 Reno in a vacant courtroom?

15 MR. MOORE: We could stipulate to that.

16 THE COURT: We're all from Reno, basically,  
17 except for Ms. Capers.

18 MR. MOORE: I think the only question is  
19 whether or not -- it may be, but the question will have  
20 to do with the jury. The parties have demanded a jury.  
21 We may want to have it in this venue.

22 THE COURT: How many days are you looking at?

23 MR. ZANIEL: I think the plaintiff's case in  
24 chief is not going to take too long.

1           MR. MOORE: Yeah. I think our case in chief  
2 -- although judging what we've seen so far, I'm going to  
3 say three days for our case in chief.

4           THE COURT: We could say seven or eight days  
5 for trial.

6           THE CLERK: We have some lengthy trials  
7 coming up starting very end of July and into August. So,  
8 I mean, we've got one going on up until September 1st  
9 there.

10          MR. ZANIEL: Your Honor, if everybody  
11 stipulates to move to Reno then this calendar becomes  
12 irrelevant, correct?

13          THE COURT: What about the jury though?

14          MR. MOORE: We'd have to agree. That's the  
15 issue.

16          MR. ZANIEL: What if we stipulate to just a  
17 venue change?

18          THE CLERK: You'd have to change the venue,  
19 wouldn't you?

20          MR. MOORE: You're right. You would, in  
21 order to make that work to do that.

22          MR. ZANIEL: Are you good with that?

23          MR. SPENCER: No.

24          MR. ZANIEL: Okay. Then we're back to

1 Douglas County.

2 THE COURT: Let's react to your motion for  
3 speedy trial based on age. Let's see where we are there  
4 and then we can circulate as far as available dates. I  
5 will check, of course, with Douglas County because that's  
6 the first one. The defendant has the right to have a  
7 trial in their own home county, and I've just heard, off  
8 the record to the side, that Mr. Spencer wants a Douglas  
9 County jury, so we're going to go Douglas County, of  
10 course. And I'm good myself August/September.

11 THE CLERK: And July, you said, wasn't good  
12 right? You're gone?

13 MS. CAPERS: Right. Because then my clients  
14 are going to --

15 MR. MOORE: But that's why we're having this  
16 discussion because I will time my motion accordingly  
17 because we want to -- we understand people --

18 MS. CAPERS: Because we answer, you know,  
19 then we do a demand for jury trial as well.

20 THE COURT: And whenever we pick a trial date  
21 and how long, I'll say two weeks because I think it's  
22 longer than a week. But I volunteer -- and I've been  
23 doing this as a senior for the last four years -- I  
24 volunteer to do myself, and a jury insulates me from

1     this, a settlement conference, so we want to pick a  
2     settlement conference, too, about a month or six weeks  
3     before the jury trial. And we can do the settlement  
4     conference in Reno. That will save us because I always  
5     can get rooms there.

6             Mike, here's your -- this is the Douglas  
7     County Sheriff.

8             MR. PINTAR: Thanks.

9             THE COURT: So I'm waiting March -- at least  
10    by March 1st. Well, no. Leave it flexible, too,  
11    Mr. Moore.

12            MR. MOORE: I think we will. And what we  
13    will do is we'll contact the Court separately in a month.  
14    We'll see because the timing of our motion may impact  
15    things. We're just letting parties know we're shooting  
16    to have things done before the end of the year. Right  
17    now, it's sounding like September, October.

18            THE COURT: Yeah. Everybody understand that?

19            THE CLERK: If it's -- if there is  
20    availability in the other courtroom, say, it looks like  
21    there's a week August 14th through the 18th that is a  
22    possibility. So in your guys' discussions, just know  
23    that that's a possibility as well.

24            MR. ROUTSIS: Judge, we'd like to move the



1 exhibits into evidence.

2 THE COURT: Right. Exhibit what?

3 THE CLERK: Just mark it as 5. It's not been  
4 admitted.

5 THE COURT: Okay. Five. Any objection to  
6 number five? That's the police report I just handed back  
7 to you, Mr. Pintar.

8 MR. PINTAR: No.

9 THE COURT: Five will be admitted.

10 (Exhibit No. 5 was admitted into evidence.)

11 THE CLERK: Two.

12 THE COURT: Two is what?

13 THE CLERK: Two is the first page of the  
14 criminal complaint from the justice court.

15 MR. PINTAR: I object to that because it's  
16 incomplete.

17 THE COURT: All right. Then I just won't  
18 admit it.

19 THE CLERK: Okay. And then you had 3, which  
20 was the amended information.

21 MR. PINTAR: No objection to that.

22 THE COURT: Three will be admitted.

23 THE CLERK: And four is already admitted. So  
24 everything but two.

1           THE COURT: Okay. All right. Everybody have  
2 my -- and I think what happened to the pleading that I  
3 just got before the hearing where Mr. Routsis sent it to  
4 me yesterday, but I couldn't open it because it wasn't  
5 Word. It wasn't --

6           MR. MOORE: It was Word Perfect, Your Honor.

7           THE COURT: It was Word Perfect. I'm  
8 PDF/Word. Everyone has my address and phone number and  
9 all of that?

10          MR. MOORE: I think we do, Your Honor. The  
11 Court's been very accessible. The record will reflect  
12 that.

13          I have two other matters, if I may, for  
14 scheduling because it will be a lot more efficient while  
15 we're all here. We've been trying to reschedule the  
16 depositions of Jeffery and Marilyn Spencer to take place.  
17 We sent out correspondence on December 1st, and that's  
18 been in flux. Everyone is here. We should be able to  
19 find a date. We had proposed the week of March 6th for  
20 those depositions, and I'm just checking to see if we can  
21 use that time.

22          MR. ZANIEL: I have two trials, Your Honor.  
23 One trial went off. One trial is still on.

24          MR. MOORE: I'm in trial as well.

1 MR. ZANIEL: March 13th looks good. March  
2 14th looks good. March 16th looks good.  
3 MR. PINTAR: I could do March 20, 21st or  
4 22nd.  
5 MR. MOORE: Now you know why we need everyone  
6 in one room.  
7 MS. CAPERS: 20th. I'm good on the 20th.  
8 THE COURT: 20th? Going once? Going twice?  
9 MR. ZANIEL: 20th? March 20th?  
10 THE COURT: March 20th.  
11 MR. MOORE: And the 21st, to be on the safe  
12 side.  
13 THE COURT: And the 21st.  
14 MR. ZANIEL: I've got a depo that date, two  
15 depositions that date. What about the 22nd?  
16 MR. MOORE: I'm okay with the 22nd.  
17 MS. CAPERS: I'm good with it.  
18 MR. MOORE: So we have two dates, March 20th  
19 and 22nd, reserved for the depositions, hopefully the  
20 final depositions of the Spencers.  
21 THE COURT: Okay. 20 and 22?  
22 MR. ZANIEL: 20 and 22. At Sunshine?  
23 MR. MOORE: Yeah. I'll send out notices.  
24 THE COURT: All right. I'm going to leave.

1 Thanks a lot, everybody. Mr. Pintar is preparing the  
2 summary judgment, and everybody is responding to the  
3 amended complaint.

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STATE OF NEVADA)  
 )  
DOUGLAS COUNTY )

I, Nicole J. Hansen, Transcriptionist for the  
Ninth Judicial District Court of the State of Nevada, in  
and for Douglas County, do hereby certify:

That I took stenotype notes of the  
proceedings entitled herein from a JAVS CD, and  
thereafter transcribed the same into typewriting as  
herein appears;

That the foregoing transcript is a full, true  
and correct transcription of my stenotype notes of said  
proceedings.

DATED: At Carson City, Nevada, this 17th day  
of February, 2017.

  
Nicole J. Hansen, Transcriptionist.



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1 Case No. 14-CV-0260

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CLERK

A. NEWTON

5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF DOUGLAS

7  
8 HELMUT KLEMENTI,

9 Plaintiff,

10 vs.

ANSWER TO AMENDED COMPLAINT  
& AMENDED COUNTERCLAIM AND  
THIRD PARTY COMPLAINT

11 JEFFREY D. SPENCER,

12 Defendant.

13  
14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual, EGON  
18 KLEMENTI, an individual, ELFRIDE  
19 KLEMENTI, an individual, MARY ELLEN  
KINION, an individual, ROWENA SHAW,  
an individual, PETER SHAW, an individual,  
& DOES 1-5,

20 Counterdefendant &  
21 Third Party Defendants.

22 COMES NOW, Defendant JEFFREY D. SPENCER, by and through his attorney of record,  
23 DAVID M. ZANIEL, ESQ. of the law offices of RANALLI, ZANIEL, FOWLER & MORAN, LLC  
24 and Counterclaimant/Third-Party Plaintiff JEFFREY D. SPENCER, by and through his attorneys  
25 WILLIAM J. ROUTSIS, II, Esq. and LYNN G. PIERCE, Esq., hereby answers Plaintiff's Amended  
26 Complaint as follows:

27 Defendant denies each and every paragraph contained within the Plaintiff's Complaint on file  
28 herein, save and except for those matters that are expressly addressed hereinafter.

1 **JURISDICTION**

2 1. Answering Paragraphs 1 and 2 of Plaintiff's Complaint, Defendant admits each and every  
3 allegation contained therein.

4 2. Answering Paragraphs 3 of Plaintiff's Complaint, Defendant is without sufficient knowledge  
5 to form a belief as to the truth or falsity of the allegations contained therein and, therefore, must deny  
6 the same.

7 3. Answering Paragraphs 4 and 5 of Plaintiff's Complaint, Defendant denies each and every  
8 allegation contained therein.

9 **FIRST CLAIM FOR RELIEF (Negligence)**

10 4. Answering Paragraph 6 of Plaintiff's Complaint, Defendant repeats, realleges, and  
11 incorporates by reference the answers to each of the allegations set forth above.

12 5. Answering Paragraph 7, 8, 9, and 10 of Plaintiff's Complaint, Defendant denies each and  
13 every allegation contained therein.

14 **SECOND CLAIM FOR RELIEF (Assault & Battery)**

15 6. Answering Paragraph 11 of Plaintiff's Complaint, Defendant repeats, realleges, and  
16 incorporates by reference the answers to each of the allegations set forth above.

17 7. Answering Paragraph 12, 13, and 14 of Plaintiff's Complaint, Defendant denies each and  
18 every allegation contained therein.

19 **THIRD CLAIM FOR RELIEF (Pursuant to NRS 41.1395**  
20 **Damages for injury or loss suffered by older person)**

21 8. Answering Paragraph 15 of Plaintiff's Complaint, Defendant repeats, realleges, and  
22 incorporates by reference the answers to each of the allegations set forth above.

23 9. Answering Paragraphs 16, 17, 18, and 19 of Plaintiff's Complaint, Defendant denies each  
24 and every allegation contained therein.

25 **FOURTH CLAIM FOR RELIEF (Emotional Distress)**

26 10. Answering Paragraph 20 of Plaintiff's Complaint, Defendant repeats, realleges, and  
27 incorporates by reference the answers to each of the allegations set forth above.

28 11. Answering Paragraph 21 and 22 of Plaintiff's Complaint, Defendant denies each and every

1 allegation contained therein.

2 **FIFTH CLAIM FOR RELIEF(Punitive Damages Pursuant to NRS 42.005)**

3 12. Answering Paragraph 23 of Plaintiff's Complaint, Defendant repeats, realleges, and  
4 incorporates by reference the answers to each of the allegations set forth above.

5 13. Answering Paragraph 24 and 25 of Plaintiff's Complaint, Defendant denies each and every  
6 allegation contained therein.

7 **AFFIRMATIVE DEFENSES**

8 **FIRST AFFIRMATIVE DEFENSE**

9 Plaintiff's Complaint on file herein fails to state a claim against Defendant upon which relief  
10 can be granted.

11 **SECOND AFFIRMATIVE DEFENSE**

12 The incident alleged in the Complaint, and the resulting damage, if any, to Plaintiff, were  
13 proximately caused or contributed to by the Plaintiff's own negligence, and such negligence was  
14 greater than the negligence, if any, of Defendant.

15 **THIRD AFFIRMATIVE DEFENSE**

16 Defendant alleges that Plaintiff has failed to mitigate his damages, if any.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 The occurrences referred to in the Complaint, and all damages, if any, resulting therefrom,  
19 were caused by the acts or omissions of third parties over whom this answering Defendant had no  
20 control.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 Pursuant to NRCP Rule 11, as amended, all possible affirmative defenses may not have been  
23 alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon the filing  
24 of Defendant's Answer and, therefore, Defendant reserves the right to amend his Answer to allege  
25 additional affirmative defenses or withdraw certain affirmative defenses if subsequent investigation  
26 warrants.

27 **SIXTH AFFIRMATIVE DEFENSE**

28 Attorney's fees are only recoverable through contract or by statute and are not recoverable

1 as damages in a lawsuit for personal injury damages. Plaintiff's claim for attorney's fees as alleged  
2 in Plaintiff's Complaint, are not recoverable herein and have been improperly pled in Plaintiff's  
3 Complaint. Defendant specifically reserves the right to have Plaintiff's improperly pled claim for  
4 attorney's fees dismissed prior to trial.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 The occurrence referred to in Plaintiff's Complaint and all injuries and damages resulting  
7 therefrom, if any, were caused by intervening and superseding causes over which this answering  
8 Defendant had no control.

9 **EIGHTH AFFIRMATIVE DEFENSE**

10 The alleged injuries and damages claimed in Plaintiff's Complaint was caused in whole or  
11 in part by pre-existing medical conditions neither caused nor contributed to by this answering  
12 Defendant.

13 **NINTH AFFIRMATIVE DEFENSE**

14 The alleged injuries and damages claimed in Plaintiff's Complaint were caused in whole or  
15 in part by his pre-existing physical, mental and/or emotional conditions and are not the responsibility  
16 of this answering Defendant.

17 **TENTH AFFIRMATIVE DEFENSE**

18 The alleged injuries and damages claimed in Plaintiff's Complaint, if any, were caused in  
19 whole or in part by accident and/or causes occurring subsequent to the occurrence referred to in  
20 Plaintiff's Complaint and are not the responsibility of this answering Defendant.

21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 All and/or part of the medical damages and/or diagnostic studies performed on Plaintiff were  
23 unnecessary and/or unreasonable in costs and were not causally related to the alleged occurrence  
24 referred to in Plaintiff's Complaint.

25 **TWELVTH AFFIRMATIVE DEFENSE**

26 Defendant is not liable to Plaintiff under the sudden emergency doctrine.

27 **THIRTEENTH AFFIRMATIVE DEFENSE**

28 The occurrence referred to in Plaintiff's Complaint was unavoidable and not caused or

1 contributed to by this answering Defendant.

2 **FOURTEENTH AFFIRMATIVE DEFENSE**

3 To the extent the Plaintiff, or an agent, representative or subrogee of the Plaintiff, have  
4 received compensation from, or on behalf of, the Answering Defendant, the Answering Defendant  
5 is entitled to a set-off, or return of the value of such compensation, from Plaintiff, and Plaintiff is  
6 estopped from seeking such compensation to the extent it has already been paid.

7 **FIFTEENTH AFFIRMATIVE DEFENSE**

8 Plaintiff is prohibited from more than one recovery for the same injury or harm.

9 **SIXTEENTH AFFIRMATIVE DEFENSE**

10 Plaintiff's damages, if any, are insufficient for this Court to have jurisdiction over this matter.

11 **SEVENTEENTH AFFIRMATIVE DEFENSE**

12 The Plaintiff has a duty to preserve evidence which he knew, or reasonably should have  
13 known, would be relevant to this action, and any failure to do so bars the prosecution of this action  
14 against the Answering Defendant and/or requires the application of appropriate sanctions and  
15 safeguards to prevent unfair prejudice to the Answering Defendant.

16 **EIGHTEENTH AFFIRMATIVE DEFENSE**

17 No act or omission of Answering Defendant was a substantial factor in bringing about the  
18 damages alleged by Plaintiff, nor was any act or omission a contributing cause thereof. Any alleged  
19 act or omission of Answering Defendant was superseded or preceded by the acts or omissions of  
20 others, which were the independent, intervening, legal and proximate cause of the damage alleged  
21 by Plaintiff.

22 **NINETEENTH AFFIRMATIVE DEFENSE**

23 To the extent Plaintiff has waived, relinquished and/or released some or all of his claims  
24 against Answering Defendant, he is estopped from pursuing them in this action.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Defendant prays for judgment as follows:

- 27 1. That Plaintiff takes nothing by way of this action;  
28 2. For such other and further relief as this Court may deem just and proper; and



3. For attorneys fees and costs for having to defend this claim.

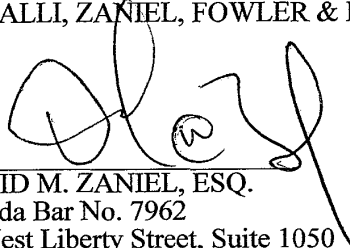
**Affirmation**

**Pursuant to NRS 239B.030**

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

DATED this 28 day of February 2017.

RANALLI, ZANIEL, FOWLER & MORAN, LLC

  
DAVID M. ZANIEL, ESQ.  
Nevada Bar No. 7962  
50 West Liberty Street, Suite 1050  
Reno, Nevada 89501  
Attorney for Defendant  
*Jeffrey D. Spencer*

**AMENDED COUNTERCLAIM AND THIRD PARTY COMPLAINT**

Defendant/Counterclaimant & Third Party Plaintiff JEFFREY D. SPENCER (hereinafter identified as "Counterclaimant"), by and through his attorneys WILLIAM J. ROUTSIS, II, Esq. and LYNN G. PIERCE, Esq., for his causes of action against the underlying Plaintiff and named Third Party Defendants (hereinafter identified as "Counter/3<sup>rd</sup> Party Defendants") hereby complains, alleges and avers as follows:

1. Counterclaimant JEFFREY D. SPENCER is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.
2. Counterdefendant HELMUT KLEMENTI is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.
3. Third Party Defendant EGON KLEMENTI is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.
4. Third Party Defendant ELFRIDE KLEMENTI is and was, at all times relevant to the causes of action alleged herein, a resident of Douglas County, State of Nevada.

1 5. Third Party Defendant MARY ELLEN KINION is and was, at all times relevant to the causes  
2 of action alleged herein, a resident of Douglas County, State of Nevada.

3 6. Third Party Defendant ROWENA SHAW is and was, at all times relevant to the causes of  
4 action alleged herein, a resident of Douglas County, State of Nevada.

5 7. Third Party Defendant PETER SHAW is and was, at all times relevant to the causes of action  
6 alleged herein, a resident of Douglas County, State of Nevada.

7 8. The true names and capacities whether individual, corporate, associate or otherwise of Third  
8 Party Defendants DOES 1 through 5, inclusive, and each of them, are unknown to Counterclaimant  
9 at this time. He therefore sues said Third Party Defendants by fictitious names and when their true  
10 names and capacities are ascertained, he will amend his Counterclaim and Third Party Complaint  
11 accordingly. Counterclaimant is informed, believes and therefore alleges that each of the Third Party  
12 Defendants designated herein as a DOE is responsible in some manner for the events and happenings  
13 referred to herein and each DOE Third Party Defendant caused the injuries and damages complained  
14 of herein.

15 9. Counterclaimant is informed, believes and therefore alleges that at all times relevant to the  
16 causes of action alleged herein, each Counter/3<sup>rd</sup> Party Defendant was acting as an agent,  
17 representative, partner and/or co-conspirator of other Counter/3<sup>rd</sup> Party Defendants, and was acting  
18 in the course and scope of such agency, representation, partnership and/or conspiracy in the events  
19 referred to herein.

#### 20 **STATEMENT OF FACTS**

21 10. In or about May 2012, JEFFERY SPENCER and his wife began erecting a fence on their  
22 residential property in Stateline for greater privacy in their yard and to contain their dog.

23 11. On or about May 27, 2012, Mrs. Spencer called the Douglas County Sheriff's Department  
24 to complain about EGON KLEMENTI coming on their property without their consent and taking  
25 photographs of two underage boys, nephews of the Spencer's close friend, who were shirtless while  
26 working the front yard.

27 12. On or about May 27, 2012, Officer Flagg of the Douglas County Sheriff's Department  
28 responded and spoke to EGON KLEMENTI to advise him of the Spencers' complaint and to advise

1 him that if he went on the Spencers' property again, he would be subject to arrest for trespassing.

2 13. On or about May 27, 2012, EGON KLEMENTI made no report nor complaint about  
3 JEFFERY SPENCER to Officer Flag.

4 14. JEFFERY SPENCER is and was working for F & B Inc., a sub-contractor for Kingsbury  
5 General Improvement District (hereinafter "KGID") for snow removal on roads within the Township  
6 of Stateline, Douglas County, Nevada.

7 15. On multiple occasions in November and December 2012, EGON KLEMENTI called KGID  
8 and complained that when plowing the road, JEFFREY SPENCER was intentionally leaving a snow  
9 berm in EGON and ELFRIDE KLEMENTI's driveway. EGON KLEMENTI also presented KGID  
10 a photograph depicting snow at the edge of their driveway in support of his complaints, but no  
11 photographs were ever produced showing any berms.

12 16. On or about December 12, 2012, MARY ELLEN KINION called KGID and complained that  
13 when plowing the road, JEFFREY SPENCER had intentionally left a snow berm in her driveway.

14 17. On or about December 12, 2012, EGON KLEMENTI called the Douglas County Sheriff's  
15 Department and complained that JEFFREY SPENCER intentionally used his snow plow to strike  
16 EGON KLEMENTI with snow, ice and debris as he was shoveling snow in his own driveway, and  
17 that the event had been witnessed by a neighbor MARY ELLEN KINION, who would corroborate  
18 his complaint.

19 18. On or about December 12, 2012, MARY ELLEN KINION called the Douglas County  
20 Sheriff's Department and reported that she had witnessed JEFFREY SPENCER intentionally use  
21 his snow plow to strike EGON KLEMENTI with snow, ice and debris from the snow plow, causing  
22 EGON KLEMENTI to suffer injuries.

23 19. On or about December 12, 2012, Deputy Sanchez of the Douglas County Sheriff's  
24 Department responded and spoke with both EGON KLEMENTI and MARY ELLEN KINION  
25 regarding their allegations against JEFFREY SPENCER. Deputy Sanchez determined that there was  
26 no evidence, no crime had been committed, and accordingly he wrote no police report.

27 20. On or about December 12, 2012, MARY ELLEN KINION called KGID and stated that she  
28 witnessed JEFFREY SPENCER intentionally use his snow plow to strike EGON KLEMENTI with

1 snow, ice and debris from the snow plow, causing EGON KLEMENTI to suffer injuries.

2 21. On or about December 12 and/or 13, 2012, EGON KLEMENTI and/or MARY ELLEN  
3 KINION made similar statements to other neighbors that JEFFREY SPENCER intentionally use his  
4 snow plow to strike EGON KLEMENTI with snow, ice and debris from the snow plow, causing  
5 EGON KLEMENTI to suffer injuries, and that MARY ELLEN KINION witnessed this battery.

6 22. On or about December 13, 2012, ROWENA SHAW and PETER SHAW sent a letter to  
7 KGID stating that MARY ELLEN KINION had witnessed JEFFREY SPENCER intentionally use  
8 his snow plow to strike EGON KLEMENTI with snow, ice and debris from the snow plow, causing  
9 EGON KLEMENTI to suffer injuries.

10 23. On or about December 13, 2012, ROWENA SHAW and PETER SHAW sent similar letters  
11 to various Douglas County agencies stating that MARY ELLEN KINION had witnessed JEFFREY  
12 SPENCER intentionally use his snow plow to strike EGON KLEMENTI with snow, ice and debris  
13 from the snow plow, causing EGON KLEMENTI to suffer injuries.

14 24. On or about December 13, 2012, EGON KLEMENTI called KGID's Director McKay and  
15 told him that JEFFREY SPENCER intentionally used his snow plow to strike EGON KLEMENTI  
16 with snow, ice and debris as he was shoveling snow in his own driveway.

17 25. On or about December 18, 2012, ELFRIDE KLEMENTI, EGON KLEMENTI, MARY  
18 ELLEN KINION, ROWENA SHAW and PETER SHAW attended a KGID meeting at which the  
19 Directors and members of the public were present.

20 26. ELFRIDE KLEMENTI spoke at that KGID meeting, reading from a letter she wrote to the  
21 Board, stating that there had been several police reports made, that her husband felt threatened by  
22 JEFFREY SPENCER, that JEFFREY SPENCER had been intentionally using his snow plow to  
23 create berms in their driveway, that JEFFREY SPENCER is aggressive and has a gun so she is  
24 afraid, and that she wants JEFFREY SPENCER removed from his position as a snow plow operator.

25 27. EGON KLEMENTI spoke at that KGID meeting stating that JEFFREY SPENCER had been  
26 intentionally using his snow plow to create berms in EGON and ELFRIDE KLEMENTI's driveway  
27 to "seal him in" and that JEFFREY SPENCER had intentionally used his snow plow to strike EGON  
28 KLEMENTI with snow, ice and debris from the road.

1 28. MARY ELLEN KINION spoke at that KGID meeting stating that she had personally  
2 witnessed the events complained of by EGON KLEMENTI, that JEFFREY SPENCER had a big grin  
3 while using his snow plow to strike EGON KLEMENTI with snow, ice and debris, and that  
4 JEFFREY SPENCER deliberately created snow berms with his snow plow in driveways.

5 29. ROWENA SHAW spoke at that KGID meeting reading from her emails to KGID and Mr.  
6 McKay complaining about JEFFREY SPENCER, and that JEFFREY SPENCER deliberately created  
7 snow berms with his snow plow in driveways.

8 30. PETER SHAW spoke at that KGID meeting complaining about JEFFREY SPENCER, and  
9 that JEFFREY SPENCER deliberately created snow berms with his snow plow in driveways.

10 31. On or about December 18, 2012, at approximately 8:35p.m., JEFFREY SPENCER heard  
11 someone near his vehicle in their driveway. Since there had been several vehicle thefts in the  
12 neighborhood, he told his wife to immediately call the Douglas County Sheriff's Department.

13 32. As Mrs. Spencer was calling the Douglas County Sheriff's Department, JEFFREY  
14 SPENCER ran down the stairs at the front of his home, yelling to the person near his vehicle to  
15 identify himself, asking why that person was breaking into his vehicle.

16 33. JEFFREY SPENCER ran out onto the icy street in the dark pursuing the intruder, who had  
17 not responded to identify himself. The intruder suddenly turned back toward JEFFREY SPENCER  
18 and they collided, causing the intruder to fall down in the street. JEFFREY SPENCER then saw the  
19 intruder was either HELMUT KLEMENTI or his twin brother EGON KLEMENTI.

20 34. When the Douglas County Sheriff's Department officers arrived in response to Mrs.  
21 Spencer's call, HELMUT KLEMENTI and EGON KLEMENTI both claimed HELMUT  
22 KLEMENTI had not been on JEFFREY SPENCER's property, that HELMUT KLEMENTI had been  
23 standing in the road taking pictures of the snow berm when JEFFREY SPENCER ran outside and  
24 punched HELMUT KLEMENTI before throwing him to the ground.

25 35. The Douglas County Sheriff's Department officers also spoke with ELFRIDE KLEMENTI  
26 and some neighbors that evening.

27 36. Based on the statements of HELMUT KLEMENTI, EGON KLEMENTI and others,  
28 JEFFREY SPENCER was arrested that night for misdemeanor battery of HELMUT KLEMENTI,

1 and was released after paying a bail that same evening.

2 37. Based upon the statements of HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE  
3 KLEMENTI, MARY ELLEN KINION and others, Douglas County Sheriff's Department instituted  
4 an investigation as to whether JEFFERY SPENCER had willfully abused an older person in  
5 violation of NRS §200.5092.

6 38. On or about December 19, 2012, MARY ELLEN KINION called Charles Manchester at  
7 KGID to say that JEFFREY SPENCER was arrested the night before for beating up HELMUT  
8 KLEMENTI.

9 39. On or about December 24, 2012, HELMUT KLEMENTI, EGON KLEMENTI and ELFRIDE  
10 KLEMENTI filed for a restraining order against JEFFREY SPENCER.

11 40. On or about January 8, 2013, HELMUT KLEMENTI attended a Douglas County Planning  
12 meeting at which the Planning Board and members of the public were present.

13 41. HELMUT KLEMENTI spoke at that Douglas County Planning meeting, using the agenda  
14 item of the Spencer's fence, stating that JEFFREY SPENCER had assaulted him and he had a  
15 restraining order against JEFFREY SPENCER.

16 42. On or about January 15, 2013, ELFRIDE KLEMENTI, ROWENA SHAW and PETER  
17 SHAW attended a KGID meeting at which the Directors and members of the public were present.

18 43. ELFRIDE KLEMENTI spoke at that KGID meeting stating that she was afraid of JEFFREY  
19 SPENCER because he had punched and beaten up HELMUT KLEMENTI and had been arrested.

20 44. ROWENA SHAW spoke at that KGID meeting, stating she was thankful a Sheriff's Deputy  
21 was there at her request, and reading a prepared written speech making accusations against  
22 JEFFREY SPENCER.

23 45. PETER SHAW spoke at that KGID meeting, reading a prepared written speech making  
24 accusations against JEFFREY SPENCER.

25 46. Several weeks after the incident, ROWENA SHAW and PETER SHAW provided Douglas  
26 County Sheriff's Department a surveillance video from their home filmed or about December 18,  
27 2012, which had been altered to remove frames showing HELMUT KLEMENTI on JEFFERY  
28 SPENCER's property next to his vehicle.

1 47. On or about January 17, 2013, JEFFERY SPENCER presented himself to the Douglas  
2 County Sheriff's Department for re-arrest on felony charges from the December 18, 2012 incident.  
3 Representations regarding that incident had been made by HELMUT KLEMENTI, EGON  
4 KLEMENTI, ELFRIDE KLEMENTI, MARY ELLEN KINION and others at their direction and/or  
5 instigation. He was released that same day.

6 48. In or about early 2013, MARY ELLEN KINION wrote an unsolicited letter to the Douglas  
7 County District Attorney which included an accusation that JEFFERY SPENCER had threatened  
8 to punch EGON KLEMENTI on May 27, 2012, even though she was not a witness to the alleged  
9 assault and even though EGON KLEMENTI himself had not reported any such alleged assault on  
10 that date when a Deputy came to his home because of a complaint by the Spencers.

11 49. On or about February 24, 2013, HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE  
12 KLEMENTI testified at a preliminary hearing, making accusations of criminal behavior against  
13 JEFFREY SPENCER.

14 50. EGON KLEMENTI testified at that preliminary hearing that JEFFREY SPENCER  
15 deliberately created berms in their driveway, and that JEFFREY SPENCER had deliberately  
16 showered him with road debris injuring him in his own driveway.

17 51. ELFRIDE KLEMENTI testified at that preliminary hearing that on May 27, 2012, JEFFREY  
18 SPENCER had threatened and then punched EGON KLEMENTI, even though she was not present  
19 and did not see the alleged assault or battery. ELFRIDE KLEMENTI testified at that preliminary  
20 hearing that on December 12, 2012, JEFFREY SPENCER had deliberately used his snow plow to  
21 cover EGON KLEMENTI with snow and ice, even though she was not present and did not see the  
22 alleged battery. She also testified that JEFFREY SPENCER deliberately created berms in their  
23 driveway, that EGON KLEMENTI is frail and feels very threatened by JEFFREY SPENCER.  
24 ELFRIDE KLEMENTI testified at that preliminary hearing that on December 18, 2012, JEFFREY  
25 SPENCER hurt HELMET KLEMENTI, even though she did not see that alleged battery either.

26 52. HELMET KLEMENTI testified at that preliminary hearing that JEFFREY SPENCER hit him  
27 in the chest and knocked him to the ground on December 18, 2012.

28 53. On or about March 8, 2013, an Amended Criminal Complaint was filed in Case No. 13-0069,



1 charging JEFFERY SPENCER with willfully and unjustifiably causing EGON KLEMENTI,  
2 ELFRIDE KLEMENTI and HELMUT KLEMENTI to incur pain, injury or mental anguish in  
3 violation of NRS §200.5092 and §200.5099.

4 54. On or about April 9, 2013, ELFRIDE KLEMENTI, MARY ELLEN KINION and ROWENA  
5 SHAW attended a Douglas County Planning meeting at which members of the public were present.

6 55. ROWENA SHAW used the Douglas County Planning meeting agenda item of the Spencer's  
7 fence to speak, stating that the Spencers were neighborhood bullies, and accusing JEFFREY  
8 SPENCER of battering HELMUT KLEMENTI.

9 56. MARY ELLEN KINION used the Douglas County Planning meeting agenda item of the  
10 Spencer's fence to speak, reading a letter from ELFRIDE KLEMENTI making accusations against  
11 JEFFREY SPENCER.

12 57. On or about April 24, 2013, at the preliminary hearing in Case No. 13-0069, the State  
13 claimed JEFFERY SPENCER had: (a) feloniously used a snow plow to create snow berms in the  
14 driveway of EGON and ELFRIDE KLEMENTI's home, blocking them into their home; (b)  
15 feloniously used a snow plow to intentionally batter EGON KLEMENTI with snow, ice and debris;  
16 (c) feloniously battered HELMUT KLEMENTI causing him to incur substantial bodily injury on  
17 December 18, 2012; and (d) feloniously verbally assaulted EGON KLEMENTI by threatening to  
18 punch him in the nose on May 23, 2012.

19 58. In or about April 2013, MARY ELLEN KINION, who was not a party to the restraining order  
20 proceeding initiated by HELMUT KLEMENTI, EGON KLEMENTI and ELFRIDE KLEMENTI,  
21 wrote an ex-parte letter to the Justice of the Peace hearing that matter trying to get more restrictive  
22 restraining orders against JEFFREY SPENCER.

23 59. On or about September 16 through 27, 2013, JEFFERY SPENCER was tried on the criminal  
24 charges brought against him based upon representations of Counterdefendants and each of them.

25 60. HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE KLEMENTI, MARY ELLEN  
26 KINION, ROWENA SHAW and PETER SHAW each testified at JEFFERY SPENCER's trial  
27 against JEFFERY SPENCER.

28 61. There was no credible evidence presented at trial that JEFFERY SPENCER had ever used

1 a snow plow to intentionally create snow berms in EGON and ELFRIDE KLEMENTI's driveway,  
2 to trap them in their home, at any time and specifically not in the winter of 2012-13.

3 62. There was no credible evidence presented at trial that JEFFERY SPENCER had used a snow  
4 plow to batter EGON KLEMENTI with snow, ice and debris while he was shoveling his driveway,  
5 intentionally or unintentionally.

6 63. There was no credible evidence presented at trial that JEFFERY SPENCER had verbally  
7 assaulted EGON KLEMENTI by threatening to punch him in the nose on May 27, 2012.

8 64. Evidence presented at trial established that neither HELMUT KLEMENTI, EGON  
9 KLEMENTI nor ELFRIDE KLEMENTI had informed anyone of the alleged assault of May 27,  
10 2012, at any time prior to filing for a protective order on or about December 24, 2012, despite  
11 numerous public statements made by them against JEFFERY SPENCER.

12 65. Further evidence presented at trial established that neither HELMUT KLEMENTI, EGON  
13 KLEMENTI, ELFRIDE KLEMENTI nor MARY ELLEN KINION had made a report to the Douglas  
14 County Sheriff's Department of the alleged assault of May 27, 2012, at any time prior to January  
15 2013, despite numerous interviews of them by Deputy Sheriffs regarding their allegations against  
16 JEFFERY SPENCER.

17 66. Evidence presented at trial established that ELFRIDE KLEMENTI and MARY ELLEN  
18 KINION were not witnesses of the May 27, 2012, alleged verbal assault, and they had no basis to  
19 make such accusations against JEFFERY SPENCER.

20 67. HELMUT KLEMENTI testified at trial that JEFFERY SPENCER had punched and battered  
21 him causing substantial bodily injuries.

22 68. Evidence presented at trial established that HELMUT KLEMENTI had been knocked down  
23 in a collision with JEFFERY SPENCER who had run down his stairs and chased the figure he had  
24 seen by his truck out onto the icy street, but there was no evidence that JEFFERY SPENCER had  
25 punched HELMUT KLEMENTI, and there was no credible evidence of intent to cause substantial  
26 bodily injury.

27 69. At the conclusion of the trial, on or about September 27, 2013, the jury returned in short  
28 order with the verdicts finding JEFFERY SPENCER not guilty on all charges.

1 70. EGON KLEMENTI continued to take pictures of the Spencers, their family members, friends  
2 and children who would come to visit at the Spencer home, despite being told by the Deputy Sheriff  
3 on or about May 27, 2012 to stop such behavior.

4 71. EGON KLEMENTI had claimed in seeking a Protective Order against JEFFERY SPENCER  
5 the end of December 2012, that he was in fear for his life, yet EGON KLEMENTI continued to walk  
6 down the Spencer's street past their home, almost daily and sometimes twice a day, even when  
7 JEFFERY SPENCER was sitting on his porch or in his driveway.

8 72. ELFRIDE KLEMENTI had claimed in seeking a Protective Order against JEFFERY  
9 SPENCER the end of December 2012, that she was in fear for her life, yet ELFRIDE KLEMENTI  
10 continued to walk down the Spencer's street past their home on many occasions

11 73. In or about March 2014, the restraining orders were all dissolved as there was no credible  
12 evidence that JEFFREY SPENCER was a threat of any kind to HELMUT KLEMENTI, EGON  
13 KLEMENTI and/or ELFRIDE KLEMENTI.

14 **FIRST CLAIM FOR RELIEF - DEFAMATION**

15 74. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 73 as if fully set forth herein.

16 75. Counter/3<sup>rd</sup> Party Defendants, and each of them, made repeated false and defamatory  
17 statements concerning JEFFREY SPENCER, publically asserting that he failed to properly do his  
18 job as a contract snow plower, that he assaulted and battered elderly persons, and that he had  
19 committed felonies against elderly persons.

20 76. The statements of Counter/3<sup>rd</sup> Party Defendants, and each of them, were unprivileged and  
21 were published verbally and/or in writing to businesses, agencies, boards, and members of the public  
22 generally.

23 77. Counter/3<sup>rd</sup> Party Defendants, and each of them, knew the statements were false when made,  
24 and/or the statements were made with a disregard for the truth.

25 78. The statements of Counter/3<sup>rd</sup> Party Defendants, and each of them, were made to get  
26 JEFFREY SPENCER terminated from his contract employment, to lower the community's opinion  
27 of JEFFREY SPENCER, and to cause him to be held up to contempt.

28 79. As a direct and proximate result of the statements and acts of Counter/3<sup>rd</sup> Party Defendants,

1 and each of them, JEFFREY SPENCER sustained harm in his business and/or profession, loss to  
2 his reputation, good name and standing in the community, and other losses and costs. His damages  
3 are both special and general in an amount in excess of \$10,000 according to proof.

4 **SECOND CLAIM FOR RELIEF - MALICIOUS PROSECUTION**

5 80. Counterclaimant realleges and incorporates ¶¶ 1 through 79 as if fully set forth herein.

6 81. Counter/3<sup>rd</sup> Party Defendants HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE  
7 KLEMENTI, ROWENA SHAW and PETER SHAW, and each of them, made statements to and/or  
8 communicated with and/or provided false evidence to the Douglas County Sheriff's Department  
9 and/or the Douglas County District Attorney's Office specifically to procure the institution of  
10 criminal charges and/or to add to the criminal charges brought, and/or to actively participate in the  
11 continuation of a criminal proceeding against JEFFREY SPENCER.

12 83. Said Counter/3<sup>rd</sup> Party Defendants, and each of them, acted with malice since they knew the  
13 evidence they were providing in support of the criminal proceeding was false and/or was made with  
14 a reckless disregard for the truth.

15 84. JEFFREY SPENCER was acquitted of all charges brought against him.

16 85. As a direct and proximate result of the statements and acts of said Counter/3<sup>rd</sup> Party  
17 Defendants, and each of them, JEFFREY SPENCER sustained harm in his business and/or  
18 profession, loss to his reputation, good name and his standing in the community, and other losses  
19 and costs. His damages are both special and general in an amount in excess of \$10,000 according  
20 to proof.

21 **THIRD CLAIM FOR RELIEF - CIVIL CONSPIRACY (DEFAMATION)**

22 86. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 85 as if fully set forth herein.

23 87. Counter/3<sup>rd</sup> Party Defendants, and each of them, acted in concert in making repeated false  
24 and defamatory statements concerning JEFFREY SPENCER, that he failed to properly do his job  
25 as a contract snow plower, that he assaulted and battered elderly persons, and that he had committed  
26 felonies against elderly persons.

27 88. Counter/3<sup>rd</sup> Party Defendants, and each of them, acted in concert in making statements to and  
28 communicating with businesses, agencies, boards, and members of the public generally.

1 89. Counter/3<sup>rd</sup> Party Defendants, and each of them, knew or should have known that the  
2 objective and purpose of making such statements was to cause harm to JEFFREY SPENCER, and  
3 explicitly and/or tacitly agreed to make such statements to cause harm to JEFFREY SPENCER.

4 90. The statements and acts of Counter/3<sup>rd</sup> Party Defendants, and each of them, were intended  
5 to get JEFFREY SPENCER terminated from his contract employment, to lower the community's  
6 opinion of JEFFREY SPENCER, to cause him to be held up to contempt.

7 91. The statements and acts of Counter/3<sup>rd</sup> Party Defendants, and each of them, were wrongful  
8 and were made with a disregard for the truth, for the sole purpose of harming JEFFREY SPENCER.

9 92. As a direct and proximate result of the statements and acts of Counter/3<sup>rd</sup> Party Defendants,  
10 and each of them, acting in furtherance of their civil conspiracy, JEFFREY SPENCER sustained  
11 harm in his business and/or profession, loss to his reputation, good name and standing in the  
12 community, and other losses and costs. His damages are both special and general in an amount in  
13 excess of \$10,000 according to proof.

14 **FOURTH CLAIM FOR RELIEF - CIVIL CONSPIRACY (MALICIOUS PROSECUTION)**

15 93. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 92 as if fully set forth herein.

16 94. Counter/3<sup>rd</sup> Party Defendants HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE  
17 KLEMENTI, ROWENA SHAW and PETER SHAW, and each of them, acted in concert in making  
18 repeated false statements concerning JEFFREY SPENCER.

19 95. Said Counter/3<sup>rd</sup> Party Defendants, and each of them, acted in concert in making statements  
20 to and communicating with the Douglas County Sheriff's Department and Douglas County District  
21 Attorney's Office to procure the institution of criminal charges, and/or to add to the criminal charges  
22 brought, and/or to actively participate in the continuation of a criminal proceeding against JEFFREY  
23 SPENCER.

24 96. Said Counter/3<sup>rd</sup> Party Defendants, and each of them, knew or should have known that the  
25 objective and purpose of making such statements and taking such acts was to cause harm to  
26 JEFFREY SPENCER, and explicitly and/or tacitly agreed to make such statements and take such  
27 acts to cause harm to JEFFREY SPENCER.

28 97. The statements and acts of said Counter/3<sup>rd</sup> Party Defendants, and each of them, were

1 intended to initiate criminal proceedings and/or to procure a criminal conviction against JEFFREY  
2 SPENCER.

3 98. The statements and acts of said Counter/3<sup>rd</sup> Party Defendants, and each of them, were  
4 wrongful and were made and taken with a disregard for the truth, for the sole purpose of harming  
5 JEFFREY SPENCER.

6 99. As a direct and proximate result of the statements and acts of said Counter/3<sup>rd</sup> Party  
7 Defendants, and each of them, acting in furtherance of their civil conspiracy, JEFFREY SPENCER  
8 sustained harm in his business and/or profession, loss to his reputation, good name and standing in  
9 the community, incurred substantial attorneys' fees and costs, and other losses and costs. His  
10 damages are both special and general in an amount in excess of \$10,000 according to proof.

11 **FIFTH CLAIM FOR RELIEF - PUNITIVE DAMAGES**

12 100. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 99 as if fully set forth herein.

13 101. Counter/3<sup>rd</sup> Party Defendants, and each of them, acted with a conscious disregard of the  
14 probable harmful consequences of their wrongful acts, with a willful and deliberate failure to avoid  
15 those consequences, by intentional misrepresentations, deceptions and/or concealment of material  
16 facts known to them with the intent to injure JEFFREY SPENCER.

17 102. Counter/3<sup>rd</sup> Party Defendants, and each of them, acted with express or implied malice, with  
18 an intent to injure JEFFREY SPENCER, and through despicable conduct with a conscious disregard  
19 of his rights, subjected JEFFREY SPENCER to cruel and unjust hardships.

20 103. As a direct and proximate result of the statements and acts of Counter/3<sup>rd</sup> Party Defendants,  
21 and each of them, JEFFREY SPENCER sustained harm and damages, and should be awarded  
22 punitive damages.

23 **SIXTH CLAIM FOR RELIEF - INFLICTION OF EMOTIONAL DISTRESS**

24 104. JEFFREY SPENCER realleges and incorporates ¶¶ 1 through 103 as if fully set forth herein.

25 105. Counter/3<sup>rd</sup> Party Defendants, and each of them, acted intentionally or with a reckless  
26 disregard for the likelihood of causing emotional distress.

27 106. As a direct and proximate result of the statements and acts of Counter/3<sup>rd</sup> Party Defendants,  
28 and each of them, JEFFREY SPENCER sustained severe emotional distress, and suffered and

1 continues to suffer from physical ailments directly attributable to the severe emotional distress.


2 107. As a direct and proximate result of the emotional distress caused by the statements and acts  
3 of Counter/3<sup>rd</sup> Party Defendants, and each of them, JEFFREY SPENCER has suffered mental and  
4 physical pain, has incurred medical expenses, and other losses and costs. His damages are both  
5 special and general in an amount in excess of \$10,000 according to proof.


6 WHEREFORE, Counterclaimant JEFFREY SPENCER prays judgement against Counter/3<sup>rd</sup>  
7 Party Defendants, and each of them, for:

- 8 1. Special damages in excess of Ten Thousand Dollars (\$10,000);
- 9 2. General damages in excess of Ten Thousand Dollars (\$10,000);
- 10 3. Punitive damages;
- 11 4. Prejudgment interest;
- 12 5. Attorneys' fees and costs; and,
- 13 6. Such other and further relief as the Court may deem just and proper.

14 The undersigned affirm pursuant to NRS §239B.030 that this pleading does not contain the  
15 social security number of any person.

16 DATED this 28<sup>th</sup> day of February, 2017.

17  
18   
19 WILLIAM J. ROUTSIS, II, Esq.  
20 Nevada State Bar No. 5474  
21 1070 Monroe Street  
22 Reno, Nevada 89509  
23 Phone 775-337-2609/Fax 775-737-9321  
24 Attorneys for Counterclaimant/Third Party Plaintiff Jeffrey D. Spencer

17  
18   
19 LYNNE G. PIERCE, Esq.  
20 Nevada State Bar No. 3567  
21 515 Court Street, Suite 2f  
22 Reno, Nevada 89501  
23 Phone 775-785-9100/Fax 775-785-9110



1 **CERTIFICATE OF SERVICE**

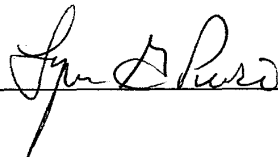
2 Pursuant to NRCP Rule 5(b), I certify that on this date I served a true and correct copy of the  
3 foregoing pleading by deposit into the U.S. Postal Service, first class postage pre-paid, addressed  
4 to:

5 Douglas R. Brown, Esq.  
Christian L. Moore, Esq.  
6 Lemons, Grundy & Eisenberg  
6005 Plumas Street, Suite 300  
7 Reno, NV 89519  
*Attorneys for Helmut Klementi*

8  
9 Michael A. Pinter, Esq.  
Glogovac & Pinter  
10 427 W. Plumb Lane  
Reno, NV 89509  
11 *Attorneys for Egon Klementi, Elfriede*  
*Klementi & Mary Ellen Kinion*

12  
13 Tanika Capers, Esq.  
6750 Via Austi Parkway, Suite 310  
14 Las Vegas, NV 89119  
*Attorney for Rowena Shaw & Peter Shaw*

15 DATED this 28<sup>th</sup> day of February, 2017.

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27  
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1 CASE NO.: 14-CV-0260

2 DEPT. NO.: 1

RECEIVED

MAR 21 2017

Douglas County  
County Court Clerk

ORIGINAL

FILED  
2017 MAR 21 PM 3:11

BOBBIE R. WILLIAMS  
CLERK

BY *M. Brown* DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

9 HELMUT KLEMENTI,

10 Plaintiff,

11 vs.

12 JEFFREY D. SPENCER & DOES 1-5,

13 Defendants.

14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17  
18 HELMUT KLEMENTI, an individual,  
19 EGON KLEMENTI, an individual, MARY  
ELLEN KINION, an individual, and DOES  
1-5,

20 Counterdefendants.

**MEMORANDUM OF COSTS AND  
DISBURSEMENTS**

22 Counterdefendant, Mary Ellen Kinion ("Defendant"), by and through her attorneys,  
23 Glogovac & Pintar, hereby submit the following Memorandum of Costs and Disbursements as  
24 follows:

25 **Clerks' Fees:**

26 Demand for Change of Venue	\$230.00
27 Initial Appearance	\$3.19
28 Reply in Support of Demand for Change of Venue	\$3.50

1 **Court Reporters' Fees:**

2 Sunshine Litigation (Depo of Rowena & Peter Shaw) \$262.50  
3 Sunshine Litigation (Video Depo of Jeffery Spencer) \$1,637.25  
4 Reporting Fee and Transcript of Pre-Trial Conference \$150.00  
5 Sunshine Litigation (Appearance Fee for Hearing) \$330.00  
6 Sunshine Litigation (Transcript of Hearing held on 12/12/16) \$216.00  
7 Capitol Reporter (Transcripts of Marilyn & Jeffery Spencer Trial) \$491.25  
8 Sunshine Litigation (Audio tape transcription of Status Hearing) \$460.45

9 **Photocopies:**

10 Sierra Legal Duplicating (12/2/15) \$175.04  
11 9<sup>th</sup> Judicial District Court (4/21/16) \$17.00

12 **TOTAL COSTS AND DISBURSMENTS: \$3,976.18**


13 **AFFIRMATION**  
14 **Pursuant to NRS 239B.030**

15 The undersigned does hereby affirm that the preceding document does not contain the  
16 social security number of any person.

17 DATED this 6<sup>th</sup> day of March, 2017.

18 GLOGOVAC & PINTAR

19 By:

20   
21 MICHAEL A. PINTAR, ESQ.  
22 Nevada Bar No. 003789  
23 Attorneys for Counterdefendant,  
24 Mary Ellen Kinion  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the foregoing document(s) described as follows:

**MEMORANDUM OF COSTS AND DISBURSEMENTS**

On the party(s) set forth below by:

  X   Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

       Personal delivery.

       Facsimile (FAX).

       Federal Express or other overnight delivery.

addressed as follows:

William Routsis, Esq.  
1070 Monroe Street  
Reno, NV 89509  
*Attorneys for Jeffrey Spencer*


Lynn G. Pierce, Esq.  
515 Court Street, Suite 2f  
Reno, NV 89501  
*Attorneys for Jeffrey Spencer*

Douglas R. Brown, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas St., 3rd Floor  
Reno, NV 89519  
*Attorneys for Helmut Klementi*

David Zaniel, Esq.  
Ranalli & Zaniel, LLC  
50 W. Liberty St., Suite 1050  
Reno, NV 89509  
*Attorneys for Jeffrey Spencer*

Tanika Capers, Esq.  
6750 Via Austi Parkway, Suite 310  
Las Vegas, NV 89119  
*Attorneys for Rowena Shaw and Peter Shaw*

Dated this   7   day of March, 2017.

  
\_\_\_\_\_  
Melissa L. Welch

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: I

RECEIVED

FILED

MAR 21 2017

Douglas County  
District Court Clerk

2017 MAR 21 PM 3:11

DOBBIE R. WILLIAMS  
CLERK

BY M. Blain DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,

9 Plaintiff,

10 vs.

11 JEFFREY D. SPENCER & DOES 1-5,

12 Defendants.

13 \_\_\_\_\_  
14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual,  
18 EGON KLEMENTI, an individual, MARY  
ELLEN KINION, an individual, and DOES  
1-5,

19 Counterdefendants.

**MOTION FOR ATTORNEY'S FEES  
AND COSTS**

21 Counter-defendant, Mary Ellen Kinion ("Kinion"), by and through her attorneys of  
22 record, Glogovac & Pintar, and pursuant to NRCP 18.005 and NRS 18.010, respectfully  
23 submits this motion for attorney's fees and costs.

24 This motion is based upon the attached Memorandum of Points and Authorities along  
25 with all papers and pleadings on file herein.

26 ///

27 ///

28 ///

I.

**MEMORANDUM OF POINTS AND AUTHORITIES**

A. **Introduction**

On February 3, 2015, Spencer filed a document entitled Answer and Counterclaim. In the Counterclaim, Spencer alleged, in relevant part, that Kinion made false statements at a KGID board meeting and then later to the Douglas County District Attorney's Office for the purpose of persuading and inducing the State to prosecute Spencer. On April 22, 2016, Kinion moved for summary judgment on the claim for malicious prosecution. Following a hearing on January 30, 2017, the Court granted that motion.

As will be shown below, in asserting a claim for malicious prosecution, neither Spencer, nor his counsel, conducted a reasonable investigation, or they ignored the documents, other facts and applicable law that specifically identify and establish the impropriety of the claim against Kinion. Because the claim for malicious prosecution was brought and maintained without reasonable grounds, it cannot be considered as anything other than a heavy-handed, unsupported litigation tactic designated to harass. Thus, Kinion is entitled to an award of attorney's fees and costs pursuant to NRS 18.010(2)(b).

B. **Background**

The undisputed facts show that on December 18, 2012, Kinion attended a neighborhood KGID meeting wherein she informed KGID of the events that took place several days earlier regarding a snowplow incident involving Spencer and Egon Klementi ("Egon"). Later that same evening, Spencer assaulted Egon's brother, Helmut Klementi ("Helmut") while Helmut was taking pictures of the snow berm in front of his brother's house.

The Douglas County Sheriff's Office responded and conducted an investigation of the incident. As part of that investigation, Douglas County Deputy Sheriff McKone interviewed Helmut, Egon, Elfie Klementi, Janet Wells, Spencer and Marilyn Spencer. According to the Douglas County Sheriff's Report and Deputy McKone's deposition testimony, Spencer informed Deputy McKone that he attacked Helmut because he believed Helmut was breaking into his truck. Spencer also claimed that he thought Helmut was a teenager in a hoodie. Spencer

1 admitted to Deputy McKone that he grabbed Helmut and threw him to the ground. Ultimately,  
2 Deputy McKone did not find Spencer's account to be credible. As a result, Deputy McKone  
3 arrested Spencer for battery and abuse of an elder. Deputy McKone never spoke with or  
4 obtained a statement from Kinion. In fact, he never had any interaction with Kinion whatsoever  
5 and did not base his decision to arrest Spencer on any information originating from Kinion.

6 Following Spencer's arrest, the Douglas County Deputy District Attorney's office  
7 pursued criminal charges against Spencer. Later, at the direction of the Douglas County District  
8 Attorney, Kinion was asked to write a letter explaining what she saw and/or heard Spencer do.  
9 Kinion did that and sent a letter to the District Attorney's Office that was received in that office  
10 on February 22, 2013. Exhibit 1, attached.

11 On January 31, 2017, a hearing was held on Kinion's motion for summary judgment. At  
12 that hearing, Maria Pence, the Douglas County District Attorney who prosecuted the criminal  
13 case against Spencer testified. Ms. Pence specifically testified that no one was involved in the  
14 decision as to what criminal charges to bring against Spencer other than herself. Ms. Pence  
15 further testified that the original criminal charges she filed against Spencer were Battery, a  
16 misdemeanor, Intimidation of a Witness to Influence Testimony, a category D felony, and  
17 Exploitation of an Elderly Person, a gross misdemeanor. Exhibit 2, Hearing Transcript p. 49:  
18 11-14. Later, the gross misdemeanor charge was enhanced by Ms. Pence to a felony based on  
19 the medical records that showed that Helmut Kelmenti had received substantial body injuries.  
20 Exhibit 2, p. 64: 4-9.

21 Ms. Pence's testimony confirms that Plaintiff's claim for malicious prosecution against  
22 Kinion was brought without a reasonable investigation and/or in ignorance of the facts. Ms.  
23 Pence's testimony was that nothing Kinion said or did affected the criminal charges filed  
24 against Spencer. Kinion had no involvement in the Douglas County Deputy Sheriff's decision  
25 to arrest Spencer on December 18, 2012 and nothing that Kinion wrote or said in her letter to  
26 the Douglas County District Attorney's office resulted in the charges against Spencer being  
27 enhanced. Kinion was simply told by Ms. Pence that, "if you have any information you think  
28



1 that would be relevant or helpful, please write it down and send it to the District Attorney's  
2 Office." Exhibit 2, p. 22: 16-23.

3 C. Discussion.

4 1. Sanctions

5 NRS 18.010(2)(b) provides in pertinent part:

6 Without regard to the recovery sought, when the court finds that  
7 the claim, **counterclaim**, cross-claim or third-party complaint or  
8 defense of the opposing party **was brought or maintained**  
9 **without reasonable ground or to harass the prevailing party.**  
10 **The court shall liberally construe the provisions of this**  
11 **paragraph in favor of awarding attorney's fees in all**  
12 **appropriate situations.** It is the intent of the Legislature that the  
13 court award attorney's fees pursuant to this paragraph and  
14 **impose sanctions pursuant to Rule 11** of the Nevada Rules of  
Civil Procedure in all appropriate situations to punish for and  
deter frivolous or vexatious claims and defenses because such  
claims and defenses overburden limited judicial resources, hinder  
the timely resolution of meritorious claims and increase the costs  
of engaging in business and providing professional services to the  
public.*(Emphasis added).*

15 In addition to Ms. Pence categorically denying that Kinion had any involvement in the  
16 criminal charges against Spencer it is clear that Spencer and his attorneys did no investigation  
17 before filing the claim for malicious prosecution. To this end, in asserting their claim against  
18 Kinion, Spencer did *not* have a copy of the February 22, 2013 letter written by Kinion that was  
19 received by the Douglas County District Attorney's office. Moreover, as established at the  
20 recent hearing, Spencer did *not* have a copy of the Criminal Complaint upon which the initial  
21 criminal charges against Spencer were based. Further, Spencer did *not* have a copy of the  
22 amended criminal charges. If they did, Spencer and his attorneys, would have known that the  
23 criminal charges asserted against Spencer were filed *before* the Douglas County District  
24 Attorney spoke to Kinion and that they were enhanced only upon the District Attorney's office  
25 learning of the severity of Helmut Klementi's injuries and damages. Nothing that Kinion said  
26 or did affected the criminal charges against Spencer. Based on the foregoing, the malicious  
27 prosecution claim was filed without reasonable grounds and solely to harass. Kinion should  
28 therefore be awarded her attorney's fees and costs.

1           **2.     Attorney's Fees.**

2           In addition to an entitlement to attorney's fees under NRS 18.010(2)(b), Kinion is also  
3 entitled to an award of attorney's fees and costs by reason of her being the prevailing party in  
4 summary judgment. "To be a prevailing party, a party need not succeed on every issue," MB  
5 Am., Inc. v. Alaska Pac. Leasing Co., 367 P.3d 1286, 132 Nev. Adv. Op. 8 (2016), quoting  
6 LVMPD v. Blackjack Bonding, Inc., 131 Nev. —, —, 343 P.3d 608, 615 (2015). In the  
7 MB Am case, the court affirmed attorney's fees awarded to Alaska Pacific after Alaska Pacific  
8 was granted summary judgment making Alaska Pacific the prevailing party. In this case,  
9 Kinion defeated a significant portion of the counter-claims against her. Therefore, attorney's  
10 fees and costs related to litigating the motion for summary judgment should be awarded.

11           "The decision whether to award attorney's fees is within the sound discretion of the  
12 trial court." Bergmann v. Boyce, 109 Nev. 670, 674 856 P.2d 560, 563 (1993), citing to  
13 County of Clark v. Blanchard Constr. Co., 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982); see  
14 National Tow v. Integrity Ins. Co., 102 Nev. 189, 191, 717 P.2d 581, 583 (1986). The  
15 Bergmann Court stated, "The fact that not all claims are frivolous does not prevent an award  
16 of attorneys' fees." Bergmann at 675, citing to Department of Revenue v. Arthur, 153 Ariz. 1,  
17 734 P.2d 98, 101 (Ct.App.1986). Attorney's fees should be allocated with relation to  
18 "grounded and groundless claims." Id at 675-676.

19           From the beginning, the claim for malicious prosecution that Spencer brought against  
20 Kinion was frivolous, vexatious, and without merit. It was designed solely to harass and  
21 intimidate. As a result, Kinion was forced to seek legal counsel and her attorneys were  
22 required to perform written discovery and depositions to establish that the malicious  
23 prosecution claim was without merit.

24           The law firm of Glogovac & Pintar incurred \$16,160 in fees defending Kinion from  
25 Spencer's claim of malicious prosecution See Affidavit of Michael A. Pintar, attached hereto  
26 as Exhibit 3. Attorney Pintar performed most of the work himself, but also had the assistance  
27 of his partner, Scott Glogovac, associates, and paralegals.

1 What began as a criminal case against Spencer has now evolved into a civil action by  
2 which Spencer seeks to harass and intimidate Kinion and the other counter-defendants.  
3 Working up a case to the point where summary judgment is granted requires much time and  
4 effort. It requires specific written discovery and deposition questions which focus in on the  
5 pertinent issues in dispute. As a culmination of the time and attention, summary judgment was  
6 entered in favor of Kinion.

7 **3. Costs.**

8 Costs must be actual costs that are also reasonable. Gibellini v. Klindt, 110 Nev. 1201,  
9 1206, 885 P.2d 540, 543 (1994).

10 “Costs must be allowed of course to the prevailing party  
11 against any adverse party against whom judgment is rendered . . .  
12 [i]n an action for the recovery of money or damages, where the  
13 plaintiff seeks to recover more than \$2,500.” NRS 18.020(3). In  
14 actions not specifically enumerated in NRS Chapter 18, the  
15 district court has discretion in awarding fees to the prevailing  
16 party. NRS 18.050. Under either statute, a party must prevail  
17 before it may win an award of costs.” Golightly & Vannah,  
18 PLLC v. TJ Allen, LLC, 132 Nev. Adv. Op. No. 41 at \*8 (2016).

19 As put forth above, Kinion was the prevailing party. NRS 18.005 defines the costs  
20 allowed to be recovered. As set forth in Exhibit 3, Kinion has also incurred costs in the  
21 amount of \$3,976.18 in defending this matter through the January 31, 2016 hearing.

22 **AFFIRMATION**

23 **Pursuant to NRS 239B.030**

24 The undersigned does hereby affirm that the preceding document does not contain the  
25 social security number of any person.

26 DATED this 6<sup>th</sup> day of March, 2017.

27 GLOGOVAC & PINTAR

28 By: 

MICHAEL A. PINTAR, ESQ.  
Nevada Bar No. 003789  
Attorneys for Counterdefendant,  
Mary Ellen Kinion

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac  
3 & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the foregoing document(s)  
4 described as follows:

5 **MOTION FOR ATTORNEY'S FEES AND COSTS**

6 On the party(s) set forth below by:

7   X   Placing an original or true copy thereof in a sealed envelope placed for  
8 collection and mailing in the United States Mail, at Reno, Nevada, postage  
9 prepaid, following ordinary business practices.

10        Personal delivery.

11        Facsimile (FAX).

12        Federal Express or other overnight delivery.

13 addressed as follows:

14 Douglas R. Brown, Esq.  
15 Lemons, Grundy & Eisenberg  
16 6005 Plumas St., 3rd Floor  
17 Reno, NV 89519  
*Attorneys for Counter-Defendant Helmut Klementi*

Tanika M. Capers, Esq.  
6750 Via Austi Parkway, Suite 310  
Las Vegas, NV 89119  
*Attorneys for Defendants Rowena Shaw and Peter Shaw*

18 William Routsis, Esq.  
19 1070 Monroe Street  
20 Reno, NV 89509  
*Attorneys for Counter-Claimant Jeffrey Spencer*

Lynn G. Pierce, Esq.  
440 Ridge St., Suite 2  
Reno, NV 89501  
*Attorneys for Counter-Claimant Jeffrey Spencer*

21 David Zaniel, Esq.  
22 Ranalli & Zaniel, LLC  
23 50 W. Liberty St., Suite 1050  
24 Reno, NV 89509  
*Attorneys for Defendant Jeffrey Spencer*

25 Dated this   7   day of March, 2017.

27   
28 Melissa L. Welch

**EXHIBIT 3**

**EXHIBIT 3**

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: II

3

4

5

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,

9 Plaintiff,

10 vs.

11 JEFFREY D. SPENCER & DOES 1-5,

12 Defendants.

13

14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual,  
18 EGON KLEMENTI, an individual, MARY  
ELLEN KINION, an individual, and DOES  
1-5,

19 Counterdefendants.

20

21 STATE OF NEVADA )

22 ) ss.

23 COUNTY OF WASHOE )

24

25 MICHAEL A. PINTAR, ESQ., does hereby swear under penalty of perjury that the  
26 following assertions are true:

27 1. I am an attorney duly licensed and admitted to practice before all courts in the  
28 State of Nevada, and I am a member in good standing with the State Bar of Nevada.

**AFFIDAVIT OF MICHAEL A. PINTAR IN  
SUPPORT OF COUNTER-DEFENDANT  
MARY ELLEN KINION'S MOTION FOR  
ATTORNEY'S FEES AND COSTS**

2. I am the attorney of record for Counter-defendant, Mary Ellen Kinion (“Kinion”) in the above-entitled action.

3. I make this affidavit in support of Kinion's Motion for Attorney's Fees and Costs.

4. Attorneys' fees and paralegal fees in the amount of \$16,160.00 (85.9 hours @ \$150/hr.; 24.5 hours @ \$125/hr. and 2.5 hours @ \$85/hr.) have been incurred by the law firm of Glogovac & Pinter with respect to defending Kinion against the claim for malicious prosecution and for the preparation of Kinion's Motion for Summary Judgment and the subsequent hearings held on December 15, 2016 and January 30, 2017. (Attached hereto as Exhibit 1 are copies of the redacted invoices reflecting the legal work performed).

5. That the attorneys' and paralegal fees charged are just, reasonable and fair under the circumstances.

6. That attached to the motion as Exhibit 1, is a true and correct copy of Kinion's letter to the Douglas County District Attorney.

7. Attached as Exhibit 2, is a true and correct copy of the January 30, 2017 hearing transcript.

8. Further affiant sayeth not.

Dated this 6<sup>th</sup> day of March, 2017.

  
MICHAEL A. PINTAR, ESQ.

SUBSCRIBED and SWORN to before me,  
this 7 day of March, 2017.

Melissa W. Selk  
NOTARY PUBLIC





---

**EXHIBIT 1**

**EXHIBIT 1**

GLOGOVAC & PINTAR  
Attorneys at Law  
427 West Plumb Lane  
Reno, Nevada 89509-3766  
Telephone (775) 333-0400  
Facsimile (775) 333-0412  
Employer I.D. No. 88-0340418

Allstate Insurance Company  
500 E. Warm Springs Rd., Ste. 200  
P. O. Box 98761  
Las Vegas, NV 89193-8761

May 2, 2016  
Our File No. ALL.1741  
Invoice Number: 62698

Re: Klementi and Kinion v. Spencer  
DOL: December 12, 2012  
0360834337.2  
[REDACTED]

Statement of Account for Services Rendered Through April 30, 2016

ATTORNEY FEES

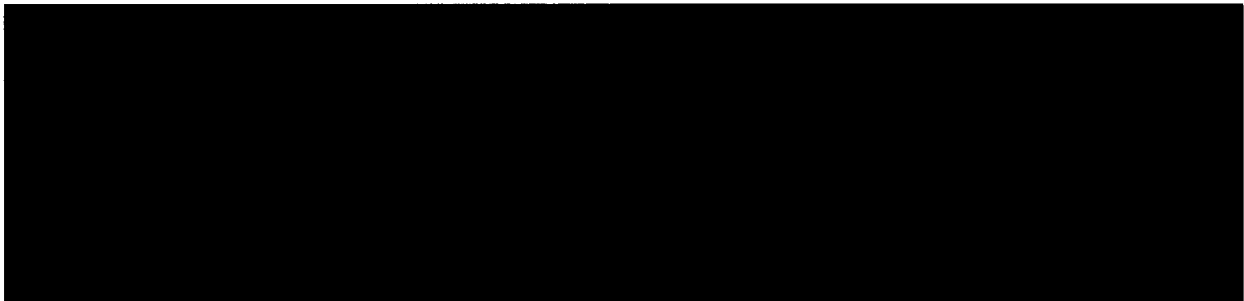
<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
[REDACTED]				
03/04/16	KCK	Legal research re: testimony immunity for Kinion.	1.00	125.00
03/04/16	KCK	Prepare memo re: testimony immunity for Kinion.	1.50	187.50
03/08/16	MAP	E-mails with Zaniel's office re: depositions.	0.20	30.00
03/09/16	SM	Prepare draft interrogatories to plaintiff.	1.50	127.50
03/11/16	SM	Prepare draft request for production of documents to plaintiff.	1.00	85.00
03/14/16	MAP	Revise and finalize interrogatories and request for production of documents to plaintiff.	1.00	150.00
[REDACTED]				
03/17/16	MAP	Meeting with client re: case strategy and further handling.	1.50	225.00

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
03/28/16	MAP	Review subpoenas to Peter and Rowena Shaw.	0.10	15.00
04/04/16	MAP	Phone call with insured re: upcoming deposition.	0.20	30.00
04/06/16	MAP	Meeting with insured re: deposition preparation.	3.00	450.00
04/08/16	MAP	Phone call with Klementi's counsel re: declaratory relief action.	0.50	75.00
04/08/16	MAP	Review letter from Klementi's counsel to Spencer's counsel re: lack of 16.1 production.	0.20	30.00
04/12/16	MAP	Review Spencer's request for production of documents to Klementi.	0.10	15.00
04/12/16	RRH	Review and analyze deposition of Jesse McKone in preparation to draft motion for summary judgment.	0.50	62.50
04/13/16	MAP	Phone call with insured re: deposition.	0.30	45.00
04/13/16	MAP	Review Officer McKone's deposition transcript.	1.00	150.00
04/14/16	MAP	Attend Helmut Klementi's deposition.	4.50	675.00
04/14/16	MAP	Attend Elfie Klementi's deposition.	3.50	525.00
04/14/16	MAP	Meeting with Klementi's counsel re: discovery.	0.80	120.00

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
04/14/16	RRH	Review claim file materials and documents in preparation to draft motion for summary judgment.	1.00	125.00
04/14/16	RRH	Review and analyze deposition of Mary Kinion in preparation to draft motion for summary judgment.	1.50	187.50
04/14/16	RRH	Begin drafting defendant's motion for summary judgment.	5.50	687.50
04/15/16	RRH	Continue drafting defendant's motion for summary judgment.	3.00	375.00
04/15/16	RRH	Revise and edit draft of defendant's motion for summary judgment.	1.00	125.00
04/17/16	MAP	Review insured's deposition transcript.	1.00	150.00
04/17/16	MAP	Revise motion for summary judgment on counter-claims.	0.80	120.00
04/20/16	MAP	Further revision to motion for summary judgment.	1.00	150.00
04/20/16	MAP	Review case file at the courthouse re: pleading and procedural irregularities.	2.50	375.00
04/20/16	MAP	Prepare demand for prior pleadings to defendant/counterclaimant Spencer.	0.30	45.00
04/21/16	MAP	Prepare demand for prior discovery and pleadings to	0.50	75.00

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
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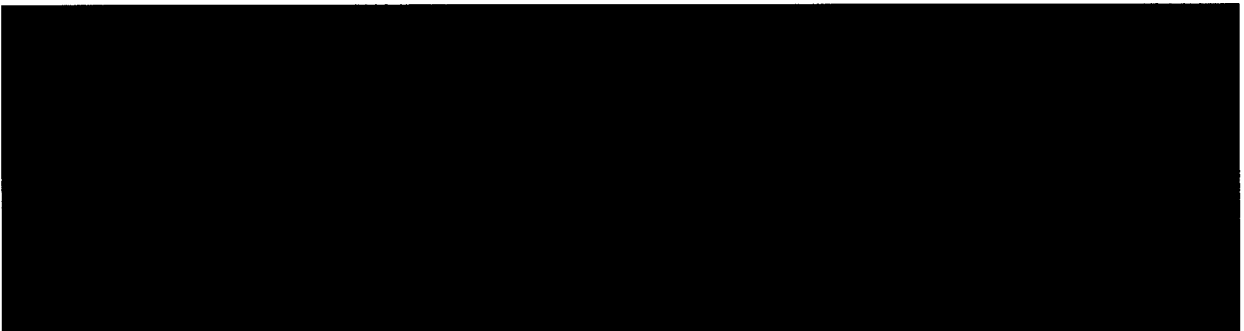
Spencer.



04/22/16	MAP	Phone call with Klementi's counsel re: anti-SLAPP laws, discovery.	1.00	150.00
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04/22/16	MAP	Finalize motion for summary judgment.	0.80	120.00
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04/27/16	MAP	Prepare letter to counter-claimant Spencer's attorney Routsis re: past due discovery responses.	0.20	30.00
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STAFF SUBTOTALS

Kenton Karrasch		@ 125.00	\$	
Howey, Robert R.		@ 125.00	\$	
Sherie Morrill		@ 85.00	\$	
Pintar, Michael A.		@ 150.00	\$	

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Total Professional Services

---



GLOGOVAC & PINTAR  
Attorneys at Law  
427 West Plumb Lane  
Reno, Nevada 89509-3766  
Telephone (775) 333-0400  
Facsimile (775) 333-0412  
Employer I.D. No. 88-0340418

Allstate Insurance Company  
500 E. Warm Springs Rd., Ste. 200  
P. O. Box 98761  
Las Vegas, NV 89193-8761

June 6, 2016  
Our File No. ALL.1741  
Invoice Number: 62751

Re: Klementi and Kinion v. Spencer  
DOL: December 12, 2012  
0360834337.2  
[REDACTED]

Statement of Account for Services Rendered Through May 31, 2016

ATTORNEY FEES

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
05/04/16	MAP	E-mails with Helmut Klementi's counsel re: prior attorney.	0.30	45.00
05/04/16	MAP	E-mails with Spencer's attorney re: deposition.	0.30	45.00
05/06/16	MAP	Meeting with insured re: legal status and further handling.	1.00	150.00
05/09/16	MAP	E-mails with counsel re: plaintiff's deposition.	0.20	30.00
05/10/16	MAP	Phone call with Spencer's counsel re: case background.	0.50	75.00
05/17/16	MAP	Review and analyze plaintiff's opposition brief and exhibits.	0.60	90.00
05/18/16	MAP	Phone call with insured re: allegation in Spencer's reply brief.	0.50	75.00
05/18/16	MAP	Legal research re: issues addressed in motion for summary judgment, standards and need for admissible evidence.	3.50	525.00
05/18/16	MAP	Begin preparing reply in support of motion for summary judgment.	2.00	300.00
05/19/16	MAP	Continue preparing reply in support of motion for summary judgment.	1.50	225.00
05/19/16	MAP	Legal research re: immunity for judicial proceedings.	2.00	300.00

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
05/20/16	MAP	Revisions to reply brief in support of motion for summary judgment.	3.00	450.00
05/22/16	MAP	Revise, finalize reply brief in support of motion for summary judgment.	1.00	150.00
05/22/16	MAP	Legal research re: authorities for amending complaint.	1.50	225.00
05/22/16	MAP	Review request for submission of substitution of counsel.	0.10	15.00
05/23/16	MAP	Legal research re: Nevada's anti-SLAPP laws.	2.00	300.00

STAFF SUBTOTALS

Pintar, Michael A.

██████████ @ 150.00


\$

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Total Professional Services

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427 West Plumb Lane  
Reno, Nevada 89509-3766  
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Employer I.D. No. 88-0340418

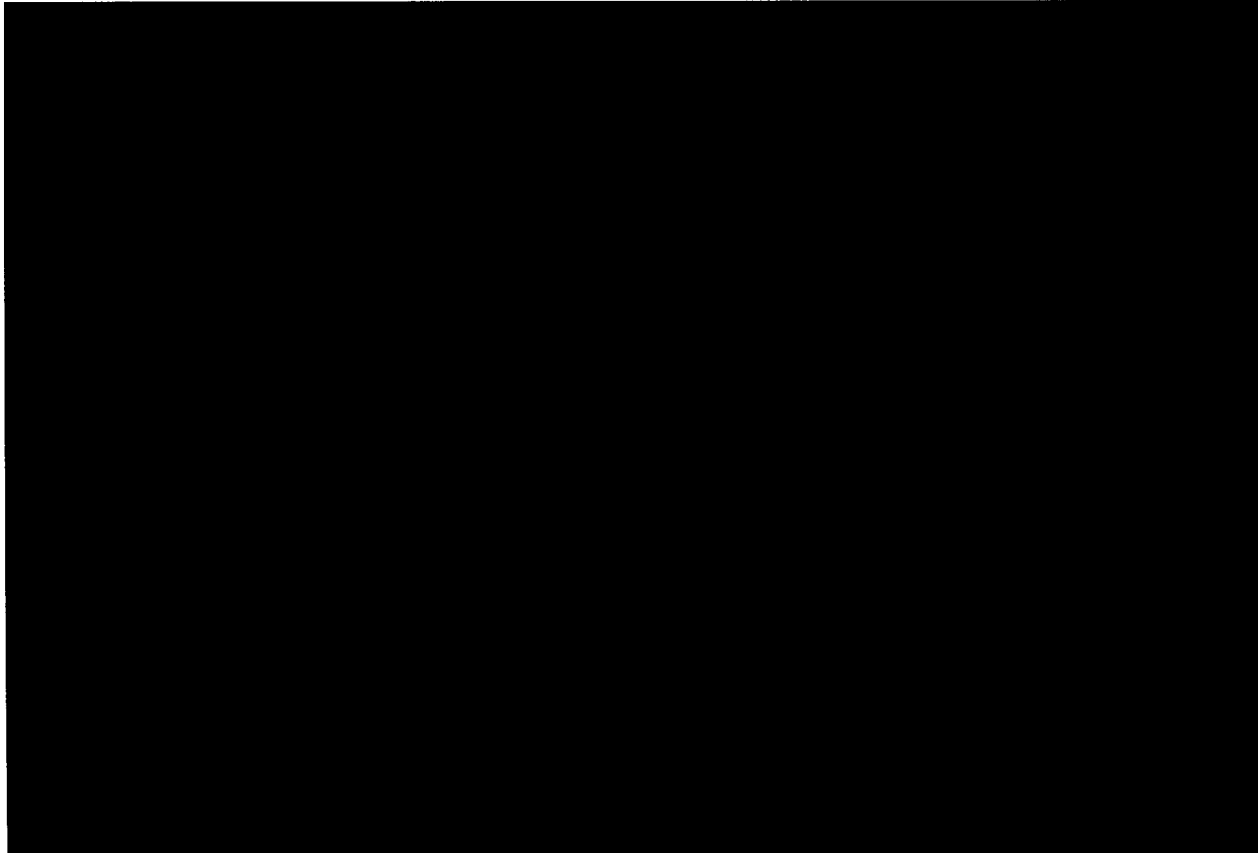
Allstate Insurance Company  
500 E. Warm Springs Rd., Ste. 200  
P. O. Box 98761  
Las Vegas, NV 89193-8761

August 8, 2016  
Our File No. ALL.1741  
Invoice Number: 62863

Re: Klementi and Kinion v. Spencer  
DOL: December 12, 2012  
0360834337.2  


Statement of Account for Services Rendered Through July 31, 2016

ATTORNEY FEES

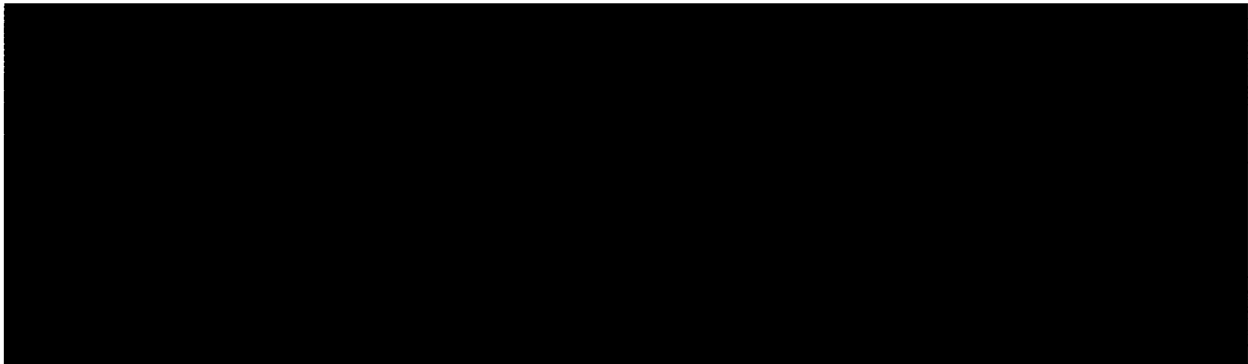
<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
				



Page two  
August 8, 2016  
Statement of Account for Services Rendered Through July 31, 2016  
Our File No. ALL.1741

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<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
07/28/16	MAP	Prepare for deposition of Jeff Spencer.	2.50	375.00
07/28/16	MAP	Attend deposition of Jeff Spencer.	6.00	900.00
07/29/16	MAP	Phone call with Helmut Klementi's counsel re: status.	0.30	45.00



STAFF SUBTOTALS

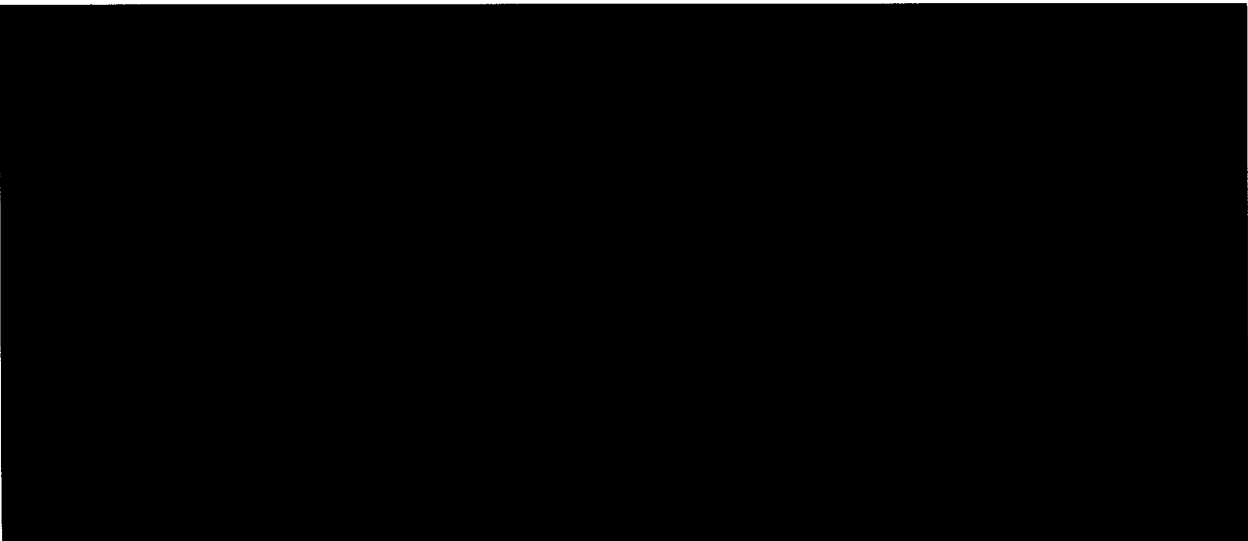
Pintar, Michael A. [REDACTED] @ 150.00 \$ [REDACTED]

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Total Professional Services

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[REDACTED]



GLOGOVAC & PINTAR  
Attorneys at Law  
427 West Plumb Lane  
Reno, Nevada 89509-3766  
Telephone (775) 333-0400  
Facsimile (775) 333-0412  
Employer I.D. No. 88-0340418

Allstate Insurance Company  
500 E. Warm Springs Rd., Ste. 200  
P. O. Box 98761  
Las Vegas, NV 89193-8761

September 6, 2016  
Our File No. ALL.1741  
Invoice Number: 62884

Re: Klementi and Kinion v. Spencer  
DOL: December 12, 2012  
0360834337.2  
[REDACTED]

Statement of Account for Services Rendered Through August 31, 2016


ATTORNEY FEES

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
[REDACTED]				
08/11/16	MAP	Prepare for hearing.	1.00	150.00
08/11/16	MAP	Attend hearing/oral argument on pending motions.	2.00	300.00
08/11/16	MAP	Meeting with insured re case status.	0.50	75.00
08/18/16	MAP	Prepare opposition to plaintiff's motion to amend complaint.	3.00	450.00
08/19/16	MAP	E-mail with court re: continuance of hearing re: motion for summary judgment and other pending motions.	0.20	30.00
[REDACTED]				

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Telephone (775) 333-0400  
Facsimile (775) 333-0412  
Employer I.D. No. 88-0340418

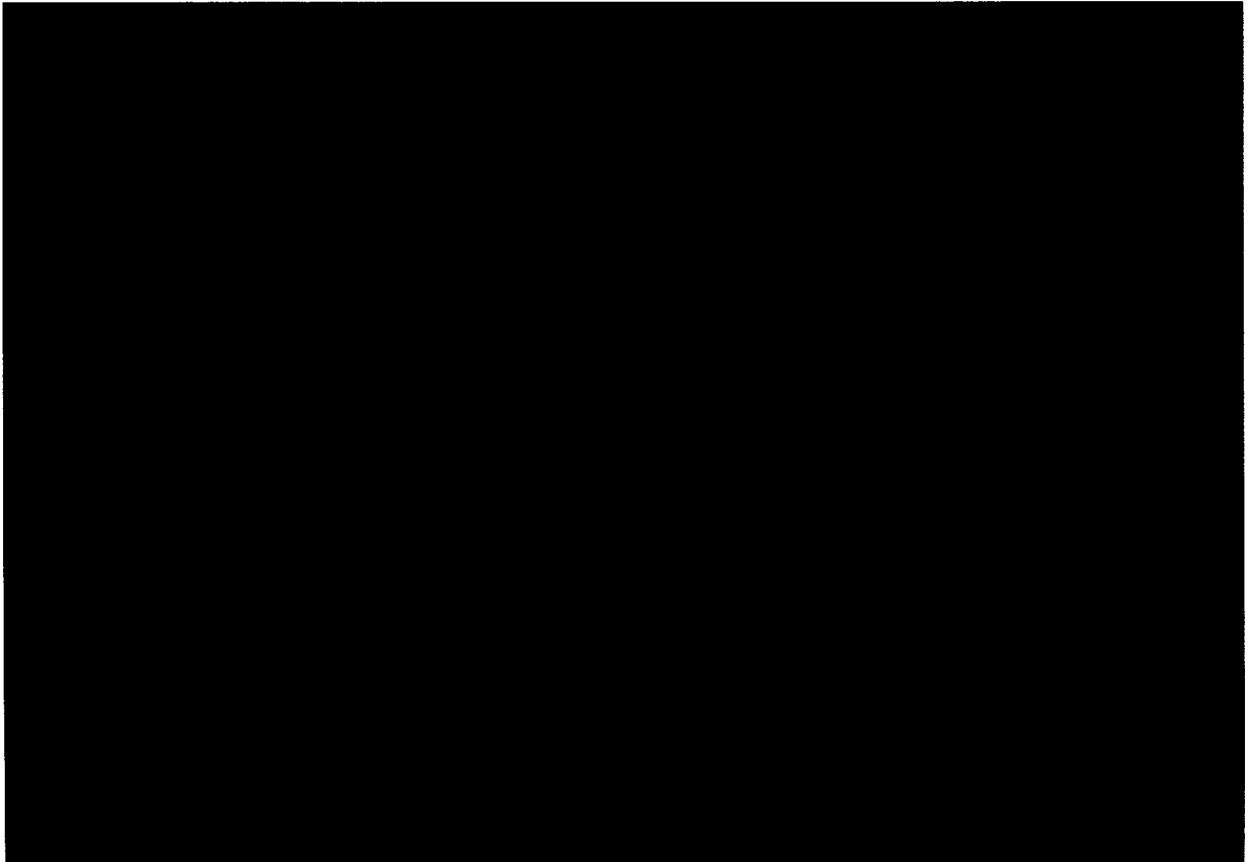
Allstate Insurance Company  
500 E. Warm Springs Rd., Ste. 200  
P. O. Box 98761  
Las Vegas, NV 89193-8761

December 5, 2016  
Our File No. ALL.1741  
Invoice Number: 63040

Re: Klementi and Kinion v. Spencer  
DOL: December 12, 2012  
0360834337.2  



Statement of Account for Services Rendered Through November 30, 2016

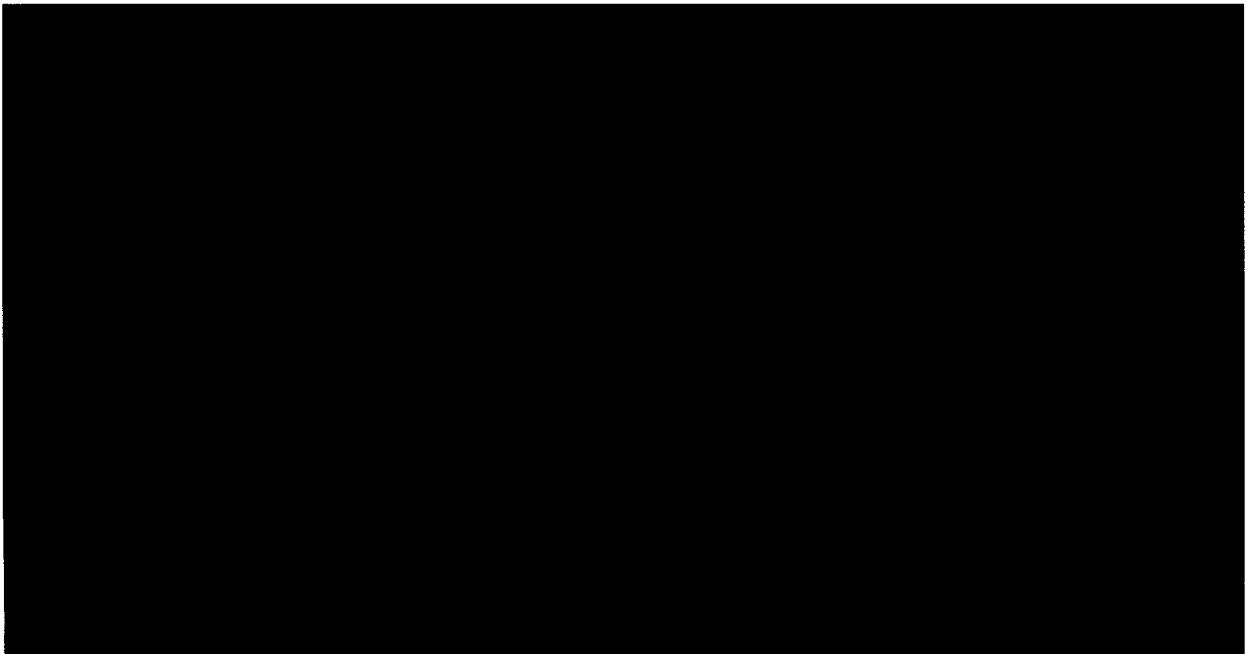
ATTORNEY FEES

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
				

Page two  
December 5, 2016  
Statement of Account for Services Rendered Through November 30, 2016  
Our File No. ALL.1741

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<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
				
11/08/16	DKW	Legal research re: issues raised by Spencer's insufficient responses to requests for production.	3.50	437.50
11/08/16	DKW	Begin drafting meet and confer letter to Spencer's counsel re: insufficient responses to requests for production.	2.00	250.00
11/09/16	DKW	Complete draft of meet and confer letter to Spencer's counsel re: insufficient responses to requests for production.	1.80	225.00
11/14/16	DKW	Finalizing meet and confer letter.	0.70	87.50



GLOGOVAC & PINTAR  
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427 West Plumb Lane  
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Employer I.D. No. 88-0340418

Allstate Insurance Company  
500 E. Warm Springs Rd., Ste. 200  
P. O. Box 98761  
Las Vegas, NV 89193-8761

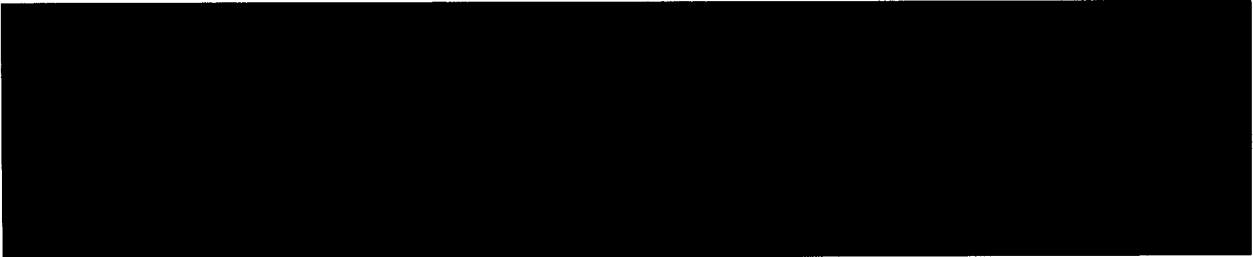
February 2, 2017  
Our File No. ALL.1741  
Invoice Number: 63163

Re: Klementi and Kinion v. Spencer  
DOL: December 12, 2012  
0360834337.2  


Statement of Account for Services Rendered Through January 31, 2017

ATTORNEY FEES

<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
12/08/16	DKW	Further revisions to meet and confer letter to Lynn Pierce.	1.50	187.50
12/09/16	MAP	Finalize meet and confer letter.	0.50	75.00
12/14/16	SAG	Reviewing file materials and preparing for court hearing on all pending motions.	4.50	675.00
12/15/16	SAG	Additional preparation for court hearing on all pending motions.	2.00	300.00
12/15/16	SAG	Travel to Minden, Nevada for court hearing.	1.00	150.00
12/15/16	SAG	Attend court hearing on all pending motions.	2.00	300.00
12/15/16	SAG	Post-hearing meeting with clients re: status and further handling of case.	0.50	75.00
12/15/16	SAG	Return trip to Reno.	1.00	150.00



<u>Date</u>	<u>Atty</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
01/26/17	MAP	Phone call with insured re: upcoming hearing.	0.30	45.00
01/27/17	MAP	Review pleading in preparation for hearing.	1.00	150.00
01/27/17	MAP	Review legal research in preparation for hearing.	1.00	150.00
01/27/17	MAP	Review extensive file from Douglas Court District Attorney.	2.50	375.00
01/30/17	MAP	Continue review of extensive file from district attorney's office.	2.50	375.00
01/30/17	MAP	Travel from Reno to Minden for court hearing re: motions.	0.80	120.00
01/30/17	MAP	Attend hearing.	4.00	600.00
01/30/17	MAP	Meeting with clients after hearing to discuss case.	1.00	150.00
01/30/17	MAP	Return trip to Reno.	0.80	120.00

Page three  
February 2, 2017  
Statement of Account for Services Rendered Through January 31, 2017  
Our File No. ALL.1741

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STAFF SUBTOTALS

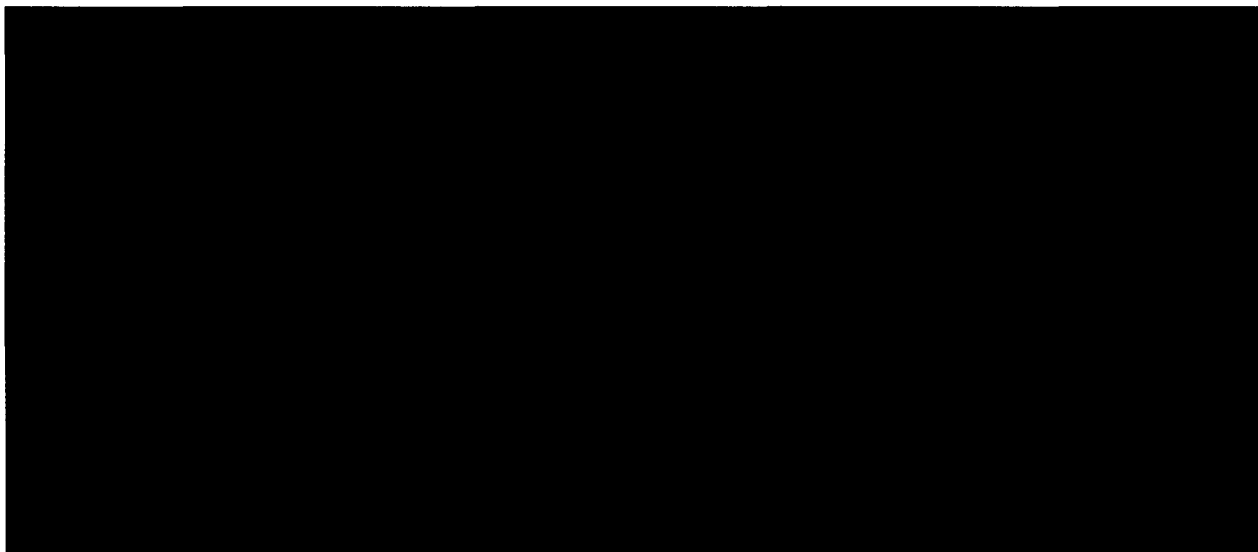
Don K. White	[REDACTED]	@ 125.00	\$	[REDACTED]
Glogovac, Scott A.	[REDACTED]	@ 150.00	\$	[REDACTED]
Pintar, Michael A.	[REDACTED]	@ 150.00	\$	[REDACTED]

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Total Professional Services

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[REDACTED]



RECEIVED

MAR 24 2017

Douglas County  
District Court Clerk

FILED

2017 MAR 24 PM 1:41

BOBBIE R. WILLIAMS  
CLERK

BY: ANAM DEPUTY

CASE NO.: 14-CV-0260

DEPT. NO.: II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

**ANSWER TO AMENDED  
COUNTERCLAIM and THIRD-PARTY  
COMPLAINT**

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual,  
EGON KLEMENTI, an individual, MARY  
ELLEN KINION, an individual, and  
DOES 1-5,

Counterdefendants.

Third-party defendants, Egon Klementi and Elfride Klementi, (collectively  
"Klementis"), by and through their attorneys, Glogovac & Pintar, and in response to the  
Third-party Complaint filed in the above-captioned matter by Defendant/  
Counterclaimant, Jeffrey Spencer ("Spencer"), admit, deny and aver as follows:



**JURISDICTIONAL ALLEGATIONS**

1. Klementis admit the allegations contained in Paragraph 1.
2. Klementis admit the allegations contained in Paragraph 2.
3. Klementis admit the allegations contained in Paragraph 3.
4. Klementis admit the allegations contained in Paragraph 4.
5. Klementis admit the allegations contained in Paragraph 5.
6. Klementis admit the allegations contained in Paragraph 6.
7. Klementis admit the allegations contained in Paragraph 7.
8. Klementis aver that the allegations contained in Paragraph 8 are vague

and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

9. Klementis aver that the allegations contained in Paragraph 9 are vague and non-specific, and thus, Klementis are without knowledge or information sufficient to form a belief as to the truth of the same.

**FACTUAL ALLEGATIONS**

10. Klementis admit the allegations contained in Paragraph 10.

11. In response to the allegations of Paragraph 11, Klementis admit that on or about May 27, 2012, Mrs. Spencer called the Douglas County Sheriff's Department to complain about Egon Klementi, but deny all other allegations contained in Paragraph 11, not admitted.

12. Klementis deny the allegations contained in Paragraph 12.
13. Klementis deny the allegations contained in Paragraph 13.

1           14.    Klementis aver that the allegations contained in Paragraph 14 are vague  
2 and non-specific, and thus, Klementis are without knowledge or information sufficient  
3 to form a belief as to the truth of the same.

4           15.    Klementis aver that the allegations contained in Paragraph 15 are vague  
5 and non-specific, and thus, Klementis are without knowledge or information sufficient  
6 to form a belief as to the truth of the same.  
7

8           16.    Klementis admit the allegations contained in Paragraph 16.

9           17.    Klementis admit the allegations contained in Paragraph 17.

10          18.    Klementis admit the allegations contained in Paragraph 18.

11          19.    Klementis deny the allegations contained in Paragraph 19.

12          20.    Klementis deny the allegations contained in Paragraph 20.

13          21.    Klementis aver that the allegations contained in Paragraph 21 are vague  
14 and non-specific, and thus, Klementis are without knowledge or information sufficient  
15 to form a belief as to the truth of the same.  
16

17          22.    Klementis aver that the allegations contained in Paragraph 22 are vague  
18 and non-specific, and thus, Klementis are without knowledge or information sufficient  
19 to form a belief as to the truth of the same.  
20

21          23.    Klementis aver that the allegations contained in Paragraph 23 are vague  
22 and non-specific, and thus, Klementis are without knowledge or information sufficient  
23 to form a belief as to the truth of the same.

24          24.    Klementis deny the allegations contained in Paragraph 24.

25          25.    Klementis admit that the allegations contained in Paragraph 25.

26          26.    Klementis aver that the allegations contained in Paragraph 26 are vague  
27 and non-specific, and thus, Klementis are without knowledge or information sufficient  
28

1 to form a belief as to the truth of the same.

2 27. Klementis aver that the allegations contained in Paragraph 27 are vague  
3 and non-specific, and thus, Klementis are without knowledge or information sufficient  
4 to form a belief as to the truth of the same.

5 28. Klementis aver that the allegations contained in Paragraph 28 are vague  
6 and non-specific, and thus, Klementis are without knowledge or information sufficient  
7 to form a belief as to the truth of the same.

8 29. Klementis aver that the allegations contained in Paragraph 29 are vague  
9 and non-specific, and thus, Klementis are without knowledge or information sufficient  
10 to form a belief as to the truth of the same.

11 30. Klementis aver that the allegations contained in Paragraph 30 are vague  
12 and non-specific, and thus, Klementis are without knowledge or information sufficient  
13 to form a belief as to the truth of the same.

14 31. Klementis deny the allegations contained in Paragraph 31.

15 32. Klementis deny the allegations contained in Paragraph 32.

16 33. Klementis deny the allegations contained in Paragraph 33.

17 34. Klementis admit the allegations contained in Paragraph 34.

18 35. Klementis admit the allegations contained in Paragraph 35.

19 36. Klementis aver that the allegations contained in Paragraph 36 are vague  
20 and non-specific, and thus, Klementis are without knowledge or information sufficient  
21 to form a belief as to the truth of the same.

22 37. Klementis aver that the allegations contained in Paragraph 37 are vague  
23 and non-specific, and thus, Klementis are without knowledge or information sufficient  
24 to form a belief as to the truth of the same.

1           38.     Klementis deny the allegations contained in Paragraph 38.

2           39.     In response to the allegations contained in Paragraph 39, Klementis  
3 admit that Helmut Klementi filed for a restraining order against Spencer on December  
4 24, 2012. Klementis deny the remaining allegations contained in Paragraph 39, not  
5 admitted.  
6

7           40.     Klementis aver that the allegations contained in Paragraph 40 are vague  
8 and non-specific, and thus, Klementis are without knowledge or information sufficient  
9 to form a belief as to the truth of the same.

10          41.     Klementis aver that the allegations contained in Paragraph 41 are vague  
11 and non-specific, and thus, Klementis are without knowledge or information sufficient  
12 to form a belief as to the truth of the same.

13          42.     Klementis aver that the allegations contained in Paragraph 42 are vague  
14 and non-specific, and thus, Klementis are without knowledge or information sufficient  
15 to form a belief as to the truth of the same.  
16

17          43.     Klementis aver that the allegations contained in Paragraph 43 are vague  
18 and non-specific, and thus, Klementis are without knowledge or information sufficient  
19 to form a belief as to the truth of the same.

20          44.     Klementis aver that the allegations contained in Paragraph 44 are vague  
21 and non-specific, and thus, Klementis are without knowledge or information sufficient  
22 to form a belief as to the truth of the same.

23          45.     Klementis aver that the allegations contained in Paragraph 45 are vague  
24 and non-specific, and thus, Klementis are without knowledge or information sufficient  
25 to form a belief as to the truth of the same.  
26

27          46.     Klementis are without knowledge or information sufficient to form a belief  
28

1 as to the truth of the allegations contained in Paragraph 46. Klementis deny that the  
2 video provided to the Douglas County Sheriff's Department by Shaw was altered.

3 47. Klementis are without knowledge or information sufficient to form a belief  
4 as to the truth of the allegations contained in Paragraph 47.

5 48. In response to the allegations contained in Paragraph 48, Klementis  
6 admit that on or about February 22, 2013, Kinion wrote a letter to the Douglas County  
7 District Attorney identifying what she had seen and heard at the request of the District  
8 Attorney. Klementis deny the remaining allegations contained in Paragraph 48 not  
9 admitted.

10 49. Klementis aver that the allegations contained in Paragraph 49 are vague  
11 and non-specific, and thus, Klementis are without knowledge or information sufficient  
12 to form a belief as to the truth of the same.

13 50. Klementis admit the allegations contained in Paragraph 50.

14 51. Klementis aver that the allegations contained in Paragraph 51 are vague  
15 and non-specific, and thus, Klementis are without knowledge or information sufficient  
16 to form a belief as to the truth of the same.

17 52. Klementis admit the allegations contained in Paragraph 52.

18 53. Klementis are without knowledge or information sufficient to form a belief  
19 as to the truth of the allegations contained in Paragraph 53.

20 54. Klementis aver that the allegations contained in Paragraph 54 are vague  
21 and non-specific, and thus, Klementis are without knowledge or information sufficient  
22 to form a belief as to the truth of the same.

23 55. Klementis aver that the allegations contained in Paragraph 55 are vague  
24 and non-specific, and thus, Klementis are without knowledge or information sufficient  
25

1 to form a belief as to the truth of the same.

2 56. Klementis aver that the allegations contained in Paragraph 56 are vague  
3 and non-specific, and thus, Klementis are without knowledge or information sufficient  
4 to form a belief as to the truth of the same.

5 57. Klementis admit the allegations contained in Paragraph 57.

6 58. Klementis aver that the allegations contained in Paragraph 58 are vague  
7 and non-specific, and thus, Klementis are without knowledge or information sufficient  
8 to form a belief as to the truth of the same.

10 59. Klementis admit the allegations contained in Paragraph 59.

11 60. Klementis admit the allegations contained in Paragraph 60.

12 61. Klementis deny the allegations contained in Paragraph 61.

13 62. Klementis deny the allegations contained in Paragraph 62.

14 63. Klementis deny the allegations contained in Paragraph 63.

15 64. Klementis deny the allegations contained in Paragraph 64.

16 65. Klementis deny the allegations contained in Paragraph 65.

17 66. Klementis deny the allegations contained in Paragraph 66.

18 67. Klementis admit the allegations contained in Paragraph 67.

19 68. Klementis deny the allegations contained in Paragraph 68.

20 69. Klementis aver that the allegations contained in Paragraph 69 are vague  
21 and non-specific, and thus, Klementis are without knowledge or information sufficient  
22 to form a belief as to the truth of the same.

23 70. Klementis deny the allegations contained in Paragraph 70.

24 71. Klementis deny the allegations contained in Paragraph 71.

25 72. Klementis deny the allegations contained in Paragraph 72.

1 73. Klementis deny the allegations contained in Paragraph 73.

2 **FIRST CAUSE OF ACTION**

3 74. In response to the allegations of Paragraph 73, Klementis incorporate  
4 herein by this reference and restate their answers to the allegations of Paragraphs 1  
5 through 73 of the Amended Counterclaim and Third-party Complaint as if fully set forth  
6 herein.  
7

8 75. In response to the allegations contained in Paragraph 75, Klementis  
9 admit that they made statements concerning Spencer in various judicial and quasi-  
10 judicial proceedings about his failure to appropriately do his job as snow plow driver  
11 and concerning his assault and battery of Egon and Helmut Klementi on separate  
12 occasions. Because these communications were uttered or published in course of  
13 judicial or quasi-judicial proceedings and were pertinent to the subject of controversy,  
14 they are absolutely privileged. Klementis deny the remaining allegations contained in  
15 Paragraph 75 not admitted.  
16

17 76. Klementis deny the allegations contained in Paragraph 76.

18 77. Klementis deny the allegations contained in Paragraph 77.

19 78. Klementis deny the allegations contained in Paragraph 78.

20 79. Klementis deny the allegations contained in Paragraph 79.  
21

22 **SECOND CAUSE OF ACTION**

23 80. In response to the allegations contained in Paragraph 80, Klementis  
24 incorporate herein by this reference and restate their answers to the allegations of  
25 Paragraphs 1 through 79 of the Amended Counterclaim and Third-party Complaint as  
26 if fully set forth herein.

27 81. In response to the allegations contained in Paragraph 81, Klementis  
28

1 deny any statements or communications they made to the Douglas County Sheriff's  
2 Department and/or the Douglas County District Attorney's Office were false. Further,  
3 because their communications were uttered or published in course of judicial or quasi-  
4 judicial proceedings and/or were made to employees of a political subsidiary, they are  
5 absolutely privileged. Klementis deny the remaining allegations contained in  
6 Paragraph 81, not admitted.  
7

8 82. Klementis deny the allegations contained in Paragraph 82 (misidentified  
9 as Paragraph 83).

10 83. Klementis admit the allegations contained in Paragraph 83 (misidentified  
11 as Paragraph 84).

12 84. Klementis deny the allegations contained in Paragraph 84 (misidentified  
13 as Paragraph 85).  
14

### 15 THIRD CAUSE OF ACTION

16 85. In response to the allegations contained in Paragraph 85 (misidentified  
17 as Paragraph 86). Klementis incorporates herein by reference and restates their  
18 answers to the allegations of Paragraphs 1 through 84 of the Amended Counterclaim  
19 and Third-party Complaint as if fully set forth herein.  
20

21 86. Klementis deny the allegations contained in Paragraph 86 (misidentified  
22 as Paragraph 87).

23 87. Klementis deny the allegations contained in Paragraph 87 (misidentified  
24 as Paragraph 88).

25 88. Klementis deny the allegations contained in Paragraph 88 (misidentified  
26 as Paragraph 89).

27 89. Klementis deny the allegations contained in Paragraph 89 (misidentified  
28



1 as Paragraph 90).

2 90. Klementis deny the allegations contained in Paragraph 90 (misidentified  
3 as Paragraph 91).

4 91. Klementis deny the allegations contained in Paragraph 91 (misidentified  
5 as Paragraph 92).

7 **FOURTH CAUSE OF ACTION**

8 92. In response to the allegations contained in Paragraph 92 (misidentified as  
9 Paragraph 93), Klementis incorporate herein by reference and restate their answers to  
10 the allegations of Paragraphs 1 through 91 of the Amended Counterclaim and  
11 Klementis as if fully set forth herein.

12 93. Klementis deny the allegations contained in Paragraph 93 (misidentified  
13 as Paragraph 94).

14 94. Klementis deny the allegations contained in Paragraph 94 (misidentified  
15 as Paragraph 95).

16 95. Klementis deny the allegations contained in Paragraph 95 (misidentified  
17 as Paragraph 96).

18 96. Klementis deny the allegations contained in Paragraph 96 (misidentified as  
19 Paragraph 97).

20 97. Klementis deny the allegations contained in Paragraph 97 (misidentified  
21 as Paragraph 98).

22 98. Klementis deny the allegations contained in Paragraph 98 (misidentified  
23 as Paragraph 99).

24 **FIFTH CAUSE OF ACTION**

25 99. In response to the allegations contained in Paragraph 99 (misidentified  
26  
27  
28

1 as Paragraph 100), Klementis incorporate herein by reference and restate their  
2 answers to the allegations of Paragraphs 1 through 98 of the Amended Counterclaim  
3 and Third-party Complaint as if fully set forth herein.

4 100. Klementis deny the allegations contained in Paragraph 100 (misidentified  
5 as Paragraph 101).

6 101. Klementis deny the allegations contained in Paragraph 101 (misidentified  
7 as Paragraph 102).

8 102. Klementis deny the allegations contained in Paragraph 102 (misidentified  
9 as Paragraph 103).

10  
11 **SIXTH CAUSE OF ACTION**

12 103. In response to the allegations contained in Paragraph 103 (misidentified  
13 as Paragraph 104), Klementis incorporate herein by reference and restate their  
14 answers to the allegations of Paragraphs 1 through 103 of the Amended Counterclaim  
15 and Third-party Complaint as if fully set forth herein.

16 104. Klementis deny the allegations contained in Paragraph 104 (misidentified  
17 as Paragraph 105).

18 105. Klementis deny the allegations contained in Paragraph 105 (misidentified  
19 as Paragraph 106).

20 106. Klementis deny the allegations contained in Paragraph 106 (misidentified  
21 as Paragraph 107).

22  
23  
24 **AFFIRMATIVE DEFENSES**

25 **FIRST AFFIRMATIVE DEFENSE**

26 The Amended Counterclaim and Third-party Complaint and each and every  
27 allegation contained therein fails to state a claim upon which relief can be granted.

28 **SECOND AFFIRMATIVE DEFENSE**

1 That the statements uttered or published by Klementis and referenced in the  
2 Amended Counterclaim and Third-party Complaint are absolutely privileged because  
3 they were uttered or published in course of judicial and/or quasi-judicial proceedings  
4 and were pertinent to the subject of controversy.

5 **THIRD AFFIRMATIVE DEFENSE**

6 That the statements uttered or published by Klementis and referenced in the  
7 Amended Counterclaim and Third-party Complaint when taken as a whole are  
8 statements of opinion protected under the First Amendment.

9 **FOURTH AFFIRMATIVE DEFENSE**

10 That the statements uttered or published by Klementis and referenced in the  
11 Amended Counterclaim and Third-party Complaint are true or substantially true and  
12 made in good faith.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 That the statements uttered or published by Klementis and referenced in the  
15 Amended Counterclaim and Third-party Complaint are privileged by reason of the  
16 statements being made in good faith, aimed at procuring governmental action, and  
17 made to an officer or employee of a political subdivision of this state.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 That the statements uttered or published by Klementis and referenced in the  
20 Amended Counterclaim and Third-party Complaint are privileged by reason of the  
21 statements being made without actual malice.

22 **SEVENTH AFFIRMATIVE DEFENSE**

23 That the statements uttered or published by Klementis and referenced in the  
24 Amended Counterclaim and Third-party Complaint are privileged by reason of the  
25 statements being made after initiation of criminal proceedings.

26 **EIGHT AFFIRMATIVE DEFENSE**

1 To the extent Spencer sustained any damages as a result of the allegations out  
2 of which this matter arises, those damages were caused by the acts or omissions of  
3 Third-parties over which Klementis have no control.  
4

5  
6 **NINTH AFFIRMATIVE DEFENSE**

7 Klementis are informed and believe and thereupon aver that at all times  
8 relevant hereto, Spencer was negligent, at fault, and otherwise responsible for the  
9 allegations which are the subject of this litigation.

10 **TENTH AFFIRMATIVE DEFENSE**

11 That Spencer's damages, if any, were caused in whole or in part, or were  
12 contributed to by reason of the actions and wrongful conduct of Spencer himself.

13 **ELEVENTH AFFIRMATIVE DEFENSE**

14 Spencer's action against the Klementis are frivolous, unreasonable, vexatious,  
15 and devoid of any legal or factual foundation. The Amended Counterclaim and Third-  
16 party Complaint is not well grounded in fact, nor warranted by existing law or a good  
17 faith argument for the extension, modification, or reversal of existing law.

18 **PRAYER FOR RELIEF**

19 Based upon the foregoing, Third-party Defendants, Egon Klementi and Elfride  
20 Klementi, respectfully request relief as follows:

- 21 1. That Spencer take nothing by virtue of this action, and that his Amended  
22 Counterclaim against the Klementis be dismissed with prejudice;  
23  
24 2. For costs of suit and attorney's fees to the extent allowed by law; and  
25 3. For such other and further relief as the Court deems just and proper.

26 ///

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**AFFIRMATION**  
**Pursuant to NRS 239B.030**

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

DATED this 24 day of March, 2017.

GLOGOVAC & PINTAR

By:   
MICHAEL A. PINTAR, ESQ.  
Nevada Bar No. 003789  
Attorneys for Mary Ellen Kinion

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the foregoing document(s) described as follows:

**ANSWER TO AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT**

On the party(s) set forth below by:

  X   Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

       Personal delivery.

       Facsimile (FAX).

       Federal Express or other overnight delivery.

addressed as follows:

William Routsis, Esq.  
1070 Monroe Street  
Reno, NV 89509  
***Attorneys for Jeffrey Spencer***

Lynn G. Pierce, Esq.  
515 Court Street, Suite 2f  
Reno, NV 89501  
***Attorneys for Jeffrey Spencer***

Douglas R. Brown, Esq.  
Chris Moore, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas St., 3rd Floor  
Reno, NV 89519  
***Attorneys for Helmut Klementi***

David Zaniel, Esq.  
Ranalli & Zaniel, LLC  
50 W. Liberty St., Suite 1050  
Reno, NV 89509  
***Attorneys for Jeffrey Spencer***

Tanika Capers, Esq.  
6750 Via Austi Parkway, Suite 310  
Las Vegas, NV 89119  
***Attorneys for Rowena Shaw and Peter Shaw***

Dated this 24<sup>th</sup> day of March, 2017.

Robert Williams Bilee  
Employee of Glogovac & Pintar

RECEIVED

MAR 24 2017

Douglas County  
District Court Clerk

FILED

2017 MAR 24 PM 1:41

BOBBIE R. WILLIAMS  
CLERK

BY ANNE DEPUTY

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: II

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5  
6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS  
8

9 HELMUT KLEMENTI,

10 Plaintiff,

11 vs.

12 JEFFREY D. SPENCER & DOES 1-5,

13 Defendants.

14  
15 JEFFREY D. SPENCER,

16 Counterclaimant,

17 vs.

18 HELMUT KLEMENTI, an individual,  
19 EGON KLEMENTI, an individual, MARY  
ELLEN KINION, an individual, and  
DOES 1-5,

20 Counterdefendants.  
21

**ANSWER TO AMENDED  
COUNTERCLAIM and THIRD-PARTY  
COMPLAINT**

22 Third-party defendant, Mary Ellen Kinion ("Kinion"), by and through her  
23 attorneys, Glogovac & Pintar, and in response to the Third-party Complaint filed in the  
24 above-captioned matter by Defendant/Counterclaimaint, Jeffrey Spencer ("Spencer"),  
25 admits, denies and avers as follows:  
26  
27  
28

**JURISDICTIONAL ALLEGATIONS**

1. Kinion admits the allegations contained in Paragraph 1.
2. Kinion admits the allegations contained in Paragraph 2.
3. Kinion admits the allegations contained in Paragraph 3.
4. Kinion admits the allegations contained in Paragraph 4.
5. Kinion admits the allegations contained in Paragraph 5.
6. Kinion admits the allegations contained in Paragraph 6.
7. Kinion admits the allegations contained in Paragraph 7.
8. Kinion avers that the allegations contained in Paragraph 8 are vague and

non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

9. Kinion avers that the allegations contained in Paragraph 9 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

**FACTUAL ALLEGATIONS**

10. Kinion admits the allegations contained in Paragraph 10.

11. In response to the allegations of Paragraph 11, Kinion admits that on or about May 27, 2012, Mrs. Spencer called the Douglas County Sheriff's Department to complain about Egon Klementi, but deny all other allegations contained in Paragraph 11, not admitted.

12. Kinion denies the allegations contained in Paragraph 12.
13. Kinion denies the allegations contained in Paragraph 13.



1           14.     Kinion avers that the allegations contained in Paragraph 14 are vague  
2 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
3 form a belief as to the truth of the same.

4           15.     Kinion avers that the allegations contained in Paragraph 15 are vague  
5 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
6 form a belief as to the truth of the same.

7           16.     Kinion admits the allegations contained in Paragraph 16.

8           17.     Kinion admits the allegations contained in Paragraph 17.

9           18.     Kinion admits the allegations contained in Paragraph 18.

10          19.     Kinion denies the allegations contained in Paragraph 19.

11          20.     Kinion denies the allegations contained in Paragraph 20.

12          21.     Kinion avers that the allegations contained in Paragraph 21 are vague  
13 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
14 form a belief as to the truth of the same.

15          22.     Kinion avers that the allegations contained in Paragraph 22 are vague  
16 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
17 form a belief as to the truth of the same.

18          23.     Kinion avers that the allegations contained in Paragraph 23 are vague  
19 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
20 form a belief as to the truth of the same.

21          24.     Kinion denies the allegations contained in Paragraph 24.

22          25.     Kinion admits that the allegations contained in Paragraph 25.

23          26.     Kinion avers that the allegations contained in Paragraph 26 are vague  
24 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
25  
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28

1 form a belief as to the truth of the same.

2 27. Kinion avers that the allegations contained in Paragraph 27 are vague  
3 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
4 form a belief as to the truth of the same.

5 28. Kinion avers that the allegations contained in Paragraph 28 are vague  
6 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
7 form a belief as to the truth of the same.

8 29. Kinion avers that the allegations contained in Paragraph 29 are vague  
9 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
10 form a belief as to the truth of the same.

11 30. Kinion avers that the allegations contained in Paragraph 30 are vague  
12 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
13 form a belief as to the truth of the same.

14 31. Kinion denies the allegations contained in Paragraph 31.

15 32. Kinion denies the allegations contained in Paragraph 32.

16 33. Kinion denies the allegations contained in Paragraph 33.

17 34. Kinion admits the allegations contained in Paragraph 34.

18 35. Kinion admits the allegations contained in Paragraph 35.

19 36. Kinion avers that the allegations contained in Paragraph 36 are vague  
20 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
21 form a belief as to the truth of the same.

22 37. Kinion avers that the allegations contained in Paragraph 37 are vague  
23 and non-specific, and thus, Kinion are without knowledge or information sufficient to  
24 form a belief as to the truth of the same.

1           38.     Kinion denies the allegations contained in Paragraph 38.

2           39.     In response to the allegations contained in Paragraph 39, Kinion admits  
3     that Helmut Klementi filed for a restraining order against Spencer on December 24,  
4     2012.   Kinion denies the remaining allegations contained in Paragraph 39, not  
5     admitted.  
6

7           40.     Kinion avers that the allegations contained in Paragraph 40 are vague  
8     and non-specific, and thus, Kinion is without knowledge or information sufficient to  
9     form a belief as to the truth of the same.

10          41.     Kinion avers that the allegations contained in Paragraph 41 are vague  
11     and non-specific, and thus, Kinion is without knowledge or information sufficient to  
12     form a belief as to the truth of the same.

13          42.     Kinion avers that the allegations contained in Paragraph 42 are vague  
14     and non-specific, and thus, Kinion is without knowledge or information sufficient to  
15     form a belief as to the truth of the same.  
16

17          43.     Kinion avers that the allegations contained in Paragraph 43 are vague  
18     and non-specific, and thus, Kinion is without knowledge or information sufficient to  
19     form a belief as to the truth of the same.

20          44.     Kinion avers that the allegations contained in Paragraph 44 are vague  
21     and non-specific, and thus, Kinion is without knowledge or information sufficient to  
22     form a belief as to the truth of the same.  
23

24          45.     Kinion avers that the allegations contained in Paragraph 45 are vague  
25     and non-specific, and thus, Kinion is without knowledge or information sufficient to  
26     form a belief as to the truth of the same.

27          46.     Kinion is without knowledge or information sufficient to form a belief as to  
28

1 the truth of the allegations contained in Paragraph 46. Kinion denies that the video  
2 provided to the Douglas County Sheriff's Department by Shaw was altered.

3 47. Kinion is without knowledge or information sufficient to form a belief as to  
4 the truth of the allegations contained in Paragraph 47.

5 48. In response to the allegations contained in Paragraph 48, Kinion admits  
6 that on or about February 22, 2013, Kinion wrote a letter to the Douglas County District  
7 Attorney identifying what she had seen and heard at the request of the District  
8 Attorney. Kinion denies the remaining allegations contained in Paragraph 48 not  
9 admitted.

10 49. Kinion avers that the allegations contained in Paragraph 49 are vague  
11 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
12 form a belief as to the truth of the same.

13 50. Kinion admits the allegations contained in Paragraph 50.

14 51. Kinion avers that the allegations contained in Paragraph 51 are vague  
15 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
16 form a belief as to the truth of the same.

17 52. Kinion admits the allegations contained in Paragraph 52.

18 53. Kinion is without knowledge or information sufficient to form a belief as to  
19 the truth of the allegations contained in Paragraph 53.

20 54. Kinion avers that the allegations contained in Paragraph 54 are vague  
21 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
22 form a belief as to the truth of the same.

23 55. Kinion avers that the allegations contained in Paragraph 55 are vague  
24 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
25

1 form a belief as to the truth of the same.

2 56. Kinion avers that the allegations contained in Paragraph 56 are vague  
3 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
4 form a belief as to the truth of the same.

5 57. Kinion admits the allegations contained in Paragraph 57.

6 58. Kinion avers that the allegations contained in Paragraph 58 are vague  
7 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
8 form a belief as to the truth of the same.

9 59. Kinion admits the allegations contained in Paragraph 59.

10 60. Kinion admits the allegations contained in Paragraph 60.

11 61. Kinion denies the allegations contained in Paragraph 61.

12 62. Kinion denies the allegations contained in Paragraph 62.

13 63. Kinion denies the allegations contained in Paragraph 63.

14 64. Kinion denies the allegations contained in Paragraph 64.

15 65. Kinion denies the allegations contained in Paragraph 65.

16 66. Kinion denies the allegations contained in Paragraph 66.

17 67. Kinion admits the allegations contained in Paragraph 67.

18 68. Kinion denies the allegations contained in Paragraph 68.

19 69. Kinion avers that the allegations contained in Paragraph 69 are vague  
20 and non-specific, and thus, Kinion is without knowledge or information sufficient to  
21 form a belief as to the truth of the same.

22 70. Kinion denies the allegations contained in Paragraph 70.

23 71. Kinion denies the allegations contained in Paragraph 71.

24 72. Kinion denies the allegations contained in Paragraph 72.

1           73.     Kinion denies the allegations contained in Paragraph 73.

2                               **FIRST CAUSE OF ACTION**

3           74.     In response to the allegations of Paragraph 73, Kinion incorporates  
4 herein by this reference and restates her answers to the allegations of Paragraphs 1  
5 through 73 of the Amended Counterclaim and Third-party Complaint as if fully set forth  
6 herein.  
7

8           75.     In response to the allegations contained in Paragraph 75, Kinion admits  
9 that they made statements concerning Spencer in various judicial and quasi-judicial  
10 proceedings about his failure to appropriately do his job as snow plow driver and  
11 concerning his assault and battery of Egon and Helmut Klementi on separate  
12 occasions. Because these communications were uttered or published in course of  
13 judicial or quasi-judicial proceedings and were pertinent to the subject of controversy,  
14 they are absolutely privileged. Kinion denies the remaining allegations contained in  
15 Paragraph 75 not admitted.  
16

17           76.     Kinion denies the allegations contained in Paragraph 76.

18           77.     Kinion denies the allegations contained in Paragraph 77.

19           78.     Kinion denies the allegations contained in Paragraph 78.

20           79.     Kinion denies the allegations contained in Paragraph 79.

21                               **SECOND CAUSE OF ACTION**

22           80.     In response to the allegations contained in Paragraph 80, Kinion  
23 incorporates herein by this reference and restates her answers to the allegations of  
24 Paragraphs 1 through 79 of the Amended Counterclaim and Third-party Complaint as  
25 if fully set forth herein.  
26

27           81.     In response to the allegations contained in Paragraph 81, Kinion denies  
28

1 any statements or communications she made to the Douglas County Sheriff's  
2 Department and/or the Douglas County District Attorney's Office were false. Further,  
3 because their communications were uttered or published in course of judicial or quasi-  
4 judicial proceedings and/or were made to employees of a political subsidiary, they are  
5 absolutely privileged. Kinion denies the remaining allegations contained in Paragraph  
6 81, not admitted.

8 82. Kinion denies the allegations contained in Paragraph 82 (misidentified as  
9 Paragraph 83).

10 83. Kinion admits the allegations contained in Paragraph 83 (misidentified as  
11 Paragraph 84).

12 84. Kinion denies the allegations contained in Paragraph 84 (misidentified as  
13 Paragraph 85).

14  
15 **THIRD CAUSE OF ACTION**

16 85. In response to the allegations contained in Paragraph 85 (misidentified  
17 as Paragraph 86). Kinion incorporates herein by reference and restates her answers to  
18 the allegations of Paragraphs 1 through 84 of the Amended Counterclaim and Third-  
19 party Complaint as if fully set forth herein.

20 86. Kinion denies the allegations contained in Paragraph 86 (misidentified as  
21 Paragraph 87).

22 87. Kinion denies the allegations contained in Paragraph 87 (misidentified as  
23 Paragraph 88).

24 88. Kinion denies the allegations contained in Paragraph 88 (misidentified as  
25 Paragraph 89).

26 89. Kinion denies the allegations contained in Paragraph 89 (misidentified as  
27  
28

1 Paragraph 90).

2 90. Kinion denies the allegations contained in Paragraph 90 (misidentified as  
3 Paragraph 91).

4 91. Kinion denies the allegations contained in Paragraph 91 (misidentified as  
5 Paragraph 92).

6  
7 **FOURTH CAUSE OF ACTION**

8 92. In response to the allegations contained in Paragraph 92 (misidentified as  
9 Paragraph 93), Kinion incorporates herein by reference and restates her answers to  
10 the allegations of Paragraphs 1 through 91 of the Amended Counterclaim and Kinion  
11 as if fully set forth herein.

12 93. Kinion denies the allegations contained in Paragraph 93 (misidentified as  
13 Paragraph 94).

14 94. Kinion denies the allegations contained in Paragraph 94 (misidentified as  
15 Paragraph 95).

16 95. Kinion denies the allegations contained in Paragraph 95 (misidentified as  
17 Paragraph 96).

18 96. Kinion denies the allegations contained in Paragraph 96 (misidentified as  
19 Paragraph 97).

20 97. Kinion denies the allegations contained in Paragraph 97 (misidentified as  
21 Paragraph 98).

22 98. Kinion denies the allegations contained in Paragraph 98 (misidentified as  
23 Paragraph 99).

24  
25  
26 **FIFTH CAUSE OF ACTION**

27 99. In response to the allegations contained in Paragraph 99 (misidentified  
28



1 as Paragraph 100), Kinion incorporates herein by reference and restates her answers  
2 to the allegations of Paragraphs 1 through 98 of the Amended Counterclaim and Third-  
3 party Complaint as if fully set forth herein.

4 100. Kinion denies the allegations contained in Paragraph 100 (misidentified  
5 as Paragraph 101).

6 101. Kinion denies the allegations contained in Paragraph 101 (misidentified  
7 as Paragraph 102).

8 102. Kinion denies the allegations contained in Paragraph 102 (misidentified  
9 as Paragraph 103).

10  
11 **SIXTH CAUSE OF ACTION**

12 103. In response to the allegations contained in Paragraph 103 (misidentified  
13 as Paragraph 104), Kinion incorporates herein by reference and restates her answers  
14 to the allegations of Paragraphs 1 through 103 of the Amended Counterclaim and  
15 Third-party Complaint as if fully set forth herein.

16 104. Kinion denies the allegations contained in Paragraph 104 (misidentified  
17 as Paragraph 105).

18 105. Kinion denies the allegations contained in Paragraph 105 (misidentified  
19 as Paragraph 106).

20 106. Kinion denies the allegations contained in Paragraph 106 (misidentified  
21 as Paragraph 107).

22  
23 **AFFIRMATIVE DEFENSES**

24 **FIRST AFFIRMATIVE DEFENSE**

25 The Amended Counterclaim and Third-party Complaint and each and every  
26 allegation contained therein fails to state a claim upon which relief can be granted.

27 **SECOND AFFIRMATIVE DEFENSE**

1 That the statements uttered or published by Kinion and referenced in the  
2 Amended Counterclaim and Third-party Complaint are absolutely privileged because  
3 they were uttered or published in course of judicial and/or quasi-judicial proceedings  
4 and were pertinent to the subject of controversy.

5 **THIRD AFFIRMATIVE DEFENSE**

6 That the statements uttered or published by Kinion and referenced in the  
7 Amended Counterclaim and Third-party Complaint when taken as a whole are  
8 statements of opinion protected under the First Amendment.

9 **FOURTH AFFIRMATIVE DEFENSE**

10 That the statements uttered or published by Kinion and referenced in the  
11 Amended Counterclaim and Third-party Complaint are true or substantially true and  
12 made in good faith.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 That the statements uttered or published by Kinion and referenced in the  
15 Amended Counterclaim and Third-party Complaint are privileged by reason of the  
16 statements being made in good faith, aimed at procuring governmental action, and  
17 made to an officer or employee of a political subdivision of this state.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 That the statements uttered or published by Kinion and referenced in the  
20 Amended Counterclaim and Third-party Complaint are privileged by reason of the  
21 statements being made without actual malice.

22 **SEVENTH AFFIRMATIVE DEFENSE**

23 That the statements uttered or published by Kinion and referenced in the  
24 Amended Counterclaim and Third-party Complaint are privileged by reason of the  
25 statements being made after initiation of criminal proceedings.

26 **EIGHT AFFIRMATIVE DEFENSE**

1 To the extent Spencer sustained any damages as a result of the allegations out  
2 of which this matter arises, those damages were caused by the acts or omissions of  
3 Third-parties over which Kinion has no control.  
4

5  
6 **NINTH AFFIRMATIVE DEFENSE**

7 Kinion is informed and believe and thereupon aver that at all times relevant  
8 hereto, Spencer was negligent, at fault, and otherwise responsible for the allegations  
9 which are the subject of this litigation.

10 **TENTH AFFIRMATIVE DEFENSE**

11 That Spencer's damages, if any, were caused in whole or in part, or were  
12 contributed to by reason of the actions and wrongful conduct of Spencer himself.

13 **ELEVENTH AFFIRMATIVE DEFENSE**

14 Spencer's actions against Kinion are frivolous, unreasonable, vexatious, and  
15 devoid of any legal or factual foundation. The Amended Counterclaim and Third-party  
16 Complaint is not well grounded in fact, nor warranted by existing law or a good faith  
17 argument for the extension, modification, or reversal of existing law.

18 **PRAYER FOR RELIEF**

19 Based upon the foregoing, Third-party Defendant Mary Ellen Kinion,  
20 respectfully requests relief as follows:

- 21 1. That Spencer take nothing by virtue of this action, and that his Amended  
22 Counterclaim against Kinion be dismissed with prejudice;  
23  
24 2. For costs of suit and attorney's fees to the extent allowed by law; and  
25 3. For such other and further relief as the Court deems just and proper.

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**AFFIRMATION**  
**Pursuant to NRS 239B.030**

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

DATED this 24 day of March, 2017.

GLOGOVAC & PINTAR

By:

  
MICHAEL A. PINTAR, ESQ.  
Nevada Bar No. 003789  
Attorneys for Mary Ellen Kinion

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the foregoing document(s) described as follows:

**ANSWER TO AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT**

On the party(s) set forth below by:

  X   Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

       Personal delivery.

       Facsimile (FAX).

       Federal Express or other overnight delivery.

addressed as follows:

William Routsis, Esq.  
1070 Monroe Street  
Reno, NV 89509  
***Attorneys for Jeffrey Spencer***

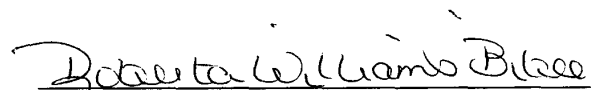
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***Attorneys for Rowena Shaw and Peter Shaw***

Dated this 24<sup>th</sup> day of March, 2017.

  
Employee of Glogovac & Pintar

## **CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Doyle Law Office, PLLC and that on the 3rd day of June, 2019, a true and correct copy of the above APPELLANT'S APPENDIX was e-filed and e-served on all registered parties to the Nevada Supreme Court's electronic filing system as listed below:

Douglas R. Brown  
Sarah M. Molleck  
Christian L. Moore  
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Michael A Pintar  
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American Family Mutual Insurance Company  
6750 Via Austi Parkway, Ste. 310  
Las Vegas NV 89119

**DATED** this 3rd day of June, 2019.

\_\_\_\_\_/s Kerry S. Doyle  
Kerry S. Doyle

1       only one witness. Are you sure you had other  
2       eyewitnesses there?

3             A       I don't know exactly.

4             Q       Then say that.

5             A       Counsel, do you need a break?

6             Q       No. I think you might need one.

7             A       Because I feel very, like, adversarial, and  
8       nobody is objecting over here.

9             MS. CAPERS: Objection, Your Honor. I think  
10       number one, he's testifying. Number two, let's give her  
11       the courtesy when asking questions, being argumentative,  
12       badgering her. Number 3, I think it would be appropriate  
13       to maybe we take a break and get the complaints because  
14       he's asking questions obviously of something she doesn't  
15       remember. It also would help us because I haven't  
16       received the DA file, so I'm not exactly sure also what  
17       these documents are, but I think in all fairness, get the  
18       documents so we can see them and then give her the  
19       documents to see if it properly refreshes her  
20       recollection. Then ask the questions.

21            MR. ROUTSIS: Judge, they have -- in all due  
22       respect, they have been served an opposition for summary  
23       judgment. We attached these transcripts for the purpose  
24       so we can clearly --

—CAPITOL REPORTERS (775) 882-5322—

1 MS. CAPERS: But your questions are --

2 MR. ROUTSIS: Please, Counsel, don't  
3 interrupt. She has the documents. She hasn't read it.  
4 That's not my fault.

5 MS. CAPERS: The questions are going outside  
6 of the complaints, and that was the reason why the judge  
7 said give us the DA file beforehand. And again, with not  
8 having that information, we can't even properly question  
9 her.

10 MR. ZANIEL: Just for the record, the  
11 complaint is not in the DA's file. I was given the  
12 subpoena.

13 Q (BY MR. ROUTSIS:) Your Honor, I'll move  
14 beyond the complaint. That's not where I'm at now, and I  
15 don't think that's particularly relevant to the issues.  
16 I'm simply asking the prosecutor if, at the felony trial,  
17 Mary Ellen Kinion was the only corroborating witness to  
18 an alleged snowplow assault on Egon Klementi on December  
19 12th. You're under oath. Was she the only corroborating  
20 witness? Yes or no.

21 A Going back to the first part of that, I don't  
22 think that you're understanding the process. And I think  
23 if you take a look at the original complaint filed at the  
24 justice court --



1                   MR. ROUTSIS: Your Honor, I'm going to move  
2 to strike.

3                   THE COURT: Be quiet. Just a minute. One of  
4 the problems is you're always interrupting, Mr. Routsis.  
5 Let her finish. I'm trying to figure out what's going  
6 on. Please. I'm sorry, Ms. Pence.

7                   THE WITNESS: The original charge at the  
8 justice court level did not involve only one count. The  
9 partial piece of paper that you handed me was the first  
10 page of a misdemeanor complaint, but there were also two  
11 gross misdemeanors, I believe, filed at the justice court  
12 level well before my office ever received this piece of  
13 paper.

14                   There was a second amended complaint, I  
15 believe, that was filed at the justice court level as  
16 well. That was the complaint that the prelim was had on.  
17 There were no other changes. So when you keep saying  
18 isn't it true that I elevated all of these charges and I  
19 elevated these different things, nothing was elevated  
20 from the original time of the charging back in January  
21 until the trial except for the one count that involved  
22 Helmut, and it went from a gross up to a felony because  
23 the medical records show that there was substantial  
24 bodily harm.

1                   As to your question about the snowplow  
2     incident, I think if you look at the complaints back at  
3     the justice court, that's already been alluded to, and my  
4     understanding -- I don't remember who testified at trial,  
5     but I think there was information regarding a call that  
6     Helmut made to his wife immediately after it had occurred  
7     and a call that he made to Miss Kinion, and then also  
8     even a call to the company that ran the snowplow  
9     business. So I don't believe she was the only person  
10    with information about that, but I would have to go back  
11    and check the trial transcript.

12                Q     Okay. Mrs. Pence, my question is, you  
13    alleged in an amended information that Egon Klementi was  
14    the victim of a snowplow assault; correct?

15                A     Yes.

16                Q     Mary Ellen Kinion wrote you a letter on  
17    February 22nd where she specifically stated she was an  
18    eyewitness to this assault; correct?

19                A     Correct.

20                Q     You indicated that you had contact with her  
21    prior to the preliminary hearing where you discussed  
22    matters with her, and as a result of that, you received a  
23    letter sometime later; correct? Yes or no?

24                A     No.

1           Q     Okay. Did you have a conversation with Miss  
2     Kinion before the letter was sent to you?

3           A     Yes.

4           Q     And you discussed her knowledge about this  
5     case or the Spencers; correct?

6           A     No.

7           Q     You talked about what?

8           A     She told me that she had information that she  
9     thought would be relevant, and I was the district  
10    attorney that handled all of the Tahoe calendar at that  
11    time. And I told her I did not have time to talk with  
12    her. If she thought it was relevant or pertinent, she  
13    needed to put it in writing and send it to my office.

14          Q     Okay. Your testimony may be different than  
15    that. But in any event, you got a letter on February  
16    22nd, and you alleged a gross misdemeanor against  
17    Mr. Spencer. At trial, Mary Ellen Kinion testified, did  
18    she not?

19               MR. MOORE: Your Honor, I have an objection  
20    on counsel characterizing testimony to the witness and  
21    arguing in the question that her testimony is different.

22               THE COURT: Sustained.

23               MR. MOORE: Thank you.

24          Q     (BY MR. ROUTSIS:) Mary Ellen Kinion was an



1     eyewitness, an alleged eyewitness to that event, the  
2     snowplow incident on December 12th, was she not?

3             A     I don't remember. I know that she had  
4     information about it.

5             Q     You don't remember if she testified as an  
6     eyewitness?

7             A     I don't remember if she testified that she  
8     was called after he was struck with the snow or if she  
9     actually saw it. I would need to look at the trial  
10    transcript, but I want to clarify because --

11            MR. ROUTSIS: Your Honor, there's not a  
12    question pending.

13            THE WITNESS: Well, your question is  
14    confusing because you keep alluding to the gross  
15    misdemeanor in the amended information. But there was a  
16    gross misdemeanor alleging this, I believe, at the  
17    justice court level well before the prelim.

18            Q     (BY MR. ROUTSIS:) I'm not asking you about  
19    that, Ms. Pence. That's not really a grave concern of  
20    mine. My concern is, you filed an amended information.  
21    You had contact with Miss Kinion prior to the letter.  
22    You indicate that that contact was discussion about  
23    information she had because you told her, according to  
24    you, to send a document to you. She testified that she

1 sent it unsolicited. But in any event, you must have  
2 discussed something about the case in order to prompt  
3 this type of discussion, right?

4 A She told me she had information she thought  
5 would be helpful.

6 Q Okay. So when you're prosecuting a man for  
7 an elderly abuse count and you charge him with a specific  
8 act of assaulting somebody with a snowplow, and  
9 Ms. Kinion testifies and provides you a letter in which  
10 she offers information -- and I'd like the Court to take  
11 judicial notice of Miss Kinion's trial testimony -- "This  
12 occurred December 12th, 2012, right? You wrote a letter  
13 to the prosecutor to try to get them to prosecute." As  
14 you testified, "Mr. Spencer, you signed a letter and it  
15 showed it received February 22nd."

16 "Okay. Correct."

17 MS. CAPERS: What page are we reading from,  
18 Your Honor?

19 THE COURT: I don't know. That's the  
20 honest-to-God answer. I don't know.

21 MS. CAPERS: I was just bringing it to the  
22 Court's attention. If we could get courtesy of where  
23 he's reading.

24 MR. ROUTSIS: I assume incorrectly that when

1 we file an opposition to a summary judgment motion, even  
2 though I'm a criminal lawyer, that they will take the  
3 time to look at the document.

4 THE COURT: All they were asking for was  
5 reference to where you're reading.

6 MR. ROUTSIS: Page 17. Page 17 of Mary Ellen  
7 Kinion's testimony that we provided to counsel.

8 THE COURT: Thank you.

9 Q (BY MR. ROUTSIS:) Miss Kinion, this --  
10 again, do you recall her testimony?

11 A No.

12 Q You wrote -- this is your questioning,  
13 Ms. Pence. Okay?

14 A You asked me if I remembered it. I don't  
15 remember it.

16 MR. ROUTSIS: Well, let me -- can I approach  
17 counsel?

18 THE COURT: Yes.

19 Q (BY MR. ROUTSIS:) Page 17. I'd ask you to  
20 read page 17 where it's highlighted. Does that refresh  
21 your memory if you asked Ms. Kinion a question regarding  
22 the purpose of that letter?

23 A This is your questioning of the witness.  
24 This is not what I asked.

1 Q Okay. Can you --

2 A That's your testimony.

3 Q My apologies.

4 A Your questioning.

5 Q Can you tell me what the question and answer  
6 reveals why she wrote that letter to you?

7 A I'm sorry. You want me to speculate as to  
8 why you asked my witness this question?

9 MR. PINTAR: Your Honor, I'm going to object.

10 THE COURT: There's no need to object. She's  
11 answered.

12 MR. PINTAR: Again, I want to make clear none  
13 of this has ever been produced other than in, apparently,  
14 in a motion. I don't know that there was an affidavit  
15 supporting that this was produced, but there's -- none of  
16 these documents have been produced in the course of  
17 discovery, so I'd just like to make that ongoing  
18 objection.

19 THE COURT: Well, I'm trying to follow.

20 Q (BY MR. ROUTSIS:) I'll just ask a simple  
21 question, Judge. From page 17 of Mary Ellen Kinion's  
22 testimony. Question regarding the December 12th assault.

23 "This occurred December 12th, 2012, right?

24 You wrote a letter to the prosecutor to try to get them



1 to prosecute, as you testified. You signed a letter and  
2 it shows it received February 22nd?"

3 "Correct."

4 MR. PINTAR: Your Honor, I'm going to object.  
5 Mr. Routsis is reading his own questions.

6 THE COURT: That's what Ms. Pence was saying.

7 MR. ROUTSIS: Yeah, okay, I'm reading my own  
8 question. So what does it matter? It's a trial  
9 transcript.

10 THE COURT: So where are we going with your  
11 own question?

12 MR. ROUTSIS: That the letter was written by  
13 Miss Kinion to prosecute.

14 THE COURT: We know there was a freaking  
15 letter written because she's reading it.

16 MR. ROUTSIS: Right. Right. And the letter  
17 was written to prosecute Mr. Spencer.

18 THE COURT: Take it for what it is. That's  
19 why I asked her.

20 Q (BY MR. ROUTSIS:) And Mrs. Pence filed  
21 criminal charges and called Miss Kinion to the stand to  
22 testify regarding the December 12th incident; isn't that  
23 correct? Yes or no? Please.

24 A It's not correct.



1 Q You didn't call her as a witness?

2 MR. MOORE: I'm going to object. It's  
3 compound. That's one of the problems.

4 MS. CAPERS: And mischaracterization.

5 THE COURT: That is a problem.

6 I kind of understand where Mr. Routsis wants  
7 me to go --

8 MR. ROUTSIS: Judge, I just --

9 THE COURT: -- but you're interrupting  
10 yourself so many times that we're losing track of it.

11 MR. ROUTSIS: Let me just restate it calmly  
12 because she won't answer the question.

13 THE COURT: She did answer the question. She  
14 won't answer it the way you want her to answer it.

15 Q (BY MR. ROUTSIS:) She's not answering the  
16 question. The simple question was, did you call her as a  
17 witness to testify regarding the December 12th snowplow  
18 assault? Yes or no?

19 A I did call her as a witness.

20 Q Thank you. And she was alleged to be a  
21 material eyewitness; correct?

22 A I don't remember if she was an eyewitness or  
23 not.

24 Q Well, when you charge the crime and you call

1 a witness regarding that crime, they're supposed to have  
2 evidence to support that crime; correct?

3 A Again, it's compound.

4 MR. PINTAR: He's being argumentative.

5 THE COURT: He is. Sustained.

6 Q (BY MR. ROUTSIS:) Okay. Here is a copy.  
7 We'll mark the criminal complaint, and it doesn't charge,  
8 as you've alleged, elderly abuse. Okay?

9 A Well, that would be in a separate document,  
10 Mr. Routsis, because gross misdemeanors have to be  
11 charged in a separate complaint. That is the misdemeanor  
12 complaint. There's another criminal complaint on file  
13 that charges gross misdemeanors. They are separate  
14 documents.

15 Q Okay. So --

16 MS. CAPERS: And again, I renew my objection.  
17 This would go a lot smoother and more efficient if we  
18 could get all of the documents for her to have to review  
19 because she doesn't remember.

20 THE COURT: Apparently, we got the DA file.

21 THE WITNESS: If I can have Volume I, Your  
22 Honor, that would help.

23 THE COURT: Yeah, you can have Volume I.  
24 Hang on. Volume I of the DA's file.

1 THE WITNESS: That's the district court file.

2 THE CLERK: Yeah.

3 THE WITNESS: That's all I need.

4 THE COURT: Thank you. Let's get the DA's  
5 file.

6 THE WITNESS: That's all I need is right  
7 there.

8 THE CLERK: So you can get it?

9 THE WITNESS: Uh-huh. It's all right there.  
10 Everything that I filed would be public record and open  
11 to everyone, so go and look at it. But if you give me  
12 that, I can put them out in order and then I can let the  
13 judge know what the dates are.

14 MS. PIERCE: For the record, Your Honor, I  
15 could not find that two-page criminal complaint in Volume  
16 I, which is why I went just now. Somehow, the second  
17 page dropped off on the copy we have here.

18 THE WITNESS: The justice court file? If it  
19 wasn't when it got bound over, they didn't send over the  
20 first because if it got bound over on the amended, it  
21 might still be in the justice court file.

22 THE COURT: Is that what are we referring to,  
23 Mr. Routsis?

24 MR. ROUTSIS: I'm sorry, Your Honor. I

1       didn't hear what you said.

2               THE COURT: Could it be in the justice court  
3       file?

4               MR. ROUTSIS: It would only be, I think, in  
5       the --

6               THE COURT: What are you looking for?

7               MR. ROUTSIS: The criminal complaint. The  
8       original. We've got here the criminal complaint. Not  
9       that it's deciding of this issue, but she says that she  
10      filed two gross misdemeanors along with the initial  
11      criminal complaint.

12              THE WITNESS: And, Your Honor, here's a copy  
13      of that filing with the two gross misdemeanors in justice  
14      court.

15              THE COURT: Very good.

16              MR. ROUTSIS: What date is that?

17              THE WITNESS: The same date as the  
18      misdemeanor battery.

19              THE COURT: January 6th?

20              THE WITNESS: That's correct.

21              THE COURT: Okay. So? January 16th.

22              Q       (BY MR. ROUTSIS:) January 16th. Okay. So  
23      on January 16th, you filed -- can I look at that, Your  
24      Honor? Thank you.



1 Well, Count 1 is not -- Count 1, in your  
2 gross misdemeanor complaint, is intimidation of a  
3 witness, okay? It has nothing to do with the two elderly  
4 abuse counts that are filed in the amended information.  
5 Would you agree with that? Yes or no? Do you want to  
6 look at it again? Yes or no?

7 A It's compound and it's complex, and if you  
8 want to break that down into something I can answer with  
9 a yes or no, I'd be happy to.

10 Q Count 1 is not an allegation of an elderly  
11 abuse charge. It's intimidation.

12 Can I approach, Your Honor? It's  
13 intimidation of a witness count.

14 A Count 1 in that misdemeanor complaint, that's  
15 correct. That is -- excuse me. I'm sorry. Can I just  
16 see that one for a minute? Count 1 is a category D  
17 felony, intimidation of a witness. And I think that  
18 charge was actually either reduced or dismissed.

19 Q Well, it was never filed.

20 A Actually, it was filed on January 16th of  
21 2013.

22 Q Look at the amended information. It's not  
23 filed.

24 A You're asking me about the original criminal

1 complaint that I filed, and the original charges in this  
2 case that I filed were both misdemeanor battery as well  
3 as intimidation of a witness to influence testimony, a  
4 category D felony, and exploitation of an elderly person  
5 as a gross misdemeanor.

6 Q Okay. Thank you. So please keep the spot.  
7 And we've allowed you to see, and it's on record, the  
8 amended information. There is not filed in the amended  
9 information an intimidation of a witness. Can you tell  
10 us why you did not file that charge?

11 MR. MOORE: Objection. It is argumentative.  
12 Let this witness testify what she knows and she did do  
13 instead of having Mr. Routsis characterize what happened.

14 MR. PINTAR: Well, in addition, it's  
15 irrelevant because the claim is that Ms. Pence increased  
16 the charges due to something that Miss Kinion said, and  
17 now he's asking her about why she reduced the charges.

18 THE COURT: I'll sustain the objection  
19 because --

20 MR. ROUTSIS: Can I explain why it's  
21 relevant? Can I explain why it's relevant? She filed an  
22 intimidation of a witness charge.

23 THE COURT: I agree.

24 MR. ROUTSIS: Okay. She did not file it in

1 the amended information.

2 THE COURT: For whatever reason. I agree.

3 MR. ROUTSIS: Right. She then filed an  
4 elderly abuse charge that she did not dismiss, and we  
5 support that Mary Ellen Kinion became a witness. And the  
6 timing of the complaint is not relevant to our case.  
7 Mary Ellen Kinion became a witness, which is the reason  
8 she did not dismiss that count because she was the -- and  
9 we'll establish to the Court -- she was the only  
10 eyewitness to a crime to an alleged assault that never  
11 happened, that the material issue of fact, it did not  
12 happen, we believe. And she later -- Judge, we have  
13 trial transcript deposition testimony.

14 She testified under oath that she saw my  
15 client with a big grin on his face put a berm in front of  
16 her house and then assault Mr. Egon Klementi with a  
17 snowplow. She then testified at the deposition she did  
18 not see who drove the snowplow. She committed perjury  
19 under oath to put a man potentially in prison on an  
20 elderly abuse charge. That is the record, and it is not  
21 controverted.

22 And so when you talk about malicious  
23 prosecution, this is about as malicious as a prosecution  
24 can get because she further testified in order to enhance



1 and ratchet up the charges that were not dismissed like  
2 the intimidation of a witness that my client put berms of  
3 snow in front of her house and it was my client -- she  
4 called his boss and she recanted on that as well.

5 We have opposition in the opposing papers.  
6 When they filed a motion for summary judgment, they  
7 stated, in the document, that she did not see who was  
8 driving the snowplow on that date, thereby trying to  
9 exclude her from what she testified to under oath. She  
10 said it was Jeff Spencer. He picked up debris. Now, we  
11 have an investigating officer come to testify at trial.  
12 He said he went out there. There was no evidence to  
13 indicate even a crime had occurred based on the debris.  
14 He filed no report.

15 Now it gets worse, Judge. How can she make a  
16 call to Egon or the police if it never happened? She  
17 testified that she called Egon Klementi. But Egon  
18 Klementi -- she waited an hour and a half before she  
19 called the police. Now we're supposed to believe she saw  
20 an 84-year-old man get assaulted with a speeding snowplow  
21 and she sits down and has lunch. She never called Egon  
22 for something she never saw, but Egon Klementi calls her.  
23 And this is the basis of our conspiracy because we have  
24 an hour and a half delay. Egon calls her. She then



1 calls the police.

2 Is this a material issue of fact for  
3 malicious prosecution, Judge? It is admitted, admitted  
4 perjury that she gave in her opposition motion that she  
5 isn't sure he was the driver. The allegations of an  
6 assault with a snowplow are unverified, and at trial, we  
7 spent a lot of time with it. It was a giant snowplow.  
8 She was down the street. You could not see the front of  
9 the plow. The jury implicitly agreed with us, although  
10 it's a different standard, we understand.

11 So when we come before the Court here and we  
12 file an opposition to a summary judgment motion and we  
13 lay out the transcripts, and the issue is really very  
14 simple. She indicates in her testimony that she gave a  
15 letter to the State unrequested. She provided a letter  
16 where she materially concludes she was a witness to  
17 multiple events that ratcheted up the energy for  
18 Ms. Pence.

19 Now, as an officer of the court, I can tell  
20 you that there came a time during this case that  
21 Ms. Pence thought the Spencers were the Antichrist  
22 because of people like Mary Ellen Kinion --

23 MS. CAPERS: I'd object, Your Honor.

24 MR. MOORE: Objection.

1 THE COURT: I'm letting it go. Honestly --

2 THE WITNESS: Your Honor, can I step down?

3 THE COURT: I totally recognize the passion,  
4 I totally understand he's arguing the motion.

5 MR. ROUTSIS: Thank you, Judge.

6 THE WITNESS: I can step down if we're done.

7 THE COURT: I don't know if he's done.

8 MR. ROUTSIS: I'm not done.

9 THE WITNESS: Because there's no question --

10 THE COURT: There certainly is not.

11 THE WITNESS: -- at this point, and I've got  
12 a ton of work to do.

13 MR. ROUTSIS: Are you running the -- are the  
14 judge?

15 THE COURT: Are you?

16 MR. ROUTSIS: No, but I --

17 THE WITNESS: No. I came. I want to be  
18 helpful, but I have work to do.

19 Q (BY MR. ROUTSIS:) You know, okay. So,  
20 Ms. Pence, you don't remember Mary Ellen Kinion  
21 testifying and being an eyewitness in the case?

22 A I remember her being an eyewitness in the  
23 case. And what I can tell you about this case is now  
24 we've seen two of the four, I think, or five charging

1 documents. Once all of the parties have all of the  
2 charging documents, I think it will really help because  
3 much of what you're referring to about things being  
4 reduced or enhanced, for example, the exploitation --

5 MR. ROUTSIS: Judge, there's no question  
6 pending. She keeps --

7 THE COURT: You weren't listening. She's  
8 answering. You were not listening. You were talking to  
9 the clerk. You were looking for something which creates  
10 horrible problems. Let her finish.

11 MR. ROUTSIS: Okay.

12 THE WITNESS: So the charges that you're  
13 asking about originally are set out as exploitation  
14 charges. And I think that's in the second amended or in  
15 the amended criminal complaint at the justice court  
16 level.

17 If you look at the to wit language in those,  
18 and this is all by memory, but if I can have that volume  
19 back, I could probably be more specific. But the  
20 allegations, the to wit language that supported those  
21 charges are all the same. And basically, it dealt with  
22 Mr. Spencer's actions towards the three different  
23 individuals, and there was a charge, from what I  
24 remember, as to each of the different individuals.



1           They went from being called exploitation to  
2   being called abuse charges after the prelim because we  
3   had to pick whether we wanted the exploitation or the  
4   abuse language. It's the same charge if you look at the  
5   NRS statute. It was never enhanced or changed. The only  
6   one that was actually elevated was the one involving the  
7   battery with Helmut because of the medical records. So  
8   that is correct.

9           But when Miss Kinion testified at the trial,  
10   I don't remember if she was an eyewitness. I remember  
11   she called to talk about the snowplow. I think that  
12   Elfride might have talked about the snowplow incident. I  
13   think the snowplow driver himself, your expert testified  
14   that, in fact, it was very possible that a snowplow could  
15   throw that much snow at that height. I think there were  
16   four or five different people that addressed that count.  
17   So I don't think she was the sole person. And again --

18           MR. ROUTSIS: Well, let's look at -- thank  
19   you. Are you done?

20           MR. PINTAR: Your Honor, he keeps on  
21   interrupting.

22           THE COURT: Yes, I agree. Are you done? And  
23   again --

24           THE WITNESS: The problem that I keep hearing

1 is that you said that we got this letter for prosecution  
2 purposes, that we got -- that she testified for  
3 prosecution. My recollection of this three years ago is  
4 that Miss Kinion was called as a prosecution or a State's  
5 witness in our case, but as a layperson, as someone  
6 outside of the district attorney's office and not the  
7 sheriff's department, she would not have had the ability  
8 or the capacity to elevate or decrease any of the  
9 charges.

10 Q (BY MR. ROUTSIS:) What are you talking  
11 about? You're a prosecutor. If you get a witness that  
12 comes in and says, "I saw somebody kill somebody," you're  
13 going to file a murder charge, right, based on the  
14 witness? Right? Yes or no?

15 A If the charge of murder has already been  
16 filed, no, I'm not going to do anything. And that's  
17 exactly the situation we have here. These charges were  
18 all filed well before this letter was received.

19 Q Well, let's --

20 A And the only change that came after this  
21 letter was the substantial bodily harm enhancement.

22 Q Well, as we have the misdemeanor complaint  
23 and the gross misdemeanor complaint, it's not alleged in  
24 that complaint that -- Count 3 in the amended information

1 -- that Jeff Spencer willfully and unlawfully abused an  
2 elderly person by inflicting pain, injury or mental  
3 anguish. He caused Elfride Klementi, a person who was 60  
4 years of age or older, mental anguish by harming or  
5 threatening to harm her family or by yelling and/or  
6 threatening her husband, Egon Klementi, or by physically  
7 attacking her brother-in-law, Helmut. Okay?

8 Now, in the letter Mary Ellen Kinion wrote to  
9 you, it sure appears like she's a witness to this event.  
10 She states, "Jeff accosted Egon in the street and yelled  
11 at him about coming on his property and taking pictures.  
12 Marilyn and Janet Wells, a neighbor, joined. Jeff  
13 threatened to punch Egon in the face." Right?

14 A That is in that letter.

15 Q It is in that letter, right?

16 A But everything you've just discussed --

17 MR. ROUTSIS: There's not a question, Judge.

18 THE COURT: It's in the letter. Go ahead and  
19 ask the question.

20 Q (BY MR. ROUTSIS:) Okay. So you have her  
21 writing a letter. Doesn't it appear she's making herself  
22 a witness to that?

23 MR. MOORE: Objection. Mischaracterizes  
24 testimony. He says quote, "You have her writing a



1 letter." That's not her testimony.

2 THE COURT: I agree. Sustained.

3 MR. MOORE: Thank you.

4 Q (BY MR. ROUTSIS:) When you read the  
5 letter -- and I assume you read the letter?

6 A I did.

7 Q Did you believe that she was a witness to  
8 that event?

9 A Did I believe that she saw those things  
10 herself?

11 Q Yes.

12 A I think I took the letter for what it said,  
13 and I set it aside. But my point that I'm trying to  
14 make is that --

15 MR. ROUTSIS: Judge, there's not a question  
16 pending. She keeps trying to offer -- if I can conduct  
17 my examination.

18 THE COURT: Go ahead.

19 MR. ROUTSIS: Thank you.

20 MR. PINTAR: This is about malicious  
21 prosecution. I don't know where he's going.

22 THE COURT: I don't quite know myself. So be  
23 specific on which complaint, amended complaint, which  
24 charge.

1           Q     (BY MR. ROUTSIS:) Right. In the amended  
2 information, you allege -- that was not charged in the  
3 complaint that we just looked at on January 16th, okay?  
4 In the amended information, you make allegations  
5 regarding my client threatening to punch Mr. Egon  
6 Klementi on -- you don't put the date down -- and Mary  
7 Ellen Kinion wrote you a letter, and she made -- she  
8 didn't say she -- Jeff accosted Egon in the street.  
9 Okay? Now, she became very interesting.

10                 Can I approach, Your Honor?

11           THE COURT: I want you to ask the question.

12           Q     (BY MR. ROUTSIS:) Yes. In your amended  
13 information, Mary Ellen Kinion is not on the original  
14 witness list. May I approach? Is that correct?

15           A     That's correct.

16           Q     So you obviously had some conversations with  
17 her prior -- after the filing of the amended information  
18 that made her a material witness; correct?

19           A     No.

20           Q     Well, she's not on the amended witness list;  
21 is that correct?

22           A     She's not.

23           Q     But she was --

24           A     She's not on the original.



1 Q That's the amended information, ma'am.

2 A Yeah, and she wasn't.

3 Q There's not a question. That's the amended  
4 information. She is not on the witness list. Yes or no?  
5 Is that correct?

6 A She is not on the witness list on the amended  
7 information.

8 Q Okay. However, at some point in time, you  
9 had to put her on the witness list to call her at trial;  
10 correct?

11 A That's correct. I filed --

12 Q Yes or no, please?

13 MR. MOORE: Your Honor --

14 THE WITNESS: That's correct. I filed a  
15 second amended information and endorsed a multitude of  
16 new witnesses.

17 Q (BY MR. ROUTSIS:) So why did Mary Ellen  
18 Kinion become a witness after the filing of the amended  
19 information and before trial? What led you to put her on  
20 the witness list?

21 MS. CAPER: Objection, Your Honor. Compound.  
22 If you could just ask --

23 THE COURT: Well, no. I understand, so I'm  
24 going to sustain or overrule that objection.

1 MR. ROUTSIS: Thank you, Judge.

2 THE COURT: It's what we've been doing for an  
3 hour and a half. What led you to put her, Mary Ellen  
4 Kinion, on the witness stand?

5 Q (BY MR. ROUTSIS:) Why did you place her on  
6 the list before trial and not after the amended  
7 information?

8 MR. PINTAR: Your Honor, wait a second. That  
9 question made no sense. He said before trial but not  
10 after the amended information.

11 MR. ROUTSIS: I said and after the amended  
12 information.

13 MR. PINTAR: No. You said and not after the  
14 amended information.

15 THE COURT: Start over, Mr. Routsis.

16 Q (BY MR. ROUTSIS:) Ms. Pence, you filed an  
17 amended information with the witness list. Mary Ellen  
18 Kinion is not on it. We've established that.

19 A That's correct.

20 Q You then put her on the witness list and  
21 called her to trial. What discussions or what evidence  
22 did she present that led you to put her on the list?

23 A I don't remember what discussions we had. I  
24 would --

1           Q     But that's an answer.  If she doesn't  
2     remember, I'd ask --

3           A     I'd most likely guess at some point --

4           MR. ROUTSIS:  Objection to strike her guess,  
5     Your Honor.

6           THE COURT:  Sustained.

7           Q     (BY MR. ROUTSIS:)  So your answer is you  
8     don't remember what led you to put her on the witness  
9     list; correct?

10          A     That's correct.

11          Q     But at trial when you're trying to prove a  
12     man's convicted or guilty, trying to prove he committed a  
13     crime, you can't put on perjured testimony; correct?  
14     Knowingly?  Is that correct?

15          MR. PINTAR:  Your Honor, where are we going  
16     with this letter?

17          MR. ROUTSIS:  Let me have a little leeway.  
18     I'll get right to it.

19          MR. PINTAR:  He's been at it for an hour.  
20     How much leeway does he need?  This is a pretty simple  
21     motion.

22          THE COURT:  I'd agree with Mr. Pintar.

23          Q     (BY MR. ROUTSIS:)  I'm almost done.

24                 Ms. Pence, you wouldn't put her on the

1 witness list unless she had material evidence to one of  
2 the charges; correct?

3 A That's correct.

4 Q And as you sit here, you don't know if that  
5 evidence was true or false, do you?

6 A I would absolutely believe that the  
7 information she had was true, or I would never have  
8 called her as a witness. So as an officer of the court  
9 and in my prosecution of this case, I believe everything  
10 she said would have been the truth.

11 Q But you have no personal knowledge of that,  
12 do you?

13 A Other than what she swore to in the  
14 courtroom, no.

15 Q And the jury acquitted him of all counts;  
16 correct? Yes or no?

17 A He was acquitted.

18 Q Of all counts?

19 A He was acquitted.

20 Q Of all counts; correct?

21 A That's my understanding.

22 Q What do you mean your understanding? You  
23 were there.

24 MR. MOORE: Objection, Your Honor.



1 THE COURT: Sustained.

2 Q (BY MR. ROUTSIS:) So at least we've  
3 established she had material information to support the  
4 charges. Can you tell us what charges she had material  
5 information about?

6 A Yes, and I would point you to the criminal  
7 complaint filed on January 16th, 2013, Count 2:  
8 exploitation of an elderly person as a gross misdemeanor  
9 wherein I charged Mr. Spencer with all of the things that  
10 I charged him with in the amended information, and that  
11 was filed well before this. That information came from a  
12 multitude of people. I would guess that in addition to  
13 Miss Kinion, I must have had some other information in  
14 order to --

15 MR. ROUTSIS: Objection. Move to strike as  
16 to what she must have had. Unless she has personal  
17 knowledge, I'd move to strike.

18 THE COURT: She can testify to it.

19 THE WITNESS: Because I wouldn't have filed  
20 this information, this complaint back in January of 2013  
21 alleging that Mr. Spencer was yelling at Egon as he  
22 walked his dog, that he covered Mr. Egon Klementi with  
23 snow and debris with the snowplow he was driving, that he  
24 was piling up snow berms and trapping the residents

1 and/or physically attacking Mr. Klementi if I didn't have  
2 other information such as a police report or law  
3 enforcement reports.

4 Q Really?

5 A At the time.

6 Q Really? Because we called the police officer  
7 to the stand at trial, and he testified that he came out  
8 to the scene on December --

9 MR. PINTAR: Your Honor, this assumes facts  
10 not in evidence.

11 THE COURT: We're going too far astray.  
12 Sustained.

13 Q (BY MR. ROUTSIS:) Did you talk to the  
14 officer that went out on the call from Egon Klementi on  
15 December 12th prior to trial? Yes or no? Did you talk  
16 to him prior to trial?

17 A Yes.

18 Q Did he tell you he wrote no police report?

19 A He told me he went out and visited with him.

20 Q Did he find sufficient evidence to file the  
21 charge?

22 A That's not my recollection.

23 MR. ROUTSIS: Okay. Thank you. Nothing  
24 further.

1 THE COURT: Any questions, Mr. Zaniel?

2 MR. ZANIEL: No, Your Honor.

3 THE COURT: Any other questions?

4 MR. PINTAR: No, thank you, Your Honor.

5 MR. MOORE: No, Your Honor.

6 MS. CAPERS: No, Your Honor.

7 THE COURT: I just have a question in regards  
8 to -- and I think I understand where Mr. Routsis was  
9 going -- in regards to the snowplow. So I understand  
10 that the enhancement, if you will, from a gross  
11 misdemeanor to a felony was based on the medical records,  
12 substantial bodily injury; correct?

13 THE WITNESS: That's correct.

14 THE COURT: What made you -- tell me about  
15 this snowplow. And it's a different person. It's a  
16 different victim.

17 THE WITNESS: It is, Your Honor. The  
18 snowplow event was totally separate from the pushing of  
19 Helmut. The snowplow dealt with his brother, and it was  
20 a totally separate incident. It was reported about well  
21 before this letter. And, Your Honor, this would probably  
22 assist the Court as well. Originally, there was only one  
23 complaint presented to the Court, and that was the  
24 misdemeanor battery that involved Helmut.



1           The same day I filed that complaint, I also  
2       filed a separate complaint alleging a felony and a gross  
3       misdemeanor, and the felony was based on intimidation of  
4       a witness because at the time, it was my understanding  
5       that he had shoved Helmut down in an attempt to  
6       intimidate him because Helmut was going to testify about  
7       an unlawful fence or some issues they were having in the  
8       neighborhood, and it was to scare him.

9           THE COURT: So it wasn't a snowplow?

10          THE WITNESS: It was not the snowplow.

11          The second charge that I filed that same day  
12       well before this letter, again, was a gross misdemeanor,  
13       and that was about the snowplow. So the snowplow  
14       incident was never enhanced or changed at any point in  
15       time. It stayed a gross misdemeanor all the way through  
16       trial. It never changed its character. And it was  
17       charged originally before I ever even got this letter.

18          It was charged back in January of 2013, and  
19       it alleges the snowplow, him building up berms at the end  
20       of the residence. It was sort of a compilation of all of  
21       the issues that had been brought to my attention through  
22       the reports and investigation, and it stayed a gross  
23       misdemeanor and it was never enhanced, and that's what it  
24       ended up being at trial. So I think the confusion is



1 that there was never just a misdemeanor and then it grew  
2 and grew and grew.

3 Back in January, which is the original filing  
4 date, there was a misdemeanor battery against Helmut,  
5 there was a felony against Helmut for intimidation of a  
6 witness, and then there was a gross misdemeanor that  
7 involved both Egon, Helmut and Elfride, I believe. Those  
8 three charges then changed slightly in character. The  
9 intimidation of the witness is what actually became the  
10 abuse charge, and the gross misdemeanor remained  
11 identical.

12 The other exploitation of an elderly person  
13 was actually then changed to be against -- I think it was  
14 one on Helmut, one on Elfride, but they were all charged  
15 originally. The nature of those charges never changed,  
16 Your Honor. This is the Count 2, and it does have that  
17 same language. So the actual only enhancement that ever  
18 occurred after receiving this letter and after all of the  
19 investigation was the charge involving Helmut, which Miss  
20 Kinion was not a part of, and it was in part because of  
21 the medical records, and that did become a felony.

22 THE COURT: Thank you. I do understand. I  
23 do understand, based on your testimony, the reason why I  
24 called you. I do understand.

1                   THE WITNESS: And I apologize because there  
2                   were four charging documents.

3  
4                   EXAMINATION

5                   BY MS. PIERCE:

6                   Q     I just have one question. You said that the  
7                   charging document on the -- other than Helmut, that  
8                   simple battery, the charging document and the other  
9                   items, whether it was the criminal complaint or the  
10                  informations or amended informations or whatever, those  
11                  charges were based on police reports and information from  
12                  individuals; is that correct?

13                  A     Investigation.

14                  Q     Can you --

15                  A     But I just want to -- I have a question.  
16                  Helmut was actually listed in the felony as well.

17                  Q     Can you tell us who was spoken to in the  
18                  process of investigation that led to these charges?

19                  A     At the time that I filed the original  
20                  complaints, the only person that I would have spoken to  
21                  was whatever officer wrote me the report that I was going  
22                  from. And my guess is that officer spoke to a variety of  
23                  people and that he wrote a report, and then based on that  
24                  report, those are the charges that I filed.

1 Q Does that police report then list all of the  
2 individuals with whom he spoke?

3 A It should. It should have everything that he  
4 would have done before he actually presented what they  
5 called a final report to our office.

6 MR. PINTAR: Your Honor, I told the Court in  
7 my moving papers that the officer testified at his  
8 deposition that he never spoke with Ms. Kinion at the  
9 scene and before he filed the police report.

10 THE COURT: Offer of proof then.

11 MS. PIERCE: I'm a little confused here  
12 because there was the officer who came out to investigate  
13 the incident on December 18th which involved Helmut  
14 Klementi. Is that the same officer that then did an  
15 investigation of a variety of other things?

16 THE WITNESS: I don't remember. It would  
17 have been the original submission to our office, and it  
18 usually has, on the criminal complaint, there should  
19 actually be a sheriff's office number that ties to a  
20 specific report, and that's the report that that's  
21 connected to.

22 Q (BY MS. PIERCE:) And how would I identify  
23 that report in the production that we received?

24 A If I did my job right, it should have been on



1 the top of the complaint, so hold on. It would be -- it  
2 was also on -- this is the amended criminal complaint  
3 that was filed March 8th, 2013, but it's Douglas County  
4 Sheriff's Office 12, which is the year, SO for sheriff's  
5 office, 41608.

6 Q I'm asking about who you would have spoken to  
7 before that second criminal complaint we're talking  
8 about, which has the charges of elder abuse that have  
9 nothing -- that are separate and apart from the battery  
10 on the 18th -- December 18th against Helmut Klementi.

11 A I think that's part of the confusion. The  
12 two criminal complaints filed on January 16th are  
13 attached to 12-SO-41608. Those charges came right off of  
14 that report, so whichever officer authored that. I filed  
15 a second amended criminal complaint before prelim and  
16 also in the justice court on March 8th, 2013. That  
17 complaint has different charges in it based on that same  
18 report, 12-SO-41608.

19 Q And that was what date?

20 A March 8th, 2013. That's the time when the  
21 charge with Helmut is elevated from a gross misdemeanor  
22 to a felony, and it alleges a substantial bodily harm.

23 THE COURT: And did Miss Kinion's letter  
24 influence you in regards to charging the elder abuse?

1       That's --

2                   MR. ROUTSIS:   Thank you.

3                   THE COURT:   -- the question.   Did it  
4       influence you to charge elder abuse vis-a-vis the law?

5                   THE WITNESS:   No.   I had already charged that  
6       before her letter.

7                   THE COURT:   All right.

8

9

**EXAMINATION**

10       BY MR. PINTAR:

11               Q       May I just approach real quick?   Ms. Pence,  
12       I'm going to show you, just to refresh your memory, a  
13       copy of the preliminary hearing transcript.   And if you  
14       look at 12, did you call Mr. Klementi to testify as to  
15       the incident with regard to the snowplow and the snow and  
16       ice being thrown on him?

17               A       Sorry.   I just want to make sure I can  
18       identify who is testifying.   Yes.   Egon Klementi was  
19       called at the preliminary hearing.   He himself testified  
20       about the snowplow.

21               Q       And Miss Kinion was not called as a witness  
22       at the preliminary hearing; correct?

23               A       That's correct, as far as I recall.   I don't  
24       believe she was.

1 THE COURT: Any more questions of Ms. Pence?

2 MS. PIERCE: Your Honor, I'm still confused  
3 because I cannot find any police report in the produced  
4 information from the DA's Office that is prior to the  
5 January -- was it 16th? Documents other than the one  
6 that addresses the incident with Helmut Klementi.

7 THE COURT: You're talking about something  
8 that addresses Egon?

9 MS. PIERCE: Yeah, Egon.

10 THE COURT: The snowplow.

11 MR. ROUTSIS: She's testifying, Judge,  
12 basically that she doesn't recall Miss Kinion having an  
13 effect on the filing of the charges, and she's saying she  
14 was relying on the police report, who -- it doesn't  
15 matter what the cop says, but who the are witnesses?

16 And we're having a real interesting debate  
17 here because we've got a letter on February 22nd, she had  
18 prior contact with Miss Kinion, and we think she was  
19 critical in this material issue of fact. Her  
20 recollection is huge on this. She doesn't remember a  
21 lot. The reality is, though, that the basic witness that  
22 identifies my client as committing a heinous crime, the  
23 only -- and I'll say this for the record. The only  
24 corroborating witness is Mary Ellen Kinion.



1 THE COURT: Okay. What did you mean,  
2 Ms. Pence, when you answered that saying when I asked you  
3 did this letter of February 22nd influence you in regards  
4 to the charges against Egon vis-a-vis the snowplow? You  
5 said to me, "No, I had already charged that based on the  
6 reports." So what's the confusion in regards to you  
7 don't have any records?

8 MR. ROUTSIS: No. The confusion is --  
9 there's two-part confusion. She's saying that she based  
10 that filing -- the letter is not the do all and say all.

11 THE COURT: No. I understand that, but --

12 MR. ROUTSIS: She's saying she has contact  
13 with Mary Ellen Kinion, and there's a dispute as to  
14 whether she asked Mary Ellen Kinion to author a letter  
15 after that. She was a material witness in the case. She  
16 doesn't -- she won't -- her testimony is that she based  
17 the charges upon -- I mean, she's a prosecutor, upon the  
18 police report, okay? Now, no police officer was there.  
19 So he had to have talked to Mary Ellen Kinion or Egon  
20 Klementi.

21 THE COURT: Okay. All right. Hang on. What  
22 did you base the charges of elder abuse on Egon -- when I  
23 say "vis-a-vis," meaning the snowplow. Did Miss Kinion  
24 have any influence? Or, if not, what -- or if so, what

1 did you base the charges on?

2 THE WITNESS: Not having the file in front of  
3 me, I would have to say that -- and it kind of tells its  
4 own tale if you start at the beginning. The original  
5 charge that deals with the snowplow incident was filed  
6 back in January.

7 THE COURT: January 16th.

8 THE WITNESS: January 16th. And it's listed  
9 as part of a number of things. So at this time, the  
10 snowplow is not a huge issue. It's one of about six  
11 different factors. I included offensive language,  
12 violent conduct, yelling at Egon as he walked his dog,  
13 covering him with snow on the snowplow, piling berms at  
14 the end of the driveway, physically attacking Helmut.

15 So the snowplow itself, back in January, was  
16 one of probably eight other factors that constituted the  
17 gross misdemeanor of exploitation of an elderly person.  
18 It was not "This is it. This is the crux of the thing."  
19 It was a --

20 THE COURT: It's not --

21 THE WITNESS: No. And I do remember that  
22 there was a number of people that were concerned about  
23 Mr. Spencer and how he was snowplowing. I think there  
24 were complaints that had been filed. I think at some



1 point, I talked to -- I don't remember if it was KGID or  
2 I can't remember the acronym, but the people who do the  
3 snowplow business, and they had actually asked him not to  
4 go into a particular neighborhood anymore because of  
5 complaints, and so I was trying to get more information,  
6 I remember about the berms and whether this was a  
7 practice, but it wasn't like the snowplow incident was  
8 some pivotal point.

9 It was part of all of these actions that were  
10 reported in the to wit language. This letter does talk  
11 about the snowplow incident, but I also know that -- I  
12 think at the time, there had been a number of complaints  
13 about Mr. Spencer and snowplowing. It was not  
14 specifically the Klementies, and it was just one of those  
15 things.

16 I would guess -- and I don't have the file,  
17 but the district attorney file as part of work product,  
18 we have an investigator that goes out and will follow up  
19 on these things. I'm sure I talked to him. Usually  
20 between the original filing and when you actually have a  
21 jury trial, there is a lot of work that we do in order to  
22 narrow down what's going to be able to be proven at trial  
23 and what we won't be able to prove.

24 And I think by the time we go to trial -- and

1 I'm guessing based on Egon's preliminary hearing  
2 testimony where he talked about being sprayed and what it  
3 was like that that was how that ended up becoming a count  
4 in and of itself. But it's been alleged as part of the  
5 -- kind of a whole part of conduct since the beginning.  
6 So it probably had some impact, meaning it was supported  
7 by someone else, but it clearly wasn't part of the  
8 charge. And that charge was in no way ever enhanced  
9 because it stayed a gross misdemeanor.

10 MR. ROUTSIS: That's a fair statement. She  
11 said she filed those charges based on a police report.  
12 There was no police report taken on the snowplow  
13 incident, so you had to rely on witnesses.

14 THE WITNESS: I think what I said was I based  
15 it on the police report that was filed and investigation.  
16 If I had our district attorney file, I would be able to  
17 tell you at the point between December 18th to January  
18 16th what sort of investigation was done.

19 MR. ROUTSIS: Ms. Pence, there was never a  
20 report filed on a snowplow incident, so you had to rely  
21 on witness information, and that's all I'm telling you.  
22 Maybe you talked to Ms. Kinion. Can you admit it's  
23 possible she's provided you with information and it may  
24 have led to the charge? Can you admit that? Is that

1 possible? Yes or no. Is that possible?

2 THE WITNESS: No.

3 MR. ROUTSIS: It's not possible?

4 THE WITNESS: That her information led me to

5 a charge?

6 MR. ROUTSIS: No, no.

7 THE WITNESS: Absolutely impossible.

8 THE COURT: That was my question. Now you're

9 splicing it down.

10 MR. ROUTSIS: No, I'm not, Judge.

11 THE COURT: Yes, you are. One counsel says

12 she's confused. You don't want to be confused.

13 MR. ROUTSIS: Judge, I'm just saying she said

14 she relied on a police report and there was none.

15 THE COURT: Right. There's no police report.

16 MR. ROUTSIS: That means she got it from a

17 witness. Okay? Somebody told her that --

18 THE COURT: Got it from investigation, got it

19 from neighbors, a whole bunch of things.

20 MR. ROUTSIS: Here's the concern that I have.

21 She's got a very faulty memory. Miss Kinion spoke to

22 her.

23 MR. MOORE: I'm going to have to object to

24 this conversation.

1 THE COURT: He's arguing with me.

2 MR. ROUTSIS: And it's a fair question  
3 because you're under penalty of perjury here.

4 Is it possible that you discussed with Miss  
5 Kinion prior to the filing of the charges that she was a  
6 witness? She saw the snowplow incident?

7 THE WITNESS: No.

8 MR. ROUTSIS: Not possible? Okay.

9

10 EXAMINATION

11 BY MR. ZANIEL:

12 Q Could I ask one question?

13 As far as the witness interviews that are  
14 taken, do you have an investigator that goes out and  
15 talks to witnesses?

16 A Yes, we do.

17 Q Is that recorded somehow, either by notes, by  
18 handwritten notes or tape recording?

19 A They're supposed to take notes. If they do a  
20 formal interview, they do record those interviews and  
21 there's -- the way that the system works is that once you  
22 get a report for submission to file, there is no period  
23 of time where you go out and you do independent  
24 investigation and you would interview people and then you

1 would charge a case. That's absolutely forbidden in the  
2 district attorney's office as far as how we are allowed  
3 to file charges. We are to look at the reports. If  
4 there's been investigation done, if anything has been  
5 confirmed or corroborated, we file an initial report, and  
6 that's the original compliant that gets filed.

7 At that point, once there's been a complaint  
8 filed and the defendant has been brought into court and  
9 is apprised of what's happening, then there's additional  
10 investigation. Then we would talk to witnesses, more  
11 investigation is done, and that results generally in  
12 different filings. So between the time that I read the  
13 report and the initial filings, no one would have gone  
14 out and talked to people before filing the charges.

15 Q After the filing of the charges, though, that  
16 would have been the time frame to go interview the  
17 witnesses?

18 A Absolutely.

19 Q In this case, were other witnesses  
20 interviewed by the district attorney investigator?

21 A I think there was a number of witnesses that  
22 were interviewed, quite a few. And I remember doing a  
23 lot of work on this case. I would say there were  
24 probably 20 to 25 people that were talked to. There were

1 subpoenas that were sent out. There were a number of  
2 different -- other than the medical records, which was  
3 the big push, but there was also the minutes for some of  
4 the improvement meetings because I remember a lot of this  
5 issue had to do with neighborhood improvements and that  
6 sort of thing. Yeah.

7 Q This is your file?

8 A Okay. Yeah. There was a -- between the  
9 original filing which alleges this information and the  
10 felony, that's when all of that would have happened.

11 Q One of the things that I can't find in here,  
12 though, is any type of witness-type interviews. Granted,  
13 it would have been after the filing of the complaint. I  
14 understand that. But if your investigator went out and  
15 talked to somebody and wrote a note on it, that would  
16 become part of the file; correct?

17 A If he -- again, I would be speculating as to  
18 what his job is. There is attorney work product, but  
19 normally when they conduct a formal interview like in a  
20 domestic battery case, there's some sort of record of  
21 that interview.

22 Q And you're pretty positive there were a  
23 number of interviews that took place in this case?

24 A I know that a number of people were spoken

1 to. I don't know who did it, which investigator would  
2 have done it. I think at one point, there were three  
3 investigators in our office. Someone would have spoken  
4 with them.

5 Q All right. And then you mentioned the very  
6 beginning the video of the Shaws. I think that was part  
7 of the DA file. Is that kept in the file? We didn't get  
8 a copy of that either, so that's the only reason I'm  
9 asking that question.

10 A That was on a -- I want to say it was on a  
11 flash drive, and it would have been part of the State's  
12 file. It would also be part of the district court record  
13 because I think it was introduced during the trial. I  
14 don't remember if it was admitted or not, but --

15 MR. ZANIEL: Okay. So we'd need another  
16 source to get that. That's all, Your Honor.

17 THE COURT: Ms. Pierce, I interrupted you  
18 when you said you were confused and then Mr. Routsis took  
19 over. Do you have any other -- any more questions?  
20

21 EXAMINATION

22 BY MS. PIERCE:

23 Q I just want to clarify if I understood this  
24 latest testimony. Before you filed your criminal



1 charges, you have not done investigation in the DA's  
2 office. You were relying on police reports; is that  
3 correct?

4 A That's the practice.

5 MS. PIERCE: Thank you.

6 MR. ROUTSIS: And I'd follow up that there  
7 was no report written on the snowplow incident by the  
8 arresting officer.

9 THE COURT: That's correct, right? No report  
10 written?

11 THE WITNESS: My understanding is that the  
12 officer that investigated the snowplow incident is not  
13 the officer that submitted the report for submission to  
14 the DA's office for filing of charges.

15 THE COURT: Any other questions?

16 MS. PIERCE: Where would we find a copy of  
17 that officer's report?

18 MR. ROUTSIS: The follow-up question would be  
19 if there's nothing mentioned in that report regarding the  
20 snowplow incident, you would have gotten that information  
21 from a witness; correct?

22 THE WITNESS: Either from the investigator or  
23 from the other report that was filed or from the  
24 Klementies themselves.

1 Q But you don't remember, do you?

2 A I do not have an independent recollection  
3 without seeing the file.

4 THE COURT: Ms. Capers, you looked like you  
5 were going to say something -- ask something.

6

7 EXAMINATION

8 BY MS. CAPERS:

9 Q Yes, I was contemplating. Just one last  
10 question. Do you remember all of the witnesses that  
11 testified at the prelim hearing?

12 A No.

13 THE COURT: Anything else, Ms. Pierce, of Ms.  
14 Pence?

15 MS. PIERCE: Not of this witness, Your Honor.

16 THE COURT: Thank you, Ms. Pence. You can go  
17 ahead and step down. I appreciate you coming, and I  
18 didn't realize it was going to be almost two hours, but  
19 thank you.

20 Let's take a short break and then we're going  
21 to argue the motion to amend and opposition, and we're  
22 going to argue the summary judgment, renew arguments on  
23 both of these issues. Let's take about ten minutes.

24 THE CLERK: Confirmation. I only have

1 Exhibit 4 as being admitted, and so I'm hoping we're on  
2 the same page.

3 MR. ROUTSIS: Okay. Yes.

4 (Recess.)

5 THE COURT: Thank you. Please be seated,  
6 everybody. Good afternoon again. We're back on the  
7 record in case number 14-CV-0260. Now what I'd like to  
8 do is close up on the arguments in regard to the summary  
9 judgment motion and in regards to the motion to amend, so  
10 I want to start. Let's start with the amendment.

11 We heard a lot from Ms. Pence, which helped,  
12 and I thank her for coming. But I didn't hear anything  
13 in regards to the Shaws from Ms. Pence's testimony.  
14 There is an allegation that they wrote a letter, and I  
15 did hear something about a video. But in regards to  
16 joining in on the motion -- the opposition to the motion  
17 to amend; correct?

18 MS. CAPERS: Yes, sir, we did.

19 THE COURT: Tell me your argument again.

20 MS. CAPERS: Again, the substance of my  
21 argument last time was number one, the delay. And I  
22 think the insufficiency of the explanation that  
23 Mr. Routsis wasn't well versed in civil litigation. And  
24 again, I made the argument that he doesn't have to be an

1 expert. He simply needs to be competent. So I don't  
2 think that's a sufficient issue.

3 And then the other issue I brought to your  
4 attention was the need for the DA to be here because if  
5 this case had gone to jurors, they would only be able to  
6 speculate or guess as to the elevation of the charges.  
7 And even though I think it was beat with a dead horse  
8 today, it was shown very clearly, even though the  
9 majority of the conversation was concerning Mrs. Kinion,  
10 but I did ask the question concerning the Shaws and  
11 whether or not the input, any information they gave was a  
12 factor in elevation of charges. And again, the answer  
13 was no as to both.

14 What was very clear in her testimony was that  
15 the elevation or increase of charges based upon the  
16 medical records, the one I guess from the exploitation to  
17 the elderly abuse was premised upon the medical records  
18 and not based upon the testimony of any of the witnesses.  
19 And so therefore, again, I think there's sufficient  
20 evidence to show that my clients should be dismissed,  
21 especially when you look at the specific elements of the  
22 malicious prosecution: initiating, procuring the  
23 institution of or actively participating in the  
24 continuation of a criminal proceeding.

1           There's no evidence whatsoever that my  
2 clients initiated, procured the institution of or  
3 actively pursued in the criminal proceeding because you  
4 had the DA testifying here that what evidence that  
5 prompted the increase in charges was in fact the medical  
6 records. And again, the reason I asked -- I was a little  
7 hesitant to ask the question in regards to all of the  
8 witnesses that were used at the preliminary hearing was  
9 to see if in fact that my clients testified at the  
10 preliminary hearing and so whether or not any argument  
11 could be made that their testimony resulted in some  
12 charges being continued or increased. But again, there's  
13 absolutely no evidence concerning that.

14           And what's also important to note is that  
15 even the plaintiffs stated themselves when you look at --  
16 when you go to page 9 of the supplemental opposition to  
17 motion for summary judgment we just received five minutes  
18 prior to this proceeding is that the only way that the  
19 conspiracy claim could go forth is if in fact you find  
20 the malicious prosecution claim is valid, and from what  
21 we believe, the evidence that has been presented here,  
22 there's no basis whatsoever to hold my clients for  
23 malicious prosecution, and therefore, also the conspiracy  
24 charge is therefore moot.

1           And as such, I re-ask that my clients be  
2 dismissed, or in the alternative, specifically, that the  
3 amended complaint should not go forward because again, if  
4 it does go forward, we're going to be here again. I'm  
5 going to renew the same motions.

6           THE COURT: Thank you. Any reply to that in  
7 regards to the Shaws?

8           MS. PIERCE: Actually, Your Honor, this kind  
9 of overlaps the summary judgment motion.

10          THE COURT: Okay. I agree.

11          MS. PIERCE: And the summary judgment motion  
12 was made only listing the facts as they apply to Miss  
13 Kinion. So joining in the summary judgment motion  
14 without listing "Here are the undisputed material facts  
15 with respect to a particular party," there's no basis to  
16 go forward because that's required by the rules. You  
17 have to list all of the material facts that are  
18 undisputed. And based on those undisputed material  
19 facts, there's nothing to go forward on. That hasn't  
20 happened with respect to anybody except Miss Kinion. So  
21 saying to join in the motion for summary judgment is  
22 meaningless, and the law was properly cited.

23          The law says that malicious prosecution is  
24 not just initiating or procuring the institution of, but

1 actively participating in the continued criminal  
2 prosecution, and that is what we've alleged. We've  
3 alleged that there were actions taken by the Shaws which  
4 were instrumental in this criminal prosecution going  
5 forward.

6 Now, based on what the DA said, her position,  
7 as I understand it, is basically I put -- I institute  
8 criminal charges without talking to witnesses. I do it  
9 based on the police report and the investigation done in  
10 the police report. Well, the only police report in this  
11 matter that was actually in place at the time that the  
12 criminal charges were brought in January was the police  
13 report on the incident with Helmut Klementi on December  
14 18th, and they were witnesses to that, and they were  
15 listed in there as witnesses.

16 So whatever the DA, deputy DA remembered  
17 sitting here today, that was part of the very first  
18 complaint that was made. And then it is our contention  
19 that there were other things that occurred as this went  
20 along and there were other claims made that came in part  
21 from the Shaws because, as Miss Pence testified, there  
22 were numerous people who talked to her about these  
23 issues, referring to the supposed assault on Egon  
24 Klementi and the claimed snowplow incident and the berms.



1       So as we sit here today, there's no basis to say that  
2       there is not a valid claim there.

3               And as far as the delay, the delay was due in  
4       part to a problem with a former counsel who couldn't get  
5       out, and I couldn't come in, and there's been numerous  
6       changes of counsel, and there have been subsequent  
7       proposed amendments to their complaint. So, you know,  
8       where we -- the argument of delay is not a good argument.

9               And I would submit that by participating in  
10       the continuation of those proceedings, according to the  
11       law, the Shaws -- an argument can be made to a jury that  
12       the actions taken by the Shaws were in fact actions for  
13       the purpose of continuing a criminal proceeding for which  
14       Mr. Spencer was acquitted of all charges. Thank you,  
15       Your Honor.

16               THE COURT: Mr. Moore, who -- okay. I want  
17       to hear from you, Mr. Moore, and then I want to hear from  
18       Mr. Pintar because you can still see how these are so  
19       intertwined in my mind these, the motion to amend, which  
20       is a much more liberal standard, versus the motion for  
21       summary judgment. I think Ms. Pence helped.

22               However, this argument right now is it's on  
23       my mind, and so, you know, I want to clear it up. Why  
24       didn't you allege a conspiracy against all of the

1 neighbors, that kind of thing? So am I parsing out some?  
2 Am I dismissing some? This is where I'm going.

3 MR. MOORE: I understand, Your Honor, and  
4 keeping in mind that I represent Helmut Klementi, who of  
5 course initiated this whole thing as a plaintiff, and  
6 then we have counterclaims that have resulted in this  
7 case, which is like a bad law school exam procedurally.

8 THE COURT: Yes, it is.

9 MR. MOORE: And, Your Honor, I respectfully  
10 suggest that when we have these things, we have to  
11 control what's happening by eating the elephant one bite  
12 at a time, and I believe that's exactly what the Court is  
13 doing, and that's what we're doing at the hearing.

14 I will note that procedurally, my client's  
15 motion to amend, the Court had already granted it. We're  
16 clean as far as my client is concerned, so that's  
17 history. We're here of course because we're interested  
18 in what the outcome is, but we have not opposed any of  
19 the motions that are currently pending. So I'm just  
20 procedurally letting you know where we are at.

21 Quite frankly, I think that Ms. Capers had a  
22 good observation. What we're trying to do here,  
23 hopefully, is be efficient and avoid unnecessary expense  
24 to all of the parties. I would think that -- I would

1       like to think that everyone has that same goal in mind.

2               Keeping that in mind, the Court is ferreting  
3       out what evidence is there of the so-called conspiracy of  
4       these acts by these specific individuals? And so when I  
5       look at the pending motions, I think that's what we want  
6       to know. What evidence is there? And that's what the  
7       Court is reasonably giving every opportunity, from what  
8       I've observed, to the Counter Claimant Spencer to  
9       present. And so that's my observation, Your Honor. And  
10      I think the evidence isn't there. And I harken back to  
11      Ms. Capers' observation, is if the motion for summary  
12      judgment is denied as to her clients right now, we know  
13      what's going to happen. She's just going to turn around  
14      and file a motion because it would be without prejudice  
15      at that point. And I think the Court is trying to be  
16      more efficient.

17             I'm -- at this point, Your Honor, I recognize  
18      what the Court said at the beginning of this hearing.  
19      The Court is trying to find out what the evidence is so  
20      the Court can make decisions to the extent the Court can,  
21      and at the same time, hopefully we get a trial date  
22      because this way, we're going to push this thing along  
23      because all good things have to come to an end.

24             THE COURT: Thank you. Okay.

1           Mr. Pintar, you filed a motion for summary  
2 judgment of Ms. Kinion. You've heard the testimony of  
3 Ms. Pence. Is there anything to add to your motion based  
4 on the testimony of Ms. Pence?

5           MR. PINTAR: Yeah, just a couple things, Your  
6 Honor. I just want to make clear on the timeline. So  
7 the incident with Helmut Klementi occurs in December of  
8 2012. The charges are filed in January of 2013, so the  
9 following month.

10           Ms. Pence just testified that the  
11 exploitation charges were filed at that time. She also  
12 said that later on after those charges are filed is when  
13 she had the conversation with Ms. Kinion at the Tahoe  
14 Justice Court and explained to Miss Kinion that if you  
15 have something to offer, then put it in writing.

16           Now, Mr. Routsis has made a lot of  
17 supposition about what Miss Kinion did and what her role  
18 in this case was, but I would just direct Your Honor to  
19 Miss Kinion's letter because you'll see right at the top,  
20 this is the list of events that I saw and heard about.

21           She's not claiming to be a witness to all of  
22 this stuff. She's trying to help, exactly what Ms. Pence  
23 asked her to do. So she's not claiming that she  
24 witnessed this stuff, and she never has, and it says

1 right here. This is a list of events that I saw and  
2 heard about.

3 And, Your Honor, the problem why we're here  
4 is this was never produced. So plaintiff's filed this  
5 case, and they didn't have any evidence. They didn't  
6 have any facts to support this thing. I mean, it's all  
7 -- I don't know if it's a Rule 11 violation, but it's  
8 pretty darn close because they didn't have what was  
9 charged and then the amended charges, and so now we're  
10 scrambling here two years after the fact.

11 Now we're getting the facts, and the facts  
12 are clearly showing that Miss Kinion had nothing to do  
13 with these charges. She wasn't called to testify at the  
14 preliminary hearing in April. And then -- and you heard  
15 Ms. Pence testify that the only reason that one charge  
16 was changed was because of the medical and the injuries  
17 to Helmut Klementi, and that was changed from a gross  
18 misdemeanor to a felony.

19 They're claiming that Miss Kinion had  
20 something to do with either initiating or prosecuting the  
21 charges, and the person who brought the charges said that  
22 wasn't the case. They have no evidence at all to support  
23 malicious prosecution. So we would respectfully request  
24 that our motion for summary judgment be granted. Thank

1       you.

2               THE COURT:   Thank you.   I did not take it as  
3       a threat, Ms. Capers.   However, tell me why, if I deny  
4       the summary judgment based on what I feel are triable  
5       issues, why is this coming back again on behalf of the  
6       Shaws?

7               MS. CAPERS:   Well, number one because at that  
8       point, you're granting their motion for the amended  
9       complaint.

10              THE COURT:   Really, no.   Not in my mind.

11              MS. CAPERS:   Oh, well for me, you would have  
12       to approve or grant the amended complaint to officially  
13       bring us in, and then of course then I would re -- I  
14       guess, bring these motions again for you to address that  
15       my client is actually officially in.

16              But what I've tried to do here, though, is  
17       show that the arguments by Mr. Pintar are really the  
18       same.   It's the same, as I say, triable issues of fact.  
19       So to be more efficient, yeah, we joined the motion, but  
20       because this hasn't proceeded in the most procedurally  
21       correct way, you know, I've tried to be proactive and get  
22       in the case before we're actually in the case.   Does that  
23       make sense?   And so therefore --

24              THE COURT:   That answered my question.



1 MS. CAPERS: Oh, okay.

2 THE COURT: That did. Because you know,  
3 that's exactly what I meant when I said what does  
4 Ms. Pence have to do -- she didn't say anything about the  
5 Shaws. Was there the video? Was it edited? Did they do  
6 anything? What about the conspiracy? What about the  
7 malicious prosecution charge? What about defamation?

8 MS. CAPERS: Right. And I get it. And so I  
9 can understand, I guess for you as a judge, there may be  
10 some questions still, but this is how I looked at it, is  
11 that the absence of information from her showed that the  
12 letters, or whatever you want to say from my client and  
13 other witnesses were not very -- I guess they weren't  
14 very influential in her decisions, and I think she said  
15 that time and time again, even though plaintiffs or  
16 Mr. Routsis' counsel would continually ask that question.  
17 Well, what -- and you at the end asked, "Okay. What was  
18 the decision and increase of charges based upon?" And  
19 that was why we originally came here. That was the  
20 singular question, right, Your Honor, from last time. So  
21 once we get here, she answered that question, did it  
22 expand you a little? So what went into your  
23 decision-making process?

24 She said originally, it was the police



1 reports. Then she said that okay, once the charges were  
2 filed, there would have been some type of investigation  
3 by the police officer. But what was very clear, if you  
4 will hear as a prosecutor, what she said, she said, "The  
5 witness statements alone would not have been influential"  
6 in her charging decision. So it may have had some -- it  
7 may have been a factor, but not the factor that we would  
8 need to show that they initiated, the they procured the  
9 institution of, or they actively participated in the  
10 continuation of a criminal proceeding.

11 And let me say this. You and I both know at  
12 the end of the day, actively participating does not mean  
13 that you're a witness in a trial, and that's the leap  
14 that they want you to make. Just because they wrote a  
15 letter, and I think I was going to bring this out, but I  
16 didn't which was very important by Mr. Pinter is that  
17 they said "I saw or heard about." So if they tell what  
18 they saw or heard about, that doesn't mean there's a  
19 malicious prosecution claim. At the end of the day,  
20 that's left to prosecutorial discretion. And for what we  
21 saw from Ms. Pence today, all of these witnesses were not  
22 that important.

23 THE COURT: Thanks. All right. Mr. --

24 MS. PIERCE: Not yet. Me.

1 THE COURT: I don't dare ask Mr. Routsis.  
2 MS. PIERCE: Nope. I'm talking this time.  
3 THE COURT: You're talking. No, that's good.  
4 MS. PIERCE: Okay. From what Ms. Pence said,  
5 the initial charges were based on police reports. There  
6 was no police report about the May incident threat to  
7 punch Egon Klementi in the face. There was no police  
8 report regarding Mr. Spencer creating berms in front of  
9 elderly people's houses. There was no police report on  
10 the snowplow incident of December 12th. And on that one,  
11 police actually came out and investigated and found no  
12 evidence of a crime such that a report was not even  
13 written. So other information had to have been provided  
14 to the deputy DA for her to bring these charges. She had  
15 to get it from somewhere.

16 And what was interesting is she made a  
17 comment that, "A lot of people were very concerned about  
18 Mr. Spencer." And that's another concern because it  
19 doesn't show up in the DA produced files as prior to  
20 filing the charges. And even if it had not influenced  
21 her in filing the charges in the first place, we have  
22 heard about it, and apparently, it's standard practice in  
23 a criminal proceeding. You have the information, and in  
24 this case, you have an amended criminal complaint and you

1 have an amended information. From what I understand, at  
2 least initial information in two amended informations  
3 after investigation was done, so even before you ever get  
4 to the trial and a witness, there's investigation going  
5 on here.

6 And the question is, for malicious  
7 prosecution, did people insert themselves in this process  
8 in a way that was dishonest for the purpose of getting  
9 criminal charges against Mr. Spencer to go forward and in  
10 an attempt to get him convicted? We want to be efficient  
11 in court, but we also want to have justice. In this  
12 case, the accusations that Miss Kinion made -- because I  
13 have to speak just to Miss Kinion because there's no  
14 motion for summary judgment that alleges the facts  
15 necessary for the motion by any other party.

16 THE COURT: Except when Ms. Capers joined in  
17 the motion for summary judgment.

18 MS. PIERCE: Yes. But the basic rules of the  
19 NRCP 56 -- I'm sorry, I'll grab my numbers. Yes, it is  
20 56 -- requires that a party put forward undisputed facts  
21 supported by affidavits, trial transcripts, whatever  
22 evidence is there. We don't have that from anybody. So  
23 I can't respond to that, and I don't see how the Court  
24 can rule on that without it.

1           With respect to the allegation that Miss  
2   Kinion made that included in her letter maybe that she  
3   just heard about threatening to punch Egon Klementi in  
4   the face, which made it into the charges, she wasn't a  
5   witness to it, and yet the only witness to that was Egon  
6   Klementi.

7           MR. PINTAR: Your Honor, may I approach?  
8   Because there's just continued misrepresentations. In  
9   the documents from the district attorney is the police  
10   report from May of 2012, and I don't know why they say  
11   that there wasn't one. And in that report, Egon Klementi  
12   clearly talks about how he was approached and assaulted  
13   by Mr. Spencer. So they're continuing to make these  
14   allegations that there's no support in the only documents  
15   that they produced.

16           MR. ROUTSIS: That's not true.

17           MR. PINTAR: It's right there.

18           MR. ZANIEL: What's the Bates stamp number on  
19   that, Your Honor?

20           MS. PIERCE: Is there a Bates number on that,  
21   Your Honor?

22           THE COURT: B1461. We just referred to it.

23           MR. ROUTSIS: Judge --

24           MS. PIERCE: 1461?

1 THE COURT: 9.

2 MR. ROUTSIS: Judge, while she's looking,  
3 what happened on that date --

4 THE COURT: Help her. I don't want to hear  
5 what happened on that date. Not from you. I respect  
6 what you're saying, but if this is a report, if this is a  
7 Douglas County Sheriff's report --

8 MR. ROUTSIS: It was Marilyn that --

9 MS. PIERCE: Yes, there is a report here.  
10 And the complaining witness was Marilyn Spencer.

11 MR. ROUTSIS: Thank you.

12 MS. PIERCE: There is no police report --

13 MR. ROUTSIS: Thank you.

14 MS. PIERCE: -- by Mr. Egon Klementi.  
15 Marilyn Spencer had called the police because he kept  
16 coming onto their property and taking pictures. And in  
17 response to her call, that police officer went out and  
18 spoke to Egon Klementi to tell him that this complaint  
19 had been made against him and to tell him that if he went  
20 on the Spencers' property again, he could be arrested for  
21 trespassing. And Egon Klementi said nothing about his  
22 supposed assault.

23 MR. ROUTSIS: That day.

24 MS. PIERCE: That's what this report was.

1 MR. PINTAR: Read the last two pages of the  
2 report. It's Egon who is responding.

3 MR. ROUTSIS: Judge, he interrupted her  
4 conversation, and I have the right to tell you what  
5 happened. Egon Klementi --

6 THE COURT: Wait. Please. We're looking at  
7 a document.

8 MR. ROUTSIS: I know. I was the only one at  
9 trial. Does anyone want to hear what happened?

10 THE COURT: She is your co-counsel.

11 MR. ROUTSIS: I know, but he got up and  
12 interrupted. If I could just tell you what happened.

13 THE COURT: Sit down.

14 MR. ROUTSIS: Okay.

15 THE COURT: You can tell Ms. Pierce. You can  
16 tell me after.

17 MS. PIERCE: There's nothing in here that  
18 says --

19 MR. ROUTSIS: She was interviewed on the  
20 27th. He never mentioned a crime occurred, an assault  
21 occurred. He went down 30 days later and made his claim.  
22 Okay?

23 MS. PIERCE: It's not in here.

24 MR. ROUTSIS: That's what happened. It was

1 written on the 27th. They don't have any evidence  
2 because it never happened.

3 MS. PIERCE: This report was a complaint by  
4 Marilyn Spencer.

5 THE COURT: Well, Mr. Pintar, what do you  
6 mean the last two pages, please?

7 MR. PINTAR: Excuse me?

8 THE COURT: What do you mean by the last two  
9 pages of what you gave me?

10 MR. PINTAR: Well, they're claiming there's  
11 no other incident where Mr. Spencer got into  
12 Mr. Klementi's face. Mr. Klementi himself wrote to the  
13 police and told them about it.

14 THE COURT: And what do you mean by saying  
15 they never got the report? I don't understand.

16 MR. ROUTSIS: Judge, see, I'll be very  
17 simple. That's what happens when you don't read the  
18 trial transcripts. Here's what happened. On the 27th of  
19 May, Marilyn Spencer called the police to say, "Egon  
20 Klementi is coming around taking pictures. We have  
21 neighbors. He's bothering us."

22 The police came out. They walked over to the  
23 Klementies and said, "Mr. Klementi and Elfride," -- this  
24 was the testimony and it's uncontroverted. They're



1 making complaints. "Don't go." He gave them a warning.  
2 "Don't go take any more pictures." They said they  
3 wouldn't. Moments before that was allegedly the assault  
4 that occurred that Egon was supposed to have been  
5 assaulted and Jeff threatened to punch him. The cops are  
6 at his house, and he doesn't say a word. Doesn't say a  
7 word. The report is written. Marilyn is the complaining  
8 witness. Thirty days later, he writes a report saying,  
9 "Oh, my. He assaulted me that day." And I asked him on  
10 the stand, "Well, how could you not say that to the  
11 police just moments after you were assaulted and you had  
12 made a complaint about the Spencers when they build a  
13 fence when they look sideways? How could you not make a  
14 complaint? You were just assaulted moments before, and  
15 they accused you and gave you a warning about not going  
16 on their property and taking pictures."

17 I'll never forget the testimony. I looked at  
18 the two. "We don't know how to do those things." "Do  
19 what things, Ms. Elfie? You don't know how to make a  
20 complaint? The cops are at your house. You don't know  
21 how to make a phone call? Your husband was just  
22 assaulted." Judge, this is the most -- those are the  
23 facts, and they're uncontroverted.

24 MS. PIERCE: Your Honor, which goes very

1 directly to a matter of fact. The facts show that that  
2 complaint was made by Marilyn Spencer. A month later, he  
3 goes back in and says, "Oh, by the way, he assaulted me  
4 that day just before the police arrived."

5 Whether his argument is credible or not or  
6 whether it was done maliciously for the purpose of trying  
7 to procure charges against Mr. Spencer, and it was later  
8 added to charges against Mr. Spencer, it's a factual  
9 dispute. That's what a jury trial is all about. The  
10 jury gets to decide the facts. He was acquitted of that  
11 charge. Now I understand the standards are different,  
12 but still, this is a disputed issue of material fact.

13 MR. PINTAR: But they're claiming that Miss  
14 Kinion said this stuff, and there's proof right there  
15 that it was Mr. Klementi himself who wrote this. And  
16 it's not a month later. It's May 12th -- May 30th of  
17 2012. I mean, this is the person who got assaulted and  
18 he told -- reported it to the police, and they're trying  
19 to claim that Miss Kinion made this up. I don't  
20 understand it.

21 MS. PIERCE: We're not trying to say Miss  
22 Kinion made it up. Her letter can be read a couple of  
23 different ways as to whether she was asserting knowledge  
24 or she was asserting hearsay. But the point is, she

1 raised this with the DA, and we're talking about later.  
2 We're not talking about back in May when this incident  
3 supposedly occurred and no charges were brought. Much  
4 later in January of the next year, charges were brought  
5 on this incident.

6 MR. PINTAR: Your Honor, ten minutes ago, she  
7 just said there was no police report. Now I've shown  
8 them the police report. Now they're changing their  
9 story.

10 MR. ROUTSIS: No, we're not, Judge. I don't  
11 know why he keeps saying that.

12 MS. PIERCE: This is a -- when I said police  
13 report, I was talking about a Douglas County Sheriff  
14 incident report, okay? This is a statement made by what  
15 follows it. In D1475 is the statement made by Egon  
16 Klementi, so he's making now a belated complaint about  
17 this incident. But, you know, I mean, this is a civil  
18 dispute that never went to charges at the time. There is  
19 a long delay from which an argument can and has been made  
20 before and can be made again to a jury that it never  
21 happened, and that's why there was a long delay.

22 And when nothing happened to file criminal  
23 charges then, it was brought up again over half a year  
24 later, and criminal charges were finally filed as a

1 supplement in addition to only after the incident with  
2 Helmut Klementi. Those are factual disputes. This is a  
3 matter where there is a real issue. And what role  
4 Ms. Kinion had in it is she brought it up again to the  
5 DA. And we don't know what date she actually brought it  
6 up to the DA, although Miss Pence testified she never --  
7 her conversation with Miss Kinion was very short in her  
8 deposition. Mary Ellen Kinion said that she had spoken  
9 with Maria Pence and that it was -- that it was at a  
10 later date that she wrote her letter.

11 And Mrs. Spencer, during the break, advised  
12 me that there was another letter she wrote to Maria Pence  
13 that predated the one that's produced here. I don't have  
14 it. But that's why these are all factual disputes. And  
15 there was a big argument last time about this letter that  
16 somehow it wasn't a valid letter and that we hadn't  
17 properly identified it and there was no explanation for  
18 it. And as it turns out yeah, it was a letter that was  
19 received by the DA's office. What we represented at the  
20 last hearing was absolutely accurate. But that's not the  
21 only thing.

22 The supposed battery with the snowplow, she  
23 claims -- Miss Kinion claims that she saw Mr. Spencer  
24 drive by with a big grin on his face, her words, big

1     grin, picking up snow and road debris from the plow that  
2     he propelled on Egon Klementi in his driveway. And she  
3     claims she called Egon Klementi and 911 to report it.  
4     And she made the same allegations under oath at  
5     Mr. Spencer's criminal trial.

6             Now, in her motion, she claims another  
7     snowplow, which Kinion thinks was driven by Spencer, put  
8     the berm of snow back in front of Kinions' driveway. As  
9     the snowplow was driving away, Kinion went outside to try  
10    and identify the driver. At that time, she saw the  
11    snowplow proceed toward Egon Klementi's house. Egon  
12    Klementi was standing in his driveway shoveling snow.  
13    Kinion then observed the snowplow approach Mr. Klementi's  
14    residence, increased its speed and captured old snow from  
15    the side of the road and propelled old snow along with  
16    other road debris on Mr. Klementi. Having witnessed this  
17    event, Kinion immediately called and checked on  
18    Mr. Klementi.

19            Now, that's not what the evidence showed at  
20    trial, and this is another case. There was no police  
21    report. Sheriff's Officer Sanchez responded to the 911  
22    call from Egon Klementi on December 12th. The officer  
23    investigated and found no evidence of a crime, so he  
24    didn't even write a report. And that was at the criminal

1 trial that testimony was given. And her description at  
2 the criminal trial of where she was supposedly standing  
3 and where Egon Klementi was supposedly standing, given  
4 the size of the snowplow, looking at it from behind as it  
5 approached Egon Klementi, there was evidence that she  
6 couldn't have even viewed what she claimed to have seen.

7 And the discrepancy between whether she  
8 actually saw Mr. Spencer with a big grin on his face or  
9 she ran out to see who the driver was because she  
10 couldn't tell, that's a material fact. She accused him  
11 in a criminal trial with a big grin, implying malice, of  
12 assaulting an elderly neighbor. And now she's saying she  
13 didn't see who the driver was.

14 Also, her sworn testimony directly conflicted  
15 with Egon Klementi's sworn testimony. He testified under  
16 oath that he called Mrs. Kinion or Miss Kinion, not the  
17 other way around. And she also testified that she didn't  
18 call 911 until after she had her lunch, over an hour  
19 after she supposedly witnessed this assault.

20 Now, from those facts, a jury could look at  
21 this and say, "Did she ever really even see an assault?"  
22 Because the police officer found no evidence of an  
23 assault. And the question is -- what circumstantial  
24 evidence shows here is Egon Klementi called her and this



1 is a fabricated event. This is a conspiracy to get  
2 charges against Mr. Spencer which were based on no facts,  
3 and he was acquitted of them.

4 In terms of the alleged battery of Helmut  
5 Klementi on the 18th of December, that's in her letter,  
6 but she admits she didn't see any assault and battery,  
7 she did not speak to the investigating officer, and yet  
8 she includes "facts," quote/unquote, in her letter that  
9 Helmut Klementi was punched in the chest, which is not  
10 what the evidence showed. What the evidence showed was  
11 that Mr. Spencer was pursuing Mr. Klementi, running on an  
12 icy street, and all of a sudden -- and he was going to  
13 make a citizen's arrest. He testified to that.  
14 Mr. Klementi turned around, started back toward him, and  
15 the two of them collided. There was no punch in the  
16 chest. So where is she getting these supposed facts for  
17 the DA? Especially since she wasn't a witness.

18 She inserted herself in this case. She  
19 became a witness in this case. She provided letters to  
20 the DA, deputy DA in this case, and she testified under  
21 oath that she did it for the specific purpose of getting  
22 Mr. Spencer convicted. That was her purpose. And she  
23 failed in that, but she was involved in it. And so the  
24 process of inserting herself here, making representations



1 which were not true and changing her story now from what  
2 she said under oath at trial, there are material issues  
3 of disputed fact here. This is not something that can go  
4 away with summary judgment.

5           If these elements of the supposed berms,  
6 which she admitted at trial she never saw what snowplow  
7 driver created the berms, but she thought it was  
8 Mr. Spencer, but she never saw him do it. So she has --  
9 and that was one of the factors that went into adding  
10 these elderly abuse charges that involved Egon and  
11 Elfride Klementi. She inserted herself in here. She  
12 talked about things which were proven untrue or proven  
13 that she couldn't have observed, and she's changing her  
14 position now from what she said under oath. So did she  
15 purger herself? Well, these are factual issues. She  
16 went beyond that.

17           The deputy DA made a comment about she went  
18 to K -- what is it? I always transpose the letters --  
19 KGID, who was a contract employer of Mr. Spencer. She  
20 tried to get him fired from his job. She made complaints  
21 there, which allegations were things she had never seen.  
22 She, in addition, was not a party to the Klementies'  
23 filing for a restraining order against Mr. Spencer. Miss  
24 Kinion wrote an ex parte letter to the justice of the

1 peace hearing the matter, trying to get more restricted  
2 orders against him. There are numerous examples, in  
3 addition to the criminal trial, of the actions she was  
4 taking to persecute this man.

5 Now, per NRCP 56, she has to set forth each  
6 material fact supported by evidence which must be  
7 undisputed. She hasn't done that. As a matter of fact,  
8 a number of the allegations she made in terms of the  
9 material facts are contrary to the actual evidence. For  
10 malicious prosecution, all we need to show to overcome a  
11 motion for summary judgment is that she had a role in  
12 either initiating, procuring the institution of, or  
13 actively participating in the continuation of the  
14 criminal proceeding. We have presented evidence that  
15 supports that. Malice, which is shown by making  
16 statements with knowledge they were false or making  
17 statements with reckless disregard for the truth, she was  
18 caught in lies under oath, and she's changing her story  
19 which she previously gave under oath. And she testified  
20 contrary to another party here, Egon Klementi. Their  
21 testimony is directly contradictory.

22 There was a determination in the prior  
23 criminal proceeding with not guilty verdicts on all  
24 counts, and the criminal conspiracy. The argument was if

1 the malicious prosecution claim goes away, the conspiracy  
2 claim goes away. But as I've articulated, there's plenty  
3 of disputed material facts to support malicious  
4 prosecution by Miss Kinion.

5 The question raised about why there were no  
6 claims of conspiracy against all of the neighbors? In  
7 filing a complaint, the elements of a claim simply need  
8 to be set out based on basic facts. You don't need to  
9 put everything in there. It is: Here's a recitation of  
10 the facts. Here's the legal conclusion for this charge.  
11 Here's the legal conclusion for this charge. Here's the  
12 legal conclusion for this charge. That's what the claims  
13 in a complaint do.

14 The amended complaint is designed to clean up  
15 the prior complaint which had some misstatements and  
16 clarify what is -- what actually occurred that each of  
17 these people did. And as Ms. Pence testified, she was  
18 hearing from a lot of people. There were a lot of people  
19 who no doubt made statements, based on what we have seen  
20 from the contract employer's file, accusing Mr. Spencer  
21 of various things. Whether it rises to the level of  
22 civil conspiracy is another question, but malicious  
23 prosecution is basic. And I am only going to address the  
24 malicious prosecution with respect to Miss Kinion because

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**IN THE SUPREME COURT FOR THE STATE OF NEVADA**

JEFFREY D. SPENCER,  
Appellant,

v.

HELMUT KLEMENTI, EGON  
KLEMENTI, ELFRIEDE KLEMENTI,  
MARY ELLEN KINION, ROWENA  
SHAW, and PETER SHAW,

Respondents.

Case No. 77086

**APPELLANT'S APPENDIX**

**VOL. 2**

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1 Case No. 13-CR-0036  
2 Department No. II  
3

4 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF  
5 NEVADA IN AND FOR THE COUNTY OF DOUGLAS  
6 BEFORE MICHAEL GIBBONS, JUDGE PRESIDING

7 STATE OF NEVADA,  
8

9 Plaintiff,  
10

11 vs.

12 JEFFREY DALE SPENCER,  
13

14 Defendant.  
15 \_\_\_\_\_/

16 REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS  
17 JURY TRIAL  
18 THURSDAY, SEPTEMBER 19, 2013  
19 MINDEN, NEVADA  
20

21 APPEARANCES:

22 For the Plaintiff: Maria Pence,  
23 Deputy District Attorney  
24 Douglas County

For the Defendant: William J. Routsis, II  
Attorney at Law  
Reno, Nevada

The Defendant: Jeffrey Dale Spencer

Reported by: Nicole J. Alexander  
Nevada CCR #446

CAPITOL REPORTERS (775) 882-5322

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1 very much. You can step down.

2 THE WITNESS: Thank you.

3 MS. PENCE: Your Honor, may she be excused  
4 for today?

5 THE COURT: She's excused. Yes. She's done.

6 THE WITNESS: Thank you.

7 THE COURT: Do you have another witness  
8 available?

9 MS. PENCE: Do you want another witness  
10 available?

11 THE COURT: We have a lot of ground to cover.

12 MS. PENCE: Yes, Your Honor. We have another  
13 witness.

14 THE COURT: We're going to be recessing by  
15 4:30 tomorrow, Friday, and you might have a longer lunch,  
16 too.

17 MARY ELLEN KINION,  
18 having been first duly sworn by the court clerk,  
19 was examined and testified as follows:  
20

21 DIRECT EXAMINATION

22 BY MS. PENCE:

23 Q Can you state your name and then spell your  
24 name for the record.

1 11:08. So you said you've been at your address on Meadow  
2 Lane for 17 years?  
3 A Uh-huh.  
4 Q So you were living there last December of  
5 2012?  
6 A Yes.  
7 Q Okay. Did something happen on December 12th  
8 of 2012 that causes you to be subpoenaed to court today?  
9 A Yes.  
10 Q And what was that?  
11 A I saw Jeff Spencer assault Egon Klementi  
12 using a snowplow.  
13 Q And do you remember about what time of day  
14 this happened?  
15 A It was around -- It was before noon.  
16 Q You said that you saw the defendant assault  
17 Mr. Klementi. Do you know more than one Mr. Klementi?  
18 A Yes. I know two.  
19 Q Which Klementi did you observe the defendant  
20 assault with a snowplow?  
21 A Egon.  
22 Q And at the time that you observed this, were  
23 you inside of your home or outside of your home?  
24 A I was outside.



1 Q Approximately how far were you from the plow  
2 itself?  
3 A Probably about -- I would say from about here  
4 to here.  
5 Q Okay. And you're -- It's hard for the  
6 record. You --  
7 A Maybe five feet.  
8 Q About five feet?  
9 A Yeah.  
10 Q So were you able to clearly see the plow?  
11 A Yes.  
12 Q And could you clearly see the driver?  
13 A Yes.  
14 Q And who was the driver?  
15 A It was Jeff Spencer.  
16 Q So you see this plow coming, and you see  
17 Mr. Spencer. What did you do?  
18 A I looked straight at him and noticed that he  
19 was not looking at me. He had a big grin on his face,  
20 and he was looking -- it looked like he was looking down  
21 the street.  
22 Q So he didn't turn and look at you as you  
23 stood in the street?  
24 A No. No, he did not.

—CAPITOL REPORTERS (775) 882-5322—

1           Q     What did he do next after you saw him looking  
2 straight ahead and smiling?

3           A     He kept going up the street, and when he got  
4 here at the Klementi residence, he kind of -- It looked  
5 like he kind of swerved in. He started picking up snow,  
6 and then all of a sudden, Egon, who was in the middle of  
7 his driveway, was covered with a big giant mass of snow.

8           Q     Now, at the time that you observed the  
9 snowplow heading down Meadow Lane, you said you had been  
10 at the end of the driveway?

11          A     I moved out into the street when he was up  
12 here. I was behind him.

13          Q     Okay. And so were you able to see Egon in  
14 his driveway?

15          A     Yes.

16          Q     And what, if anything, did you do when you  
17 saw the plow go by and then the debris go in the air?

18          A     I screamed. I just -- I thought he was hurt.  
19 I just -- it was terrifying to watch. I mean, it was  
20 just like it wasn't real, you know. Like here all of a  
21 sudden, all of this snow is going on this old man, and I  
22 just --

23          Q     What did you do?

24          A     I watched. I saw Egon go into his house. At

1 first, I started down the street.

2 Q You can sit. I'm sorry.

3 A I can sit? I started to walk down the street  
4 to see if he was okay, and I saw him going into his  
5 house, so I went back to my house, and I called him and  
6 asked him if he was all right.

7 Q Do you see Mr. Spencer in the courtroom  
8 today?

9 A Yes.

10 Q Can you describe where he's seated and  
11 something he's wearing?

12 A He's sitting right over here. He's got on a  
13 gray suit with looks like a green tie.

14 MS. PENCE: Your Honor, could the record  
15 reflect that she did identify the defendant.

16 THE COURT: Yes.

17 Q (BY MS. PENCE:) Thank you. After you -- You  
18 said that you called and spoke to Mr. Klementi?

19 A Right.

20 Q And were you able to confirm his condition?

21 A Yes. He sounded really shaky, but he said he  
22 was okay.

23 Q Okay. After you called Egon, did you do  
24 anything else?

1           A     I waited awhile, and then I called 911.

2           Q     Why did you call 911?

3           A     I thought about it, and I knew, you know, I  
4     told Egon to call. I knew he was going to call, but I  
5     was worried that there might be some kind of language  
6     barrier. I did not know if, you know, they would  
7     understand what he was trying to say, and I was also a  
8     witness, so I called to tell them that, you know, to  
9     volunteer, more or less. "Hey, I'm a witness. I saw  
10    this crime happen."

11          Q     Ms. Kinion, showing you what was previously  
12    marked as State's Exhibit 18. Do you recognize that?

13          A     Yes, I do, because I see my initials on it.

14          Q     Okay. And what is it?

15          A     It's the tape of the emergency call that I  
16    made.

17                MS. PENCE: Your Honor, I believe this  
18    exhibit was previously admitted.

19                THE COURT: Yes.

20                (WHEREUPON, a CD was played.)

21          Q     (BY MS. PENCE:) Is that the call that you  
22    made to 911?

23          A     Yes.

24          Q     In that call, did you explain that you were a

1 witness?

2 A Yes.

3 Q In that call, you were told that Manchester  
4 had all of the information. Do you know who Manchester  
5 is?

6 A Yes.

7 Q Who is Manchester?

8 A He is part of a family that owns the  
9 snowplowing company that is used by KGID.

10 Q Okay. Did you speak with Mr. Manchester  
11 about this incident?

12 A Yes, I did.

13 Q Can you tell us about that.

14 A I called him and -- I believe the second time  
15 I called him that day. I called him up, and I said,  
16 "This is ridiculous, you know." I don't remember exactly  
17 what I said after that, but it was to the fact that this  
18 should not be happening, you know, and he should be doing  
19 something about it.

20 Q Ms. Kinion, you were also -- Were you present  
21 at a KGID meeting in December?

22 A Yes.

23 Q And why were you there?

24 A I believe it was because of the snowplowing.

1 We had complaints about it.

2 Q Had you personally had any issues?

3 A Not until that on the 12th.

4 Q At some point in the last three months, did

5 you write anyone a letter about what you saw and observed

6 on the 12th at the KGID meeting?

7 A I believe I wrote you a letter about it.

8 Q And what was the reason for your letter?

9 A I was trying to get all of the facts straight

10 in what I perceived as happened leading up to the assault

11 on him.

12 Q Okay. Did I ever ask you to write a letter?

13 A No.

14 Q Is everything that you wrote in the letter

15 truthful?

16 A Yes.

17 MR. ROUTSIS: Objection, Your Honor. Is

18 everything you wrote in the letter truthful? Okay. I'll

19 withdraw the objection. I'll withdraw the objection.

20 MS. PENCE: May I have this marked as State's

21 28 for identification purposes.

22 (Whereupon, State's Exhibit No. 28 was

23 marked for identification.)

24 Q (BY MS. PENCE:) Ms. Kinion, showing you

1       what's been marked as State's Exhibit 28. Do you  
2       recognize that?

3               A       This is the letter that I wrote to you.

4               Q       And how do you recognize it?

5               A       Because I signed it, for one thing.

6               MS. PENCE: Your Honor, may State's Exhibit  
7       28 be admitted?

8               MR. ROUTSIS: Your Honor, objection. This  
9       letter is loaded with -- it's loaded with hearsay  
10      comments from other people.

11              THE COURT: Out-of-court statement. What  
12      would be the hearsay exception?

13              MS. PENCE: No problem, Your Honor.

14              THE COURT: All right.

15              MR. ROUTSIS: I mean, if she wants to cover a  
16      particular area that's relevant and not hearsay, I have  
17      no problem with it, but the whole letter itself, she  
18      needs to --

19              MS. PENCE: No, Your Honor. That's fine. I  
20      have no further questions.

21              MR. ROUTSIS: Judge, can I just ask one  
22      question before we break, if we could?

23              THE COURT: Well, I don't know how many  
24      questions you have. I hope you can ask all of them and





# Exhibit 10

# Exhibit 10

1 Case No. 13-CR-0036  
2 Department No. II  
3

4 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF  
5 NEVADA IN AND FOR THE COUNTY OF DOUGLAS  
6 BEFORE MICHAEL GIBBONS, JUDGE PRESIDING

7 STATE OF NEVADA,

8 Plaintiff,

9 vs.  
10

11 JEFFREY DALE SPENCER,

12 Defendant.  
13 \_\_\_\_\_/

14 REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS  
15 JURY TRIAL  
16 FRIDAY, SEPTEMBER 20, 2013  
17 MINDEN, NEVADA

18 APPEARANCES:

19 For the Plaintiff: Maria Pence,  
20 Deputy District Attorney  
21 Douglas County

22 For the Defendant: William J. Routsis, II  
23 Attorney at Law  
24 Reno, Nevada

The Defendant: Jeffrey Dale Spencer

Reported by: Nicole J. Alexander  
Nevada CCR #446

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1 or down.

2 Q Okay. What did you mean by he -- I stand  
3 corrected then. What did you mean by, "He turned the  
4 blade on Egon"?

5 A That's how he was able to spray the snow at  
6 him.

7 Q Okay. So your ability to perceive what is  
8 the back of a giant snowplow, correct, or a big snowplow;  
9 right?

10 A It's more like a truck, and then the plow  
11 comes out.

12 Q It's more like a truck?

13 A Yeah. It wasn't like all snowplow. It's  
14 like a truck with something attached to it.

15 Q Like a regular pickup truck?

16 A I wouldn't call it a regular pickup. I'm not  
17 really good with automobiles, so I don't really know what  
18 you'd call a regular pickup truck.

19 Q What did you mean when you said, "It's like a  
20 truck"? Did you mean --

21 A It wasn't like the other snowplows. It  
22 looked like they had converted it into a snowplow.

23 Q Okay. In any event, ma'am, you're looking at  
24 a -- After Jeff smiled, do you know what he was smiling

1 at?

2 A I looked down the street in the direction he  
3 was looking and saw Egon in the driveway.

4 Q So he was smiling at Egon?

5 A I don't know what he was smiling at.

6 Q And as the plow goes down the street, you're  
7 looking at the back of the plow; correct?

8 A Partly the back of the plow and the other  
9 side of the street.

10 Q So when the plow gets up to where  
11 Mr. Klementi is, how do you see the blade?

12 A I'm not sure if I really saw it as much as I  
13 knew that he had to turn it because you have to turn it  
14 to be able to throw snow on somebody.

15 Q You didn't even see the snowplow blade, did  
16 you?

17 A I think I did. I don't remember. That was a  
18 long time ago.

19 Q Well, how could you see it, ma'am? You'd be  
20 looking at the back of the snowplow going in the opposite  
21 direction about, what did you say? How far do you think  
22 it was down the road?

23 A I didn't say.

24 Q But today, are you testifying that you didn't

1       see the blade?

2               A       I think I saw the blade.

3               Q       Did you see where Egon was?

4               A       I saw where Egon was, yes.

5               Q       So the snowplow would be going in this

6       direction, right?

7               A       Right.

8               Q       Right in front of Egon.  You're on this side

9       of the street, so you'd have to be looking through the

10       snowplow and the back of the snowplow to perceive Egon.

11       Were you able to do that?

12              A       Yes.

13              Q       Do you have x-ray vision?

14              A       No, but it's not the way that you say it is

15       by that picture.  I was able to see the snowplow, and I

16       was able to see where Egon was, both at the same time.

17              Q       Okay.  So from this perspective, were you

18       staying out on the street?  You're looking at that angle,

19       and you're going to be able to see Egon and the snowplow?

20              A       Yes.

21              Q       Because we've got to assume that as he's

22       driving by, the snow is hitting Egon in the head, or we

23       haven't got there yet; right?  Is that correct?

24              A       I'm sorry.  What was your question?

—CAPITOL REPORTERS (775) 882-5322—

1           Q     Am I correct that at the time that you're  
2     claiming to have seen whatever it is you saw go onto  
3     Egon, the snowplow would have had to have been horizontal  
4     to him at that moment?

5           A     That's correct.

6           Q     So at that moment in time, you have a large  
7     snowplow, a blade, Egon somewhere in his driveway, and  
8     you're seeing Egon at the same time you're seeing the  
9     plow. You've testified that the blade was angled to blow  
10    snow on him. You saw all of that at that moment?

11          A     Yes.

12          Q     Okay. Now, you indicated that the street had  
13    been somewhat cleared earlier; correct?

14          A     Right.

15          Q     So where did the defendant get the snow to  
16    put onto Egon?

17          A     There's a street, Charles, that goes across.  
18    When he went across Charles, he went into the side of the  
19    Klementies' property. That's where he got the snow.

20          Q     Did you write that in your statement?

21          A     I don't remember.

22          Q     Okay. Let's take a look at it. Did I leave  
23    that up with you?

24          A     Yeah.



1           Q     So if I get you right, as you're visualizing  
2     looking through the -- seeing through the plow, seeing  
3     the plow angle up, put snow on Egon, you're saying right  
4     before that on Charles Avenue, the defendant,  
5     Mr. Spencer, who had a big smile on his face, then took a  
6     turn into Charles to gather snow from Charles?

7           MS. PENCE:  Objection, Your Honor.  Compound.  
8     Complex.  Asked and answered.

9           THE COURT:  Overruled.

10          Q     (BY MR. ROUTSIS:)  Is that what happened,  
11     ma'am, or not?

12          A     I'm sorry.  Will you repeat the question?

13          Q     (BY MR. ROUTSIS:)  Yes.  This happened --  
14     today, I believe, is the 20th of September, correct,  
15     2013?

16          A     Yes.

17          Q     This occurred December 12th, 2012; right?  
18     You wrote a letter to the prosecutor to try to get them  
19     to prosecute, as you testified, Mr. Spencer, you signed a  
20     letter, and it shows it received February 22nd, okay?

21          A     Correct.

22          Q     Can you show us -- Would it refresh your  
23     memory as to whether or not Jeff Spencer somehow drove  
24     onto Charles Avenue, gathered up the snow, and then drove

1 back --

2 MS. PENCE: Objection, Your Honor. He's

3 testifying, and it's compound and complex.

4 MR. ROUTSIS: I have the right to reiterate

5 the facts she's laid. It's foundation.

6 THE COURT: Okay. The Court overruled the

7 objection originally, and the witness asked to restate

8 it, so he's restating the question.

9 MS. PENCE: Sorry. I didn't hear the

10 question.

11 Q (BY MR. ROUTSIS:) Now, Ms. Kinion, you're

12 saying that the defendant drove onto Charles and gathered

13 snow, then came back onto Meadow and delivered that snow

14 onto the victim, Mr. Klementi; correct?

15 A No.

16 Q What are you saying?

17 A I did not say that he drove onto Charles.

18 Q Okay. Tell me again.

19 A He drove into -- The Klementies are on a

20 corner. He went into their property. Well, he didn't

21 have to go into their property. He went into the side of

22 the street where the berm was and picked it up there, and

23 then --

24 Q And then he hit him with the berm?

—CAPITOL REPORTERS (775) 882-5322—

1           A     Yeah.

2           Q     Now, did you ever write that down in your  
3 letter? Did you ever think that he drove into the berm  
4 of Mr. Klementies' property prior to spraying snow on  
5 him?

6           A     I don't think I wrote that down.

7           Q     Why wouldn't you write that down?

8           A     Well, for one thing, I was trying to keep it  
9 short. And no, I just did not write that down.

10          Q     Okay. And then -- and we'll be done very  
11 shortly -- the snow you're saying you saw, you then saw  
12 the back of the plow go onto his property and angle, and  
13 somehow the snow went up? Was it snow, or was it rocks  
14 and tar?

15          A     It was snow and probably ice because I know  
16 that day there was a lot of ice along the side of the  
17 road.

18          Q     Okay. And you saw that material fly into --  
19 Tell us what you saw because I don't know.

20          A     I saw the snow fly up and hit Egon.

21          Q     Where did it hit him?

22          A     It hit him like all over. There was a large  
23 amount. It flew up. It went -- Part of it went over his  
24 head. It went onto his body.

1           Q     Right. Now, and at that moment in time, how  
2 close was Egon to Meadow? How many feet away from Meadow  
3 would you say he was?

4           A     I don't know. He was still in the middle of  
5 the driveway.

6           Q     Ma'am, can you see the middle of the  
7 driveway? Wouldn't that be behind the tree?

8           A     I could definitely see the middle of the  
9 driveway.

10           MR. ROUTSIS: Okay. I'd like to mark what's  
11 defendant's next in order.

12           Q     (BY MR. ROUTSIS:) Ms. Kinion, are you sure  
13 you're just not relaying what Mr. Klementi told you what  
14 happened?

15           A     I am positive.

16           (Whereupon Defendant's Exhibit next in order  
17 was marked for identification.)

18           Q     (BY MR. ROUTSIS:) This is just another --  
19 maybe a better picture, ma'am. Is that an accurate  
20 depiction? You could go ahead and look at it. Is that  
21 an accurate depiction of the Klementies' driveway from  
22 your location?

23           A     Sort of. In this picture, it looks so far  
24 back, it's hard to tell. In this picture, it's hard to

1 tell where it was taken from. You know what?

2 Q I'm just asking you. Is this an accurate  
3 depiction of the property? Are the trees --

4 A Yeah, it is a picture of the property.

5 Q Okay. I'd ask to admit.

6 A And you said something about the trees.

7 MR. ROUTSIS: Yes. We'll get to that. I'd  
8 ask to admit this into evidence, Your Honor.

9 MS. PENCE: No objection.

10 THE COURT: It's admitted.

11 Q (BY MR. ROUTSIS:) Okay. Ms. Klementi --  
12 Ms. Kinion. My apologies. This is Charles Avenue;  
13 correct?

14 A Yes.

15 Q This would be the driveway to the Klementies;  
16 correct?

17 A Yes.

18 Q There's about one, two -- Those are pretty  
19 big trees, aren't they?

20 A Yes.

21 Q That's a tree, and that's a tree, right?

22 A Right.

23 Q Now, wouldn't the middle of the driveway be  
24 somewhere behind these trees?

1           A     No.

2           Q     Okay.  Where would it be?

3           A     It's before the trees.  It's on -- it's more  
4 to the right.

5           Q     To the right this way?

6           A     Yeah.

7           Q     So he'd be on --

8           A     Not near the tree.

9           Q     The other side of the trees to the right?

10          A     Yeah.

11          Q     So you're saying the snow went about 20 feet  
12 in the air?

13          A     I don't know how many feet it went.

14          Q     But if we have someone go out to the scene  
15 and walk it off, it's clearly to the right of these  
16 trees.

17          A     Correct.

18          Q     Okay.  And at that point -- we're almost  
19 done -- you're seeing snow fly up and hit him in the  
20 head?

21          A     It's hitting his whole body.

22          Q     His whole body?

23          A     Yeah.

24          Q     Did you see what he did after that?  Did he

—CAPITOL REPORTERS (775) 882-5322—

1 Q Do you know what a berm is --  
2 A Oh, yeah.  
3 Q -- correct?  
4 A Yes.  
5 Q And when you called to make that complaint,  
6 did you watch the snowplow as it left the berm?  
7 A I don't understand your question.  
8 Q You called and made a complaint about a berm.  
9 A Right.  
10 Q Did you watch the snowplow as it left the  
11 berm?  
12 A Did I see --  
13 Q It leave the berm?  
14 A Did I see him go by the berm?  
15 Q Did you see --  
16 A No, I did not.  
17 Q There's many snowplow drivers, ma'am, isn't  
18 there?  
19 A Yes.  
20 Q Why did you say it was Jeff Spencer?  
21 A I don't remember saying it was him until  
22 later.  
23 MR. ROUTSIS: I'd like to mark next in order.  
24 (Whereupon Defendant's Exhibit next in order was

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marked for identification.

Q (BY MR. ROUTSIS:) Counsel, this is K.

Now, ma'am, do you recall writing a letter complaining that you witnessed Jeff Spencer leave the snow berm at the end of your driveway and you made a complaint about it?

A Did I write a letter?

Q Did you make a complaint to the Kingsbury Improvement District?

A Yes.

Q And did you not in that complaint say that you saw Jeff Spencer leave the berm in front of your driveway?

A I did not say that.

Q I'd like you to refer to this document that's been marked Defendant's Exhibit next in order. Would it refresh your recollection if you saw the comments that were noted from your mouth?

A Yes.

MS. PENCE: Objection, Your Honor.

MR. ROUTSIS: Please read it.

MS. PENCE: We haven't identified what that document is.

MR. ROUTSIS: Okay. She said it would



1 in order.

2 (Whereupon, Defendant's Exhibits U & V  
3 were marked for identification.)  
4

5 RECROSS EXAMINATION

6 BY MR. ROUTSIS:

7 Q Ms. Kinion, I'd like to show you what's been  
8 marked Defense U and V. Is that a picture of your  
9 driveway?

10 A Yes.

11 Q I'm going to publish it. Maria, may I please  
12 have the photograph you just published?

13 Ms. Kinion, the prosecution just published  
14 Exhibit 30 and said was this your driveway, and you said  
15 yes; correct?

16 A Correct.

17 Q And there's a white fence right in front of  
18 it; correct?

19 A No. The white fence is down the street  
20 further.

21 Q Okay. Now, isn't it in fact true that your  
22 driveway is not -- we'll go back to the District  
23 Attorney's photograph. This driveway has pavers on it;  
24 correct? Can you see these rims here?

—CAPITOL REPORTERS (775) 882-5322—

1           A     Yes.

2           Q     And you see the white fence there?

3           A     Yes.

4           Q     Now, we're going to now publish Defense

5     Exhibit P, and that's your car, isn't it?

6           A     Yes.

7           Q     Your driveway has a wooden fence in front of

8     it, doesn't it?

9           A     No. The fence is on the side of it.

10          Q     Right. And your driveway is asphalt, isn't

11     it?

12          A     No. It's paver stone.

13          Q     Okay. So there's a wooden fence there;

14     correct?

15          A     Yes.

16          Q     Next to your driveway? In this picture,

17     there's no wooden fence. Isn't that in fact your

18     neighbor's driveway?

19          A     That could be my neighbor's driveway.

20          Q     Yes, it is your neighbor's driveway; isn't

21     that correct?

22          A     Yes. I'm sorry.

23                 MR. ROUTSIS: We seek to admit all of the

24     exhibits at this time, Your Honor.



# Exhibit 11

# Exhibit 11

**DISK**  
**NOT**  
**SCANNED**

ORIGINAL

Case No. 14-CV-0260

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA IN AND FOR THE COUNTY OF DOUGLAS  
THE HONORABLE STEVEN KOSACH PRESIDING

-oOo-

EGON, HELMUT & ELFRIDE KLEMENTI, )  
Plaintiffs, )  
vs. )  
JEFF SPENCER, )  
Defendant. )  
JEFF SPENCER, )  
Counter-Plaintiff, )  
vs. )  
EGON, HELMUT & ELFRIDE )  
KLEMENTI and MARY ELLEN )  
KINION, )  
Counter-Defendants. )

JAVS TRANSCRIPT OF PROCEEDINGS  
MONDAY, JANUARY 30, 2017  
MINDEN, NEVADA

For Jeff Spencer: William Routsis, Esq.  
Lynn Pierce, Esq.  
David Zaniel, Esq.  
For the Klementies: Chris Moore, Esq.  
For Mary Ellen Kinion: Michael Pintar, Esq.  
For Peter and Rowina Shaw: Tanika Capers, Esq.  
Transcribed by: Capitol Reporters  
Nicole J. Hansen

CAPITOL REPORTERS (775) 882-5322

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I N D E X

THE WITNESS:

PAGE:

MARIA ELIZABETH PENCE

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1 MINDEN, NEVADA; MONDAY, JANUARY 30, 2017; 1:38 P.M.  
2 -oOo-

3  
4 THE COURT: Thank you. Please be seated,  
5 everybody. Good afternoon to you all.

6 MR. ROUTSIS: Good afternoon, Judge.

7 THE COURT: All right. We're on the record  
8 in case number 14-CV-0260. The title is Klementi versus  
9 Spencer, Spencer versus Klementi and Kinion. Two  
10 Klementies. Excuse me.

11 We were here in December, and I asked and I  
12 heard arguments in regards to motion for summary judgment  
13 and in regards to motion to amend, and I thought it would  
14 be a good idea at the time to invite the district  
15 attorney that prosecuted the original case against  
16 Mr. Spencer to come and testify based on a letter that  
17 was presented to me during that hearing, and the letter  
18 was from Miss Kinion.

19 Do you have that in front of you, Counsel?

20 MR. ROUTSIS: Yes.

21 THE COURT: And so when I was glancing -- I  
22 didn't read the letter in detail -- but as I was glancing  
23 at it, it occurred to me that maybe we could talk to the  
24 district attorney to see what was going on in the



1 district attorney's mind at the time of charging the  
2 original matter as a felony, and so that's why we're here  
3 today. And also, I want to, when we're done with the  
4 summary judgment and when we're done with the amendment,  
5 I want to pick a trial date.

6 MR. ROUTSIS: Judge, we filed a supplemental  
7 opposition as the Court asked. We e-mailed this to the  
8 Court. Can we provide you with a physical copy now?

9 THE COURT: Please. Did you get it,  
10 Mr. Zaniel?

11 MR. ZANIEL: Yes, Your Honor. I think it was  
12 circulated by e-mail. I just file stamped it five  
13 minutes ago.

14 THE COURT: Okay. I didn't get it. I saw it  
15 this morning, and I'll identify everybody, but I didn't  
16 get it. I saw where Mr. Routsis sent something yesterday  
17 afternoon.

18 MR. ROUTSIS: Yes.

19 THE COURT: And I couldn't open it.

20 MR. PINTAR: It was in Word Perfect, and I  
21 couldn't either.

22 THE COURT: And then Mr. Zaniel wrote this  
23 this morning, so okay.

24 MS. PIERCE: I would like to apologize for

1       that, Your Honor. I was experiencing technical  
2       difficulties with the whole thing, and so I attempted to  
3       send it via Mr. Routsis's e-mail. And I'm sorry --

4               MR. ROUTSIS: I can take the blame.

5               THE COURT: So, Mr. Pintar, good afternoon.  
6       Mr. Moore, good afternoon, and Ms.?

7               MS. CAPERS: Capers.

8               THE COURT: Capers. Good afternoon to you.  
9       You're standing like maybe you didn't get it either? All  
10      three of you?

11              MR. PINTAR: No. This was just handed to us  
12      less than five minutes ago. Also, I wanted to apprise  
13      the Court we were not provided with the records that the  
14      Spencers received from the Douglas District Attorney's  
15      Office until late last week, so we haven't had a chance  
16      to go through them all.

17              MS. CAPERS: And I haven't received them at  
18      all.

19              MR. PINTAR: And I believe your order at the  
20      last hearing was that those were supposed to be produced  
21      so that we could review them and prepare a supplemental  
22      briefing. I just wanted to advise the Court that was not  
23      done.

24              MR. ZANIEL: I disclosed last Wednesday they

1 signed for them. It was late. My office had an issue  
2 with that. My paralegal wanted to review and summarize  
3 before disclosing. Since then, I've talked to my  
4 paralegal about disclosing records as soon as we get  
5 them, so I have to fix my internal issue, but it is true  
6 that they were not disclosed until last Wednesday.

7 And then with Ms. Capers, I'll put her on the  
8 mailing list. It's still my understanding -- I don't  
9 think that Ms. Capers has made a full appearance in the  
10 case.

11 MS. CAPERS: No, I did.

12 MR. ZANIEL: You did, okay. So we'll correct  
13 the certificate of service and make sure that she is on  
14 there.

15 THE COURT: Let's see what we can do. That's  
16 all I'm going to say right now. I know that Mr. Glogovac  
17 was here earlier for Mr. Pintar, and you know, we'll  
18 catch up. I was saying, and I'll say this to all of the  
19 parties that are present. You know, if this case were on  
20 my normal docket 20 years ago in Reno, you watch me and  
21 counsel knows me. Every counsel except for Ms. Capers  
22 knows me to the point, "Come on, come on, come on, come  
23 on, come on, come on." Well, senior judge now, "Hmm.  
24 Let me see what's going on here." Not that I was too

1 quick to make any judgments earlier, but I have many,  
2 many more cases. Now I'm a little bit more take my time.  
3 I'm older, I'm hopefully a little bit wiser. So that's  
4 why.

5 And so when I say to everybody today if you  
6 feel like you can't respond, remember I had the arguments  
7 before, and I wanted to talk to the district attorney.  
8 So I want you all to talk with the district attorney  
9 today. She's going to be under oath. I'm happy that she  
10 came, and I want to get a flavor for why she charged the  
11 felony. If you feel like you want to supplement, if you  
12 feel like you want to bring up anything else, we just got  
13 this late supplement. I just got it just now, haven't  
14 read it, so let's take advantage.

15 Let's go ahead and call the witness and go  
16 from there. I've identified Ms. Capers, I've identified  
17 Mr. Moore, I've identified Mr. Pintar, Mr. Zaniel,  
18 Ms. Pierce and Mr. Routsis, who didn't send me any e-mail  
19 yesterday. So you all are present. Let's go. Where is  
20 our witness?

21 (Whereupon, the witness was duly sworn.)

22 THE COURT: Good afternoon to you and thank  
23 you so much for coming. I sincerely, sincerely  
24 appreciate it.

1           THE WITNESS: You're welcome. It's not how  
2 I'd like to spend the afternoon, but --  
3           THE COURT: I understand.  
4           THE WITNESS: -- I understood you asked, and  
5 I'm here to comply.  
6           THE COURT: Well, thank you. And could you  
7 please state your name for the record?  
8           THE WITNESS: Maria Elizabeth Pence:  
9 P-E-N-C-E.  
10          MR. PINTAR: Excuse me, Your Honor.  
11          THE COURT: Yes?  
12          MR. PINTAR: Do we have a court reporter  
13 here? Is this being recorded?  
14          THE COURT: It's all recorded, right?  
15          THE CLERK: Yes, on JAVS.  
16          MR. PINTAR: It is?  
17          THE COURT: Yes. Even though we're in one of  
18 a cow counties, we do have a recording.  
19          MR. PINTAR: You said that. Not me.  
20          THE COURT: I know it. I said it before you  
21 were going to say it. Forgive me. These are all Reno  
22 lawyers, and I have one Las Vegas lawyer, so I know,  
23 quote/unquote, "big cities."  
24          Ms. Pence, thanks a lot for coming, and I

1 want you to be comfortable. I do not want, in any way,  
2 shape, or form to invade any attorney/client privilege,  
3 relationship, public relationship, anything like that. I  
4 -- where is that letter? Where is that letter for  
5 Ms. Kinion?

6 MR. ROUTSIS: Your Honor, you know we  
7 provided -- I just gave you the document, the  
8 supplemental, and that letter is actually an exhibit.  
9 And I'll tell you. It's on after the document, which is  
10 ten pages, it's the first exhibit.

11 THE COURT: Ms. Pence, I'm going to hand you  
12 what has not been admitted in evidence, but I'm going to  
13 hand you a letter authored by Mary Ellen Kinion. There's  
14 no date on it, but I want you to look at this. Go ahead  
15 and give it to her.

16 Thank you, Mr. Pintar.

17 I want you to look at this to see if you can  
18 refresh your memory as to whether or not you received a  
19 letter and whether or not it meant anything to you. Now  
20 I realize that that's an open-ended question, but I'm  
21 trying to make it open-ended so I can go on from there.  
22 So go ahead and take your time and see if you can  
23 identify and refresh your recollection about receiving  
24 that letter.



1 THE CLERK: Just to be clear, Mr. Pintar, you  
2 would like me to mark this as exhibit one?

3 MR. PINTAR: Can we do that, Your Honor?

4 THE COURT: I think we did last hearing for  
5 the purposes of the hearing.

6 THE CLERK: Okay.

7 MR. PINTAR: Your Honor, for the record, I  
8 just want to -- this was produced. We marked Exhibit 1  
9 the first time last week, so I don't know where -- it  
10 couldn't have been at the last hearing.

11 THE COURT: I think it was at the last  
12 hearing.

13 MR. ROUTSIS: It was.

14 THE COURT: I didn't admit it into evidence.  
15 I marked it for the purposes of identifying it.

16 MS. PIERCE: If I can clarify that for the  
17 record, Your Honor. At the last hearing, we had found  
18 the letter very recently prior to the hearing in the  
19 files that the investigator for Mr. Routsis still had  
20 from the criminal matter, which he didn't even know he  
21 still had. It is identical to the letter that has now  
22 been produced by the DA's office, so I don't know which  
23 copy you're looking at, but it is the same letter.

24 THE COURT: All right. The letter I'm

1 looking at -- and I hope that Ms. Pence is looking at,  
2 has, in somebody's writing, 12-2555Q, and to the right of  
3 it, it's received February 22, 2013, Douglas County  
4 District Attorney. Is that what you have on the third  
5 page?

6 THE WITNESS: It is, Your Honor.

7 THE COURT: Okay. That's what I'm looking  
8 at, and that's what I think was marked at the last  
9 hearing.

10 THE CLERK: And it's lodged in the file, so I  
11 don't have it in front of me, but it would being lodged  
12 on the left of your case file.

13 THE COURT: Lodged?

14 THE CLERK: Yeah, so I'm not seeing an  
15 envelope, so I'm not --

16 THE COURT: All right. I don't see an  
17 envelope, and that's what lodged means.

18 THE CLERK: Right. It would have been in an  
19 envelope.

20 THE COURT: So let's go ahead and just mark  
21 this as Exhibit 1.

22 THE CLERK: Okay.

23 (Whereupon, Exhibit No. 1 was marked for  
24 identification.)



1 THE WITNESS: And, Your Honor, I apologize.  
2 Mine appears to have some sort of a Bates stamp at the  
3 bottom of it. Is that -- no. So this was a Bates  
4 stamped copy. So I don't have the same.

5 THE COURT: I don't have it Bates stamped.

6 THE WITNESS: But I have a similar.

7 MR. ZANIEL: Your Honor, that's my Bates  
8 stamp. That's how we just produced the record.

9 THE COURT: Let's have you, Ms. Pence, go off  
10 the marked letter. So same thing. 12-2555Q, received  
11 February 22, 2013. No Bates stamp?

12 THE WITNESS: It has the Bates stamp still,  
13 Your Honor. I apologize. I think you're the only one  
14 whose copy is not Bates stamped now.

15 MR. ZANIEL: Would you like a Bates stamped  
16 copy, Your Honor?

17 THE COURT: No.

18 MR. MOORE: I would like a Bates stamped  
19 copy, Your Honor.

20 THE COURT: Give it to him. But who's got  
21 the button? As long as we're on the same page. Are we?  
22 Signed by Mary Ellen Kinion, 775-588-6916, the second  
23 page. Okay.

24

1 EXAMINATION

2 BY THE COURT:

3 Q Have you familiarized yourself with the  
4 contents of this letter, Ms. Pence?

5 A I have, Your Honor. I just briefly read  
6 through it.

7 Q And do you remember receiving this letter?

8 A I remember seeing this letter before. I can  
9 tell the Court that the handwritten entry at the top was  
10 made by my legal secretary at the time, so it would have  
11 come to the Douglas County District Attorney's Office.  
12 She coded it to this particular criminal matter. That's  
13 a DA number. Q was my number at the time, and the time  
14 that it was received in our office was the February 22nd,  
15 2013, time.

16 I'm not sure. I think that would be sometime  
17 several months after I had originally charged this case,  
18 and I remember meeting Miss Kinion at the Tahoe Township  
19 Justice Court and her expressing that she had some  
20 information. And I told her, "You know, if there's  
21 something that you think is relevant to the case to  
22 please feel free to write something and send it to the  
23 district attorney's office." And that's about the extent  
24 of what I remember without going back and checking file

1 notes as far as this letter.

2 Q And you met Miss Kinion at justice court.  
3 Was that the day of the preliminary hearing on this date?  
4 I shouldn't say "this date."

5 A I don't remember when it was. I think there  
6 were several court appearances at the justice court level  
7 before it went to prelim, and I don't know when -- if she  
8 was a ride for them, if she came -- I don't remember. I  
9 just remember that's where I met her, was at the Tahoe  
10 Township Justice Court.

11 Q Did she say anything to you that -- I'm going  
12 to use the word "unduly," unduly influenced you to charge  
13 a felony or not? Anything like that? Was there anything  
14 in reaction on your part from what Miss Kinion either  
15 wrote or said to you?

16 A No. And I would just be guessing, but my  
17 guess is that I think when I originally charged this  
18 case -- I don't remember if it was two or three counts,  
19 but she was not a part of the charging decision  
20 whatsoever at all. I received this. I received a lot of  
21 information before prelim. Specifically, I think the  
22 biggest thing was medical documents, and I remember there  
23 was voluminous records from doctors that Mr. Routsis  
24 wasn't able to find, that we kept losing, that there were

1 all of these reasons that they were disappearing, but  
2 there was actually a ton of medical records. And I think  
3 probably the biggest change -- and I apologize because  
4 it's been so long I don't remember exactly, but I don't  
5 think the charges actually changed substantially at all  
6 from what I charged the day I read the sheriff's office  
7 report until the day we went to trial.

8 I think the only enhancement was based on the  
9 medical records because once there was substantial bodily  
10 harm elevated, I think it was a gross misdemeanor to a  
11 felony.

12 Q And the medical records influenced you to the  
13 point of the felony because of substantial bodily harm?

14 A Well, exactly. At the time that I charged  
15 it, I did not have any medical records --

16 Q I see.

17 A -- at all. And then I think I was given his  
18 original medical records, and I talked to the victim  
19 himself in that count, and he was still seeing a doctor.  
20 And by the time I actually understood what had actually  
21 happened to him, I believe that he was pushed down by  
22 Mr. Spencer, it was much more severe than I had  
23 originally understood.

24 And the only reason it became a felony was

1 because the level of proof that I would need for  
2 prolonged physical pain or impairment was met by the  
3 medical records. But I actually think that all of the  
4 charges were the same the entire time, and I think there  
5 was at least -- a criminal complaint, I think it was  
6 amended at the lower court level. I think there was an  
7 information filed that alleged the substantial bodily  
8 harm. That's what elevated the one count to a felony  
9 from a gross, and I think there was one more amendment  
10 when I added -- I asked to endorse some witnesses because  
11 there were more medical personnel and more people that  
12 were involved.

13 Q Did age have anything to do with it as far as  
14 Mr. Klementi was over a certain age or anything like  
15 that?

16 A Absolutely. But that was done, I think, the  
17 day I received the case.

18 Q Because of the age?

19 A Because of the age. There's the DA's office,  
20 there's a checklist for these sort of things and you look  
21 at victim age, especially under exploitation or abuse of  
22 an elderly, and he met the age criteria. So I think that  
23 was charged just based off of the police report.

24 THE COURT: Okay. I don't have any other

1 questions. I want to invite the attorneys, and we can go  
2 in order from left to right.

3 Ms. Capers, start with Ms. Capers to see if  
4 you have any questions of Ms. Pence based on why she's  
5 here.

6

7

EXAMINATION

8

BY MS. CAPERS:

9 Q Right. I do, and I represent Peter and  
10 Rowina Shaw. I don't know if me saying those names jogs  
11 your memory at all, but again, the same type of questions  
12 I would ask as the judge concerning the factors that  
13 weighed into your charging the matter.

14 Did anything Mr. Shaw or Mrs. Shaw say or do  
15 influence your decision to charge a felony in this  
16 matter?

17 A And before I answer, can I just clarify?

18 Q Yes.

19 A That's Dr. Shaw?

20 Q Yes.

21 A They had video cameras, security outside of  
22 their home; is that right?

23 Q Yes.

24 A Okay. I just want to make sure. No. And if



1 it helps, just to sort of go back in time, when I was  
2 working as a deputy district attorney with the DA's  
3 office, we have a charging manual, and the way things  
4 work is that when sheriff's office reports are generated,  
5 they are randomly assigned, sometimes randomly, sometimes  
6 at the direction of the DA, to particular deputies in the  
7 office, so we constantly have a stack of reports. And  
8 when we have time, we go through these reports and we  
9 file certain guidelines that we're given, and we make a  
10 charging decision.

11 No one is involved in the charging decision  
12 except for myself. And then, for example, if I have a  
13 question of the deputy that writes the report, I'll call  
14 downstairs. I would try and find that out. But the  
15 charging decision is made solely by whichever deputy  
16 district attorney is assigned that case, and it's always  
17 been office policy. And I can't speak for today, but  
18 while I was employed there, victims and witnesses do not  
19 drive that process.

20 I mean, you can imagine in a domestic battery  
21 if you're relying on a victim for filing -- if you're --  
22 it doesn't work that way. And while the manual is very  
23 specific, victims must be constantly apprised of what's  
24 happening in a case and what's going on. That's very

1 different than allowing them to participate in the actual  
2 charging. And I know that the Shaws are actually -- they  
3 were not victims, but they would not have a part in  
4 charging decisions.

5 And again, I don't have a copy of all of the  
6 complaints, but my understanding is that the only real  
7 change was from a gross misdemeanor for the abuse of  
8 Helmut Klementi up to a felony, and that was when the  
9 medical records showed that there were serious injuries  
10 and that he was in prolonged physical pain. So in a long  
11 roundabout way, the Shaws had nothing to do with my  
12 decision to upgrade the charge from a gross to a felony.

13 MS. CAPERS: All right. Thank you. I'll  
14 pass the witness.

15 THE COURT: Thank you. Mr. Moore?

16 MR. MOORE: Thank you, Your Honor.

17 THE COURT: Well, we might as well take it as  
18 far as any cross examination based on Ms. Capers'  
19 questions. We can go one at a time or we can go --

20 MR. ROUTSIS: Okay. We would be the opposing  
21 counsel. Can I proceed then, Judge?

22 THE COURT: Yes. Go ahead.

23 MR. ROUTSIS: And this is specifically just  
24 regarding the Shaws, right, for direct?



1 THE COURT: Well --

2 MR. ROUTSIS: Because that's all she --

3 THE COURT: Just hold your thoughts. Hold  
4 your notes because I'll go one side to another side, all  
5 right? So now, Mr. Moore.

6

7

EXAMINATION

8 BY MR. MOORE:

9 Q Thank you, Your Honor.

10 Hi, Ms. Pence. My name is Chris Moore, and  
11 I'm an attorney who represents Helmut Klementi in the  
12 civil litigation, to let you know what I'm doing here.  
13 Although my client is not directly involved in maybe a  
14 particular motion for summary judgment, one of the things  
15 you did say in response to the questioning here was that  
16 you knew the Shaws had a video camera.

17 To your recollection, did you ever look at  
18 anything on that video camera? And I'm asking that  
19 because I want to know if it had anything to do with the  
20 charging.

21 A It had nothing to do with charging because by  
22 the time I -- my understanding is -- and I would have to  
23 go back to the case file. All of these charging  
24 decisions were made well before I received the evidence

1 from these things, and that's generally how it works, is  
2 we make charges based on the reports, and we file a  
3 particular set of charges.

4 There's always, you know, investigation  
5 ongoing. And as we get new records, we get new reports,  
6 my understanding is we did not actually get the footage  
7 from the Shaws for some time, and there was an issue with  
8 how to play it because it was a very complicated system.  
9 And I want to say it was months after I charged this that  
10 we actually received that. I did in fact watch it, and I  
11 believe part of it may have even been played at the  
12 trial, but it had nothing to do with the charges.

13 Q And I understand many of this happened three,  
14 four years ago. You talked about the video footage.  
15 Were you aware that the Spencers had a video surveillance  
16 system?

17 A Yes, I was.

18 Q And was some of that video available to you  
19 as part of the process?

20 A It was a well-known fact that the Spencers  
21 had a video surveillance system. I was not provided with  
22 the actual surveillance footage, although it was  
23 requested multiple times up until, I think, almost  
24 immediately before trial. And I believe the first --

1 no, actually, I might not have even been provided with  
2 the footage until trial. It was a huge contention as far  
3 as discovery. At one point, I know it was turned over  
4 finally because it had been altered, and I did a motion  
5 in limine because it had been cut and spliced.

6 MR. ROUTSIS: Judge, I'd move to strike.  
7 Misstates the evidence.

8 THE COURT: This is her memory, so I'm not  
9 going to --

10 THE WITNESS: And I asked the Court to  
11 exclude it. My recollection is the Court did exclude  
12 some portions of it. At some point, I think the video  
13 actually was played in court, but I don't know if the  
14 actual final push was played in court, but what the  
15 footage did show was Mr. Klementi on the ground and  
16 Mr. Spencer over him, and then I don't remember if there  
17 was volume or not, but his body language and then him  
18 returning to the home.

19 MR. MOORE: And, Your Honor, this is  
20 probative really to much of the case because one of the  
21 things we'd like to address later on today is that video  
22 because we've been in the process. And as the Court may  
23 recall, we have been engaging forensic experts and what  
24 have you. And so Ms. Pence's enlightenment is helpful to



1 us. I'm not going to go too much farther, but I just  
2 want to let the Court know why I'm asking the questions.

3 THE COURT: Thank you.

4 Q (BY MR. MOORE:) And along those lines, the  
5 material that you say was a subject of contention and of  
6 dispute, when it was provided to the district attorney's  
7 office, do you recall if there was any raw or what we  
8 might call -- some people would call a native footage  
9 that was provided, or was it just the edited material?

10 A My recollection is that all we received was  
11 edited material. I was informed by Mr. Routsis that he  
12 had the entire incident on film and that he was going to  
13 play it at the trial and that, you know, we would see  
14 what really happened. I was never given any raw footage.  
15 I don't believe the district attorney's office received  
16 raw footage. The ultimate compilation that we received  
17 had been broken into pieces and cut down and actually  
18 edited with arrows and certain additions that were not  
19 part of the original.

20 MR. MOORE: That's what we thought. Thank  
21 you.

22 THE COURT: Thank you. Mr. Pintar?  
23  
24

1 EXAMINATION

2 BY MR. PINTAR:

3 Q Thank you. Ms. Pence, my name is Mike  
4 Pintar. I represent Ms. Kinion. I just want to ask you  
5 a couple of questions just about the timeline, if you  
6 will, as best as you can. So my understanding is that  
7 the altercation or incident between Mr. Spencer and  
8 Mr. Klementi occurred on December 18th of 2012; is that  
9 correct?

10 A I wouldn't -- I don't have a way to  
11 independently remember that. It would probably be  
12 alleged in the first original criminal complaint, but I  
13 have no independent memory of that.

14 Q Okay. Assuming -- I don't have a copy of the  
15 report. Assuming that that was the case, when would the  
16 initial charging document have been filed by the Douglas  
17 County District Attorney's Office?

18 A It would have depended on when the reports  
19 came in. Sometimes it's two weeks later. Sometimes it's  
20 two months later. I'm sure if somebody wanted to go and  
21 get the district court file, we could just look at it and  
22 know exactly when it was filed right now. I mean, it  
23 would be sometime after that.

24 Q You mentioned before during your questioning

1 with Judge Kosach that you had a conversation with Miss  
2 Kinion at the Tahoe Justice Court. Was that after the  
3 charging document had been filed?

4 A Yes.

5 Q And that conversation that you had with Miss  
6 Kinion at the Tahoe Justice Court, tell us again what you  
7 directed her to do.

8 A At the time that we spoke, she represented to  
9 me that she knew the Klementies and she had some  
10 information, and would I like to hear it, and I said,  
11 "You know, if you have any information you think that  
12 would be relevant or helpful, please write it down and  
13 send it to the district attorney's office."

14 We have people all the time in cases like  
15 this, witnesses, victims, who want to give us just a ton  
16 of information which isn't helpful. I don't have  
17 anything to report it or look at it with. I don't have  
18 any way to sort through it, so I ask people if they're  
19 serious and they have something they want to say or would  
20 be helpful to write it and send it to the office because  
21 then we do get this. We get something that gets logged  
22 and we get a record of it, and I can review and look at  
23 it. And if it's something that's helpful or that  
24 clarifies something, that's the most useful thing for me.



1           Q     So looking at Exhibit 1 with the Bates stamp  
2 of February 22nd, 2013, does that mean that that's when  
3 that was received by your office?

4           A     Yes.

5           Q     Okay. And then so this was received on or  
6 about February 22nd of 2013?

7           A     That's what the stamp shows.

8           Q     Okay. And then after you had the initial  
9 charges, then you conducted the preliminary hearing, and  
10 I believe that was in April?

11          A     That's correct.

12          Q     And Ms. Kinion was not called as a witness at  
13 the preliminary hearing; is that correct?

14          A     I don't believe that she was. I don't  
15 remember, but I don't think she was.

16          Q     Okay. So is it fair to conclude that, as you  
17 said before, she had nothing to do with the charges  
18 brought against Mr. Spencer?

19          A     No. By the time that she wrote this letter  
20 that was received in February, charges would have already  
21 been filed, and they would have been filed for at  
22 least -- I'm guessing they weren't probably filed for at  
23 least a month or so, so no. She did not have anything to  
24 do with the charges that I filed.

1           Q     And would the same also be true for the  
2     amended charges that were filed after the preliminary  
3     hearing then? That's my understanding of the time  
4     sequence, that there was some amended charges after the  
5     preliminary hearing before the trial.

6           A     And I could be wrong, and obviously the  
7     easiest thing would be to get the district court file,  
8     but I think the only amendments were that one of the -- a  
9     gross misdemeanor was enhanced to a felony, and that was  
10    based on medical records. That had nothing to do with  
11    Miss Kinion.

12           MR. MOORE: Okay. Thank you.

13           MR. ROUTSIS: Good afternoon, Ms. Pence.

14           THE COURT: I was going left to right. Maybe  
15    that's not the way the Greeks do it.

16           MR. ROUTSIS: Judge, it's our motion.

17           MR. ZANIEL: I was just going to ask a couple  
18    of questions about the DA file.

19           MR. ROUTSIS: I'd like to mark for the record  
20    the criminal complaint, if we can.

21           THE COURT: Okay. Mr. Zaniel is deferring.

22           MR. ZANIEL: I'm deferring. I'll reserve. I  
23    have just a few follow-up questions procedurally just  
24    about how the district attorneys office works, not about



1 the substantive nature.

2 THE COURT: Okay.

3 MR. ROUTSIS: Thank you, Judge. May I  
4 approach, Your Honor?

5 THE COURT: Yes.

6 MR. ROUTSIS: Counsel, here is a copy of the  
7 complaint in case you want to review it.

8 MR. PINTAR: Your Honor, for the record, this  
9 is the first time we've been presented this document.

10 MR. ROUTSIS: Your Honor, these are part of  
11 the discovery. They were provided last week because they  
12 went through it.

13 MR. MOORE: Great, Counsel. Can you provide  
14 a document control number?

15 MR. ROUTSIS: Strike that, Judge. This  
16 appears --

17 MS. PIERCE: If I may say, that was an  
18 attachment as the exhibit to the opposition for motion  
19 for summary judgment which was served on all parties.

20 MR. ROUTSIS: They've had this for a long  
21 time.

22 MR. MOORE: Do you have a document control  
23 number we should write down?

24 MS. PIERCE: A document control number?

1 MR. MOORE: Sure.

2 MR. ROUTSIS: Judge, if we can, we provided a  
3 motion.

4 THE COURT: All he's asking for is some kind  
5 of number so we can refer to it.

6 MR. MOORE: Thank you, Your Honor.

7 MR. ROUTSIS: We filed a motion.

8 MS. PIERCE: It was -- well, hang on just a  
9 second and I'll find it. It is --

10 MR. ROUTSIS: Judge, if I may, it was  
11 attached as exhibits to the motion opposing the summary  
12 judgment.

13 MS. PIERCE: It was Exhibit 1 to the motion.

14 MR. ROUTSIS: It was an exhibit to the  
15 motion.

16 MR. MOORE: I'm sorry. I couldn't hear you.

17 MS. PIERCE: It was Exhibit No. 1 in  
18 opposition to the motion for summary judgment.

19 MR. MOORE: Thank you.

20 MS. PIERCE: You're welcome.

21 THE COURT: Not the supplemental?

22 MS. PIERCE: No. The actual opposition that  
23 was originally filed.

24 MR. ROUTSIS: Judge, they've had this for a

1 long time. May I approach, Your Honor?

2 MS. PIERCE: That was back in May.

3 THE COURT: Hang on. Let me get this  
4 straight.

5 MS. PIERCE: Okay.

6 THE COURT: All right. Have you got that,  
7 Mr. Moore?

8 MR. MOORE: Yes. Thank you, Your Honor.

9 THE COURT: Now you can approach,  
10 Mr. Routsis.

11 EXAMINATION

12 BY MR. ROUTSIS:

13 Q Okay. Thank you.

14 Ms. Pence, I want to approach and provide you  
15 with what's been marked -- I guess we've already had  
16 exhibit -- it's Exhibit No. 2. Can you tell us what that  
17 is?

18 A It appears to be page 1 of a misdemeanor  
19 complaint filed against Mr. Spencer.

20 Q What do you mean it appears to be? Is it  
21 file stamped?

22 A Well, it's only -- it's only page 1 of what  
23 appears to be something that -- we had a two-page  
24 document. Any criminal complaint would have a sworn

1 declaration attached, and this is on a face page, so this  
2 is only page one of a criminal complaint.

3 (WHEREUPON, an off-the-record discussion ensued.)

4 Q (BY MR. ROUTSIS:) What is the front page?  
5 Is it a file stamped copy of a criminal complaint? Yes  
6 or no?

7 A This is page 1 of a file-stamped misdemeanor  
8 criminal complaint.

9 Q What date does it allege on the file-stamped  
10 copy?

11 A This alleged that it was filed on January  
12 16th of 2013.

13 Q Can you tell the Court what charges were  
14 filed and against who?

15 MR. PINTAR: Your Honor, I'm going to object.  
16 It's an incomplete document. Mr. Routsis admits it.

17 MR. ROUTSIS: There's a page missing. It's a  
18 charging document, if she's alleging the second page is  
19 gone, it's a charging document on the front that alleges  
20 the crime. And I think we can find the other page later  
21 if there's a second page.

22 THE COURT: What's the question?

23 Q (BY MR. ROUTSIS:) Ms. Pence, can you tell us  
24 what the charging document -- who it charges with and



1       what crime? Who is the defendant and what crime is being  
2       charged in the complaint?

3               A       This misdemeanor complaint is charging  
4       Jeffery Spencer with the crime of battery on a person  
5       over 60 years of age, and it alleges that that occurred  
6       on December 18th of 2012.

7               Q       Did you say misdemeanor or a felony?

8               A       The one page that you handed me is part of a  
9       misdemeanor complaint. I think there's also a felony and  
10      gross misdemeanor complaint on file on the same date, but  
11      this is only a part of the charging documents. From what  
12      I remember, there was also two gross misdemeanors filed  
13      at the same time that that document was filed, but again,  
14      that's just from memory.

15              Q       Okay. So this complaint indicates it was  
16      filed on January 16th; correct? At that time, it was  
17      filed as a misdemeanor; correct?

18              A       That particular count was filed as a  
19      misdemeanor, and I think there were two others that were  
20      filed as gross misdemeanors.

21              Q       Okay. And a preliminary hearing occurred in  
22      this case sometime in February; correct?

23              A       I don't know the date of the preliminary  
24      hearing, but it would have been after that was charged.

1           Q     Miss Kinion provided you a letter that your  
2 office indicates it received on February 22nd; correct?

3           A     That's correct.

4           Q     And in regard to that letter, you indicated  
5 that you specifically asked her to write the letter?

6           A     I think what I indicated was that I  
7 instructed her if she had information she thought would  
8 be relevant or important to the case, if she would write  
9 it down and send it to our office.

10          Q     She didn't just offer you a letter in the  
11 mail and it came to you without any request by you?

12          A     No, Your Honor. Or no, sir.

13          Q     I'd like to refer counsel to the trial  
14 transcript, and I'm going to read you a question and  
15 answer, and I want to ask you if this refreshes your  
16 memory. Okay?

17               MR. MOORE: Counsel, can we know where that's  
18 coming from, please?

19               MR. ROUTSIS: Yes, please. Page 266 of the  
20 trial transcript of the testimony of your client, Mary  
21 Ellen Kinion.

22               MR. MOORE: No, Counsel, that's not my  
23 client, and I would just like a little courtesy here.  
24 I'd like to know where that's coming from more.

1 MR. ROUTSIS: Page 266 of the trial  
2 testimony. You've been provided that in the opposition  
3 motion. Reading this from your motion exhibits, Counsel.  
4 Okay? Please, can you refer to your motion so you don't  
5 keep interrupting me?

6 MR. PINTAR: Your Honor, we're going to  
7 object to this exhibit. It hasn't been produced in its  
8 entirety. I don't know exactly what he's referencing.  
9 Maybe a snippet of the trial testimony. We've asked many  
10 times for the trial testimony to be produced. It has not  
11 been, so I would object on that basis.

12 THE COURT: All right. Read the question  
13 and --

14 MR. ROUTSIS: I will.

15 THE COURT: Before the answer, ask if she  
16 remembers the question.

17 MR. ROUTSIS: Your Honor, if I may.

18 THE COURT: Please do what I say so we can  
19 get through.

20 Q (BY MR. ROUTSIS:) Ms. Pence, do you remember  
21 that Mary Ellen Kinion testified at trial against  
22 Mr. Spencer?

23 A I remember her being a witness, yes.

24 Q All right. And regarding this letter that

1 indicates your office received it on February 22nd, do  
2 you remember asking: "Okay. Did I ever ask you to write  
3 a letter?"

4 "Answer: No."

5 "Is everything that you wrote in the letter  
6 truthful?"

7 "Answer: Yes."

8 Now, did you ask her to write the letter?

9 A Well, your first question was do I remember  
10 that. I don't remember that. And the second part of  
11 that would be, as I told you, I never instructed her to  
12 write me a letter. What I told her is if she had some  
13 valuable information that she should write it down and  
14 send it to the district attorney's office. That's the  
15 policy of the office.

16 MR. ROUTSIS: I'd like to mark as next in  
17 order and ask the Court to take judicial notice of the  
18 trial testimony. There's a specific question asked by  
19 Ms. Pence: "Did I ever ask you to write a letter?"

20 "No."

21 "Is everything that you wrote in the letter  
22 truthful?"

23 "Yes."

24 And I'd like to move that into evidence now.



1 THE COURT: Was there any objection? There  
2 was an objection.

3 MR. PINTAR: Well, there is an objection  
4 because I don't know the context in which this testimony  
5 was made. I mean, that's just a snippet.

6 THE COURT: I realize it's just a snippet,  
7 and --

8 MR. ROUTSIS: It's part of the trial  
9 testimony. It was provided to them in their opposition.

10 THE COURT: Okay. I got that. So the  
11 objection is overruled. I'll go ahead and admit it.

12 Q (BY MR. ROUTSIS:) Thank you. Now,  
13 Ms. Pence, is it Miss or Mrs.? I'm sorry.

14 A Either is fine.

15 Q That doesn't refresh your recollection about  
16 how the letter came into your possession?

17 A You're asking me two different things. You  
18 asked me if I asked Ms. Kinion to write me a letter. I  
19 told you I did not ask her to write me a letter. That  
20 agrees exactly with the trial transcript. What I asked  
21 Ms. Kinion to do, if she had something relevant or  
22 important, was to write it down and to send it to the  
23 district attorney's office, which is what she did.

24 Q But the testimony specifically refers to you

1 telling her: "Did I ever ask you to write a letter"?

2 A She says, "No."

3 MR. PINTAR: Your Honor.

4 THE WITNESS: So we're in agreement. I  
5 didn't ask her to write a letter, and she agreed. Your  
6 point is well made.

7 Q (BY MR. ROUTSIS:) Okay. In any event, you  
8 received a letter on February 27th; correct?

9 A My office did, yes, at the time. The  
10 district attorney's office got this document, Exhibit 1.

11 Q And after that letter, it's been your  
12 testimony here today that the only thing you did in terms  
13 of enhancing the charges was filing a felony battery  
14 because of the medical records that established  
15 substantial bodily injury; is that correct?

16 A I think what I said was that the complaint  
17 was amended at least once or twice. There was an  
18 information filed, and then there was an amended  
19 information which I endorsed. But the only charge that  
20 was actually enhanced -- and I believe it was lifted from  
21 a gross misdemeanor to a felony -- and again, I would  
22 need to see the file.

23 MR. ROUTSIS: May I approach?

24 THE WITNESS: I think the easiest thing would

1 be to obtain the district court's file which has all of  
2 these filings in it, and then I can tell you exactly  
3 which one was enhanced based on the fact that it became  
4 substantial bodily harm rather than a minor injury.

5 Q (BY MR. ROUTSIS:) I think I could do one  
6 better. I can provide, if I can approach with Defense  
7 Exhibit Number 3, which is a copy of the amended  
8 information which has been provided to counsel in the  
9 motion.

10 And is it in fact true that after you  
11 received the letter from Mary Ellen Kinion which alleged  
12 that she was a witness to a snowplow assault and that she  
13 may have been a witness to an assault on May 27th, that  
14 you did not just enhance the charges to a felony? You  
15 filed two counts of felony elderly abuse regarding two  
16 other alleged victims, Egon Klementi and Elfride  
17 Klementi? Does that refresh your memory now? Yes or no?  
18 Yes or no?

19 THE WITNESS: Your Honor, he's asked me four  
20 different questions and --

21 THE COURT: I agree. One thing at a time.

22 Q (BY MR. ROUTSIS:) Does that document refresh  
23 your memory that you didn't just simply make an  
24 enhancement to a felony due to medical injuries that you



1 added --

2 THE COURT: Wait. Let her answer the  
3 question.

4 THE WITNESS: No, it does not.

5 Q (BY MR. ROUTSIS:) Can you tell us what  
6 charges are on the amended information, please?

7 A On the document that you've handed me, there  
8 is one, and this would be Exhibit 3, amended information,  
9 and I think this is not the first information that I  
10 filed, but the second. There are three charges. The  
11 first is a felony charge of abuse, and that is the one  
12 that now went from a gross misdemeanor to a felony based  
13 on substantial bodily harm.

14 There are two additional gross misdemeanors  
15 in this which were also filed, I believe, back in January  
16 at the same time that the misdemeanor complaint was  
17 filed. So no, it does not refresh my recollection as to  
18 anything additional.

19 Q Well you testified earlier that there was  
20 only one charge that was elevated to a felony battery,  
21 and now there's three charges before you?

22 A There is still only one charged as a felony  
23 battery in this information that you handed me. The  
24 other two are gross misdemeanors. They were charged at

1 the time of the misdemeanor battery back at the justice  
2 court level.

3 If someone would get the district court  
4 clerk's file and follow the exact filings, anyone can go  
5 across right now and get that -- just FYI -- it will show  
6 that there was an original criminal complaint that  
7 charged a misdemeanor and two gross misdemeanors. The  
8 only thing that's changed in all of this time is one  
9 gross misdemeanor to a felony.

10 Q Okay. Let's discuss that because on February  
11 22nd, you received a letter from Mary Ellen Kinion.

12 A My office did receive this letter from Miss  
13 Kinion. You're right.

14 Q And at trial --

15 MR. ZANIEL: This is Exhibit 1 and 2.

16 THE WITNESS: It's in Volume I. You'll find  
17 the original filing.

18 Q (BY MR. ROUTSIS:) Okay. Now, when you filed  
19 the amended information, can I -- do you remember at  
20 trial that Judge Gibbons was our trial judge?

21 A I do remember that.

22 Q And do you remember that the two allegations  
23 of abuse of an elderly person -- let's read what you  
24 alleged. "Willfully and unlawfully abused an older

1 person by inflicting injury or mental anguish, to wit:  
2 not Helmut Klementi, Egon Klementi, a person over 60.  
3 Using a snowplow, he sprayed, covered or showered Egon  
4 Klementi with ice, snow and debris." Do you recall that?

5 A Is the question do I remember that that  
6 charge is in the amended information?

7 Q Yes. Do you recall filing that?

8 A Yes.

9 Q And do you remember who was your only  
10 corroborating witness in that charge? Mary Ellen Kinion  
11 was the only witness at trial that testified she was an  
12 eyewitness to that event. The only other witness in that  
13 regard was Egon Klementi, the alleged victim. Is that a  
14 fair comment, Mrs. Pence?

15 A Again, that's three or four different  
16 questions.

17 Q That's a fair comment?

18 A And no, it's not.

19 Q Did you have another witness that testified  
20 to the snowplow assault on Egon Klementi on December  
21 12th?

22 A I think there were two other people that  
23 testified about that.

24 Q Ms. Pence, I'd be very careful. There was

# Exhibit 3

# Exhibit 3

1 Case No. 13-CR-0036

2 Dept. No. II

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FILED

2013 SEP 27 PM 10:22

LEO THIRAN  
CLERK

*[Signature]*

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Plaintiff,

vs.

VERDICT

JEFFREY DALE SPENCER,

Defendant.

WE, the jury in the above-entitled matter, do find the  
defendant, JEFFREY DALE SPENCER:

Not Guilty of: COUNT ONE, ABUSE OF AN OLDER PERSON RESULTING  
IN SUBSTANTIAL BODILY HARM.

DATED this 27 day of September, 2013.

*[Signature]*  
FOREPERSON



1 Case No. 13-CR-0036

2 Dept. No. II

2013 SEP 27 PM 10:22

TED THIRAN  
CLERK

*[Signature]*  
DEPUTY

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5  
6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

8  
9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

V E R D I C T

12 JEFFREY DALE SPENCER,

13 Defendant.  
14 \_\_\_\_\_/

15 WE, the jury in the above-entitled matter, do find the  
16 defendant, JEFFREY DALE SPENCER:

17 Not Guilty of: COUNT TWO, ABUSE OF AN OLDER PERSON.

18 DATED this 27 day of September, 2013.  
19

20  
21 *[Signature]*  
22 FOREPERSON  
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1 Case No. 13-CR-0036

2 Dept. No. II

FILED

2013 SEP 27 PM 10:22

TED THIRAN  
CLERK

BY [Signature] DEPUTY

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5  
6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

8  
9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

V E R D I C T

12 JEFFREY DALE SPENCER,

13 Defendant.  
14 \_\_\_\_\_/

15 WE, the jury in the above-entitled matter, do find the  
16 defendant, JEFFREY DALE SPENCER:

17 Not Guilty of: COUNT THREE, ABUSE OF AN OLDER PERSON.

18 DATED this 27 day of September, 2013.  
19

20

21

[Signature]  
FOREPERSON

22

23

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28

# Exhibit 4

# Exhibit 4

1 Case No. 13-CR-0036  
2 Department No. II  
3

4 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF  
5 NEVADA IN AND FOR THE COUNTY OF DOUGLAS  
6 BEFORE MICHAEL GIBBONS, JUDGE PRESIDING

7 STATE OF NEVADA,

8 Plaintiff,

9 vs.  
10

11 JEFFREY DALE SPENCER,

12 Defendant.  
13 \_\_\_\_\_/

14 REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS  
15 JURY TRIAL  
16 FRIDAY, SEPTEMBER 20, 2013  
17 MINDEN, NEVADA

18 APPEARANCES:

19 For the Plaintiff: Maria Pence,  
20 Deputy District Attorney  
21 Douglas County

22 For the Defendant: William J. Routsis, II  
23 Attorney at Law  
24 Reno, Nevada

The Defendant: Jeffrey Dale Spencer

Reported by: Nicole J. Alexander  
Nevada CCR #446

CAPITOL REPORTERS (775) 882-5322

1 MINDEN, NEVADA, FRIDAY, SEPTEMBER 20, 2013

2 -o0o-

3  
4 MR. ROUTSIS: Good morning, Your Honor.

5 THE COURT: Good morning. The Court is back  
6 in session. Welcome back, everyone. This is Friday, and  
7 Ms. Kinion was on the witness stand. If you could step  
8 forward, please.

9 Mr. Routsis, you may continue with the  
10 cross-examination.

11  
12 CONTINUED CROSS-EXAMINATION

13 BY MR. ROUTSIS:

14 Q Ms. Kinion, we left off yesterday, and I  
15 think I was a bit tired, but there was just a few  
16 foundational questions that I wanted to go over before I  
17 get to the photographs. You wrote a letter to Ms. Pence,  
18 and in the letter, didn't you indicate on May 27th that  
19 Jeff threatened to punch Egon in the face?

20 A Yes.

21 Q Where did yes get -- You were not a witness  
22 to that event, were you?

23 A No. I told you --

24 Q No, no. Just yes or no. You were not a

1 witness to that event?

2 A No.

3 Q And where did you get those statements from?

4 MS. PENCE: Objection, Your Honor. Asked and  
5 answered.

6 THE COURT: Sustained.

7 Q (BY MR. ROUTSIS:) After getting those  
8 statements, you then put those statements in a letter  
9 directed and addressed and sent to Maria Pence, the  
10 prosecutor; correct?

11 A Correct.

12 Q Okay. And did you not assert in the letter  
13 that that event happened to Ms. Pence?

14 A Yes.

15 Q But you weren't there; right?

16 A Right.

17 Q Okay. And moving ahead to January 12th, we  
18 just marked a couple of photographs. I'd like to, if we  
19 can, publish what would be defense next in order, Q.

20 Ms. Kinion, is it Mrs. or Miss?

21 A Miss.

22 Q Excuse me?

23 A Miss.

24 Q Miss. Thank you. Miss Kinion, you indicated

1 this is your driveway here, or no? Now I'm confused.

2 A No.

3 Q Let me put on the other exhibit. At this  
4 time, Judge, we'd be publishing Exhibit P.

5 And, Ms. Kinion, is this your residence here?  
6 I think we went over it yesterday, and that's your  
7 driveway?

8 A Yes.

9 Q And you were out on the 12th. You were out  
10 plowing or shoveling your driveway?

11 A Shoveling.

12 Q About what time did you begin?

13 A I don't remember.

14 Q You don't remember? Okay. And we indicated  
15 going down the street is Charles Avenue, and the  
16 Klementies is on the right side of the street looking  
17 down; correct?

18 A Yes.

19 Q Now, you testified that you called Egon  
20 Klementi after you saw what you said you saw, a snowplow  
21 assault; correct?

22 A Correct.

23 Q And you called him because you were concerned  
24 that --



1           A     I was concerned that he was hurt.

2           Q     He was hurt. And did you discuss what  
3 happened?

4           MS. PENCE: Objection, Your Honor. Asked and  
5 answered.

6           MR. ROUTSIS: It's foundational at this  
7 point.

8           THE COURT: Overruled.

9           Q     (BY MR. ROUTSIS:) Did you discuss with him  
10 what happened?

11          A     I don't remember exactly what we said.

12          Q     Did he inform you that he had called the  
13 police already?

14          A     No.

15          Q     Did he tell you he hadn't called them?

16          A     No.

17          Q     Did any conversation regarding that occur?

18          MS. PENCE: Objection, Your Honor. Asked and  
19 answered.

20          THE COURT: Overruled.

21          THE WITNESS: I suggested to him to call the  
22 police.

23          Q     (BY MR. ROUTSIS:) He was assaulted, and it  
24 was your suggestion that he call the police?

1 MS. PENCE: Objection, Your Honor. Asked and  
2 answered.

3 THE COURT: Sustained.

4 Q (BY MR. ROUTSIS:) In any event, after that,  
5 about an hour and ten minutes later, you called the  
6 police; correct?

7 MS. PENCE: Objection, Your Honor. Asked and  
8 answered.

9 THE COURT: Sustained.

10 Q (BY MR. ROUTSIS:) Okay. And what was the  
11 delay of the hour and ten minutes when you called the  
12 police?

13 A I don't remember. I remember eating lunch,  
14 thinking about it, deciding to do it. I don't know that  
15 I would call it a delay. That's when I decided to do it.

16 Q Okay. And now I'd like to go -- Those plows  
17 are pretty big, aren't they?

18 A Yeah, I guess.

19 Q Pretty big snowplow?

20 A I guess. I don't know.

21 Q Do you know the difference between a snowplow  
22 and a loader?

23 A No.

24 Q Okay. So at some point in time during that

1 morning, it's your testimony that a snowplow was coming  
2 down Meadow Avenue; right?

3 A It wasn't -- There's a couple of snowplows,  
4 and it was a white one.

5 Q And it was coming down Meadow Avenue?

6 A Yes, Meadow Lane.

7 Q Meadow Lane. And you -- Where were you when  
8 it came down Meadow Lane in this picture?

9 A I was right at the end of my driveway.

10 Q Right there in this area?

11 A In that area. I was actually in the street  
12 because when we get a lot of snow, you get berms, you  
13 have to shovel all the street too.

14 Q So you were shoveling out the street when the  
15 plow came by?

16 A Part of the street, yeah.

17 Q And you saw Jeff Spencer driving the plow --

18 A Yes.

19 Q -- correct?

20 A Yes.

21 Q And he had a big smile on his face?

22 A Yes.

23 Q Well, at that point, Egon Klementi was --  
24 Did you see where Mr. Klementi was?

1 already been plowed. I know that. And it seemed like  
2 the plow was down, but he wasn't really picking up any  
3 snow. He was just kind of going along with it, you know.  
4 It was kind of like I was wondering why he was there  
5 also.

6 Q Okay. So you're on the edge of your  
7 driveway, and the snowplow is coming down the street, but  
8 your memory is that he had already plowed the street  
9 earlier? The street was already plowed?

10 A The street was plowed. That's why I was out  
11 here shoveling.

12 Q So when the defendant drove by, you saw a big  
13 smile on Mr. Spencer's face, and was the plow down or up?

14 A I think it was down, but I don't remember  
15 exactly.

16 Q Okay. And the reason I'm asking, ma'am,  
17 because you're saying that as the plow went all the way  
18 down the street towards the -- past Charles or at some  
19 point near Charles, it's your testimony that Mr. Spencer  
20 put the plow down at that point; correct?

21 A I don't remember.

22 Q Excuse me?

23 A I don't remember whether he put it down or  
24 not. I remember him going by me, and I think the plow

1 was down at that time, and then he swerved into their  
2 property, into the Klementies' property. That's how he  
3 picked up snow. And then all of a sudden, the snow was  
4 sent all over.

5 Q Okay. You wrote a letter to Miss Pence, and  
6 the purpose of what you wrote to Ms. Pence was to try to  
7 get her to prosecute Mr. Spencer; correct? Yes or no.

8 A Yes.

9 Q Okay. And in that letter, you put down in  
10 the letter that Mr. Spencer put his blade down, did you  
11 not, as he approached Mr. Egon's driveway?

12 A I don't remember.

13 Q Well, would it refresh your recollection if  
14 you read your letter? Would it refresh your  
15 recollection, ma'am, if you read your letter?

16 A Probably.

17 Q Okay. It would be, for counsel's  
18 edification, one, two, three, four, five, six paragraphs.

19 A That's not what I wrote.

20 Q That's not what you what?

21 A What I wrote was --

22 Q Excuse me. Ms. Kinion, I didn't ask you a  
23 question, in all due respect. We've got procedures. You  
24 read --

1           A     I'm sorry.

2           Q     You read that paragraph; correct?

3           A     Yes.

4           Q     Can you -- will you turn the page. Is that  
5 your signature?

6           A     Yes.

7           Q     You're saying that's not what you wrote?

8           A     I'm saying this is what I wrote, but what you  
9 said is not what I wrote.

10          Q     Oh. Tell us what you wrote.

11          A     Can I read it?

12          Q     Please.

13                THE COURT: The original question was, does  
14 it refresh her recollection. That's why she was looking  
15 at it.

16          Q     (BY MR. ROUTSIS:) Okay. Very good. Ma'am,  
17 does that refresh your recollection as to what you saw on  
18 that day?

19          A     Yes.

20          Q     And is that letter, could you go ahead, if  
21 you feel comfortable reading exactly what you wrote.

22          A     Yes. "When Jeff drove past him, he turned  
23 the blade on the snowplow to spray Egon with ice and  
24 snow." It doesn't say anything about the blade being up

1           Q     So if I get you right, as you're visualizing  
2     looking through the -- seeing through the plow, seeing  
3     the plow angle up, put snow on Egon, you're saying right  
4     before that on Charles Avenue, the defendant,  
5     Mr. Spencer, who had a big smile on his face, then took a  
6     turn into Charles to gather snow from Charles?

7           MS. PENCE:  Objection, Your Honor.  Compound.  
8     Complex.  Asked and answered.

9           THE COURT:  Overruled.

10          Q     (BY MR. ROUTSIS:)  Is that what happened,  
11     ma'am, or not?

12          A     I'm sorry.  Will you repeat the question?

13          Q     (BY MR. ROUTSIS:)  Yes.  This happened --  
14     today, I believe, is the 20th of September, correct,  
15     2013?

16          A     Yes.

17          Q     This occurred December 12th, 2012; right?  
18     You wrote a letter to the prosecutor to try to get them  
19     to prosecute, as you testified, Mr. Spencer, you signed a  
20     letter, and it shows it received February 22nd, okay?

21          A     Correct.

22          Q     Can you show us -- Would it refresh your  
23     memory as to whether or not Jeff Spencer somehow drove  
24     onto Charles Avenue, gathered up the snow, and then drove

1           A     Yeah.

2           Q     Now, did you ever write that down in your  
3 letter? Did you ever think that he drove into the berm  
4 of Mr. Klementies' property prior to spraying snow on  
5 him?

6           A     I don't think I wrote that down.

7           Q     Why wouldn't you write that down?

8           A     Well, for one thing, I was trying to keep it  
9 short. And no, I just did not write that down.

10          Q     Okay. And then -- and we'll be done very  
11 shortly -- the snow you're saying you saw, you then saw  
12 the back of the plow go onto his property and angle, and  
13 somehow the snow went up? Was it snow, or was it rocks  
14 and tar?

15          A     It was snow and probably ice because I know  
16 that day there was a lot of ice along the side of the  
17 road.

18          Q     Okay. And you saw that material fly into --  
19 Tell us what you saw because I don't know.

20          A     I saw the snow fly up and hit Egon.

21          Q     Where did it hit him?

22          A     It hit him like all over. There was a large  
23 amount. It flew up. It went -- Part of it went over his  
24 head. It went onto his body.



1 about the blade.

2 THE COURT: Hold on. Ms. Kinion, there's no  
3 question pending. The question was please look at this,  
4 see if it refreshes -- Ms. Kinion, please listen.

5 The question was, please read the letter to  
6 see if it refreshes your recollection whether you made a  
7 complaint about Jeff Spencer to KGID for allegedly  
8 putting a berm in front of your house. That's the  
9 question. And the answer is either yes, no, or I don't  
10 know or I don't remember.

11 THE WITNESS: I'll say yes.

12 Q (BY MR. ROUTSIS:) Okay. Now, I just asked  
13 you under oath if you saw, when you made a complaint, if  
14 you saw the snowplow leave the berm in front of your  
15 residence, and you said no, you did not.

16 A Correct.

17 Q And now you admit that you've made  
18 complaints, and you specifically identified Jeffery  
19 Spencer as the individual that left the berm in front of  
20 your property.

21 A I made a complaint. I did not say Jeff  
22 Spencer. I said my driveway. I talked about my driveway  
23 being bermed. I did not say Jeff Spencer.

24 Q You testified on direct examination as well.

1 And do you recall your testimony on direct examination at  
2 this trial that you called somebody out, you said it was  
3 Jeff Spencer that left the berm, and they told you it was  
4 intentional? Do you remember that testimony?

5 A I don't remember saying Jeff Spencer, but I  
6 may have inferred that because I may have said he was  
7 driving a white truck.

8 Q So what's the relevance of bringing it up at  
9 a trial for Jeff Spencer if you don't know who left that  
10 berm?

11 A I was pretty sure it was him.

12 Q Excuse me, ma'am?

13 A I was pretty sure it was him.

14 Q Do you have any pictures of the berm?

15 A No.

16 Q And you've also testified under oath that  
17 somebody told you that it was intentional. You've  
18 testified under oath to that; correct?

19 A Yes.

20 Q Tell me exactly who told you it was  
21 intentional.

22 A It was a guy -- It says here his name was  
23 James, but I don't really remember his name. He came in  
24 a truck from KGID.

1           Q     Okay. And you made a complaint regarding  
2 Jeff Spencer to him as well; correct?

3           A     I think he said something about Jeff. I  
4 don't remember.

5           Q     Okay. So, Ms. Kinion, the extent of your  
6 observations in this case is that what you've testified  
7 to, and I'll ask you one last time. Did you ever see  
8 Jeff Spencer drive a snowplow and leave a berm in front  
9 of your home?

10          A     No.

11               MR. ROUTSIS: Nothing further.

12               THE COURT: Thank you. Ms. Pence?

13               MS. PENCE: Thank you, Your Honor.

14

15                       REDIRECT EXAMINATION

16 BY MS. PENCE:

17           Q     Ms. Kinion, at the top of your letter in big  
18 bold print immediately after my name, what did you write?

19           A     I don't remember.

20           Q     Would it refresh your recollection to see a  
21 copy of that letter?

22           A     Sure.

23           Q     I think it is still up there. Do you have  
24 the letter still?

1 a problem.

2 THE COURT: Sustained.

3 Q (BY MS. PENCE:) Did you tell Egon Klementi  
4 you had taken care of the issue with the man driving the  
5 snowplow that sprayed snow in his face?

6 A Yes.

7 MS. PENCE: I have no further questions at  
8 this time.

9 CROSS-EXAMINATION

10 BY MR. ROUTSIS:

11 Q Good morning, Detective, or Officer Sanchez.

12 A Morning, sir.

13 Q Officer, first of all, you were called out on  
14 December 12th, 2012. There had been a call in about a  
15 gentleman that may have gotten snow plowed into his face,  
16 for lack of a better term; correct?

17 A Yes.

18 Q And you drove out to the scene; correct?

19 A Yes.

20 Q About how long after the call in do you  
21 believe you drove out to the scene?

22 A I can't recall.

23 Q Now, you didn't write a report in this case,  
24 did you?

1           A     I put notes in the computer.

2           Q     You put notes in the computer. That's a log  
3 for the 911 call, but you did not write a report in this  
4 case, did you?

5           A     No.

6           Q     In fact, as a trained police officer, if  
7 you're called out to a crime, you can make an arrest if  
8 you feel there's probable cause or sufficient evidence to  
9 arrest; correct?

10          A     Yes.

11          Q     You did not do that in this case; correct?

12          A     No.

13          Q     You can also then write a police report and  
14 make a recommendation to the District Attorney that  
15 certain charges be filed; correct?

16          A     Yes.

17          Q     You did not do that in this case; correct?

18          A     No.

19          Q     In fact, in this case, you found there was  
20 insufficient evidence to even write a report; correct?

21          A     Well, I put notes in the computer.

22          Q     I know you did, and that's common. You have  
23 to do that on a 911 call. But you found there was  
24 insufficient evidence to write a report in this case,

1 right?

2 A At the time, yes.

3 Q Now, when you were called out to  
4 Mr. Klementi's property, he was in his driveway; correct?

5 A Yes.

6 Q Was there any evidence? I mean, if he says  
7 that he was assaulted by snow and debris, did you take  
8 any photographs?

9 A There was snow everywhere.

10 Q Okay. Well, let's talk about that. Did you  
11 take any photographs?

12 A No.

13 Q Did you go up the street to see if there had  
14 been driving into any berms or any misdriving and  
15 document any type of berms prior to the driveway that had  
16 been plowed into?

17 A Like I said, there was snow everywhere.

18 Q Okay. That's not the question. I'm asking  
19 you, did you go up Meadow Avenue before the defendant's  
20 driveway to see if a berm or any type of berm or any type  
21 of plowing had taken out a berm prior to the driveway?

22 A I checked --

23 MS. PENCE: Objection, Your Honor.

24 A -- the area.

1 Q (BY MR. ROUTSIS:) Did you take any  
2 photographs?

3 A No. I told you no.

4 Q Did you find any evidence of a crime?

5 A Like I said, there was snow everywhere.

6 Q Did you find any evidence of a crime?

7 A No.

8 Q Did you find any debris, rock, or excessive  
9 snow in the driveway, so much that you felt it was  
10 necessary to photograph?

11 A No.

12 Q Now, did you ask Mr. Klementi, "Do you have  
13 any evidence to support your claim?" Did you ask him  
14 that?

15 A Yeah, I did.

16 Q And apparently, he showed you no evidence  
17 sufficient to document or even write a report; correct?

18 A Correct.

19 Q And you ended up speaking to Jeffery Spencer  
20 at some point; correct?

21 A I actually don't even recall talking to  
22 Mr. Spencer.

23 Q Okay. And your position was, you know, I'll  
24 talk to the snowplow company and let them deal with this.

# Exhibit 5

# Exhibit 5



1 Case No. CR-13-0069

2 -0001 MAY 17 AM 9:57

3 IN THE JUSTICE COURT OF TAHOE TOWNSHIP  
4 IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA  
5 BEFORE THE HONORABLE RICHARD GLASSON, JUDGE  
6

7 -o0o-

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -VS-

PRELIMINARY HEARING

11 JEFFREY DALE SPENCER,

12 Defendant.

13  
14 TRANSCRIPT OF PROCEEDINGS

15 APRIL 24, 2013

16 STATELINE, NEVADA

17 APPEARANCES:

18 For the Plaintiff:

MARIA PENCE  
District Attorney  
Minden, Nevada

20  
21 For the Defense:

WILLIAM ROUTSIS  
Attorney at Law  
Reno, Nevada

22  
23  
24 REPORTED BY:

SUZANNE KUES ROWE  
Nevada CCR #127

25  
1  
SUZANNE ROWE REPORTING (775) 782-5278

1 THE COURT: That's me in two weeks. Mazel tov. Thank  
2 you.

3 MS. PENCE: And, Your Honor, the other section that was  
4 listed 200.5099 is the penalty statute. And, Counsel, one has  
5 been charged as a felony under subsection six, when there's  
6 Substantial Bodily Harm.

7 In this case that harm is going to be the prolonged  
8 physical pain that Mr. Klementi suffered in Count II. It's  
9 charged as a gross misdemeanor.

10 THE COURT: Thank you. That helps give me a focus.

11 And 200.5092 just says definitions, and that wouldn't  
12 be descriptive at all for purposes of the charge.

13 And the legislature hasn't otherwise titled these.  
14 It's in a chapter called Abuse, Neglect, Exploitation or  
15 Isolation.

16 MS. PENCE: That's correct.

17 THE COURT: So I'm clear and the Defendant's clear,  
18 that this is a case alleging abuse of an older person.

19 MS. PENCE: That's correct.

20 THE COURT: Okay. Go right ahead then.

21 MS. PENCE: Your Honor, the state would call Egon  
22 Klementi.

23 THE COURT: Mr. Egon Klementi.

24 EGON KLEMENTI,  
25 called as a witness in the matter herein,

1                   having been first duly sworn  
2                   was examined and testified as follows:

3  
4                   THE BAILIFF: Make yourself comfortable here, sir. And  
5 watch your step here.

6                   THE WITNESS: Thank you.

7                   THE COURT: Good afternoon, Mr. Klementi. Can you hear  
8 us okay?

9                   THE WITNESS: Yes.

10                  THE COURT: All right. There's a microphone on the  
11 table in front of you. Would you please state your name and  
12 spell your first and last name for our record?

13                  A. My name is Egon Klementi. The first name is spelled.  
14 E G O N, last name spelled, K L E M E N T I.

15                  THE COURT: Thank you. Mr. Klementi, our record in  
16 this Court's created audibly and visually. We have the  
17 microphone to catch what you're saying, so we can have a record  
18 of that. And we also have a camera. I think your camera is up  
19 there underneath. You don't have to look at the camera.

20                  THE WITNESS: No, no. I'm used to it.

21                  THE COURT: We're trying to capture this. And so  
22 there's a camera here that's looking at the attorneys and a  
23 camera back there that's looking at me, and that's how we are  
24 keeping our record.

25                  THE WITNESS: Can I look at you?

1 Q. Were there any witnesses to that event?  
2 A. Yes.  
3 Q. Yes, there was?  
4 A. Yeah.  
5 Q. And you saw the witness?  
6 A. Yes.  
7 Q. And that would have been Maryellen?  
8 A. Correct.  
9 Q. And she was, was she shoveling snow with you?  
10 A. Not with me.  
11 Q. Okay.  
12 A. I mean she was shoveling snow on her property.  
13 Q. Okay. And you happened to see her?  
14 A. Of course, I mean I see everybody that's coming and  
15 going.  
16 Q. Okay. So?  
17 A. Or standing.  
18 Q. After you got the snow plowed on you, you called the  
19 police, correct?  
20 A. The shovel -- Oh, covered me.  
21 Q. You called law enforcement, correct?  
22 A. Yes.  
23 Q. And did you tell law enforcement there was a witness to  
24 this event?  
25 A. Yes, because the witness was, there was another witness

1 right next, my next door neighbor.

2 Q. Okay.

3 A. Maryellen.

4 Q. Did you tell law enforcement that Maryellen saw the  
5 event?

6 A. No, I believe that Maryellen got in contact with  
7 somebody.

8 Q. So, the day you called --

9 A. But, I don't --

10 Q. The day you called the sheriff out, Mr. Klementi, they  
11 came to your house and you made an allegation that there was an  
12 intentional act of snow being plowed into you?

13 A. Yes.

14 Q. And you didn't tell the sheriff that your neighbor was  
15 a witness to this?

16 THE COURT: Mr. Routsis, you've asked that question  
17 four times now. You can ask it once, and then we move on.  
18 Otherwise it's wasting my time. Let's get a new question.

19 BY MR. ROUTSIS:

20 Q. Okay. Did you speak with Maryellen after that happened  
21 on that day?

22 A. Of course.

23 Q. Right after it happened?

24 A. No. Because I was finishing my job.

25 Q. You didn't go up and say, Maryellen, did you see that?

1 A. No. Why should I?  
2 Q. Okay. Did you talk to her at all that day?  
3 A. My neighbor?  
4 Q. No.  
5 A. Yes, okay. Of course.  
6 Q. Did you speak with Maryellen that day?  
7 A. Of course.  
8 Q. And how did you contact her?  
9 A. By phone.  
10 Q. You called her? What's her phone number?  
11 A. My phone number?  
12 Q. What is her phone number?  
13 MS. PENCE: Objection, Your Honor.  
14 THE WITNESS: I don't know her phone number.  
15 BY MR. ROUTSIS:  
16 Q. You called her?  
17 A. Yes.  
18 Q. And what did you say to her?  
19 MS. PENCE: Objection, Your Honor.  
20 BY MR. ROUTSIS:  
21 Q. You called her the day that you got the snow plowed on  
22 you?  
23 THE COURT: Mr. Routsis, now six times. Are you doing  
24 this on purpose, just trying to blow off the afternoon for me?  
25 MR. ROUTSIS: No.

1 something in my eye.

2 THE COURT: Would you like some water?

3 THE WITNESS: Thank you. I'm fine. I have an allergy,  
4 it's only my right eye. Thank you. I'm all right. I want to  
5 put that down in case somebody.

6 Q. Now, you have indicated, Mrs. Klementi, that your  
7 husband is afraid of Mr. Spencer?

8 A. Yes.

9 Q. And when did he become, start becoming afraid of  
10 Mr. Spencer?

11 A. Last summer.

12 Q. Was there an event that began the fear?

13 A. Yeah. I told you, when my husband tried to take a  
14 picture, Mr. Spencer came to him and asked him, told him if he  
15 takes another picture I punch him in the face. I would be scared  
16 as well.

17 Q. You never heard that though, correct?

18 A. No.

19 Q. Now, do you recall the police or law enforcement or the  
20 sheriff's department coming to your house and asking you not to  
21 take any more pictures or trespass on the Spencer property?

22 A. No one talked to me about that.

23 Q. Were you aware that they spoke to your husband about  
24 that?

25 A. Yes.

1 Q. And that was the very same day your husband alleged  
2 that he was threatened?

3 A. Yes. No, no. Say this again.

4 Q. Yes. Law enforcement came out?

5 A. Yes.

6 Q. And spoke to your husband?

7 A. Yes.

8 Q. And explained that you are not to be harassing the  
9 Spencers by taking pictures or trespassing?

10 A. Mm-hmm.

11 Q. Is that the very same day that your husband told you  
12 that he was yelled at and cussed at and intimidated by  
13 Mr. Spencer for walking on his property?

14 A. Correct.

15 Q. And did you call the police?

16 A. No, we did not call the police.

17 Q. So, the Spencers called law enforcement, alleging that  
18 your husband trespassed and was taking pictures on the Spencer  
19 property, correct?

20 A. Correct.

21 Q. They came out and gave you a warning not to do that,  
22 correct?

23 A. Yes.

24 Q. Your husband then is walking right up on the Spencer's  
25 property later that day?



# Exhibit 6

# Exhibit 6

1 Case No. 13-CR-0036  
2 Department No. II  
3

4 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF  
5 NEVADA IN AND FOR THE COUNTY OF DOUGLAS  
6 BEFORE MICHAEL GIBBONS, JUDGE PRESIDING  
7  
8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 JEFFREY DALE SPENCER,

12 Defendant.  
13 \_\_\_\_\_/

14 REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS  
15 JURY TRIAL  
16 WEDNESDAY, SEPTEMBER 18, 2013  
17 MINDEN, NEVADA

18 APPEARANCES:

19 For the Plaintiff: Maria Pence,  
20 Deputy District Attorney  
21 Douglas County

22 For the Defendant: William J. Routsis, II  
23 Attorney at Law  
24 Reno, Nevada

The Defendant: Jeffrey Dale Spencer

Reported by: Nicole J. Alexander  
Nevada CCR #446

\_\_\_\_CAPITOL REPORTERS (775) 882-5322\_\_\_\_\_

1           A     I waited awhile, and then I called 911.

2           Q     Why did you call 911?

3           A     I thought about it, and I knew, you know, I  
4     told Egon to call. I knew he was going to call, but I  
5     was worried that there might be some kind of language  
6     barrier. I did not know if, you know, they would  
7     understand what he was trying to say, and I was also a  
8     witness, so I called to tell them that, you know, to  
9     volunteer, more or less. "Hey, I'm a witness. I saw  
10    this crime happen."

11          Q     Ms. Kinion, showing you what was previously  
12    marked as State's Exhibit 18. Do you recognize that?

13          A     Yes, I do, because I see my initials on it.

14          Q     Okay. And what is it?

15          A     It's the tape of the emergency call that I  
16    made.

17                MS. PENCE: Your Honor, I believe this  
18    exhibit was previously admitted.

19                THE COURT: Yes.

20                (WHEREUPON, a CD was played.)

21          Q     (BY MS. PENCE:) Is that the call that you  
22    made to 911?

23          A     Yes.

24          Q     In that call, did you explain that you were a

1 witness?

2 A Yes.

3 Q In that call, you were told that Manchester  
4 had all of the information. Do you know who Manchester  
5 is?

6 A Yes.

7 Q Who is Manchester?

8 A He is part of a family that owns the  
9 snowplowing company that is used by KGID.

10 Q Okay. Did you speak with Mr. Manchester  
11 about this incident?

12 A Yes, I did.

13 Q Can you tell us about that.

14 A I called him and -- I believe the second time  
15 I called him that day. I called him up, and I said,  
16 "This is ridiculous, you know." I don't remember exactly  
17 what I said after that, but it was to the fact that this  
18 should not be happening, you know, and he should be doing  
19 something about it.

20 Q Ms. Kinion, you were also -- Were you present  
21 at a KGID meeting in December?

22 A Yes.

23 Q And why were you there?

24 A I believe it was because of the snowplowing.

1 We had complaints about it.

2 Q Had you personally had any issues?

3 A Not until that on the 12th.

4 Q At some point in the last three months, did  
5 you write anyone a letter about what you saw and observed  
6 on the 12th at the KGID meeting?

7 A I believe I wrote you a letter about it.

8 Q And what was the reason for your letter?

9 A I was trying to get all of the facts straight  
10 in what I perceived as happened leading up to the assault  
11 on him.

12 Q Okay. Did I ever ask you to write a letter?

13 A No.

14 Q Is everything that you wrote in the letter  
15 truthful?

16 A Yes.

17 MR. ROUTSIS: Objection, Your Honor. Is  
18 everything you wrote in the letter truthful? Okay. I'll  
19 withdraw the objection. I'll withdraw the objection.

20 MS. PENCE: May I have this marked as State's  
21 28 for identification purposes.

22 (Whereupon, State's Exhibit No. 28 was  
23 marked for identification.)

24 Q (BY MS. PENCE:) Ms. Kinion, showing you

# Exhibit 7

# Exhibit 7



**Fw: Attempted Ex Parte Communication**

Monday, April 29, 2013 6:15 PM

**From:** "Todd Torvinen" <toddtorvinen@sbcglobal.net>

**To:** "Jessica McCurry" <jessicamccurry@sbcglobal.net>

Print for file.

Todd L. Torvinen, Esq.  
Law Office of Todd L. Torvinen Chtd.  
232 Court St  
Reno, NV 89501  
Nevada Bar Number: 3175  
(775) 825-6066  
(775) 324-6063 Facsimile

This e-mail, and any attachments may contain privileged attorney-client communication and information. If you are not the intended recipient, please delete.

IRS CIRCULAR 230 NOTICE: Any US tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or any attachment).

--- On Fri, 4/26/13, R. Glasson [REDACTED] <[REDACTED]@[REDACTED].com> wrote:

From: R. Glasson [REDACTED] <[REDACTED]@[REDACTED].com>

Subject: Attempted Ex Parte Communication

To: "Todd Torvinen" <toddtorvinen@sbcglobal.net>, "Johnson, Mike" <mike@tahoelawyer.com>

Date: Friday, April 26, 2013, 10:24 AM

Counsel;

The last thing I need is for attorneys to either give out my email address to the public or forward my communications to their clients so that I can get spammed, threatened or worse. Please be advised that your respective email addresses have now been blocked from my account, along with kinionm@aol.com

The court cannot receive or consider communications directed to it outside of court. The court considers attempts to communicate with it as contemptuous of the legal process and a threat to the safety and security of the judge and his family.

Find a way to transmit a proposed copy of a mutually agreed-upon TPO to the court other than through my email account.

Something old-fashioned? Courier? Mail? Pony Express? Carrier pigeon?

I don't care. But unless the court receives a mutually agreed upon stipulation by some means as of close of court business on Monday, May 6, the court will issue an order that counsel appear in court on a Saturday morning with their word processing equipment for an order drafting session.

Never attempt to communicate with the court through electronic mail again. This is why our fax machine does not accept incoming faxes and why our court does not maintain a public email account.

----- Forwarded message -----

From: <kinionm@aol.com>  
Date: Fri, Apr 26, 2013 at 9:53 AM  
Subject: meadow lane neighbor  
To: [REDACTED].com

Dear Judge Glasson, My name is Mary Ellen Kinion, I was sitting with the Klementi's in court last Wednesday afternoon. I am writing you because of the part of the new restraining order app. that allows Jeff to go to 162 Meadow Lane, to visit Ken Stead, which is 100 meters north of the 205 intersection. Please consider not allowing this. The Klementi's ' drive past Ken Stead's house to get to Kingsbury Grade. Jeff Spencer standing out in Ken Stead's driveway will be very stressful for them. Believe me, these people have had way too much stress already. I have known the Spencer's for the last 7 years and don't believe they deserve any special considerations that give them the chance to further intimidate and harass the Klementi's. Thank you, Mary Ellen Kinion

THIS EMAIL TRANSMISSION IS INTENDED FOR THE EXCLUSIVE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED, AND MAY CONTAIN PRIVILEGED AND CONFIDENTIAL INFORMATION THAT IS COVERED BY THE ELECTRONIC COMMUNICATIONS PRIVACY ACT (18 USC §§ 2510-2521), AND ALSO MAY BE PROTECTED UNDER THE ATTORNEY CLIENT OR WORK PRODUCT PRIVILEGE. IF YOU ARE NOT THE INTENDED RECIPIENT OR AGENT RESPONSIBLE TO DELIVER THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE ((775) 588-2540) AND/OR EMAIL AND DELETE THE ORIGINAL MESSAGE. THANK YOU.



1 CASE NO.: 14-CV-0260

2 DEPT. NO.: II

**RECEIVED**

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Douglas County  
District Court Clerk

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BY *[Signature]* DEPUTY

3  
4  
5  
6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,

9 Plaintiff,

10 vs.

11 JEFFREY D. SPENCER & DOES 1-5,

12 Defendants.

**REPLY IN SUPPORT OF THIRD-PARTY  
DEFENDANT MARY KINION'S MOTION  
FOR SUMMARY JUDGMENT**

13  
14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual,  
18 EGON KLEMENTI, an individual, MARY  
ELLEN KINION, an individual, and  
DOES 1-5,

19 Counterdefendants.

20  
21 Third-Party Defendant, Mary Ellen Kinion ("Kinion"), by and through her  
22 undersigned counsel, Glogovac & Pintar, hereby submits this Reply in Support of  
23 Motion for Summary Judgment.

24 I.

25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26 Kinion is a neighbor of, and witness to, various bad acts that defendant Spencer  
27 has perpetrated on brothers, Helmut and Egon Klementi. All of them live in the  
28 Kingsbury Grade General Improvement District in Stateline, Nevada. Kinion has done

1 nothing but her civic duty to report Spencer's actions to the police and to the deputy  
2 district attorney. When subpoenaed, Kinion testified at Spencer's criminal trial.

3 The claims against Kinion in this case are nothing more than vexatious to  
4 claims designed to harass and intimidate her. Kinion has moved this Court for an order  
5 granting summary judgment in her favor. Kinion seeks summary judgment because, as  
6 a matter of law, Spencer cannot meet the required elements for a claim for malicious  
7 prosecution. In addition, Kinion seeks summary judgment because all of her  
8 communications with the police and/or district attorney's office, as well as her  
9 testimony at Spencer's criminal trial, are protected communications under the judicial  
10 proceeding privilege and/or are immune from civil liability under NRS 41.650.

11 Spencer's opposition brief contains no admissible evidence on the issues raised  
12 in Kinion's motion for summary judgment. Instead, the opposition attempts to create a  
13 factual dispute by challenging Kinion's credibility based on what the outcome of  
14 Spencer's criminal trial was. Spencer claims that because he was acquitted Kinion's  
15 testimony was untrue. As will be shown below, however, Kinion's credibility is not the  
16 issue. Rather, because all of the statements and actions that are attributed to Kinion  
17 occurred in the course of judicial proceedings, the issue is whether Kinion has  
18 absolute immunity.

19 **A. Law and Discussion.**

20 **1. Summary Judgment Standard.**

21 Nevada law long has held that only admissible evidence may be considered on  
22 a motion for summary judgment. NRCP 56(e). *See, Adamson v. Bowker*, 85 Nev.  
23 115, 119, 450 P.2d 796, 799 (1969) ("[E]vidence that would be inadmissible at the trial  
24 of the case is inadmissible on a motion for summary judgment."). Because  
25 authentication is a condition precedent to admissibility, all evidence presented on  
26 summary judgment must be authenticated. NRS § 52.015. *See Thomas v. BAC*  
27 *Home Loans Servicing, LP*, No. 56587, 2011 WL 6743044, \*2 (Nev. Dec. 20, 2011)  
28 (Order of Affirmance) (unpublished) (documents offered in support of summary

1 judgment were properly authenticated and admissible when attached to an affidavit  
2 made on personal knowledge affirming that the documents were true and correct  
3 copies of the originals).

4       On summary judgment, documents authenticated through personal knowledge  
5 must be attached to an affidavit that meets the requirements of NRCP 56(e), and the  
6 affiant must be a person through whom the exhibits could be admitted into evidence.  
7 NRS § 52.025. Documents may also be authenticated in any another manner  
8 permitted under the Nevada rules. See e.g., NRS § 52.085 (evidence that a public  
9 record "is from the public office where items of this nature are kept is sufficient to  
10 authenticate [it]"). Nevada courts consistently hold that unauthenticated documents  
11 cannot be considered in a motion for summary judgment. See Employers Ins. Co. of  
12 Nevada v. Employco Servs., Ltd., 281 P.3d 1170, n.1 (Nev. 2009) (Table) (Order of  
13 Reversal) ("unauthenticated documents cannot be considered in a summary judgment  
14 motion"); Whalen v. State, 100 Nev. 192, 195-96, 679 P.2d 248, 250 (1984) (NRCP  
15 56(e) requires documents offered in opposition to summary judgment be  
16 authenticated); Buss v. Consol. Casinos Corp., 82 Nev. 355, 357, 418 P.2d 815, 816  
17 (1966) (reversing grant of summary judgment where documents submitted in support  
18 were not authenticated).

19       Nevada law is equally clear and consistent that, even when a document is  
20 sworn and admissible, inadmissible hearsay statements within the document will not  
21 give rise to a material issue of fact. For example, in Collins v. Union Fed. Savings &  
22 Loan, the Nevada Supreme Court affirmed summary judgment in favor of defendants  
23 where plaintiff's opposition rested on inadmissible hearsay statements offered in an  
24 affidavit. 99 Nev. 284, 302 (1983) ("Evidence introduced in support of or opposition to  
25 a motion for summary judgment must be admissible evidence."). The Court held that  
26 in offering only hearsay, plaintiff had "failed to show that he could produce the requisite  
27 quantum of evidence to enable him to reach the jury with his claims." *Id.* Nevada  
28 appellate rulings consistently instruct that hearsay statements are as inadmissible on

1 summary judgment as they are at trials. See e.g., White v. Mediatl, No. 57710, 2012  
2 WL 6588980, at \*1-2 (Nev. Dec. 14, 2012) (Order of Affirmance) (unpublished)  
3 (affirming grant of summary judgment where opposing party offered only hearsay  
4 statements and speculation); Soebbing v. Carpet Barn, Inc., 109 Nev. 78, 81, 847 P.2d  
5 731, 734 (1993) (affirming district court's finding that out-of-court statements of a non-  
6 party offered in opposition to summary judgment were inadmissible hearsay and could  
7 not create a material issue of fact).

8 In his opposition brief, Spencer attempts to create questions of fact based on  
9 speculation as to what he thinks caused the Douglas County Sheriff's Office to arrest  
10 Spencer in the first place and what he thinks later caused the Douglas County District  
11 Attorney's office to prosecute Spencer. The opposition brief also asserts – wrongly --  
12 that Spencer's acquittal of those criminal charges means that the underlying acts did  
13 not occur. In truth, of course, all the acquittal means is that the state did not meet its  
14 burden of proof. The acquittal could be the result of over-charging the criminal acts,  
15 the product of poor police work, the product of poor prosecutorial work, or both. The  
16 acquittal certainly does not mean that the conduct at issue did not occur. In any event,  
17 because Spencer has failed to present, by way of affidavit, or other admissible  
18 evidence, specific facts demonstrating the existence of a triable issue, Kinion is  
19 entitled to summary judgment

20 **B. Kinion Is Entitled to Judicial Immunity**

21 In his opposition brief, Spencer claims that immunity for communications with  
22 the police and district attorney are limited to claims for defamation only. In addition,  
23 Spencer claims that Kinion is not entitled to immunity because her statements to the  
24 police and district attorney were false or made with reckless disregard for the truth.  
25 Spencer is wrong.

26 In Harrison v. Roitman, 131 Nev.Adv.Op. 92 (decided December 17, 2015), the  
27 Nevada Supreme Court addressed judicial immunity for a party-retained expert  
28 witness. In Harrison, the husband in divorce proceedings retained a psychiatrist to

1 conduct a psychiatric analysis of his then-wife. The psychiatrist prepared and  
2 submitted a report to the court which diagnosed the wife with a personality disorder. In  
3 response, the wife sued the psychiatrist alleging the statements in the report  
4 constituted medical malpractice, IIED, NIED, and civil conspiracy. The psychiatrist  
5 then filed a motion to dismiss claiming to be absolutely immune from liability. The  
6 psychiatrist's motion to dismiss was granted by the district court.

7 On appeal, the Nevada Supreme Court affirmed. Like Spencer in this case, the  
8 wife argued in Harrison that the district court improperly dismissed her complaint  
9 because judicial immunity was limited to claims for defamation. However, concluding  
10 that party-retained expert witnesses play an integral role in the judicial process, the  
11 supreme court concluded that the psychiatrist was entitled to absolute immunity for all  
12 claims arising from the report. In reaching its decision, the Harrison court adopted the  
13 "functional approach" to resolve the question of immunity.

14 According to Harrison, the functional approach is made up of three separate  
15 inquiries. First, whether the person seeking immunity performed functions sufficiently  
16 comparable to those who have traditionally been afforded absolute immunity at  
17 common law. Second, whether the likelihood of harassment or intimidation by way of  
18 personal liability is sufficiently great to interfere with the person's performance of her  
19 duties, and third, whether procedural safeguards exist in the system that would  
20 adequately protect against illegitimate conduct. Id.

21 Analyzing the functional approach adopted in Harrison to the facts in this matter  
22 compels the conclusion that absolute immunity should be given to Kinion. First, as a  
23 witness to the acts committed by Spencer against Klementi and who then reported  
24 what she saw to the police and district attorney, Kinion clearly falls within the category  
25 of persons afforded absolute immunity at common law. The immunity of witnesses  
26 from subsequent damages liability for their testimony in judicial proceedings is well  
27 established. See, Briscoe v LaHue, 460 U.S. 325, 330 (1983).

1 Secondly, as pointed in Harrison, harassment or intimidation by threat of  
2 personal liability may interfere with a party-retained expert's duties since it could deter  
3 their acceptance of court appointments or color their recommendations. Similarly,  
4 exposing independent witnesses like Kinion to personal liability would deter other  
5 witnesses from coming forward and making reports to the police and/or be willing to  
6 testify at trial. For example, no witnesses to a traffic accident would stop at the  
7 accident scene and report to the police what they saw if they felt that they could later  
8 be sued by a party to the traffic accident for not seeing the traffic accident occur in the  
9 exact same manner as that party did.

10 Thirdly, even assuming Kinion's recollection of the events surrounding  
11 Spencer's actions toward the Klementi brothers is wrong, various procedural  
12 safeguards are in place to protect against Kinion's recollection from being used  
13 improperly. In this regard, like the expert witnesses in Harrison, Kinion is, and was at  
14 Spencer's criminal trial, subject to cross-examination. It is up the finder of fact to  
15 determine Kinion's credibility. Spencer's acquittal at his criminal trial confirms the  
16 safeguards of cross-examination were adequate.

17 In addressing immunity under NRS 41.650, Spencer's opposition brief gives  
18 only lip service to Nevada's anti-SLAPP law. NRS 41.637 provides:

19 "Good faith communication in furtherance of the right to petition or  
20 the right to free speech in direct connection with an issue of public  
21 concern" means any:

22 1. Communication that is aimed at procuring any governmental or  
23 electoral action, result or outcome;

24 2. Communication of information or a complaint to a Legislator,  
25 officer or employee of the Federal Government, this state or a  
26 political subdivision of this state, regarding a matter reasonably of  
27 concern to the respective governmental entity;

28 3. Written or oral statement made in direct connection with an issue  
under consideration by a legislative, executive or judicial body, or  
any other official proceeding authorized by law; or

1 4. Communication made in direct connection with an issue of public  
2 interest in a place open to the public or in a public forum, which is  
truthful or is made without knowledge of its falsehood.

3 In this case, Spencer has provided no admissible evidence that Kinion's  
4 statements are not truthful. And since it is undisputed that Kinion's statements  
5 otherwise fall within NRS 41.637, Kinion must be extended absolute immunity as a  
6 judicial participant and summary judgment must be granted.  
7

8 **C. Summary Judgment is Appropriate on Spencer's Claim for Malicious**  
9 **Prosecution.**

10 In addition being afforded absolute immunity for her statements to the police and  
11 district attorney, Kinion is also entitled to summary judgment because Spencer's  
12 opposition brief fails to set forth admissible evidence which raises a question of  
13 material fact. The elements of a claim of malicious prosecution are: "(1) want of  
14 probable cause to initiate the prior criminal proceeding; (2) malice; (3) termination of  
15 the prior criminal proceedings; and (4) damages." LaMantia v. Redisi, 118 Nev. 27, 38  
16 P.3d 877, 879-80 (2002). (Emphasis added).  
17

18 Implicitly acknowledging the futility of trying to tie Kinion in any manner to the  
19 Douglas County Sheriff's Department decision to arrest Spencer on December 18,  
20 2012, Spencer's opposition brief instead focuses on the charges filed in the Amended  
21 Information to the Douglas County District Attorney's office on May 9, 2013. See,  
22 Exhibit 2 to Spencer's opposition brief. Nevertheless, amending criminal charges is not  
23 the same as "initiating" criminal charges. Moreover, the amended charges, i.e. those  
24 pertaining to elder abuse of Elfie and Egon Klementi, were filed by the district attorney  
25 after Spencer's preliminary hearing was held on April 24, 2013. Exactly what went into  
26 the district attorney's thought process in amending the charges is not known but Kinion  
27 did not testify at the preliminary hearing and she is not identified as a witness to the  
28

1 amended information. Hence, there is no admissible evidence showing that Kinion was  
2 involved in procurement of additional criminal charges against Spencer.

3 In a futile, last ditch attempt to tie Kinion to Spencer's criminal prosecution,  
4 Spencer also makes reference to a letter that Kinion wrote to Maria Pence, the Deputy  
5 District attorney who prosecuted Spencer. Spencer claims that this letter from Kinion  
6 became the basis for the amended charges against Spencer.<sup>1</sup> Opposition brief, p.  
7 2:15-20. Notably, however, Spencer has never produced the letter from Kinion in this  
8 case. At Kinion's deposition, attorney Routis admitted that he had the letter at  
9 Spencer's trial but that it has been lost. At Kinion's deposition, the following exchange  
10 took place:

11 Q Do you remember that you provided her with a letter?

12 A Yes.

13 Q And in that letter --

14 MR. PINTAR: Has that letter been produced, counsel?

15 MR. ROUTSIS: I don't have it. Do you?

16 MR. PINTAR: Well, you produced it. I mean --

17 MR. ROUTSIS: It's your client.

18 MR. PINTAR: -- you're asking about it.

19 MR. ROUTSIS: I'm asking her.

20 MR. PINTAR: You're not going to ask her any questions about any  
21 documents --

22 MR. ROUTSIS: Whoa, whoa, whoa.

23 MR. PINTAR: No, you are not going to ask her any questions about  
24 documents that you're under an obligation to produce in this case for her  
testimony.

25 MR. ROUTSIS: So your objection is that your client wrote a letter and  
gave it to the DA --

26 MR. PINTAR: No.

27 <sup>1</sup> As testified to by Kinion at Spencer's criminal trial, everything in her letter is truthful and it was written  
28 only to help her get all of the facts straight leading up to the assault. See, Exhibit 6 to opposition brief, p.  
266:7-16.



1 MR. ROUTSIS: -- that she just admitted. Now, hold on.  
2 MR. PINTAR: No, my objection is you haven't produced it.  
3 MR. ROUTSIS: And you're objecting to me asking her questions  
4 regarding a letter that she wrote that none of us have in the evidence.  
5 What's your objection? I don't understand.  
6 MR. PINTAR: You have it and you haven't produced it.  
7 MR. ROUTSIS: I don't have it.  
8 MR. PINTAR: Well, you're talking about it.  
9 MR. ROUTSIS: I'm asking her a question.  
10 MR. PINTAR: You obviously saw it at the criminal trial.  
11 MR. ROUTSIS: Listen, I don't have the letter, so you should be aware of  
12 what you're talking about.  
13 MR. PINTAR: You should be aware of what you're talking about.  
14 MR. ROUTSIS: Again, I don't have the letter, so try to do your job and not  
15 make an objection that makes no sense. I don't have the letter.  
16 MR. PINTAR: Well, why don't you ask an intelligible question?  
17 MR. ROUTSIS: Well, I think it's very intelligible.  
18 MR. PINTAR: Really?  
19 BY MR. ROUTSIS:  
20 Q I think it's very damaging, because you know, Miss Kinion, you're  
21 charged with conspiracy for malicious prosecution. That's the basis of our  
22 civil suit. Are you aware of that? Do you know why you're here?  
23 MR. PINTAR: Counsel, we don't do charging in civil cases, okay? You  
24 made a complaint --  
25 BY MR. ROUTSIS:  
26 Q In the civil case you're aware --  
27 THE REPORTER: I'm sorry. I'm not getting this verbatim again because  
28 you're talking at the same time.  
MR. PINTAR: Use the right terms, counsel.  
BY MR. ROUTSIS:  
Q Miss Kinion, you're aware that a civil complaint has been filed against  
you; are you not?

1 A I can't hear you.

2 Q You're aware of a civil complaint being filed against you in this matter;  
3 are you not?

4 A Yes. Yes, I'm aware.

5 Q For conspiracy to get involved for malicious prosecution against a  
6 man who was acquitted of all counts. You're aware of that, right?

7 A Yes.

8 Q Okay. Now, after charges were filed in this case, you presented a  
9 letter to the prosecutor, Maria Pence; did you not?

10 A Yes.

11 Q And in that letter did you not state to Maria Pence that Jeffrey  
12 Spencer attempted to assault Egon Klementi on May 27th, 2012?

13 MR. PINTAR: Don't answer the question.

14 MR. ROUTSIS: It's the whole case. You don't want her to answer.

15 MR. PINTAR: No, no, no. I want you to produce your evidence.

16 MR. ROUTSIS: I don't have it. I told you that, counsel.

17 MR. PINTAR: Well, you obviously -- you're referencing it.

18 MR. ROUTSIS: The whole purpose we're here today to see if she acted --

19 MR. PINTAR: No. You have an obligation to produce it. She's not  
20 answering your questions about documents that you have an obligation --

21 MR. ROUTSIS: Counsel, listen --

22 THE REPORTER: All right.

23 MR. ZANIEL: You cannot talk over each other.

24 THE REPORTER: I cannot do this. This is like the fourth warning. I'm  
25 about ready to pack up my gear.

26 THE WITNESS: Me, too.

27 MR. ROUTSIS: For the record, we do not have the letter. I'm asking her  
28 questions from her personal knowledge.

29 Deposition of Mary Ellen Kinion, dated April 7, 2016, p.132:11 – 136:12, attached  
30 hereto as Exhibit 1.

31 Without the actual letter, neither the date that it was written, nor its contents can  
32 be evaluated for any evidentiary purpose. More importantly, the letter does not raise a

1 question of material fact sufficient to defeat summary judgment because any  
2 inferences concerning the evidentiary value of the letter must be construed against  
3 Spencer. As this court is aware, when the potential for litigation exists, a party has an  
4 affirmative duty to preserve evidence which it knows, or reasonably should know, is  
5 relevant to the subject matter of the action. Banks v. Sunrise Hospital, 120 Nev. 822  
6 (2004).

7 **D. Motion to Amend Should be Denied**

8 As a final point, Spencer claims that he has filed a motion to amend his counter-  
9 claim. Opposition p. 8. However, to the extent Spencer has filed a motion to amend his  
10 claims, the motion has never been served on the undersigned so that a response to  
11 the motion can be filed.

12 Notwithstanding, it is within the court's discretion to deny a motion for leave to  
13 amend a complaint. Kantor v. Kantor, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000). In  
14 that respect, after responsive pleadings have been filed, a party may only amend its  
15 pleadings after obtaining leave of the court and when justice so requires. NRCP 15(a).  
16 The requirement that the amending party acquire leave of the court indicates that there  
17 are instances where leave should not be granted. Brown v. Capanna, 105 Nev. 665,  
18 668, 782 P.2d 1299, 1301 (1989). A motion for leave to amend may appropriately be  
19 denied "(1) where there has been undue delay, bad faith, dilatory motive, or repeated  
20 failure to cure deficiencies by amendments previously allowed; (2) where allowing  
21 amendment would cause undue prejudice to the opposing party; or (3) where  
22 amendment would be futile. 4432 Individual Tobacco Plaintiffs v. Various Tobacco  
23 Cos. (In re Engle Cases) (11th Cir. 2014).

24 In this case, any amendment to the third-party claims made against Kinion  
25 would be futile because of judicial immunity and Nevada's anti-SLAPP laws. In finding  
26 that the expert witness was entitled to immunity, the court in Harrison v. Roitman,  
27 supra, specifically held the immunity applied to all claims in general which arose from  
28 the judicial proceedings, not just defamation. Id.

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II.

**CONCLUSION**

The claims against Kinion (and the other third-party defendants) are nothing more than vexatious litigation. Because Kinion is absolutely immune from liability, Kinion respectfully requests that the claims asserted against her be dismissed by way of summary judgment.

**AFFIRMATION  
Pursuant to NRS 239B.030**

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

DATED this 23 day of May, 2016.

GLOGOVAC & PINTAR

By:



MICHAEL A. PINTAR, ESQ.  
Nevada Bar No. 003789  
ROBERT R. HOWEY, ESQ.  
Nevada bar No. 11608

Attorneys for Third-Party Defendant,  
Mary Ellen Kinion

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that on the 23 day of May, 2016, I served the foregoing document(s) described as follows:

**REPLY IN SUPPORT OF THIRD-PARTY DEFENDANT MARY KINION'S MOTION FOR SUMMARY JUDGMENT**

On the party(s) set forth below by:

- X   Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Facsimile (FAX).
- Federal Express or other overnight delivery.

addressed as follows:

William Routsis, Esq. 1070 Monroe Street Reno, NV 89509 <b><i>Attorneys for Jeffrey Spencer</i></b>	Lynn G. Pierce, Esq. 440 Ridge Street, Suite 2 Reno, NV 89501 <b><i>Attorneys for Jeffrey Spencer</i></b>
Douglas R. Brown, Esq. Lemons, Grundy & Eisenberg 6005 Plumas St., 3rd Floor Reno, NV 89519 <b><i>Attorneys for Helmut Klementi</i></b>	David Zaniel, Esq. Ranalli & Zaniel, LLC 50 W. Liberty St., Suite 1050 Reno, NV 89509 <b><i>Attorneys for Jeffrey Spencer</i></b>
Tanika Capers, Esq. 6750 Via Austi Parkway, Suite 310 Las Vegas, NV 89119 <b><i>Attorneys for Rowena Shaw and Peter Shaw</i></b>	

Dated this 23 day of May, 2016.

Shirley J. Morrice  
Employee of Glogovac & Pintar

# **EXHIBIT 1**

# **EXHIBIT 1**

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IN THE NINTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS  
---o0o---

HELMUT KLEMENTI, Case No. 14-CV-0260  
Plaintiff,  
-vs- Dept. No. 1  
JEFFREY D. SPENCER,  
Defendant.  
\_\_\_\_\_  
JEFFREY D. SPENCER,  
Counterclaimant,  
-vs-  
HELMUT KLEMENTI, an individual,  
EGON KLEMENTI, an individual,  
MARY ELLEN KINION, an individual,  
and DOES 1-5,  
Counterdefendants.  
\_\_\_\_\_

DEPOSITION OF MARY ELLEN KINION  
04/07/2016  
Reno, Nevada

REPORTED BY: KRISTINE BOKELMANN  
NV CCR #165, CA #5979  
Job No: 297108B

<p style="text-align: right;">Page 130</p> <p>1 remember the exact words -- by Jeff Spencer and he was 2 laying in the street.</p> <p>3 Q And did you ask her where Egon was during 4 this?</p> <p>5 A No.</p> <p>6 Q Since that time have you talked to Egon to 7 find out where he was when his brother was laying on the 8 street?</p> <p>9 A I don't remember.</p> <p>10 Q You discussed this with Egon, right? I mean, 11 obviously you've discussed it. The trial's been had in 12 this case.</p> <p>13 A I don't remember.</p> <p>14 Q You don't remember what Egon told you about 15 where he was during the event?</p> <p>16 A I don't remember.</p> <p>17 Q And Jeff Spencer had a confrontation with 18 Helmut?</p> <p>19 A I don't remember.</p> <p>20 Q You don't remember. Okay. In any event, 21 after 12-18 you had contact with a prosecutor named 22 Maria Pence, correct?</p> <p>23 A Correct.</p> <p>24 Q And Maria Pence and you had quite a few 25 conversations together; did you not?</p>	<p style="text-align: right;">Page 132</p> <p>1 to trial, did you talk to Miss Pence, the prosecutor in 2 the case that prosecuted Jeffrey Spencer for numerous 3 felony crimes, did you talk to her about information 4 that you had regarding the Spencers?</p> <p>5 A Yes.</p> <p>6 Q Did you talk to her on numerous occasions, 7 meaning more than one?</p> <p>8 A Yes.</p> <p>9 Q Did you talk to her on more than two times?</p> <p>10 A I don't remember.</p> <p>11 Q Do you remember that you provided her with a 12 letter?</p> <p>13 A Yes.</p> <p>14 Q And in that letter --</p> <p>15 MR. PINTAR: Has that letter been produced, 16 counsel?</p> <p>17 MR. ROUTSIS: I don't have it. Do you?</p> <p>18 MR. PINTAR: Well, you produced it. I mean --</p> <p>19 MR. ROUTSIS: It's your client.</p> <p>20 MR. PINTAR: -- you're asking about it.</p> <p>21 MR. ROUTSIS: I'm asking her.</p> <p>22 MR. PINTAR: You're not going to ask her any 23 questions about any documents --</p> <p>24 MR. ROUTSIS: Whoa, whoa, whoa.</p> <p>25 MR. PINTAR: No, you are not going to ask her</p>
<p style="text-align: right;">Page 131</p> <p>1 A I don't understand the question.</p> <p>2 Q You talked. You talked to each other?</p> <p>3 A Yes.</p> <p>4 Q On numerous occasions?</p> <p>5 A No.</p> <p>6 Q No? You didn't talk to her?</p> <p>7 MR. PINTAR: Counsel, that's two different 8 questions. You just asked her numerous occasions or 9 talked to her. Which one do you want to ask? Ask the 10 question.</p> <p>11 MR. ROUTSIS: You should be ashamed of 12 yourself.</p> <p>13 BY MR. ROUTSIS:</p> <p>14 Q Did you talk to her on numerous occasions, yes 15 or no? It's a simple question. Yes or no?</p> <p>16 MR. PINTAR: You can answer it.</p> <p>17 THE WITNESS: What?</p> <p>18 MR. PINTAR: You can answer.</p> <p>19 THE WITNESS: I can answer?</p> <p>20 MR. PINTAR: Yeah.</p> <p>21 THE WITNESS: I talked to her -- I don't 22 understand the question as far as when you're talking 23 about.</p> <p>24 BY MR. ROUTSIS:</p> <p>25 Q Okay. After the event of 12-18, 2012, prior</p>	<p style="text-align: right;">Page 133</p> <p>1 any questions about documents that you're under an 2 obligation to produce in this case for her testimony.</p> <p>3 MR. ROUTSIS: So your objection is that your 4 client wrote a letter and gave it to the DA --</p> <p>5 MR. PINTAR: No.</p> <p>6 MR. ROUTSIS: -- that she just admitted. Now, 7 hold on.</p> <p>8 MR. PINTAR: No, my objection is you haven't 9 produced it.</p> <p>10 MR. ROUTSIS: And you're objecting to me 11 asking her questions regarding a letter that she wrote 12 that none of us have in the evidence. What's your 13 objection? I don't understand.</p> <p>14 MR. PINTAR: You have it and you haven't 15 produced it.</p> <p>16 MR. ROUTSIS: I don't have it.</p> <p>17 MR. PINTAR: Well, you're talking about it.</p> <p>18 MR. ROUTSIS: I'm asking her a question.</p> <p>19 MR. PINTAR: You obviously saw it at the 20 criminal trial.</p> <p>21 MR. ROUTSIS: Listen, I don't have the letter, 22 so you should be aware of what you're talking about.</p> <p>23 MR. PINTAR: You should be aware of what 24 you're talking about.</p> <p>25 MR. ROUTSIS: Again, I don't have the letter,</p>



<p style="text-align: right;">Page 134</p> <p>1 so try to do your job and not make an objection that 2 makes no sense. I don't have the letter. 3 MR. PINTAR: Well, why don't you ask an 4 intelligible question? 5 MR. ROUTSIS: Well, I think it's very 6 intelligible. 7 MR. PINTAR: Really? 8 BY MR. ROUTSIS: 9 Q I think it's very damaging, because you know, 10 Miss Kinion, you're charged with conspiracy for 11 malicious prosecution. That's the basis of our civil 12 suit. Are you aware of that? Do you know why you're 13 here? 14 MR. PINTAR: Counsel, we don't do charging in 15 civil cases, okay? You made a complaint -- 16 BY MR. ROUTSIS: 17 Q In the civil case you're aware -- 18 THE REPORTER: I'm sorry. I'm not getting 19 this verbatim again because you're talking at the same 20 time. 21 MR. PINTAR: Use the right terms, counsel. 22 BY MR. ROUTSIS: 23 Q Miss Kinion, you're aware that a civil 24 complaint has been filed against you; are you not? 25 A I can't hear you.</p>	<p style="text-align: right;">Page 136</p> <p>1 MR. PINTAR: No. You have an obligation to 2 produce it. She's not answering your questions about 3 documents that you have an obligation -- 4 MR. ROUTSIS: Counsel, listen -- 5 THE REPORTER: All right. 6 MR. ZANIEL: You cannot talk over each other. 7 THE REPORTER: I cannot do this. This is like 8 the fourth warning. I'm about ready to pack up my gear. 9 THE WITNESS: Me, too. 10 MR. ROUTSIS: For the record, we do not have 11 the letter. I'm asking her questions from her personal 12 knowledge. 13 BY MR. ROUTSIS: 14 Q Do you remember giving a letter to Maria Pence 15 regarding conduct that Jeffrey Spencer may or may not 16 have committed, yes or no? 17 MR. MOORE: Pause. Do you need to interpose? 18 MR. PINTAR: Don't answer the question. 19 MR. MOORE: Okay. Are we finished here? We 20 need a break. We're going off the record for a few 21 minutes. We'll reconvene. 22 (Recess 3:57 - 4:09 p.m.) 23 (The continuation of the Deposition of Mary 24 Ellen Kinion was videotaped.) 25 THE VIDEOGRAPHER: This is the beginning of</p>
<p style="text-align: right;">Page 135</p> <p>1 Q You're aware of a civil complaint being filed 2 against you in this matter; are you not? 3 A Yes. Yes, I'm aware. 4 Q For conspiracy to get involved for malicious 5 prosecution against a man who was acquitted of all 6 counts. You're aware of that, right? 7 A Yes. 8 Q Okay. Now, after charges were filed in this 9 case, you presented a letter to the prosecutor, Maria 10 Pence; did you not? 11 A Yes. 12 Q And in that letter did you not state to Maria 13 Pence that Jeffrey Spencer attempted to assault Egon 14 Klementi on May 27th, 2012? 15 MR. PINTAR: Don't answer the question. 16 MR. ROUTSIS: It's the whole case. You don't 17 want her to answer. 18 MR. PINTAR: No, no, no. I want you to 19 produce your evidence. 20 MR. ROUTSIS: I don't have it. I told you 21 that, counsel. 22 MR. PINTAR: Well, you obviously -- you're 23 referencing it. 24 MR. ROUTSIS: The whole purpose we're here 25 today to see if she acted --</p>	<p style="text-align: right;">Page 137</p> <p>1 videotape one in the deposition of Mary Ellen Kinion 2 taken in the matter of Spencers and civil case versus 3 Klementi, Kinion, and Shaw, held at Sunshine Litigation 4 Services on April 7, 2016. The time is approximately 5 4:09 p.m. 6 The court reporter is Kris Bokelmann. I am 7 Stewart Campbell, the videographer and employee of 8 Sunshine Litigation Services. 9 This deposition is being videotaped at all 10 times unless specified to go off the video record. 11 Would all present please identify themselves, 12 beginning with the witness. 13 THE WITNESS: Mary Ellen Kinion. 14 MR. PINTAR: Mike Pintar, Miss Kinion's 15 attorney. 16 MR. ROUTSIS: Attorney William Routsis, 17 attorney for Jeff and Marilyn Spencer. 18 MR. ZANIEL: Will the microphones pick us 19 up from -- 20 THE VIDEOGRAPHER: Yeah. 21 MR. ZANIEL: David Zaniel on behalf of Jeffrey 22 Spencer as a defendant in a case filed by Helmut 23 Klementi. Present, Jeff Spencer and Marilyn Spencer. 24 Present -- 25 DR. SHAW: Dr. Rowena Shaw.</p>

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drb@lge.net  
clm@lge.net  
*Attorneys for Helmut Klementi*

**RECEIVED**

**AUG 12 2016**

Douglas County  
District Court Clerk

**FILED**

**2016 AUG 12 AM 10:58**

BOBBIE R. WILLIAMS  
CLERK

**D. HECIMOVICH**  
DEPUTY

**IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR THE COUNTY OF DOUGLAS**

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER,

Defendant

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON  
KLEMENTI, an individual, MARY ELLEN  
KINION, an individual, and DOES 1-5

Counterdefendants.

Case No. 14-CV-0260

Dept. No. I

**AMENDED COMPLAINT**

Plaintiff HELMUT KLEMENTI by and through his attorneys, LEMONS, GRUNDY &  
EISENBERG, complains and alleges as follows:

**JURISDICTION**

1. At all times referred to herein, Plaintiff Helmut Klementi was and is a  
resident of Stateline, State of Nevada.
2. At times referred to herein, Defendant Jeffrey D. Spencer, was and is a  
resident of Stateline, State of Nevada.

1           3. Defendant Does 1-5 are other possible Defendants unknown to the  
2 Plaintiff at this time. The Plaintiff requests leave of this Court to amend the Complaint  
3 to insert the true names and capacities of the Does 1-5 when the same have been  
4 ascertained, to join such Defendants in this action, and to assert the appropriate  
5 charging allegations.

6           4. On or about December 18, 2012, Plaintiff, Helmut Klementi was standing  
7 in the street in front of his twin brother's house.

8           5. Defendant Jeffrey D. Spencer ran up to Plaintiff Helmut Klementi and  
9 collided with Plaintiff in such a manner as to cause Plaintiff to violently strike the  
10 ground and incur serious injury.

11                                   **FIRST CLAIM FOR RELIEF**

12                                   **(Negligence)**

13           6. Plaintiff realleges each and every allegation contained in paragraphs 1-5,  
14 inclusive, as if fully set forth herein.

15           7. Defendant Jeffrey D. Spencer had a duty of care to act as a reasonably  
16 prudent person and not collide or otherwise make physical contact with Plaintiff  
17 Helmut Klementi.

18           8. Defendant Jeffrey D. Spencer had a duty of care to act as a reasonably  
19 prudent person and not misidentify Plaintiff Helmut Klementi.

20           9. Defendant Jeffrey D. Spencer breached his above described duties.

21           10. As a direct and proximate result of Defendant Jeffrey D. Spencer's breach  
22 of one or more of the above described duties, and negligence, Plaintiff Helmut  
23 Klementi has incurred bodily injury as well as special and general damages in excess of  
24 Ten Thousand Dollars (\$10,000.00).

25                                   **SECOND CLAIM FOR RELIEF**

26                                   **(Assault & Battery)**

27           11. Plaintiff realleges each and every allegation contained in paragraph 1-10  
28 inclusive, as if fully set forth herein.

12. On or about December 19, 2012 Defendant Jeffrey D. Spencer physically battered and assaulted Plaintiff Helmut Klementi in a harmful manner without his consent causing him damages in an amount of more than \$10,000.00. Further, due to the intentional act of battery Plaintiff Helmut Klementi seeks punitive damages in an amount to be determined at trial.

13. Further, Plaintiff Helmut Klementi has suffered emotional distress due to the battery by Defendant Jeffrey D. Spencer.

14. As a direct result and proximate result of the battery and assault by the Defendant, Plaintiff has suffered, and will continue to suffer in the future, damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

### **THIRD CLAIM FOR RELIEF**

#### **(Pursuant to NRS 41.1395 Damages for Injury or loss suffered by older person)**

15. Plaintiff realleges each and every allegation contained in paragraphs 1-14 inclusive, as if fully set forth herein.

16. Defendant Jeffrey D. Spencer intentionally or negligently collided with Plaintiff Helmut Klementi who was 78 years old at the time of this incident.

17. NRS 41.1395 applies to Plaintiff Helmut Klementi who is an older person and has suffered a personal injury caused by Defendant Jeffrey D. Spencer's conduct.

18. NRS 41.1395 provides for the doubling of actual damages and award attorney's fees and costs in favor of Plaintiff Helmut Klementi.

19. As a direct and proximate result of the injury inflicted upon him, Plaintiff has suffered damages and incurred attorneys' fees and costs in an amount in excess of Ten Thousand Dollars (\$10,000.00).

### **FOURTH CLAIM FOR RELIEF**

#### **(Emotional Distress)**

20. Plaintiff realleges each and every allegation contained in paragraphs 1-19 inclusive, as if fully set forth herein.

///

21. Defendant Jeffrey D. Spencer's conduct was extreme and outrageous with either the intention of, or reckless disregard for, causing emotional distress to Plaintiff Helmut Klementi who in turn suffered severe, extreme emotional distress as the actual, proximate result of Defendant's conduct.

22. As a result of Defendant's extreme and outrageous conduct, Plaintiff has suffered general damages in the amount in excess of Ten Thousand Dollars (\$10,000.00).

### **FIFTH CLAIM FOR RELIEF**

**(Punitive Damages Pursuant to NRS 42.005)**

23. Plaintiff realleges each and every allegation contained in paragraph 1-22 inclusive, as if fully set forth herein.

24. Defendant has acted with extreme and outrageous conduct by colliding with Plaintiff Helmut Klementi.

25. As a result of Defendant Jeffrey D. Spencer's extreme and outrageous behavior Plaintiff Helmut Klementi has suffered damages in an amount greater than Ten Thousand Dollars (\$10,000.00).

**WHEREFORE**, the Plaintiff prays for judgment against the Defendant as follows:

1. For general damages in an amount in excess of Ten Thousand Dollars (\$10,000.00);

2. For leave of this Court to amend the complaint when the identities of the Doe Defendants are discovered;

3. For special damages, past and future, according to proof at the time of trial;

4. For punitive damages in an amount greater than Ten Thousand Dollars (\$10,000.00);

5. For the costs of suit, including reasonable attorney's fees; and

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6. For such other and further relief as the Court deems just and proper.

The undersigned affirm that this document does not contain the social security number of any person pursuant to NRS 239B.030.

Dated this 12<sup>th</sup> day of August, 2016.

LEMONS, GRUNDY & EISENBERG

By: D.R.B.  
Douglas R. Brown, Esq.  
Christian L. Moore, Esq.  
*Attorneys for Helmut Klementi*

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Rosie Marquez

1 AA 177

1 **FILED** IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

2 2016 DEC 15 PM 3:30. IN AND FOR THE COUNTY OF DOUGLAS

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WILLIAMS  
CLERK  
HELMUT KLEMENTI,  
BY ~~DEPUTY~~ Plaintiff,

Case No. 14-CV-0260

Dept. No. II

**RECEIVED**

DEC 15 2016

Douglas County  
District Court Clerk

vs.

JEFFREY D. SPENCER,

Defendant

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON  
KLEMENTI, an individual, MARY ELLEN  
KINION, an individual, and DOES 1-5

Counterdefendants.

**ORDER GRANTING HELMUT KLEMENTI'S**

**MOTION FOR LEAVE TO AMEND A COMPLAINT**

Plaintiff HELMUT KLEMENTI filed and served a Motion for Leave to Amend Complaint on April 11, 2016, in the above-captioned case. The time to file an opposition or otherwise object to Helmut Klementi's motion has passed, with no opposition or objection having been filed.

Good cause appearing, leave is hereby granted for Plaintiff to file the attached amended complaint.

Dated this 15 day of May, 2016.

  
DISTRICT COURT JUDGE



IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS  
BEFORE THE HONORABLE STEVEN R. KOSACH, SENIOR DISTRICT JUDGE

HELMUT KLEMENTI,	:	
	:	
Plaintiff,	:	
	:	Case No. 14-CV-0260
-vs-	:	
	:	Dept. No. I
JEFFREY D. SPENCER & DOES 1-5,	:	
	:	
	:	
Defendants.	:	
<hr/>		
JEFFREY D. SPENCER & DOES 1-5,	:	
	:	
Counterclaimant,	:	
	:	
-vs-	:	
	:	
HELMUT KLEMENTI, an individual,	:	
EGON KLEMENTI, an individual,	:	
MARY ELLEN KINION, an	:	
individual, and DOES 1-5,	:	
	:	
Counterdefendants.	:	
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HEARING

December 15, 2016

Minden, Nevada

Reported by: Lesley A. Clarkson, CCR #182

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1 MINDEN, NEVADA, THURSDAY, DECEMBER 15, 2016, 1:50 P.M.

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3  
4 THE COURT: Let me call the case, and then I'm going to  
5 ask if I have, confirm the parties. So yea or nay.

6 This is Case Number 14-CV-0260 in the Ninth Judicial  
7 District Court in the State of Nevada in and for the County of  
8 Douglas. Helmut Klementi.

9 And Mr. Klementi, are you present? Mr. Helmut  
10 Klementi. Good afternoon to you, Mr. Klementi.

11 And Mr. Doug Brown is present on behalf of Mr. Klementi  
12 as plaintiff and as counterdefendant, correct?

13 MR. BROWN: Yes, Your Honor. Thank you.

14 THE COURT: Thank you. Good afternoon to you.

15 Versus Jeffrey Spencer. Is Mr. Spencer present?

16 MR. ZANIEL: He is, Your Honor.

17 THE COURT: Good afternoon to you, Mr. Spencer. I met  
18 you in Reno. And Mr. Spencer, you are the defendant, and you are  
19 also the counter plaintiff or counterclaimant in this case,  
20 correct?

21 MR. SPENCER: Yes, sir.

22 THE COURT: Now, Mr. Zaniel, David Zaniel, to you, good  
23 afternoon to you, represents Mr. Spencer as the defendant, and  
24 Mr. William Routsis and Miss Lynn Pierce represent Mr. Spencer as  
25 the counterclaimant, correct?

1 MR. ROUTSIS: That's correct.

2 MS. PIERCE: Yes, Your Honor.

3 THE COURT: And Miss Capers is present. Your first  
4 name is?

5 MS. CAPERS: Tanika.

6 THE COURT: How do you spell it?

7 MS. CAPERS: T-a-n-i-k-a.

8 THE COURT: Did you drive from Las Vegas?

9 MS. CAPERS: Yes, sir.

10 THE COURT: Last night or today?

11 MS. CAPERS: Today. I flew in from Las Vegas yesterday  
12 evening and drove to Minden today.

13 THE COURT: Were you ten two also?

14 MS. CAPERS: I actually was.

15 THE COURT: And you are representing the neighbors  
16 Shaw, correct?

17 MS. CAPERS: Both, yes, husband and wife the Shaws.

18 THE COURT: And we will talk with you when we have  
19 argument on the motions to amend.

20 MS. CAPERS: Correct.

21 THE COURT: Okay? And today what we have is motions to  
22 amend, a motion for summary judgment, and a trial date, because I  
23 continued the trial based on our August talk, if you will.

24 And Mr. Zaniel and the district attorney, Mr. Zach  
25 Wadle, met earlier informally. And Mr. Zaniel, I want you to put

1 on the record what you and Mr. Wadle talked about in regards to  
2 your motion to compel.

3 MR. GLOGOVAC: Excuse me, Your Honor. Your Honor, I  
4 just want in on the record that I am here as well. It would be  
5 okay if I was forgotten.

6 THE COURT: Forgive me.

7 MR. GLOGOVAC: Scott Glogovac, Your Honor, and I'm here  
8 on behalf of Egon Klementi, who is not in court, Your Honor.  
9 He's not capable of being here. He is elderly and infirm, and he  
10 could not be here. His wife Elfriede Klementi is here, and I  
11 represent her, and I also represent Mary Ellen Kinion. And all  
12 three of my clients are counterdefendants on the Spencer  
13 counterclaim.

14 THE COURT: Forgive me, Mr. Glogovac. Good afternoon  
15 to you.

16 MR. GLOGOVAC: Thank you, Your Honor.

17 THE COURT: And good afternoon to you, Miss Kinion and  
18 Miss Klementi.

19 And we will also take up, after these amendments that I  
20 was talking about, we will also take up this motion for summary  
21 judgment filed by Mr. Pintar, who is your partner, correct?

22 MR. GLOGOVAC: Yes, Your Honor.

23 THE COURT: Mr. Zaniel, please.

24 MR. ZANIEL: Yes, Your Honor. Thank you. In this  
25 particular case Mr. Spencer as a defendant prepared and served a

1 subpoena on the Douglas County District Attorney's Office for  
2 various documents associated with the criminal prosecution of  
3 Mr. Spencer. The Douglas County District Attorney's Office  
4 initially objected to complying with that subpoena. On July 5 of  
5 this year I filed a motion to compel with Your Honor before this  
6 Court and requesting that the subpoena be complied with. There  
7 was an opposition and reply filed. Today was the date for that  
8 motion to go forward.

9 Prior to entering court today, me and Zach Wadle, the  
10 district attorney, deputy district attorney for Douglas County,  
11 met in private, and we worked out and negotiated a resolution of  
12 that issue. The, Mr. Wadle is not here, but as Your Honor is  
13 aware, we did meet in chambers as well, and that, the agreement  
14 is that the Douglas County District Attorney's Office will comply  
15 with the subpoena and produce documents requested through that  
16 subpoena and all discoverable information within the criminal  
17 file.

18 As a result of that discussion, the defendant Jeffrey  
19 Spencer's motion to compel is withdrawn. I'll reserve that to do  
20 without prejudice to insure that they actually do provide that  
21 information, and I will notify the Court if in fact it becomes an  
22 issue at a later time. But for that issue today, that's been  
23 resolved.

24 THE COURT: Thank you for that. And I was present in  
25 that informal discussion. And Mr. Wadle, W-a-d-l-e, Douglas

1 County deputy district attorney, and Mr. Zaniel met. And thank  
2 you for that.

3 Do you need to be here for anything else?

4 MR. ZANIEL: I'm going to stay, Your Honor. But I  
5 don't, my time at the table I believe is probably done in terms  
6 of speaking. Although one more thing, Your Honor.

7 As far as there's been a request, I don't know if it  
8 was a request for documents, what the request was, how it was  
9 presented, but it was for the hard drive of the Spencers' video  
10 camera system, and there's been a request to have that hard drive  
11 produced in this case. And I have the hard drive here today. So  
12 just for the record, I'm going to hand the hard drive to  
13 Mr. Brown before I leave here today, and he will take care,  
14 custody, and control of that hard drive.

15 THE COURT: Okay. Is that okay, Mr. Brown?

16 MR. BROWN: That is fine, Your Honor. In fact, I  
17 proposed a protocol which we will follow. I think we have an  
18 agreement on the protocol that I proposed about handling this  
19 drive to make sure we protect it, any irrelevant information that  
20 is Mr. Spencer's that's on that.

21 THE COURT: Okay. Miss --

22 MS. PIERCE: That's all I was going to add. At our  
23 last meeting we talked about agreeing to a particular computer  
24 expert, with a protocol for any of the requested production of  
25 video records. And I believe we were all in agreement with that,

1 and that's all I was going to add. Thank you.

2 THE COURT: Thank you. Okay. Let's get to the first  
3 issue for the case. Now, remember we met in August in Reno, and  
4 at that time there was discussion, I don't even think there was  
5 discussion, whether, well, there was discussion about the motion  
6 compel. And that's been sorted out. There was also discussion  
7 about the trial date, and there was also discussion about  
8 amendments.

9 So let's take up the first amendment, counterclaimant  
10 Jeffrey Spencer's motion to amend counterclaim and third-party  
11 complaint. So in regards to that, let's go ahead and briefly  
12 summarize your reasoning and opposition, if there is one, and  
13 reply. And we will go from there.

14 So who brought the motion? Please.

15 MS. PIERCE: Your Honor, as was discussed at the last  
16 hearing, it was recognized fairly early on that the initial  
17 counterclaimant claim that was filed needed to be amended, and  
18 Mr. Spencer had at that time retained Mr. Swafford as co-counsel  
19 with --

20 THE COURT: Now, I remember.

21 MS. PIERCE: And he was supposed to have done the  
22 amendment. He did not do it. And considerable effort was made  
23 to contact him, have him do it. He was nonresponsive. I was  
24 approached to see if I would be willing to replace Mr. Swafford.  
25 I agreed that I would.



1           A proposed change of counsel form was signed by me and  
2 Mr. Spencer and was sent to Mr. Swafford. He failed to return  
3 it. Thereafter a motion was made to have Mr. Swafford withdrawn  
4 from the case and me instated as co-counsel for purposes of  
5 proceeding with that.

6           Mr. Routsis is not an expert in civil law, which is why  
7 he needed co-counsel in this, and so that motion was not pursued  
8 the way it should have been. Ultimately I did a notice of  
9 association of counsel, and then the whole issue and the fact  
10 that that motion had not been ruled upon, even though there was  
11 no opposition, was brought up, and Your Honor agreed that it  
12 would be, that order would be signed.

13           In the meantime, I had considerable documentation to  
14 look at to do a proper counterclaim. I was reviewing volumes of  
15 material going back to the time of the criminal complaint and  
16 forward since then, because the case had been progressing before  
17 I was brought into it. And I drafted a proposed counterclaim  
18 which ultimately was, an amended counterclaim which was presented  
19 with the motion. Although it is identified as a second  
20 amendment, the first amendment was never ruled upon by Your Honor  
21 because of the issues that had come about with Mr. Swafford's  
22 first amendment.

23           So this is really the first amendment of the complaint,  
24 or the counterclaim, I should say. And at the same time it is I  
25 think cleaning up what the issues are, clarifying what the issues

1 are. So it's all in the interest of judicial economy, among  
2 other things. And nobody's been compromised, because discovery  
3 went forward, the issues that are being raised in this amended  
4 complaint are all things that have been addressed in the  
5 discovery to date. And there was multiple changes of counsel. I  
6 think of the counsel here today, the only ones that were here  
7 from the beginning were Mr. Routsis and Mr. Zaniel. And there  
8 was also an amended complaint from the other side as well.

9 So there was no true undue delay. Nobody's been  
10 prejudiced by any delay. And there are good grounds for going  
11 forward with this as the appropriate counterclaim in this matter.

12 THE COURT: As soon as you mentioned Swafford, I  
13 remembered the discussion back in August.

14 So is there any opposition to an amended counterclaim?

15 MR. GLOGOVAC: Yes, Your Honor. We, my office has  
16 filed an opposition to the motion to amend the counterclaim.

17 By the way, just as a housekeeping matter, it shouldn't  
18 be an amended counterclaim and third-party complaint, because no  
19 new party is being brought into the case on the grounds of  
20 indemnity or contribution. The rules allow an additional  
21 nonparty to be added to a counterclaim. So it would be an  
22 amended counterclaim.

23 But whatever we call it, we have objected to the motion  
24 and opposed it on two grounds. One, a substantive ground, Your  
25 Honor, and that is that the claims that are added in the amended

1 counterclaim suffer the same fate that the two original claims in  
2 the original counterclaims suffer and that are the subject of our  
3 motion for summary judgment. So in a way the arguments go  
4 together.

5 The motion for summary judgment argues that the two  
6 original claims alleged in the counterclaim, which were malicious  
7 prosecution and civil conspiracy with malicious prosecution as  
8 the underlying tort, fails as a matter of law. And I was going  
9 to address that when Your Honor called for the motion for summary  
10 judgment.

11 The additional claims that are being added in this  
12 counterclaim, and I can tell you what they are, Your Honor. They  
13 had a claim for false light, invasion of privacy, a claim for  
14 defamation, and a claim for intentional infliction of emotional  
15 distress, and then civil conspiracy claims with those as the  
16 predicate or underlying torts. They all lump into the same  
17 basket that someone is attempting to impose liability on  
18 individuals who simply complied with criminal process, responded  
19 to subpoenas, spoke to law enforcement as they were entitled to  
20 do, and I'll get into it when we argue the motion, Your Honor,  
21 but that there's immunity, and the elements of the claim aren't  
22 met in this case and can't be met. So there's no point in  
23 allowing an amended complaint to be filed that suffers the same,  
24 amended counterclaim that suffers the same fate as the original  
25 counterclaim.

1           One of bases upon which a court can deny a motion to  
2 amend is it would be futile to do it. Why put all of these folks  
3 through another year of this when the claims are futile, when  
4 they don't get out of the box legally. So that's the basis on  
5 which I oppose the motion.

6           The second basis on which we oppose the motion is that  
7 it is in fact untimely. There is nothing that is alleged in the  
8 amended counterclaim that wasn't known by either Mr. Spencer or  
9 his attorneys at the time the original counterclaim was filed.  
10 All the predicate behavior that's discussed in the proposed  
11 amended counterclaim took place before Mr. Spencer was acquitted  
12 on the criminal charges in this district.

13           So everything was known. There's no reason why now a  
14 couple of years later to allow futile claims to be added to  
15 existing futile claims, when all of this could have been packed  
16 into this case originally back in 2015. For that additional  
17 reason, our contention is this motion to amend the counterclaim  
18 should be denied, we should move forward with a hearing on the  
19 motion for summary judgment on the two existing claims. And as  
20 I'll indicate then, that should be granted as well.

21           Thank you, Your Honor.

22           THE COURT: Thank you. Any comment, Miss Pierce?

23           MS. PIERCE: Well, Your Honor, in terms of the futility  
24 of it and the malicious prosecution, if the argument is accepted  
25 as made on the summary judgment, there would be no such thing as

1 a malicious prosecution claim in the state of Nevada because, the  
2 argument is, basically anything that is in any way connected with  
3 a criminal prosecution is privileged, and that's not the law. So  
4 I will argue that further on that motion.

5 But there was information that was learned later, some  
6 of it in the course of the discovery once this case was  
7 proceeding, which resulted in the conspiracy claim; that there  
8 were efforts made to, and that also will be argued as part of the  
9 motion for summary judgment; that there were efforts made between  
10 the counterdefendants or third-party defendants, however they are  
11 tagged, to cause a criminal prosecution to go forward that was a  
12 prosecution without foundation. And that these parties were  
13 working with each other to place Mr. Spencer in a position of  
14 having to go through an extensive criminal trial which ended in  
15 his favor. He was fully acquitted of all of the claims against  
16 him.

17 THE COURT: Okay. Let's go on to the -- well, hang on  
18 a second. We have another motion to amend. And then we will get  
19 to the motion for summary judgment.

20 MR. GLOGOVAC: Your Honor, could I speak to that, the  
21 other motion to amend?

22 THE COURT: Yes.

23 MR. GLOGOVAC: I think it wasn't our motion. It was a  
24 motion made on behalf of Mr. Klementi. That must have been  
25 granted, because that amended complaint was filed. Mr. Brown can

1 speak to that.

2 MR. BROWN: Your Honor, my recollection going back to  
3 that hearing in August was that our, that you allowed us to amend  
4 the complaint. If you recall, the case was originally brought by  
5 Laub and Laub, and once we got it, we found some things that we  
6 wanted to add, brought that up at the hearing, and we filed that  
7 complaint in August. And it's my understanding that there hasn't  
8 been any responsive pleadings or answers filed to that as of  
9 today.

10 MR. ZANIEL: Your Honor, I did not see that complaint  
11 being filed, so obviously --

12 THE COURT: The amended complaint.

13 MR. ZANIEL: The amended complaint. I have not seen a  
14 copy of that. I have a good feeling that there's a certificate  
15 of service that says it was sent to me, but I just didn't see  
16 that. So there's been no three-day notice of intent or anything  
17 like that. So with the Court's permission, I guess Mr. Brown's  
18 permission, as soon as I receive a copy of that, I'll have an  
19 answer on file on behalf of Mr. Spencer.

20 MR. BROWN: I'll make sure that's done as soon as I get  
21 back, Your Honor. And I have not taken any adverse action with  
22 respect to that complaint.

23 THE COURT: Forgive me. But I remember, it wasn't  
24 reported.

25 MR. BROWN: Was not, Your Honor.

1 THE COURT: And when I say I remember, I remember the  
2 discussion on the attorney that was not in compliance.

3 MR. ZANIEL: Swafford.

4 THE COURT: Swafford. I remember that. And then as  
5 soon as you told me Laub and Laub, I remember that.

6 But what does that do to the motion to amend in regards  
7 to Mr. Spencer's renewed motion to amend counterclaim? Am I  
8 throwing monkey wrenches into this?

9 MR. GLOGOVAC: I don't know if that's the type of  
10 wrench. Yeah. I looked at this file, Your Honor, and I saw that  
11 Mr. Brown's office filed an amended complaint in August. And one  
12 of the things that occurred to me is that's an amended complaint  
13 against Mr. Spencer, which entitles him to file a responsive  
14 pleading to the amended complaint. And I don't believe under the  
15 rules his hands are tied on when he can file his responsive  
16 pleading.

17 You may be correct, Your Honor. He could file what  
18 they are seeking leave to go back, and well, file in terms of  
19 their earlier filed motion, he could probably do that, Your  
20 Honor. That would be my feeling about it. That's how I  
21 interpret the rules.

22 But it doesn't mean this Court has to allow that. I  
23 think this Court could still put restrictions on what Mr. Spencer  
24 could plead in terms of a counterclaim. And if Your Honor  
25 decides the motion for summary judgment in our favor and agrees

1 that the same legal principles applied to the proffered amended  
2 counterclaims, then we can still get to the same position we are  
3 advocating here today. But definitely that's a procedural  
4 detour, Your Honor, that the amended complaint causes.

5 THE COURT: All right. Let's hear this motion for  
6 summary judgment.

7 MS. PIERCE: Your Honor, before I go to that, can I add  
8 one thing? Just in the interest of judicial economy, I hate to  
9 keep arguing things and having to file new pleadings to do the  
10 same thing, and, you know, if it was added as a counterclaim with  
11 the answer to the amended complaint, we could very well end up  
12 back here arguing the same thing.

13 In the opposition to my motion to amend, the defense  
14 cited to Jackson v. Bank of Hawaii, 902 Fed 2nd 1385, from 1990.  
15 And that case stands for the proposition that the rule regarding  
16 amendments should be interpreted with extreme liberality, and it  
17 cites to the United States v. Webb case.

18 There's no prejudice here, there's not bad faith  
19 involved. Let's cut to the chase and go forward with the two,  
20 the amended complaint, the amended counterclaim, and hear the  
21 case on the merits.

22 THE COURT: Okay. And thank you for that. But again,  
23 what -- okay. Let's hear the summary judgment. I think they are  
24 connected, but I want to hear arguments. Because we got the  
25 Shaws' lawyer here, and they are not even named and a party, so



1 what's the connection? But Miss Pierce is alluding to a  
2 conspiracy that she wants me to liberally amend because of the  
3 Shaws. But if I'm wrong, I'll find out. So help me out here.

4 MR. GLOGOVAC: You're right, Your Honor. I think there  
5 is an interconnection. I don't disagree with that. I also agree  
6 with Miss Pierce that cutting to the chase makes sense. If this  
7 case is disposable now, knowing what we know, there's no reason  
8 not to do it just because we have taken a little bit of a  
9 procedural side road with the amended complaint filed by  
10 Mr. Spencer.

11 I would say on Miss Capers' behalf, her clients will  
12 become parties to this case if an amended pleading is filed, an  
13 amended counterclaim is filed. But they are not right now.  
14 However, she did on their behalf enter an appearance, and she did  
15 join in this, join in the motion, the opposition to the motion to  
16 amendment. So if Your Honor wants to hear from her and she has  
17 something to add, I would think she should have that opportunity.

18 THE COURT: Oh, absolutely. Absolutely. Even though  
19 the Shaws aren't there, I do want to hear from you, Miss Capers.

20 So please, Mr. Glogovac.

21 MR. GLOGOVAC: The motion for summary judgment was  
22 filed, Your Honor, initially on behalf of Mary Ellen Kinion by my  
23 office on the two claims that were alleged in the original  
24 counterclaim filed by the Spencers. And those two claims were  
25 malicious prosecution and conspiracy with malicious prosecution

1 as the underlying tort. They are treated the same, because under  
2 Nevada law you can't have a legally sustainable conspiracy claim  
3 unless the underlying tort survives. So if there's no malicious  
4 prosecution claim that's justiciable here, then the claim goes  
5 forward and summary judgment is appropriate.

6 The arguments that we have made in support of the  
7 summary judgment motion of the malicious prosecution claim are  
8 two, Your Honor. The first is if you look at the elements of the  
9 malicious prosecution claim as explained by the Nevada Supreme  
10 Court, as a matter of law the burden that Mr. Spencer has on that  
11 claim can't be met here. The Nevada Supreme Court, and it's  
12 cited in our papers, Your Honor, has said that a defendant in a  
13 malicious prosecution claim must have initiated, caused, or  
14 actively participated in a criminal proceeding against the  
15 plaintiff.

16 So just taking Mary Ellen Kinion here, Your Honor, the  
17 question would be is there any evidence that Mary Ellen Kinion  
18 participated, caused, or actively participated in a criminal  
19 proceeding. And the answer is emphatically no. There's no  
20 evidence of that. The criminal proceeding itself started with an  
21 incident that happened on December 18, 2012, I believe. Pardon  
22 me, Your Honor. I'm the newest lawyer to this case. Yeah,  
23 December 18, 2012. Helmut Klementi, who is in the courtroom here  
24 today, claims that he was physically assaulted and battered by  
25 Mr. Spencer while standing in the street out in front of

1 Mr. Spencer's home, but turned towards his relative's home taking  
2 photographs. The Douglas County Sheriff's Office responded to  
3 the scene of that incident on December 18, 2012. A Douglas  
4 County sheriff's deputy investigated the incident, talked to  
5 witnesses, not including Mary Ellen Kinion, talked to witnesses,  
6 gathered evidence, and made the decision that he thought a  
7 battery had been committed.

8 And Mr. Klementi at the time was, I want to say 79  
9 years old, maybe 78 years old, Your Honor.

10 The deputy, in his deposition in this case, said he  
11 didn't buy what Mr. Spencer was telling him. Mr. Spencer told  
12 the deputy, this is my understanding of what he said, told the  
13 deputy that he thought he saw a younger person in a hoodie trying  
14 to break into his vehicle in his driveway, and came down in  
15 response to that, and then shoved that individual that he said  
16 was in a hoodie trying to break into his vehicle, shoved that  
17 person down in the street, and it happened to be this elderly  
18 gentleman that he shoved down, his neighbor. Sheriff's deputy  
19 said he wasn't buying that, after listening to witnesses'  
20 statements, after talking to Mr. Spencer and hearing  
21 inconsistencies in Mr. Spencer's statements.

22 So the sheriff's deputy, as he testified to in his  
23 deposition, made his own subjective determination that a crime  
24 had been committed, and also admitted in his deposition that he  
25 never spoke to Mary Ellen Kinion before he reached that

1 conclusion. He then turned the matter over to Douglas County  
2 D.A.'s office, which, without prodding from Mary Ellen Kinion,  
3 caused criminal charges to be filed, three of them to be filed  
4 against Mr. Spencer.

5 Now, Mr. Spencer had able criminal defense counsel who  
6 obtained an acquittal. But that doesn't mean that somehow, some  
7 way, just because there was an acquittal in the criminal case,  
8 that anyone who happened to be a witness was contacted by police,  
9 was interviewed by the D.A.'s office, somehow got together to  
10 pursue a malicious prosecution against Mr. Spencer.

11 Mary Ellen Kinion again didn't talk to the police  
12 officer who responded and made the recommendations to the D.A.'s  
13 office. She did talk to the D.A., but that was with the D.A.'s  
14 office request. The D.A. actually contacted Miss Kinion at one  
15 point. Miss Kinion had information about the incident and let  
16 the D.A.'s office know that. The D.A.'s office then reached out  
17 to her and was asking her questions.

18 The actual assistant D.A. that prosecuted the case,  
19 Miss Pence, as I understand it, in the process of that  
20 conversation it was stated by Miss Kinion, well, maybe I should  
21 write all of this down so I don't forget. She provided a  
22 document that stated the information she knew, and that was  
23 provided to the D.A.'s office. That went to trial, but before it  
24 did, there was a preliminary hearing. Miss Kinion testified at  
25 that, the Klementis testified. These folks just simply went

1 along with the process that was initiated by events in their  
2 neighborhood.

3 And anybody that's subjected, whether Mr. Spencer was  
4 in the right or not and ultimately was acquitted, isn't the  
5 question. The question is was there some sort of criminal  
6 investigation that was instituted, and did these folks  
7 participate as any citizen should. And that's what they did.  
8 And to turn around and have them be subjected to a civil tort  
9 action for malicious prosecution, when that's what their  
10 involvement is, Your Honor, is not the law in this state. And  
11 because you can't have a malicious prosecution, you can't have a  
12 conspiracy to commit that act. So the summary judgment was based  
13 on that in the first instance.

14 It was also then based, and this is a little more  
15 restrictive, on an immunity claim. And that is someone who  
16 speaks with the District Attorney's office, testifies at a  
17 preliminary hearing, testifies in court, speaks with cops, is  
18 immune from liability. If, feature this, that if we have a  
19 system where if you decide to do what you should as a citizen,  
20 and that's talk to cops, the D.A.'s office, show up in response  
21 to a subpoena for court proceedings, you are going to get sued  
22 for malicious prosecution if the defendant gets acquitted, that's  
23 the exact opposite policy that we want to promote here, Your  
24 Honor.

25 And so for that reason, there is case authority out

1 there which establishes one who participates in the judicial  
2 process in good faith is immune from liability, civil liability.  
3 Not just malicious prosecution, but defamation and the whole  
4 array of claims that have been alleged here.

5           There is no evidence that Mary Ellen Kinion or my other  
6 clients in this case acted in bad faith. Neighbors sometimes  
7 don't get along, and maybe that's what happened here. I don't  
8 really know what was underlying all this. But what we do know is  
9 an elderly gentleman got shoved to the ground, neighbors of his  
10 were witnesses to some extent to some of these events, and they  
11 participated with law enforcement.

12           The case, fortunately for Mr. Spencer, was ultimately  
13 in his favor, revolved in his favor. But that doesn't mean we  
14 now should have a civil outshoot where these people in the  
15 courtroom are sued for malicious prosecution, false light,  
16 invasion of privacy, and on and on.

17           So our position is some cases just come along where you  
18 can cut them off, and this is one of them. And to allow a  
19 further amended pleading to be filed under these circumstances,  
20 subject to the same problems that the original pleading is  
21 subject to, really is a waste of this Court's time and the  
22 resources of this district. And so our position, bottom line,  
23 Your Honor, would be that the motion for summary judgment should  
24 be granted, the motion to amend should be denied, and directive  
25 should come from this Court that to the extent Mr. Spencer files

1 an amended pleading in response to the amended complaint filed by  
2 Helmut Klementi, that it not include these claims that we are  
3 disposing of here today.

4 That would be our position, Your Honor.

5 THE COURT: Thank you. Now, Miss Shaw --

6 MS. CAPERS: Capers.

7 THE COURT: Miss Capers. I was going to ask you about  
8 the Shaws.

9 MS. CAPERS: Yes, sir.

10 THE COURT: Miss Capers. Are the Shaws neighbors? Are  
11 they witnesses to this incident? What's the Shaw -- tell me.

12 MS. CAPERS: Primarily --

13 THE COURT: You have joined in the motion for summary  
14 judgment, correct?

15 MS. CAPERS: No, I did not. I joined in the opposition  
16 to amended complaint.

17 THE COURT: Okay.

18 MS. CAPERS: Counsel was quite thorough. The only  
19 thing I could add -- well, to directly answer your question, all  
20 of them live in the neighboring neighborhood. Okay? And the  
21 Shaws are in fact associates of the Kinions and the Klementis,  
22 but my clients did not observe the incident at all. Again, their  
23 participation was brought about by a request from the D.A. as  
24 well. So the testimony that was elicited from them was strictly  
25 for the criminal lawsuit initiated by the district attorney.

1           And so for efficiency, even if you allow this claim to  
2 proceed, rest assured that the Shaws will be bringing another  
3 motion for summary judgment based upon the same premises that  
4 counsel has alleged here, because the facts are the same. The  
5 facts that he's espoused to support the granting of the motion  
6 for summary judgment applies to my client.

7           Miss Pierce states that Mr. Routsis isn't an expert,  
8 specifically she said in civil law. However, the law doesn't  
9 require him to be an expert. He just needs to be competent. And  
10 these facts that we have here regarding my clients have been  
11 known for over a year. Over a year. So there is no legitimate  
12 reason why my clients have not been brought in.

13           Number two, she says there is no prejudice to my  
14 clients. Well, it depends on how you define prejudice. My  
15 clients have been living with this specter over their head for  
16 over a year trying to wait and see what is going to happen to  
17 them. So we do allege that they have been prejudiced.

18           And again, at the end of the day, there's no legitimate  
19 reason for the delay, even if you give them a few months of  
20 dealing with the issues with Mr. Swafford, Swaifford -- I  
21 apologize. I don't know how to pronounce his name. But at the  
22 end of the day, the information concerning my clients was well  
23 known over a year ago. And Mr. Routsis may not have been versed  
24 in civil law, but if he's going to take on this lawsuit, then  
25 it's up to him to find the personnel to assist him or go forward



1 with the knowledge himself. And just because he didn't know what  
2 he was doing should not be held against my clients.

3 THE COURT: Thank you. Miss Pierce or, Mr. Routsis or  
4 Miss Pierce.

5 MS. PIERCE: Thank you, Your Honor. It's alleged that  
6 Miss Kinion was simply responding to things. The reality is the  
7 charge that was made, the criminal charge that was brought  
8 against Mr. Spencer was a misdemeanor battery. It then got  
9 amended and changed to felony charges, including allegations of  
10 elder abuse, and those charges were procured as a direct result  
11 of Miss Kinion, among others, contacting the D.A.'s office. She  
12 was not a witness. She was not questioned by the police. She on  
13 her own reached out to the D.A. and said oh, I have all this  
14 information. And a lot of things she claimed were things that  
15 she was not a witness to. So she made allegations without facts.

16 The additional charges are different than the initial.  
17 That is procuring -- procuring charges, procuring criminal  
18 charges. The fact that there was one misdemeanor doesn't excuse  
19 the change that resulted as a result of her actions.

20 The immunity that's talked about here is a qualified  
21 privilege. It's not absolute immunity. NRS 41.637 defines  
22 immunity as a good faith communication, truthful, or made without  
23 knowledge of its falsehood. The facts show that there were  
24 multiple false representations by Miss Kinion in an attempt to  
25 get additional charges against Mr. Spencer. And those therefore

1 are not privileged.

2 The qualified or conditional privilege which we are  
3 talking about, which is cited in the motion on Circus Circus and  
4 Sahara Gaming, are cases of defamation. And again, those are  
5 cases where defamatory statements made in good faith on a subject  
6 matter in which the person communicating has an interest or in  
7 which he has a right or a duty.

8 Now, Miss Kinion had no interest in this case. She had  
9 no right or a duty to say the things that she did, and the  
10 statements were not made in good faith, because they were not  
11 true. The malice comes in, malice by definition is a statement  
12 made with the knowledge that it's false or there's reckless  
13 disregard for the truth. And the record will show that Miss  
14 Kinion was originally scheduled to be a witness in the criminal  
15 case, but because the D.A. found out that she had misrepresented  
16 things, she wasn't called as a witness at the time of trial.

17 THE COURT: You know this?

18 MS. PIERCE: I apologize, Your Honor. There's so many  
19 people in this case, that mixed that. And I apologize, and I  
20 will retract that statement.

21 But in the statements that she made in trial there were  
22 dishonest statements made. And that's not privilege.

23 In addition, there were statements made to  
24 Mr. Spencer's employer with an attempt to damage him in his  
25 business. And those were dishonest statements.

1 THE COURT: By Kinion?

2 MS. PIERCE: Among others, yes, Your Honor. And those  
3 are not privileged, and those were defamatory, they were done  
4 with the specific intent to cause him to lose his job.

5 The other thing I would say, Your Honor, is that there  
6 are parties who have joined in the motion for summary judgment,  
7 but NRCP 56C requires that each party set forward each fact  
8 material to the disposition of the motion which the party claims  
9 is or is not genuinely an issue. And citing to particular  
10 portions of pleadings, affidavits, depositions, interrogatories,  
11 answers, admissions, or other evidence. There are a number of  
12 allegations made in the motion for summary judgment for which  
13 there is no evidence provided in support. And the additional  
14 parties that joined in did not address their participation. The  
15 motion simply addresses Miss Kinion. So they have no basis to go  
16 forward on the motion.

17 MR. ROUTSIS: Your Honor, if I may. Your Honor, I was  
18 the trial attorney. And the representations made by counsel,  
19 certainly if he could prove that to a jury, he should win a jury  
20 trial. But when counsel articulates to this Court what happened,  
21 what I had said at one of the depositions, what I will get into  
22 now, is I don't think anybody has taken the time to read the jury  
23 trial transcripts.

24 Here's what happened, Judge. They arrested my client  
25 for a misdemeanor battery originally that evening.

1 THE COURT: They, Douglas County.

2 MR. ROUTSIS: Douglas County Sheriff. Maria Pence was  
3 the prosecutor at the time. She's the one that prosecuted the  
4 case. Pending the original filing of a misdemeanor battery, that  
5 was escalated to substantial bodily injury, which would have been  
6 a felony on its own, they filed significant charges of elderly  
7 abuse, a pattern of behavior. And these two separate, the  
8 elderly abuse charges was a direct result of Mary Ellen Kinion  
9 making allegations that she had been an eyewitness, and I  
10 believe, I forget, I think it was in December, that she was an  
11 eyewitness to Jeff Spencer taking a giant snowplow, of which he  
12 was employed, driving down the street, committing a battery,  
13 assault with a snowplow on Mr. Egon Klementi, who was in his  
14 driveway. Now, this by definition is malicious prosecution.

15 Here's what the evidence showed at trial, Judge. We an  
16 investigator take pictures from her driveway, presented evidence  
17 that it was factually impossible on that day to see what she  
18 claims to have saw. The police officer testified under oath that  
19 he was called out, there was a telephone call made, here is the  
20 conspiracy, Egon Klementi claims that he was assaulted by Jeff  
21 Spencer on a snowplow that day. The police officer came out and  
22 said there was no debris consistent with his claim, there was  
23 insufficient evidence to file a police report. I didn't file a  
24 police report, I did not write a police report. That incident,  
25 the evidence established at trial, never occurred.

1           Now, Mary Ellen Kinion said she called the police prior  
2 to having any conversation with Egon Klementi. The evidence  
3 establishes, and I guess this would be one of the foundations of  
4 conspiracy and malicious prosecution, the evidence established  
5 that Egon Klementi had contact with Mary Ellen Kinion. And it's  
6 our belief, and I forget how it was laid out now, he had called  
7 her, and then she made a call claiming to be an eyewitness.

8           Now, how can I be simple here? The evidence on that  
9 date established that there was a battery according to Egon  
10 Klementi. Mary Ellen Kinion, the evidence I think is  
11 unequivocal, was not a witness. She interjected herself that she  
12 was an eyewitness when it was impossible to be a witness.

13           There is another allegation of an alleged battery that  
14 occurred in the month of May where the police were called out by  
15 the Spencers. The police contacted the Klementis. The Klementis  
16 were told to stop harassing the Spencers and taking photographs  
17 of the Spencers. Later on after that date the Klementis claim  
18 that Jeff threatened a battery on them that date. When the  
19 police went out there and spoke to them, they never mentioned any  
20 evidence of a battery. These were two separate incidents that  
21 ended up causing an elderly abuse enhancement in the case.

22           Mary Ellen Kinion wrote a letter and interjected  
23 herself in the case with Maria Pence, claiming that she was a  
24 witness to numerous events that she was not a witness to. Mary  
25 Ellen Kinion, regarding the one significant snowplow incident,

1 and it's very hard to articulate this to the Court, was a central  
2 piece of our trial, in that they were alleging that my client  
3 drove a snowplow on a day where there was very little snow. We  
4 had video of it. Mr. Klementi said that he sped up as he was  
5 coming down the street.

6 Now, Mary Ellen Kinion's house is about 300 yards on  
7 the same street. The plow is giant. We took pictures of the  
8 plow from the back end. If Mary Ellen Kinion was located where  
9 she said she was located, there's virtually impossible that she  
10 would be able to see snow any coming off the blade in  
11 Mr. Klementi's driveway. She testified she saw it.

12 We put up the video pictures, big, giant pictures, at  
13 trial. I asked her how possibly could you see that Jeff  
14 assaulted this man with snow, ice, and debris if you can't see  
15 the snowplow? And I asked her a question at trial, do you have  
16 X-ray vision? And --

17 THE COURT: What was her answer?

18 MR. ROUTSIS: I forget her exact answer to that. But  
19 here's what happened, Judge, is this allegation, she could not  
20 have called the sheriff and been a witness to something she never  
21 saw. She waited over an hour before she made the call. She  
22 called the police an hour later and said I witnessed Mr. Spencer  
23 assault my neighbor with a snowplow, I believe it was an hour and  
24 45 minutes later, hour and 20 minutes later. During that period,  
25 it is our, and I believe we have the evidence by the admission of

1 Egon Klementi that he had contacted her and conspired with her to  
2 make her a witness to something she could not have seen.

3 And the jury clearly understood that. Because if they  
4 felt Jeff battered this man with a snowplow, they would have  
5 convicted him in a second.

6 She could not have seen it. She calls an hour and 20  
7 minutes later and says to the police my, Jeff Spencer is a  
8 snowplow driver, and he assaulted a man with a snowplow with ice  
9 and debris.

10 I asked the police officer was there any evidence Egon  
11 said snow came flying at him, he was in his driveway. There was  
12 no evidence of snow, debris, there was very little snow on the  
13 road. With the video evidence we established, the officer  
14 admitted, I said officer, you have a duty to write a report in  
15 the case if there's any evidence. That's correct. If you  
16 believe there's, if you believe there's a crime, you forward it  
17 to the D.A. or make an arrest. That's correct. You went out  
18 there. Was there any physical evidence consistent with a battery  
19 of debris and snow in Egon's driveway? No, there was not. Was  
20 there any evidence even sufficient to write a report in this  
21 case? No, there was not.

22 Now, this was clearly critical, critical evidence at  
23 this trial. This made this case, and this was one of the counts  
24 that made this case an elderly abuse pattern of behavior.

25 Miss Kinion, we submit to the Court, that's a question

1 for the jury. If counsel feels confident that they can win the  
2 case, then win your case. But I'll tell this Court right now I  
3 feel very confident that if we go to a civil trial, just like  
4 they believed me in the criminal trial, they will find Miss  
5 Kinion wrote a letter, she injected herself into the case on  
6 multiple counts, she was not a witness, she fabricated evidence,  
7 she lied under oath, and she testified to acts that never  
8 occurred, were impossible, by the police officer who will testify  
9 that it was, I had no evidence, not even enough to write a  
10 report. And that's just one act.

11 She also wrote letters to Jeff's bosses trying to get  
12 him fired from his job, defaming his name. She wrote a letter to  
13 the D.A. that we provided, that the other side has. The letter  
14 to the D.A. was critical, because when I started the negotiations  
15 with Maria Pence, she started hitting me with these arguments,  
16 well, the neighbors in this case say your clients are monsters.  
17 And I put on 15 character witnesses in the case. I knew when I  
18 started talking to all the other neighbors about these people  
19 that the Spencers were loved in that neighborhood. They won the  
20 case on good character evidence.

21 And why that's important is the attorney today never  
22 read, I don't believe he's ever read a transcript. So when he  
23 says that Miss Klementi did not initiate, cause, or participate  
24 in getting charges enhanced, that's completely untrue. This was  
25 originally a misdemeanor. And without reservation or hesitation



1 Maria Pence escalated these charges based on statements in the  
2 neighborhood from people that were not witnesses.

3 Now, we provided a letter, and I think you cited that  
4 letter. Miss Kinion, did you cite the letter to the Court?

5 MS. PIERCE: Yes.

6 MR. ROUTSIS: That letter, she inserts herself into  
7 situations. She was not a witness to any of these prior  
8 incidents.

9 And then, Judge, the other incident is in May. And I  
10 want to be simple and clear on this. My client was building a  
11 fence. He had been, in his feelings, constantly harassed from  
12 Egon Klementi, would come by and take pictures, take pictures.  
13 They had young men, friends working on their property. Egon  
14 Klementi had been on his property in the past taking pictures.  
15 They got tired of it. Egon Klementi walked down the street that  
16 day. Mr. Spencer said why do you keep invading our privacy? You  
17 keep taking pictures. Why do you do, please stop doing that.  
18 They called the police. Mrs. Spencer was so upset she called the  
19 police. The police came over. They said these people keep  
20 taking pictures, invading our privacy.

21 Judge, it is eerie, if you watch the videotape, what  
22 these people were doing. They drive home, the Klementis are out  
23 there taking pictures. I have talked to friends of the Spencers.  
24 Unnerving. I mean making their life miserable, complaint after  
25 complaint for de minimis violations to ruin these people's lives.

1 But one of the counts that the D.A. felt was compelling  
2 and was a basis for elderly abuse is on that date, and she was  
3 unaware of the facts, Maria Pence said well, your client  
4 assaulted Mr. Klementi and threatened to batter him that day.  
5 Well, at trial here's what the facts were. The police officer  
6 testified the Spencers call the police, they said he keeps coming  
7 on our property, we have video, he's taking picture, they are  
8 invading our privacy. The police officer went and knocked on the  
9 Klementis' door, said look, the Spencers have made complaints,  
10 are you taking pictures? If you do it again, you can't do it  
11 anymore. Okay, we won't do it. The police officer leaves.

12 Trial begins. All of a sudden the testimony is that  
13 Jeff Spencer assaulted him that day. Egon Klementi testifies  
14 under oath, Elfriede Klementi corroborates it, that when the  
15 police came over that day, I asked her why did she tell the  
16 police, if your husband was assaulted that day, the police  
17 knocked on the door, they accused you of taking pictures, you are  
18 saying your husband was assaulted 30 minutes prior. But you  
19 never told the police. Why? Well, we don't do things like that.  
20 What do you mean you don't do things like that? We don't  
21 complain. This is the examination, the testimony. And I told  
22 the jury in opening argument, when you hear the testimony of  
23 these people, it is eerie.

24 I said Miss Klementi, and Egon, you make a complaint if  
25 they start their car in the morning. Actually he was originally

1 furious because he smelled diesel fuel. You complain if their  
2 fencepost is two inches too high. You expect us to believe, you  
3 know, ladies and gentlemen, you know, at the closing, they are  
4 now saying elderly abuse, that he assaulted this man on a May  
5 day, when they called the police, and the Klementis never  
6 mentioned it.

7 In the letter from Miss Kinion, and I may be incorrect,  
8 but I believe she said, quote, there was an assault on that May  
9 day. And it certainly implies she was a witness to that assault.  
10 And it had an effect on the prosecution that filed elderly abuse  
11 charges.

12 Can you corroborate that?

13 But she wrote a letter listing counts that elevated  
14 this case from what was a battery, a simple battery.

15 Now, the underlying crime in this case was -- Jeff  
16 threatened to punch Egon in the face. This is a letter that by  
17 definition, I submit to counsel, is an admission of malicious  
18 prosecution. She has intervened to escalate charges against  
19 these people. Can you imagine being accused of elderly abuse  
20 when everybody in the neighborhood loves you? She's writing a  
21 letter, you read the letter, she wasn't a witness to anything  
22 that she alleges. The jury found that. Now, I believe that.  
23 Impossible.

24 But she was certainly not a witness to this event.  
25 Jeff threatened to punch, Jeff accosted Egon in the street and

1 yelled at him about coming on his property and taking pictures.  
2 Marilyn and Janet Wells, a neighbor, joined him. Jeff threatened  
3 to punch Egon in the face. The same day Marilyn and Jeff made a  
4 complaint that Egon was harassing him.

5 I can tell you that these charges were escalated when  
6 Maria Pence turned, when I thought I could get the case  
7 dismissed, because this is one of the most bizarre cases you'll  
8 have run across, Judge. The Klementis were taking pictures, they  
9 come all the time taking pictures, even after the Spencers asked  
10 them not to. The night in question there had been, we put on  
11 evidence of tremendous amounts of vehicular burglaries in the  
12 neighborhood. Mr. Spencer was on his deck that night. It was  
13 very, very dark. We have video. Mr. Klementi is out on the  
14 street right next to his car, Jeff is on the upper deck. Helmut  
15 Klementi admits Jeff asked him who are you, what are you doing  
16 next to my car, and he didn't answer. He said what are you  
17 doing? Jeff ran down on the street.

18 The reason, the jury instruction that won the case was,  
19 I got Judge Gibbons to grant a jury instruction on a civil  
20 arrest. And I asked Mr. Klementi, why didn't you identify  
21 yourself when Mr. Klementi asked you who are you, what are you  
22 doing. You are right next to his property, you are next to his  
23 truck. And then he started walking away, and Jeff ran out and  
24 ran into him, and he fell down. And Jeff was like in shock. And  
25 that was the event.

1           But a lot went into that. A lot of, a lot went into  
2 this man having to go to trial for two weeks on aggravated  
3 charges where, and I'll briefly address the Shaws. She's here,  
4 she wants to talk about a summary judgment motion. This is a  
5 jury trial issue. And I feel very comfortable that we will win  
6 the jury trial, because the conduct of Miss Kinion in her letter  
7 interjecting herself, I can tell the Court, did have an effect,  
8 was responsible for charges being filed. I was there. I saw the  
9 evidence, I saw the testimony. It aggravated this case to  
10 elderly abuse. It made this case a very, very serious case. She  
11 was not a witness.

12           I submit that if counsel is good trial counsel, which  
13 I'm sure he is, then you could prove she was an eyewitness on  
14 December 18 when Jeff Spencer was accused of felony assault with  
15 a snowplow that factually was impossible. The cop corroborates  
16 that.

17           Judge, I can tell you from being part of the trial that  
18 these neighbors were involved in conduct that, if the jury  
19 believes, they will get a very big judgment. And I believe they  
20 should, and I'll tell you why. This man had to go to trial.  
21 He's gotten ill, he doesn't sleep. They painted a picture of  
22 this man that is entirely untrue. And they interjected facts  
23 into the case as though they were witnesses. They were not.  
24 That's the definition of malicious.

25           There's no good faith in this case. We submit that she

1 did not call the police because she saw. She called the police,  
2 and we will establish by clear and convincing evidence, because  
3 she was in conversations with the Klementis, and we believe that  
4 he clearly asked her to be a witness in the case. That explains  
5 the hour and 20 minute delay.

6 And clearly on an issue for summary judgment I think  
7 the simplicity is what's just, what's right, and what is fair.  
8 We have a case, and I think we will win the case, and I think we  
9 can prove the case. All the arguments he made were very  
10 eloquent, but the problem is the foundation for them is not true.  
11 They did initiate, they did cause, they did participate. There  
12 was no good faith.

13 I'll submit it on that.

14 THE COURT: Any comment?

15 MR. GLOGOVAC: I'll try to be brief, Your Honor, and  
16 try to refrain from being overly glib.

17 The first thing I want to say is I'm glad my clients  
18 were here today so that Your Honor could see this is a real  
19 rogues gallery of malicious prosecuting folks here out to harm  
20 Mr. Spencer and his life and subject him to criminal proceedings.  
21 That's number one.

22 Secondly, Mr. Routsis is a capable criminal defense  
23 attorney, so he well knows that his closing arguments and his  
24 opening statements, as he just delivered here, are not only not  
25 evidence in the criminal case he defended, they are certainly not

1 evidence here, Your Honor. Also, he should well know that  
2 vouching for the credibility and the merit of his case has no  
3 weight and should in no way influence this Court as to what  
4 should be done on the motion for summary judgment.

5 Finally, more directly to the merits, Your Honor, all  
6 of the things that Mr. Routsis said are his factual allegations.  
7 As you notice, many times he said there were allegations of, and  
8 we believe, and I contend, and I can tell you for certain.  
9 That's just all Mr. Routsis saying that. But what isn't in front  
10 of this Court is the one critical thing that he needs, and that  
11 is something from the D.A.'s office that says the reason that we  
12 charged Jeff Spencer with these additional things is because what  
13 Mary Ellen Klementi told us. And they don't have that.

14 This isn't getting past a motion to dismiss now where  
15 because they alleged it, they get to go forward. This was a  
16 motion for summary judgment on the malicious prosecution claim.  
17 And if they wanted to establish that the D.A.'s office prosecuted  
18 the case the way it did because of what Mary Ellen Klementi said,  
19 then they should have provided evidence, admissible evidence of  
20 that.

21 The letter that he was reading from was just handed to  
22 me for the first time today. I don't believe it's in the Court's  
23 file. There have been some problems on their side in  
24 reconstructing Mr. Routsis' file, and they are trying to do that.  
25 But even if you can say there's in here that Mary Ellen Kinion

1 said that was proven or not believed by the jury in the criminal  
2 trial, this letter was still prepared and provided to the D.A. by  
3 a person who is a witness to a criminal case.

4 So the fact of the matter is that Mary Ellen Kinion and  
5 these individuals aren't the ones that initiated the criminal  
6 prosecution against Mr. Spencer, and there's no credible evidence  
7 that they are the ones that enlarged it, accelerated it, added  
8 depth to it. There's no evidence of that. There's just  
9 Mr. Routsis' arguments and allegations that that's what happened.

10 Now, the one thing that I heard from Miss Pierce that I  
11 think should give all of a little bit of pause is, she mentioned  
12 that there were statements to the employer that were made by my  
13 clients, and that the allegation is that those statements were  
14 made to the employer to try to harm him economically and cause  
15 him to lose his job. Those things weren't alleged in the  
16 original counterclaim. The original counterclaim focused in on  
17 the criminal proceedings. It didn't focus on, nor alleges  
18 malicious prosecution and conspiracy to commit malicious  
19 prosecution. That's all the original counterclaim alleged.

20 Now, in the amended counterclaim that's been proffered,  
21 there are allegations that communications were made by my clients  
22 to KGID, the employer -- well, my understanding is Mr. Spencer  
23 worked for a contractor who provided snow clearance or snow  
24 clearing services to KGID up at the lake. That's my  
25 understanding. To the extent that there were any communications



1 with the employer, that is new stuff, and it could be possible  
2 for this Court, in fashioning a remedy here today, to say that  
3 any counterclaim that is permitted to be filed by Mr. Spencer can  
4 address those private types of concerns, but anything that goes  
5 to this allegation that somehow some way Mr. Spencer was  
6 subjected to the criminal prosecution that he was subjected to  
7 because of what my clients did should be resolved today.

8 A motion for summary judgment, again, was filed on  
9 that. And there is not admissible evidence in the record that  
10 establishes, there's nothing in the record that establishes that  
11 the D.A.'s office charged the case the way it did or amended  
12 charges based upon what my clients did. And beyond that, there  
13 is no evidence of malice.

14 Now, I understand that Mr. Spencer believes, and his  
15 counsel believes, that things were said by my clients that  
16 weren't accepted by the jury in the criminal court case, and he's  
17 upset about that. I can understand that. But that doesn't mean  
18 in any sense that my clients acted in a frame of mind of malice.  
19 There is no evidence of bad faith. Cross-examination by  
20 Mr. Routsis that gets a jury to believe a witness was not  
21 credible, and therefore they don't buy that person's testimony  
22 doesn't equate to bad faith. And that's essentially what he's  
23 arguing. He's reliving a nice result for himself in which he  
24 convinced a jury certain witnesses aren't to be believed. That's  
25 fine. We congratulate him for that, Mr. Spencer thanks him for

1 that. But that doesn't mean my clients somehow some way now have  
2 to face claims that they acted in bad faith. There's no evidence  
3 of that.

4 Again, this is a summary judgment proceeding. The fact  
5 that they have made allegations that they believe they will win,  
6 it doesn't matter. They haven't properly opposed, and they  
7 haven't substantively opposed the motion.

8 So I believe the motion for summary judgment on the  
9 original counterclaim should be granted.

10 This Court has pointed out that there's an amended  
11 complaint by Helmut Klementi pending that gets to be answered by  
12 Mr. Spencer. If he wants to add counterclaims in that, it should  
13 be limited to private communications only. Anything that ties  
14 into the process, the criminal process, however that claim is  
15 going to be characterized, whether it's characterized as  
16 malicious prosecution, intentional infliction of emotional  
17 distress, anything else relative to communications by my clients  
18 with the government, law enforcement, the prosecutor's office,  
19 those claims should be dismissed -- well, not allowed under the  
20 amended counterclaim, Your Honor.

21 That would be our submission.

22 THE COURT: Miss Capers, any comment?

23 MS. CAPERS: I don't have anything to add.

24 MS. PIERCE: Your Honor, may I have a minute in  
25 response?

1           The opposition to the motion for summary judgment,  
2 Exhibit 1 was the criminal complaint that was originally filed  
3 for a misdemeanor count of battery. Exhibit 2 was an amended  
4 information filed May 9 with a felony count of abuse and two  
5 misdemeanor, gross misdemeanor counts of abuse of Egon and  
6 Elfriede Klementi. In between those two times is this letter  
7 which was the subject of the subpoena and the motion that was  
8 made to compel the D.A.'s office to produce documents in the  
9 record, or documents that they had in the course of the criminal  
10 proceeding.

11           It was recently, before we arrived here today, it was  
12 discovered that Mr. Routsis' investigator in the criminal matter  
13 had kept a file of some documents which we are going through now  
14 to produce in this matter. And some of them were D.A. documents  
15 which I provided today. I'd be happy to provide a copy to Your  
16 Honor.

17           THE COURT: Go ahead and mark it for the purposes of  
18 this hearing.

19           MS. PIERCE: And this shows as received by the D.A.'s  
20 office on February 22, 2013, in between the time of the original  
21 simple misdemeanor battery and the increase of charges to felony  
22 and gross misdemeanors. And that is a letter from, that  
23 Mr. Routsis was talking about, from Mary Ellen Kinion to the D.A.  
24 representing things that she was not a witness to.

25           And the definition of malice, legal definition of

1 malice is saying something that either you know to be untrue or  
2 without a reasonable belief that it's true. To assert yourself  
3 in a criminal proceeding where she was not a witness, claimed to  
4 be a witness, and say things that were not true is the definition  
5 of malice and malicious prosecution. She instigated charges  
6 because of her letter.

7 MR. ROUTSIS: I just want to read one thing, Judge.  
8 Here's your case. "When Jeff drove past him," this is the date  
9 that she alleged an assault and battery that never happened, and  
10 we believe that this is by definition malicious prosecution.  
11 "When Jeff drove past him, he turned the blade on the snowplow to  
12 spray Egon with ice and snow. Egon was fortunately not hurt."

13 This was reported, and she's saying she was a witness  
14 to that. We submit that this is a jury question, because we  
15 submit this is malicious prosecution, it elevated the charges.

16 And very briefly, Judge. When, I don't know if he's  
17 ever been a criminal defense or prosecutor, but to say that our  
18 standard is to show that we need a district attorney to give a  
19 statement admitting the conduct of Mary Ellen Kinion caused this  
20 specific charge to be filed, you'd never have malicious  
21 prosecution. But if we come forward and say this man was  
22 prosecuted, and we can show that it was malicious, and the facts  
23 that were interjected by Mary Ellen Kinion, among others, was  
24 untruthful and elevated the charges, I don't need the D.A. The  
25 D.A. may not know exactly why they amended. They may have

1 amended because of that, they didn't like somebody else. But our  
2 duty was to show it was malicious and it was untrue and the  
3 charges were escalated as a result of that, and I think we have  
4 met all three.

5 MS. PIERCE: Numerous exhibits that were attached to my  
6 opposition, Your Honor, were quotes from sections from the trial  
7 transcript. And my Exhibit 4 shows that Miss Kinion wrote the  
8 deputy D.A. And the purpose, her stated purpose was, quote, to  
9 try and get her to prosecute Mr. Spencer. And she admitted that  
10 she, the D.A. had not asked her to write the letter.

11 So by her own testimony in the trial, she admitted she  
12 inserted herself into this legal proceeding for the specific  
13 purpose of procuring charges against Mr. Spencer. And other  
14 places in the transcript which were quoted in here show that she  
15 was stating as facts in that letter things that were not facts,  
16 which by definition is malice and grounds for malicious  
17 prosecution.

18 MR. GLOGOVAC: Your Honor, you are rubbing your hands,  
19 so I hesitate to stand up and talk further. But since it is our  
20 burden here, I just wanted to point one thing out.

21 If you look at the Exhibit 1 that Miss Pierce pointed  
22 out, the original criminal complaint was filed January 16, 2013.  
23 The amended information with more serious charges was filed May  
24 19, 2013. And the amended information contains a witness list,  
25 and Mary Ellen Kinion's name is not on the witness list. This is

1 funny business about how they are timing the letter and the  
2 amended information. If Mary Ellen Kinion was the polestar of  
3 this amended information, why isn't she on the witness list?

4 I mean there's a sense of desperation on this side. I  
5 get that. There's just no evidence that actually establishes in  
6 response to a motion for summary judgment that my clients  
7 prompted the criminal prosecution to move forward in the way it  
8 did.

9 I believe Miss Capers did want to add one thing.

10 MS. CAPERS: I just wanted to add one thing. I was in  
11 the situation not too long ago in a trial, and I pose the  
12 question to the judge: So if you allow this to go forward based  
13 upon their premise that there was an original complaint, then the  
14 letter from Miss Kinion, and then the charges were elevated, what  
15 in essence is going to happen is that you are asking the jurors  
16 to speculate as to why there was a change in the complaint.

17 Now, they want you to believe it's because of her  
18 letter. But do you have any evidence with one hundred percent  
19 assurance as to why they changed those charges? And because we  
20 do not, if you allow it to go to the jurors, again, the only way  
21 they can find in their favor is to actually speculate.

22 So even if we get to trial, they finish their case,  
23 guess what, we are going to be asking for a judgment as a matter  
24 of law, because there's no evidence presented. We want  
25 inferences, inferences based upon a letter that was received by

1 her and then changed by the D.A.

2 If my co-counsel has an answer to Mr. Routsis'  
3 question, I have been a prosecutor, I have been a criminal  
4 defense attorney, but at the end of the day the decision whether  
5 or not to go forward, as you know, Your Honor, all rests with the  
6 state and that prosecutor.

7 THE COURT: You know, I really -- I'm going to ask,  
8 submitted?

9 MR. GLOGOVAC: Yes, Your Honor.

10 THE COURT: Well, you are not involved.

11 MS. CAPERS: I'm just here.

12 THE COURT: You are just here. I have seen you sit at  
13 the table. I'm pointing to you, Miss Capers.

14 It's really interesting. If I would have had what  
15 Mr. Zaniel got from the D.A. today, this would have been a little  
16 bit easier call. I'm not trying to get out of anything, because  
17 look at exactly what I'm doing. And by the way, ending my 26th  
18 year, this ain't my first rodeo. Okay? So I want to make sure  
19 that I'm correct with the decision.

20 So I'm going to withhold making a call on the motion to  
21 amend. I'm going to withhold making a call on the motion for  
22 summary judgment until Mr. Zaniel turns the -- well, you got a  
23 hard drive, and you got evidence coming from the D.A.

24 MR. ZANIEL: Yes, Your Honor.

25 THE COURT: And I will say this. You know, I might

1 even want to talk to the D.A. Is she still here?

2 MR. ROUTSIS: She's a defense attorney now. A public  
3 defender, I think.

4 THE COURT: It doesn't matter. I still might want to  
5 talk to her. Do you follow me? Because it's important, if you  
6 talk about Rule 15, liberal pleading, you know, I should allow  
7 the amendment. If you talk about ending this thing, and by the  
8 way, I got to say this, this isn't Ferguson, Missouri. Hello.  
9 This is Douglas County, Nevada. Gardnerville, Minden, nice,  
10 wonderful, wonderful people. I almost ask why are you taking  
11 pictures? I don't even want to know. Do you see what I mean?  
12 But it's not Ferguson.

13 And so if I had a tendency to enter anything, I would  
14 grant the motion for summary judgment and disallow the motion to  
15 amend. But I want to find out if Miss, is it Kinion? Yes. If  
16 Miss Kinion was involved. If she's involved, you stuck your nose  
17 into something that you shouldn't have if you didn't see it.

18 So anyway, with that said, I wish everybody happy  
19 holidays, Merry Christmas. I'll be politically incorrect and say  
20 Merry Christmas, because I want to say Merry Christmas.

21 And as soon as, you know, follow the protocol.

22 Mr. Brown, by the same token, I would like to myself,  
23 in camera, take a look at the hard drive. What's the difference  
24 between the hard drive and the physical evidence, I'll call it.

25 MR. ZANIEL: Your Honor, the district attorney's office



1 is going to send over all discoverable material from the trial  
2 that we don't know, we don't have a copy of any that. That's the  
3 reason for the subpoena. Recently there was some information  
4 found, but in the next two weeks, according to the deputy D.A.,  
5 we should have that entire file. As soon as I get that file, I  
6 will disseminate it to all parties. If you would like, I will  
7 disseminate it and file it with the Court.

8 THE COURT: Please. Give it to me.

9 MR. ZANIEL: In terms of the drive, this is the drive.  
10 I believe that there was a request for time prior to and after  
11 the event, and I believe that this is the drive that may or may  
12 not have that information on it. They have requested the  
13 information. We are going to comply with that request.

14 THE COURT: Well, I'll curl up with it some winter  
15 evening.

16 MR. ZANIEL: Your Honor, as a matter of housekeeping, I  
17 don't think anybody's answered the amended complaint. I don't  
18 think there's ever been an order granting Helmet Klementi's  
19 amended complaint. I don't know if that was a discussion that we  
20 had that we would wait for the order to be signed before  
21 answering it or not.

22 But just as a matter of housekeeping, here's an order  
23 that grants that amended complaint. I think that probably should  
24 be filed, just to keep the record straight, because somehow this  
25 case may not end. So as a matter of housekeeping, I think the

1 order allowing Helmut Klementi to amend his complaint be signed  
2 today. The complaint is already on file, so I don't think Mr.  
3 Brown would need to file anything again. We will have the  
4 defendant, and counterclaimants will have 20 days to file a  
5 responsive pleading to that answer.

6 THE COURT: There's no objection to Mr. Klementi's  
7 amended complaint.

8 MR. BROWN: Your Honor, you granted it at that last  
9 hearing we had, and I think this order probably followed that. I  
10 think you said go ahead and file it at the time.

11 THE COURT: Right. And then either re-serve it, and --

12 MR. ZANIEL: I remember that. I don't need to be  
13 re-served.

14 MR. GLOGOVAC: In light of this, though, Your Honor, I  
15 would propose that no party file a responsive pleading to the  
16 amended complaint until you have ruled on these motions and you  
17 table it for the time being, because it may affect what they get  
18 to file. Does that make sense?

19 THE COURT: I'm not going to do it within 20 days from  
20 today, because I won't have it.

21 MR. GLOGOVAC: That's okay. Your rulings are a  
22 cornerstone at this point, and I think the parties should wait.

23 THE COURT: Let's wait until everybody sees this  
24 information from the district attorney before you file responses.

25 MR. BROWN: Your Honor, one of the things I'd just like

1 to address, and I completely agree with the rulings, but this  
2 case has been around for a while. I want to get this case going.  
3 Is there some kind of timeline that we can put on disclosing this  
4 information, this new information that's come out? And I don't  
5 know if there's, I don't think we talked about any supplemental  
6 pleadings or anything, but if there's, or do you just want to see  
7 this evidence? I'm just worried about timing. I know my client  
8 wants to get this case --

9 THE COURT: When was it filed? When was the first  
10 complaint filed?

11 MR. ZANIEL: First complaint was filed 12/17/14.

12 THE COURT: Well, I feel, you know, I feel bad for the  
13 parties. But we are not running up against any five-year rule or  
14 anything like that.

15 MR. ZANIEL: Your Honor, the deputy district attorney  
16 said he would have what we have requested within two weeks. So I  
17 don't know if that helps with timing.

18 THE COURT: It does.

19 MR. BROWN: What's the procedure after that, Your  
20 Honor?

21 THE COURT: I want to take a look at it. Because  
22 frankly, I will be waiting to supplement the motion to amend or  
23 supplement the motion for summary judgment. Do you see what I  
24 mean?

25 MR. BROWN: Understood.

1           THE COURT: I could set a hearing here six weeks from  
2 now. Do you think that would give us enough time if you get it  
3 out?

4           MR. ZANIEL: I think that's a good idea, Your Honor.  
5 At that hearing then you will direct either the parties to file a  
6 response -- well, I'm going to be filing responsive pleadings  
7 either way, but whether their counterclaim can be filed or not.

8           THE COURT: Yeah, I can make a call. Especially if you  
9 get it in two weeks, three weeks, go ahead and supplement. If  
10 you don't supplement, go ahead and submit. After you take a look  
11 at this information from the D.A, both parties, then submit it.  
12 And I will give, I think six weeks, I'll give you two months.  
13 But I think six weeks is enough time. But you tell me if it's  
14 not.

15           MR. ROUTSIS: Your Honor, would that be an amended  
16 supplemental motion to dismiss the summary judgment motion, from  
17 our perspective?

18           THE COURT: Yes.

19           MR. ROUTSIS: Very good.

20           THE COURT: There might be supplements on this side.  
21 Because frankly, if there's nothing in there about Kinion, that's  
22 district attorney discretion as far as I'm concerned.

23           MR. ZANIEL: Your Honor, may I approach with the order  
24 granting Helmut Klementi's motion to amend complaint?

25           THE COURT: Yes. I'm going to my calendar, 2017. I'm

1 going to assign -- this is May of '16. Wow.

2 Did you understand what I'm saying? This order  
3 granting Helmut Klementi's motion for leave to amend complaint is  
4 this blank day of May.

5 MR. ZANIEL: So if you just cross out and put December,  
6 Your Honor, based on your rulings today, there will be no  
7 responsive pleadings to that until after we meet again on a next  
8 hearing date which you are about to announce.

9 THE COURT: Yes. And Miss Pierce, just so you know, I  
10 signed an order today, the 15th of December, to get you in as  
11 co-counsel.

12 MS. PIERCE: Thank you, Your Honor. I received a copy  
13 of that today.

14 THE COURT: All right. Friday, January 27, that's  
15 about, yeah, that's about six weeks. Is that all right?

16 MS. CAPERS: I'm just checking very quickly, Your  
17 Honor.

18 THE COURT: Have the clerk check, too.

19 MR. BROWN: I'm available, Your Honor.

20 MR. ZANIEL: Your Honor, I have depositions in Carson  
21 City at eleven and at one. Can we have it at three o'clock?  
22 Would that be enough time for the Court? Or nine o'clock in the  
23 morning, Your Honor. Because I can go here, and then I can go to  
24 my depositions.

25 THE COURT: How about the 30th, Monday the 30th? We

1 are checking with the court first, John, and then with you. That  
2 week?

3 MR. BROWN: What day, Your Honor? The 30th?

4 MS. CAPERS: I'm good all day.

5 MR. GLOGOVAC: That's the week before I coach the  
6 Raiders to the Superbowl championship.

7 MR. ZANIEL: I have a court call, Your Honor, at 10:00  
8 a.m., and that's the only thing on my calendar that day.

9 THE COURT: Let's do it at 1:30.

10 MR. GLOGOVAC: On January 30.

11 THE COURT: Yes.

12 MR. GLOGOVAC: We had talked about setting the trial.  
13 Will we wait to do that?

14 THE COURT: I want to wait. That's kind of what I  
15 meant when I said we are not approaching the five-year rule. So  
16 1:30, January 30. Everybody have pleasant holidays. And I'll  
17 see you, weather permitting and God willing, on the 30th.

18 Thank you very much for the presentation. Both the  
19 parties. And Mr. Glogovac, you can pinch hit for me any time. I  
20 will say that.

21 MR. GLOGOVAC: Thank you, Your Honor.

22 THE COURT: How many times have any of you at these  
23 tables go hey, I can't make it, here's the case, would you go in?  
24 I bet you it's a little bit more.

25 (Off the record.)

1 THE COURT: By the way -- let's go back on the record.  
2 Does anybody have any objections for me to call the D.A. that --

3 MS. CAPERS: I would prefer it.

4 THE COURT: The then D.A. Anybody?

5 MR. BROWN: Your Honor, I would prefer it. I spoke to  
6 the former prosecutor that was on this case, and I think what you  
7 have heard from Miss Capers you will, I think you will be able to  
8 confirm that.

9 MR. ROUTSIS: Yeah, I think.

10 THE COURT: You can't say no.

11 MR. ROUTSIS: It can't hurt.

12 THE COURT: I put you in a position that you can't say  
13 no.

14 Right. I'd want to do it. In other words, I have been  
15 a D.A. myself, and I totally understand prosecution discretion.  
16 And I just want know for the purpose of the motion and the  
17 amendment and the motion. Okay. What's her name?

18 MR. ROUTSIS: Maria Pence. And can we each propose  
19 just one question to ask her?

20 MR. ZANIEL: Why don't we just have an evidentiary on  
21 the issue? Because if it's going to become part of the record,  
22 and your decisions will be based on what she says, doesn't that  
23 have to be part of the record for appellate issues?

24 THE COURT: That's probably why I asked you does  
25 anybody object. So we might be sooner than the end of January.

1 Because I'm going to call her and see available dates for her  
2 with the law clerk.

3 MR. BROWN: She's a private defense attorney now, Your  
4 Honor.

5 THE COURT: She's here in Douglas County?

6 MR. ROUTSIS: She's on the alternates public defender's  
7 list here in Minden.

8 THE COURT: Okay. Thanks.

9 (3:15 p.m., proceedings concluded.)

10 -o0o-



1 CASE NO. 14-CV-0260

2 Dept. No. **II**

**RECEIVED**

JAN 30 2017

Douglas County  
District Court Clerk

**FILED**

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BOBBIE R. WILLIAMS  
CLERK

BY *[Signature]* DEPUTY

5 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

6 **IN AND FOR THE COUNTY OF DOUGLAS**

7 HELMUT KLEMENTI,

8 Plaintiff,

9 vs.

10 JEFFREY D. SPENCER

11 Defendant.

**SUPPLEMENTAL  
OPPOSITION TO MOTION  
FOR SUMMARY JUDGMENT**

12 \_\_\_\_\_ /  
13 JEFFREY D. SPENCER,

14 Counterclaimant,

15 vs.

16 HELMUT KLEMENTI, an individual, EGON  
17 KLEMENTI, an individual, ELFRIEDE  
18 KLEMENTI, an individual, MARY ELLEN  
KINION, an individual, and DOES 1-5,

19 Counterdefendants.  
20 \_\_\_\_\_ /

21 Defendant/Counterclaimant JEFFREY D. SPENCER supplements his Opposition to Counter-  
22 defendant MARY ELLEN KINION's Motion for Summary Judgment. This supplement incorporates  
23 pleadings and papers on file herein, and Points and Authorities, Declarations and Exhibits following  
24 hereto. This Supplemental Opposition is to address the letter MARY ELLEN KINION wrote to  
25 Deputy DA Pence, admitted in the prior hearing and confirmed by the response to subpoena on the  
26 Douglas County District Attorney's Office, and to address in part oral argument by counsel for the  
27 various Counterdefendants at the prior hearing on the Motion for Summary Judgment. The Exhibits  
28 are identified as "Supplemental Exhibits" following in number the Exhibits of the original  
Opposition, with a new Exhibit List incorporating both for convenience of the Court.

1 **POINTS AND AUTHORITIES**

2 **A. DATES RELEVANT TO CRIMINAL PROSECUTION**

3 01/16/2013 Criminal Complaint, Count 1, misdemeanor battery on a person over 60 years of age,  
4 that December 18, 2012, JEFFERY SPENCER struck HELMUT KLEMENTI "in the  
back and knocked him to the ice covered road". Opposition Exhibit 1.

5 02/21/2013 Unsolicited letter from MARY ELLEN KINION to Deputy DA Maria Pence.  
6 Supplemental Exhibit 8.

7 02/22/2013 Preliminary Hearing.

8 05/09/2013 Amended Information:  
9 Count 1, felony abuse of an older person by JEFFERY SPENCER resulting in  
substantial bodily harm of HELMUT KLEMENTI;  
10 Count 2, gross misdemeanor abuse of an older person by JEFFERY SPENCER of  
EGON KLEMENTI by yelling and/or threatening him, and/or using a snowplow to  
11 attack him; and,  
Count 3, gross misdemeanor abuse of an older person by JEFFERY SPENCER of  
12 ELFRIEDE KLEMENTI by causing her mental anguish related to actions against  
EGON KLEMENTI and/or HELMUT KLEMENTI. Opposition Exhibit 2.

13 09/27/2013 JEFFREY SPENCER was acquitted of all charges with Jury Verdicts of Not Guilty  
on Counts 1, 2, and 3 after a two week trial. Opposition Exhibit 3.

14 **B. MARY ELLEN KINION'S LETTER TO DEPUTY DA MARIA PENCE**

15 MARY ELLEN KINION admits in her Motion for Summary Judgment that she was not a  
16 witness to the December 18, 2012, event which resulted in Mr. SPENCER being originally charged  
17 with misdemeanor battery of HELMET KLEMENTI. In February 2013, after Mr. SPENCER was  
18 charged with misdemeanor battery, Ms. KINION wrote a letter to Deputy DA Maria Pence, with  
19 numerous accusations against Mr. SPENCER going back to May 2012. Supplemental Exhibit 8.

20 Ms. KINION was not a witness to the December 18, 2012 incident. Ms. KINION testified  
21 at trial that **the Deputy DA did not ask her to write the letter**, and she testified **the purpose of her**  
22 **letter was "to try and get her to prosecute Mr. Spencer."** Opposition Exhibits 4 & 6;  
23 Supplemental Exhibit 9, Trial Transcript of September 19, 2013, pgs 266-267.

24 Ms. KINION's allegations against Mr. SPENCER in her unsolicited letter to the Deputy DA  
25 included 1) an alleged threat of physical violence by Mr. SPENCER to EGON KLEMENTI on May  
26 27, 2012; 2) an alleged assault and battery by "snowplow" of EGON KLEMENTI on December 12,  
27 2012; and, 3) an alleged assault and battery of HELMET KLEMENTI on December 18, 2012.  
28 Supplemental Exhibit 8. The evidence supports that she did witness any of these alleged events.

1           **Following are the three false allegations of Ms. KINION**

2           **1. 05/27/2012 - Alleged assault of EGON KLEMENTI**

3           **Ms. KINION's Accusation**

4           In her unsolicited letter to Deputy DA Pence, Ms. KINION accused Mr. SPENCER of  
5 threatening to punch EGON KLEMENTI in the face on May 27, 2012. This was several months  
6 after this alleged May 27, 2012 incident. Supplemental Exhibit 8.

7           **Material Facts**

8           Ms. KINION was not a witness to that alleged assault on May 27, 2012. Supplemental  
9 Exhibit 10, Trial Transcript of September 20, 2013, pgs 3-4. The only supposed eyewitness who  
10 testified at trial and made this claim was the alleged victim EGON KLEMENTI.

11           In regard to the alleged assault on May 27, 2012, Mrs. Spencer called 911 to complain about  
12 EGON KLEMENTI coming on their property and taking photographs. In response to the 911 call,  
13 responding Officer Flagg spoke to EGON KLEMENTI to advise him of the complaint and warn him  
14 that if he went on the Spencers' property he would be subject to arrest for trespassing. EGON  
15 KLEMENTI made no statement to the Officer about any alleged assault by Mr. SPENCER that day.  
16 Opposition, Exhibit 4.

17           This allegation was one basis of the amended and additional charges of elderly abuse against  
18 Mr. SPENCER of which he was acquitted.

19           **Conclusion**

20           Mr. SPENCER asserts this alleged crime never occurred, as evidenced by EGON  
21 KLEMENTI making no statement of any such assault to the Officer who responded to the call by  
22 Mrs. Spencer that day. This is a material issue of disputed fact for a jury as to malicious prosecution.

23           Mr. SPENCER also asserts that the timing of the letter to the Deputy DA including this  
24 accusation, and the totality of the circumstances, support a conspiracy to fabricate this crime between  
25 EGON KLEMENTI and MARY ELLEN KINION. These are material issues of disputed facts for  
26 a jury as to conspiracy.

27           ///

28           ///

1 **2. 12/12/2012 - Alleged assault and battery of EGON KLEMENTI with a snow plow**

2 **Ms. KINION's Accusation**

3 In her unsolicited letter to Deputy DA Pence, Ms. KINION accused Mr. SPENCER of  
4 assaulting and battering EGON KLEMENTI with a snowplow on December 12, 2012. She alleged  
5 Mr. SPENCER drove by her with a "big grin" on his face, picking up old snow and road debris with  
6 the plow which he then propelled onto EGON KLEMENTI in his driveway. She claimed she called  
7 EGON KLEMENTI and then 911 to report this. Supplemental Exhibit 8.

8 Ms. KINION made the same allegations under oath at Mr. SPENCER's criminal trial, that  
9 on December 12, 2012, she saw Mr. SPENCER use his snowplow to assault and batter EGON  
10 KLEMENTI. Opposition Exhibit 4; Supplemental Exhibit 9, Trial Transcript of September 19,  
11 2013, pgs 256, 261-264.

12 In Ms. KINION's Motion, she claims under penalty of perjury: 1) she "immediately called"  
13 EGON KLEMENTI, and then "later" called 911 to advise she was a witness to the assault and  
14 battery with a snowplow; 2) she "thinks" she saw Mr. SPENCER driving that snowplow; and 3) she  
15 did not make a written statement of this accusation.

16 **Facts**

17 Contrary to her statement under penalty of perjury in her Motion, Ms. KINION did make a  
18 written statement of this accusation by her unsolicited letter to Deputy DA Pence. Supplemental  
19 Exhibit 8.

20 December 12, 2012, Sheriff Officer Sanchez responded to a 911 call from EGON  
21 KLEMENTI. The Officer investigated and found no evidence of a crime, so he did not even write  
22 a report. Opposition Exhibit 4.

23 The cross-examination of Ms. KINION at trial cast great doubt on whether Ms. KINION  
24 could have seen the alleged snowplow attack on EGON KLEMENTI as she described it, based on  
25 the positions where she was standing at her house and where EGON KLEMENTI was standing in  
26 his driveway. The cross-examination of Ms. KINION at trial established that the size and the shape  
27 of the snowplow would have blocked any view of the snowplow blade. Opposition Exhibit 4;  
28 Supplemental Exhibit 10, Trial Transcript of September 20, 2013, pgs 13-22, 38-39.

1 Ms. KINION's letter under penalty of perjury and sworn trial testimony that she saw Mr.  
2 SPENCER driving the snowplow with a "big grin" on his face suggests an intentional malicious act  
3 by Mr. SPENCER against EGON KLEMENTI. This is in direct conflict with her Motion, also made  
4 under penalty of perjury, that she "thinks" it was Mr. SPENCER driving the snowplow. Ms.  
5 KINION's sworn statements are contradictory.

6 Ms. KINION's sworn testimony was also in direct conflict with EGON KLEMENTI, who  
7 testified under oath he called Ms. KINION, not the other way around. Opposition Exhibit 5.  
8 Further, Ms. KINION testified she did not call 911 until after she had her lunch, over an hour after  
9 she claimed to have witnessed this assault and battery on her elderly neighbor. Opposition Exhibit  
10 4. It is only reasonable to conclude that EGON KLEMENTI called Ms. KINION to create a  
11 "witness" for him of this alleged assault and battery, and she complied.

12 This allegation was one basis of the amended and additional charges of elderly abuse against  
13 Mr. SPENCER of which he was acquitted.

14 **Conclusion**

15 The evidence supports this alleged assault and battery with a snowplow never occurred, as  
16 found by the investigating Officer on the date of the alleged crime. Ms. KINION was the only  
17 corroborating witness to the alleged snowplow assault and battery. The evidence shows Ms.  
18 KINION's own sworn statements in trial, to support the added and enhanced charges of elderly  
19 abuse, are shockingly amended in her Motion when she now says she does not even know if it was  
20 Mr. SPENCER driving the snowplow! The facts of Ms. KINION's false testimony at trial are facts  
21 to be heard by a jury as to malicious prosecution.

22 The evidence shows Ms. KINION's sworn statement that she called EGON KLEMENTI  
23 immediately, are in direct conflict with EGON KLEMENTI's sworn statement that he called her.  
24 The evidence shows that her delay of over an hour in calling 911 is not reasonable in the face of her  
25 allegations, but rather supports she was not a witness at all to a crime which never occurred. Further  
26 this is all evidence of her lack of credibility. In addition, evidence of the timing of the letter to the  
27 Deputy DA which included this accusation, and the totality of the circumstances support a  
28 conspiracy to fabricate this crime between EGON KLEMENTI and MARY ELLEN KINION. These

1 are material issues of fact for a jury as to conspiracy.

2 **3. 12/18/2012 - Alleged battery of HELMET KLEMENTI**

3 **Ms. KINION's Accusation**

4 In her unsolicited letter to Deputy DA Pence, referring to the misdemeanor battery charge  
5 of December 18, 2012, Ms. KINION accused Mr. SPENCER of punching HELMET KLEMENTI  
6 "in the chest so hard that he landed on his back and couldn't get up." Supplemental Exhibit 8.

7 **Facts**

8 Ms. KINION in her Motion under penalty of perjury admits she did not see any alleged  
9 assault and battery of HELMET KLEMENTI on December 18, 2012, and she did not speak to the  
10 investigating Officer.

11 HELMET KLEMENTI was not "punched" in the chest. Mr. SPENCER and HELMET  
12 KLEMENTI collided with each other on an icy street when HELMET KLEMENTI suddenly turned  
13 and walked toward Mr. SPENCER who had been pursuing him to make a citizen's arrest.  
14 Supplemental Exhibit 11, CD video of the collision.

15 This allegation was one basis of the amended and additional charges of elderly abuse against  
16 Mr. SPENCER of which he was acquitted.

17 **Conclusion**

18 Mr. SPENCER asserts that this alleged assault and battery of HELMET KLEMENTI never  
19 occurred; what happened was not a civil wrong. The evidence shows Ms. KINION was not a witness  
20 to any such alleged crime, and that she inserted herself into this misdemeanor criminal matter for the  
21 specific purpose of getting Mr. SPENCER convicted, as she admitted in her trial testimony. By  
22 inserting herself into this matter to which she was neither a witness nor party, Ms. KINION's  
23 multiple allegations against Mr. SPENCER contributed to additional and amended charges against  
24 him, which were false. These are material issues of fact for a jury as to malicious prosecution.

25 **C. MARY ELLEN KINION INSERTED HERSELF WITH MALICE**

26 The evidence shows that Ms. KINION **did not witness** two of the three crimes she alleged,  
27 and that, based on the evidence, a jury could reasonably find that the third crime she alleged never  
28 even occurred. The evidence shows Ms. KINION **lied under oath at trial**, about what she

1 supposedly witnessed. The evidence shows she testified under oath **about things that did not**  
2 **happen** as well.

3 In her unsolicited letter to Deputy DA Pence, Ms. KINION accused Mr. SPENCER of  
4 various actions supporting elderly abuse, including deliberately creating berms at her home.  
5 Supplemental Exhibit 8. At trial, Ms. KINION testified under oath and admitted she NEVER saw  
6 Mr. SPENCER deliberately create a berm in her driveway or in any other driveway. Opposition  
7 Exhibit 4. In her Motion she claims under penalty of perjury that on December 12, 2012, she  
8 complained to Mr. SPENCER's contract employer about the berm and, as result of her complaint,  
9 her driveway was then cleared. Ms. KINION then claims in her Motion that another snowplow,  
10 which she "thinks was driven" by Mr. SPENCER put the berm of snow back. Again, Ms. KINION  
11 never saw Mr. SPENCER deliberately create a berm in her driveway or in any other driveway.  
12 Opposition Exhibit 4.

13 The alleged May 27, 2012, assault of EGON KLEMENTI, the alleged deliberate berms in  
14 selected driveways during the Winter of 2012 which allegedly trapped EGON and ELFRIEDE  
15 KLEMENTI in their home, and the alleged December 12, 2012, snowplow assault and battery of  
16 EGON KLEMENTI were **only** admissible at trial based on the added elderly abuse charges,  
17 otherwise they would have been "prior bad acts" and inadmissible. Ms. KINION did not witness  
18 the alleged assault of May 27, 2012. Ms. KINION was the only **non-victim witness** to testify to the  
19 alleged snowplow assault and battery of EGON KLEMENTI, and her testimony at trial is an  
20 admitted false identification of Mr. SPENCER as the driver of the snowplow, for she has now in her  
21 Motion admitted she did not even see Mr. SPENCER as the driver.

22 In addition to Ms. KINION trying to get Mr. SPENCER falsely convicted of criminal  
23 charges, she tried to get him fired from his job, and to destroy his reputation.

24 Ms. KINION called Mr. SPENCER's employer trying **to get him fired** from his job.  
25 Opposition Exhibit 6. Ms. KINION admits in her Motion that on December 18, 2012, she attended  
26 a KGID meeting and claimed she had seen the alleged attack on EGON KLEMENTI of December  
27 12, 2012, which is disputed for reasons set forth above. Further, at that December 18, 2012, KGID  
28 meeting, Ms. KINION claimed that Mr. SPENCER was deliberately creating high berms, which was

1 directly contradicted by her trial testimony and her Motion statement under penalty of perjury, in  
2 which she admits she never actually saw Mr. SPENCER create any berms. Mr. SPENCER assets  
3 that both accusations were lies.

4 After criminal charges were filed, HELMUT, EGON and ELFRIEDE KLEMENTI filed for  
5 a restraining order against Mr. SPENCER. Ms. KINION, who was **not a party** to that proceeding,  
6 wrote an ex-parte letter to Justice of the Peace Judge Glasson who was hearing that matter, trying  
7 to get more restrictive orders against Mr. SPENCER. Opposition Exhibit 7.

8 These other acts are further evidence of Ms. KINION's malice, which is factual matter for  
9 a jury.

10 **D. MARY ELLEN KINION HAS NOT MET HER BURDEN OF PROOF**

11 Per NRCP 56(c), a party must set forth each material fact, supported by evidence, which must  
12 be undisputed. Yet many material facts set forth by Ms. KINION are disputed, some shown to be  
13 unsupported by and contrary to the actual evidence, including conflicting sworn statements, some  
14 as testimony in court proceedings, and some in her Motion under penalty of perjury.

15 **1. The Malicious Prosecution Claim Should Go to a Jury**

16 Per *LaMantia v. Redisi*, 118 Nev. 27, 38 P.3d 877 (2002), the elements of malicious  
17 prosecution are:

18 1) initiating, procuring the institution of, or actively participating in the continuation of a  
19 criminal proceeding. In this case Ms. KINION wrote an unsolicited letter to Deputy DA Pence and  
20 then testified to the amended and additional charges against Mr. SPENCER for elder abuse.

21 2) malice, shown by statements made with the knowledge they were false and/or making  
22 such statements with a reckless disregard for the truth. In this case, as demonstrated above, Ms.  
23 KINION made allegations under oath which were conflicting with other sworn statements made by  
24 her and/or by the supposed victim.

25 Ms. KINION's arguments that communications with the Deputy DA and testimony at trial  
26 "would be protected" and that her statements to the police or district attorney are immune from civil  
27 liability, are contrary to law. Her cited cases of *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev.  
28 56, 657 P.2d 101 (1983) and *Sahara Gaming v. Culinary Workers Union*, 115 Nev. 212, 984 P.2d



1 164 (1999), are cases of defamation, not malicious prosecution. Further, in *Circus Circus* the  
2 Supreme Court ruled that:

3 A **qualified or conditional privilege** exists where a defamatory statement is made  
4 in **good faith** on any subject matter **in which the person communicating has an**  
5 **interest**, or in reference to which he has a **right or a duty**, if it is made to a person  
6 with a corresponding interest or duty.

7 *Id.* at 62. In this matter, Ms. KINION had no interest, right nor duty, and her dishonesty shows a  
8 lack of good faith. She cited to NRS §41.650, but the statute provides immunity **only** for:

9 A **person who engages in a good faith communication in furtherance of the right**  
10 **to petition or the right to free speech in direct connection with an issue of public**  
11 **concern** is immune from any civil action for claims based upon the communication.

12 This had nothing to do with the “right to petition” or “free speech”. She also cited to NRS §41.637,  
13 which defines “good faith communication” as that which is “**truthful or is made without**  
14 **knowledge of its falsehood.**” The evidence shows repeated false representations by Ms. KINION  
15 in an effort to get Mr. SPENCER criminally convicted, which failed.

16 3) termination of the prior criminal proceeding. The criminal proceeding against Mr.  
17 SPENCER was terminated by jury verdicts of **Not Guilty** on all charges.

18 4) damage, which Mr. SPENCER has suffered and will prove in detail at trial.

19 Ms. KINION has not met her burden of proof for Summary Judgment. Mr. SPENCER has  
20 evidence of a factual basis for this claim to be decided by a jury.

## 21 **2. The Conspiracy Claim Should Go to a Jury**

22 Ms. KINION’s Motion argues that a conspiracy claim requires an underlying tort, and if the  
23 malicious prosecution claim is struck, the conspiracy claim cannot stand. But, as described above,  
24 the malicious prosecution claim has plenty of evidence in support.

25 Ms. KINION’s other argument is that “the idea is outrageous and completely unsupported  
26 by the facts.” The facts of Ms. KINION inserting herself into a criminal proceeding to which she  
27 was neither a party nor a witness, and the conflicting testimony about whether she called EGON  
28 KLEMENTI or he called her, are facts from which a jury could conclude that Ms. KINION and  
EGON KLEMENTI were working in concert to get Mr. SPENCER criminally convicted.

Ms. KINION has not met her burden of proof for Summary Judgment. Mr. SPENCER has

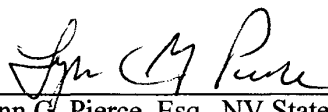
1 evidence of a factual basis for the conspiracy claim to be decided by a jury.

2 **Conclusion**

3 JEFFERY SPENCER has provided evidence of his claims and demonstrated numerous  
4 genuine material issues of fact to support his claims. NRCP 56; *Anderson v. Liberty Lobby, Inc.*,  
5 477 U.S. 242, 254 (1986). MARY ELLEN KINION stuck her nose in where it did not belong,  
6 falsely testified and accused a man of heinous crimes. She has not met her burden of proof under  
7 the law to show no disputed material facts. The Motion for Summary Judgment must be denied.

8 The undersigned affirms pursuant to NRS §239B.030 that this pleading does not contain the  
9 social security number of any person.

10 DATED this 27<sup>th</sup> day of January, 2017.

11   
12 Lynn G. Pierce, Esq., NV State Bar 3567  
13 LYNN G. PIERCE, Attorney at Law, Ltd.  
14 515 Court Street, Ste. 2f  
15 Reno, NV 89501  
16 775-785-9100

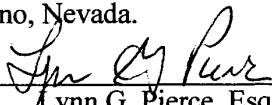
15 **Declaration of Lynn G. Pierce, Esq.**

16 Pursuant to NRS §53.045(1), I, Lynn G. Pierce, declare under penalty of perjury, that:

- 17 1. I am an attorney licensed to practice law in the states of Nevada and California.  
18 2. I am a attorney for Jeffrey Spencer in the above entitled matter.  
19 3. Supplemental Exhibit 8 is a true and correct copy of a letter from Mary Ellen Kinion to  
20 Deputy DA Maria Pence stamped received by the District Attorney on February 22, 2013.  
21 4. Supplemental Exhibits 9 & 10 attached hereto are true and correct copies of transcripts of  
22 legal proceedings related to this matter.

23 I declare under penalty of perjury that the foregoing is true and correct.

24 Executed on the 27<sup>th</sup> day of January, 2017, in Reno, Nevada.

25   
26 Lynn G. Pierce, Esq.  
27  
28

1 CERTIFICATE OF SERVICE

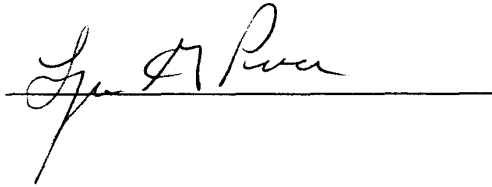
2 Pursuant to NRCp Rule 5(b), I certify that I served a true and correct copy of the foregoing  
3 pleading by email on January 29, 2017, to be hand-delivered on January 30, 2017, addressed to:

4 Douglas R. Brown, Esq.  
5 Christian L. Moore, Esq.  
6 Lemons, Grundy & Eisenberg  
7 6005 Plumas Street, Suite 300  
8 Reno, NV 89519  
9 *Attorneys for Helmut Klementi*

10 Michael A. Pintar, Esq.  
11 Glogovac & Pintar  
12 427 W. Plumb Lane  
13 Reno, NV 89509  
14 *Attorneys for Egon Klementi, Elfriede  
15 Klementi & Mary Ellen Kinion*

16 David M. Zaniel, Esq.  
17 Ranalli & Zaniel, LLC  
18 50 W. Liberty Street, Suite 1050  
19 Reno, NV 89501  
20 *Attorney for Jeffrey D. Spencer*

21 DATED this 29 day of January, 2017.

22  
23  
24  
25  
26  
27  
28  


**EXHIBIT LIST**

1			
2		Opposition to Summary Judgment Motion	
3	Exhibit 1	January 16, 2013, Criminal Complaint, Count 1, misdemeanor	2 pages
4		elderly battery of HELMUT KLEMENTI	
5	Exhibit 2	May 9, 2013, Amended Information, Count 1, felony elderly	
6		battery of HELMUT KLEMENTI, Counts 2 & 3, gross	3 pages
7		misdemeanor elderly abuse of EGON & ELFRIEDE KLEMENTI	
8	Exhibit 3	September 27, 2013, Executed Jury Verdicts, Not Guilty on	3 pages
9		Counts 1, 2, and 3	
10	Exhibit 4	Portions of Trial Transcript of September 20, 2013, testimony of	19 pages
11		MARY ELLEN KINION	
12	Exhibit 5	Portions of Transcript of Preliminary Hearing of February 22, 2013	8 pages
13	Exhibit 6	Portions of Trial Transcript of September 18, 2013, testimony of	4 pages
14		MARY ELLEN KINION	
15	Exhibit 7	April 26, 2013, email from Judge Glasson to Todd L. Torvinen, Esq.,	
16		TPO attorney for Mr. SPENCER, with forwarded email from	2 pages
17		MARY ELLEN KINION to the Judge	
18		Supplemental Opposition to Summary Judgment Motion	
19	Exhibit 8	February 22, 2013 (stamped date of receipt), letter from MARY	2 pages
20		ELLEN KINION to Deputy DA Maria Pence	
21	Exhibit 9	Portions of Trial Transcript of September 19, 2013, testimony of	12 pages
22		MARY ELLEN KINION	
23	Exhibit 10	Portions of Trial Transcript of September 20, 2013, testimony of	17 pages
24		MARY ELLEN KINION	
25	Exhibit 11	CD video of incident of December 18, 2012	

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# Exhibit 8

# Exhibit 8

**O. KLEMENTI**

12-2555Q

RECEIVED

FEB 22 2013

DOUGLAS COUNTY  
DISTRICT ATTORNEY

Dear Maria Pence, This is a list of events that I saw and heard about.

Last May Marilyn Spencer told me she won her restraining order against Bruce Taylor but she was mad that Elfie and Egon did not sit on her side of the court room for the event. She sent her lawyer over to ask which side they were on. The Klementis told him they were just spectators. They did not move to the other side where Marilyn had a group of people sitting.

Marilyn and Jeff parked a huge neon painted 18 wheeler truck on to their property. Marilyn came to my house to tell me they had a film of Egon standing at the edge of their property taking pictures of the truck. She said she was going to do something about it. I told her to leave him alone. She also told me they were going to put up a 6 ft fence and didn't want any neighbors complaining.

They were forced to remove the truck. The fence went up and there were complaints issued because the fence created a dangerous intersection.

Jeff accosted Egon in the street and yelled at him about coming on his property and taking pictures. Marilyn and Janet Wells, a neighbor, joined him. Jeff threatened to punch Egon in the face. The same day Marilyn and Jeff made a complaint that Egon was harassing them and insinuated that he was a pervert who took pictures of high school boys with their shirts off on their property. The fence builder had his sons helping him put up the fence. The same week they also tried to get TRPA involved saying the Klementi's did not have permits for work done on their property. They had permits.

Pete and Rowena Shaw made complaints about the fence. Pete was working at the edge of his property when Jeff backed his truck up to him and sat there revving up the engine to cause a cloud of exhaust to cover Pete. He didn't stop until Pete went into his house to get away.

I woke up one morning after it snowed to find a huge ice filled snow berm in front of my driveway. No other neighbor had one, I called KGID. They came and cleared it away and said it was a deliberate act. Later when I was outside I saw Jeff driving the plow truck fast past me with a big grin on his face. Egon was shoveling snow in his driveway. When Jeff drove past him he turned the blade on the snow plow to spray Egon with ice and snow. Egon was fortunately not hurt. This was reported and a KGID manager told us Jeff would not be allowed to snowplow on our street any more.

Jeff was also not allowed to snowplow on Juniper St because he was caught putting huge berms in front of the Taylor's house the year before. Janet Wells said Marilyn bragged to her about how Jeff was going to plow huge berms in front of the Shaw's and Klementi's houses this winter.

A few days later Jeff plowed snow from his property and jammed it up against the Klementi's fence and driveway. At a KGID meeting the next night we were told to take pictures of the berms. This is what Helmut was doing later that night when Jeff came up and punched him in the chest so hard that

he landed on his back and couldn't get up. Jeff left him lying in the street in front of the Klementi's house.

Two days later I came home from work to a nasty phone message from Debbie Tilley, someone I had known for twenty years. I found out from Debbie that Marilyn had told her that I was spreading rumors around town about her two teenage sons involvement in car break ins. Marilyn also told her that the Klementi's and I wrote a threatening unsigned letter to the Poet's, who live in our neighborhood. It said something bad was going to happen to their son for breaking into cars. I was truly amazed that Marilyn would go this far. It is too crazy.

The day Jeff was charged in court, Dave Bashline and Michelle Grant, friends of the Spencer's, tried to get restraining orders against the Klementi's and myself. I am sure Marilyn was behind this also. I don't think she will ever quit.

I don't care about all the lies as much as I do Helmut getting hurt so badly. I see him a couple of times a week and he is still in a lot of pain and may have lifelong pain issues from his injuries. He is a kind and gentle person.

Thank you,

*Mary Ellen Klementi*

1775-588-6916

# Exhibit 9

# Exhibit 9



## CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Doyle Law Office, PLLC and that on the 3rd day of June, 2019, a true and correct copy of the above APPELLANT'S APPENDIX was e-filed and e-served on all registered parties to the Nevada Supreme Court's electronic filing system as listed below:

Douglas R. Brown  
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6005 Plumas Street, Suite 300  
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Michael A Pintar  
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241 Ridge Street, Suite 300  
Reno NV 89501

Tanika M. Capers  
American Family Mutual Insurance Company  
6750 Via Austi Parkway, Ste. 310  
Las Vegas NV 89119

**DATED** this 3rd day of June, 2019.

\_\_\_\_\_/s Kerry S. Doyle  
Kerry S. Doyle

Kerry S. Doyle, Esq.  
Nevada Bar No. 10866  
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Electronically Filed  
Jun 03 2019 11:46 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Attorneys for Appellant

**IN THE SUPREME COURT FOR THE STATE OF NEVADA**

JEFFREY D. SPENCER,  
Appellant,

v.

HELMUT KLEMENTI, EGON  
KLEMENTI, ELFRIEDE KLEMENTI,  
MARY ELLEN KINION, ROWENA  
SHAW, and PETER SHAW,

Respondents.

Case No. 77086

**APPELLANT'S APPENDIX**

**VOL. 1**

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ORIGINAL

Case No. 14-CV-026

DEC 17 2014

Dept. No. II

Douglas County  
Dist. Ct. Court Dept. 2

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CLERK  
J. WILLIAMS

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,  
Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,  
Defendant

Case No.

Dept. No.

### COMPLAINT

COMES NOW, Plaintiff Helmut Klementi by and through his attorney, Joe M. Laub, Esq. of the Law Firm of Laub & Laub, for his claims against the Defendant, and hereby allege as follows:

### JURISDICTION

1. At all times referred to herein, Plaintiff was and is a resident of Stateline, State of Nevada.
2. At all times referred to herein, Defendant Jeffrey D. Spencer, was and is a resident of Stateline, State of Nevada.
3. Defendant Does 1-5 are other possible Defendants unknown to the Plaintiff at this time. The Plaintiff requests leave of this Court to amend the Complaint to insert the true names and capacities of the Does 1-5 when the same have been ascertained, to join such Defendants in this action, and to assert the appropriate charging allegations.

1 **FACTS**

2 4. On or about December 18, 2012, Plaintiff, Helmut Klementi was standing in the  
3 street in front of his twin brother's house taking a picture of a large berm of snow.

4 5. Defendant Jeff Spencer ran up to him, punched him in the chest and sent him flying  
5 to the ground where he landed hard on his back.

6 **FIRST CLAIM FOR RELIEF**

7 **(Assault and Battery)**

8 6. The Plaintiff realleges each and every allegation contained in paragraphs 1-5.  
9 inclusive, as if fully set forth herein.

10 7. That on or about December 19, 2012 Defendant Jeffrey Spencer physically  
11 battered and assaulted Plaintiff Helmut Klementi in a harmful manner without his consent causing  
12 him damages in an amount of more than \$10,000.00. Further, due to the intentional act of battery  
13 Plaintiff Helmut Klementi seeks punitive damages in an amount to be determined at trial.

14 8. Further, Plaintiff Helmut Klementi has suffered emotional distress due to the  
15 battery by Defendant Jeffrey Spencer.

16 7. As a direct and proximate result of the battery and assault by the Defendant, the  
17 Plaintiff has suffered, and will continue to suffer in the future, damages in an amount in excess of  
18 Ten Thousand Dollars (\$10,000.00).

19 **SECOND CLAIM FOR RELIEF**

20 **(Pursuant to NRS41.1395 Damages for Injury or loss suffered by older person)**

21 8. The Plaintiff realleges each and every allegation contained in paragraphs 1-7,  
22 inclusive, as if fully set forth herein.

23 9. Defendant Jeffrey Spencer intentionally or negligently punched Plaintiff Helmut  
24 Klementi who was 78 years old at the time of this incident.

25 10. As a direct and proximate result of the injury inflicted upon him, the Plaintiff has  
26 suffered damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

1 **THIRD CLAIM FOR RELIEF**

2 **(Emotional Distress)**

3 11. The Plaintiff realleges each and every allegation contained in paragraphs 1-10.  
4 inclusive, as if fully set forth herein.

5 12. Defendants' conduct was extreme and outrageous with either the intention of, or  
6 reckless disregard for, causing emotional distress to the Plaintiff. The Plaintiff suffered severe,  
7 extreme emotional distress as the actual, proximate result of defendants' conduct

8 13. As a result of defendant's extreme and outrageous conduct, the Plaintiff has  
9 suffered general damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

10 **FOURTH CLAIM FOR RELIEF**

11 **(Punitive Damages Pursuant to NRS 42.005)**

12 14. The Plaintiff realleges each and every allegation contained in paragraphs 1-13.  
13 inclusive, as if fully set forth herein.

14 15. The Defendant has acted with extreme and outrageous conduct by punching  
15 Plaintiff Helmut Klementi in the chest. Defendant Jeffrey Spencer has intended to cause harm and  
16 injury to the Plaintiff by punching him and therefore has acted with actual malice.

17 16. As a result of Defendant Jeffrey Spencer's extreme and outrageous behavior the  
18 Plaintiff has suffered damages in an amount greater Ten Thousand Dollars (\$10,000.00).

19  
20 ///

21 ///

22 ///

23 ///

1 **WHEREFORE**, the Plaintiff prays for judgment against the Defendant as follows:

- 2 1. For general damages in an amount in excess of Ten Thousand Dollars (\$10,000.00);
- 3 2. For leave of this Court to amend the complaint when the identities of the Does are
- 4 discovered;
- 5 3. For special damages, past and future, according to proof at the time of trial;
- 6 4. For Punitive damages in an amount greater than Ten Thousand Dollars (\$10,000.00);
- 7 5. For the costs of suit, including reasonable attorney's fees; and
- 8 6. For such other and further relief as the Court deems just and proper.

9 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social  
10 security number of any person.

11 DATED this 17 day of December, 2014.



12  
13 The Law Firm of Laub & Laub  
14 Joe M. Laub  
15 Nevada State Bar #3664  
16 Nik C. Palmer  
17 Nevada State Bar #9888  
18 630 E. Plumb Lane  
19 Reno, Nevada 89502

1 WILLIAM J. ROUTSIS, II, ESQ.  
2 Nevada State Bar No. 5474  
3 1070 Monroe Street  
4 Reno, Nevada 89509  
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**RECEIVED**

FEB - 3 2015  
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District Court Clerk

**FILED**

2015 FEB -3 PM 3:25

BOBBIE R. WILLIAMS  
CLERK

BY msl DEPUTY

5 WILLIAM A. SWAFFORD, ESQ.  
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**ORIGINAL**

9 Attorneys for Defendant

10 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
11 IN AND FOR THE COUNTY OF DOUGLAS

12  
13 HELMUT KLEMENTI,

14 Plaintiff,

15 -vs-

16 JEFFREY D. SPENCER & DOES 1-5,

17 Defendant(s).

CASE NO. 14-CV-0260

DEPT. NO. II

**ANSWER AND COUNTERCLAIMS**

18 JEFFREY D. SPENCER,

19 Counterclaimant,

20  
21 -vs-

22 HELMUT KLEMENTI, an individual, EGON  
KLEMENTI, an individual, MARY ELLEN  
23 KINION, an individual, and DOES 1-5.

24 Counterdefendants.

25 **ANSWER TO PLAINTIFF'S COMPLAINT**

26 Defendant, JEFFEREY D. SPENCER ("Spencer"), by and through his attorneys, William  
27 R. Routsis II, Esq., and Law Offices of William Swafford LLC, submits the following answer to  
28 Plaintiff's Complaint:

**JURISDICTION**

1. The allegation contained in paragraph 1 of Plaintiff's Complaint is admitted.
2. The allegation contained in paragraph 2 of Plaintiff's Complaint is admitted.
3. In response to Paragraph 3 of Plaintiff's Complaint, Defendant states that he is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of said allegations and therefore denies the same.

**FACTS**

4. The allegations contained in paragraph 4 of Plaintiff's Complaint are denied.
5. The allegations in paragraph 5 are denied to the extent that they suggest Defendant approached Plaintiff while standing in the road in front of his brother's house, and that Defendant punched Plaintiff in the chest causing Plaintiff to be sent flying to the ground.

**FIRST CLAIM FOR RELIEF (ASSAULT AND BATTERY)**

6. Answering paragraph 6 of Plaintiff's Complaint, Defendant repeats, realleges and incorporates by reference the answers to each of the allegations set forth above.
7. In response to the allegations in paragraph 7 of Plaintiff's Complaint, Defendant states that the allegations contained therein constitute conclusions of law and this require no answer. However, to the extent they are allegations of fact with respect to damages, Defendant denies having caused the complained of damages.
8. The allegations contained in paragraph 8 of Plaintiff's Complaint are denied.
9. The allegations contained in paragraph 9 of Plaintiff's Complaint (incorrectly labeled as paragraph 7) are denied.

**SECOND CLAIM FOR RELIEF (DAMAGES UNDER NRS 41.1395)**

10. Answering paragraph 10 of Plaintiff's Complaint (incorrectly labeled as paragraph 8) Defendant repeats, realleges and incorporates by reference the answers to each of the allegations set forth above.

1           11. In response to the allegations in paragraph 11 of Plaintiff's Complaint (incorrectly  
2 labeled as paragraph 9) to the extent it is alleges that Plaintiff was "negligent" this allegation is a  
3 conclusion of law that requires no answer. To the extent that the allegations constitute assertions  
4 of fact that Plaintiff punched Defendant, the allegations are denied. To the extent that the  
5 allegations assert the age of Plaintiff at the time of the incident complained of, Defendant states  
6 that he is without sufficient knowledge or information necessary to for a belief as to the truth or  
7 falsity of said allegation.

8           12. Answering paragraph 12 (incorrectly labeled as paragraph 10), Plaintiff's  
9 allegations are denied.

10                   **THIRD CLAIM FOR RELIEF (EMOTIONAL DISTRESS)**

11           13. Answering paragraph 13 of Plaintiff's Complaint (incorrectly labeled as  
12 paragraph 11) Defendant repeats, realleges and incorporates by reference the answers to each of  
13 the allegations set forth above.

14           14. The allegations contained in paragraph 14 of Plaintiff's Complaint (incorrectly  
15 labeled as paragraph 12) are denied.

16           15. The allegations contained in paragraph 15 of Plaintiff's Complaint (incorrectly  
17 labeled as paragraph 13) are denied.

18                   **FOURTH CLAIM FOR RELIEF (PUNITIVE DAMAGES)**

19           16. Answering paragraph 16 of Plaintiff's Complaint (incorrectly labeled as  
20 paragraph 14) Defendant repeats, realleges and incorporates by reference the answers to each of  
21 the allegations set forth above.

22           17. Answering paragraph 17 of Plaintiff's Complaint (incorrectly labeled as  
23 paragraph 15) the allegations contained therein constitute conclusions of law and this require no  
24 answer. However, to the extent they are allegations of fact with respect to the intent or motive of  
25 Defendant, the allegations are denied.  
26  
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28

1           18.     Answering paragraph 18 of Plaintiff's Complaint (incorrectly labeled as  
2 paragraph 116) the allegations contained therein constitute conclusions of law and this require no  
3 answer. However, to the extent they are allegations of fact with respect to the cause of Plaintiff's  
4 alleged damages, the allegations are denied.

5                               **PRAYERS FOR RELIEF**

6           Defendant denies that Plaintiff is entitled to any of the relief requested.

7                               **AFFIRMATIVE DEFENSES**

8           1.     Plaintiff's Complaint, and each purported cause of action contained therein fail to  
9 state a claim upon which relief may be granted, and Defendant is entitled to judgment as a matter  
10 of law.

11           2.     Plaintiff is not entitled to any damages, and any claim for punitive damages is not  
12 warranted and would violate due process.

13           3.     Plaintiff has failed, in whole or in part, to mitigate his alleged damages, if any.

14           4.     Plaintiff's claims are barred because he assumed the risk of his injuries.

15           5.     Plaintiff's claims are barred because Defendant acted, at all times relevant, in  
16 good faith, in self-defense, in defense of property or otherwise in the defense of others.

17           6.     Any injuries, loss or damages suffered by Plaintiff were proximately caused by  
18 Plaintiff's own carelessness and or negligence, or the carelessness and or negligence of others for  
19 which Defendant is not responsible.

20           7.     Plaintiff's claims are barred because no causal relationship exists between any  
21 injuries, loss or damages, if any, suffered by Plaintiff and the alleged negligent or wrongful  
22 actions, if any, of Defendant.

23           8.     If there was any negligence or other fault proximately causing Plaintiff's alleged  
24 injuries, loss or damages, if any, Plaintiff's alleged injuries, losses or damages were proximately  
25 caused, in whole or in part, by the acts or omissions of Plaintiff and/or others for which  
26 Defendant is not responsible.  
27  
28



1           9. All affirmative defenses may not have been fully set forth herein. Defendant  
2 reserves the right to amend his answer to allege additional affirmative defenses as subsequent  
3 investigation warrants pursuant to NRCP 8 and 15.

4           WHEREFORE, Defendant prays as follows:

5           1. That Plaintiff take nothing by virtue of this action and that the same be dismissed  
6 with prejudice:

7           2. That Defendant be awarded attorney fees and costs incurred in the defense of this  
8 action; and

9           3. Such other further relief as the Court may deem just and proper.

10                               **COUNTERCLAIMS**

11           Counterclaimant JEFFREY D. SPENCER ("Spencer") brings the following  
12 counterclaims against Counterdefendants HELMUT KLEMENTI ("H. Klementi"), EGON  
13 KLEMENTI ("E. Klementi") an individual, Elfriede Klementi ("El. Klementi") an individual,  
14 MARY ELLEN KINION ("Kinion"), an individual, and unknown individuals hereinafter  
15 referred to as DOES 1-10, and allege as follows:  
16

17                               **JURISDICTIONAL ALLEGATIONS**

18           1. The District Courts of Nevada have subject matter jurisdiction over this matter  
19 because this action concerns issues of Nevada law and all parties are Nevada residents.

20           2. Counterclaimant Spencer is and was at all times relevant to this Complaint a  
21 resident of Stateline, Douglas County, Nevada.

22           3. Each of the above named Counterdefendants is and was at all times relevant to  
23 this Complaint, residents of Stateline, Douglas County, Nevada.

24           4. Spencer is unaware of the true names and capacities of Counterdefendants sued  
25 herein as Does 1-10 and will seek leave to amend this complaint when their true names and  
26 capacities are ascertained.  
27  
28

1           5.       Spencer is informed, believes and alleges that that each of the named  
2 Counterdefendants, as well as those Counterdefendants fictitiously named as DOE Defendants,  
3 were at all times relevant the agent, employee, representative, joint venturer, partner, and co-  
4 conspirator of each other Counterdefendant, and was acting in the course and scope of such  
5 agency, employment, representation, joint venture, partnership and conspiracy, and with the  
6 knowledge, approval and ratification of each other Counterdefendant, in causing the plaintiffs'  
7 injuries, losses, and damages as alleged herein.

8           6.       Spencer is informed, believes and alleges that that each of the named  
9 Counterdefendants, as well as those Counterdefendants fictitiously named as DOE Defendants  
10 negligently, willfully, maliciously, contractually, vicariously or otherwise are legally responsible  
11 for the events and happenings herein referred to and likewise proximately caused injury and  
12 damages to Counterclaimant.

13  
14                   **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

15           7.       Counterclaimant Spencer incorporates the foregoing paragraphs of his  
16 Counterclaims as if fully set forth at this point.

17           8.       That at all times relevant, Spencer was an independent contractor, and agent of  
18 the Kingsbury General Improvement District ("KGID") who had been retained by the KGID  
19 Board of Trustees for the purpose of snow plow removal from various roads located in the  
20 township of Stateline, within the district.

21           9.       On December 12, 2012, E. Klementi called 911 and stated that Spencer had  
22 intentionally assaulted and battered him with ice, snow and debris with his snow plow as he  
23 shoveled snow in his driveway. While speaking to the 911 operator, E. Klementi stated that an  
24 eyewitness named Mary Ellen Kinion observed the battery and could corroborate his story.

25  
26           10.       On December 12, 2012, Kinion called 911 and stated that she observed Spencer  
27 intentionally use his snow plow to batter E. Klementi with ice, snow and debris.

1           11.     On December 12, 2012, Kinion stated to a Douglas County Sheriff's Officer  
2 ("DCSO") that she witnessed Spencer drive his snow plow past her home with a big grin on his  
3 face and observed him intentionally batter E. Klementi with snow, ice and debris with the blade  
4 of his snow plow.

5           12.     On or about December 17, 2012, El. Klementi submitted a type written report to  
6 the DCSO in connection with case #12S041608 in which she stated that Spencer intentionally  
7 caused her husband to be battered with snow and street debris by using the blade of his snow  
8 plow to propel debris at him while he shoveled snow in his driveway.

9           13.     That upon information and belief, on or about December 13, 2012, E. Klementi  
10 told the Mr. McKay, the director of the KGID, that Spencer intentionally battered him with snow  
11 and debris using his snow plow.

12           14.     On December 18, 2012, Kinion attended a KGID board meeting and stated that  
13 she witnessed Spencer use his snow plow to intentionally batter E. Klementi with snow, ice and  
14 debris.

15           15.     On December 18, 2012, E. Klementi attended a KGID board meeting and stated  
16 that Spencer had intentionally used his snow plow to place large berms of snow at the edge of his  
17 driveway, causing him to be sealed in. E. Klementi additionally stated to those present at the  
18 board meeting that Spencer intentionally put the blade of his snowplow down and caused him to  
19 be battered with snow, ice and debris.

20           16.     On December 18, 2012, Spencer reported to DCSO that at about 8:00 pm, he  
21 heard someone in his driveway by his vehicle and believed that it was a burglar. He yelled from  
22 his upper deck "who are you?" and asked the man why he was breaking into his truck as the  
23 unidentified individual walked away. Spencer pushed the man down to the ground without  
24 realizing it was his neighbor H. Klementi, the twin brother of E. Klementi.

25           17.     E. Klementi reported to DCSO officers that he witnessed Spencer hit his brother  
26 in the back and push him to the ground.  
27  
28

18. On December 18, 2012, Spencer was arrested for battery for pushing H. Klementi to the ground.

19. On March 8, 2013, an Amended Criminal Complaint was filed in case 13-0069 whereby the State charged Spencer with three counts of Exploitation of an Elderly Person pursuant to NRS 200.0592 and NRS 200.0599. The three counts were predicated upon the acts of (i) using a snow plow to berm E. Klementi and his wife El. Klementi into their driveways with snow, (ii) using a snow plow to intentionally cause E. Klementi to be battered with snow, ice and debris, and (iii) battering H. Klementi and causing him to incur substantial bodily injuries.

COUNT I  
MALICIOUS PROSECUTION

20. Counterclaimant Spencer incorporates the foregoing paragraphs of his Counterclaims as if fully set forth at this point.

21. That the statements of Counterdefendants E. Klementi, El. Klementi and Kinion concerning Spencer's use of the snow plow to (i) berm in the Klementi's driveway and (i) intentionally cause E. Klementi to be battered with snow, ice and/or debris from the road were false.

22. E. Klementi, El. Klementi and Kinion made these statements with both express and implied malice, that is they had knowledge that they were false, or otherwise acted with reckless disregard for the truth. These Counterdefendants caused these statements to be made to agents of the Douglas County Sheriff's Office, and to agents of the Douglas County District Attorney's Office for the sole purpose of causing injury to Spencer's reputation, and to cause him to suffer humiliation, embarrassment, mental suffering and inconvenience.

23. Upon information and belief, H. Klementi made false statements to the prosecution concerning the source and nature of his injuries, and presented false testimony to the jury at Spencer's trial concerning severity and resulting limitations of his injuries. H. Klementi made these statements with actual malice in that he knew that they were false, and he made these

1 statements for the purpose of causing injury to Spencer's reputation, and to cause him to suffer  
2 humiliation, embarrassment, mental suffering and inconvenience.

3 24. The above-mentioned false statements were made by the Counterdefendants for  
4 the purpose of persuading and inducing the State to prosecute Spencer for Exploitation of an  
5 Elderly Person pursuant to NRS 200.0592 and NRS 200.0599.

6 25. Counterdefendants testified falsely regarding Spencer's supposedly improper and  
7 criminal behavior in connection with the underlying proceedings without probable cause in law  
8 or fact to do so.

9 26. The false statements outlined above actually caused the State to institute criminal  
10 proceedings and charge Spencer with three counts of Exploitation of an Elderly Person pursuant  
11 to NRS 200.0592 and NRS 200.0599 predicated entirely upon the false and malicious statements  
12 of the Counterdefendants.

13 27. Following institution of criminal proceedings, Counterdefendant's presented false  
14 testimony during Spencer's preliminary hearing and his subsequent jury trial for the purpose of  
15 causing him to be wrongfully prosecuted and convicted, and to suffer injuries to his reputation  
16 and to incur humiliation, embarrassment, mental suffering and inconvenience.

17 28. On September 27, 2013, the State's case against Spencer terminated in his favor  
18 when he was acquitted on all three charged counts of Exploitation of an Elderly Person pursuant  
19 to NRS 200.0592 and NRS 200.0599.

20 29. In inducing the commencement of criminal proceedings against Spencer, and  
21 causing them to be continued, the Codefendants acted maliciously and engaged in wrongful acts  
22 and conduct without just cause or excuse in pursing and taking affirmative steps to have Spencer  
23 wrongfully prosecuted and convicted, without any probable cause to do so and for improper,  
24 ulterior purposes.  
25  
26  
27  
28

30. As a direct and proximate result of Counterdefendant's actions, Spencer suffered harm in his business and/or profession, to his reputation and good name, his standing in the local community and third parties were deterred from associating with him.

31. As a direct and proximate result of Counterdefendant's actions, Spencer suffered personal humiliation, mental anguish and suffering.

32. As a direct and proximate result of Counterdéfendant's malicious prosecution, Spencer suffered special and general damages in an amount in excess of \$10,000 and to be shown according to proof.

33. Counterdefendants malicious prosecution, as set forth above, was carried out intentionally, and with an evil motive and/or with a reckless indifference and conscious disregard to the rights of Spencer, thereby entitling Spencer to punitive damages in an amount sufficient to punish and deter Counterdefendants and those similarly situated from like conduct in the future.

COUNT II  
CIVIL CONSPIRACY (MALICIOUS PROSECUTION)

34. Counterclaimant Spencer incorporates the foregoing paragraphs of his Counterclaims as if fully set forth at this point.

35. That between December 12, 2012 and December 18, 2012, and at all relevant times, above named Counterdefendants formed an agreement to act in concert against Spencer for the purpose of causing him to be wrongfully convicted of Exploitation of an Elderly Person pursuant to NRS 200.0592 and NRS 200.0599, and causing him to suffer damages to his reputation and to incur personal humiliation, mental anguish and suffering.

36. Counterdefendants acted pursuant to their conspiracy to cause harm to Spencer by providing false statements to agents of the Douglas County Sheriff's Office as well as to the Douglas County District Attorney's Office, and by presenting false testimony during Spencer's preliminary hearing and trial.

1           37.     Counterdefendant's respectively knew that these statements were false and acted  
2 with express malice in intentionally, wrongfully and tortuously persuading and inducing the  
3 State to institute and prosecute criminal charges against Spencer.

4           38.     As a direct and proximate result of the conspiracy, Spencer has been specially and  
5 generally damaged in a sum of at least \$10,000 and to be shown according to proof at trial.

6           39.     Counterdefendant's actions were intended to cause injury, malicious and  
7 oppressive, justifying an award of punitive damages.

8           40.     Spencer has been required to retain the services of two attorneys to prosecute the  
9 claims for malicious prosecution and conspiracy and he is entitled to an award of attorney's fees.

10           WHEREFORE, Counterclaimant requests:

- 11           1.     Special damages in a sum in excess of \$10,000;  
12           2.     General damages in a sum in excess of \$10,000;  
13           3.     Punitive damages;  
14           4.     Prejudgment interest;  
15           5.     Reasonable attorneys fees;  
16           6.     Costs of suit; and  
17           7.     All other appropriate relief.

18  
19           PURSUANT TO NRS 239B.030, THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRECEEDING  
20 DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON.

21           DATED: February 3, 2015.

22  
23           \_\_\_\_\_  
24 WILLIAM J. ROUTSIS II, ESQ.  
Attorney for Defendant Counterclaimant  
JEFFREY D. SPENCER

25           \_\_\_\_\_  
26 WILLIAM A. SWAFFORD, ESQ.  
27 Attorney for Defendant Counterclaimant  
28 JEFFREY D. SPENCER

ORIGINAL

The Law Firm of Laub & Laub  
Joe M. Laub, Esq.  
State Bar of Nevada No. 3664  
Nicholus C. Palmer, Esq.  
State Bar of Nevada No. 9888  
630 E. Plumb Lane  
Reno, Nevada 89502  
Attorneys for Plaintiff

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FEB 23 2015

Douglas County  
District Court Clerk

FILED

2015 FEB 23 PM 4:02

BODDIE R. WILLIAMS  
CLERK  
*B. Williams*  
DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff/Counterdefendant,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants/Counterclaimant

Case No. 14-CV-0260

Dept. No. II

JEFFREY D. SPENCER & DOES 1-5,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON  
KLEMENTI, an individual, MARY ELLEN  
KINION, an individual, and DOES 1-5,

Counterdefendants

**ANSWER TO COUNTERCLAIM**

COMES NOW, Plaintiff/Counterdefendant Helmut Klementi by and through his  
attorneys, Joe M. Laub, Esq. and Nicholus C. Palmer of the Law Firm of Laub & Laub, for his  
claims against the Defendant, and hereby allege as follows:



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**JURISDICTIONAL ALLEGATIONS**

1. Plaintiff/Counterdefendant admits the allegations contained in paragraph 1 of the Counterclaim.

2. Plaintiff/Counterdefendant admits the allegations contained in paragraph 2 of the Counterclaim.

3. Plaintiff/Counterdefendant admits the allegations contained in paragraph 3 of the Counterclaim.

4. Plaintiff/Counterdefendant admits the allegations contained in paragraph 4 of the Counterclaim.

5. Plaintiff/Counterdefendant is without sufficient information as to for a belief as to the truthfulness of all the allegations contained in paragraph 5 of Counterclaimant's Counterclaim, and therefore denies same;

6. Plaintiff/Counterdefendant is without sufficient information as to for a belief as to the truthfulness of all the allegations contained in paragraph 6 of Counterclaimant's Counterclaim, and therefore denies same;

**FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

7. Plaintiff/Counterdefendant admits the allegations contained in paragraph 7 of the Counterclaim.

8. Plaintiff/Counterdefendant is without sufficient information as to for a belief as to the truthfulness of all the allegations contained in paragraph 8 of Counterclaimant's Counterclaim, and therefore denies same;

Plaintiff/Counterdefendant denies the allegations contained in paragraph 8 of the Counterclaim.

9. Plaintiff/Counterdefendant denies the allegations contained in paragraph 9 of the Counterclaim.

10. Plaintiff/Counterdefendant admits the allegations contained in paragraph 10 of the Counterclaim.

1 11. Plaintiff/Counterdefendant admits the allegations contained in paragraph 11 of the  
2 Counterclaim.

3 12. Plaintiff/Counterdefendant denies the allegations contained in paragraph 12 of the  
4 Counterclaim.

5 13. Plaintiff/Counterdefendant admits the allegations contained in paragraph 13 of the  
6 Counterclaim.

7 14. Plaintiff/Counterdefendant admits the allegations contained in paragraph 14 of the  
8 Counterclaim.

9 15. Plaintiff/Counterdefendant admits the allegations contained in paragraph 15 of the  
10 Counterclaim.

11 16. Plaintiff/Counterdefendant denies the allegations contained in paragraph 16 of the  
12 Counterclaim.

13 17. Plaintiff/Counterdefendant denies the allegations contained in paragraph 17 of the  
14 Counterclaim.

15 18. Plaintiff/Counterdefendant denies the allegations contained in paragraph 18 of the  
16 Counterclaim.

17 19. Plaintiff/Counterdefendant admits the allegations contained in paragraph 19 of the  
18 Counterclaim.

19 **COUNT 1**  
20 **MALICIOUS PRESECUTION**

21 20. Plaintiff/Counterdefendant denies the allegations contained in paragraph 20 of the  
22 Counterclaim.

23 21. Plaintiff/Counterdefendant denies the allegations contained in paragraph 21 of the  
24 Counterclaim.

25 22. Plaintiff/Counterdefendant denies the allegations contained in paragraph 22 of the  
26 Counterclaim.

27 23. Plaintiff/Counterdefendant denies the allegations contained in paragraph 23 of the  
28 Counterclaim.

24. Plaintiff/Counterdefendant denies the allegations contained in paragraph 24 of the Counterclaim.

25. Plaintiff/Counterdefendant denies the allegations contained in paragraph 25 of the Counterclaim.

26. Plaintiff/Counterdefendant denies the allegations contained in paragraph 26 of the Counterclaim.

27. Plaintiff/Counterdefendant denies the allegations contained in paragraph 27 of the Counterclaim.

28. Plaintiff/Counterdefendant denies the allegations contained in paragraph 28 of the Counterclaim.

29. Plaintiff/Counterdefendant denies the allegations contained in paragraph 29 of the Counterclaim.

30. Plaintiff/Counterdefendant denies the allegations contained in paragraph 30 of the Counterclaim.

31. Plaintiff/Counterdefendant denies the allegations contained in paragraph 31 of the Counterclaim.

32. Plaintiff/Counterdefendant denies the allegations contained in paragraph 32 of the Counterclaim.

33. Plaintiff/Counterdefendant denies the allegations contained in paragraph 33 of the Counterclaim.

**COUNT II**  
**CIVIL CONSPIRACY (MALICIOUS PROSECUTION)**

34. Plaintiff/Counterdefendant denies the allegations contained in paragraph 34 of the Counterclaim.

35. Plaintiff/Counterdefendant denies the allegations contained in paragraph 35 of the Counterclaim.

36. Plaintiff/Counterdefendant denies the allegations contained in paragraph 36 of the Counterclaim.



1 **FIFTH AFFIRMATIVE DEFENSE**

2 The incident referred to in the Counterclaim, and any damages allegedly resulting  
3 therefrom, were proximately caused by the conduct of persons and/or entities other than this  
4 Plaintiff/ Counterdefendant, and further in this regard, Plaintiff/ Counterdefendant states that he  
5 had no supervision, duty of supervision, control, nor duty of control exercisable as to said  
6 persons and/or entities.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 Defendant/Counterplaintiff's alleged injuries and damages existed prior to any conduct  
9 of the Plaintiff/Counterdefendant and this answering Plaintiff/Counterdefendant bears no  
10 liability for pre-existing injuries or damages.

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 Pursuant to the provisions of Rule 11 of the Nevada Rules of Civil Procedure, at the time  
13 of filing of Plaintiff/Counterdefendant's Answer to Counterclaim. All possible affirmative  
14 defenses may not have been alleged inasmuch as insufficient facts and other relevant  
15 information may not have been available after reasonable inquiry, and therefore, Defendant  
16 reserves the right to amend this Answer to Counterclaim to allege additional affirmative  
17 defenses if subsequent investigation so warrants.

18 **WHEREFORE**, the Plaintiff/Counterdefendant prays for judgment against the  
19 Defendant/Counterplaintiff as follows:

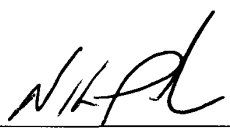
- 20 1. That Defendant/Counterplaintiff take nothing by way of his Counterclaim and that the  
21 same be dismissed with prejudice;  
22 2. That Plaintiff/Counterdefendant be awarded his costs and attorney's fees incurred to  
23 defend this action as provided by law; and  
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3. For such other and further relief as the Court may deem just and proper.

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 23rd day of February, 2015.

  
\_\_\_\_\_  
The Law Firm of Laub & Laub  
Joe M. Laub  
Nevada State Bar #3664  
Nik C. Palmer  
Nevada State Bar #9888  
630 E. Plumb Lane  
Reno, Nevada 89502

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On the 23rd day of February, 2015, I caused to be delivered by U.S. MAIL, a true and correct copy of the within document: ANSWER TO COUNTERCLAIM, Case No. 14-CV-0260, addressed as follows:

William A. Swafford, Esq.  
570 Monroe Street  
Reno, Nevada 89509

M. Moreno  
MARIA MORENO

RECEIVED

FEB 26 2015

FILED

2015 FEB 26 PM 4:03

BOBBIE R. WILLIAMS  
CLERK

BY MBear DEPUTY

The Law Firm of Laub & Laub  
Joe M. Laub, Esq.  
State Bar of Nevada No. 3664  
Nicholus C. Palmer, Esq.  
State Bar of Nevada No. 9888  
630 E. Plumb Lane  
Reno, Nevada 89502  
Attorneys for Plaintiff

Douglas County  
District Court Clerk

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff/Counterdefendant,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants/Counterclaimant

Case No. 14-CV-0260

Dept. No. II

JEFFREY D. SPENCER & DOES 1-5,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON  
KLEMENTI, an individual, MARY ELLEN  
KINION, an individual, and DOES 1-5.

Counterdefendants

**ANSWER TO COUNTERCLAIM**

COMES NOW, Counterdefendants Egon Klementi and Elfriede Klementi by and  
through his attorneys, Joe M. Laub, Esq. and Nicholus C. Palmer of the Law Firm of Laub &  
Laub, for his claims against the Defendant, and hereby allege as follows:



**JURISDICTIONAL ALLEGATIONS**

1  
2 1. Counterdefendants admit the allegations contained in paragraph 1 of the Counterclaim.  
3 2. Counterdefendants admit the allegations contained in paragraph 2 of the Counterclaim.  
4 3. Counterdefendants admit the allegations contained in paragraph 3 of the Counterclaim.  
5 4. Counterdefendants admit the allegations contained in paragraph 4 of the Counterclaim.  
6 5. Counterdefendants are without sufficient information as to for a belief as to the  
7 truthfulness of all the allegations contained in paragraph 5 of Counterclaimant's Counterclaim.  
8 and therefore denies same;  
9

10 6. Counterdefendants are without sufficient information as to for a belief as to the  
11 truthfulness of all the allegations contained in paragraph 6 of Counterclaimant's Counterclaim.  
12 and therefore denies same;  
13

**FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

14  
15 7. Counterdefendants admit the allegations contained in paragraph 7 of the Counterclaim.  
16 8. Counterdefendants are without sufficient information as to for a belief as to the  
17 truthfulness of all the allegations contained in paragraph 8 of Counterclaimant's Counterclaim.  
18 and therefore denies same;  
19

20 9. Counterdefendants deny the allegations contained in paragraph 9 of the Counterclaim.  
21 10. Counterdefendants admit the allegations contained in paragraph 10 of the  
22 Counterclaim.  
23

24 11. Counterdefendants admit the allegations contained in paragraph 11 of the  
25 Counterclaim.  
26

27 12. Counterdefendants deny the allegations contained in paragraph 12 of the  
28 Counterclaim.  
29

30 13. Counterdefendants admit the allegations contained in paragraph 13 of the  
31 Counterclaim.  
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33 14. Counterdefendants admit the allegations contained in paragraph 14 of the  
34 Counterclaim.  
35

1 15. Counterdefendants admit the allegations contained in paragraph 15 of the  
2 Counterclaim.

3 16. Counterdefendants deny the allegations contained in paragraph 16 of the  
4 Counterclaim.

5 17. Counterdefendants deny the allegations contained in paragraph 17 of the  
6 Counterclaim.

7 18. Counterdefendants deny the allegations contained in paragraph 18 of the  
8 Counterclaim.

9 19. Counterdefendants admit the allegations contained in paragraph 19 of the  
10 Counterclaim.

11 COUNT 1  
12 MALICIOUS PROSECUTION

13 20. Counterdefendants deny the allegations contained in paragraph 20 of the  
14 Counterclaim.

15 21. Counterdefendants deny the allegations contained in paragraph 21 of the  
16 Counterclaim.

17 22. Counterdefendants deny the allegations contained in paragraph 22 of the  
18 Counterclaim.

19 23. Counterdefendants deny the allegations contained in paragraph 23 of the  
20 Counterclaim.

21 24. Counterdefendants deny the allegations contained in paragraph 24 of the  
22 Counterclaim.

23 25. Counterdefendants deny the allegations contained in paragraph 25 of the  
24 Counterclaim.

25 26. Counterdefendants deny the allegations contained in paragraph 26 of the  
26 Counterclaim.

27 27. Counterdefendants deny the allegations contained in paragraph 27 of the  
28 Counterclaim.

1 28. Counterdefendants deny the allegations contained in paragraph 28 of the  
2 Counterclaim.

3 29. Counterdefendants deny the allegations contained in paragraph 29 of the  
4 Counterclaim.

5 30. Counterdefendants deny the allegations contained in paragraph 30 of the  
6 Counterclaim.

7 31. Counterdefendants deny the allegations contained in paragraph 31 of the  
8 Counterclaim.

9 32. Counterdefendants deny the allegations contained in paragraph 32 of the  
10 Counterclaim.

11 33. Counterdefendants deny the allegations contained in paragraph 33 of the  
12 Counterclaim.

13 **COUNT II**  
14 **CIVIL CONSPIRACY (MALICIOUS PROSECUTION)**

15 34. Counterdefendants deny the allegations contained in paragraph 34 of the  
16 Counterclaim.

17 35. Counterdefendants deny the allegations contained in paragraph 35 of the  
18 Counterclaim.

19 36. Counterdefendants deny the allegations contained in paragraph 36 of the  
20 Counterclaim.

21 37. Counterdefendants deny the allegations contained in paragraph 37 of the  
22 Counterclaim.

23 38. Counterdefendants deny the allegations contained in paragraph 38 of the  
24 Counterclaim.

25 39. Counterdefendants deny the allegations contained in paragraph 39 of the  
26 Counterclaim.

27 40. Counterdefendants deny the allegations contained in paragraph 39 of the  
28 Counterclaim.

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**FIRST AFFIRMATIVE DEFENSE**

Defendant/Counterplaintiff Counterclaim fails to state upon which relief can be granted in favor of Defendant/Counterplaintiff against Plaintiff/Counterdefendant.

**SECOND AFFIRMATIVE DEFENSE**

Defendant/Counterplaintiff is chargeable with negligence on his own part in and about the premises set forth in the Complaint; the alleged resulting damage Defendant/Counterplaintiff, if any, was directly and proximately caused and contributed to by Defendant/Counterplaintiff is of greater proportion and degree than that of Plaintiff/Counterdefendant, if any.

**THIRD AFFIRMATIVE DEFENSE**

The negligence of Defendant/Counterplaintiff caused or contributed to any injuries or damages Defendant/Counterplaintiff may have sustained, said injuries and damages being expressly denied herein; and the negligence of Defendant/Counterplaintiff, in comparison with the alleged negligence of Plaintiff/Counterdefendant, requires that the alleged damage of Defendant/Counterplaintiff be diminished in proportion to the amount of negligence attributable to him.

**FOURTH AFFIRMATIVE DEFENSE**

Defendant/Counterplaintiff has exaggerated and otherwise increased his alleged damages by failing to mitigate his damages as required by law or otherwise avoid incurring additional unnecessary damages.

**FIFTH AFFIRMATIVE DEFENSE**

The incident referred to in the Counterclaim, and any damages allegedly resulting therefrom, were proximately caused by the conduct of persons and/or entities other than this Plaintiff/ Counterdefendant, and further in this regard, Plaintiff/ Counterdefendant states that he had no supervision, duty of supervision, control, nor duty of control exercisable as to said persons and/or entities.

1 **SIXTH AFFIRMATIVE DEFENSE**

2 Defendant/Counterplaintiff's alleged injuries and damages existed prior to any conduct  
3 of the Plaintiff/Counterdefendant and this answering Plaintiff/Counterdefendant bears no  
4 liability for pre-existing injuries or damages.

5 **SEVENTH AFFIRMATIVE DEFENSE**

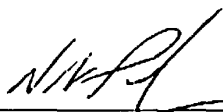
6 Pursuant to the provisions of Rule 11 of the Nevada Rules of Civil Procedure, at the time  
7 of filing of Plaintiff/Counterdefendant's Answer to Counterclaim. All possible affirmative  
8 defenses may not have been alleged inasmuch as insufficient facts and other relevant  
9 information may not have been available after reasonable inquiry, and therefore, Defendant  
10 reserves the right to amend this Answer to Counterclaim to allege additional affirmative  
11 defenses if subsequent investigation so warrants.

12 **WHEREFORE**, the Counterdefendants pray for judgment against the  
13 Defendant/Counterplaintiff as follows:

- 14 1. That Defendant/Counterplaintiff take nothing by way of his Counterclaim and that the  
15 same be dismissed with prejudice;  
16 2. That Counterdefendants be awarded their costs and attorney's fees incurred to defend  
17 this action as provided by law; and  
18 3. For such other and further relief as the Court may deem just and proper.

19 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social  
20 security number of any person.

21 DATED this 25<sup>th</sup> day of February, 2015.

22  
23 

24 The Law Firm of Laub & Laub  
25 Joe M. Laub  
26 Nevada State Bar #3664  
27 Nik C. Palmer  
28 Nevada State Bar #9888  
630 E. Plumb Lane  
Reno, Nevada 89502

CERTIFICATE OF SERVICE

I, MARIA MORENO, certify that I am an employee of the LAW FIRM OF LAUB & LAUB., and a citizen of the United States, over twenty-one years of age, not a party to, nor interested in, the within action.

On the 26<sup>th</sup> day of February, 2015, I caused to be delivered by U.S. MAIL, a true and correct copy of the within document: ANSWER TO COUNTERCLAIM, Case No. 14-CV-0260, addressed as follows:

William Routsis  
1070 Monroe Street  
Reno, Nevada 89509

William A. Swafford, Esq.  
570 Monroe Street  
Reno, Nevada 89509

M. Moreno  
MARIA MORENO

Mary Ellen Kinion  
P.O. Box 10868  
Zephyr Cove, Nevada 89448

**RECEIVED**

MAR 19 2015

Douglas County  
District Court Clerk

**FILED**

2015 MAR 23 PM 2:33

BOBBIE R. WILLIAMS  
CLERK

K. WILBERT DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff/Counterdefendant

VS.

JEFFREY D. SPENCER & DOES 1-5,

Defendants/Counterclaimant

Case No. 14-CV-0260

Dept. No II

JEFFREY D. SPENCER & DOES 1-5

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual,  
EGON KLEMENTI, an individual,  
MARY ELLEN KINION, an individual,  
and DOES 1-5

Counterdefendants

**ANSWER TO COUNTERCLAIM**

Counterdefendant , Mary Ellen Kinion, **Pro Se**, hereby submits this answer to  
Complaint on file herein, and alleges and avers as follows:

## **JURISDICTIONAL ALLEGATIONS**

**1. Counterdefendant admits the allegations contained in paragraph 1 of the Counterclaim.**

**2. Counterdefendant admits the allegations contained in paragraph 2 of the Counterclaim.**

**3. Counterdefendant admits the allegations contained in paragraph 3 of the Counterclaim.**

**4. Counterdefendant admits the allegations contained in paragraph 4 of the Counterclaim.**

**5. Counterdefendant is without sufficient information as to for a belief as to the truthfulness of all allegations contained in paragraph 5 of Counterclaimant's Counterclaim, and therefore denies same;**

**6. Counterdefendant is without sufficient information as to for a belief as to the truthfulness of all allegations contained in paragraph 6 of Counterclaimant's Counterclaim, and therefore denies same;**

## **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

**7. Counterdefendant admits the allegations contained in paragraph 7 of the Counterclaim.**

**8. Counterdefendant is without sufficient information as to for a belief as to the truthfulness of all allegations contained in paragraph 8 of Counterclaimant's Counterclaim, and therefore denies same;**

**9. Counterdefendant denies the allegations contained in paragraph 9 of the Counterclaim.**

**10. Counterdefendant admits the allegations contained in paragraph 10 of the Counterclaim.**

**11. Counterdefendant admits the allegations contained in paragraph 11 of the Counterclaim.**

**12. Counterdefendant denies the allegations contained in paragraph 12 of the Counterclaim.**



**13. Counterdefendant admits the allegations contained in paragraph 13 of the Counterclaim.**

**14. Counterdefendant admits the allegations contained in paragraph 14 of the Counterclaim.**

**15. Counterdefendant admits the allegations contained in paragraph 15 of the Counterclaim.**

**16. Counterdefendant denies the allegations contained in paragraph 16 of the Counterclaim.**

**17. Counterdefendant denies the allegations contained in paragraph 17 of the Counterclaim.**

**18. Counterdefendant denies the allegations contained in paragraph 18 of the Counterclaim.**

**19. Counterdefendant admits the allegations contained in paragraph 19 of the Counterclaim.**

**COUNT 1  
MALICIOUS PRESECUTION**

**20. Counterdefendant denies the allegations contained in paragraph 20 of the counterclaim.**

**21. Counterdefendant denies the allegations contained in paragraph 21 of the Counterclaim.**

**22. Counterdefendant denies the allegations contained in paragraph 22 of the Counterclaim.**

**23. Counterdefendant denies the allegations contained in paragraph 23 of the Counterclaim.**

**24. Counterdefendant denies the allegations contained in paragraph 24 of the Counterclaim.**

**25. Counterdefendant denies the allegations contained in paragraph 25 of the Counterclaim.**

**26. Counterdefendant denies the allegations contained in paragraph 26 of the Counterclaim.**

**27. Counterdefendant denies the allegations contained in paragraph 27 of the Counterclaim.**

**28. Counterdefendant denies the allegations contained in paragraph 28 of the Counterclaim.**

**29. Counterdefendant denies the allegations contained in paragraph 29 of the Counterclaim.**

**30. Counterdefendant denies the allegations contained in paragraph 30 of the Counterclaim.**

**31. Counterdefendant denies the allegations contained in paragraph 31 of the Counterclaim.**

**32. Counterdefendant denies the allegations contained in paragraph 32 of the Counterclaim.**

**33. Counterdefendant denies the allegations contained in paragraph 33 of the Counterclaim.**

**COUNT 11  
CIVIL CONSPIRACY (MALICIOUS PROSECUTION)**

**34. Counterdefendant denies the allegations contained in paragraph 34 of the Counterclaim.**

**35. Counterdefendant denies the allegations contained in paragraph 35 of the Counterclaim.**

**36. Counterdefendant denies the allegations contained in paragraph 36 of the Counterclaim.**

**37. Counterdefendant denies the allegations contained in paragraph 37 of the Counterclaim.**

**38. Counterdefendant denies the allegations contained in paragraph 38 of the Counterclaim.**

**39. Counterdefendant denies the allegations contained in paragraph 39 of the Counterclaim.**

**40. Counterdefendant denies the allegations contained in paragraph 40 of the Counterclaim.**

**FURTHER, as a separate affirmative defense to each and every claim for relief of the Counterclaimant, this answering Counterdefendant is informed and believes, and on such information and belief alleges as follows: this counterdefendant was called as a witness and testified under oath at the jury trial of the Defendant/ Counterclaimant on September 19, 2013.**

#### **FIRST AFFIRMATIVE DEFENSE**

**As a first and separate affirmative defense, this answering Counterdefendant alleges that the cross-complaint and each claim for relief contained therein fails to state facts sufficient to state a claim against this answering Counterdefendant.**

#### **SECOND AFFIRMATIVE DEFENSE**

**As a second and separate affirmative defense, this answering Counterdefendant alleges that the countercomplaint and each claim for relief contained therein fails to establish a valid lawsuit against this answering Counterdefendant.**

#### **THIRD AFFIRMATIVE DEFENSE**

**As a third and separate affirmative defense, this answering Counterdefendant alleges that Defendant/Counterplaintiff lacks standing to assert any of the claims and causes of action alleged in the Counterclaim.**

#### **FORTH AFFIRMATIVE DEFENSE**

**As a forth and separate affirmative defense. This answering Counterdefendant alleges that the Counterclaim fails to allege facts to support a claim for punitive or exemplary damages.**

#### **FIFTH AFFIRMATIVE DEFENSE**

**As a fifth and separate affirmative defense, Defendant/Counterplaintiff fails to state upon which relief can be granted in favor of Defendant/Counterplaintiff**

### **SIXTH AFFIRMATIVE DEFENSE**

All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon filing this answer. Therefore counterdefendant reserves the right to amend this Answer to allege additional affirmative defenses and claims, counter-claims or third-party claims, as applicable upon further investigation and discovery.

WHEREFORE, this answering counterdefendant prays for judgement against the Defendant/Counterplaintiff as follows:

1. That Defendant/Counterplaintiff take nothing by way of his Counterclaim and that the same be dismissed with prejudice;
2. That Counterdefendant be awarded her costs and court fees incurred to defend this action as provided by law and
3. Award Counterdefendant such other and further relief as the court deems just and equitable.

DATED this 19 day of March, 2015.



**Mary Ellen Kinion**

**Box 10868**

**Zephyr Cove, Nevada 89448**

**CERTIFICATE OF MAILING**

**I HEREBY CERTIFY** that on the 24 day of March, 2015, I placed a true and correct copy of the foregoing **ANSWER TO COUNTERCLAIM**, Case No. 14-CV-0260 in the United States Mail at Stateline, Nevada, with first-class postage prepaid, addressed to the following:

**William Routsis  
1070 Monroe Street  
Reno, Nevada 89509**

  
\_\_\_\_\_  
**Counterdefendant Pro Se**

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: II

RECEIVED

FEB - 9 2016

2016 FEB -9 PM 2: 20

Douglas County  
District Court Clerk

FILED  
BY *[Signature]* DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

9 HELMUT KLEMENTI,

10 Plaintiff,

11 vs.

12 JEFFREY D. SPENCER & DOES 1-5,

13 Defendants.

**ANSWER TO COUNTERCLAIM**

14  
15 JEFFREY D. SPENCER,

16 Counterclaimant,

17 vs.

18 HELMUT KLEMENTI, an individual,  
19 EGON KLEMENTI, an individual, MARY  
ELLEN KINION, an individual, and  
DOES 1-5,

20 Counterdefendants.

22 Counter-defendant, Mary Ellen Kinion ("Kinion"), by and through her attorneys,  
23 Glogovac & Pintar, and in response to the Counterclaims filed in the above-captioned  
24 matter by Defendant/Counter-claimaint, Jeffrey Spencer ("Spencer"), admits, denies  
25 and avers as follows:  
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**JURISDICTIONAL ALLEGATIONS**

1. Kinion admits the allegations contained in Paragraph 1.

2. Kinion admits the allegations contained in Paragraph 2.

3. Kinion admits the allegations contained in Paragraph 3.

4. Kinion avers that the allegations contained in Paragraph 4 are vague and non-specific, and thus, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

5. Kinion denies the allegations contained in Paragraph 5.

6. Kinion denies the allegations contained in Paragraph 6.

**FACTUAL ALLEGATIONS**

7. In response to the allegations of Paragraph 7, Kinion incorporates herein by reference and restates her answers to the allegations of Paragraphs 1 through 6 of the Counterclaim as if fully set forth herein.

8. In response to the allegations contained in Paragraph 8, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

9. In response to the allegations of Paragraph 9, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

10. Kinion admits the allegations contained in Paragraph 10.

11. Kinion admits the allegations contained in Paragraph 11.

12. In response to the allegations of Paragraph 12, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

13. In response to the allegations of Paragraph 13, Kinion is without knowledge or information sufficient to form a belief as to the truth of the same.

14. Kinion admits the allegations contained in Paragraph 14.

1           15. In response to the allegations of Paragraph 15, Kinion is without  
2 knowledge or information sufficient to form a belief as to the truth of the same.

3           16. In response to the allegations of Paragraph 16, Kinion is without  
4 knowledge or information sufficient to form a belief as to the truth of the same.

5           17. In response to the allegations of Paragraph 17, Kinion is without  
6 knowledge or information sufficient to form a belief as to the truth of the same.

7           18. In response to the allegations of Paragraph 18, Kinion is without  
8 knowledge or information sufficient to form a belief as to the truth of the same.

9           19. In response to the allegations of Paragraph 19, Kinion is without  
10 knowledge or information sufficient to form a belief as to the truth of the same.

11  
12                                   **FIRST CAUSE OF ACTION**

13           20. In response to the allegations of Paragraph 20, Kinion incorporates  
14 herein by reference and restates her answers to the allegations of Paragraphs 1  
15 through 19 of the Counterclaim as if fully set forth herein.

16           21. Kinion denies the allegations contained in Paragraph 21.

17           22. Kinion denies the allegations contained in Paragraph 22.

18           23. Kinion denies the allegations contained in Paragraph 23.

19           24. Kinion denies the allegations contained in Paragraph 24.

20           25. Kinion denies the allegations contained in Paragraph 25.

21           26. Kinion denies the allegations contained in Paragraph 26.

22           27. Kinion denies the allegations contained in Paragraph 27.

23           28. Kinion denies the allegations contained in Paragraph 28.

24           29. Kinion denies the allegations contained in Paragraph 29.

25           30. Kinion denies the allegations contained in Paragraph 30.



1 31. Kinion denies the allegations contained in Paragraph 31.

2 32. Kinion denies the allegations contained in Paragraph 32.

3 33. Kinion denies the allegations contained in Paragraph 33.

4 **SECOND CAUSE OF ACTION**

5 34. In response to the allegations of Paragraph 34, Kinion incorporates  
6 herein by reference and restates her answers to the allegations of Paragraphs 1  
7 through 33 of the Counterclaim as if fully set forth herein.  
8

9 35. Kinion denies the allegations contained in Paragraph 35.

10 36. Kinion denies the allegations contained in Paragraph 36.

11 37. Kinion denies the allegations contained in Paragraph 37.

12 38. Kinion denies the allegations contained in Paragraph 38.

13 39. Kinion denies the allegations contained in Paragraph 39.

14 40. Kinion denies the allegations contained in Paragraph 40.

15 **AFFIRMATIVE DEFENSES**

16 **FIRST AFFIRMATIVE DEFENSE**

17 The Counterclaim and each and every allegation contained therein fails to state  
18 a claim upon which relief can be granted.  
19

20 **SECOND AFFIRMATIVE DEFENSE**

21 That Kinion is afforded privilege and immunity for all statements made in the  
22 course of legal proceedings.

23 **THIRD AFFIRMATIVE DEFENSE**

24 That the statements made by Kinion are statements of opinion protected under  
25 the First Amendment.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 That Kinion is afforded immunity by reason of her statements being absolutely  
28 true or substantially true and in good faith.

1  
2 **FIFTH AFFIRMATIVE DEFENSE**

3 To the extent Spencer sustained any damages as a result of the allegations out  
4 of which this matter arises, those damages were caused by the acts or omissions of  
5 Third-parties over which Kinion has no control.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 Kinion is informed and believes and thereupon avers that at all times relevant  
8 hereto, Spencer was negligent, at fault, and otherwise responsible for the allegations  
9 which are the subject of this litigation.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 Spencer's damages, if any, were caused in whole or in part, or were contributed  
12 to by reason of the negligence or wrongful conduct of Spencer himself.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 Spencer's action is frivolous, unreasonable, vexatious, and devoid of any legal  
15 or factual foundation. The Counterclaim is not well grounded in fact, nor warranted by  
16 existing law or a good faith argument for the extension, modification, or reversal of  
17 existing law. Consequently, sanctions against Spencer are warranted and Kinion is  
18 entitled to attorney's fees and costs.

19 **PRAYER FOR RELIEF**

20 Based upon the foregoing, Mary Ellen Kinion respectfully requests relief as  
21 follows:  
22

- 23 1. That Spencer take nothing by virtue of this action, and that his  
24 Counterclaim be dismissed with prejudice;  
25 2. For costs of suit and attorney's fees to the extent allowed by law; and  
26 3. For such other and further relief as the Court deems just and proper.  
27

28 ///


**AFFIRMATION**  
**Pursuant to NRS 239B.030**

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

DATED this 9<sup>th</sup> day of February, 2016.

GLOGOVAC & PINTAR

By:

  
MICHAEL A. PINTAR, ESQ.  
Nevada Bar No. 003789  
Attorneys for Mary Ellen Kinion

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of  
3 Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that on the 9 day  
4 of February, 2016, I served the foregoing document(s) described as follows:

5 **ANSWER TO COUNTERCLAIM**

6 On the party(s) set forth below by:

7 X Placing an original or true copy thereof in a sealed envelope placed for  
8 collection and mailing in the United States Mail, at Reno, Nevada,  
9 postage prepaid, following ordinary business practices.

10 \_\_\_\_\_ Personal delivery.

11 \_\_\_\_\_ Facsimile (FAX).

12 \_\_\_\_\_ Federal Express or other overnight delivery.

13 addressed as follows:

14 Nicholas Palmer, Esq.  
15 Laub & Laub  
16 630 East Plumb Lane  
17 Reno, NV 89502  
***Attorneys for Helmut Klementi***

Douglas R. Brown, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas St., 3rd Floor  
Reno, NV 89519  
***Attorneys for Helmut Klementi***

18 William Routsis, Esq.  
19 1070 Monroe Street  
20 Reno, NV 89509  
***Attorneys for Jeffrey Spencer***

David Zaniel, Esq.  
Ranalli & Zaniel, LLC  
50 W. Liberty St., Suite 1050  
Reno, NV 89509  
***Attorneys for Jeffrey Spencer***

21 Dated this 9 day of February, 2016.

22  
23 Sherie L. Marrier  
24 Employee of Glogovac & Pintar  
25  
26  
27  
28

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: HI

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Douglas County  
District Court Clerk

BOBBIE R. WILLIAMS  
CLERK

BY M. Williams DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,

9 Plaintiff,

10 vs.

11 JEFFREY D. SPENCER & DOES 1-5,

12 Defendants.

13 \_\_\_\_\_ /  
14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual,  
18 EGON KLEMENTI, an individual, MARY  
ELLEN KINION, an individual, and  
DOES 1-5,

19 Counterdefendants.

**THIRD-PARTY DEFENDANT MARY  
KINION'S MOTION FOR SUMMARY  
JUDGMENT**

22 Pursuant to Rule 56 of the Nevada Rules of Civil Procedure, Third-Party  
23 Defendant, Mary Kinion ("Kinion"), hereby moves this Court for summary judgment on  
24 the claims asserted against her by Defendant, Jeffrey Spencer ("Spencer").<sup>1</sup>

25 This motion is based upon the memorandum of points and authorities submitted  
26 herewith, and upon all other papers, pleadings and documents on file herein.

27 ///

28 \_\_\_\_\_  
<sup>1</sup> Kinion has been misidentified in the caption as being a Counter-defendant.

I.  
**MEMORANDUM OF POINTS AND AUTHORITIES**

**A. Case Summary.**

This is an action stemming from disputes between neighbors that live in the Kingsbury Grade General Improvement District ("KGID") on the south shore of Lake Tahoe. The dispute escalated to the point that in 2013, Spencer was criminally prosecuted for assault on an elderly neighbor, Helmut Klementi. Following trial in the criminal action, Helmut Klementi filed a civil action against Spencer seeking recovery for personal injuries arising from the assault. In response, Spencer asserted a counterclaim against Mr. Klementi as well as third-party claims against Mr. Klementi's brother and sister-in-law, Egon and Elfie Klementi, and Kinion. Spencer's third-party claims consist of claims for malicious prosecution and civil conspiracy.

As will be shown below, the elements necessary to prevail on a claim for malicious prosecution and/or civil conspiracy have not been satisfied as they pertain to Kinion. Therefore, as a matter of law, Kinion is entitled to summary judgment and the claims against her should be dismissed.

**B. Background.**

Ms. Kinion is a sixty-eight year-old (68) retired nurse. She has lived in the KGID neighborhood for approximately twenty-seven (27) years. Helmut Klementi and his twin brother, Egon Klementi, are eighty-two (82) years old and also live in the neighborhood. Jeff Spencer is fifty-two (52) years old. Spencer and his wife, Marilyn, live across the street from Egon and Elfie Klementi. Spencer is employed during the winter months as a snowplow operator for a company that contracts to provide plowing services for KGID.

In the summer of 2012, a dispute between various neighbors and Spencer developed. In that year, the Spencers unilaterally decided to build a six (6) foot tall fence around their property. The height of that fence was out-of-compliance with

1 standards developed by Douglas County. As a result, the Spencers were ultimately  
2 required to take the fence down.

3 In retaliation, later that year, as snow began to fall in the area and the  
4 snowplows were clearing the streets, excessively high berms of snow and ice would  
5 appear in front of driveways belonging to the neighbors who objected to the Spencers'  
6 fence. On December 12, 2012, Kinion went outside and discovered that an  
7 excessively high berm of snow and ice was blocking her driveway, but that all other  
8 driveways on the street were clear. Exhibit 1, Deposition of Mary Ellen Kinon dated  
9 April 7, 2016, pp. 47-49. In response, Kinion called KGID. Id. Soon thereafter, workers  
10 from KGID appeared and cleared the snow berm from her driveway entrance.

11 A short time later, Marilyn Spencer stopped her car in the road in front of  
12 Kinion's house, called someone with her phone, and drove away. Fifteen (15) minutes  
13 later, another snowplow which Kinion thinks was driven by Spencer, put the berm of  
14 snow back in front of Kinion's driveway. Exhibit 1, p. 50:11-25.

15 As the snowplow was driving away, Kinion went outside to try to identify the  
16 driver. At that time, she saw the snowplow proceed toward Egon Klementi's house.  
17 Egon Klementi was standing in his driveway shoveling snow. Kinion then observed  
18 the snowplow approach Mr. Klementi's residence, increased its speed and capture  
19 "old" snow from the side of the road, and then propel the "old" snow along with other  
20 road debris onto Mr. Klementi. Having witnessed this event, Kinion immediately called  
21 and checked on Mr. Klementi who advised her that he was going to call 911 and report  
22 the incident. Kinion later called 911 herself to advise them that she was a witness.  
23 Exhibit 1, p. 77:24 – p. 80:12.

24 Several days later, on December 18, 2012, Kinion attended a KGID meeting. At  
25 that meeting, Kinion advised the KGID members of what she had witnessed days  
26 earlier regarding the snowplow spraying snow over Egon Klementi. In addition, she  
27 and other neighbors complained about the excessively high berms left by Spencer in  
28

1 their driveways. Exhibit 1, p. 89:10 – 92:18. KGID representatives informed the  
2 neighbors to photograph the berms.

3 Later that same evening, Helmut Klementi went into the street to take pictures  
4 of the snow berm piled up in front of his brother's property. While doing so, Helmut  
5 Klementi was assaulted and knocked over by Spencer. Video evidence confirms that  
6 when he was assaulted by Spencer, Helmut's back was to the Spencers' property and  
7 he was facing his brother's residence taking pictures.

8 Following the assault, the Douglas County Sheriff's Office was called out and  
9 Deputy McKone arrived on the scene. See, Douglas County Sheriff Deputy Report,  
10 attached as Exhibit 2. Deputy McKone called for medical assistance from the local  
11 paramedics who attended to Helmut Klementi. Meanwhile, Deputy McKone with the  
12 assistance of Deputy Almeida undertook a criminal investigation. As part of their  
13 investigation, the DCSO deputies spoke with Helmut Klementi, his brother Egon,  
14 Egon's wife Elfie, and neighbor, Janet Wells. Deputy McKone also interviewed  
15 Spencer and his wife.

16 According to the Sheriff's Report, Spencer informed Deputy McKone that he  
17 attacked Helmut because he believed Helmut was breaking into his truck. Claiming to  
18 believe Helmut was a teenager in a hoodie, Spencer admitted to Deputy McKone that  
19 he grabbed Helmut and threw him to the ground. Ultimately, Deputy McKone did not  
20 find Spencer's account to be credible. In particular, Deputy McKone did not believe  
21 that Spencer could mistake his 82 year old elderly neighbor for a teenager and he  
22 found other inconsistencies with Spencer's account as well. As a result, Deputy  
23 McKone arrested Spencer for battery and abuse of an elder. See, Exhibit 2.

24 Through the course of his criminal investigation, Deputy McKone never spoke  
25 with or obtained a statement from Kinion. In fact, he never had any interaction with  
26 Kinion whatsoever and did not base his decision to arrest Spencer that evening on any  
27 information originating from Kinion.

28 At his deposition of April 7, 2016, Deputy McKone testified as follows:



1 Q So then after you went to the hospital, spoke  
2 to Mr. Klementi, what did you do then?  
3 A I believe I returned back to the area and collected the  
4 written statements from the Klementis.  
5 Q And then what did you do once you obtained all these  
6 written statements?  
7 A I went back to the station -- I mean, I finished my shift  
8 with the other calls not related to this.  
9 Q Right.  
10 A And then I went back to the station and wrote my report.  
11 Q So this report we've marked Exhibit 1?  
12 A Yes.  
13 Q When was this report completed?  
14 A I believe it was -- the narrative was written on the same  
15 shift before I left for the night.  
16 Q Okay. In this report it says that it is your opinion that  
17 Jeffrey Spencer was upset with Klementi, saw Helmut taking  
18 photographs of the snow berm, and used the excuse of  
19 someone breaking into his truck to confront and to commit a  
20 battery on Helmut Klementi.  
21 A Yes.  
22 Q And that conclusion was formed by you on the evening  
23 of December 18th?  
24 A Yes.  
25 MR. ROUTSIS: I'm going to object and move to strike his  
26 opinion, which is not relevant.  
27  
28 BY MR. PINTAR:  
Q Have we --  
MR. ROUTSIS: It's a relevance objection.  
BY MR. PINTAR:  
Q Have we talked about all the investigation that you  
performed in forming that opinion and conclusion?  
A Yes.  
Q Okay. At any point in time prior to forming this opinion  
and conclusion in this report did you speak with Mary Ellen  
Kinion?  
A I did not.  
Q And based on your report, it was forwarded to the  
Douglas County Sheriff's Department or the district attorney  
for prosecution, correct?  
A Yes.  
Deposition of Deputy Jesse McKone, pp. 35:22 – 37:16 attached as Exhibit 3.

1 Following Spencer's arrest, the Douglas County Deputy District Attorney's office  
2 pursued criminal charges. In preparation for the trial, the Deputy District Attorney,  
3 Maria Pence, reached out to Kinion and asked her to provide whatever information she  
4 had in regards to the ongoing events. Kinion complied with that request. Kinion was  
5 later subpoenaed to testify at Spencer's trial and gave testimony in response to  
6 questions posed to her at trial. Exhibit 1, p. 141:15-18. Spencer was eventually  
7 acquitted of the criminal charges.

8 Following his acquittal, Spencer asserted the instant third-party claims against  
9 Kinion for malicious prosecution and civil conspiracy. However, based on the  
10 undisputed facts, Spencer cannot prevail against Kinion, as a matter of law. The  
11 required elements for a claim for malicious prosecution are not satisfied, and thus,  
12 summary judgment is appropriate.

13 **C. Statement of Relevant Facts**

14 1. Spencer is employed seasonally as a snowplow operator for a company  
15 contracted with KGID. Spencer's Answer and Counterclaims, attached hereto as  
16 Exhibit 4, ¶ 8.

17 2. Spencer resides in a neighborhood with Helmut Klementi, Egon Klementi  
18 and Kinion on the south end of Lake Tahoe. Deposition Transcript of Mary Kinion  
19 attached as Exhibit 1, at pp.12:17 – 15:10.

20 3. Spencer and his wife were involved in disputes or issues with neighbors  
21 since at least the summer of 2012. Exhibit 1, at pp. 34:4 – 39:12; pp.67:5 – 74:3.

22 4. On December 12, 2012 Spencer caused snow and debris to spray over  
23 Egon Klementi. In response, Egon Klementi and Kinion called 911 to report the  
24 incident. A brief investigation into the matter was conducted by the Douglas County  
25 Sheriff's Office, however, Kinion did not file any report or make any written statement.  
26 Exhibit 1, at 77:24 – 85:24.

1           5.     On December 18, 2012, Kinion attended a neighborhood KGID meeting  
2 wherein she informed KGID of the events that took place several days earlier  
3 regarding the snowplow incident and Egon Klementi. Exhibit 1, at 89:22 – 92:18.

4           6.     Later that evening, Spencer assaulted Helmut Klementi in the street  
5 while Helmut Klementi was been taking pictures of the snow berm in front of his  
6 brother's house. Exhibit 2, Douglas County Sheriff's Report dated December 18, 2012.

7           7.     The Douglas County Sheriff's Office responded to the scene and  
8 conducted an investigation of the incident. As part of that investigation, Deputy  
9 McKone interviewed Helmut Klementi, Egon Klementi, Elfie Klementi, Janet Wells,  
10 Spencer and Marilyn Spencer. From that investigation, Deputy McKone states that  
11 Spencer's version of the incident was not credible and, in his opinion, Spencer "was  
12 upset with the Klementis, saw Helmut taking photographs of the snowburn [sic] and  
13 used the excuse of someone breaking into his truck to confront and commit a battery  
14 on Helmut Klementi." Deputy McKone forwarded his investigation report to the District  
15 Attorney's Office for a decision regarding prosecution. Deposition Transcript of Deputy  
16 Jesse McKone, attached as Exhibit 3, pp. 36:11 – 37:16.

17           8.     Ms. Kinion had no involvement in Deputy McKone's decision to arrest  
18 Spencer on December 18, 2012. Deputy McKone confirmed that he never spoke with  
19 Kinion and never obtained a written statement from Kinion prior to arresting Spencer.  
20 Exhibit 3, at p. 37:9-16.

21           9.     Ms. Kinion was not involved in the criminal prosecution against Spencer  
22 until the Deputy District Attorney contacted her and requested that Kinion provide any  
23 information that she may have regarding the incident and events relevant to the  
24 neighborhood. Exhibit 1, at pp. 147:9 – 148:15.

25           10.    As part of Spencer's trial, Kinion received a subpoena and was required  
26 to provide testimony in response to the questions posed to her. Exhibit 1, at p. 141:13-  
27 23.

28     ///

1           **A. Law and Discussion.**

2           **1. Legal Standard.**

3           Nevada Rule of Civil Procedure 56(b) provides that “[a] party against whom a  
4 claim . . . is sought may, at any time, move with or without supporting affidavits for a  
5 summary judgment in the party’s favor.” Summary judgment is appropriate when  
6 “there is no genuine issue as to any material fact and . . . the moving party is entitled  
7 to a judgment as a matter of law.” NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. 724,  
8 729, 121 P.3d 1026, 1029 (2005). When reviewing a motion for summary judgment,  
9 the court must view the evidence in a light most favorable to the nonmoving party.  
10 Wood, 121 Nev. at 729, 121 P.3d at 1029. However, the nonmoving party may not  
11 defeat a motion for summary judgment by relying “on the gossamer threads of whimsy,  
12 speculation and conjecture,” or on “general allegations and conclusions, but must, by  
13 affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine  
14 factual issue.” Id. at 731, 121 P.3d at 1030.

15  
16  
17           Summary judgment is available as a matter of law when the facts of the case do  
18 not satisfy the required elements of the claims asserted. See LaMantia v. Redisj, 38  
19 P.3d 877, 879-80 (2002) (holding that a claim for malicious prosecution is subject to  
20 summary judgment when facts do satisfy the elements of that claim); Land Baron  
21 Investments, Inc. v. Bonnie Springs Family Limited Partnership, 131 Nev. Adv. Op. 69  
22 (2015) (affirming summary judgment because the evidence did not satisfy the  
23 elements of the claim).

24  
25           **2. Summary Judgment is Appropriate on Spencer’s Claim for**  
26 **Malicious Prosecution.**

27           The elements for a claim of malicious prosecution are: “(1) want of probable  
28 cause to initiate the prior criminal proceeding; (2) malice; (3) termination of the prior

1 criminal proceedings; and (4) damages." LaMantia v. Redisi, 118 Nev. 27, 38 P.3d  
2 877, 879-80 (2002). The Nevada Supreme Court has further explained that "[a]  
3 malicious prosecution claim requires that the defendant initiated, procured the  
4 institution of, or actively participated in the continuation of a criminal proceeding  
5 against the plaintiff." Id. In this case, there is no evidence that supports a finding that  
6 Kinion initiated or actively participated in the continuation of Spencer's criminal action.  
7 Furthermore, there is no evidence that there was a lack of probable cause created by  
8 Kinion, much less malice on her part in respect to Spencer's arrest and prosecution.  
9

10 Deputy McKone testified that he had no contact or communication with Kinion  
11 prior to arresting Spencer on the evening of December 18, 2012. Deputy McKone  
12 responded to the scene and found 82-year old Helmut Klementi lying in the street, in  
13 the snow, after being attacked. From that, he conducted his own investigation into the  
14 matter and, without ever speaking with Kinion or obtaining a statement from her,  
15 Deputy McKone came to his own conclusions regarding the events that transpired that  
16 evening and placed Spencer under arrest. In his own words, Deputy McKone states:  
17

18 *It is my own opinion*, Jeffrey Spencer, was upset with the Klementi's [sic],  
19 saw Helmut taking photographs of the snowburm [sic] and used the  
20 excuse of someone breaking into his truck to confront and commit a  
battery on Helmut Klementi.

21 See Exhibit 2 (emphasis added). Deputy Klementi then forwarded his report to the  
22 Douglas County District Attorney's Office and the decision to prosecute was made by  
23 that Office. From these facts, it is clear that Kinion played no role in the initiation of the  
24 criminal charges against Spencer.  
25

26 Furthermore, there is no evidence that Kinion "actively participated in the  
27 continuation of a criminal proceeding" or that she acted with any level of malice. Once  
28 the decision to prosecute was made by the Douglas County District Attorney's Office,

1 Kinion's involvement was limited to responding to solicitations from the appropriate  
2 authorities. Certainly, responding to requests for information from the Douglas County  
3 District Attorney's Office and testifying at trial pursuant to a subpoena does not amount  
4 to "active[ ] participat[ion] in a criminal proceeding." Kinion did not push information  
5 onto the authorities nor did she insist that prosecution continue. Instead, her role was  
6 limited to that of a citizen responding to requests made to her from government  
7 officials through the proper channels. These same facts fail to demonstrate any malice  
8 on the part of Kinion.  
9

10 Based on the foregoing, Spencer has failed to provide any evidence that would  
11 support a claim for malicious prosecution against Kinion. Frankly, Spencer has no one  
12 to blame but himself for having to endure the criminal prosecution. Certainly, he  
13 cannot look to blame Kinion or others for his actions or the resulting consequences.  
14 For these reasons, the claim for malicious prosecution against Kinion should be  
15 dismissed.  
16

17 **3. The Claim for Civil Conspiracy Cannot Continue.**

18 Based on many of the same facts outline above, the claim for civil conspiracy  
19 must fail as a matter of law. Importantly, "to establish a claim for civil conspiracy, a  
20 plaintiff must establish . . . *the commission of an underlying tort.*" Peterson v. Miranda,  
21 991 F.Supp.2d 1109, 1120 (D. Nev. 2014) *citing* GES, Inc. v. Corbitt, 117 Nev. 265, 21  
22 P.3d 11, 15 (2001) (emphasis added). In addition to establishing an underlying tort, a  
23 claim for civil conspiracy must establish the following elements: (1) defendants acted  
24 in concert; (2) defendants intended to accomplish an unlawful objective for the  
25 purpose of harming the plaintiff; and (3) plaintiff sustained damages resulting from the  
26  
27  
28

1 defendants' acts. Consol. Generator-Nevada, Inc. v. Cummins Engine Co., Inc., 114  
2 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1999). None of these elements are satisfied.

3 Initially defeating the conspiracy claim is the fact that the underlying claim for  
4 malicious prosecution cannot stand. Without a valid and actionable tort, Spencer's  
5 claim for civil conspiracy must also fail. Nevertheless, considering the remaining  
6 elements of the claim for civil conspiracy, there is no evidence to support that Kinion,  
7 or the other defendants, somehow concocted an agreement amongst each other to  
8 harm Spencer. The idea itself is unimaginable and would require that all of events that  
9 took place on the evening of December 18, 2012 were scripted; i.e., that Helmut  
10 Klementi, a 82-year-old man, would act as bait to prod Spencer into assaulting him;  
11 that the neighbors would act together in concert and influence the Sheriff's  
12 investigation; and that the neighbors would work together and give false or inaccurate  
13 trial testimony against Spencer. The idea is outrageous and completely unsupported  
14 by the facts.

15  
16  
17 **4. Privilege Precludes the Claims Asserted Against Kinion.**

18 Lastly, Kinion's communications with the District Attorney's Office and testimony  
19 at trial would be protected under the testimonial or judicial proceeding privilege.  
20 "[There] is [a] long-standing common law rule that communications uttered or  
21 published in the course of judicial proceedings are absolutely privileged so long as  
22 they are in some way pertinent to the subject of controversy." Circus-Circus Hotels v.  
23 Witherspoon, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983). "The policy underlying the  
24 privilege is that certain situations the public interest in having people speak freely  
25 outweighs the risk that individuals will occasionally abuse the privilege. . . ." Id. at 61,  
26  
27  
28

1 657 P.2d at 104. In addition, of course, statements made by Kinion to the police or  
2 district attorney are immune from civil liability under NRS 41.650.

3 In this instance, Kinion's involvement in this matter was limited to responding to  
4 requests from the District Attorney's Office as well as testifying at trial pursuant to a  
5 subpoena. However, Kinion's trial testimony and communications with the District  
6 Attorney's Office in preparation to a judicial proceeding are privileged and cannot  
7 subject her to a claim for malicious prosecution. See Sahara Gaming v. Culinary  
8 Workers Union, 115 Nev. 212, 984 P.2d 164, 167 (1999) ("This court has also held  
9 that the absolute privilege rule applies to letters written in anticipation of litigation.")  
10

11 II.

12 **CONCLUSION**

13 Based on the foregoing, Kinion respectfully requests that the claims asserted  
14 against her in this matter for malicious prosecution and civil conspiracy be dismissed  
15 by way of summary judgment.  
16


17 **AFFIRMATION**  
18 **Pursuant to NRS 239B.030**

19 The undersigned does hereby affirm that the preceding document does not  
20 contain the social security number of any person.

21 DATED this 22 day of April, 2016.

22 GLOGOVAC & PINTAR

23 By:

24   
25 MICHAEL A. PINTAR, ESQ.  
26 Nevada Bar No. 003789  
27 ROBERT R. HOWEY, ESQ.  
28 Nevada bar No. 11608  
Attorneys for Third-Party Defendant,  
Mary Ellen Kinion



1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of  
3 Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that on the 22 day  
4 of April, 2016, I served the foregoing document(s) described as follows:

5 THIRD-PARTY DEFENDANT MARY KINION'S MOTION FOR SUMMARY  
6 JUDGMENT

7 On the party(s) set forth below by:

8 X Placing an original or true copy thereof in a sealed envelope placed for  
9 collection and mailing in the United States Mail, at Reno, Nevada,  
postage prepaid, following ordinary business practices.

10 \_\_\_\_\_ Personal delivery.

11 \_\_\_\_\_ Facsimile (FAX).

12 \_\_\_\_\_ Federal Express or other overnight delivery.

13 addressed as follows:

14  
15 Nicholus Palmer, Esq.  
16 Laub & Laub  
630 East Plumb Lane  
Reno, NV 89502

17 ***Attorneys for Helmut Klementi***

Douglas R. Brown, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas St., 3rd Floor  
Reno, NV 89519

***Attorneys for Helmut Klementi***

18 William Routsis, Esq.  
19 1070 Monroe Street  
Reno, NV 89509

20 ***Attorneys for Jeffrey Spencer***

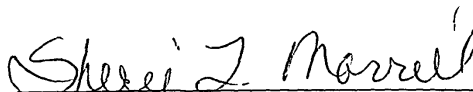
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***Attorneys for Jeffrey Spencer***

21 Tanika Capers, Esq.  
22 6750 Via Austi Parkway, Suite 310  
Las Vegas, NV 89119

23 ***Attorneys for Rowena Shaw and Peter***  
24 ***Shaw***

25 Dated this 22 day of April, 2016.

26   
27 \_\_\_\_\_  
Employee of Glogovac & Pintar  
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# **EXHIBIT 1**

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1                   IN THE NINTH JUDICIAL DISTRICT COURT  
2                   OF THE STATE OF NEVADA  
3                   IN AND FOR THE COUNTY OF DOUGLAS

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6   HELMUT KLEMENTI,  
7                   Plaintiff,                   Case No. 14-CV-0260

8   -vs-                   Dept. No. 1

9   JEFFREY D. SPENCER,  
10                  Defendant.

11   \_\_\_\_\_  
11   JEFFREY D. SPENCER,  
12                  Counterclaimant,

13   -vs-

14   HELMUT KLEMENTI, an individual,  
14   EGON KLEMENTI, an individual,  
15   MARY ELLEN KINION, an individual,  
15   and DOES 1-5,

16                  Counterdefendants.  
17   \_\_\_\_\_

18  
19                  DEPOSITION OF MARY ELLEN KINION  
19                           04/07/2016  
20                           Reno, Nevada

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23  
24   REPORTED BY:                   KRISTINE BOKELMANN  
24                                   NV CCR #165, CA #5979  
25   Job No: 297108B

<p style="text-align: right;">Page 10</p> <p>1 A Correct.</p> <p>2 Q You're not precisely sure which one, but it's</p> <p>3 one of those two boxes?</p> <p>4 A Correct.</p> <p>5 MR. ZANIEL: Okay. I don't know if anybody</p> <p>6 else needs to see that.</p> <p>7 MR. PINTAR: Are you going to mark that, Dave?</p> <p>8 MR. ZANIEL: Yeah, I think we'll mark it.</p> <p>9 (Marked Defendant's Exhibit 7.)</p> <p>10 BY MR. ZANIEL:</p> <p>11 Q Okay. So you've lived in this residence for</p> <p>12 approximately 16 to 17 years?</p> <p>13 A Yes.</p> <p>14 Q Do you currently live with anybody?</p> <p>15 A No.</p> <p>16 Q Have you ever lived with anybody at that</p> <p>17 location?</p> <p>18 A My son has been there on and off.</p> <p>19 Q Was your son there relative to the time of the</p> <p>20 incident that we're here to discuss today?</p> <p>21 A Which incident are you here to discuss?</p> <p>22 Q The alleged assault of Mr. Klementi.</p> <p>23 MR. PINTAR: So December of 2012.</p> <p>24 BY MR. ZANIEL:</p> <p>25 Q December 2012.</p>	<p style="text-align: right;">Page 12</p> <p>1 BY MR. ZANIEL:</p> <p>2 Q Yeah. I mean, I guess does he have any</p> <p>3 independent information other than what you have told</p> <p>4 him about the incident?</p> <p>5 A Oh, no.</p> <p>6 Q Okay. So he hasn't looked at any computer</p> <p>7 video or anything like that?</p> <p>8 A No.</p> <p>9 Q Any information that he knows about the</p> <p>10 incident of December 2012 has come from you?</p> <p>11 A Correct.</p> <p>12 Q Okay. Does Zachary know anything else about</p> <p>13 any disputes that have occurred either before or after</p> <p>14 December 2012 involving the Spencers and the Klementis,</p> <p>15 firsthand knowledge?</p> <p>16 A No.</p> <p>17 Q Okay. When you moved into the residence</p> <p>18 approximately 16 to 17 years ago on Meadow Lane, was the</p> <p>19 Klementi residence built at that time?</p> <p>20 A Yes.</p> <p>21 MR. PINTAR: I'm sorry. Which one?</p> <p>22 BY MR. ZANIEL:</p> <p>23 Q Egon's house on Charles Street.</p> <p>24 A Yes.</p> <p>25 Q Was that house built?</p>
<p style="text-align: right;">Page 11</p> <p>1 A 2012. Nobody was there.</p> <p>2 Q You were living there by yourself?</p> <p>3 A I was by myself.</p> <p>4 Q Okay. Does your son have any information</p> <p>5 about this event in December of 2012?</p> <p>6 A I don't know.</p> <p>7 Q What's your son's name?</p> <p>8 A Zachary.</p> <p>9 Q And is it Zachary Kinion?</p> <p>10 A Yes.</p> <p>11 Q And how old is Zachary?</p> <p>12 A He's 34.</p> <p>13 Q And when he's not living with you part time,</p> <p>14 where does he live?</p> <p>15 A He's been living in Thailand.</p> <p>16 Q And what does Zachary do for work?</p> <p>17 A He's a computer expert.</p> <p>18 Q Okay. So Zachary may have information, it</p> <p>19 sounds like, about the incident in December of 2012?</p> <p>20 When you said "I don't know," I don't know what that</p> <p>21 means.</p> <p>22 MR. PINTAR: Could you maybe clarify for Miss</p> <p>23 Kinion, I mean, did she say something to him? Is that</p> <p>24 what you're asking?</p> <p>25</p>	<p style="text-align: right;">Page 13</p> <p>1 A Yes.</p> <p>2 Q Okay. Who was living in it at that time?</p> <p>3 A The Klementis.</p> <p>4 Q Okay. So they were there before you?</p> <p>5 A Yes.</p> <p>6 Q Was the residence of the Spencers present when</p> <p>7 you moved into your home 16 to 17 years ago?</p> <p>8 A Yes.</p> <p>9 Q And who was living there at that time, if you</p> <p>10 know?</p> <p>11 A Nobody.</p> <p>12 Q Okay. It was just a home?</p> <p>13 A Yes.</p> <p>14 Q Okay. Approximately, to the best of your</p> <p>15 recollection, who was the first person that moved into</p> <p>16 that residence and when did that occur?</p> <p>17 A I don't know.</p> <p>18 MR. PINTAR: You're speaking at this --</p> <p>19 BY MR. ZANIEL:</p> <p>20 Q Of the Spencer residence. The question is,</p> <p>21 did somebody live in the Spencer residence before the</p> <p>22 Spencers did?</p> <p>23 A I don't know.</p> <p>24 Q Okay. Do you know when the Spencers moved</p> <p>25 into that residence?</p>

<p style="text-align: right;">Page 14</p> <p>1 A No.</p> <p>2 Q Within a couple years? You wouldn't have an</p> <p>3 estimate of that?</p> <p>4 A No.</p> <p>5 Q A little more background, I guess. What is</p> <p>6 your date of birth, ma'am?</p> <p>7 A 1-15-48.</p> <p>8 Q Okay. And before you lived on Meadow Lane,</p> <p>9 where were you living? Was it northern Nevada area or</p> <p>10 did you move from a different state?</p> <p>11 A I lived nextdoor to the house that I have now.</p> <p>12 Q Okay. And how long did you live nextdoor to</p> <p>13 that home?</p> <p>14 A 11 years.</p> <p>15 Q And would it have been -- if we go back to</p> <p>16 this Exhibit No. 7 there, would it have been farther</p> <p>17 away from Charles Street or closer to Charles Street?</p> <p>18 A Closer.</p> <p>19 Q Okay. So when you moved in that residence --</p> <p>20 well, if your residence is 176, do you know what the</p> <p>21 street number is for the house you lived in for 11 years</p> <p>22 before 176?</p> <p>23 A 178.</p> <p>24 Q Okay. When you lived on 178 Meadow Lane, was</p> <p>25 the Klementi residence on Charles Street built at that</p>	<p style="text-align: right;">Page 16</p> <p>1 Q Okay. And then before that?</p> <p>2 A I lived on the California side.</p> <p>3 Q Okay. Still in the Lake Tahoe area?</p> <p>4 A Yes.</p> <p>5 Q And how long were you on the California side?</p> <p>6 A About six years, I believe.</p> <p>7 Q Okay. I think that's probably far enough</p> <p>8 back.</p> <p>9 Tell me about your educational background.</p> <p>10 High school? College?</p> <p>11 A I have some college. I have a degree in</p> <p>12 nursing.</p> <p>13 Q Okay. So I guess to go backward, you</p> <p>14 graduated high school and then from there you went on to</p> <p>15 college?</p> <p>16 A No.</p> <p>17 Q Okay. So there was some time off and then you</p> <p>18 returned to go to college?</p> <p>19 A Right.</p> <p>20 Q Which college did you attend?</p> <p>21 A Western Nevada Community College.</p> <p>22 Q And what time frame are we talking, generally?</p> <p>23 '70s, '80s, '90s?</p> <p>24 A I'm trying to think. Well, I was about 49</p> <p>25 when I graduated.</p>
<p style="text-align: right;">Page 15</p> <p>1 time?</p> <p>2 A Yes.</p> <p>3 Q And when you moved into that house</p> <p>4 approximately 27 years ago, the 178 Meadow Lane, were</p> <p>5 the Klementis living there at that time?</p> <p>6 A Yes.</p> <p>7 Q Okay. Where did you live before 178 Meadow</p> <p>8 Lane? If you don't know the numbers, that's fine.</p> <p>9 A It was a little bit higher up on Kingsbury</p> <p>10 Grade. I don't remember the name of the street.</p> <p>11 Q And how long did you live there for?</p> <p>12 A About a year.</p> <p>13 Q And then before that?</p> <p>14 A I lived on top of Kingsbury. I lived up there</p> <p>15 for maybe a year or two.</p> <p>16 Q Okay. And before that?</p> <p>17 A I lived in Round Hill.</p> <p>18 Q Which is how far from Kingsbury Grade?</p> <p>19 A About -- do you mean -- I don't understand</p> <p>20 your question.</p> <p>21 Q Geographically, was it a couple miles away?</p> <p>22 A Yes.</p> <p>23 Q Okay. How long did you live in Round Hill</p> <p>24 for?</p> <p>25 A For I believe two years.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q Okay. So you were 49 when you graduated, and</p> <p>2 forgive me for asking, how old are you today?</p> <p>3 A 68.</p> <p>4 Q All right. So you were 49 when you graduated,</p> <p>5 that was from Western Nevada Community College?</p> <p>6 A Correct.</p> <p>7 Q And what was your degree in?</p> <p>8 A Nursing.</p> <p>9 Q Okay. And was that an associate's degree or a</p> <p>10 bachelor's degree?</p> <p>11 A Associate's.</p> <p>12 Q Okay. So before, I guess, you graduated from</p> <p>13 Western Nevada Community College, had you worked in the</p> <p>14 nursing field?</p> <p>15 A No.</p> <p>16 Q So this was kind of a late change of careers</p> <p>17 for you?</p> <p>18 A Yes.</p> <p>19 Q Okay. Do you have any further education</p> <p>20 besides an associate's degree from Western Nevada</p> <p>21 Community College?</p> <p>22 A No.</p> <p>23 Q All right. Let's do employment. Are you</p> <p>24 currently employed?</p> <p>25 A Yes.</p>

<p style="text-align: right;">Page 34</p> <p>1 the Spencers. And by "dispute" I mean you guys don't  2 get along; is that a fair comment?  3 A Yes.  4 Q I'm trying to find out approximately when that  5 started. And when I say it's years, I'm going to try to  6 ask you to be as specific as you can. I mean, 10 years,  7 15 years?  8 A I would say it would be the summer of 2012.  9 Q Okay. Do you know approximately -- and if I  10 asked you this, forgive me. Do you know approximately  11 when the Spencers moved into their home?  12 A No.  13 Q I asked you that and you said you didn't  14 remember. Okay. So in the summer of 2012 you remember  15 that there was some -- some kind of dispute or that's  16 when the problems started between you and the Spencers?  17 A Yes.  18 Q Do you remember if there was one precipitating  19 event that started the turmoil between you and the  20 Spencers?  21 A Yes.  22 Q Tell me about that specific event. What was  23 it?  24 A Marilyn Spencer came to my house. She brought  25 this dog that she had. It was a puppy. We went out.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q Okay. All right. So let's go back. In the  2 summer of 2012 Miss Spencer came to your house with a  3 brand new puppy. Had either Mr. or Mrs. Spencer come to  4 your house before that date for any reason?  5 A Yes.  6 Q Give me some examples of how long have they  7 been coming to your house and what would they come to  8 your house for.  9 A Not Jeff especially, but Marilyn would come  10 mostly to tell me about Bruce Taylor.  11 Q And who is Bruce Taylor?  12 A It's a guy that she was -- had a restraining  13 order against.  14 Q One of the residents around that area?  15 A Yes.  16 Q Okay. So she would tell you about Bruce  17 Taylor. Any other reasons that you remember,  18 get-togethers or her coming to your house for?  19 A On and off for years, but I don't remember  20 exact incidents.  21 Q Did they ever, like, bring you food or -- that  22 was a bad question. Before the summer of 2012, were you  23 ever social with the Spencers?  24 A Yes.  25 Q Did you ever have lunch together or --</p>
<p style="text-align: right;">Page 35</p> <p>1 She wanted to talk to me. She said she wanted to show  2 me the puppy. I'd just seen it a couple days before.  3 She -- we sat down on my deck and she told me  4 that she had film of Egon Klementi at the edge of their  5 property taking pictures of the truck, and she was upset  6 about it and she said they were going to do something  7 about it. And I told her, you leave him alone.  8 And then the dogs were playing, and there's an  9 old shoe that was in my yard, and they were playing tug  10 of war, and while we were talking they are playing tug  11 of war. And then her dog got the shoe and it came up  12 and it was all excited, and she took the shoe and just  13 slammed it into the dog's head as hard as she could.  14 And then she told me, we are going to build a  15 fence and we don't want any of the neighbors  16 complaining.  17 Q Okay. So there was a lot of information  18 there. First of all, have you ever told the Spencers  19 any of what you're saying now?  20 A No.  21 Q This is the first time that they've heard what  22 started this whole dispute?  23 A I don't know.  24 Q Okay. But you have never told them this?  25 A No.</p>	<p style="text-align: right;">Page 37</p> <p>1 A Yes.  2 Q -- dinner together?  3 A Yes.  4 Q Was it at their house?  5 A Was what at their house?  6 Q The social get-togethers.  7 A I've been to their house.  8 Q Okay. And have they been inside your house?  9 A Yes.  10 Q So you've socialized before with both Mr. and  11 Mrs. Spencer?  12 A Mainly Mrs. Spencer.  13 Q Okay. How about outside of the neighborhood,  14 have you and Mrs. Spencer ever gone out to lunch  15 together?  16 A Yes.  17 Q Okay. All right. So up until summer of 2012,  18 would you have -- so if we were in spring of 2012  19 sitting here right now and I asked you would you  20 consider Miss Spencer a friend, what would you say?  21 A I would say not a real close friend.  22 Q Okay. Would you say an acquaintance?  23 A Kind of somewhere in between.  24 Q Okay. Fair enough. Before summer of 2012,  25 did they ever ask you to borrow things or vice versa,</p>

<p style="text-align: right;">Page 38</p> <p>1 like other neighbors do?</p> <p>2 A I don't remember.</p> <p>3 Q Okay. So there was certainly no turmoil or</p> <p>4 problems prior to the summer of 2012 then between you</p> <p>5 and the Spencers?</p> <p>6 A Right, yes.</p> <p>7 Q When Mrs. Spencer would tell you about Bruce</p> <p>8 Taylor, the restraining order, you didn't have an</p> <p>9 opinion about that or a feeling about that?</p> <p>10 A No.</p> <p>11 Q Okay. So then the summer of 2012 happens and</p> <p>12 it's one day that kind of changes everything, and it's</p> <p>13 the day Miss Spencer comes over with her puppy, and</p> <p>14 three things happened on that particular day, which</p> <p>15 we're going to go over here in a second, but from that</p> <p>16 day forward, there was discourse between you and Mrs.</p> <p>17 Spencer?</p> <p>18 A I think it was actually before that.</p> <p>19 Q Okay. Was it one event? Because you gave me</p> <p>20 that one day. So that's what I'm keeping in my mind now</p> <p>21 from going forward. What happened before that?</p> <p>22 A She had come to my house and told me how they</p> <p>23 were driving somewhere and somebody had cut her off,</p> <p>24 some old man had cut her off, and Jeff got out of the</p> <p>25 car and slugged the guy in the face, and she was all</p>	<p style="text-align: right;">Page 40</p> <p>1 Q And who was living there at that time at the</p> <p>2 Klementis' home when you first move in 20 something</p> <p>3 years ago?</p> <p>4 A Elfi and Egon.</p> <p>5 Q And they are husband and wife?</p> <p>6 A Yes.</p> <p>7 Q Okay. And when you first moved in 20</p> <p>8 something years ago, did you introduce yourself to Elfi</p> <p>9 and Egon within the first few months of moving in?</p> <p>10 A I think it was years. Maybe a year or two.</p> <p>11 Q Okay.</p> <p>12 A I don't remember.</p> <p>13 Q That's fine. From that point when you</p> <p>14 introduce yourself up until the summer of 2012 -- so</p> <p>15 that's quite a long span now -- can you describe your</p> <p>16 overall relationship between you and the Klementis, Egon</p> <p>17 and Elfi.</p> <p>18 A I was friends with them.</p> <p>19 Q Okay. So there's no question or hesitation</p> <p>20 about that. It was not the same relationship as with</p> <p>21 Miss Spencer. You were friends with the Klementis?</p> <p>22 A Right.</p> <p>23 Q Did you ever go to the Klementis' house and</p> <p>24 eat dinner?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 39</p> <p>1 excited about it.</p> <p>2 Q Okay. So she told you that story, and then</p> <p>3 what did you do at that point? Did you say to yourself,</p> <p>4 I don't want to be friends with these people any longer?</p> <p>5 A I looked at -- I went online. I tried to look</p> <p>6 at police reports. I tried to see -- not police</p> <p>7 reports, but newspapers to see if anything had been</p> <p>8 reported about it.</p> <p>9 Q All right. Approximately when was that</p> <p>10 conversation relative to the summer of 2012?</p> <p>11 A I think that was approximately months before,</p> <p>12 a few months. I don't remember.</p> <p>13 Q And in between that conversation up until the</p> <p>14 time when Miss Spencer came over with the dog, did</p> <p>15 anything happen during that time frame?</p> <p>16 A I don't remember.</p> <p>17 Q Okay. All right. So then we get to the</p> <p>18 summer of 2012 and Miss Spencer comes over with her dog,</p> <p>19 and we're going to talk about that in a second, but just</p> <p>20 a little more foundation with regard to the Klementis.</p> <p>21 When you moved in years and years ago, the</p> <p>22 Klementis were occupying that residence on Meadow Lane?</p> <p>23 A I don't know how long they occupied it.</p> <p>24 Q But when you moved in, they were there?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 41</p> <p>1 Q Did they ever come over to your house and eat</p> <p>2 dinner?</p> <p>3 A Occasionally.</p> <p>4 Q Did you ever go out to dinner with the</p> <p>5 Klementis?</p> <p>6 A Yes.</p> <p>7 Q Okay. From the entire time that you lived on</p> <p>8 Meadow Lane up until now, has anybody lived at the</p> <p>9 Klementi residence other than Egon and Elfi?</p> <p>10 A No.</p> <p>11 Q Okay. And then I guess just for foundational</p> <p>12 purposes, in the summer of 2012, if we look at Exhibit 7</p> <p>13 on this map here, the red mark is where the Spencers</p> <p>14 live. You can tell where the Klementis live here on</p> <p>15 Meadow Lane, right? Is that clear to you that that's</p> <p>16 their residence there?</p> <p>17 A Yes.</p> <p>18 Q Okay. And then you live in one of these two</p> <p>19 down here?</p> <p>20 A Yes.</p> <p>21 Q Who lives at this first house right here? So</p> <p>22 if you keep going down Charles and don't turn on Meadow,</p> <p>23 who would you run into?</p> <p>24 A I don't know their names.</p> <p>25 Q How long has that person been there? Do you</p>

<p style="text-align: right;">Page 46</p> <p>1 A No.</p> <p>2 Q Do you know who you talked to?</p> <p>3 A I know I talked to a guy named Joel.</p> <p>4 Q On at least one of the occasions?</p> <p>5 A Yeah.</p> <p>6 Q How about the other one?</p> <p>7 A I'm not sure on the other one.</p> <p>8 Q Fair enough. And just so I'm clear, these</p> <p>9 were two phone calls that were made to KGID; you never</p> <p>10 did any written forms to KGID, wrote any letters, filled</p> <p>11 out a specific form or anything like that?</p> <p>12 A No.</p> <p>13 Q Could you tell me approximately when these two</p> <p>14 phone calls were made. We know it's after the summer of</p> <p>15 2012 until we sit here today, so sometime in between</p> <p>16 that. Do we know approximately when they were?</p> <p>17 A One was 2012 on the 12th of December.</p> <p>18 Q On 12-12-12?</p> <p>19 A Yeah.</p> <p>20 Q Okay. So 12-12-12 you made a phone call to</p> <p>21 the KGID. And did you speak to Joel on that one or the</p> <p>22 other person?</p> <p>23 A Other person.</p> <p>24 Q Okay. And then when was the other time?</p> <p>25 A It was about -- I think it was in January, but</p>	<p style="text-align: right;">Page 48</p> <p>1 A Maybe 12.</p> <p>2 Q Okay. So 12 other driveways had no snow</p> <p>3 blocking their driveway, but your residence had snow</p> <p>4 blocking your driveway?</p> <p>5 A Yes.</p> <p>6 Q And the snow that was blocking your driveway,</p> <p>7 when you say a berm, how high was the snow?</p> <p>8 A It was different levels because it was full of</p> <p>9 ice, big ice chunks.</p> <p>10 Q Okay. All right. So you told somebody at</p> <p>11 KGID on 12-12-12 that a snowplow had driven down Meadow</p> <p>12 Lane and all 12 -- or 12 other driveways were clear but</p> <p>13 yours was blocked?</p> <p>14 A That's not what I said.</p> <p>15 Q Okay. Then let's go over that again. On</p> <p>16 12-12-12 you made a phone call to KGID?</p> <p>17 A Correct.</p> <p>18 Q And you said that your driveway had a snow</p> <p>19 berm blocking it -- excuse me -- blocking it?</p> <p>20 A Snow and ice.</p> <p>21 Q Snow and ice. And no other driveways did?</p> <p>22 A Yes.</p> <p>23 Q Okay. Did you know -- did you see the</p> <p>24 snowplow come down the street that day?</p> <p>25 A No.</p>
<p style="text-align: right;">Page 47</p> <p>1 I'm not sure.</p> <p>2 Q January of 2013?</p> <p>3 A Yeah, I am not sure. No, recently.</p> <p>4 Q Of '16?</p> <p>5 A Yes.</p> <p>6 Q Okay. But you're not positive about that?</p> <p>7 A I'm not positive whether it was January or</p> <p>8 February.</p> <p>9 Q Okay. But this winter?</p> <p>10 A Yes.</p> <p>11 Q And that's the time you talked to Joel?</p> <p>12 A Yes.</p> <p>13 Q Okay. On the 12-12-12 telephone call, could</p> <p>14 you tell me generally what you told KGID.</p> <p>15 A I told them I had a huge berm in front of my</p> <p>16 driveway. And I went out and looked, and nobody had</p> <p>17 anything in front of their driveways.</p> <p>18 Q Okay. So when you say you went out and</p> <p>19 looked, you walked down Meadow Lane?</p> <p>20 A Yes.</p> <p>21 Q And on everybody else's driveway that you</p> <p>22 walked in front of there was no snow?</p> <p>23 A Yes.</p> <p>24 Q And approximately how many driveways did you</p> <p>25 go past?</p>	<p style="text-align: right;">Page 49</p> <p>1 Q When you called on 12-12-12, did you</p> <p>2 specifically report that Jeff Spencer had --</p> <p>3 A No.</p> <p>4 Q Okay. You just said a snowplow did this?</p> <p>5 A Right.</p> <p>6 Q Did that person tell you any information once</p> <p>7 you told them what had occurred?</p> <p>8 A No, they just said they would do something</p> <p>9 about it.</p> <p>10 Q Okay. And then did you ever hear anything</p> <p>11 else about that incident?</p> <p>12 A They came with a small plow truck.</p> <p>13 Q Who is "they"?</p> <p>14 A The KGID men. A guy named James and another</p> <p>15 man -- I don't know his name -- they came and plowed it</p> <p>16 out.</p> <p>17 Q Within a day?</p> <p>18 A That morning right after I called.</p> <p>19 Q Okay. So James and another man came with a</p> <p>20 small type plow.</p> <p>21 A Yeah, the front of a truck.</p> <p>22 Q Okay. And just moved the snow and ice out of</p> <p>23 the driveway?</p> <p>24 A Right.</p> <p>25 Q Okay. As we sit here today, do you know if</p>



<p style="text-align: right;">Page 50</p> <p>1 Jeff was driving a snowplow anywhere near 12-12-12?</p> <p>2 A I suspected it.</p> <p>3 Q What leads -- what led you to suspect that</p> <p>4 Jeff -- well, from what you're telling me, it sounds</p> <p>5 like you believe somebody intentionally created a berm</p> <p>6 in front of your driveway.</p> <p>7 A Yes.</p> <p>8 Q Okay. You believe that that was Mr. Spencer?</p> <p>9 You suspect that that was Mr. Spencer?</p> <p>10 A I suspected, yes.</p> <p>11 Q I'm trying to find out why did you suspect</p> <p>12 that? You didn't see it, but why did you suspect that?</p> <p>13 A I suspected it because after it was done,</p> <p>14 after it was plowed away, Marilyn came by in her sports</p> <p>15 car, which I could hear. I looked out the window. She</p> <p>16 had stopped the car in front of my driveway. She was</p> <p>17 looking at it, and then she got on the phone. I could</p> <p>18 tell she was on her phone, and then she drove away.</p> <p>19 And then 15 minutes later about, a snowplow</p> <p>20 came by again and took what was put into that pile of</p> <p>21 snow and put it, part of it, back into my driveway.</p> <p>22 Q Okay. And did you see the person that was</p> <p>23 operating the snowplow when they came back and put it</p> <p>24 back in front of your driveway?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 52</p> <p>1 MR. PINTAR: '16.</p> <p>2 MR. ZANIEL: '16. This year. Thanks for</p> <p>3 listening.</p> <p>4 BY MR. ZANIEL:</p> <p>5 Q All right. So this year you called KGID and</p> <p>6 made a complaint and you talked to Joel. First tell me</p> <p>7 why you called KGID. What was the complaint about?</p> <p>8 A It was a complaint about that Jeff was in the</p> <p>9 area snowplowing.</p> <p>10 Q Okay. Did you see Jeff operating a snowplow?</p> <p>11 A No.</p> <p>12 Q How do you know it was Jeff that was operating</p> <p>13 the snowplow?</p> <p>14 A He was going to his house and stopping at his</p> <p>15 house.</p> <p>16 Q When you say "stopping at his house," you mean</p> <p>17 getting out of the snowplow and going inside?</p> <p>18 A Yes.</p> <p>19 Q Okay. So you saw a snowplow in the</p> <p>20 neighborhood operating and you watched the snowplow stop</p> <p>21 in front of the Spencers' residence and you watched the</p> <p>22 driver of that snowplow get out and go into the Spencer</p> <p>23 residence?</p> <p>24 A No.</p> <p>25 Q Okay. Tell me then -- we've got to go over</p>
<p style="text-align: right;">Page 51</p> <p>1 Q Okay. Did you call KGID after that?</p> <p>2 A No.</p> <p>3 Q Do you have any photographs of the 12-12-12</p> <p>4 incident either the first time that there was snow and</p> <p>5 ice in your driveway or after they cleared it and</p> <p>6 somebody came back and put it back again?</p> <p>7 A No.</p> <p>8 Q Did anybody -- do you know anybody else that</p> <p>9 witnessed this? Like did you go knock on somebody</p> <p>10 else's doors, like the Klementis or anybody else, and</p> <p>11 say, hey, look at my driveway compared to everybody</p> <p>12 else's?</p> <p>13 A Just the KGID guys, the comments they made.</p> <p>14 Q What comments did they make?</p> <p>15 A They said your house was real easy to find</p> <p>16 because yours was the only one that had a big, you know,</p> <p>17 had this big berm mess in front of it.</p> <p>18 Q Okay. What about when somebody else deposited</p> <p>19 the snow and ice back again after they cleared it, did</p> <p>20 anybody else see that?</p> <p>21 A No.</p> <p>22 Q All right. And then the other time would have</p> <p>23 been in January or February of 2013 where you called</p> <p>24 KGID and talked to Joel?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 53</p> <p>1 that again.</p> <p>2 A I did not see him go in the residence. I was</p> <p>3 told he went into the residence.</p> <p>4 Q By whom?</p> <p>5 A By the Klementis.</p> <p>6 Q Okay. So did you, yourself, see a snowplow on</p> <p>7 whatever date that was? We're not sure of the date, but</p> <p>8 it was either January, February 2016. Did you,</p> <p>9 yourself, see a snowplow in the area?</p> <p>10 A Yes.</p> <p>11 Q And was it on Meadow Lane or Charles Lane when</p> <p>12 you saw it?</p> <p>13 A I saw it on Meadow.</p> <p>14 Q And was it plowing?</p> <p>15 A Yes.</p> <p>16 Q And at the time you saw it, could you tell who</p> <p>17 was operating the snowplow?</p> <p>18 A No.</p> <p>19 Q Okay. And then were you inside or outside at</p> <p>20 this time when you saw it?</p> <p>21 A I was inside.</p> <p>22 Q Do you have windows that you can see out into</p> <p>23 your street?</p> <p>24 A Yes. My bedroom is on the street.</p> <p>25 Q So you saw a snowplow. You're not sure who</p>

<p style="text-align: right;">Page 66</p> <p>1 Q Okay. All right. So we'll get up to that  2 point in a second. But at that meeting, was that the  3 first meeting in which you heard anybody say that Jeff  4 Spencer was not supposed to plow in the neighborhood?  5 A No.  6 Q It was before that?  7 A Yes.  8 Q Okay. When was the first time you heard that  9 Jeff Spencer was not supposed to plow in the  10 neighborhood?  11 A I don't remember.  12 Q Was it you think a year before or more than a  13 year before? And I don't want you to guess. I'm just  14 trying to see.  15 A I can't guess, so I'm going to say I don't  16 know.  17 Q Okay. Do you know where it was that you heard  18 that Jeff Spencer should not plow in the neighborhood  19 the first time?  20 A No.  21 Q Was it at a meeting, or just have no idea?  22 A I have no idea.  23 Q Is it possible you were just told by somebody  24 else and that you didn't actually hear it from KGID,  25 somebody just may have told you that?</p>	<p style="text-align: right;">Page 68</p> <p>1 Wait. I take that back. She didn't ask me if  2 I was mad at her. She goes, what's wrong? Why aren't  3 you talking to me?  4 Q And you said?  5 A I said, Marilyn, you have a rotten soul.  6 Q And what else happened?  7 A I walked away.  8 Q Okay. And is that the last time you had a  9 conversation with Miss Spencer?  10 A Yes.  11 Q And that was after the summer of 2012? That  12 was after the dog incident where she brought the dog  13 over?  14 A Yes.  15 Q Was that in 2012 still but before December of  16 2012?  17 A Yes.  18 Q Okay. All right. Let's go to that one time  19 she brings the dog over. So she brings the puppy over  20 to your house. She knocks on the door and wants to show  21 you her new puppy. You open the front door and you both  22 go out to the front yard?  23 A No.  24 Q I thought this took place in the front yard,  25 so let me get the details then. Did you invite her in</p>
<p style="text-align: right;">Page 67</p> <p>1 A I don't remember.  2 Q Okay. All right. So I want to go back to the  3 summer of 2012. So do you want to take a break?  4 A No, I'm fine.  5 Q All right. So summer of 2012 Miss Spencer  6 comes over. Up until this point, one thing had happened  7 with the -- she came over one time and said that Jeff  8 had punched somebody.  9 But summer of 2012 when she came over with her  10 dog, that was kind of the last time you would have  11 considered yourself an acquaintance of Miss Spencer.  12 From that point forward, you were not even  13 acquaintances; is that a fair statement?  14 A No.  15 Q That's not a fair statement?  16 A No.  17 Q Okay. Were you acquaintances after that?  18 A I talked to her one time after that.  19 Q Okay. When did you talk to her after that?  20 A I was walking down the street with my dog.  21 Q Which street? Meadow or Charles?  22 A Meadow, going towards the woods. She pulled  23 up in her sports car behind me and she asked me, she  24 said, are you mad at me?  25 And I said, Marilyn, you have a rotten soul.</p>	<p style="text-align: right;">Page 69</p> <p>1 on that day?  2 A Yeah, she came to the door with the puppy.  3 I'd seen the puppy before. She'd had it -- I guess it  4 was eight weeks old, something like that. I don't  5 remember.  6 Q Do you know what kind of dog it was?  7 A Some kind of wolf mix.  8 Q All right. So she brings the puppy over and  9 knocks on your door. What happens?  10 A She's standing there. I don't remember  11 exactly what we said after that. She's showing me the  12 puppy. I invited her in. She didn't look like she was  13 going anywhere. And my dog was out back, so we went out  14 to the deck so the dogs could play.  15 Q So this was in the backyard, not the front  16 yard?  17 A Right.  18 Q Okay. What kind of dog do you have?  19 A At the time I had a mix that you really can't  20 tell what it is.  21 Q Okay. All right.  22 A A medium size dog.  23 Q All right. Medium size dog. You go out to  24 the back deck, and that's when these three things kind  25 of happen. One is that the dogs got into some tussling</p>

<p style="text-align: right;">Page 70</p> <p>1 match. Marilyn --</p> <p>2 A They were playing.</p> <p>3 Q They were playing and Marilyn's dog got ahold</p> <p>4 of a shoe and brought it to Marilyn. Marilyn took the</p> <p>5 shoe out of the dog's mouth and hit the dog over the</p> <p>6 head with the shoe?</p> <p>7 A Just whacked it right across its snout.</p> <p>8 Q Did you find that to be problematic?</p> <p>9 A I thought it was barbaric.</p> <p>10 Q Okay. Did you say anything to her at that</p> <p>11 time about just that issue, the dog issue?</p> <p>12 A No.</p> <p>13 Q But in your mind, you thought at that time it</p> <p>14 was barbaric?</p> <p>15 A Yes.</p> <p>16 Q Okay. Anything else with the dog on that day</p> <p>17 that you saw that was inappropriate other than the</p> <p>18 hitting the dog in the jaw?</p> <p>19 A No.</p> <p>20 Q Okay. The second thing on that day was a</p> <p>21 discussion with Egon Klementi?</p> <p>22 A His name is pronounced "a gone".</p> <p>23 Q Egon. Forgive me. I'll get the hang of it</p> <p>24 after a while. Egon Klementi. She said something about</p> <p>25 Egon Klementi taking photographs at that time?</p>	<p style="text-align: right;">Page 72</p> <p>1 A No, but after hearing about other things that</p> <p>2 Jeff had done, I was afraid for Egon.</p> <p>3 Q Okay. What other things did you hear?</p> <p>4 A From Marilyn about how at work he just walked</p> <p>5 up to some guy, the guy was whining about something, and</p> <p>6 he punched him out.</p> <p>7 Q Okay. Do you know -- when you say "work," do</p> <p>8 you mean Mr. Spencer's work?</p> <p>9 A Yeah. Marilyn told me he was working and some</p> <p>10 guy he was working with he beat up.</p> <p>11 Q Okay.</p> <p>12 A Or didn't beat up. He just punched him and he</p> <p>13 was knocked out.</p> <p>14 Q And when did Marilyn tell you that,</p> <p>15 approximately?</p> <p>16 A I don't know how long. I think it was maybe</p> <p>17 the summer before. I don't remember.</p> <p>18 Q So that comment, and then what other comments</p> <p>19 did you hear about Mr. Spencer that you felt afraid for</p> <p>20 Egon?</p> <p>21 A The one I already stated.</p> <p>22 Q About the driving where somebody cut Mr.</p> <p>23 Spencer off?</p> <p>24 A Right.</p> <p>25 Q All right. So you told Miss Spencer at that</p>
<p style="text-align: right;">Page 71</p> <p>1 A Yes.</p> <p>2 Q Can you tell me a little bit more about that.</p> <p>3 A No, I've told you pretty much.</p> <p>4 Q So she made one comment?</p> <p>5 A She told me, yeah, just what I just said</p> <p>6 earlier.</p> <p>7 Q That Egon Klementi had taken photographs of</p> <p>8 people on the property, on the Spencer property?</p> <p>9 A No.</p> <p>10 Q Where?</p> <p>11 A She said that he was at the edge of the</p> <p>12 property and was taking pictures of the truck, this</p> <p>13 18-wheeler semi, whatever, giant truck, and that was it,</p> <p>14 that she was -- that they were going to do something</p> <p>15 about it.</p> <p>16 Q Okay. And then at that point you said leave</p> <p>17 Egon alone?</p> <p>18 A Right.</p> <p>19 Q Okay. You were friends with Egon and Elfi?</p> <p>20 A Yes.</p> <p>21 Q So you kind of felt the need to stand up for</p> <p>22 Egon and say leave him alone?</p> <p>23 A Yes.</p> <p>24 Q When she said they were going to do something</p> <p>25 about it, did she say specifically anything?</p>	<p style="text-align: right;">Page 73</p> <p>1 time to leave Egon alone?</p> <p>2 A Right.</p> <p>3 Q And then the fence issue. So Miss Spencer</p> <p>4 told you on that day that they were going to build a</p> <p>5 fence --</p> <p>6 A Correct.</p> <p>7 Q -- on their property?</p> <p>8 A Yes.</p> <p>9 Q And she told you that nobody better complain?</p> <p>10 A She said none of the neighbors better complain</p> <p>11 about it.</p> <p>12 Q Okay. Before that date -- so that was the</p> <p>13 fence thing. Or before that date did you know anything</p> <p>14 about the fence?</p> <p>15 A Before it was built? No.</p> <p>16 Q Before that one day that Marilyn came over and</p> <p>17 said we're going to build a fence, had you heard</p> <p>18 anything about a fence before that date?</p> <p>19 A I don't think so. I don't remember.</p> <p>20 Q Okay. And then Marilyn left that day. And</p> <p>21 then the only other time you would have had a</p> <p>22 conversation with her is when she came by in her sports</p> <p>23 car and asked what was wrong, and you said you have a</p> <p>24 rotten soul, and that was the end of the relationship</p> <p>25 with Miss Spencer?</p>

<p style="text-align: right;">Page 74</p> <p>1 A Right.</p> <p>2 MR. ZANIEL: Okay. All right. So let's take</p> <p>3 a break there.</p> <p>4 (Recess 2:41 - 2:54 p.m.)</p> <p>5 BY MR. ZANIEL:</p> <p>6 Q All right, everybody. We'll go back on the</p> <p>7 record.</p> <p>8 Okay. So we just took a break, and we've now</p> <p>9 realized that we're going to do two more depositions.</p> <p>10 It's 3:00 o'clock. So I'm going to try to speed things</p> <p>11 up a little bit quicker.</p> <p>12 So the summer of 2012 and -- is when the first</p> <p>13 time that -- from that date is when you kind of had that</p> <p>14 conversation with Miss Spencer when she came over, and</p> <p>15 that's kind of when the friendship, acquaintances</p> <p>16 stopped.</p> <p>17 A Yes.</p> <p>18 Q Okay. Was there anything that happened from</p> <p>19 that point up until December 18th of 2012 between you</p> <p>20 and Mrs. Spencer or you and Mr. Spencer in which there</p> <p>21 was any conversations that took place or you saw</p> <p>22 something that was objectionable or any disputes?</p> <p>23 Other than when Miss Spencer pulled up in the</p> <p>24 car -- I know about that one -- other than that, were</p> <p>25 there any issues that you had with the Spencers from the</p>	<p style="text-align: right;">Page 76</p> <p>1 A Yes.</p> <p>2 Q What else did you see that was inappropriate?</p> <p>3 A One night I was walking my dog, and I was up</p> <p>4 on Pine Street, which is a few streets up, and a car was</p> <p>5 coming up towards me with its lights out, and then right</p> <p>6 when it got to me, it turned its lights on, its bright</p> <p>7 lights on me. And I got my dog off the road, but I</p> <p>8 could see that it was a Camaro, which was the car that</p> <p>9 I'd seen in their driveway when I went -- started on my</p> <p>10 walk.</p> <p>11 Q Okay.</p> <p>12 A And that was it.</p> <p>13 Q So you saw a Camaro without lights on?</p> <p>14 A Yeah, and then they shined their brights on</p> <p>15 when they got to me.</p> <p>16 Q Could you positively identify that as Mrs.</p> <p>17 Spencer's vehicle?</p> <p>18 A No.</p> <p>19 Q Okay. Could you identify the driver of that</p> <p>20 vehicle?</p> <p>21 A No.</p> <p>22 Q So you assume it was Mr. or Mrs. Spencer?</p> <p>23 A Well, I called Elfi up and I said I'm out</p> <p>24 walking and a car passed me. I told her what had</p> <p>25 happened, and I had called her a few minutes after, and</p>
<p style="text-align: right;">Page 75</p> <p>1 summer of 2012 up until the night of December 2012?</p> <p>2 MR. PINTAR: Well, I'm going to object. I</p> <p>3 mean, that question is vague, it's compound.</p> <p>4 MR. ZANIEL: I'm just trying to speed it up.</p> <p>5 MR. PINTAR: I know, but do you have a</p> <p>6 specific event you want to talk about?</p> <p>7 BY MR. ZANIEL:</p> <p>8 Q Well, I don't know. That's what I'm trying to</p> <p>9 find out. Are there any events other -- Miss Spencer</p> <p>10 pulled up when you were walking your dog and asked you</p> <p>11 what's wrong, and then you said you had a rotten soul.</p> <p>12 Did you ever speak to Miss Spencer after that</p> <p>13 up until December 18th of 2012?</p> <p>14 A No.</p> <p>15 Q Did you ever observe Miss Spencer drive by</p> <p>16 your home slowly or do anything inappropriate in a</p> <p>17 vehicle between that time frame?</p> <p>18 A Yes.</p> <p>19 Q Okay. Tell me about that. What did you see</p> <p>20 that was inappropriate?</p> <p>21 A What I already told you.</p> <p>22 Q What was that?</p> <p>23 A When they drive by and --</p> <p>24 Q Make angry faces. Okay. Is there anything</p> <p>25 else?</p>	<p style="text-align: right;">Page 77</p> <p>1 I said, is the Camaro in their drive? And she said no.</p> <p>2 And then during the conversation she goes, oh, here it</p> <p>3 comes now. And it was coming back down into their</p> <p>4 driveway.</p> <p>5 Q Okay.</p> <p>6 A That was the --</p> <p>7 Q So the conversation you had with Elfi was</p> <p>8 right after you saw them, the Camaro drive by you?</p> <p>9 A No, it was a few minutes after.</p> <p>10 Q Okay. Anything else? Any other inappropriate</p> <p>11 behavior by the Spencers in between the summer of 2012</p> <p>12 and December of 2012, the date of the incident, other</p> <p>13 than what we've talked about?</p> <p>14 A This happened recently. This was not --</p> <p>15 Q Oh, the Camaro was recently?</p> <p>16 A Yeah, it was last summer.</p> <p>17 Q Last summer. Okay. Anything in between</p> <p>18 December 2012 and December -- the summer of 2012 and</p> <p>19 December 2012, other than what we've talked about?</p> <p>20 A I can't remember.</p> <p>21 Q Okay. Have you ever filed any type of police</p> <p>22 report with regard to the Spencers?</p> <p>23 A No.</p> <p>24 Q Have you ever called 911 and reported any</p> <p>25 instances involving the Spencers?</p>

<p style="text-align: right;">Page 78</p> <p>1 A When he assaulted Egon with the snowplow.</p> <p>2 Q Okay. What date was that?</p> <p>3 A That was on the 12th.</p> <p>4 Q 12-12?</p> <p>5 A '12.</p> <p>6 Q '12. Okay. So you called 911 on 12-12-12,</p> <p>7 and what made you call 911?</p> <p>8 A What I just said.</p> <p>9 Q What did you see?</p> <p>10 A I saw Jeff go down the street in his -- in the</p> <p>11 snowplow and put snow all over Egon.</p> <p>12 Q Okay. What street was it?</p> <p>13 A On Meadow.</p> <p>14 Q Where was Egon at the time?</p> <p>15 A He was in his driveway.</p> <p>16 Q Could you clearly identify the operator of the</p> <p>17 snowplow at that time?</p> <p>18 A Yes.</p> <p>19 Q You looked in the snowplow?</p> <p>20 A He went right past me.</p> <p>21 Q Okay. Was it day or night?</p> <p>22 A Daytime.</p> <p>23 Q So you were able to identify the operator of</p> <p>24 the snowplow as Mr. Spencer?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 80</p> <p>1 out of the plow towards Egon?</p> <p>2 A Yes.</p> <p>3 Q Where were you standing at this point?</p> <p>4 A I was out in the road, in the street.</p> <p>5 Q Were you -- which street were you on?</p> <p>6 A Meadow.</p> <p>7 Q And where were you -- if we look at Exhibit 7</p> <p>8 here, approximately where were you standing? Can you</p> <p>9 see it on this map?</p> <p>10 A I was standing -- well, my house is one of</p> <p>11 these.</p> <p>12 Q Right.</p> <p>13 A But I was standing right over here in the</p> <p>14 street.</p> <p>15 Q In front of your house?</p> <p>16 A Yes.</p> <p>17 Q Okay. So you were standing in front of your</p> <p>18 house in the middle of the road and you observed this in</p> <p>19 front of you up at the Klementis' driveway?</p> <p>20 A Yes.</p> <p>21 Q Okay. Did you see snow actually touch Egon?</p> <p>22 A Yes.</p> <p>23 Q Did Egon try to move away from the snow?</p> <p>24 A He didn't have a chance. It came at him so</p> <p>25 fast.</p>
<p style="text-align: right;">Page 79</p> <p>1 Q As he passed you?</p> <p>2 A Yes.</p> <p>3 Q Okay. And you observed the snowplow at that</p> <p>4 point continue down Meadow Lane plowing snow, and snow</p> <p>5 left the front loader of the plow and struck Mr.</p> <p>6 Klementi, Egon?</p> <p>7 A No.</p> <p>8 Q Okay. So how did Egon get hit with snow?</p> <p>9 A He wasn't plowing until he got to Egon's</p> <p>10 property, and then he went into the snow and picked it</p> <p>11 up off the side, because there's no snow on the road,</p> <p>12 and picked up the snow from the old snow and put that</p> <p>13 onto Egon.</p> <p>14 Q Did the plow have to go in reverse at any</p> <p>15 time?</p> <p>16 A I don't know anything about plows.</p> <p>17 Q Did the plow come to a stop and pick up snow?</p> <p>18 A No.</p> <p>19 Q Okay. So it continued to move, the plow</p> <p>20 continued to move?</p> <p>21 A He speeded up.</p> <p>22 Q Okay. So he sped up on Meadow Lane. Did you</p> <p>23 see the plow pick up the snow?</p> <p>24 A Yes.</p> <p>25 Q Okay. And then you saw the plow -- snow come</p>	<p style="text-align: right;">Page 81</p> <p>1 Q Okay. Did Egon fall down on the ground?</p> <p>2 A No.</p> <p>3 Q Okay. All right. So you saw that happen, and</p> <p>4 then how soon after that did you dial 911?</p> <p>5 A It was an hour later.</p> <p>6 Q Why did you wait an hour?</p> <p>7 A Because Egon called 911.</p> <p>8 Q Okay. How did you find out Egon called 911?</p> <p>9 A I called him to see if he was okay, and he was</p> <p>10 going to call 911.</p> <p>11 Q Okay. So when you saw this, you didn't walk</p> <p>12 up to see how Egon was doing at that time?</p> <p>13 A No, I ran in the house and immediately --</p> <p>14 because I saw him go towards his house, so I ran into my</p> <p>15 house and called them.</p> <p>16 Q You saw who go towards the house?</p> <p>17 A Egon.</p> <p>18 Q So you saw Egon go into his house. You go</p> <p>19 into your house.</p> <p>20 A Right.</p> <p>21 Q Okay. You call 911 at that time or you call</p> <p>22 Egon at that time?</p> <p>23 A I called Egon.</p> <p>24 Q Okay. And did you make contact with Egon?</p> <p>25 A Yes.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q Tell me about the conversation you and Egon 2 had. 3 A I don't remember the conversation. Just that 4 I remember -- the one thing I remember is asking him are 5 you okay. 6 Q Okay. And what did he say? 7 A He was flustered. I don't remember what he 8 said. 9 Q Okay. Did the Klementis have cameras on 10 their -- well, strike that. Do the Klementis have 11 cameras on their house? 12 A Yes. 13 Q Did they on 12-12-12? 14 A No, they were told to put them up after the 15 trial by the DA. 16 Q Okay. All right. So you run in the house. 17 You call Egon. You make contact. He said he's calling 18 911? 19 A Right. 20 Q He told you that? 21 A Right. 22 Q Why did you call 911 if he said he's going to 23 call 911? 24 A Because Egon has a bit of a language barrier 25 and I thought about it, and I thought, you know, I</p>	<p style="text-align: right;">Page 84</p> <p>1 Q Where on his body did the snow hit? 2 A It just like covered him. It just like went 3 over his body. It just covered his body. 4 Q Okay. 5 A It was higher than he was. 6 Q So I'm trying to get this in my mind now. So 7 one minute Egon was standing on his driveway without any 8 snow near him, this event happens and Egon is completely 9 covered in snow? 10 A I don't know about completely. I could still 11 see him. 12 Q Okay. But there was snow higher than him 13 around him? 14 A It was coming at him. It was higher. 15 Q Okay. So you call 911, you say you're a 16 witness to an assault. What did the dispatcher tell 17 you? 18 A I don't remember. 19 Q Okay. Were you ever contacted by the police 20 regarding that event? 21 A Yes. 22 Q When and what happened? 23 A I don't remember what time. And an officer 24 called me -- I don't remember his name -- and just asked 25 me about, you know, if I was a witness to it, if I had</p>
<p style="text-align: right;">Page 83</p> <p>1 wanted him to do it himself, because he's a man, you 2 know, and he should be able to handle that. But then I 3 thought about him not -- maybe not getting across what 4 had happened to him, because he says things sometimes a 5 little different. 6 Q Well, in that hour period of time that 7 elapsed, did you go back outside at all? 8 A No, I think I was getting ready to go 9 somewhere or something. I don't remember. 10 Q Did you call Egon back again during that hour 11 span? 12 A No. 13 Q Okay. So you called 911, and what did you 14 report? 15 A I reported that I was a witness to seeing an 16 assault. 17 Q Okay. And you defined "assault" as what we 18 talked about, right? That's -- I just want to make sure 19 there was nothing else other than the snow being ejected 20 from the plow towards Egon. 21 A Right. 22 Q Okay. Did the snow physically touch Egon? 23 A Yes. 24 Q You could see that from your vantage point? 25 A Yes.</p>	<p style="text-align: right;">Page 85</p> <p>1 seen something. 2 Q Was it that day or a different day? 3 A It was that day. 4 Q Okay. And that officer called you, and did 5 you say yes, I'm a witness to that? 6 A Yes. 7 Q Did the officer ask you to fill out a 8 statement? 9 A No. 10 Q Have you ever filled out a statement regarding 11 that event? 12 A No, I don't think so. 13 Q Okay. Do you know what came about of that 14 event? Did the police contact Egon? 15 A Yes. 16 Q And what happened as a result of that 911 17 call? 18 A Nothing. 19 Q Do you know if the police talked to the 20 Spencers about it? 21 A I don't know. 22 Q Do you know if there was any citations or 23 arrests at that time? 24 A I don't know. 25 Q Okay. And that was on 12-12-12 you said?</p>

<p style="text-align: right;">Page 86</p> <p>1 A Yes.</p> <p>2 Q Okay. Any other times that you've called 911</p> <p>3 other than on 12-12-12 regarding the Spencers?</p> <p>4 A I don't remember.</p> <p>5 Q Okay. Before we talk about the night of the</p> <p>6 incident, you installed the four security cameras after</p> <p>7 this event, in the fall of 2013?</p> <p>8 A I'm not sure when that was.</p> <p>9 Q It was in 2013, though?</p> <p>10 A Yeah, I've had them for over a year. So maybe</p> <p>11 later than that. '13.</p> <p>12 Q Okay. So 2013, 2014. Where are the four</p> <p>13 security cameras located on your residence?</p> <p>14 MR. PINTAR: Wait. What does it matter? I</p> <p>15 mean, let's --</p> <p>16 MR. ZANIEL: I want to see what vantage point,</p> <p>17 because I'm going to ask for the security -- I'm going</p> <p>18 to ask for the video.</p> <p>19 MR. PINTAR: She said they weren't there at</p> <p>20 the time of the event.</p> <p>21 MR. ZANIEL: No, but they were there after the</p> <p>22 event.</p> <p>23 MR. PINTAR: Yeah, years after.</p> <p>24 MR. ZANIEL: Yes.</p> <p>25 MR. PINTAR: So what's the point?</p>	<p style="text-align: right;">Page 88</p> <p>1 A No.</p> <p>2 Q Are they continually rewrote over?</p> <p>3 A I don't know. I don't know that much about</p> <p>4 it. I got them more as a --</p> <p>5 Q Deterrent?</p> <p>6 A Deterrent, yeah.</p> <p>7 Q Have you ever looked at any video from these</p> <p>8 cameras in your -- that your cameras have taken?</p> <p>9 A Yes.</p> <p>10 Q Have you ever seen the Spencers on any of your</p> <p>11 video cameras since you've installed them?</p> <p>12 A I haven't looked.</p> <p>13 Q You've looked at some footage of your cameras.</p> <p>14 A Yes.</p> <p>15 Q And the footage you've looked at, did you see</p> <p>16 the Spencers?</p> <p>17 A I don't remember.</p> <p>18 Q Okay. And you're not sure how long things are</p> <p>19 stored for or have no knowledge about that?</p> <p>20 A I have no -- I have a limited knowledge. I</p> <p>21 know that it's continuous and there has to be motion for</p> <p>22 me to see it.</p> <p>23 Q Okay. And how about at night, can they pick</p> <p>24 up information at night, if you know?</p> <p>25 A Not very much.</p>
<p style="text-align: right;">Page 87</p> <p>1 MR. ZANIEL: Well, in case people were driving</p> <p>2 by or walking by. I don't know what discovery is going</p> <p>3 to come out yet. There could be potentially issues of</p> <p>4 ongoing harassment since this event. I don't think this</p> <p>5 event stopped the ongoing harassment. The question of</p> <p>6 where the cameras are located I think is certainly</p> <p>7 discoverable. I don't think it's anything privileged.</p> <p>8 MR. PINTAR: Well, okay. Go ahead.</p> <p>9 THE WITNESS: I have one in the front of my</p> <p>10 house.</p> <p>11 BY MR. ZANIEL:</p> <p>12 Q Okay.</p> <p>13 A One is over my garage, one is by my front</p> <p>14 door, so if anybody comes to my front door.</p> <p>15 Q Okay.</p> <p>16 A One is on a side of my house by my gate that</p> <p>17 goes into my backyard.</p> <p>18 Q Okay.</p> <p>19 A And then one is in my backyard looking down at</p> <p>20 my back door. I have a sliding door, looking down at</p> <p>21 that and into my backyard.</p> <p>22 Q All right. And then we'll just have a running</p> <p>23 objection about the camera issue.</p> <p>24 How are these -- are these put onto a hard</p> <p>25 drive?</p>	<p style="text-align: right;">Page 89</p> <p>1 Q Okay. All right. So let's move along.</p> <p>2 December 18th, 2012. I guess let's talk about</p> <p>3 that week between 12-12 and 12-18, that approximate week</p> <p>4 period of time when you saw the plow that Jeff was</p> <p>5 operating to throw snow on Egon. Any events or</p> <p>6 incidents happen during that week between 12-12 and</p> <p>7 12-18 that you thought were inappropriate by Mr. Spencer</p> <p>8 or Mrs. Spencer?</p> <p>9 A I don't remember.</p> <p>10 Q Okay. On 12-18, 2012, on that day -- do you</p> <p>11 remember what day of the week it was?</p> <p>12 A No.</p> <p>13 Q Okay. On that day, do you remember what you</p> <p>14 did that day? The incident, according to the police</p> <p>15 report, was about 8:40 at night. Is that your</p> <p>16 understanding?</p> <p>17 A Right.</p> <p>18 Q Okay.</p> <p>19 A Yes.</p> <p>20 Q What did you do that day?</p> <p>21 A I don't remember what I did all day long.</p> <p>22 Q What's the first thing you do remember?</p> <p>23 A I do remember going to a KGID meeting.</p> <p>24 Q And who -- how did you get to the KGID</p> <p>25 meeting?</p>

<p style="text-align: right;">Page 90</p> <p>1 A I drove myself.</p> <p>2 Q Okay. Was anybody with you?</p> <p>3 A No.</p> <p>4 Q Where is the KGID meeting held at?</p> <p>5 A It was held right down the street on Pine</p> <p>6 Ridge Street.</p> <p>7 Q Okay. That wasn't the first meeting you had</p> <p>8 been to?</p> <p>9 A No.</p> <p>10 Q Do you normally go to the KGID meetings?</p> <p>11 A No.</p> <p>12 Q What made you go on that day?</p> <p>13 A I felt that it was the right thing to do.</p> <p>14 Q Why?</p> <p>15 A Because of what had happened to Egon as far as</p> <p>16 him getting covered with snow.</p> <p>17 Q Okay. Did you want to make a complaint to the</p> <p>18 KGID people about that incident?</p> <p>19 A I don't know. That never -- I never thought</p> <p>20 about that.</p> <p>21 Q Did you want to voice a concern to the KGID</p> <p>22 people about that incident?</p> <p>23 A Yes, yes, because I was a witness to it.</p> <p>24 Q So you go there. What time does the meeting</p> <p>25 start?</p>	<p style="text-align: right;">Page 92</p> <p>1 meetings run. Is there like a leader that gets up and</p> <p>2 calls the session to order or is it a formal meeting?</p> <p>3 A I think it is a formal meeting because they</p> <p>4 allow people to say whatever they want in the beginning</p> <p>5 and then we leave and then they do their actual meeting.</p> <p>6 Q Okay. So they have like a public comment</p> <p>7 section?</p> <p>8 A Yeah, pretty much.</p> <p>9 Q Okay. Did you speak at that meeting?</p> <p>10 A I did.</p> <p>11 Q Okay. And can you tell us basically what you</p> <p>12 said at that meeting.</p> <p>13 A I don't remember very much of what I said. I</p> <p>14 remember saying that I was a witness to what Jeff had</p> <p>15 done.</p> <p>16 Q Did you basically tell them what you just told</p> <p>17 me?</p> <p>18 A As far as I remember.</p> <p>19 Q Okay. Anything else other than that incident?</p> <p>20 Did you report anything to KGID other than the incident</p> <p>21 of 12-12?</p> <p>22 A I don't remember.</p> <p>23 Q Okay. Who else spoke at that meeting, if you</p> <p>24 remember?</p> <p>25 A I don't remember.</p>
<p style="text-align: right;">Page 91</p> <p>1 A I don't know. Maybe 6:00 o'clock. I don't</p> <p>2 know.</p> <p>3 Q Okay. Could you tell me who was present at</p> <p>4 the meeting besides yourself?</p> <p>5 A No.</p> <p>6 Q Were the Klementis there?</p> <p>7 A Yes.</p> <p>8 Q When we say the Klementis, was Elfi there?</p> <p>9 A Yes.</p> <p>10 Q Egon?</p> <p>11 A I'm not sure.</p> <p>12 Q Helmut?</p> <p>13 A I'm not sure.</p> <p>14 Q You know Elfi was?</p> <p>15 A Yes.</p> <p>16 Q Okay. Were the Spencers there?</p> <p>17 A No.</p> <p>18 Q Okay. Were the Shaws there?</p> <p>19 A Yes.</p> <p>20 Q Okay. Anybody else you remember being present</p> <p>21 at that meeting?</p> <p>22 A I don't remember.</p> <p>23 Q Approximately how long did the meeting last?</p> <p>24 A I don't remember.</p> <p>25 Q Can you just tell me basically how these</p>	<p style="text-align: right;">Page 93</p> <p>1 Q Okay. And if I asked you this, I'm sorry.</p> <p>2 How long did the meeting last?</p> <p>3 A Don't remember. Sorry.</p> <p>4 Q That's okay. And how did you leave the</p> <p>5 meeting? You get back in your car and you drove home?</p> <p>6 A Yes.</p> <p>7 Q Did you make any stops after that?</p> <p>8 A No.</p> <p>9 Q When you got home, was it dark out?</p> <p>10 A Yes, I think it was.</p> <p>11 Q Okay. And if we look at this map here, from</p> <p>12 the meeting place to your home, did you pass through</p> <p>13 Charles Street?</p> <p>14 A No.</p> <p>15 Q Okay. Did you try to avoid Charles Street at</p> <p>16 that time in the --</p> <p>17 A No.</p> <p>18 Q Okay. But you just don't use that as an</p> <p>19 egress, in and out of the neighborhood?</p> <p>20 A Right.</p> <p>21 Q All right. So you got to your home that day,</p> <p>22 and at that time nobody was living with you, correct?</p> <p>23 A Correct.</p> <p>24 Q Okay. What did you do when you got home?</p> <p>25 A I don't remember.</p>



<p style="text-align: right;">Page 138</p> <p>1 MR. ZANIEL: And Mr. Shaw.</p> <p>2 MS. CAPERS: And Tanika Capers representing</p> <p>3 the Shaws.</p> <p>4 MR. PALMER: Nick Palmer representing Helmut</p> <p>5 Klementi.</p> <p>6 MR. MOORE: Chris Moore of Lemons, Grundy &amp;</p> <p>7 Eisenberg. We represent Helmut Klementi in the</p> <p>8 counterclaim that's been filed against him in this</p> <p>9 action.</p> <p>10 I'll note further that because of the events</p> <p>11 transpiring in the immediate preceding portion of this</p> <p>12 deposition, counsel found it prudent to start</p> <p>13 videotaping this deposition.</p> <p>14 I will note for the court reporter's benefit</p> <p>15 that people should not speak at the same time. Please</p> <p>16 speak at different times. Please be patient, even if</p> <p>17 you're upset. Thank you.</p> <p>18 MR. ROUTSIS: Very good. I'd like to lay a</p> <p>19 foundation. We've had some issues regarding pending</p> <p>20 legal evidentiary issues. This case formally went to a</p> <p>21 criminal trial for two weeks in which the Spencers were</p> <p>22 acquitted of all charges.</p> <p>23 During that trial, evidence came in where Miss</p> <p>24 Kinion, who is here for this deposition, testified to</p> <p>25 writing a letter to the district attorney that's</p>	<p style="text-align: right;">Page 140</p> <p>1 her to testify simply to her personal knowledge of what</p> <p>2 she did or not, did or not -- did or did not do relevant</p> <p>3 to the civil suit against her.</p> <p>4 They're pertinent questions, and whether she</p> <p>5 put it in a letter or not in a letter, I'm asking her</p> <p>6 questions that are relevant to a document that we're</p> <p>7 not -- we are not discussing whether counsel improperly</p> <p>8 has the document. I do not have the document. I am</p> <p>9 asking her what she did that is quite critical to</p> <p>10 getting information to this deposition. And please feel</p> <p>11 free to object on every question, okay?</p> <p>12 MR. PINTAR: Let me just stop. You</p> <p>13 acknowledge you have seen the letter and that you used</p> <p>14 it at the criminal trial, correct?</p> <p>15 MR. ROUTSIS: That is a correct statement,</p> <p>16 that at the criminal trial the letter that she authored,</p> <p>17 she present -- never presented it to me. She presented</p> <p>18 it to the prosecution. The prosecution I believe</p> <p>19 discovered it to me and it was marked as an exhibit.</p> <p>20 We lost all our exhibits in this case. We</p> <p>21 lost our whole case files and we're trying to piece it</p> <p>22 together. So we do not have that exhibit.</p> <p>23 So I want to question her regarding her</p> <p>24 conduct. Now, whether or not -- the letter is not</p> <p>25 relevant. What's relevant is the information she</p>
<p style="text-align: right;">Page 139</p> <p>1 material, critical, and relevant to our filing of a</p> <p>2 civil suit of a conspiracy for malicious prosecution.</p> <p>3 I do not have that letter. I'm not in</p> <p>4 possession of that letter, and I am simply asking her</p> <p>5 questions regarding her personal recollection of that</p> <p>6 letter. And I'd like to proceed.</p> <p>7 Miss Kinion --</p> <p>8 MR. MOORE: For the record, I'm objecting to</p> <p>9 any line of questioning on a document that should have</p> <p>10 been produced, especially if, in the words of counsel,</p> <p>11 it is crucial to counsel's case, which there is an</p> <p>12 affirmative obligation under NRCP 16.1 to do so. Thank</p> <p>13 you.</p> <p>14 MR. ROUTSIS: Okay.</p> <p>15 MR. PINTAR: And in response to that, let me</p> <p>16 note my objection. It's my position that any of the</p> <p>17 testimony or evidence that was produced at the criminal</p> <p>18 trial which Mr. Routsis wants to use in this case, he</p> <p>19 has an affirmative obligation to produce, and therefore,</p> <p>20 I'm objecting to Miss Kinion testifying about that</p> <p>21 evidence.</p> <p>22 MR. ROUTSIS: Okay. And I think here's the</p> <p>23 misunderstanding, and this should be presented to the</p> <p>24 trial judge. I am not testifying or asking her to</p> <p>25 testify or moving into evidence an exhibit. I'm asking</p>	<p style="text-align: right;">Page 141</p> <p>1 provided to the DA. So I'll go down that road.</p> <p>2 BY MR. ROUTSIS:</p> <p>3 Q Miss Kinion, you testified at the criminal</p> <p>4 trial in this case with the Spencers, correct? Where</p> <p>5 the Spencers were -- Jeff Spencer was accused of a</p> <p>6 criminal act and you were a witness in that case,</p> <p>7 correct?</p> <p>8 MR. PINTAR: You can answer that.</p> <p>9 THE WITNESS: No.</p> <p>10 BY MR. ROUTSIS:</p> <p>11 Q You didn't testify at that trial?</p> <p>12 A Not that he was a criminal in as far as --</p> <p>13 Q Did you testify at the criminal trial?</p> <p>14 A Yes.</p> <p>15 Q Okay. Now, were you subpoenaed by Maria Pence</p> <p>16 or were you subpoenaed by the District Attorney's Office</p> <p>17 to testify at that trial?</p> <p>18 A Yes.</p> <p>19 Q Prior to your testimony at that trial, did you</p> <p>20 give evidence or statements or material or information</p> <p>21 to Maria Pence regarding alleged conduct that Jeffrey</p> <p>22 Spencer may or may not have committed against Egon or</p> <p>23 Helmut Klementi?</p> <p>24 MR. PINTAR: Just for the record, I'm going to</p> <p>25 object because it may be testimonial privileged, but go</p>

<p style="text-align: right;">Page 146</p> <p>1 A I don't remember.</p> <p>2 MR. MOORE: Counsel, just -- I forget whether</p> <p>3 or not you were in the room when we had a discussion. I</p> <p>4 do know it's getting later in the day, and there are</p> <p>5 additional deponents that we noticed in this matter, who</p> <p>6 I don't know how long their deposition --</p> <p>7 MR. ROUTSIS: I'm almost done. If you let me</p> <p>8 go, I'm almost done.</p> <p>9 MR. MOORE: Can I finish myself, please?</p> <p>10 MR. ROUTSIS: Certainly. Go ahead.</p> <p>11 MR. MOORE: I'm letting you know so that we do</p> <p>12 have to stop the proceedings at 5:00 today.</p> <p>13 MR. ROUTSIS: What time is it?</p> <p>14 MR. MOORE: I have around 20 after 4:00.</p> <p>15 MR. ROUTSIS: Okay. Why do we have to stop at</p> <p>16 5:00?</p> <p>17 MR. MOORE: We've got a scheduling conflict.</p> <p>18 MR. ROUTSIS: Who does?</p> <p>19 MR. MOORE: I do.</p> <p>20 MR. ROUTSIS: Where do you got to be?</p> <p>21 MR. MOORE: None of your business.</p> <p>22 MR. ROUTSIS: Well, maybe you need to stay</p> <p>23 then. You know what, if we go a few minutes over.</p> <p>24 We've got people from Las Vegas.</p> <p>25 MR. MOORE: I'm saying no, counsel.</p>	<p style="text-align: right;">Page 148</p> <p>1 Klementis?</p> <p>2 A She didn't say who.</p> <p>3 Q Okay. She never told you how she came to get</p> <p>4 your number?</p> <p>5 A No. I never asked.</p> <p>6 Q Okay. So you got a call from her, her</p> <p>7 secretary?</p> <p>8 A Yes.</p> <p>9 Q And the letter that -- did you present a</p> <p>10 letter to her, without getting into what was in the</p> <p>11 letter? Did you present a letter to her?</p> <p>12 A At a later date, yes.</p> <p>13 Q And is that at her request or did you do that</p> <p>14 on your own volition?</p> <p>15 A It was at her request.</p> <p>16 Q Okay. And do you know if -- okay. I have</p> <p>17 nothing further. Oh, strike that. A couple more</p> <p>18 questions.</p> <p>19 A I knew he was going to.</p> <p>20 MR. PINTAR: All attorneys do.</p> <p>21 MR. MOORE: Not all.</p> <p>22 BY MR. ROUTSIS:</p> <p>23 Q Did you ever have discussions with any of the</p> <p>24 Klementis, prior to the criminal trial, that the</p> <p>25 Klementis were going to keep taking pictures near or at</p>
<p style="text-align: right;">Page 147</p> <p>1 MR. ROUTSIS: Well, then you can leave.</p> <p>2 MR. MOORE: At the peril that the whole video</p> <p>3 gets stricken and you have to pay for it.</p> <p>4 BY MR. ROUTSIS:</p> <p>5 Q Okay. Miss Kinion, so you don't remember if</p> <p>6 you presented evidence about Jeffrey Spencer berming you</p> <p>7 in?</p> <p>8 A I don't remember.</p> <p>9 Q Okay. How is it that you got in touch with</p> <p>10 Maria Pence, the prosecutor that prosecuted Jeff Spencer</p> <p>11 for these serious crimes? How is it that you came to</p> <p>12 meet her?</p> <p>13 A Through her secretary.</p> <p>14 Q Who prompted you to contact her? Did the</p> <p>15 Klementis ask you to please contact her to give them</p> <p>16 information?</p> <p>17 A She contacted me.</p> <p>18 Q Okay. And Maria Pence contacted you?</p> <p>19 A Her secretary.</p> <p>20 Q Okay. And you spoke with Maria Pence,</p> <p>21 correct?</p> <p>22 A Yes.</p> <p>23 Q And did she inform you that she was informed</p> <p>24 by the Klementis that you may have information regarding</p> <p>25 conduct, repeated conduct by Mr. Spencer against the</p>	<p style="text-align: right;">Page 149</p> <p>1 the Spencers' property in order to antagonize and to get</p> <p>2 Mr. Spencer angry because they knew that they were</p> <p>3 getting to him?</p> <p>4 A No.</p> <p>5 Q Any conversations in that regard?</p> <p>6 A No.</p> <p>7 Q Did they ever talk to you about why they were</p> <p>8 taking photographs consistently on the Spencers' street?</p> <p>9 A No.</p> <p>10 Q Do you know why on the evening in question</p> <p>11 that Mr. Klementi was taking -- that Mr. Helmut Klementi</p> <p>12 was taking pictures near the defendant's property? Were</p> <p>13 you ever informed why he was doing that after the KGID</p> <p>14 meeting?</p> <p>15 A I don't know that he was.</p> <p>16 Q Okay. Do you have any information as to</p> <p>17 whether or not this was a preplanned situation that they</p> <p>18 were trying to antagonize Mr. Spencer that evening?</p> <p>19 A I would say a definite no.</p> <p>20 MR. ROUTSIS: Okay. Nothing further.</p> <p>21 MR. ZANIEL: I have no questions.</p> <p>22 MR. PINTAR: I have no questions.</p> <p>23 MR. MOORE: I have no questions.</p> <p>24 MR. PALMER: I have nothing.</p> <p>25 MS. CAPERS: No, I don't have any.</p>

## **EXHIBIT 2**

## **EXHIBIT 2**

12-2555



# Douglas County Sheriff

## Deputy Report for Incident 12SO41608

Minden, Nevada

Nature: Assault  
Location: LUK68

Address: 321 CHARLES AV; LRKG  
Stateline NV 89449

Offense Codes: ELDB  
Received By: Spellberg D      How Received: 9      Agency: DCSO  
Responding Officers: McKone J, Almeida N  
Responsible Officer: McKone J      Disposition: CAA 12/18/12  
When Reported: 20:44:41 12/18/12      Occurred Between: 20:44:21 12/18/12 and 20:44:40 12/18/12

Assigned To:      Detail:      Date Assigned: \*\*/\*\*/\*\*  
Status:      Status Date: \*\*/\*\*/\*\*      Due Date: \*\*/\*\*/\*\*

**Complainant:**

Last:      First:      Mid:  
DOB: \*\*/\*\*/\*\*      Dr Lic:      Address:  
Race:      Sex:      Phone:      City: ,

**Offense Codes**

Reported:      Observed: AOWP Assault, Othr Weap  
Additional Offense: ELDB Elder Abuse Battery

**Circumstances**

LT13 Highway, Road, Alley

Responding Officers:      Unit :  
McKone J      303  
Almeida N      301

Responsible Officer: McKone J      Agency: DCSO  
Received By: Spellberg D      Last Radio Log: 22:40:43 12/18/12 CMPLT  
How Received: 9 911 Line      Clearance: ARR Arrest  
When Reported: 20:44:41 12/18/12      Disposition: CAA Date: 12/18/12  
Judicial Status:      Occurred between: 20:44:21 12/18/12  
Misc Entry:      and: 20:44:40 12/18/12

Modus Operandi:      Description :      Method :

**Involvements**

12/21/12

Date	Type	Description	Arrest/Offense
12/18/12	Arrest	Booking#: 12SOJ3277	Involved
12/19/12	Name	SPENCER, MARILYN ANN	Arrested
12/19/12	Name	SPENCER, JEFFREY DALE	Contacted
12/19/12	Name	Wells, Janet	witness
12/18/12	Name	KLEMENTI, EGON alois	contacted
12/18/12	Name	Klementi, Elfie	Victim
12/18/12	Name	KLEMENTI, HELMUT	

12/21/12

## Narrative

### Douglas County Sheriff's Department Investigation Narrative

Case#12SO41608

#### CLASSIFICATION:

Abuse of the Elderly/Battery.

#### ATTACHED:

03 Statements.

#### DETAILS:

On Tuesday, December 18 2012 at 2044 hours, I was dispatched to 321 Charles Avenue, Stateline, Nevada for a report of someone breaking into the reporting person, Jeffrey Spencer's truck. During my response, I was told by the 911 dispatcher, Jeffrey had the burglary suspect on the ground momentarily.

Deputy N. Almeida responded to the address. As I turned onto Charles Avenue from Juniper Drive, I could see an elderly male subject lying supine on the ice covered road of Charles Avenue and Meadow Drive. I could see a second elderly male standing near the downed subject. The male that was standing, was waving his arms in attempt to get my attention. I positioned my patrol vehicle in the center of Charles Avenue, near the two males blocking the travel lane to keep the downed male from being struck from traffic.

I made contact with the two males and could see the downed male was conscious and moving his arms. The standing male, said, "help my brother, please." I requested dispatch to respond Tahoe Douglas Paramedics to the location."

The male on the ground, identified himself as Helmut Klementi. Helmut said, his back and knee were in a lot of pain and was attempting to sit up. I instructed Helmut to remain lying down, and told him paramedic would be on scene shortly.

Deputy Almeida arrived and went to 321 Charles to meet with the 911 caller, Marilyn and Jeffrey Spencer.

The male standing with Helmut, identified himself as, Egon Klementi, Helmut's twin brother. I asked Egon if he lived nearby and he pointed to the residence next to our location and said he lived right here. I instructed Egon to retrieve a blanket from his residence for his brother who was laying on ice. Egon went to his home to retrieve a blanket.

I asked Helmut what occurred. Helmut said he was at his brother, Egon's home, went out to the road to take pictures of the snowburr along his brothers fence. While he was taking the pictures with his camera, he could hear Jeff yelling at him from the back, upper deck of 321 Charles Avenue. Helmut began walking back towards Charles Avenue and Meadow Lane.

Helmut said he could hear Jeff come out of his house and coming towards him as he walked away. Helmut heard Jeff yelling at him from behind as he continued to walk. According to Helmut, Jeff ran up to him, struck him on his back then knocked him to the ground. Helmut began yelling for help and Jeff ran back to his residence at 321 Charles Lane. Helmut said, Egon came to his aid, tried to help him stand up, however he was in pain and could not stand. Egon stood next to Helmut to stop any cars from hitting him as he lay in the roadway.

12/21/12

I asked Helmut, if he was taking pictures of his brothers fence, could I see his camera and if I had permission to look at the photographs he took. Helmut said his camera was in the right pocket of his pants and I could retrieve it and look at the pictures. I pulled a camera from Helmut's pants pocket, turned it on and could see the last picture on the camera were those of his brothers fence and snowburm in front of his brothers house. the pictures appear to be taken from the area of the street closer to the intersection of Meadow Lane, Than the driveway of 321 Charles Avenue.

I told Egon to return to his home and wait for a deputy to come take his statement. While waiting for the ambulance to arrive, Egon's wife, Elfie Klementi came from the house and said she had more information about this incident. I told her a deputy would come speak with her shortly.

A second person walked to the scene and said she did not see this specific incident, however could provide a history of the ongoing harassment by Jeff towards Helmut and Egon Klementi. I identified her as Janet Wells and told her I would contact her for a statement.

Tahoe Douglas Paramedics arrived, placed Helmut on a backboard, loaded him into the ambulance and transported him to Barton Memorial Hospital.

After Helmut was transported to the hospital, I walked to 321 Charles Avenue and met with Deputy Almeida, Marilyn and Jeffrey Spencer in the the front entry room. Jeffrey was holding a paper towel over a bleeding abrasion on his arm. He was explaining to Deputy Almeida his accounts of the events that occurred.

Jeffrey was telling Deputy Almeida he could hear someone in his driveway and thought it was a burglar. He said he yelled from his upper deck "Who are you, identify yourself." Jeffrey said, he could see someone at the edge of his driveway. I asked him if he actually saw someone in his driveway and he said, "Someone was on the edge of my driveway, I went out front and saw a man walking away from my house." "I kept saying, who are you, why are you breaking into my truck."

Jeffrey went on to say, "I ran down the street, then pushed him down. I would have tackled him, but then we both would have gotten hurt." Jeffrey said, he thought the subject he chased down the street was a teenager, because of the hood he was wearing. He said he didn't know it was Egon and If Egon would have identified himself, he would not have pushed him down. Jeffrey also said, "what would you do if someone wouldn't identify themselves to you?"

I asked Jeffrey how he got the cut on his arm and he said, "I don't know, maybe that guys fingernail."

I asked Jeffrey to put his shoes on, come outside and show me where the male subject he thought was breaking into his vehicle was standing/walking on his property.

Jeffrey, Marilyn, Deputy Almeida and I went to the driveway that was covered in approximately 3" to 4" of snow. I could see two patterns of shoe prints in the driveway, neither of matched the pattern of Helmut's shoe prints I observed on his feet while he was lying in the street.

Marilyn pointed to a set of footprints and said, "there, those were not in the snow before." Deputy Almeida said he made the footprints when he walk to the

the house. I compared the prints to Deputy Almeida's boots and they appear to be the same.

I asked Jeffrey how he could see the subject in his driveway from his rear second floor deck and he said, "I heard them in my driveway." I also asked Jeffrey how he could mistake his 78 year old neighbor, Egon or his brother Helmut as a teenager. Jeffrey said he was wearing a hood. I told Jeffrey, the subject he confronted in the street was Helmut, not Egon and neither were wearing a hood.

I placed Jeffrey under arrest, secured him into handcuffs, checked for proper fit and double locked. As I secured Jeffrey into handcuffs and searched his person for weapons, he said, "Come on, you're really arresting me?"

I told Jeffrey he was being arrested for battery/abuse of an elderly person. Jeffrey said, "well is he okay? he wasn't bleeding or anything."

Deputy Almeida met with Elfie and Egon Klementi and had them complete written statement.

I transported Jeffrey to the Douglas County Jail for booking. At the jail, I advised Jeffrey of his Miranda Rights and asked him if he was willing to write a statement to his accounts of this incident.

I left the jail and responded to Barton Memorial Hospital to speak with Helmut and check on his condition. I met with Helmut in the emergency room along with hospital staff. The treating staff told me no major injuries were noted upon their initial exam, and Helmut would be further observed and evaluated due to his age.

Helmut told me, he still had pain in his lower back and could not understand why Jeff would hit him. Helmut said, Jeff and his wife Marilyn have been involved with hostile confrontations with his brother, Egon. Jeff likes to harass all the neighbors and Kingsbury General Improvement District regarding, snowburms and a large fence Jeff built. Helmut said there is some type of restraining order against Jeff due to those civil issues about snow removal and fence issues. Helmut said he was in fear of Jeffrey and said he may have heard a single gunshot from Jeffrey's balcony prior to this battery.

I told Helmut, no other reports of gunshot were heard during that time and I had no evidence or other information to cause me to believe a firearm was involved.

I asked Helmut if he was in Jeff's driveway and he said he was not in the driveway and only took the pictures of his brothers fence from the street. I double checked and photographed Helmut's boots and confirmed they were not similar to any of the boot prints in Jeff's driveway.

I confirmed with Helmut he was not wearing a hood prior to my arrival, and his face was not covered during his altercation with Jeff.

I responded back to the jail to pick up Jeffrey Spencer's written statement. I asked Jeffrey if he wanted to add any information to his statement or make any additional verbal statements. Jeffrey said it was all written in his statement. I asked Jeffrey how he could not recognize his long term neighbor Egon or Helmut. Jeffrey said, "it was dark and my flashlight was small."

I told him, I did not realize he had a flashlight with him during this incident.

12/21/12



Jeffrey said, "I grabbed it on my way out, but it does not work well." I asked Jeffrey if any of tonight's confrontation stemmed from the ongoing dispute with the Klementi's or repercussions regarding an alleged restraining order? Jeffrey said, "I won't comment on that, that's in my lawyer's hands."

Wednesday, December 19 2012, I responded to 183 Juniper and contacted Janet Wells. Janet told me, she has been a witness to prior altercations between Jeffrey Spencer and the Klementi brothers. She recalls one specific incident, where Jeffrey came out from his house and was yelling at Egon Klementi as Egon walked his dog on Charles Avenue. Janet said, Jeffrey was hostile and she went to the street and stood between Egon and Jeffrey because she was afraid Jeffrey might hit Egon.

According to Janet, Jeffrey seems to have a dislike for the Klementi's, all of the senior citizens in the area and a dispute with Kingsbury General Improvement District. Janet said the dispute stems from Jeffrey's empowerment with F&B Trucking, where he is employed to plow the Kingsbury streets under a contract between K.G.I.D and F&B. Janet said, Jeffrey has a tendency to plow the street and block the driveways of those neighbors he is not fond of with snowburms. Janet believes it is Jeffrey's way of harassing and bullying anyone he does not like. This issue has been addressed at K.G.I.D meetings. Janet said, Marilyn Spencer has made comments after these meetings, that she has a concealed weapons permit. Janet said she was not ready to write a written statement.

I completed a locals check and discovered, Marilyn and Jeffrey Spencer are both CCW holders. Due to Jeffrey's arrest, I am forwarding a copy of this report to Undersheriff P. Howell for request of temporary suspension of Jeffrey Spencer's CCW permit pending adjudication.

I did not locate a Temporary Restraining Order involving Jeffrey Spencer. However, it is possible, some type of civil court order would not be listed in the local database maintained for Domestic Violence Protection Orders.

#### CONCLUSION:

This is my first encounter with Jeffrey Spencer or the Klementi Brothers. It is obvious there is a longstanding dispute between these homes. The Klementi's are 78 years old and do not resemble a teenager as described by Jeffrey Spencer. I found Jeffrey's statement to be not credible, regarding being able to see a dark figure in his driveway from the back of his house, then go outside with a flashlight, confront a male walking down the street and not recognize one of the Klementi twins, who he has confronted in the past, knock him to the ground, see that it's an elderly male that he mistook for a teenager, then walk away, leaving Helmut Klementi lying on the street.

It is my opinion, Jeffrey Spencer, was upset with the Klementi's saw Helmut taking photographs of the snowburr and used the excuse of someone breaking into his truck to confront and commit a battery on Helmut Klementi.

#### DISPOSITION:

Forward to the Douglas County District Attorney's Office for prosecution.  
Forward to the Tahoe Township Justice Court for possible restraining order violation if order exists.  
Forward to Undersheriff Howell for CCW review.

Wed Dec 19 21:21:48 PST 2012

12/21/12

**Supplement**Douglas County Sheriff's Department  
Supplemental Narrative

Case#12SO41608

**DETAILS:**

On Thursday, 12/20/12, I requested and received a copy of the 911 call placed by Marilyn Spencer. I booked the CD copy of the 911 call into the Douglas County Sheriff's evidence system, for review by the Douglas County District Attorney's Office.

**DISPOSITION:**

Attach to original report.

Thu Dec 20 22:17:22 PST 2012

Deputy J. McKone 301.

**Booking Information:**

Booking Number: 12SOJ3277

Name Number: 13672

Name: SPENCER, JEFFREY DALE

Address: 321 CHARLES AV; LRKG

Phone: (775)588-0801

Stateline, NV 89449

DOB: 02/21/63

Dr Lic: 370662860363

Location: ----

Tmp Location: ----

Booking Date: 12/18/12

Arrest Number: 1

Time/Date: 21:14:00 12/18/12

Agency: DCSO

Age at Arrest: 49

Location: 321 Charles

Officer: McKone J

Arrest Type: VIEW

Area: DCS3

Reference:

Disposition:

-----  
Offense Number: 31653

BFRO: B

Sentenced: No

Statute: 50152

NCIC:

Offense: ELDB Elder Abuse Battery

Crime Class: G

Offense Reference:

Offense Type: S

Offense Area: DCS3

Related Incident: 12SO41608

Law Jurisdiction: NRS

Entry Code: CRIM

Offense Location: 321 Charles

Court Code: TTJC

Offense Time/Date: 21:14:00 12/18/12

Off Judicial Status: ARR

Billing Agency: DCSO

12/21/12

Offense Disposition:

Billing Beg Tm/Dt: 21:14:00 12/18/12

Disposition Date: \*\*.\*.\* \*\*/\*\*\*\*

End Time/Date: \*\*.\*.\* \*\*/\*\*\*\*

Sentencing Judge:

Alcohol/Drug Invl: Been Drinking

Sent. Time/Date: \*\*.\*.\* \*\*/\*\*\*\*

Sent. Components:

Comments:

12/21/12

**Name Involvements:**

contacted : 82410

Last: Klementi

First: Elfie

Mid:

DOB: 08/14/41

Dr Lic:

Address: 187 MEADOW LN; LRKG

Race: W Sex: F

Phone: (775)588-8895

City: Stateline, NV 89449

Involved : 13671

Last: SPENCER

First: MARILYN

Mid: ANN

DOB: 05/31/63

Dr Lic: 3601282693

Address: 321 CHARLES AV; LRKG

Race: W Sex: F

Phone: (775)588-0801

City: Stateline, NV 89449

witness : 75504

Last: KLEMENTI

First: EGON

Mid: alois

DOB: 04/11/34

Dr Lic: 0202344863

Address: 187 MEADOW LN; LRKG

Race: W Sex: M

Phone: (775)588-8895

City: STATELINE, NV 89449

Contacted : 82443

Last: Wells

First: Janet

Mid:

DOB: 05/01/46

Dr Lic:

Address: 183 JUNIPER DR; LRKG

Race: W Sex: F

Phone: (775)588-6049

City: Stateline, NV 89449

Arrested : 13672

Last: SPENCER

First: JEFFREY

Mid: DALE

DOB: 02/21/63

Dr Lic: 370662860363

Address: 321 CHARLES AV; LRKG

Race: W Sex: M

Phone: (775)588-0801

City: Stateline, NV 89449

Victim : 82411

Last: KLEMENTI

First: HELMUT

Mid:

DOB: 04/11/34

Dr Lic:

Address: 164 PINE RIDGE DR; LRKG

Race: W Sex:

Phone: (775)588-0556

City: Stateline, NV 89449



SHERIFF-CORONER'S  
DEPARTMENT  
Douglas County, Nevada

STATEMENT FORM

VICTIM \_\_\_\_\_  
WITNESS \_\_\_\_\_  
DRIVER \_\_\_\_\_  
PASSENGER \_\_\_\_\_

Page 1 of 1

LAST NAME - FIRST - MIDDLE <b>KLEMENTI EGON ALOIS</b>		D.O.B.	RACE - SEX <b>WHITE, M</b>	AGE <b>78</b>	HT. <b>5'10"</b>	WT. <b>165</b>	HAIR <b>BROWN GREY</b>	EYES <b>BLUE</b>
PHYSICAL ADDRESS <b>187 HAWAII LN</b>		MAILING ADDRESS <b>PO BOX 3155 STATELINE</b>		HOME PHONE # <b>775 588 8895</b>				
SS #	EMPLOYMENT/LOCATION			WORK PHONE #				
VEHICLE INFORMATION		YEAR	MAKE	MODEL	COLOR			
LICENSE PLATE/STATE		DRIVER'S LIC NO.			STATE			
MY OBSERVATION OR INVOLVEMENT IN THIS MATTER WAS AS FOLLOWS:  I was in the house arranging my artwork in my studio east side of the house for a meeting with a <b>TAHOE TRIBUNE JOURNALIST</b> tomorrow afternoon. I HEARD MY TWIN BROTHER SCREAM FOR HELP! I SAW MY TWIN BROTHER LAYING ON THE STREET and ran out to help him. I saw <b>JEFF SPENCER</b> hitting <b>Helmut</b> from the back and pushing him to the FLOOR/STREET. I tried to help <b>Helmut</b> to get up but he had too much pain so I was just saving him from being run over in the middle of the street!								
SIGNATURE OF PERSON MAKING STATEMENT:  <b>Egon Klementi</b>								
DATE/TIME: <b>12-18-12</b>								



SHERIFF-CORONER'S  
DEPARTMENT  
Douglas County, Nevada

STATEMENT FORM

VICTIM  
WITNESS  
DRIVER  
PASSENGER

Page 1 of 2

LAST NAME - FIRST - MIDDLE KLEMENTI, ELFIE		D.O.B. 8, 14, 41	RACE - SEX F	CASE # 128041608	AGE 71	HT.	WT.	HAIR	EYES
PHYSICAL ADDRESS 187 MEADOW LANE		MAILING ADDRESS P.O. BOX 3155		HOME PHONE # 775-588 2295					
SS #		EMPLOYMENT LOCATION HARRAH'S		WORK PHONE # 775-588 6611					
VEHICLE INFORMATION	YEAR	MAKE	MODEL	COLOR					
	LICENSE PLATE/STATE		DRIVER'S LIC NO.			STATE			
MY OBSERVATION OR INVOLVEMENT IN THIS MATTER WAS AS FOLLOWS: AFTER DINNER AROUND 8 <sup>15</sup> PM MY BROTHER IN LAW LEFT OUR HOUSE AND TO TAKE A PICTURE AT THE END OF OUR FENCE ON CHARLES AVE. WE CAME BACK FROM A BOARD MEETING WITH KID ABOUT BEAMS WHICH WE GOT BY MR. SPENCER. ALL OVER SUDDEN I HEARD MY BROTHER IN LAW YELLING, <del>AND I SAW</del> I RUN OUT TO OUR DOOR AND I SAW HIM LAYING ON THE FLOOR AND MR. SPENCER RUNNING TO HIS HOUSE, I CALLED 911 RIGHT AWAY AND MADE A REPORT THAT HELMET IS ON THE FLOOR. I STAYED IN THE HOUSE WHEN THE SHERIFF AND ATTORNEY CAME.									
SIGNATURE OF PERSON MAKING STATEMENT: <i>Elfie Klementi</i>				DATE/TIME: 12, 18, 2012					

My name is Elfie Klementi. My husband, Egon, and I live on 187 Meadow Lane. In the early winter season of 2011, while Egon was shoveling the berm away in front of our 2 gates by our fence on Charles Avenue, Mrs. Spencer, wife of the snow plow diver, came over to Egon and offered that her husband, Jeff Spencer, would take care of the snow if we like, since he was driving a big snow plow. My husband declined.

Later in 2011, and earlier this year, we found out that Mr. Spencer had been completely clearing certain driveways on Meadow Lane.

The neighborhood problem started in April, 2012, when the Spencers parked an 18 wheeler on Charles. The large vehicle blocked the view for drivers turning from Meadow Lane to Charles and from Charles to Meadow. After several police reports, the 18 wheeler was parked next to their house. It took several weeks for the vehicle to be removed.

Around the same time of the 18 wheeler problem, the Spencers built a six foot, solid wood fence. The six foot fence goes around their corner property on Charles and Juniper and behind their house. The fence violated the three foot height allowed in the county code. TRPA's standard is also three feet high. We know this policy because we checked with the county when we built a solid wooden fence around our corner property on Meadow and Charles. Our fence height was three feet. Later, we changed to an iron fence.

While the Spencers were building their fence last Memorial Day weekend, my husband walked by their house with our dog. Mr. Spencer and his wife aggressively confronted my husband, which made him fear for his safety.

During the 2012 winter season, Mr. Spencer was hired again to do the snow removal in our neighborhood. First snow of the season, we got the biggest berm in front of our driveway. No one else on Meadow Lane had piles of snow on their driveway. We reported the problem to KGID.

With previous snow plow removers, if the snow piled up on the intersection of Charles and Meadow or coming down from Charles to Meadow, the snow was plowed toward the empty corner lot which belongs to Douglas County, not pushed to our driveway.

On December 12th, while my husband was clearing our driveway, Mr. Spencer drove by with the snow truck with the blade down which caused my husband to be covered with snow and street debris. Egon called the Sheriff's department and filed a report with an officer. Egon also went to Mr. McKay and reported the incident. Mr. McKay told Egon that the situation would be addressed. Apparently it was not! Yesterday, December 17th, Mr. Spencer came back again with the snow plow and pushed a large amount of snow, ice blocks and street debris from Charles, against our fence, across the road from Mr. Spencer's house. Mr. Spencer then went into his house for a break.

Since Mr. Spencer became a snow plow operator, whenever Mr. Spencer took a break, day or night time, he parked the large vehicle on Charles, across our property, blocking traffic, and went in his house for breaks. The entire period he went on his breaks, Mr. Spencer left the vehicle's motor running, every single time.

At this time, the Spencer's are now trying to get an approval from the KGID board to put a stop sign at the intersection in case they do not get the variance to keep their over 6 foot high fence. The stop sign is not going to solve the dangerous intersection problem at all.

My husband and I do not trust Mr. Spencer. We are afraid that Mr. Spencer uses his influence with other snow plow drivers in our neighborhood to create problems with our snow removal. We want him removed from his position. My husband and I cannot understand why this problem had been tolerated all this time by those who hired him, even after many complaints from different people in the neighborhood.



SHERIFF-CORONER'S  
DEPARTMENT  
Douglas County, Nevada

STATEMENT FORM

Page 1 of 2

VICTIM \_\_\_\_\_  
WITNESS \_\_\_\_\_  
DRIVER \_\_\_\_\_  
PASSENGER \_\_\_\_\_

CASE # 125041608

LAST NAME - FIRST - MIDDLE <u>Spencer Jeff D</u>		# <u>13672</u>	D.O.B. <u>2-21-63 W M</u>	RACE - SEX <u>W M</u>	AGE <u>49</u>	HT. <u>5'10"</u>	WT. <u>185</u>	HAIR <u>bln</u>	EYES <u>bln</u>
PHYSICAL ADDRESS <u>321 Charles</u>		MAILING ADDRESS <u>PO Box 2326</u>			HOME PHONE # <u>775 588-0801</u>				
EMPLOYMENT/LOCATION <u>State Line</u>					WORK PHONE # <u>530 318-1876</u>				
VEHICLE INFORMATION		YEAR	MAKE	MODEL	COLOR				
		LICENSE PLATE/STATE		DRIVER'S LIC NO.			STATE		

MY OBSERVATION OR INVOLVEMENT IN THIS MATTER WAS AS FOLLOWS:

On December 18th I arrived home from work at approximately 7:45pm. My wife was extremely upset and crying. She had just got home and saw someone in our driveway. I calmed her down and tried to get her to relax. After about 45 minutes, she got the dog out. I then went upstairs to clean up the top deck. At this time, I heard someone in my driveway. I shined a small flash light down there and saw someone dress in black with a hood on. I yelled out who are you and what are you doing on my property. There was no response. I yelled multiple times with no response. I thought they were breaking into my vehicles in the driveway. I ran down stairs to the front door. At this time I yelled to my wife someone is breaking in to the truck. I ran down the stairs and saw a figure now in the street heading westbound on Charles Ave. I yelled again multiple times who are you and what where you doing breaking in to my truck. The person refused to respond. I ran after them and gave them a push to stop them. They fell down. I then saw that it was one of the Clementes. I could not tell in the dark if it was

SIGNATURE OF PERSON MAKING STATEMENT:

Jeff Spencer

DATE/TIME:  
12-18-12 10:50pm





SHERIFF-CORONER'S  
DEPARTMENT  
Douglas County, Nevada

STATEMENT FORM

VICTIM \_\_\_\_\_  
WITNESS \_\_\_\_\_  
DRIVER \_\_\_\_\_  
PASSENGER \_\_\_\_\_

Page 2 of 2

CASE # 125041608

LAST NAME - FIRST - MIDDLE <u>SPENCER, JEFF</u> # <u>13672</u>		D.O.B.	RACE - SEX		AGE	HT.	WT.	HAIR	EYES
PHYSICAL ADDRESS		MAILING ADDRESS			HOME PHONE #				
SS #		EMPLOYMENT/LOCATION			WORK PHONE #				
VEHICLE INFORMATION	YEAR	MAKE	MODEL	COLOR					
	LICENSE PLATE/STATE		DRIVER'S LIC NO.			STATE			

MY OBSERVATION OR INVOLVEMENT IN THIS MATTER WAS AS FOLLOWS:

From on his brother. I asked him what he was doing in my driveway. He would not tell me and just yelled at this ever to call the Police. I told him they had already been called. His <sup>if you</sup> wife and brother were there by now. He wasn't bleeding, that I could see, just yelling so I went into my house. The 911 operator told my wife for us to stay inside. I stayed inside until a Sheriff's Deputy knocked on the door. We have had someone all summer try to break into are vehicles. A neighbor's car was broke into over Thanksgiving. I don't understand why he never identified himself.

SIGNATURE OF PERSON MAKING STATEMENT: [Signature]

DATE/TIME: 12-18-12

## **EXHIBIT 3**

## **EXHIBIT 3**

1                   IN THE NINTH JUDICIAL DISTRICT COURT  
2                   OF THE STATE OF NEVADA  
3                   IN AND FOR THE COUNTY OF DOUGLAS

4                   ---oOo---

5  
6   HELMUT KLEMENTI,  
7                   Plaintiff,  
8   - vs -  
9   JEFFREY D. SPENCER,  
10                  Defendant.

Case No. 14-CV-0260

Dept. No. 1

11                  \_\_\_\_\_  
12                  JEFFREY D. SPENCER,  
13                  Counterclaimant,

14   - vs -

15   HELMUT KLEMENTI, an individual,  
16   EGON KLEMENTI, an individual,  
17   MARY ELLEN KINION, an individual,  
18   and DOES 1-5,

19                  Counterdefendants.

20   \_\_\_\_\_  
21

22  
23                   DEPOSITION OF JESSE MCKONE  
24                   04/07/2016  
25                   Reno, Nevada

26   REPORTED BY:

KRISTINE BOKELMANN  
NV CCR #165, CA #5979

27   JOB NO: 297108A

<p style="text-align: right;">Page 34</p> <p>1 BY MR. PINTAR:</p> <p>2 Q Attached -- just for the record, attached to</p> <p>3 your report is Exhibit No. 1. There's a written</p> <p>4 statement from Egon Klementi, correct?</p> <p>5 A Yes.</p> <p>6 Q When did you speak with Egon Klementi?</p> <p>7 A I believe it was after -- no, I think he came</p> <p>8 out to the scene. My initial contact, he came out to</p> <p>9 the scene where his -- when his brother was still there</p> <p>10 before the ambulance took him.</p> <p>11 Q Okay. And you also have a statement here from</p> <p>12 Elfi Klementi?</p> <p>13 A Yes.</p> <p>14 Q When did you speak with Mrs. Klementi?</p> <p>15 A There at the scene.</p> <p>16 Q And then there's Mr. Spencer's statement. I</p> <p>17 don't see a statement from Miss Wells. Is there one?</p> <p>18 A No. It may have just been Egon's and Elfi</p> <p>19 Klementi.</p> <p>20 Q Okay. Is there anything else that you did in</p> <p>21 terms of your investigation at the scene on the evening</p> <p>22 of December 18, 2012?</p> <p>23 A At the scene?</p> <p>24 Q Yes.</p> <p>25 A Other than what I -- meeting with the</p>	<p style="text-align: right;">Page 36</p> <p>1 Q And then what did you do once you obtained all</p> <p>2 these written statements?</p> <p>3 A I went back to the station -- I mean, I</p> <p>4 finished my shift with the other calls not related to</p> <p>5 this.</p> <p>6 Q Right.</p> <p>7 A And then I went back to the station and wrote</p> <p>8 my report.</p> <p>9 Q So this report we've marked Exhibit 1?</p> <p>10 A Yes.</p> <p>11 Q When was this report completed?</p> <p>12 A I believe it was -- the narrative was written</p> <p>13 on the same shift before I left for the night.</p> <p>14 Q Okay. In this report it says that it is your</p> <p>15 opinion that Jeffrey Spencer was upset with Klementi,</p> <p>16 saw Helmut taking photographs of the snow berm, and used</p> <p>17 the excuse of someone breaking into his truck to</p> <p>18 confront and to commit a battery on Helmut Klementi.</p> <p>19 A Yes.</p> <p>20 Q And that conclusion was formed by you on the</p> <p>21 evening of December 18th?</p> <p>22 A Yes.</p> <p>23 MR. ROUTSIS: I'm going to object and move to</p> <p>24 strike his opinion, which is not relevant.</p> <p>25</p>
<p style="text-align: right;">Page 35</p> <p>1 Spencers --</p> <p>2 Q Yes.</p> <p>3 A -- and the Klementis and Miss Wells, no.</p> <p>4 Q Okay. And then you indicated you went to the</p> <p>5 hospital?</p> <p>6 A Yes.</p> <p>7 Q And what did you do at the hospital?</p> <p>8 A I got a briefing from the ER staff on Mr.</p> <p>9 Klementi's injuries and then they allowed me to speak to</p> <p>10 him briefly.</p> <p>11 Q And what did Mr. Klementi tell you occurred?</p> <p>12 MR. ROUTSIS: We're getting into hearsay, so</p> <p>13 I'm going to object to hearsay.</p> <p>14 BY MR. PINTAR:</p> <p>15 Q It's okay. We're in a civil matter.</p> <p>16 Go ahead.</p> <p>17 A He told me that he had been out in the street</p> <p>18 and that Jeff Spencer had attacked him.</p> <p>19 Q Okay. What were Mr. Klementi's injuries?</p> <p>20 A I don't recall. I'd have to speculate.</p> <p>21 Q Okay. We don't want you to speculate.</p> <p>22 So then after you went to the hospital, spoke</p> <p>23 to Mr. Klementi, what did you do then?</p> <p>24 A I believe I returned back to the area and</p> <p>25 collected the written statements from the Klementis.</p>	<p style="text-align: right;">Page 37</p> <p>1 BY MR. PINTAR:</p> <p>2 Q Have we --</p> <p>3 MR. ROUTSIS: It's a relevance objection.</p> <p>4 BY MR. PINTAR:</p> <p>5 Q Have we talked about all the investigation</p> <p>6 that you performed in forming that opinion and</p> <p>7 conclusion?</p> <p>8 A Yes.</p> <p>9 Q Okay. At any point in time prior to forming</p> <p>10 this opinion and conclusion in this report did you speak</p> <p>11 with Mary Ellen Kinion?</p> <p>12 A I did not.</p> <p>13 Q And based on your report, it was forwarded to</p> <p>14 the Douglas County Sheriff's Department or the district</p> <p>15 attorney for prosecution, correct?</p> <p>16 A Yes.</p> <p>17 MR. PINTAR: Thank you. That's all I have.</p> <p>18 MR. PALMER: I just have a couple questions.</p> <p>19 EXAMINATION</p> <p>20 BY MR. PALMER:</p> <p>21 Q To follow up on what Mr. Pintar asked you</p> <p>22 regarding alcohol, I noticed in your report on page nine</p> <p>23 and 10 -- do you want to turn to that? -- that</p> <p>24 there's -- been drinking was listed in the top</p> <p>25 right-hand corner. I just wanted to clarify what that</p>

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: II

**RECEIVED**

MAY - 9 2016

Douglas County  
District Court Clerk

**FILED**

2016 MAY -9 PM 4: 32

DOUGLAS R. WILLIAMS  
CLERK

BY W. J. DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,

9 Plaintiff,

10 vs.

11 JEFFREY D. SPENCER & DOES 1-5,

12 Defendants.

**JOINDER TO THIRD-PARTY  
DEFENDANT MARY KINION'S MOTION  
FOR SUMMARY JUDGMENT**

13  
14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual,  
EGON KLEMENTI, an individual, MARY  
18 ELLEN KINION, an individual, and  
DOES 1-5,

19 Counterdefendants.

20  
21 Third-Party Defendants Egon Klementi and Elfriede Lementi ("Defendants"), by  
22 and through their attorneys of record, Glogovac & Pintar, hereby join in with Third-  
23 Party Defendant, Mary Kinion's Motion for Summary Judgment filed on April 22, 2016.

24 ///

25 ///

26 ///

27 ///

28 ///

**AFFIRMATION**  
**Pursuant to NRS 239B.030**

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

DATED this 6 day of May, 2016.

GLOGOVAC & PINTAR

By: 

MICHAEL A. PINTER, ESQ.  
Nevada Bar No. 003789  
Attorneys for Third-Party Defendants,  
Egon Klementi and Elfriede Klementi

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of  
3 Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that on the 6 day  
4 of May, 2016, I served the foregoing document(s) described as follows:

5 **JOINDER TO THIRD-PARTY DEFENDANT MARY KINION'S MOTION FOR**  
6 **SUMMARY JUDGMENT**

7 On the party(s) set forth below by:

8 X Placing an original or true copy thereof in a sealed envelope placed for  
9 collection and mailing in the United States Mail, at Reno, Nevada,  
postage prepaid, following ordinary business practices.

10 \_\_\_\_\_ Personal delivery.

11 \_\_\_\_\_ Facsimile (FAX).

12 \_\_\_\_\_ Federal Express or other overnight delivery.

13  
14 addressed as follows:

15 Nicholus Palmer, Esq.  
16 Laub & Laub  
17 630 East Plumb Lane  
18 Reno, NV 89502  
19 ***Attorneys for Helmut Klementi***

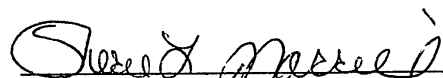
Douglas R. Brown, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas St., 3rd Floor  
Reno, NV 89519  
***Attorneys for Helmut Klementi***

18 William Routsis, Esq.  
19 1070 Monroe Street  
20 Reno, NV 89509  
21 ***Attorneys for Jeffrey Spencer***

David Zaniel, Esq.  
Ranalli & Zaniel, LLC  
50 W. Liberty St., Suite 1050  
Reno, NV 89509  
***Attorneys for Jeffrey Spencer***

21 Tanika Capers, Esq.  
22 6750 Via Austi Parkway, Suite 310  
23 Las Vegas, NV 89119  
24 ***Attorneys for Rowena Shaw and Peter Shaw***

25 Dated this 6 day of May, 2016.

26  
27   
28 Employee of Glogovac & Pintar

1 CASE NO. 14-CV-026

2 Dept. No. II

RECEIVED

MAY 18 2016

Douglas County  
District Court Clerk

FILED

2016 MAY 18 PM 1:4

JUSTICE R. WILLIAMS  
CLERK

BY *M. Day* DEPUTY

5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF DOUGLAS

7 HELMUT KLEMENTI,

8 Plaintiff,

9 vs.

10 JEFFREY D. SPENCER

11 Defendant.

OPPOSITION TO MOTION  
FOR SUMMARY JUDGMENT

12 JEFFREY D. SPENCER,

13 Counterclaimant,

14 vs.

15  
16 HELMUT KLEMENTI, an individual, EGON  
17 KLEMENTI, an individual, ELFRIEDE  
18 KLEMENTI, an individual, MARY ELLEN  
KINION, an individual, and DOES 1-5,

19 Counterdefendants.

20 Defendant/Counterclaimant JEFFREY D. SPENCER opposes Counterdefendant MARY  
21 ELLEN KINION's Motion for Summary Judgment. This Opposition is made and based upon the  
22 pleadings and papers on file herein, and the Points and Authorities, Declarations and Exhibits  
23 following hereto.

24 POINTS AND AUTHORITIES

25 1. Case Summary

26 MARY ELLEN KINION's Motion is replete with partial truths, implicit misrepresentations,  
27 and outright misrepresentations. The Case Summary begins with the undisputed fact that JEFFREY  
28 SPENCER was criminally prosecuted. Motion pg 1, lns 6-7; Exhibit 1, Criminal Complaint filed



1 January 16, 2013 for one misdemeanor count of battery against HELMUT KLEMENTI, & Exhibit  
2 2, Amended Information filed May 9, 2013, with one felony count of abuse of HELMUT  
3 KLEMENTI, and two gross misdemeanor counts of abuse of EGON and ELFRIEDE KLEMENTI.  
4 The Case Summary leaves out the undisputed fact that after a two week trial the jury quickly  
5 acquitted JEFFREY SPENCER of all charges. *See* Declaration of Jeffery Spencer & Exhibit 3,  
6 Verdicts of Not Guilty on Counts One, Two and Three, filed September 27, 2013.

7 **2. Background**

8 Ms. KINION asserts that in the summer of 2012 there was a neighborhood dispute over Mrs.  
9 and Mrs. SPENCER putting up a fence around their property. Motion pg 2, lns 25-27. A few  
10 neighbors, the Counterdefendants and one other couple, had issues with the fence.

11 Ms. KINION's Motion does not address the incident of May 27, 2012, when Mrs. Spencer  
12 called 911 to complain about EGON KLEMENTI coming on their property and taking photographs.  
13 Responding Officer Flagg spoke to EGON KLEMENTI to advise him of the complaint and that if  
14 he went on the Spencers' property he would be subject to arrest for trespassing. EGON KLEMENTI  
15 made no report about a supposed assault and/or battery upon him that day by Mr. SPENCER. Yet  
16 over half a year later, Ms. KINION wrote a letter to the District Attorney accusing Mr. SPENCER  
17 of threatening to punch EGON KLEMENTI in the face on May 27, 2012, even though she was not  
18 a witness to that alleged event. Exhibit 4, Trial Transcript of September 20, 2013 (hereinafter "TT  
19 9/20/13"), pg 3, lns 17-23. The baseless accusation became one basis for amended charges against  
20 Mr. SPENCER of which he was acquitted.

21 Ms. KINION asserts that in the winter of 2012, excessively high berms of snow and ice  
22 appeared in driveways in "retaliation" for the fence dispute, implying Mr. SPENCER deliberately  
23 created berms. Motion pg 3, lns 3-6. She says that after she called KGID December 12, 2012, and  
24 a berm on her driveway was cleared, another snowplow which she "thinks was driven" by Mr.  
25 SPENCER put the berm of snow back. Motion, pg 3, lns 9-10 & 12-14. As Ms. KINION previously  
26 testified under oath, she NEVER saw Mr. SPENCER deliberately create a berm in her driveway or  
27 in any other driveway. Exhibit 4, 9/20/13, TT pg 29, lns 5-10. The alleged deliberate creation of  
28 berms was also one basis for amended charges against Mr. SPENCER of which he was acquitted.

1 Ms. KINION describes that on December 12, 2012, the snowplow which she "thinks" Mr.  
2 SPENCER was driving, sped up, picked up old snow and road debris which was propelled onto  
3 EGON KLEMENTI in his driveway. Motion, pg 3, lns 15-20. Ms. KINION claims she  
4 "immediately called" EGON KLEMENTI, and then "later" called 911 to advise that she was a  
5 witness. Motion, pg 3, lns 20-22. This allegation was investigated by Sheriff Officer Sanchez, who  
6 responded to the 911 call from EGON KLEMENTI, and the Officer found no evidence of a crime  
7 and did not even write a report. Exhibit 4, TT 9/20/13, pg 47, lns 2-24 & pg 49, lns 6-18. This  
8 accusation was one basis of a charge in the amended criminal complaint of which Mr. SPENCER  
9 was acquitted.

10 In addition to an officer finding no evidence of a crime, Ms. KINION's sworn testimony is  
11 in direct conflict with the sworn testimony of EGON KLEMENTI in the preliminary hearing on that  
12 incident. On February 22, 2013, EGON KLEMENTI testified under oath that he had called Ms.  
13 KINION, not the other way around. Exhibit 5, Transcript of Preliminary Hearing of February 22,  
14 2013 (hereinafter "TPH 2/22/13"), pg 62, lns 6-9 & 16-17. A reasonable inference is that EGON  
15 KLEMENTI called Ms. KINION to create a "witness" for him.

16 This allegation of assaulting EGON KLEMENTI with ice and debris thrown by the  
17 snowplow, which had been investigated when it allegedly occurred and there was no evidence to  
18 support, was also included in the letter Ms. KINION wrote to Deputy District Attorney Maria Pence  
19 and testified the purpose of that letter was "to try and get her to prosecute Mr. Spencer." Exhibit 4,  
20 TT 9/20/13, pg 11, lns 5-8. Ms. KINION admitted that the Deputy District Attorney did not ask her  
21 to write that letter. Exhibit 6, Trial Transcript of September 18, 2013 (hereinafter "TT 9/18/13"),  
22 pg 266, lns 7-13.

23 Ms. KINION in her Motion admits that the following week, December 18, 2012, she attended  
24 a KGID meeting and claimed she had seen the alleged attack on EGON KLEMENTI of December  
25 12, 2012, and complained that Mr. SPENCER was deliberately creating high berms. Motion, pg 3,  
26 ln 24 thru pg 4, ln 1. Not only did Ms. KINION never see Mr. SPENCER create any berm, nor see  
27 Mr. SPENCER driving the snowplow on December 12, 2012, at trial there was evidence presented  
28 that Ms. KINION could not have seen the alleged attack on EGON KLEMENTI as she described

1 based on the locations of her house and the KLEMENTI house, and the size of the snowplow  
2 vehicle.

3 Ms. KINION's Motion asserts that Deputy McKone, one of the Sheriff's Officers who  
4 responded to the 911 call on December 18, 2012, which Mr. SPENCER told Mrs. Spencer to make,  
5 and who arrested Mr. SPENCER, "never spoke with or obtained a statement from Kinion. In fact,  
6 he never had any interaction with Kinion whatsoever..." Motion, pg 4, lns 24-26. Yet Mr.  
7 SPENCER and his wife saw Ms. KINION come down the street, approach the Deputy, and speak  
8 with him. A surveillance video of that evening, produced in the second supplemental 16.1  
9 production by David Zaniel, Esq. on September 23, 2015, shows Ms. KINION approached and spoke  
10 to Deputy McKone at 8:51p.m. and continued to be there in the street with the Deputies for ten  
11 minutes.

12 Ms. KINION's Motion asserts that in "preparation for the trial" of Mr. SPENCER, Deputy  
13 District Attorney Maria Pence "reached out to Kinion and asked her to provide whatever information  
14 she had in regards to the ongoing events." Motion, pg 6, lns 2-4. Since Mr. SPENCER was arrested  
15 for the December 18, 2012 incident, to which Ms. KINION was not a witness and was not listed in  
16 the arresting Officer's report, the District Attorney's Office would have had no reason to contact her  
17 regard the charges for that evening.

18 In addition to her communication with the District Attorney's Office, Ms. KINION called  
19 Mr. SPENCER's employer, for which the only conceivable reason would be trying to get him fired  
20 from his job. Exhibit 6, TT 9/18/13, pg 265, lns 4-19.

21 After criminal charges were filed against Ms. SPENCER, HELMUT, EGON and ELFRIEDE  
22 KLEMENTI filed for a restraining order against Mr. SPENCER. Ms. KINION, who was not a party  
23 to that proceeding, took it upon herself to write an exparte letter to the Justice of the Peace hearing  
24 that matter, Judge Glasson, trying to get more restrictive orders against Mr. SPENCER. Exhibit 7,  
25 April 26, 2013, email from Judge Glasson to Todd L. Torvinen, Esq., attorney for Mr. SPENCER,  
26 with forwarded email from Ms. KINION to the Judge.

27 **C. Statement of Relevant Facts**

28 For facts to be relevant to a summary judgment motion, they must be undisputed facts, and

1 very few of these asserted facts are undisputed, and among the disputed facts are material facts to  
2 this case.

3 Mr. SPENCER does not dispute the facts as stated in ¶¶1 and 2. Motion, pg 6, lns 14-19.

4 Mr. SPENCER disputes ¶3 as implying that he and his wife do not get along with their  
5 neighbors collectively, when the disputes are almost exclusively with the Counterdefendants in this  
6 matter. Motion, pg 6, lns 20-21.

7 Mr. SPENCER disputes ¶4 that he sprayed EGON KLEMENTI with ice and debris on  
8 December 12, 2012, and his position is supported by the investigation conducted by the Sheriff's  
9 Office at that time, and his acquittal on all charges in the criminal trial. Motion, pg 6, lns 22-25.  
10 Further, Mr. SPENCER disputes that Ms. KINION did not make a written statement of this  
11 accusation since, upon information and belief, it is part of the letter she wrote to the District  
12 Attorney's Office. Motion, pg 6, lns 25-26; Exhibit 4, TT 9/20/13, pg 11, lns 5-8. Mr. SPENCER's  
13 counsel is not in possession of that letter, but expects to receive it in discovery. The entire criminal  
14 court file was recently obtained on April 26, 2016, consisting of over 800 pages, and is being  
15 reviewed. It appears that Ms. KINION's letter to the District Attorney's Office is not in that file.  
16 However, Mr. Zaniel previously served a subpoena on the District Attorney's Office for their file,  
17 which the District Attorney's Office refused to produce and, upon information and belief, he is  
18 preparing a Motion to Compel.

19 Mr. SPENCER does not dispute ¶5 that Ms. KINION attended a KGID meeting and made  
20 public accusations against him, which accusations were false. Motion, pg 7, lns 1-3.

21 Mr. SPENCER disputes ¶6 that he assaulted HELMUT KLEMENTI on December 18, 2012,  
22 and his position is supported by his acquittal of that charge. Motion, pg 7, lns 4-6.

23 Mr. SPENCER does not dispute ¶7 that he was arrested by Deputy McKone for the incident  
24 with HELMUT KLEMENTI on December 18, 2012, yet despite that Deputy's opinion, Mr.  
25 SPENCER was acquitted of that charge, as well as all other charges later brought against him in the  
26 criminal trial. Motion, pg 7, lns 7-16.

27 Mr. SPENCER does not dispute ¶8 that the Deputy did not obtain a written statement from  
28 Ms. KINION prior to his arrest, but does dispute the Deputy's claim he never spoke with her.

1 Motion, pg 7, lns 17-20.

2 Mr. SPENCER disputes ¶9 since, upon information and belief, Ms. KINION inserted herself  
3 into the criminal prosecution and was instrumental in getting additional charges filed against Mr.  
4 SPENCER for elder abuse associated with her untrue accusations of Mr. SPENCER deliberately  
5 creating berms in driveways and battering EGON KLEMENTI using his snowplow. Motion, pg 7,  
6 lns 21-24.

7 Mr. SPENCER does not dispute ¶10 that Ms. KINION was subpoenaed as a witness in the  
8 criminal prosecution. Motion, pg 7, lns 25-26.

9 Counterdefendants EGON KLEMENTI and ELFRIEDE KLEMENTI have filed a joinder  
10 in this Motion but have provided no specific facts regarding themselves to which Mr. SPENCER  
11 could respond.

#### 12 **4. Legal Claim for Malicious Prosecution**

13 NRCP 56(c) requires that a party must set “forth each fact material to the disposition of the  
14 motion which the party claims is or is not genuinely in issue, citing the particular portions of any  
15 pleading, affidavit, deposition, interrogatory, answer, admission, or other evidence upon which the  
16 party relies.” As was shown above, many of the key facts set forth by Ms. KINION are disputed and  
17 shown to be unsupported by the evidence, including sworn testimony in court proceedings.

18 Ms. KINION’s Motion cites to *LaMantia v. Redisi*, 118 Nev. 27, 38 P.3d 877 (2002),  
19 defining the elements of malicious prosecution: (1) want of probable cause to initiate the prior  
20 criminal proceeding; (2) malice; (3) termination of the prior criminal proceeding; and (4) damage.  
21 Motion, pg 8, ln 27 thru pg 9, ln 2.

22 *LaMantia* defines the first element as requiring “that the defendant initiated, procured the  
23 institution of, or actively participated in the continuation of a criminal proceeding against the  
24 plaintiff.” Motion, pg 9, lns 2-5. There is evidence that Ms. KINION was actively involved in the  
25 procuring of additional charges against Mr. SPENCER for elder abuse and of actively participating  
26 in the continuation of the criminal proceeding. She was not just a concerned “citizen responding to  
27 requests made to her from government officials through proper channels.” Motion, pg 10, lns 2-8.  
28 This was an ongoing effort of Ms. KINION, in keeping with her calling 911 after the alleged battery

1 of EGON KLEMENTI on December 12, 2012, which the Sheriff's Officer found had not happened,  
2 with her lying under oath and saying she saw Mr. SPENCER driving the snowplow that day when  
3 she previous said under oath that she thought it was him. This was in keeping with Ms. KINION  
4 making reports to KGID in an attempt to smear his name in front of the neighbors and to  
5 compromise his employment. And, this was in keeping with her insinuating herself in a civil  
6 proceeding for a groundless protective order against Mr. SPENCER, in which she initiated an  
7 exparte communication with the Judge, and in keeping with her unsolicited letter to the District  
8 Attorney's Office repeating baseless accusations.

9 The second element of malicious prosecution is malice, and Ms. KINION argues that the  
10 facts do not demonstrate any malice. Motion, pg 10, lns 8-9. Malice is shown by the  
11 misrepresentations, even under oath, which means Ms. KINION was providing "evidence" with the  
12 knowledge that it was false and/or making such statements with a reckless disregard for the truth.

13 Ms. KINION then argues that her "communications with District Attorney's Office and  
14 testimony at trial would be protected" citing to *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev.  
15 56, 657 P.2d 101 (1983). Motion, pg 11, lns 18-26. She further asserts that her statements to the  
16 police or district attorney are immune from civil liability, citing to NRS 41.650 and *Sahara Gaming*  
17 *v. Culinary Workers Union*, 115 Nev. 212, 984 P.2d 164 (1999). Motion, pg 11, ln 18 thru pg 12,  
18 ln 2. The privilege claimed is not unlimited or there could never be a case successfully brought for  
19 malicious prosecution.

20 *Circus Circus* and *Sahara Gaming* are cases of defamation, not malicious prosecution.  
21 *Circus Circus*, 99 Nev. at 59; *Sahara Gaming*, P.2nd at 164. Further, in *Circus Circus* the Supreme  
22 Court ruled that:

23 A **qualified or conditional privilege** exists where a defamatory statement is made  
24 in **good faith** on any subject matter in which the person communicating has an  
25 interest, or in reference to which he has a right or a duty, if it is made to a person with  
a corresponding interest or duty.

26 *Id.* at 62. In the criminal prosecution of Mr. SPENCER, Ms. KINION had no interest, right or duty,  
27 and her dishonesty shows a lack of good faith.

28 ////

1 NRS §41.650, provides that:

2 A person who engages in a good faith communication in furtherance of the right to  
3 petition or the right to free speech in direct connection with an issue of public  
concern is immune from any civil action for claims based upon the communication.

4 NRS §41.637 defines "good faith communication" as that which is which is "truthful or is made  
5 without knowledge of its falsehood." The false representations made by Ms. KINION in an effort  
6 to get Mr. SPENCER criminally convicted are issues of fact, and are not privileged.

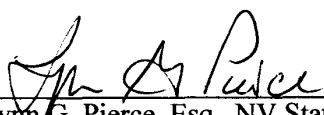
7 One argument made regarding the conspiracy claim is that it requires an underlying tort, and  
8 if the malicious prosecution claim is struck, the conspiracy claim cannot stand. Motion, pg 10, lns  
9 18-23 & pg 11, lns 3-5. However, the malicious prosecution claim has evidence in support. The  
10 other argument regarding the conspiracy claim is that "the idea is outrageous and completely  
11 unsupported by the facts." Motion, pg 11, lns 6-16. The facts presented, of Ms. KINION inserting  
12 herself into legal matters which were not her's and of conflicting testimony about whether she called  
13 EGON KLEMENTI or he called her, are factual matters from which a jury could conclude that Ms.  
14 KINION and the other counterdefendants were working in concert to get Mr. SPENCER criminally  
15 convicted.

16 **Conclusion**

17 JEFFERY SPENCER has provided evidence of his claims and demonstrated numerous  
18 genuine issues of fact to support his claims. NRCP 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
19 242, 254 (1986). Not only that, but discovery is ongoing, and Mr. SPENCER has brought a Motion  
20 to Amend his Counterclaim. The Motion for Summary Judgment should be denied.

21 The undersigned affirms pursuant to NRS §239B.030 that this pleading does not contain the  
22 social security number of any person.

23 DATED this 15<sup>th</sup> day of May, 2016.

24   
25 Lynn G. Pierce, Esq., NV State Bar 3567  
26 LYNN G. PIERCE, Attorney at Law, Ltd.  
27 440/Ridge Street, Ste. 2  
28 Reno, NV 89501  
775-785-9100





CERTIFICATE OF SERVICE

Pursuant to NRCR Rule 5(b), I certify that on this date I served a true and correct copy of the foregoing pleading by deposit into the U.S. Postal Service, first class postage pre-paid, addressed to:

Douglas R. Brown, Esq.  
Christian L. Moore, Esq.  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Suite 300  
Reno, NV 89519  
*Attorneys for Helmut Klementi*

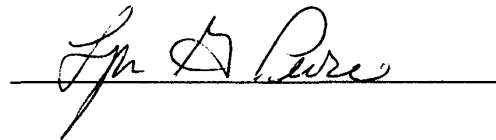
Michael A. Pintar, Esq.  
Glogovac & Pintar  
427 W. Plumb Lane  
Reno, NV 89509  
*Attorneys for Egon Klementi, Elfriede  
Klementi & Mary Ellen Kinion*

David M. Zaniel, Esq.  
Ranalli & Zaniel, LLC  
50 W. Liberty Street, Suite 1050  
Reno, NV 89501

William J. Routsis, II, Esq.  
1070 Monroe Street  
Reno, Nevada 89509

*Attorneys for Jeffrey D. Spencer*

DATED this 13<sup>th</sup> day of May, 2016.

A handwritten signature in cursive script, appearing to read "L. D. Pore", is written over a horizontal line.

## EXHIBIT LIST

Exhibit 1	Criminal Complaint filed January 16, 2013 for one misdemeanor count of battery of HELMUT KLEMENTI	2 pages
Exhibit 2	Amended Information filed May 9, 2013, with one felony count of abuse of HELMUT KLEMENTI, and two gross misdemeanor counts of abuse of EGON and ELFRIEDE KLEMENTI	3 pages
Exhibit 3	Executed Verdicts of Not Guilty on Counts One, Two and Three, filed September 27, 2013	3 pages
Exhibit 4	Portions of Trial Transcript of September 20, 2013, testimony of Ms. KINION	19 pages
Exhibit 5	Portions of Transcript of Preliminary Hearing of February 22, 2013	8 pages
Exhibit 6	Portions of Trial Transcript of September 18, 2013, testimony of Ms. KINION	4 pages
Exhibit 7	April 26, 2013, email from Judge Glasson to Todd L. Torvinen, Esq., attorney for Mr. SPENCER, with forwarded email from Ms. KINION to the Judge	2 pages

# Exhibit 1

# Exhibit 1

Douglas County District Attorney  
Post Office Box 218  
Minden, Nevada 89423  
(775) 782-9800 Fax (775) 782-9807

JAN 11 2013

CASE NO. 13-CR-0068

DA 12-2555Q

DCSO 12SO41608

FILED

2013 JAN 16 PM 2:32

TAHOE TOWNSHIP  
JUSTICE COURT  
CLERK

IN THE JUSTICE COURT OF TAHOE TOWNSHIP  
COUNTY OF DOUGLAS, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

CRIMINAL  
COMPLAINT

JEFFREY DALE SPENCER,

DOB: 2/21/1963

Defendant.

Maria Pence, Deputy District Attorney, with the Douglas County District Attorney's Office, County of Douglas, State of Nevada, on information and belief, being first duly sworn, makes complaint and charges JEFFREY DALE SPENCER with the crime of BATTERY ON A PERSON OVER 60 YEARS OF AGE, a violation of NRS 200.481 and NRS 193.167, a misdemeanor, committed as follows:

The defendant, JEFFREY DALE SPENCER, on or about December 18, 2012, and prior to the filing of this complaint, in the County of Douglas, State of Nevada,

did willfully and unlawfully use force and violence upon Helmut Klementi, a person over 60 years of age, to-wit: he struck Mr. Klementi in the back and knocked him to the ice covered road of Charles Avenue, all of which occurred in the County of Douglas, State of Nevada,

against the peace and dignity of the State of Nevada. Complainant prays the Defendant be dealt

///

///

Douglas County District Attorney  
Post Office Box 218  
Minden, Nevada 89423  
(775) 782-9800 Fax (775) 782-9807

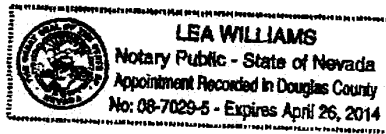
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with according to law.

Maria Renee  
COMPLAINANT

SUBSCRIBED and SWORN to before me  
by Maria Renee, this 10<sup>th</sup> day of January, 2013.

Lea Williams  
Justice of the Peace/Notary Public



# Exhibit 2

# Exhibit 2

RECEIVED

Case No.13-CR-0036

MAY - 9 2013

2013 MAY -9 PM 2:09

Dept. No. II

DOUGLAS COUNTY  
DISTRICT COURT CLERK

This document does not contain personal information of any person

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Plaintiff,

AMENDED

vs.

INFORMATION

JEFFREY DALE SPENCER,

Defendant.

Maria Pence, Deputy District Attorney, within and for the County of Douglas, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court that JEFFREY DALE SPENCER, has committed the crimes of ABUSE OF AN OLDER PERSON RESULTING IN SUBSTANTIAL BODILY HARM, a violation of NRS 200.5092 and NRS 200.5099(6), a category B felony, ABUSE OF AN OLDER PERSON, a violation of NRS 200.5092 and NRS 200.5099(1), a gross misdemeanor, and ABUSE OF AN OLDER PERSON, a violation of NRS 200.5092 and NRS 200.5099(1), a gross misdemeanor.

The defendant on or between April 2012 through December 18, 2012, and before the filing of this Information, at and within the County of Douglas, State of Nevada,

COUNT ONE:

ABUSE OF AN OLDER PERSON  
RESULTING IN SUBSTANTIAL BODILY  
HARM, a violation of NRS 200.5092 and NRS  
200.5099(6), a B felony

willfully and unlawfully abused an older person by inflicting pain, injury or mental anguish, such abuse resulting in substantial bodily harm, to wit: he struck, hit, pushed, shoved, and/or used force or violence on Helmut Klementi, a person who is 60 years of age or older, thereby inflicting injuries causing Helmut Klementi prolonged physical pain, all of which

Douglas County District Attorney  
Post Office Box 218  
Minden, Nevada 89423  
(775) 782-9800 Fax (775) 782-9807

Douglas County District Attorney  
Post Office Box 218  
Minden, Nevada 89423  
(775) 782-9800 Fax (775) 782-9807

1 occurred in Douglas County, Nevada,

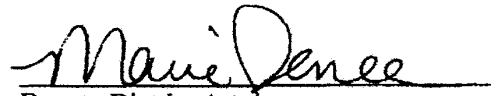
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3 **COUNT TWO: ABUSE OF AN OLDER PERSON, a violation**  
4 **of NRS 200.5092 and NRS 200.5099(1), a gross**  
5 **misdemeanor**

6 willfully and unlawfully abused an older person by inflicting pain, injury or  
7 mental anguish, to wit: he yelled at and/or threatened Egon Klementi, a  
8 person who is 60 years of age or older; and/or using a snowplow, he  
9 sprayed, covered, and/or showered Egon Klementi with ice, snow, and  
10 debris, all of which occurred in Douglas County, Nevada,

11  
12 **COUNT THREE: ABUSE OF AN OLDER PERSON, a violation**  
13 **of NRS 200.5092 and NRS 200.5099(1), a gross**  
14 **misdemeanor**

15 willfully and unlawfully abused an older person by inflicting pain, injury or  
16 mental anguish, to wit: he caused Elfriede Klementi, a person who is 60  
17 years of age or older, mental anguish by harming or threatening to harm  
18 her family, and/or by yelling at and/or threatening her husband Egon  
19 Klementi, and/or by physically attacking her brother-in-law Helmut  
20 Klementi, all of which occurred in Douglas County, Nevada,

21 against the peace and dignity of the State of Nevada. Complainant prays the defendant be dealt  
22 with according to law.

23  
24   
25 Deputy District Attorney  
26  
27  
28



Douglas County District Attorney  
Post Office Box 218  
Minden, Nevada 89423  
(775) 782-9800 Fax (775) 782-9807

1                   The following are the names of such witnesses as are known to me at the time of  
2 filing the within Information:

3  
4 Egon Alois Klementi                   187 Meadow Ln.  
5   Stateline, NV 89449

6 Nate Almeida                         1038 Buckeye Road  
7   Minden, NV 89423

8 Jesse Mckone                         1038 Buckeye Road  
9   Minden, NV 89423

10 Paul Howell                         1038 Buckeye Road  
11   Minden, NV 89423

12 Helmut Klementi                   164 Pine Ridge Dr.  
13   Stateline, NV 89449

14  
15 Marilyn Ann Spencer                 321 Charles Ave.  
16   Stateline, NV 89449

17 Janet Wells                         183 Juniper Dr.  
18   Stateline, NV 89449

19 Elfie Klementi                   187 Meadow Lane  
20   Stateline, NV 89449

21 Daniel Norman, M.D.                 2170 South Ave,  
22   South Lake Tahoe, CA 96150

23 Rowena Shaw, M.D.                 185 Juniper Dr.  
24   Stateline, NV 89449

25 Steven L. Brooks, M.D.             Stateline Medical Center  
26   155 Highway 50  
27   Stateline, NV 89449

28  
  
Deputy District Attorney

# Exhibit 3

# Exhibit 3

1 Case No. 13-CR-0036

2 Dept. No. II

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FILED

2013 SEP 27 PM 10:22

LEO THIRAN  
CLERK

*[Signature]*

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

THE STATE OF NEVADA,

Plaintiff,

vs.

VERDICT

JEFFREY DALE SPENCER,

Defendant.

WE, the jury in the above-entitled matter, do find the  
defendant, JEFFREY DALE SPENCER:

Not Guilty of: COUNT ONE, ABUSE OF AN OLDER PERSON RESULTING  
IN SUBSTANTIAL BODILY HARM.

DATED this 27 day of September, 2013.

*[Signature]*  
FOREPERSON

1 Case No. 13-CR-0036

2 Dept. No. II

2013 SEP 27 PM 10:22

TED THIRAN  
CLERK

DEPUTY

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4  
5  
6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

8  
9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

V E R D I C T

12 JEFFREY DALE SPENCER,

13 Defendant.  
14 \_\_\_\_\_/

15 WE, the jury in the above-entitled matter, do find the  
16 defendant, JEFFREY DALE SPENCER:

17 Not Guilty of: COUNT TWO, ABUSE OF AN OLDER PERSON.

18 DATED this 27 day of September, 2013.  
19

20  
21 Kim Carr  
22 FOREPERSON  
23  
24  
25  
26  
27  
28

1 Case No. 13-CR-0036

2 Dept. No. II

FILED

2013 SEP 27 PM 10:22

TED THIRAN  
CLERK

BY [Signature] DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

V E R D I C T

12 JEFFREY DALE SPENCER,

13 Defendant.

14 \_\_\_\_\_/

15 WE, the jury in the above-entitled matter, do find the  
16 defendant, JEFFREY DALE SPENCER:

17 Not Guilty of: COUNT THREE, ABUSE OF AN OLDER PERSON.

18 DATED this 27 day of September, 2013.

19

20

21

[Signature]  
FOREPERSON

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# Exhibit 4

# Exhibit 4

1 Case No. 13-CR-0036  
2 Department No. II  
3

4 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF  
5 NEVADA IN AND FOR THE COUNTY OF DOUGLAS  
6 BEFORE MICHAEL GIBBONS, JUDGE PRESIDING

7 STATE OF NEVADA,

8 Plaintiff,

9 vs.  
10

11 JEFFREY DALE SPENCER,

12 Defendant.  
13 \_\_\_\_\_/

14 REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS  
15 JURY TRIAL  
16 FRIDAY, SEPTEMBER 20, 2013  
17 MINDEN, NEVADA

18 APPEARANCES:

19 For the Plaintiff: Maria Pence,  
20 Deputy District Attorney  
21 Douglas County

22 For the Defendant: William J. Routsis, II  
23 Attorney at Law  
24 Reno, Nevada

The Defendant: Jeffrey Dale Spencer

Reported by: Nicole J. Alexander  
Nevada CCR #446

CAPITOL REPORTERS (775) 882-5322

1 MINDEN, NEVADA, FRIDAY, SEPTEMBER 20, 2013

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3  
4 MR. ROUTSIS: Good morning, Your Honor.

5 THE COURT: Good morning. The Court is back  
6 in session. Welcome back, everyone. This is Friday, and  
7 Ms. Kinion was on the witness stand. If you could step  
8 forward, please.

9 Mr. Routsis, you may continue with the  
10 cross-examination.

11  
12 CONTINUED CROSS-EXAMINATION

13 BY MR. ROUTSIS:

14 Q Ms. Kinion, we left off yesterday, and I  
15 think I was a bit tired, but there was just a few  
16 foundational questions that I wanted to go over before I  
17 get to the photographs. You wrote a letter to Ms. Pence,  
18 and in the letter, didn't you indicate on May 27th that  
19 Jeff threatened to punch Egon in the face?

20 A Yes.

21 Q Where did yes get -- You were not a witness  
22 to that event, were you?

23 A No. I told you --

24 Q No, no. Just yes or no. You were not a



1 witness to that event?

2 A No.

3 Q And where did you get those statements from?

4 MS. PENCE: Objection, Your Honor. Asked and  
5 answered.

6 THE COURT: Sustained.

7 Q (BY MR. ROUTSIS:) After getting those  
8 statements, you then put those statements in a letter  
9 directed and addressed and sent to Maria Pence, the  
10 prosecutor; correct?

11 A Correct.

12 Q Okay. And did you not assert in the letter  
13 that that event happened to Ms. Pence?

14 A Yes.

15 Q But you weren't there; right?

16 A Right.

17 Q Okay. And moving ahead to January 12th, we  
18 just marked a couple of photographs. I'd like to, if we  
19 can, publish what would be defense next in order, Q.

20 Ms. Kinion, is it Mrs. or Miss?

21 A Miss.

22 Q Excuse me?

23 A Miss.

24 Q Miss. Thank you. Miss Kinion, you indicated

1 this is your driveway here, or no? Now I'm confused.

2 A No.

3 Q Let me put on the other exhibit. At this  
4 time, Judge, we'd be publishing Exhibit P.

5 And, Ms. Kinion, is this your residence here?  
6 I think we went over it yesterday, and that's your  
7 driveway?

8 A Yes.

9 Q And you were out on the 12th. You were out  
10 plowing or shoveling your driveway?

11 A Shoveling.

12 Q About what time did you begin?

13 A I don't remember.

14 Q You don't remember? Okay. And we indicated  
15 going down the street is Charles Avenue, and the  
16 Klementies is on the right side of the street looking  
17 down; correct?

18 A Yes.

19 Q Now, you testified that you called Egon  
20 Klementi after you saw what you said you saw, a snowplow  
21 assault; correct?

22 A Correct.

23 Q And you called him because you were concerned  
24 that --

1           A     I was concerned that he was hurt.

2           Q     He was hurt. And did you discuss what  
3 happened?

4           MS. PENCE: Objection, Your Honor. Asked and  
5 answered.

6           MR. ROUTSIS: It's foundational at this  
7 point.

8           THE COURT: Overruled.

9           Q     (BY MR. ROUTSIS:) Did you discuss with him  
10 what happened?

11          A     I don't remember exactly what we said.

12          Q     Did he inform you that he had called the  
13 police already?

14          A     No.

15          Q     Did he tell you he hadn't called them?

16          A     No.

17          Q     Did any conversation regarding that occur?

18          MS. PENCE: Objection, Your Honor. Asked and  
19 answered.

20          THE COURT: Overruled.

21          THE WITNESS: I suggested to him to call the  
22 police.

23          Q     (BY MR. ROUTSIS:) He was assaulted, and it  
24 was your suggestion that he call the police?

1 MS. PENCE: Objection, Your Honor. Asked and  
2 answered.

3 THE COURT: Sustained.

4 Q (BY MR. ROUTSIS:) In any event, after that,  
5 about an hour and ten minutes later, you called the  
6 police; correct?

7 MS. PENCE: Objection, Your Honor. Asked and  
8 answered.

9 THE COURT: Sustained.

10 Q (BY MR. ROUTSIS:) Okay. And what was the  
11 delay of the hour and ten minutes when you called the  
12 police?

13 A I don't remember. I remember eating lunch,  
14 thinking about it, deciding to do it. I don't know that  
15 I would call it a delay. That's when I decided to do it.

16 Q Okay. And now I'd like to go -- Those plows  
17 are pretty big, aren't they?

18 A Yeah, I guess.

19 Q Pretty big snowplow?

20 A I guess. I don't know.

21 Q Do you know the difference between a snowplow  
22 and a loader?

23 A No.

24 Q Okay. So at some point in time during that

1 morning, it's your testimony that a snowplow was coming  
2 down Meadow Avenue; right?

3 A It wasn't -- There's a couple of snowplows,  
4 and it was a white one.

5 Q And it was coming down Meadow Avenue?

6 A Yes, Meadow Lane.

7 Q Meadow Lane. And you -- Where were you when  
8 it came down Meadow Lane in this picture?

9 A I was right at the end of my driveway.

10 Q Right there in this area?

11 A In that area. I was actually in the street  
12 because when we get a lot of snow, you get berms, you  
13 have to shovel all the street too.

14 Q So you were shoveling out the street when the  
15 plow came by?

16 A Part of the street, yeah.

17 Q And you saw Jeff Spencer driving the plow --

18 A Yes.

19 Q -- correct?

20 A Yes.

21 Q And he had a big smile on his face?

22 A Yes.

23 Q Well, at that point, Egon Klementi was --  
24 Did you see where Mr. Klementi was?

1 already been plowed. I know that. And it seemed like  
2 the plow was down, but he wasn't really picking up any  
3 snow. He was just kind of going along with it, you know.  
4 It was kind of like I was wondering why he was there  
5 also.

6 Q Okay. So you're on the edge of your  
7 driveway, and the snowplow is coming down the street, but  
8 your memory is that he had already plowed the street  
9 earlier? The street was already plowed?

10 A The street was plowed. That's why I was out  
11 here shoveling.

12 Q So when the defendant drove by, you saw a big  
13 smile on Mr. Spencer's face, and was the plow down or up?

14 A I think it was down, but I don't remember  
15 exactly.

16 Q Okay. And the reason I'm asking, ma'am,  
17 because you're saying that as the plow went all the way  
18 down the street towards the -- past Charles or at some  
19 point near Charles, it's your testimony that Mr. Spencer  
20 put the plow down at that point; correct?

21 A I don't remember.

22 Q Excuse me?

23 A I don't remember whether he put it down or  
24 not. I remember him going by me, and I think the plow

1 was down at that time, and then he swerved into their  
2 property, into the Klementies' property. That's how he  
3 picked up snow. And then all of a sudden, the snow was  
4 sent all over.

5 Q Okay. You wrote a letter to Miss Pence, and  
6 the purpose of what you wrote to Ms. Pence was to try to  
7 get her to prosecute Mr. Spencer; correct? Yes or no.

8 A Yes.

9 Q Okay. And in that letter, you put down in  
10 the letter that Mr. Spencer put his blade down, did you  
11 not, as he approached Mr. Egon's driveway?

12 A I don't remember.

13 Q Well, would it refresh your recollection if  
14 you read your letter? Would it refresh your  
15 recollection, ma'am, if you read your letter?

16 A Probably.

17 Q Okay. It would be, for counsel's  
18 edification, one, two, three, four, five, six paragraphs.

19 A That's not what I wrote.

20 Q That's not what you what?

21 A What I wrote was --

22 Q Excuse me. Ms. Kinion, I didn't ask you a  
23 question, in all due respect. We've got procedures. You  
24 read --

1           A     I'm sorry.

2           Q     You read that paragraph; correct?

3           A     Yes.

4           Q     Can you -- will you turn the page. Is that  
5 your signature?

6           A     Yes.

7           Q     You're saying that's not what you wrote?

8           A     I'm saying this is what I wrote, but what you  
9 said is not what I wrote.

10          Q     Oh. Tell us what you wrote.

11          A     Can I read it?

12          Q     Please.

13                THE COURT: The original question was, does  
14 it refresh her recollection. That's why she was looking  
15 at it.

16          Q     (BY MR. ROUTSIS:) Okay. Very good. Ma'am,  
17 does that refresh your recollection as to what you saw on  
18 that day?

19          A     Yes.

20          Q     And is that letter, could you go ahead, if  
21 you feel comfortable reading exactly what you wrote.

22          A     Yes. "When Jeff drove past him, he turned  
23 the blade on the snowplow to spray Egon with ice and  
24 snow." It doesn't say anything about the blade being up



1           Q     So if I get you right, as you're visualizing  
2     looking through the -- seeing through the plow, seeing  
3     the plow angle up, put snow on Egon, you're saying right  
4     before that on Charles Avenue, the defendant,  
5     Mr. Spencer, who had a big smile on his face, then took a  
6     turn into Charles to gather snow from Charles?

7           MS. PENCE:  Objection, Your Honor.  Compound.  
8     Complex.  Asked and answered.

9           THE COURT:  Overruled.

10          Q     (BY MR. ROUTSIS:)  Is that what happened,  
11     ma'am, or not?

12          A     I'm sorry.  Will you repeat the question?

13          Q     (BY MR. ROUTSIS:)  Yes.  This happened --  
14     today, I believe, is the 20th of September, correct,  
15     2013?

16          A     Yes.

17          Q     This occurred December 12th, 2012; right?  
18     You wrote a letter to the prosecutor to try to get them  
19     to prosecute, as you testified, Mr. Spencer, you signed a  
20     letter, and it shows it received February 22nd, okay?

21          A     Correct.

22          Q     Can you show us -- Would it refresh your  
23     memory as to whether or not Jeff Spencer somehow drove  
24     onto Charles Avenue, gathered up the snow, and then drove

1           A     Yeah.

2           Q     Now, did you ever write that down in your  
3 letter? Did you ever think that he drove into the berm  
4 of Mr. Klementies' property prior to spraying snow on  
5 him?

6           A     I don't think I wrote that down.

7           Q     Why wouldn't you write that down?

8           A     Well, for one thing, I was trying to keep it  
9 short. And no, I just did not write that down.

10          Q     Okay. And then -- and we'll be done very  
11 shortly -- the snow you're saying you saw, you then saw  
12 the back of the plow go onto his property and angle, and  
13 somehow the snow went up? Was it snow, or was it rocks  
14 and tar?

15          A     It was snow and probably ice because I know  
16 that day there was a lot of ice along the side of the  
17 road.

18          Q     Okay. And you saw that material fly into --  
19 Tell us what you saw because I don't know.

20          A     I saw the snow fly up and hit Egon.

21          Q     Where did it hit him?

22          A     It hit him like all over. There was a large  
23 amount. It flew up. It went -- Part of it went over his  
24 head. It went onto his body.

1 about the blade.

2 THE COURT: Hold on. Ms. Kinion, there's no  
3 question pending. The question was please look at this,  
4 see if it refreshes -- Ms. Kinion, please listen.

5 The question was, please read the letter to  
6 see if it refreshes your recollection whether you made a  
7 complaint about Jeff Spencer to KGID for allegedly  
8 putting a berm in front of your house. That's the  
9 question. And the answer is either yes, no, or I don't  
10 know or I don't remember.

11 THE WITNESS: I'll say yes.

12 Q (BY MR. ROUTSIS:) Okay. Now, I just asked  
13 you under oath if you saw, when you made a complaint, if  
14 you saw the snowplow leave the berm in front of your  
15 residence, and you said no, you did not.

16 A Correct.

17 Q And now you admit that you've made  
18 complaints, and you specifically identified Jeffery  
19 Spencer as the individual that left the berm in front of  
20 your property.

21 A I made a complaint. I did not say Jeff  
22 Spencer. I said my driveway. I talked about my driveway  
23 being bermed. I did not say Jeff Spencer.

24 Q You testified on direct examination as well.

1 And do you recall your testimony on direct examination at  
2 this trial that you called somebody out, you said it was  
3 Jeff Spencer that left the berm, and they told you it was  
4 intentional? Do you remember that testimony?

5 A I don't remember saying Jeff Spencer, but I  
6 may have inferred that because I may have said he was  
7 driving a white truck.

8 Q So what's the relevance of bringing it up at  
9 a trial for Jeff Spencer if you don't know who left that  
10 berm?

11 A I was pretty sure it was him.

12 Q Excuse me, ma'am?

13 A I was pretty sure it was him.

14 Q Do you have any pictures of the berm?

15 A No.

16 Q And you've also testified under oath that  
17 somebody told you that it was intentional. You've  
18 testified under oath to that; correct?

19 A Yes.

20 Q Tell me exactly who told you it was  
21 intentional.

22 A It was a guy -- It says here his name was  
23 James, but I don't really remember his name. He came in  
24 a truck from KGID.