

9th Judicial District Court
Clerk of the Court,
Bobbie R. Williams
Ph 782-9820 Fax 782-9954
1038 Buckeye Rd.
P.O. Box 218
Minden, NV 89423-0000

Received From: Lemons Grundy Eisenberg

14-CV-00260-DC

Motion for Summary Judgment CK

\$200.00

TOTAL DUE: \$200.00

Other: \$0.00

TOTAL PAID: \$200.00

Balance Due 14-CV-00260-DC

0.00

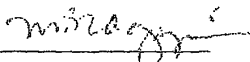
COMMENT:

Klementi v Spencer

Receipt #201800000993

Cashier: MB 04/12/18 3:43pm

Signature: _____



2970 Ninth Judicial District Court
04/10/18 30.7776- Filing fee

30.7776

200.00

200.00

04/10/18

34973

Gross:

200.00

Ded:

0.00 Net:

200.00

34973

LEMONS, GRUNDY & EISENBERG
ATTORNEYS AT LAW
6005 PLUMAS ST., THIRD FLOOR
RENO, NV 89519

NEVADA STATE BANK
RENO, NV 89505
94-771224

DATE

04/10/18

AMOUNT

34973

****\$200.00

PAY
TO THE
ORDER
OF

*** TWO HUNDRED & 00/100 DOLLARS

Ninth Judicial District Court

TWO SIGNATURES REQUIRED OVER 1000.00 DOLLARS
VOID AFTER 180 DAYS

AUTHORIZED SIGNATURE

⑈034973⑈ ⑆122400779⑆0542041629⑈

INVOICE



SUNSHINE
Litigation
SERVICES

151 Country Estates Circle
Reno, NV 89511
Phone: 800-330-1112
Fax: 702-631-1735
www.litigation-services.com

Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street - Third Floor
Reno, NV 89519

Invoice No.	Invoice Date	Job No.
1063029	4/20/2016	303601
Job Date	Case No.	
4/7/2016		
Case Name		
Klementi vs. Spencer		
Payment Terms		
Due upon receipt		

VIDEOGRAPHY SERVICES

Multiple Witnesses

460.00

TOTAL DUE >>> \$460.00

AFTER 5/20/2016 PAY \$506.00

Job scheduled to begin at 11:00 a.m.; videographer on site and setup at that time.
Video portion of depositions began at 4:09 p.m.

Deponents:

Mary Ellen Kinion (partial)
Rowena Shaw, Ph.D.
Peter Shaw

Tax ID: 20-3835523

Phone: 775-786-6868 Fax: 775-786-9716

Please detach bottom portion and return with payment.

Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street - Third Floor
Reno, NV 89519

Invoice No. : 1063029
Invoice Date : 4/20/2016
Total Due : \$ 460.00
AFTER 5/20/2016 PAY \$506.00

Remit To: **Sunshine Reporting and Litigation Services,
LLC
PO Box 843298
Los Angeles, CA 90084-3298**

Job No. : 303601
BU ID : RN-VID
Case No. :
Case Name : Klementi vs. Spencer



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6005 Plumas Street - Third Floor
Reno, NV 89519

INVOICE

Invoice No.	Invoice Date	Job No.
1062437	4/20/2016	299003
Job Date	Case No.	
4/7/2016		
Case Name		
Klementi vs. Spencer		
Payment Terms		
Due upon receipt		

1 CERTIFIED COPY OF TRANSCRIPT OF: Rowena Shaw, Ph.D.	172.50
1 CERTIFIED COPY OF TRANSCRIPT OF: Peter Shaw	90.00
TOTAL DUE >>>	\$262.50
AFTER 5/20/2016 PAY	\$288.75

Tax ID: 20-3835523

Phone: 775-786-6868 Fax: 775-786-9716

Please detach bottom portion and return with payment.

Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street - Third Floor
Reno, NV 89519

Invoice No. : 1062437
Invoice Date : 4/20/2016
Total Due : \$ 262.50
AFTER 5/20/2016 PAY \$288.75

Remit To: **Sunshine Reporting and Litigation Services,
LLC
PO Box 843298
Los Angeles, CA 90084-3298**

Job No. : 299003
BU ID : RN-CR
Case No. :
Case Name : Klementi vs. Spencer



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Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street - Third Floor
Reno, NV 89519

INVOICE

Invoice No.	Invoice Date	Job No.
1061410	4/20/2016	297108
Job Date	Case No.	
4/7/2016		
Case Name		
Klementi vs. Spencer		
Payment Terms		
Due upon receipt		

ORIGINAL AND 1 CERTIFIED COPY OF TRANSCRIPT OF:

Jesse McKone

725.30

1 CERTIFIED COPY OF TRANSCRIPT OF:

Mary Ellen Kinion

437.95

TOTAL DUE >>>

\$1,163.25

AFTER 5/20/2016 PAY

\$1,279.58

Tax ID: 20-3835523

Phone: 775-786-6868 Fax: 775-786-9716

Please detach bottom portion and return with payment.

Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street - Third Floor
Reno, NV 89519

Invoice No. : 1061410
Invoice Date : 4/20/2016
Total Due : \$ 1,163.25
AFTER 5/20/2016 PAY \$1,279.58

Remit To: **Sunshine Reporting and Litigation Services,
LLC
PO Box 843298
Los Angeles, CA 90084-3298**

Job No. : 297108
BU ID : RN-CR
Case No. :
Case Name : Klementi vs. Spencer

INVOICE



151 Country Estates Circle
Reno, NV 89511
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Fax: 702-631-1735
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Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street - Third Floor
Reno, NV 89519

Invoice No.	Invoice Date	Job No.
1063254	4/28/2016	299004
Job Date	Case No.	
4/14/2016		
Case Name		
Klementi vs. Spencer		
Payment Terms		
Due upon receipt		

1 CERTIFIED COPY OF TRANSCRIPT OF: Elfriede Klementi	486.35
1 CERTIFIED COPY OF TRANSCRIPT OF: Proceedings in Lieu of Depo of Egon Klementi	17.95
1 CERTIFIED COPY OF TRANSCRIPT OF: Helmut Klementi	402.50
TOTAL DUE >>>	\$906.80
AFTER 5/28/2016 PAY	\$997.48

Tax ID: 20-3835523

Phone: 775-786-6868 Fax: 775-786-9716

Please detach bottom portion and return with payment.

Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street - Third Floor
Reno, NV 89519

Invoice No. : 1063254
Invoice Date : 4/28/2016
Total Due : \$ 906.80
AFTER 5/28/2016 PAY \$997.48

Remit To: **Sunshine Reporting and Litigation Services, LLC**
PO Box 843298
Los Angeles, CA 90084-3298

Job No. : 299004
BU ID : RN-CR
Case No. :
Case Name : Klementi vs. Spencer



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OK
2203

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street - Third Floor
Reno, NV 89519

INVOICE

Invoice No.	Invoice Date	Job No.
1084272	8/2/2016	314146
Job Date	Case No.	
7/28/2016		
Case Name		
Klementi vs. Spencer		
Payment Terms		
Due upon receipt		

30,777.6

Original and One Certified Copy of the Video Deposition of:
Jeffrey Spencer

1,567.75
TOTAL DUE >>> \$1,567.75
AFTER 9/1/2016 PAY \$1,724.53

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 20-3835523

Phone: 775-786-6868 Fax: 775-786-9716

Please detach bottom portion and return with payment.

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street - Third Floor
Reno, NV 89519

Job No. : 314146 BU ID : RN-CR
Case No. :
Case Name : Klementi vs. Spencer

Invoice No. : 1084272 Invoice Date : 8/2/2016
Total Due : \$ 1,567.75
AFTER 9/1/2016 PAY \$1,724.53

Remit To: **Sunshine Reporting and Litigation Services,
LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

PAYMENT WITH CREDIT CARD



Cardholder's Name: _____
Card Number: _____
Exp. Date: _____ Phone#: _____
Billing Address: _____
Zip: _____ Card Security Code: _____
Amount to Charge: _____
Cardholder's Signature: _____
Email: _____

INVOICE



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Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street - Third Floor
Reno, NV 89519

OK
DLB

Invoice No.	Invoice Date	Job No.
1089293	8/23/2016	314147
Job Date	Case No.	
7/28/2016		
Case Name		
Klementi vs. Spencer 30.7776		
Payment Terms		
Due upon receipt		

Videography Services for the Deposition of:
Jeffrey Spencer (video)

475.00

TOTAL DUE >>>

\$475.00

AFTER 9/22/2016 PAY

\$522.50

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 20-3835523

Phone: 775-786-6868 Fax: 775-786-9716

Please detach bottom portion and return with payment.

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street - Third Floor
Reno, NV 89519

Job No. : 314147 BU ID : RN-VID
Case No. :
Case Name : Klementi vs. Spencer

Invoice No. : 1089293 Invoice Date : 8/23/2016

Total Due : \$ 475.00

AFTER 9/22/2016 PAY \$522.50

Remit To: **Sunshine Reporting and Litigation Services,
LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

PAYMENT WITH CREDIT CARD



Cardholder's Name:

Card Number:

Exp. Date:

Phone#:

Billing Address:

Zip:

Card Security Code:

Amount to Charge:

Cardholder's Signature:

Email:

Capitol

Phone 775-882-5322
Fax 775-882-7154

Reporters

123 W. Nye Lane, Ste. 107 Carson City, NV 89706

Catherine Ammon
Lemons, Grundy & Eisenberg
6005 Plumas Street
Suite 300
Reno, NV 89509

INVOICE

Invoice No.	Invoice Date	Job No.
86457	2/6/2017	31267
Job Date	Case No.	
9/18/2013		
Case Name		
State vs. Spencer		
Payment Terms		
Due upon receipt		

- 1 CERTIFIED COPY OF TRANSCRIPT OF:
Testimony of Marilyn Spencer 9-25-13
1 CERTIFIED COPY OF TRANSCRIPT OF:
Testimony of Jeff Spencer 9-26-13

159.00 Pages @ 2.50 397.50

234.00 Pages @ 2.50 585.00

TOTAL DUE >>> \$982.50

Reference No. : Nicole Hansen

WE NOW ACCEPT CREDIT CARDS
Thank you for your business....

1/2 Pintar \$491.25
1/2 Hartford
OK to pay 1/2 direct
DA

30.7776

Tax ID: 45-0908514

Please detach bottom portion and return with payment.

Catherine Ammon
Lemons, Grundy & Eisenberg
6005 Plumas Street
Suite 300
Reno, NV 89509

Invoice No. : 86457

Invoice Date : 2/6/2017

Total Due : ~~\$982.50~~ \$491.25

Remit To: Capitol Reporters
123 W. Nye Lane Ste. 107
Carson City, NV 89706

Job No. : 31267

BU ID : 1-MAIN

Case No. :

Case Name : State vs. Spencer

7 AA 1583

33395

2181 Capitol Reporters
02/06/17 30.7776- Transcript

86457

491.25

491.25

02/28/17

33395

Gross:

491.25

Ded:

0.00 Net:

491.25

33395

LEMONS, GRUNDY & EISENBERG
ATTORNEYS AT LAW
6005 PLUMAS ST., THIRD FLOOR
RENO, NV 89519

NEVADA STATE BANK
RENO, NV 89505
94-7771224

DATE
02/28/17

33395

AMOUNT
****\$491.25

PAY
TO THE
ORDER
OF

*** FOUR HUNDRED NINETY-ONE & 25/100 DOLLARS

Capitol Reporters
123 W. Nye Lane Ste.107
Carson City NV 89706

TWO SIGNATURES REQUIRED OVER 1000.00 DOLLARS
VOID AFTER 180 DAYS

AUTHORIZED SIGNATURE

⑈033395⑈ ⑆ 22400779⑆0542041629⑈

Details on Back.
Security Features Included



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litigationservices.com

OK
DUB

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street Ste. 300
Reno, NV 89519

INVOICE

Invoice No.	Invoice Date	Job No.
1143699	4/7/2017	373231
Job Date	Case No.	
3/20/2017	14-CV-0260	
Case Name		
Klementi vs. Spencer		
30.7776	Payment Terms	
Due upon receipt		

Videography Services for the Deposition of:
Jeff Spencer (Video)

375.00

TOTAL DUE >>> \$375.00
AFTER 5/7/2017 PAY \$412.50

Client Matter No.: 30.7776

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 20-3835523

Phone: 775-786-6868 Fax: 775-786-9716

Please detach bottom portion and return with payment.

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street Ste. 300
Reno, NV 89519

Job No. : 373231 BU ID : RN-VID
Case No. : 14-CV-0260
Case Name : Klementi vs. Spencer

Invoice No. : 1143699 Invoice Date : 4/7/2017
Total Due : \$ 375.00
AFTER 5/7/2017 PAY \$412.50

Remit To: **Sunshine Reporting and Litigation Services,
LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

PAYMENT WITH CREDIT CARD



Cardholder's Name: _____
Card Number: _____
Exp. Date: _____ Phone#: _____
Billing Address: _____
Zip: _____ Card Security Code: _____
Amount to Charge: _____
Cardholder's Signature: _____
Email: _____



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Reno, NV 89511
Phone: 800-330-1112
litigationservices.com

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street Ste. 300
Reno, NV 89519

ok
PRB ✓

INVOICE

Invoice No.	Invoice Date	Job No.
1143693	4/7/2017	373233
Job Date	Case No.	
3/22/2017	14-CV-0260	
Case Name		
Klementi vs. Spencer		
30.7776	Payment Terms	
Due upon receipt		

Videography Services for the Deposition of:
Marilyn Spencer

475.00

TOTAL DUE >>> \$475.00

AFTER 5/7/2017 PAY \$522.50

Client Matter No.: 30.7776

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 20-3835523

Phone: 775-786-6868 Fax: 775-786-9716

Please detach bottom portion and return with payment.

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street Ste. 300
Reno, NV 89519

Job No. : 373233 BU ID : RN-VID
Case No. : 14-CV-0260
Case Name : Klementi vs. Spencer

Invoice No. : 1143693 Invoice Date : 4/7/2017

Total Due : \$ 475.00

AFTER 5/7/2017 PAY \$522.50

Remit To: **Sunshine Reporting and Litigation Services,
LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

PAYMENT WITH CREDIT CARD



Cardholder's Name: _____
Card Number: _____
Exp. Date: _____ Phone#: _____
Billing Address: _____
Zip: _____ Card Security Code: _____
Amount to Charge: _____
Cardholder's Signature: _____
Email: _____



151 County Estates Circle
Reno, NV 89511
Phone: 800-330-1112
litigationservices.com

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street Ste. 300
Reno, NV 89519

OK
PRB

INVOICE

Invoice No.	Invoice Date	Job No.
1142301	4/3/2017	372991
Job Date	Case No.	
3/20/2017	14-CV-0260	
Case Name		
Klementi vs. Spencer		
Payment Terms		
Due upon receipt		

Original and One Certified Copy of the Video Deposition of:
Jeffrey Spencer

1,194.45
TOTAL DUE >>> \$1,194.45
AFTER 5/3/2017 PAY \$1,313.90

Client Matter No.: 30.7776

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 20-3835523

Phone: 775-786-6868 Fax: 775-786-9716

Please detach bottom portion and return with payment.

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street Ste. 300
Reno, NV 89519

Job No. : 372991 BU ID : RN-CR
Case No. : 14-CV-0260
Case Name : Klementi vs. Spencer

Invoice No. : 1142301 Invoice Date : 4/3/2017
Total Due : \$ 1,194.45
AFTER 5/3/2017 PAY \$1,313.90

Remit To: **Sunshine Reporting and Litigation Services, LLC**
P.O. Box 98813
Las Vegas, NV 89193-8813

PAYMENT WITH CREDIT CARD				
Cardholder's Name: _____				
Card Number: _____				
Exp. Date: _____		Phone#: _____		
Billing Address: _____				
Zip: _____		Card Security Code: _____		
Amount to Charge: _____				
Cardholder's Signature: _____				
Email: _____				



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Phone: 800-330-1112
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OK
DEB

INVOICE

Invoice No.	Invoice Date	Job No.
1142224	4/4/2017	373232
Job Date	Case No.	
3/22/2017	14-CV-0260	
Case Name		
Klementi vs. Spencer		
30.7776	Payment Terms	
Due upon receipt		

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street Ste. 300
Reno, NV 89519

Original and One Certified Copy of the Video Deposition of:
Marilyn Spencer

1,501.70

TOTAL DUE >>> \$1,501.70

AFTER 5/4/2017 PAY \$1,651.87

Client Matter No.: 30,7776

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 20-3835523

Phone: 775-786-6868 Fax: 775-786-9716

Please detach bottom portion and return with payment.

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street Ste. 300
Reno, NV 89519

Job No. : 373232 BU ID : RN-CR
Case No. : 14-CV-0260
Case Name : Klementi vs. Spencer

Invoice No. : 1142224 Invoice Date : 4/4/2017
Total Due : \$ 1,501.70
AFTER 5/4/2017 PAY \$1,651.87

Remit To: **Sunshine Reporting and Litigation Services,
LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

PAYMENT WITH CREDIT CARD



Cardholder's Name: _____
Card Number: _____
Exp. Date: _____ Phone#: _____
Billing Address: _____
Zip: _____ Card Security Code: _____
Amount to Charge: _____
Cardholder's Signature: _____
Email: _____

31787

6160 Jesse McKone
03/09/16 30.7776- Witness Fee

70.36

70.36

03/09/16 31787 Gross: 70.36 Ded: 0.00 Net: 70.36

31787

LEMONS, GRUNDY & EISENBERG
ATTORNEYS AT LAW
6005 PLUMAS ST., THIRD FLOOR
RENO, NV 89519

NEVADA STATE BANK
RENO, NV 89505
94-771224

DATE AMOUNT
03/09/16 *****\$70.36

PAY
TO THE
ORDER
OF

*** SEVENTY & 36/100 DOLLARS

Jessee McKone

TWO SIGNATURES REQUIRED OVER 1000.00 DOLLARS
VOID AFTER 180 DAYS

AUTHORIZED SIGNATURE

⑈031787⑈ ⑆122400779⑆0542041629⑈

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LEMONS GRUNDY & EISENBERG

CHECK REQUEST

DATE: March 9, 2016

DATE NEEDED: March 9, 2016

AMOUNT: \$70.36

PAYEE: Jesse McKone

PURPOSE: Witness Fees

CASE: Klementi adv. Spencer

FILE No.: 30.7776

ATTORNEY: DRB

REQUESTED BY: Catherine

32052

6160 Marilyn Spencer
05/03/16 30.7776- Witness fee

30.7776

84.40

84.40

05/03/16

32052

Gross:

84.40

Ded:

0.00 Net:

84.40

32052

LEMONS, GRUNDY & EISENBERG
ATTORNEYS AT LAW
6005 PLUMAS ST., THIRD FLOOR
RENO, NV 89519

NEVADA STATE BANK
RENO, NV 89505
94-77/1224

DATE
05/03/16

AMOUNT
*****\$84.40

PAY
TO THE
ORDER
OF

*** EIGHTY-FOUR & 40/100 DOLLARS

Marilyn Spencer

TWO SIGNATURES REQUIRED OVER 1000.00 DOLLARS
VOID AFTER 180 DAYS

AUTHORIZED SIGNATURE

⑈032052⑈ ⑆122400779⑈0542041629⑈

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LEMONS GRUNDY & EISENBERG

CHECK REQUEST

DATE: May 3, 2016

DATE NEEDED: May 3, 2016

AMOUNT: \$84.40

PAYEE: Marilyn Spencer

PURPOSE: Witness Fees

CASE: Klementi adv. Spencer

FILE No.: 30.7776

ATTORNEY: DRB

REQUESTED BY: Catherine

Data Clone Labs, Inc

4790 Caughlin Pky #223
Reno NV 89509
775-337-8142

Invoice

Date	Invoice #
10/10/2016	2780

30.7776

Bill To
Chris Moore Lemons, Grundy & Eisenberg 6005 Plumas Street, Third Floor Reno, NV 89519

Description	P.O. No.	Terms	Due Date
		Due on receipt	10/10/2016
Description	Quantity	Rate	Amount
Klementi Matter		0.00	0.00
Klementi consultations and report, Sept 2016	6.5	240.00	1,560.00
Reserve account for future work		840.00	840.00
Sales Tax		7.725%	0.00
Total			\$2,400.00

Privacy Technician

4790 Caughlin Pkwy, #223
Reno, NV 89519

INVOICE

Date	Invoice #
6/1/2018	2974

Bill To
Lemons, Grundy, & Eisenberg ATTN: Sara 6005 Plumas St, 3rd Floor Reno, NV 89519

Regarding
Helmut Klementi 30.7776

Description	Qty	Rate	Amount	Terms	Due Date	Project
				Due on receipt	6/1/2018	Kermet
5-4-18 Discovery meeting	0.33	250.00	82.50			
Please pay - Sara						
				Total	\$82.50	
				Payments/Credits	\$0.00	
				Balance Due	\$82.50	

Please make checks payable to: Privacy Technician, Inc
Questions? 775-745-6960

7042 Privacy Technician Inc
06/01/18 30.7776- Discovery Meeting

2974

82.50

82.50

07/16/18

35273

Gross:

82.50

Ded:

0.00 Net:

82.50

LEMONS, GRUNDY & EISENBERG
ATTORNEYS AT LAW
6005 PLUMAS ST., THIRD FLOOR
RENO, NV 89519

NEVADA STATE BANK
RENO, NV 89505
94-77/1224

35273

DATE

AMOUNT

07/16/18

35273

*****\$82.50

PAY
TO THE
ORDER
OF

*** EIGHTY-TWO & 50/100 DOLLARS

TWO SIGNATURES REQUIRED OVER 1000.00 DOLLARS
VOID AFTER 180 DAYS

Privacy Technician Inc
4790 Caukghlin Parkway #223
Reno NV 89519

AUTHORIZED SIGNATURE

MP

⑈035273⑈ ⑆122400779⑆0542041629⑈

Photo Safe Deposit®
Details on Back

Invoice #: 65255

CREDIT TERMS ARE NET 30. INVOICES NOT PAID WITHIN TERMS WILL BE ASSESSED A 1.5% PER MONTH FINANCE CHARGE

Date: 07/16/2015

Reno/Carson Messenger Service, Inc.
185 Martin Street
Reno, NV 89509
tel 775.322.2424 fax 775.322.3408
process@renocarson.com
Federal Tax ID: 88-0306306
NV STATE LIC#322



Process Server - Messenger Service
RENO / CARSON / LAS VEGAS
*** WE MAKE DEADLINES ***



INVOICE FOR SERVICE:

Amount Due: \$132.50

LEMONS, GRUNDY EISENBERG
6005 PLUMAS STREET, SUITE 300,
RENO, NV 895096000

Phone number: 775 786-6868
Fax number: 786-9716
Email Address:

Requestor: CATHERINE AMMON
Email: catherine@lge.net
Your File# 307776

Service #65356: ATWATER INVESTIGATIONS
Manner of Service: CORP/BUSINESS

Completion Information/Received by: TYRONE ATWATER
Service Date/Time: 07/14/2015 3:28 PM
Service address: 1666 HIGHWAY 395 (MCDONALD'S PARKING LOT), MINDEN, NV
Served by: LARRY SCOTT R-053852

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Male	Caucasian	Gray	69	5'11 8in	161-170lbs

Other Features:

IN THE NINTH JUDICIAL DISTRICT COURT-DOUGLAS COUNTY, STATE OF NEVADA

HELMUT KLEMENTI v. JEFFREY D. SPENCER

Service Documents: SUBPOENA DUCES TECUM

CASE#: 14-CV-0260

Service Notes

Service Comments:

07/13/2015 15:19

1155 HIGHWAY 395 SOUTH Gardnerville, NV
89410

TELEPHONE CALL. LOCATED AT TOPAZ LAKE. NOT AVAILABLE
UNTIL 7 IS. CALL THEN TO SETUP APPT TO SERVE.@

07/09/2015 10:50

1155 HIGHWAY 395 SOUTH Gardnerville, NV
89410

NO SUCH ADDRESS

BAD ADDRESS	\$37.00
Standard Service	\$37.00
MILEAGE	\$58.50
TOTAL CHARGES:	\$132.50
BALANCE:	\$132.50

7570 Reno-Carson Messenger Service, Inc.

07/16/15	30-7776- Delivery	65255	132.50	132.50
08/12/15	90.7733- Delivery	66345	97.50	97.50
08/12/15	90.7733- Delivery	66404	67.50	67.50
08/24/15	90.7733- Delivery	65479	-45.00	-45.00

08/28/15	30907	Gross:	252.50	Ded:	0.00	Net:	252.50
----------	-------	--------	--------	------	------	------	--------

LEMONS, GRUNDY & EISENBERG ATTORNEYS AT LAW 6005 PLUMAS ST., THIRD FLOOR RENO, NV 89519		NEVADA STATE BANK RENO, NV 89505 94-771224		30907
		DATE	30907	****AMOUNT \$252.50
		08/28/15		
*** TWO HUNDRED FIFTY-TWO & 50/100 DOLLARS				
PAY TO THE ORDER OF	Reno-Carson Messenger Service, Inc. 185 Martin Street Reno NV 89509		TWO SIGNATURES REQUIRED OVER 1000.00 DOLLARS VOID AFTER 180 DAYS	
		_____ AUTHORIZED SIGNATURE		MP
⑈030907⑈ 1222400779⑈0542041629⑈				
THIS DOCUMENT MUST HAVE A COLORED BACKGROUND. ULTRAVIOLET FIBERS AND AN ARTIFICIAL WATERMARK ON THE BACK - VERIFY FOR AUTHENTICITY				

31786

6160 Douglas County Sheriff's Office
03/09/16 30.7776- Fee for Service of Subpoena

17.00

17.00

03/09/16 31786 Gross: 17.00 Ded: 0.00 Net: 17.00

		31786	
LEMONS, GRUNDY & EISENBERG ATTORNEYS AT LAW 6005 PLUMAS ST., THIRD FLOOR RENO, NV 89519		NEVADA STATE BANK RENO, NV 89505 94-7711224	
		DATE	AMOUNT
		03/09/16	*****\$17.00
PAY TO THE ORDER OF		*** SEVENTEEN & 00/100 DOLLARS	
Douglas County Sheriff's Office		TWO SIGNATURES REQUIRED OVER 1000.00 DOLLARS VOID AFTER 180 DAYS	
		_____ AUTHORIZED SIGNATURE	
⑈031786⑈ ⑆122400779⑆0542041629⑈			
THIS DOCUMENT MUST HAVE A COLORED BACKGROUND, ULTRAVIOLET FIBERS AND AN ARTIFICIAL WATERMARK ON THE BACK - VERIFY FOR AUTHENTICITY			

LEMONS GRUNDY & EISENBERG

CHECK REQUEST

DATE: March 9, 2016

DATE NEEDED: March 9, 2016

AMOUNT: \$17.00

PAYEE: Douglas County Sheriff's Office

PURPOSE: Fee for Service of Subpoena

CASE: Klementi adv. Spencer

FILE No.: 30.7776

ATTORNEY: DRB

REQUESTED BY: Catherine

Civil Division

CIVIL DIVISION

The Sheriff's Civil Division Captain, and all the division's Deputies, are full time peace officers who are commissioned as Deputy Sheriffs by the Sheriff of Douglas County. Our Civil Division Deputies provide security and bailiff duties for the two district courts in Douglas County. The civil deputies also serve legal paperwork within Douglas County. A wide variety of papers are accepted, including protection orders, subpoenas, summons, writs of execution, notices and other court orders. We are open Monday through Friday from 8:00 a.m. and close promptly at 5:00 p.m. We are closed for all observed state holidays.

FEE SCHEDULE

Summons or Complaint	\$17.00 per defendant plus mileage
Subpoena	\$15.00 each witness plus mileage
Order	\$15.00 each plus mileage
Notice (one)	\$26.00 Two-Ten (each)
\$20.00	
Writ of Execution/Garnishment	\$36.00 plus mileage
Writ of Possession/Restitution	\$36.00 plus mileage
Mileage	\$2.00 per mile one way only

-Go to Bing Maps-Enter starting address; 1038 Buckeye Road, Minden, NV 89423-Enter address to be served.-Click "Get Directions"-Multiply the number of total miles @ \$2.00 per mile (round up)-This will be the cost of mileage
Douglas County Sheriff's Office, Civil Division is located at; 1038 Buckeye Road.

Minden, NV 89423 Mailing address is; P.O. Box 218 Minden, NV 89423

Please feel free to contact our Civil Division Secretary, Tanya Scott at 775-782-9942 or by email tscott@douglasnv.us



Site developed and hosted by [visionASP](http://visionasp.com), designed by [MacWest Marketing](http://MacWestMarketing.com).

Invoice #: 76800

CREDIT TERMS ARE NET 30. INVOICES NOT PAID WITHIN TERMS WILL BE ASSESSED A 1.5% PER MONTH FINANCE CHARGE

Date: 05/11/2016

Reno/Carson Messenger Service, Inc.
185 Martin Street
Reno, NV 89509
tel 775.322.2424 fax 775.322.3408
process@renocarson.com
Federal Tax ID: 88-0306306
NV STATE LIC#322



Process Server - Messenger Service
RENO / CARSON / LAS VEGAS
*** WE MAKE DEADLINES ***



INVOICE FOR SERVICE:

Amount Due: \$156.00

LEMONS, GRUNDY EISENBERG
6005 PLUMAS STREET, SUITE 300,
RENO, NV 895096000

Phone number: 775 786-6868
Fax number: 786-9716
Email Address:

Requestor: CATHERINE AMMON
Email: catherine@lge.net
Your File# 30.7776

Service #76446: MARILYN SPENCER
Manner of Service: NON-SERVE

Service Date/Time: 05/06/2016 4:30 PM

Service address: 321 CHARLES AVE. STATELINE NV

Served by: RICHARD PARISH R-016421

Sex	Color of skin/race	Color of hair	Age	Height	Weight
N/A	N/A	N/A		N/A	N/A
Other Features:					

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

HELMUT KLEMENTI v. JEFFREY D. SPENCER

Service Documents: SUBPOENA

CASE#: 14-CV-0260

Service Notes

Service Comments:

05/06/2016 16:30	321 CHARLES AVE. STATELINE, NV	AN ANONYMOUS SOURCE SUPPLIED 2 PHONE NUMBERS: 775/588-0801; CELL 530/400-2391
05/05/2016 16:30	321 CHARLES AVE. STATELINE, NV	TALKED WITH DC SHERIFFS DEPT., MOUNTED POSSE IS A VOLUNTARY GROUP WITH NO BUILDING OR OFFICE. INDIVIDUALS USE THEIR OWN HORSES AND EQUIPMENT. A CONTACT AT THE DC SO WILL SEEK ADDITIONAL INFO ON MARILYN.
05/03/2016 15:35	321 CHARLES AVE. STATELINE, NV	NO RESPONSE TO KNOCKING.
05/02/2016 15:05	321 CHARLES AVE. STATELINE, NV	CARD GONE. NO RESPONSE TO KNOCKING.
05/01/2016 12:42	321 CHARLES AVE. STATELINE, NV	NO ANSWER AT DOOR, RESIDENTS INSIDE REFUSING TO ANSWER THE DOOR.
04/29/2016 14:19	321 CHARLES AVE. STATELINE, NV	SPOKE HUSBAND WHO STATED SUBJECT WAS NOT HOME. LEFT CARD
04/29/2016 14:19	321 CHARLES AVE. STATELINE, NV	SPOKE TO HUSBAND SAID WOULD BE HOME LATER LEFT CARD SAID WOULD CALL WITH TIME TO MEET HE ALL SO SAID HIS ATTORNEY MIGHT HAVE HER EVADE SERVICE
04/28/2016 15:17	321 CHARLES AVE. STATELINE, NV	NO ANSWER AT DOOR. HOUSES ACROSS THE STREET ARE NUMBERED 186 AND 187. NO NUMBERS ON SUBJECTS HOUSE.
04/28/2016 14:47	321 CHARLES AVE. STATELINE, NV	BAD ADDRESS: NO SUCH NUMBER ON CHARLES AVENUE.

RUSH SERVICE
RUSH MILEAGE

\$52.00
\$104.00

TOTAL CHARGES:

\$156.00

BALANCE:

\$156.00

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

HELMUT KLEMENTI

Case No:14-CV-0260

Plaintiff,

Dept.No:

vs.

JEFFREY D. SPENCER

Defendant



AFFIDAVIT OF ATTEMPTS

STATE OF NEVADA
COUNTY OF WASHOE

ss.:

RICHARD PARISH, the undersigned, being duly sworn, deposes and says that I was at the time of attempting service over the age of eighteen and not a party to this action. I reside in the STATE OF NEVADA.

I received **SUBPOENA** with instructions to complete service upon **MARILYN SPENCER** during the period of **04/28/2016** through **05/06/2016** and have been unable to effect service as described in the attempts listed below:

Date/Time	Address	Remarks
04/28/2016-2:47 PM	321 CHARLES AVE. STATELINE, NV	BAD ADDRESS: NO SUCH NUMBER ON CHARLES AVENUE.
04/28/2016-3:17 PM	321 CHARLES AVE. STATELINE, NV	NO ANSWER AT DOOR. HOUSES ACROSS THE STREET ARE NUMBERED 186 AND 187. NO NUMBERS ON SUBJECTS HOUSE.
04/29/2016-2:19 PM	321 CHARLES AVE. STATELINE, NV	SPOKE HUSBAND WHO STATED SUBJECT WAS NOT HOME. LEFT CARD
04/29/2016-2:19 PM	321 CHARLES AVE. STATELINE, NV	SPOKE TO HUSBAND SAID WOULD BE HOME LATER LEFT CARD SAID WOULD CALL WITH TIME TO MEET HE ALL SO SAID HIS ATTORNEY MIGHT HAVE HER EVADE SERVICE
05/01/2016-12:42 PM	321 CHARLES AVE. STATELINE, NV	NO ANSWER AT DOOR, RESIDENTS INSIDE REFUSING TO ANSWER THE DOOR.
05/02/2016-3:05 PM	321 CHARLES AVE. STATELINE, NV	CARD GONE. NO RESPONSE TO KNOCKING.
05/03/2016-3:35 PM	321 CHARLES AVE. STATELINE, NV	NO RESPONSE TO KNOCKING.
05/05/2016-4:30 PM	321 CHARLES AVE. STATELINE, NV	TALKED WITH DC SHERIFF'S DEPT., MOUNTED POSSE IS A VOLUNTARY GROUP WITH NO BUILDING OR OFFICE. INDIVIDUALS USE THEIR OWN HORSES AND EQUIPMENT. A CONTACT AT THE DCSO WILL SEEK ADDITIONAL INFO ON MARILYN.
05/06/2016-4:30 PM	321 CHARLES AVE. STATELINE, NV	AN ANONYMOUS SOURCE SUPPLIED 2 PHONE NUMBERS: 775/588-0801; CELL 530/400-2391

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

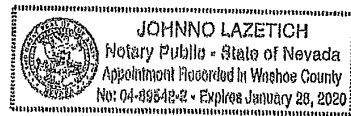
Sworn to and subscribed before me on
05/11/2016
by RICHARD PARISH

Notary Public



76446

X Richard Parish
RICHARD PARISH
Registration#: R-016421
Reno/Carson Messenger Service(Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: 30.7776



Invoice #: 76723

CREDIT TERMS ARE NET 30. INVOICES NOT PAID WITHIN TERMS WILL BE ASSESSED A 1.5% PER MONTH FINANCE CHARGE

Date: 05/10/2016

Reno/Carson Messenger Service, Inc.
185 Martin Street
Reno, NV 89509
tel 775.322.2424 fax 775.322.3408
process@renocarson.com
Federal Tax ID: 88-0306306
NV STATE LIC#322



Process Server • Messenger Service
RENO / CARSON / LAS VEGAS
*** WE MAKE DEADLINES ***



INVOICE FOR SERVICE:

Amount Due: \$156.00

LEMONS, GRUNDY EISENBERG
6005 PLUMAS STREET, SUITE 300,
RENO, NV 895096000

Phone number: 775 786-6868
Fax number: 786-9716
Email Address:

Requestor: CATHERINE AMMON
Email: catherine@lge.net
Your File# 30.7776

Service #76617: MARILYN SPENCER
Manner of Service: NON-SERVE

Service Date/Time: 05/07/2016 5:10 PM

Service address: 321 CHARLES AVE. STATELINE NV

Served by: WADE MORLAN R-006823

Sex	Color of skin/race	Color of hair	Age	Height	Weight
N/A	N/A	N/A		N/A	N/A
Other Features:					

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE
HELMUT KLEMENTI v. JEFFREY D. SPENCER

Service Documents: AMENDED SUBPOENA; WITNESS FEE CHECK \$84.40

CASE#: 14-CV-0260

Service Notes

Service Comments:

05/09/2016 09:00	321 CHARLES AVE. STATELINE, NV	spoke to catherine at lemons grundy she said to cancel and return docs to there office.
05/07/2016 17:10	321 CHARLES AVE. STATELINE, NV	NO ANSWER LET CARD

RUSH SERVICE	\$52.00
RUSH MILEAGE	\$104.00
TOTAL CHARGES:	\$156.00
BALANCE:	\$156.00

1
2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND
4 FOR THE COUNTY OF WASHOE

5 HELMUT KLEMENTI

6 Plaintiff,

7 vs.

8 JEFFREY D. SPENCER

9 Defendant

Case No:14-CV-0260

Dept.No:



10
11 AFFIDAVIT OF ATTEMPTS

12 STATE OF NEVADA
13 COUNTY OF CARSON CITY ss.:

14 WADE MORLAN, the undersigned, being duly sworn, deposes and says that I was at the time of
15 attempting service over the age of eighteen and not a party to this action. I reside in the STATE
16 OF NEVADA.

17 I received AMENDED SUBPOENA; WITNESS FEE CHECK \$84.40 with instructions to
18 complete service upon MARILYN SPENCER during the period of 05/03/2016 through
19 05/07/2016 and have been unable to effect service as described in the attempts listed below:

20

Date/Time	Address	Remarks
05/07/2016-5:10 PM	321 CHARLES AVE. STATELINE, NV	NO ANSWER LET CARD

21

22 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true
23 and correct.

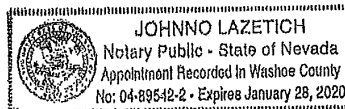
24 Sworn to and subscribed before me on
25 05/10/2016
by WADE MORLAN

Notary Public

WADE MORLAN
Registration#: R-006823
Reno/Carson Messenger Service(Lic# 322)
185 Martin Street
Reno, NV 89509
775.322.2424
Atty File#: 30.7776



76617



Spencer Investigations
1325 Airmotive Way # 209
Reno NV 89502



20-4696239


Lemons, Grundy & Eisenberg
Doug Brown
6005 Plumas Street, Third floor
Reno NV 89519

Invoice # 00810
Invoice Date June 13, 2016
Balance Due (USD) \$360.00

Task	Time Entry Notes	Rate	Hours	Line Total
General	2016-06-142 ~ LGE Service to State Line upon Marilyn Spencer. Service completed first attempts	90.00	3	270.00

Item	Description	Unit Cost	Quantity	Line Total
Expense	miles 120 miles	0.75	120	90.00

Total	360.00
Amount Paid	0.00
Balance Due (USD)	\$360.00

This invoice was sent using  FreshBooks

PAYMENT STUB

Spencer Investigations
1325 Airmotive Way # 209
Reno NV 89502

Client Lemons, Grundy & Eisenberg
Client Phone 775-786-6868
Invoice # 00810
Invoice Date June 13, 2016
Balance Due (USD) \$360.00
Amount Enclosed

1/2 of cost reimburse
to Pintar by Glogovac per DRB

INVOICE



151 County Estates Circle
Reno, NV 89511
Phone: 803-330-1112
litigationservices.com

Michael A. Pintar, Esq.
Glogovac & Pintar
427 West Plumb Lane
Reno, NV 89509

Invoice No.	Invoice Date	Job No.
1131566	2/15/2017	375071
Job Date	Case No.	
2/13/2017	14-CV-0260	
Case Name		
Klement vs. Spencer		
Payment Terms		
Net 30		

Audio Tape Transcription of the Following:
Review and Analysis of Audio of Status Hearing

	921.50
TOTAL DUE >>>	\$921.50
AFTER 3/17/2017 PAY	\$1,013.65

Please note, disputes or refunds will not be honored or issued after 30 days.

1/2 = \$460.75

Tax ID: 20-3835523

Phone: 775-333-0400 Fax: 775-333-0412

Please detach bottom portion and return with payment.

Michael A. Pintar, Esq.
Glogovac & Pintar
427 West Plumb Lane
Reno, NV 89509

Job No. : 375071 BU ID : RN-CR
Case No. : 14-CV-0260
Case Name : Klement vs. Spencer
Invoice No. : 1131566 Invoice Date : 2/15/2017
Total Due : \$921.50
AFTER 3/17/2017 PAY \$1,013.65

Remit To: Sunshine Reporting and Litigation Services,
LLC
P.O. Box 98813
Las Vegas, NV 89193-8813

PAYMENT WITH CREDIT CARD

Cardholder's Name: _____
Card Number: _____
Exp. Date: _____ Phone#: _____
Billing Address: _____
Zip: _____ Card Security Code: _____
Amount to Charge: _____
Cardholder's Signature: _____
Email: _____

34312

7645 Glogovac & Pinter
10/03/17 30.7776-Transcript

460.75

460.75

10/03/17

34312

Gross:

460.75

Ded:

0.00 Net:

460.75

34312

LEMONS, GRUNDY & EISENBERG
ATTORNEYS AT LAW
6005 PLUMAS ST., THIRD FLOOR
RENO, NV 89519

NEVADA STATE BANK
RENO, NV 89505
94-77/1224

DATE
10/03/17

34312

AMOUNT
****\$460.75

PAY
TO THE
ORDER
OF

*** FOUR HUNDRED SIXTY & 75/100 DOLLARS

Glogovac & Pinter

TWO SIGNATURES REQUIRED OVER 1000.00 DOLLARS
VOID AFTER 180 DAYS

AUTHORIZED SIGNATURE

⑈034312⑈ ⑆122400779⑆0542041629⑈

Details on Back



Security Features Included

LEMONS, GRUNDY & EISENBERG

CHECK REQUEST

DATE: 10/3/2017

DATE NEEDED: 10/3/2017

AMOUNT: \$460.75

PAYEE: Glogovac & Pintar

PURPOSE: Reimbursement for ½ of cost of transcript for
January 30, 2017 hearing

CASE NAME: Klementi adv. Spencer

CLIENT NO.: 30.7776

ATTORNEY: DRB

REQUESTED BY: CNA



151 County Estates Circle
Reno, NV 89511
Phone: 800-330-1112
litigationservices.com

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street Ste. 300
Reno, NV 89519

*ok
02/57*

INVOICE

Invoice No.	Invoice Date	Job No.
1152281	5/17/2017	392606
Job Date	Case No.	
5/12/2017		
Case Name		
Spencer vs. Kinion		
30.7776	Payment Terms	
Due upon receipt		

1/4 the Cost of the Per Diem
Hearing

82.50
TOTAL DUE >>> \$82.50
AFTER 6/16/2017 PAY \$90.75

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 20-3835523

Phone: 775-786-6868 Fax: 775-786-9716

Please detach bottom portion and return with payment.

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street Ste. 300
Reno, NV 89519

Job No. : 392606 BU ID : RN-CR

Case No. :

Case Name : Spencer vs. Kinion

Invoice No. : 1152281 Invoice Date : 5/17/2017

Total Due : \$ 82.50

AFTER 6/16/2017 PAY \$90.75

Remit To: **Sunshine Reporting and Litigation Services,
LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

PAYMENT WITH CREDIT CARD



Cardholder's Name:

Card Number:

Exp. Date:

Phone#:

Billing Address:

Zip:

Card Security Code:

Amount to Charge:

Cardholder's Signature:

Email:

O.K. For LGE to pay direct,
\$ bill to 30.7776 of



Discovery - Depositions - Trial

151 Country Estates Circle
Reno, NV 89511
Phone: 800-330-1112
litigation-services.com

Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street Ste. 300
Reno, NV 89519

INVOICE

Invoice No.	Invoice Date	Job No.
1157808	6/12/2017	398293
Job Date	Case No.	
6/9/2017	14-CV-0260	
Case Name		
Klementi vs. Spencer		
Payment Terms		
Due upon receipt		

Transcript of Proceedings
Settlement

-142.00
TOTAL DUE >>> \$142.00
AFTER 7/12/2017 PAY \$156.20

Please note, disputes or refunds will not be honored or issued after 30 days

(-) Payments/Credits: 0.00
(+) Finance Charges/Debits: 14.20
(=) New Balance: \$156.20

Tax ID: 20-3835523

Phone: 775-786-6868 Fax: 775-786-9716

Please detach bottom portion and return with payment.

Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street Ste. 300
Reno, NV 89519

Invoice No. : 1157808
Invoice Date : 6/12/2017
Total Due : \$ 156.20

Remit To: **Sunshine Reporting and Litigation Services,
LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

Job No. : 398293
BU ID : RN-CR
Case No. : 14-CV-0260
Case Name : Klementi vs. Spencer

Thank you for your payment!

This service has been provided by Douglas County District Court, NV and Point & Pay. We value your business. Please keep this receipt for future reference.

You have made a payment to Douglas County District Court, NV . Douglas County District Court thanks you for your payment. For questions about your account, please call 775-782-9820

Name: Douglas Brown
Address: 6005 Plumas St., Suite 300, Reno NV, US, 89519
Contact: 7757866868
Comments:

Payment ID: 23810032
Date: 04/19/16 09:19 AM
Subtotal: \$43.50
Fee: \$2.00
Total: \$45.50
Method: Credit or Debit Card(*****8413)

Item Purchased	Transaction Description	Account	Amount
Fines and Fees	Douglas Co Distri Ct	13-CR-0036	\$43.50

Signature: _____ **Date:** ____/____/____

By signing this receipt you agree to the terms and conditions of this service.

You will see two line items on your credit or debit card statement. One line will indicate the amount you paid to the Douglas County District Court and will read *Douglas Co Distri Ct* . If you have any questions about either of these charges please call 1-888-891-6064.

[Print Receipt](#) [Close Window](#)

LEMONS, GRUNDY & EISENBERG (FIRM) CREDIT CARD CHARGE FORM

DATE CHARGED: 4/19/2016

CASE NAME: Klementi adv. Spencer

FILE NO.: 30 7776

AMOUNT CHARGED: \$45.50

PAYMENT MADE TO: Douglas County District Court

PURPOSE OF CHARGE: copy charges (87 @ .50 per page)

SUBMITTED BY: Catherine Ammon

EXPENSE APPROVED/REQUESTED BY: DKB

PLEASE RETURN FORM TO VONDA

WITH RECEIPT AND/OR CONFIRMATION PRINTOUT

INVOICE



SUNSHINE
Litigation
SERVICES

151 Country Estates Circle
Reno, NV 89511
Phone: 800-330-1112
Fax: 702-631-1735
www.litigationservices.com

Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street - Third Floor
Reno, NV 89519

Invoice No.	Invoice Date	Job No.
1065785	5/6/2016	307512
Job Date	Case No.	
4/7/2016		
Case Name		
Klementi vs. Spencer		
Payment Terms		
Due upon receipt		

On-the-Spot Copy Request

44.10

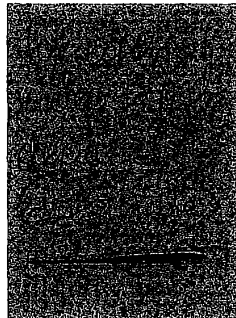
TOTAL DUE >>>

\$44.10

AFTER 6/5/2016 PAY

\$48.51

On-the-spot copy request made during depositions taken on April 7, 2016 for the above-referenced case. .



Tax ID: 20-3835523

Phone: 775-786-6868 Fax: 775-786-9716

Please detach bottom portion and return with payment.

Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street - Third Floor
Reno, NV 89519

Invoice No. : 1065785
Invoice Date : 5/6/2016
Total Due : \$ 44.10
AFTER 6/5/2016 PAY \$48.51

Remit To: **Sunshine Reporting and Litigation Services,
LLC
PO Box 843298
Los Angeles, CA 90084-3298**

Job No. : 307512
BU ID : RN-MISC
Case No. :
Case Name : Klementi vs. Spencer

32167

8220 Sunshine Reporting Services			
05/04/16	85.7569 Transcripts	1065069	281.00
05/04/16	33.7135 & 33.7163 Document		
	Depository	1065347	50.00
05/05/16	49.7707- Transcripts	1065426	504.50
05/06/16	30.7776- On the Spot Copy request	1065785	44.10
05/11/16	85.7569- Transcript	1066507	344.00

05/27/16 32167 Gross: 1,223.60 Ded: 0.00 Net: 1,223.60

32167

LEMONS, GRUNDY & EISENBERG
ATTORNEYS AT LAW
6005 PLUMAS ST., THIRD FLOOR
RENO, NV 89519

NEVADA STATE BANK
RENO, NV 89505
94-77/1224

DATE AMOUNT
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⑈032167⑈ ⑆122400779⑆0542041629⑈

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9th Judicial District Court
Clerk of the Court,
Bobbie R. Williams
Ph 782-9820 Fax 782-9954
1038 Buckeye Rd.
P.O. Box 218
Minden, NV 89423-0000

Received From: Lemons Grundy Eisenberg

14-CV-00260-DC
Copies (Case) CC

\$10.00

TOTAL DUE: \$10.00

Other: \$0.00

TOTAL PAID: \$10.00

Balance Due 14-CV-00260-DC

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Klementi v. Spencer

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LEMONS, GRUNDY & EISENBERG (FIRM) CREDIT CARD CHARGE FORM

DATE CHARGED: 2/14/18

CASE NAME: Klemen's adv. Spencer

FILE NO.: 30 7776

AMOUNT CHARGED: \$12.00

PAYMENT MADE TO: Point & Pay (Ninth Judicial)

PURPOSE OF CHARGE: Charge for copies

SUBMITTED BY: Catherine

EXPENSE APPROVED/REQUESTED BY: WAB

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Date: 09/07/2018

Detail Cost Transaction File List
LEMONS, GRUNDY & EISENBERG

Page: 1

<u>Case No.</u>	<u>Trans Date</u>	<u>Tmk</u>	<u>P</u>	<u>H Tcode/ Task Co</u>	<u>Rate</u>	<u>Amount</u>	<u>Ref</u>
Transaction Date 04/30/2015							
30.7776	04/30/2015	27	AL110	E101	0.100	17.40 Copying for April 174 @ .10/page The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/29/2015							
30.7776	05/29/2015	27	AL110	E101	0.100	1.90 Copying for May 19 @ .10/page The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/31/2015							
30.7776	07/31/2015	27	AL110	E101	0.100	27.90 Copying for July 279 @ .10/page The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 08/31/2015							
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Transaction Date 09/30/2015							
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Transaction Date 08/31/2016							
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Date: 09/07/2018

Detail Cost Transaction File List
LEMONS, GRUNDY & EISENBERG

Page: 2

<u>Case No.</u>	<u>Trans Date</u>	<u>Tmk</u>	<u>H Tcode/ P Task Co</u>	<u>Rate</u>	<u>Amount</u>	<u>Ref</u>
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Transaction Date 07/31/2017						
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GRAND TOTALS

Billable	<u>249.20</u>
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31971

1175 Catherine Ammon
04/14/16 30.7776- Travel to Tahoe

65.34

65.34

04/14/16 31971 Gross: 65.34 Ded: 0.00 Net: 65.34

31971

LEMONS, GRUNDY & EISENBERG
ATTORNEYS AT LAW
6005 PLUMAS ST., THIRD FLOOR
RENO, NV 89519

NEVADA STATE BANK
RENO, NV 89505
94-7711224

DATE
04/14/16

AMOUNT
*****\$65.34

PAY
TO THE
ORDER
OF

*** SIXTY-FIVE & 34/100 DOLLARS

Catherine Ammon

TWO SIGNATURES REQUIRED OVER 1000.00 DOLLARS
VOID AFTER 180 DAYS

AUTHORIZED SIGNATURE

⑈031971⑈ ⑆122400779⑆0542041629⑈

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MILEAGE Catherine Ammon

DATE	To Whom & Address	Mileage
4/11	Travel to Tanoa Justice Court in Stateline and 9th Judicial District Court in Mindem (reheard)	121
	30.7776	
		65.34



Two Corporation Way
Suite 150
Peabody, MA 01960

Invoice

Bill To
Lemons, Grundy & Eisenberg 6005 Plumas St. Attn: Greg Mitchell-Third Floor Reno, NV 89519

Phone | 978-278-0600
Fax | 978-278-0601
Date | 7/31/2015
Account # | 10000011260
Invoice # | 715PC11260
PO Number |

Plan	Description	Rate	Amount
PPC	LocatePlus Website Usage - July 2015	74.89	74.89
	<div>[REDACTED]</div>	<div>[REDACTED]</div>	
	<i>Klemen ti adv. Spencer 30.7776</i>		
	<div>[REDACTED]</div>		
	Invoice Total		\$74.89
	Payments/Credits <i>OK</i>		\$0.00

To Pay ONLINE: Go to payments.locateplus.com

To Pay by Credit Card: Fill out the form and fax to 978-278-0601

Card Number: _____

Exp: _____
(MM/YYYY)

CVV: _____
3 or 4 digit number
on back of card

Check off Your Card Type:

☐☐☐☐

Total Due:

\$74.89

Name on Card: _____

Billing Address: _____

City/State/Zip: _____

I hereby authorize Locateplus to bill my Visa,
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for all charges incurred while using its services.

☐ **Accept**

Signature: _____

Billing@locateplus.com

978-278-0600

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30904

5694 Locate Plus
07/31/15 July- Website Usage

715PC11260

74.89

74.89

08/28/15

30904

Gross:

74.89

Ded:

0.00 Net:

74.89

30904

LEMONS, GRUNDY & EISENBERG
ATTORNEYS AT LAW
6005 PLUMAS ST., THIRD FLOOR
RENO, NV 89519

NEVADA STATE BANK
RENO, NV 89505
94-7711224

DATE
08/28/15

30904

*****AMOUNT
\$74.89

PAY
TO THE
ORDER
OF

*** SEVENTY-FOUR & 89/100 DOLLARS

Locate Plus
2 Corporation Way
Suite 150
Peabody MA 01960

TWO SIGNATURES REQUIRED OVER 1000.00 DOLLARS
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⑈030904⑈ ⑈122400779⑈0542041629⑈

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Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street Ste. 300
Reno, NV 89519

Invoice No.	Invoice Date	Job No.
1233396	5/22/2018	465361
Job Date	Case No.	
5/9/2018	14-CV-0260	
Case Name		
Klementi vs. Spencer		
30.7776	Payment Terms	
Due upon receipt		

Conference Room Rental
Settlement Conference

150.00

TOTAL DUE >>> \$150.00

AFTER 6/21/2018 PAY \$165.00

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Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street Ste. 300
Reno, NV 89519

Job No. : 465361 BU ID : RN-MISC

Case No. : 14-CV-0260

Case Name : Klementi vs. Spencer

Invoice No. : 1233396 Invoice Date : 5/22/2018

Total Due : \$ 150.00

AFTER 6/21/2018 PAY \$165.00

Remit To: **Sunshine Reporting and Litigation Services,**
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Las Vegas, NV 89193-8813

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Card Number:

Exp. Date:

Phone#:

Billing Address:

Zip:

Card Security Code:

Amount to Charge:

Cardholder's Signature:

Email:

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Case No. 14-CV-0260

SEP 20 2018

2018 SEP 20 PM 3:01

Dept. No. 1

Douglas County
Clerk

BOBBIE R. WILLIAMS
CLERK

[Signature]
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, & DOES 1-5,

Defendant

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON
KLEMENTI, an individual, ELFRIDE
KLEMENTI, an individual, MARY ELLEN
KINION, an individual, ROWENA SHAW, an
individual, PETER SHAW, an individual, and
DOES 1-5,

Counter-defendants & Third-
Party Defendants.

COUNTER-DEFENDANT HELMUT KLEMENTI'S
MOTION FOR ATTORNEY'S FEES

Counter-defendant HELMUT KLEMENTI, by and through his counsel of record, Douglas
R. Brown, Christian L. Moore, and Sarah M. Molleck of Lemons, Grundy & Eisenberg,
respectfully moves for attorney's fees pursuant to NRCP 54(d)(2) and NRS 18.010. This
motion is based on the memorandum of points and authorities herein, the attached exhibits,
the transcripts of proceedings in this action, all papers and pleadings on file in this matter, and
any other information this Court deems appropriate to consider.

///

LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 This case commenced on December 17, 2014, as an action for damages suffered by
4 now Counter-defendant Helmut Klementi after he was violently knocked to the ground by
5 Jeffrey Spencer on the evening of December 18, 2012 after taking photographs of a snow
6 beam. Mr. Spencer, in retaliatory fashion, filed a counterclaim against Helmut, ultimately
7 bringing five different and serious causes of action against Helmut for defamation, malicious
8 prosecution, civil conspiracy to commit defamation and malicious prosecution, and intentional
9 infliction of emotional distress.

10 As this Court recognized and held on July 12, 2018, not a single one of Mr. Spencer's
11 claims was supported by competent, credible evidence. In fact, the record revealed Mr.
12 Spencer produced no admissible evidence to defeat Helmut's motion for summary judgment.
13 On August 23, 2018, four years after this case began, summary judgment was entered in
14 Helmut's favor and against Mr. Spencer on all five counterclaims. When an action is brought
15 "without reasonable grounds or to harass," then an award of attorney's fees is authorized by
16 NRS 18.010(2). In fact, NRS 18.010(2) is so liberally construed in situations like this that the
17 legislature expressed its intent that courts should award attorney's fees "to punish and deter
18 frivolous or vexatious claims and defenses because **such claims and defenses overburden**
19 **limited judicial resources, hinder the timely resolution of meritorious claims and increase**
20 **the costs of engaging in business and providing professional services to the public."**
21 NRS 18.010(2)(b) (emphasis added). After countless depositions and discovery lasting four
22 years, Mr. Spencer was unable to produce any evidence to support his claims against Helmut.
23 This is the exact type of case contemplated by the legislature when it provided courts with a
24 mechanism to award attorney's fees to deter litigants like Mr. Spencer from filing frivolous,
25 retaliatory, vexatious litigation in the future.

26 II. PROCEDURAL AND FACTUAL BACKGROUND

27 This action arose out of an incident that occurred on December 18, 2012, when Mr.
28 Spencer violently knocked then-78-year-old Helmut Klementi to the ground, causing Helmut

1 to sustain serious personal injuries. Mr. Spencer was arrested for battery after investigating
2 officers at the scene determined that Mr. Spencer's version of the evening's events was
3 simply not credible.¹ A criminal proceeding was initiated, where Mr. Spencer was charged
4 with battery upon Helmut. Deputy District Attorney Maria Pence decided to elevate the
5 seriousness of the battery charge to a felony after she reviewed Helmut's medical records
6 demonstrating that he had suffered substantial bodily harm.² The criminal case proceeded to
7 trial, where Helmut testified as the victim of a crime and a witness for the State. Mr. Spencer
8 was ultimately acquitted.

9 After Mr. Spencer's acquittal, and in response to Helmut's civil action for personal
10 injury against him, Mr. Spencer filed five counterclaims against Helmut. Mr. Spencer's
11 complaint asserted Helmut had defamed him by reading a statement to the Douglas County
12 Planning Commission, by responding to investigating officers' questions the night of
13 December 18, 2012, and by testifying as the victim of a crime in Mr. Spencer's criminal
14 proceedings. *Complaint*, generally.

15 Mr. Spencer also repeatedly informed Helmut's counsel and this Court that he had
16 "video surveillance" evidence to support his theory that he believed Helmut was a hooded
17 teenager trespassing on Mr. Spencer's property and attempting to break into his truck. (This is
18 the same theory responding officers deemed "not credible" when investigating the underlying
19 criminal case).³ Although Mr. Spencer produced *some* video evidence of the night in question,
20 he never produced the video clip of Helmut trespassing on his property. Notably, the footage

21 ///

22 ///

23 ///

24

25 ¹ *Counter-defendant Helmut Klementi's Motion for Summary Judgment on All Counterclaims* ("Helmut
26 MSJ"), Exhibits 7-8.

27 ² *Helmut MSJ*, Exhibit 12.

28 ³ *See* fn. 1, *infra*.

1 Mr. Spencer did produce from camera 3 (the driveway view) does not contain footage from
2 the operative timeframe during which he alleged Helmut was on his property.⁴ The
3 conclusion is clear: Helmut, a 78-year old man who has trouble ambulating, was not on Mr.
4 Spencer's property that night and Mr. Spencer had no evidence to prove it.

5 On July 12, 2018, all parties appeared before this Court on pending summary judgment
6 motions. After consideration of the Helmut's motion and oral argument presented by both
7 sides, this Court specifically found "no evidence whatsoever" in regard to Mr. Spencer's
8 claims. *Transcript of Proceedings – July 12, 2018 Hearing* ("MSJ Hearing"), pp. 56:9-25—57:1-
9 2. As to all of Mr. Spencer's claims, whether against Helmut or against other third-party
10 defendants, the Court concluded there were "no facts to take forward to the jury in regards to
11 any of the allegations" contained in Mr. Spencer's complaint. *Id.* p. 57:21-23. Mr. Spencer's
12 claims were deemed "one-sided" by Mr. Spencer against Helmut. *Id.* p. 56:14-20. This Court
13 also ruled the statements Helmut gave to reporting officers, at trial, and to the Douglas
14 County Planning Commission were all true. *Id.* p. 56:9-20.

15 Thus, summary judgment was granted in favor of Helmut and against Mr. Spencer on
16 all of Mr. Spencer's claims. *Id.*, p. 57; and *Order Granting Counter-Defendant Helmut*
17 *Klementi's Motion for Summary Judgment on All Claims* entered August 23, 2018. This motion
18 for attorney's fees followed Helmut's timely *Verified Memorandum of Costs*

19 III. LEGAL ANALYSIS AND APPLICATION

20 A. Attorney's fees under NRS 18.010(2)(b) are warranted.

21 Subsection 2 of NRS 18.010 permits a prevailing party to recover attorney's fees in the
22 following circumstance:

23 (b) Without regard to the recovery sought, when the court finds that the claim,
24 counterclaim, cross-claim or third-party complaint or defense of the opposing
25 party was brought or maintained without reasonable ground or to harass the

26
27 ⁴ See *Video Exhibit in support of Responses to Motions for Summary Judgment & to Motion for*
28 *Sanctions Based on Spoliation of Evidence* filed June 1, 2016. This flash drive contains five video files
for December 18, 2012. The video footage beings at 8:40 and ends at 8:44 – however, the timeframe
from 8:42:11 through 8:45:50 is conspicuously absent and was never produced.

prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and 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.

NRS 18.010(2)(b). A prevailing party under NRS 18.010 is one who "succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit." *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. Adv. Op. 8, 367 P.3d 1286, 1292 (2016). When a party is meritorious on summary judgment, it is a prevailing party for purposes of NRS 18.010. *Id.* In this case, Helmut is the prevailing party because he was meritorious in obtaining summary judgment in his favor on all five counterclaims alleged by Mr. Spencer.

Where a counterclaim is brought or maintained without reasonable ground or to harass the prevailing party, attorney's fees are appropriate. A claim is groundless and frivolous where "the allegations in the complaint are not supported by any credible evidence at trial." *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 996, 860 P.2d 720, 724 (1993) (finding attorney's fees were warranted where evidence failed to support respondent's allegations); *Bergmann v. Boyce*, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993) (superseded by statute on other grounds) (there was "ample evidence" in the record to support a finding that respondent's claims were groundless); *Foster v. Dingwall*, 126 Nev. 56, 72, 227 P.3d 1042, 1052 (2010) (attorney's fees proper where claims and defenses were not based in law or fact).

In this case, as recognized by this Court, Mr. Spencer's claims against Helmut were brought and maintained without reasonable ground. It is clear Mr. Spencer and his counsel failed to conduct any reasonable investigation into the facts and applicable law before filing serious allegations against Helmut. A brief inquiry by Mr. Spencer's counsel into applicable Nevada law would have revealed at the onset of this action that Mr. Spencer's counterclaims against Helmut failed as a matter of law because all of Helmut's statements were made in a judicial or quasi-judicial setting. Therefore, those statements were protected by the absolute or conditional immunities afforded to persons who testify before tribunals or provide

1 information to reporting officers during a criminal investigation.

2 Mr. Spencer's maintenance of his Counterclaim is even more egregious in light of the
3 fact that four years elapsed where Mr. Spencer did not produce a single piece of concrete
4 evidence to support his allegations against Helmut. During his two depositions, Mr. Spencer
5 repeatedly dodged questions regarding the evidence he had to support his claims, instead
6 stating the evidence was in his criminal trial transcripts or in the notes he had given his
7 attorney.⁵ Mr. Spencer never gave a specific answer to exactly what statements Helmut made
8 that were defamatory. He instead provided vague, ambiguous references to video evidence
9 and "a lot of statements."⁶ In fact, Mr. Spencer's maintenance of his suit was so devoid of any
10 evidentiary foundation, that this Court recognized counsel for Helmut had to "piecemeal [and]
11 had to follow the bouncing ball" to even determine what Mr. Spencer's claims were and what
12 evidence supposedly supported those claims. *MSJ Hearing*, p. 60:7-14.

13 In considering the amount of time the court and defense counsel have spent on this
14 case, it is clear an award of attorney's fees under NRS 18.010(2)(b) is appropriate. Litigation
15 of this case has imposed a significant burden on judicial resources and counsel in the defense
16 of a frivolous and vexatious counterclaim filed by Mr. Spencer.

17 **B. Attorney's fees incurred in the amount of \$30,000.00 are reasonable under *Brunzell*.**

18 After a court determines that attorney's fees are warranted, a court must determine
19 the reasonable amount to award for attorney's fees. The proper factors a court considers
20 under this inquiry are set out in *Brunzell v. Golden Gate Nat. Bank*:

21 (1) the qualities of the advocate: his ability, his training, education, experience,
22 professional standing and skill; (2) the character of the work to be done: its
23 difficulty, its intricacy, its importance, time and skill required, the responsibility
24 imposed and the prominence and character of the parties where they affect
25 the importance of the litigation; (3) the work actually performed by the lawyer:
26 the skill, time and attention given to the work; (4) the result: whether the
27 attorney was successful and what benefits were derived.

28 ⁵ *Helmut MSJ*, Exhibit 3 "Deposition of Jeffrey Spencer dated July 28, 2016," pp. 71-79, 162-165, 172.

⁶ *Id.*, pp. 82-85, 160 ("there is a lot of stuff I haven't provided yet...there's a lot of video. A lot of statements.").

1 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Each of these factors is considered in equal regard,
2 without one factor predominating over the other. *Id.*; see also *O'Connell v. Wynn Las Vegas,*
3 *LLC.*, 134 Nev. Adv. Op. 67 (2018) (district court must properly weigh *Brunzell* factors and
4 provide "sufficient reasoning and findings in support of its ultimate determination").

5 As to the first factor, the attorneys who defended Mr. Klementi were Douglas R.
6 Brown, Christian L. Moore, and Sarah M. Molleck. Mr. Brown and Mr. Moore are experienced
7 litigators who have completed dozens of jury trials to verdict and reached hundreds of
8 successful outcomes in the defense of their clients. Mr. Moore has been practicing law since
9 1989 and is an AV-rated attorney through Martindale-Hubbell. Mr. Brown has been practicing
10 since 2001 after serving in the United States Marine Corp and is an AV-rated attorney through
11 Martindale-Hubbell. Ms. Molleck was admitted to the bar in 2015 and has significant legal
12 research and writing experience from her two-year clerkship in district court. She is an active
13 member of the legal community, including the American Inns of Court. The resumes for each
14 attorney are attached hereto as **Exhibit 2**, as well as the *Affidavit of Douglas R. Brown in*
15 *Support of Motion for Attorney's Fees*, which is attached hereto as **Exhibit 1**. The qualities of
16 the legal advocates in this case are not at issue.

17 The second factor requires this Court to examine the character of the work to be done:
18 "its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed
19 and the prominence and character of the parties where they affect the importance of the
20 litigation." *Brunzell*, 85 Nev. at 349. All of these factors are reflected in considering the
21 motion for summary judgment filed by Helmut's counsel in this case. Although not disfavored
22 under the Nevada Rules of Civil Procedure, summary judgment is difficult to obtain. It
23 requires a working knowledge of the summary judgment standard and the applicable
24 substantive area of the law, as well as a clear grasp on all of the material facts presented in
25 the case. This case was important, because Mr. Spencer sought punitive damages against
26 Helmut. Such an award would be borne personally by Helmut, as his insurer would not pay
27 for a punitive damages award against him. Thus, the work that counsel spent in defending
28 Helmut was difficult and serious.

1 Under the third factor, the Court considers the work actually performed by the lawyer:
2 the skill, time, and attention given to the work. There is no question Helmut's counsel in this
3 case spent a significant amount of time defending him. As provided in detail throughout
4 these proceedings, Mr. Spencer never identified a single statement made by Helmut that was
5 defamatory in nature. Counsel for Helmut had to hunt through the record to determine what
6 facts, if any supported Mr. Spencer's vague assertions. At the summary judgment hearing,
7 this Court stated, "it was hard for the defense to speculate, to put together, to try to
8 piecemeal" Mr. Spencer's legal theories. *MSJ Transcript*, p. 60. Counsel for Helmut "had to
9 follow the bouncing ball." *Id.* Helmut's counsel devoted significant time, skill, and attention to
10 taking numerous depositions, propounding discovery, and drafting a summary judgment
11 motion that would be meritorious or cause Mr. Spencer to produce in opposition the evidence
12 he claimed supported his case. Counsel also obtained settlement authority and participated
13 in mediation even though a strong motion for summary judgment was pending. By virtue of
14 the documents filed on behalf of Helmut in this case, it is clear his counsel devoted much time
15 and effort to defend him.

16 The fourth and final factor is the result the attorney obtains for the client and what
17 benefits were derived for the client. Summary judgment was granted in favor of Helmut in a
18 contentious case comprised of five serious counterclaims. Counsel for Helmut could not have
19 obtained a better result for him. Helmut faced a punitive damages award that could have
20 personally affected him, as well as a lengthy jury trial. The summary judgment order in
21 Helmut's favor on all five counterclaims was the best result his counsel could obtain for him,
22 because it put at rest a meritless case that continued to affect Helmut on a daily basis.

23 Counsel for Helmut incurred attorney's fees totaling \$48,787.00 in this case. See
24 **Exhibit 3**, attached hereto, "Detail Fee Transaction File Lists." A total of 296.20 attorney hours
25 were spent on this case. *Id.* In light of counsel's reasonable hourly rate at an average of \$160
26 per hour, it is respectfully requested that this court award \$30,000.00 in attorney's fees to
27 Helmut in this case. Substantial evidence supports a finding that this amount is warranted,
28 especially in light of the express mandates of NRS 18.010(2)(b).

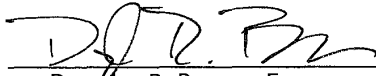
1 **IV. CONCLUSION**

2 This was a time-consuming case involving serious allegations against Helmut Klementi,
3 for which the Court ultimately determined summary judgment was appropriate. Mr. Spencer
4 simply had no evidence to support his claims. The legislature has expressed its intent for
5 courts to award attorney's fees in cases like this where a party has no reasonable grounds to
6 bring or maintain a suit. The purpose is to deter and punish frivolous and vexatious behavior
7 that taxes the legal system as a whole. In light of the significant time spent by counsel in
8 defending Helmut Klementi, an award of attorney's fees in the amount of \$30,000 is
9 reasonable for this case.

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

12 Dated: September 20, 2018.

13 Lemons, Grundy & Eisenberg

14
15 BY: 
16 Douglas R. Brown, Esq.
17 Christian L. Moore, Esq.
18 Sarah M. Molleck, Esq.
19 Attorneys for Helmut Klementi

1 **CERTIFICATE OF MAILING**


2 Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg
3 and that on September 20, 2018, I deposited in the United States Mail, with postage fully
4 prepaid, a true and correct copy of the within **COUNTER-DEFENDANT HELMUT KLEMENTI'S**
5 **MOTION FOR ATTORNEY'S FEES**, addressed to the following:

6 Jeffrey D. Spencer
7 P. O. Box 2326
8 Stateline, NV 89449
9 *In Pro Per*

10 David M. Zaniel, Esq.
11 Ranalli & Zaniel, LLC
12 50 West Liberty Street, Suite 1050
13 Reno, Nevada 89501
14 *Attorney for Jeffrey Spencer*

Michael A. Pintar, Esq.
Glogovac & Pintar
427 West Plumb Lane
Reno, Nevada 89509
*Attorney for Mary Ellen Kinion,
Egon Klementi and Elfriede Klementi*

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

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Susan G. Davis

INDEX OF EXHIBITS

<i>Exhibit No.</i>	<i>Description</i>	<i>Length of Exhibit</i>
1	Affidavit of Douglas R. Brown in Support of Motion for Attorney's Fees	2 pages
2	Resumes of Christian L. Moore, Douglas R. Brown, and Sarah M. Molleck	4 pages
3	Detail Fee Transaction File List	51 pages

EXHIBIT 1

EXHIBIT 1

AFFIDAVIT OF DOUGLAS R. BROWN IN SUPPORT OF MOTION FOR ATTORNEY'S FEES

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, Douglas R. Brown, being first duly sworn, depose and say under penalty of perjury:

1. I am an attorney at law at Lemons, Grundy & Eisenberg, licensed in the State of Nevada and in good standing, and am counsel of record for Counter-defendant Helmut Klementi ("Helmut").

2. This Affidavit is submitted in support of Helmut's *Motion for Attorney's Fees* filed concurrently herewith.

3. My firm was retained to defend Helmut on or about March 24, 2015.

4. Attached as **Exhibit 2** to this Motion are true and correct copies of the resumes of Christian L. Moore, Sarah M. Molleck, and myself, which attest to our qualities as counsel pursuant to the first factor of the *Brunzell* analysis as detailed in the current Motion.

5. Attached as **Exhibit 3** to this Motion are true and correct copies of the Detail Fee Transaction File Lists for Douglas R. Brown (timekeeper 27), Christian L. Moore (timekeeper 10), and Sarah M. Molleck (timekeeper 65). Redactions to the Detail Fee Transaction File List for timekeeper 65 have been redacted to remove attorney work-product.

6. A review of my firm's timekeeping and billing system reveals that I billed a total of 137.60 hours in this case, from my initial file review through filing Counter-defendant's *Memorandum of Costs*, for a total of \$24,080.00.

7. A review of my firm's timekeeping and billing system reveals that Christian Moore billed a total of 57 hours from his preparation for depositions in this case through communications with our digital forensics expert, for a total of \$9,975.00.

8. A review of my firm's timekeeping and billing system reveals that Sarah Molleck billed a total of 101.6 hours, from her preparation of a significant motion for summary judgment and mediation statement through her preparation of Counter-defendant's *Memorandum of Costs*, for a total of \$14,732.00.

///

1 9. The total amount my firm billed in attorney's fees for the defense of this case is
2 \$48,787.00.

3 10. The hourly billing rates for Christian Moore and myself are \$175.00 and the
4 hourly billing rate for Ms. Molleck is \$145.00. These rates are very reasonable in comparison
5 to the customary rates charged by practitioners in this community.

6 11. The fees incurred in this case were actually and necessarily incurred in the
7 defense of our client, Helmut Klementi. As is evident from the record before this Court, the
8 efforts our firm dedicated to the defense of Helmut Klementi to protect him from a punitive
9 damages award were difficult and important and required much time and skill by counsel. As
10 a result of our firm's efforts, a successful result was obtained on behalf of our client, resulting
11 in summary judgment in favor of Mr. Klementi on all five claims alleged by Mr. Spencer in his
12 Counterclaim.

13 12. A reasonable amount of attorney's fees in this case is \$30,000, for the defense
14 of Mr. Klementi.

15 13. I declare under penalty of perjury the foregoing is true and correct.

16 Dated: September 20, 2018.

17

18


DOUGLAS R. BROWN

19 SUBSCRIBED and SWORN to before me
20 this 20th day of September, 2018.

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Notary Public

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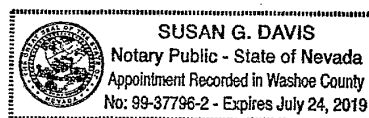


EXHIBIT 2

EXHIBIT 2

Curriculum Vitae
CHRISTIAN L. MOORE
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada, 89503
(775) 786-6868

PROFESSIONAL EXPERIENCE

Lemons, Grundy & Eisenberg
Employed 1989 to Present
Equity Shareholder
AV-rated by Martindale Hubbell

BAR ADMISSIONS

State Bar of Nevada, 1989
State Bar of California, 1990
United States District Court, District of Nevada, 1990
United States District Court, Eastern District of California, 1990
United States Court of Appeals, Ninth Circuit, 1992

LEGAL ASSOCIATION MEMBERSHIPS (BOTH CURRENT AND HISTORIC)

Washoe County Bar Association
Association of Defense Counsel of Nevada
Association of Defense Counsel of Northern California
American Bar Association
Defense Research Institute
Master, Bruce R. Thompson Inn, American Inns of Court
American Judicature Society
American Board of Trial Advocates

Curriculum Vitae
Douglas R. Brown
6005 Plumas Street, Third Floor
Reno, Nevada 89519
(775) 786-6868

Education

University of the Pacific, McGeorge School of Law, Sacramento, CA
Juris Doctor, May 2001

University of Nevada, Las Vegas, Las Vegas, NV
Bachelor of Arts: Political Science, May 1997

Organizations

State Bar of Nevada

Licensed, 2001 (State Bar No. 7620)

American Inns of Court, Bruce R. Thompson Chapter, Reno, NV

Barrister, August 2001 – 2009

Association of Defense Counsel of Nevada, Reno, NV

January 2002 - Present (President, 2006-2007)

Defense Research Institute, Chicago, IL

Nevada State Representative, March 2008 – 2012

Military

United States Marine Corps, 1989 – 1993

Legal Experience

Lemons, Grundy & Eisenberg, Reno, NV

Shareholder, July 2007 - Present

Associate, July 2002 - June 2007

AV Rated by Martindale Hubbell - 2013

Practice Areas: Civil Litigation and Commercial Transactions

- Substantial tort, commercial litigation and business practice.
- Litigated several bench and jury trials to conclusion.
- Participated in numerous mediations and settlement conferences.
- Significant motion practice.

Page 2

- Drafted appellate briefs and presented oral arguments before the Nevada Supreme Court.
- Appeared on behalf of clients at state administrative proceedings.
- Involved in numerous coverage disputes on behalf of insurance carriers.
- Involved in the preparation of insurance coverage opinions arising from coverage disputes and suspicious losses.
- Arbitrator for the mandatory court annexed arbitration program.

Hon. William A. Maddox, First Judicial District, Carson City, NV

Law Clerk, August 2001- July 2002

- Drafted bench orders and memoranda.
- Performed extensive legal research and writing.
- Attended oral arguments at civil and criminal proceedings.
- Participated in several civil and criminal jury trials.

Hon. Howard D. McKibben, United States District Court, District of Nevada

Summer Extern, May 1999 - August 1999

- Received first hand knowledge of the workings behind a federal chamber and court.
- Performed legal research and writing.
- Drafted bench orders and memoranda.
- Attended oral arguments at civil and criminal proceedings.

Curriculum Vitae
Sarah M. Molleck, Esq.
6005 Plumas Street, Third Floor, Reno NV 89519
(775) 786-6868 / mmm@lge.net

PROFESSIONAL EXPERIENCE

Lemons, Grundy & Eisenberg, September 2017—present (Reno, NV)
Associate Attorney, Civil Litigation

Second Judicial District Court for the State of Nevada, August 2015—August 2017 (Reno, NV)
Law Clerk to Honorable Lynne K. Simons

Unemployment Law Project, January 2015—May 2015 (Spokane, WA)
Legal Extern

Spokane County Superior Court, May 2014—December 2014 (Spokane, WA)
Judicial Extern to Honorable Annette Plese

Keller Rohrback L.L.P., May 2014—August 2014 (Seattle, WA)
Summer Associate, Complex Litigation

Gonzaga University School of Law, May 2013—May 2014 (Spokane, WA)
Research Assistant to Professor Brooks R. Holland

University Legal Assistance, May 2013—August 2013 (Spokane, WA)
Legal Clerk, Foreclosure Prevention Clinic

BAR ADMISSIONS

State Bar of Nevada – 2015
United States District Court, District of Nevada – 2017

LEGAL ASSOCIATION MEMBERSHIPS

Washoe County Bar Association
Association of Defense Counsel of Nevada
American Inns of Court, Bruce R. Thompson Inn
Northern Nevada Women Lawyers Association

EDUCATION

Gonzaga University School of Law – May 2015 (Spokane, WA)
Juris Doctor, Magna Cum Laude

- CALI Award Recipient: Antitrust, Legal Research & Writing
- Gonzaga Journal of International Law, Managing Editor

University of Nevada, Reno – December 2011 (Reno, NV)
Bachelor of Arts in journalism, minor in French, Dean's List

EXHIBIT 3

EXHIBIT 3

Douglas R. Brown

Timekeeper 27

Date: 09/17/2018

Detail Fee Transaction File List
LEMONS, GRUNDY & EISENBERG

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<u>Case No.</u>	<u>Trans Date</u>	<u>Tmk</u>	<u>H Tcode/ P Task Co</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref</u>
Transaction Date 03/24/2015							
30.7776	03/24/2015	27	AL110 A104	175.00	0.40	70.00 L110 Fact Investigation/Development; A104 Review/analyze Review file materials for new case assignment. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/25/2015							
30.7776	03/25/2015	27	AL110 A108	175.00	0.40	70.00 L110 Fact Investigation/Development; A108 Communicate (other external) Telephone conference with claims professional re: new matter. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/25/2015	27	AL110 A103	175.00	0.40	70.00 L110 Fact Investigation/Development; A103 Draft/revise Prepare acknowledgement letters to claims professional, opposing counsel and co-counsel The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/30/2015							
30.7776	03/30/2015	27	AL110 A108	175.00	0.10	17.50 L110 Fact Investigation/Development; A108 Communicate (other external) leave detailed voicemail with co-counsel, Joe Laub re: status of case and notice of counterclaim The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/30/2015	27	AL110 A103	175.00	0.20	35.00 L110 Fact Investigation/Development; A103 Draft/revise letter to co-counsel re: status of case The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/31/2015							
30.7776	03/31/2015	27	AL110 A103	175.00	0.30	52.50 L110 Fact Investigation/Development; A103 Draft letter to client re: counterclaim. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/31/2015	27	AL110 A108	175.00	0.10	17.50 L110 Fact Investigation/Development; A108 Communicate (other external) prepare letter to co-counsel re: association of counsel in new matter. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH

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<u>Case No.</u>	<u>Trans Date</u>	<u>Tmk</u>	<u>H Tcode/ P Task Co</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>		<u>Ref</u>
Transaction Date 03/31/2015								
30.7776	03/31/2015	27	AL110 A108	175.00	0.10	17.50	L110 Fact Investigation/Development; A108 Communicate (other external) prepare acknowledgement letter to opposing counsel. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/31/2015	27	AL110 A103	175.00	0.30	52.50	L110 Fact Investigation/Development; A103 Draft notice of association. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/13/2015								
30.7776	04/13/2015	27	AL110 A108	175.00	0.30	52.50	L110 Fact Investigation/Development; A108 Communicate (other external) with client re: status and allegations of complaint. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/17/2015								
30.7776	04/17/2015	27	AL110 A106	175.00	1.40	245.00	L110 Fact Investigation/Development; A106 Communicate (with client) re: facts and circumstances surrounding counterclaim. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/22/2015								
30.7776	04/22/2015	27	AL110 A108	175.00	0.80	140.00	L110 Fact Investigation/Development; A108 Communicate (other external) review documents provided by Mr. Klementi's counsel concerning prior action and dispute with Mr. Spencer. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/24/2015								
30.7776	04/24/2015	27	AL110 A104	175.00	0.20	35.00	L110 Fact Investigation/Development; A104 Review letter from retained defense counsel for Mr. Spencer re: involvement in case The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/30/2015								
30.7776	04/30/2015	27	AL110 A108	175.00	0.80	140.00	L110 Fact Investigation/Development; A108 Communicate (other external) prepare for and attend initial case conference with claims professional Julie Haick	ARCH

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<u>Case No.</u>	<u>Trans Date</u>	<u>H Tcode/ Tmk P Task Co</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>		<u>Ref</u>
Transaction Date 04/30/2015							
						The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 05/29/2015							
30.7776	05/29/2015	27 AL110 A108175.00		0.40	70.00	L110 Fact Investigation/Development; A108 Communicate (other external) review defendant's witness list and discovery requests The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	05/29/2015	27 AL110 A108175.00		0.40	70.00	L110 Fact Investigation/Development; A108 Communicate (other external) prepare letter to client re: status of case and responses to request for production of documents. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	05/29/2015	27 AL110 A108175.00		0.40	70.00	L110 Fact Investigation/Development; A108 Communicate (other external) telephone conference with co-counsel re: strategy The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/31/2015							
30.7776	05/31/2015	27 AL110 A103175.00		0.70	122.50	L110 Fact Investigation/Development; A103 Draft/revise liability metric report for Hartford The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 06/05/2015							
30.7776	06/05/2015	27 AL110 A104175.00		0.30	52.50	L110 Fact Investigation/Development; A104 Review/analyze email from client re: discovery requests (.3) The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 06/16/2015							
30.7776	06/16/2015	27 AL110 A108175.00		0.50	87.50	L110 Fact Investigation/Development; A108 Communicate (other external) telephone conference with Dr. Shaw re: surveillance performed on her byu plaintiff's private investigator. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	06/16/2015	27 AL120 A108175.00		0.40	70.00	L120 Analysis/Strategy; A108 Communicate (other external) review correspondence and proposed amended complaint from opposing counsel.	ARCH

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<u>Case No.</u>	<u>Trans Date</u>	<u>H Tcode/ Tmk P Task Co</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref</u>
Transaction Date 06/16/2015						
					The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 06/17/2015						
30.7776	06/17/2015	27 AL110 A108175.00		0.30	52.50 L110 Fact Investigation/Development; A108 Communicate (other external) telephone conference with Dr. Shaw re: amended c omplaint. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	06/17/2015	27 AL110 A108175.00		0.30	52.50 L110 Fact Investigation/Development; A108 Communicate (other external) telephone conference with Julie A. Haiek re: status and amended complaint. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 06/18/2015						
30.7776	06/18/2015	27 AL110 A108175.00		0.40	70.00 L110 Fact Investigation/Development; A108 Communicate (other external) telephone conference with attorney Nicholas Palmer re: status and proposed amended complaint. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 06/29/2015						
30.7776	06/29/2015	27 AL110 A104175.00		0.20	35.00 L110 Fact Investigation/Development; A104 Review correspondence from defendatn Rowina Shaw re: information relating to the private investigator who attempted to contact her. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 06/30/2015						
30.7776	06/30/2015	27 AL110 A104175.00		0.30	52.50 L110 Fact Investigation/Development;; A104 Review/analyze file status and communicate with paralegal and associate attorney re: litigation strategy. (no charge). The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/17/2015						
30.7776	07/17/2015	27 AL110 A104175.00		0.10	17.50 L110 Fact Investigation/Development; A104 Review/analyze Order transferring case to department 1 of the 9th Judicial Dist. Court. The Hartford	ARCH

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<u>Case No.</u>	<u>Trans Date</u>	<u>H Tcode/</u> <u>Tmk P Task Co</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref</u>
Transaction Date 07/17/2015						
Klementi, Helmut adv. Spencer, Jeffrey						
Transaction Date 07/20/2015						
30.7776	07/20/2015	27 AL110 A104175.00	0.20	35.00	L110 Fact Investigation/Development; A104 Review/analyze affidavit of Tyrone Atwater re: produciton of documents. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/21/2015						
30.7776	07/21/2015	27 AL110 A104175.00	0.20	35.00	L110 Fact Investigation/Development; A104 Review/analyze Notice of Preemptory Challenge of Judge filed by opposing counsel. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/24/2015						
30.7776	07/24/2015	27 AL110 A104175.00	0.20	35.00	L110 Fact Investigation/Development; A104 Review Request for Assignment of Judge. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/28/2015						
30.7776	07/28/2015	27 AL110 A108175.00	0.20	35.00	L110 Fact Investigation/Development; review suboena duces tecum re: Douglas COuntY Code enforcement. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/30/2015						
30.7776	07/30/2015	27 AL110 A108175.00	0.40	70.00	L110 Fact Investigation/Development; A108 Communicate (other external) with newly assigned judge re: status and attendance at status confernece. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/31/2015						
30.7776	07/31/2015	27 AL110 A108175.00	0.40	70.00	L110 Fact Investigation/Development; A108 Communicate (other external) prepare letter to opposing counsel re: assignement of new judge and status conference. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 08/04/2015						
30.7776	08/04/2015	27 AL110 A108175.00	0.40	70.00	L110 Fact Investigation/Development; A108 Communicate (other external) prepare email to opposing counsel	ARCH

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<u>Case No.</u>	<u>Trans Date</u>	<u>H Tcode/ Tmk P Task Co</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref</u>
Transaction Date 08/04/2015						
					re: request for status conference and stipulation to have matter heard in Washoe County. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 08/05/2015						
30.7776	08/05/2015	27 AL110 A104175.00		0.20	35.00 L110 Fact Investigation/Development; A104 Review and respond to email from opposig counsel re: status conference. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 08/07/2015						
30.7776	08/07/2015	27 AL110 A108175.00		0.10	17.50 L110 Fact Investigation/Development; A108 Communicate (other external) review correspondence from co-counsel re: status conference. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 08/10/2015						
30.7776	08/10/2015	27 AL110 A104175.00		0.20	35.00 L110 Fact Investigation/Development; A104 Review and respond to email from opposing counsel re: availability for status conference. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	08/10/2015	27 AL110 A104175.00		0.10	17.50 L110 Fact Investigation/Development; A104 Review/analyze and respond to email from opposing counsel re: scheduling conference. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 08/11/2015						
30.7776	08/11/2015	27 AL110 A104175.00		1.20	210.00 L110 Fact Investigation/Development; A104 Review/analyze documents produced by plaintiff (approx 300 pages) The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 09/09/2015						
30.7776	09/09/2015	27 AL110 A108175.00		0.30	52.50 L110 Fact Investigation/Development; A108 Communicate (other external) with claims professional, Julie Haick re: status of case The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	09/09/2015	27 AL110 A108175.00		0.20	35.00 L110 Fact	ARCH

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Date: 09/17/2018

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<u>Case No.</u>	<u>Trans Date</u>	<u>Tmk</u>	<u>H Tcode/ P Task Co</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref</u>
Transaction Date 09/09/2015							
30.7776	09/09/2015	27	AL110 A104	175.00	0.20	35.00	ARCH
						Investigation/Development; A108 Communicate (other external) review Defendant Spencer's First Supplemental Production of Documents The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
						L110 Fact	
						Investigation/Development; A104 Review email from opposing counsel re: status conference. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 09/10/2015							
30.7776	09/10/2015	27	AL310 A104	175.00	0.40	70.00	ARCH
						L310 Written Discovery; A104 Review defendant's responses to interrogatories and requests for production of documents. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 09/11/2015							
30.7776	09/11/2015	27	AL110 A108	175.00	0.40	70.00	ARCH
						L110 Fact Investigation/Development; A108 Communicate (other external) review Order re: trial setting and prepare trial setting form as directed by the District Court. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
30.7776	09/11/2015	27	AL110 A108	175.00	0.40	70.00	ARCH
						L110 Fact Investigation/Development; A108 Communicate (other external) telephone conference with Nik Palmer re: preferential trial setting and defendant's deficient discovery responses The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 09/15/2015							
30.7776	09/15/2015	27	AL110 A109	175.00	1.50	262.50	ARCH
						L110 Fact Investigation/Development; A109 Appear for/attend mandatory status conference. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
30.7776	09/15/2015	27	AL110 A104	175.00	0.20	35.00	ARCH
						L110 Fact Investigation/Development; A104 Review correspondence from opposing counsel re discovery The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 09/23/2015							
30.7776	09/23/2015	27	AL110 A104	175.00	1.00	175.00	ARCH
						L110 Fact	

Monday 09/17/2018 3:31 pm

Date: 09/17/2018

Detail Fee Transaction File List
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Transaction Date 09/23/2015						
					Investigation/Development; A104 Review/analyze plaintiff's supplemental disclosure and portions of security video purporting to show footage of incident that is the subject of this lawsuit The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 09/28/2015						
30.7776	09/28/2015	27 AL110 A104	175.00	0.10	17.50 L110 Fact Investigation/Development; A104 Review email from opposing counsel, David Zaniel re: trial. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 09/29/2015						
30.7776	09/29/2015	27 AL110 A104	175.00	0.10	17.50 L110 Fact Investigation/Development; A104 Review/analyze email from co-counsel, Nik Palmer re: status. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	09/29/2015	27 AL110 A108	175.00	0.20	35.00 L110 Fact Investigation/Development; A108 Communicate (other external) with co-counsel re: status of discovery propounded to plaintiff. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	09/29/2015	27 AL110 A103	175.00	0.50	87.50 L110 Fact Investigation/Development; A103 Draft/revise letter to opposing counsel re: meet and confer concerning Spencer's deficient discovery responses. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 09/30/2015						
30.7776	09/30/2015	27 AL110 A108	175.00	0.30	52.50 L110 Fact Investigation/Development; A108 Communicate (other external) review email from opposing counsel re: availability for deposition. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 10/05/2015						
30.7776	10/05/2015	27 AL110 A104	175.00	0.10	17.50 L110 Fact Investigation/Development; A104 Review/analyze email from David Zaniel re: document production The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH

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Transaction Date 10/19/2015						
30.7776	10/19/2015	27 AL110 A104	175.00	0.30	52.50 L110 Fact Investigation/Development; A104 Review/analyze subpoena duces tecum. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 10/20/2015						
30.7776	10/20/2015	27 AL110 A104	175.00	0.20	35.00 L110 Fact Investigation/Development; A104 Review letter from opposing counsel re: discovery dispute. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 10/22/2015						
30.7776	10/22/2015	27 AL110 A104	175.00	0.10	17.50 L110 Fact Investigation/Development; A104 Review letter from opposing counsel re: meet and confer letter. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 10/27/2015						
30.7776	10/27/2015	27 AL110 A108	175.00	0.30	52.50 L110 Fact Investigation/Development; A108 Communicate (other external) review file status and prepare email to co-counsel re: status of plaintiff's discovery responses. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 10/28/2015						
30.7776	10/28/2015	27 AL110 A104	175.00	0.20	35.00 L110 Fact Investigation/Development; A104 Review/analyze and respond to email re: trial date. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 11/04/2015						
30.7776	11/04/2015	27 AL110 A104	175.00	0.20	35.00 L110 Fact Investigation/Development; A104 Review and respond to email from opposing counsel re: deposition preparation. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 11/17/2015						
30.7776	11/17/2015	27 AL110 A108	175.00	0.50	87.50 L110 Fact Investigation/Development; A108 Communicate (other external) review defendant's Third Supplemental Production of Documents The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH

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Transaction Date 11/18/2015							
30.7776	11/18/2015	27	AL110 A108	175.00	0.30	52.50 L110 Fact Investigation/Development; A108 Communicate (other external) telephone conference with counsel for Mary Ellen Kinion re:status of case The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 11/23/2015							
30.7776	11/23/2015	27	AL110 A109	175.00	0.60	105.00 L110 Fact Investigation/Development; A109 meet with witness Mary Ellon Kinion re: new allegations against defendant Spencer concerning snow removal barricade placed on Helmut Klementi's driveway The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	11/23/2015	27	AL110 A104	175.00	0.40	70.00 L110 Fact Investigation/Development; A104 Review photographs and security video footage of snowplowing barricades The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 11/30/2015							
30.7776	11/30/2015	27	AL310 A104	175.00	0.40	70.00 L310 Written Discovery; A104 Review/analyze discovery responses of Helmut Klementi prepared by attorney Nik Palmer The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 12/18/2015							
30.7776	12/18/2015	27	AL110 A104	175.00	0.40	70.00 L110 Fact Investigation/Development; A104 Review defendant's fifth s supplemental disclosure The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 01/08/2016							
30.7776	01/08/2016	27	AL110 A104	175.00	0.30	52.50 L110 Fact Investigation/Development; A104 Review/analyze review Jeffrey Spencer's sixth supplemental disclosure of witnesses and documents The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	01/08/2016	27	AL110 A104	175.00	0.30	52.50 L110 Fact Investigation/Development; A104 Review Spencer's request for production of documents to Egon Klementi	ARCH

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Transaction Date 01/08/2016						
					The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 01/14/2016						
30.7776	01/14/2016	27 AL110 A108175.00		0.20	35.00 L110 Fact Investigation/Development; A108 Communicate (other external) review motion to substitute counsel and to withdraw filed by Spencer's counsel. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 01/23/2016						
30.7776	01/23/2016	27 AL110 A104175.00		0.20	35.00 L110 Fact Investigation/Development; A104 Review/analyze motion to substitute. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	01/23/2016	27 AL110 A104175.00		0.20	35.00 L110 Fact Investigation/Development; A104 Review/analyze Defendants request for production of documents to Egon Klementi The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/21/2016						
30.7776	03/21/2016	27 AL110 A108175.00		0.20	35.00 L110 Fact Investigation/Development; A108 Communicate (other external) review Mary Ellen Kinion's request for production of documents to Jeffery Spencer The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/24/2016						
30.7776	03/24/2016	27 AL110 A108175.00		0.40	70.00 L110 Fact Investigation/Development; A108 Communicate (other external) telephone conference with Rowena Shaw re: depositions The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/31/2016						
30.7776	03/31/2016	27 AL110 A108175.00		0.40	70.00 L110 Fact Investigation/Development; A108 Communicate (other external) telephone conference with witness, Rowena Shaw re: representation for upcoming depositions The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/08/2016						
30.7776	04/08/2016	27 AL110 A108175.00		0.40	70.00 L110 Fact	ARCH

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Transaction Date 04/08/2016						
					Investigation/Development; A108 Communicate (other external) with co-counsel re: motion for leave to amend. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 04/13/2016						
30.7776	04/13/2016	27 AL110 A108175.00		0.20	35.00 L110 Fact Investigation/Development; A108 Communicate (other external) review Klementi's motion to amend complaint to include a claim for negligence. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/22/2016						
30.7776	04/22/2016	27 AL110 A108175.00		0.50	87.50 L110 Fact Investigation/Development; A108 Communicate (other external) with client re: status. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/25/2016						
30.7776	04/25/2016	27 AL110 A104175.00		0.40	70.00 L110 Fact Investigation/Development; A104 Review request for prior pleadings from counsel for Mary Ellen Kinion The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/25/2016	27 AL110 A104175.00		0.40	70.00 L110 Fact Investigation/Development; A104 Review motion for summary judgment filed by Mary Ellen Kinion. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/27/2016						
30.7776	04/27/2016	27 AL110 A108175.00		0.80	140.00 L110 Fact Investigation/Development; A108 Communicate (other external) with Maria Spence re: facts and circumstances surrounding prosecution of Jeffery Spencer. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/27/2016	27 AL110 A101175.00		0.50	87.50 L110 Fact Investigation/Development; A101 Plan and prepare for meeting with client The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/27/2016	27 AL110 A106175.00		1.50	262.50 L110 Fact Investigation/Development; A106 Communicate (with client) re:	ARCH

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Transaction Date 04/27/2016							
						litigation strategy. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 04/28/2016							
30.7776	04/28/2016	27	AL110 A108	175.00	0.20	35.00 L110 Fact Investigation/Development; A108 Communicate (other external) with client re: disengaging plaintiff's counsel. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/28/2016	27	AL110 A108	175.00	0.40	70.00 L110 Fact Investigation/Development; A108 Communicate (other external) telephone conference with Julie Haiek re: status. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/03/2016							
30.7776	05/03/2016	27	AL110 A101	175.00	0.80	140.00 L110 Fact Investigation/Development; A101 Plan and begin preparing for the deposition of Mr. Spencer. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/09/2016							
30.7776	05/09/2016	27	AL110 A108	175.00	0.20	35.00 L110 Fact Investigation/Development; A108 Communicate (other external) review and respond to email from opposing counsel re: deposition of Mr. and Mrs. Spencer. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/23/2016							
30.7776	05/23/2016	27	AL110 A104	175.00	0.40	70.00 L110 Fact Investigation/Development; A104 Review/analyze opposition to Kinnon's MSJ. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/27/2016							
30.7776	05/27/2016	27	AL110 A104	175.00	0.40	70.00 L110 Fact Investigation/Development; A104 Review supplemental document disclosures of Spencer. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/19/2016							
30.7776	07/19/2016	27	AL110 A104	175.00	0.70	122.50 L110 Fact Investigation/Development; A104 Review/analyze file status. The Hartford	ARCH

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Transaction Date 07/19/2016						
30.7776	07/19/2016	27 AL110 A104175.00		0.40	70.00	ARCH
					Klementi, Helmut adv. Spencer, Jeffrey L110 Fact Investigation/Development; A104 Review/analyze Motion to compel filed by Spencer The Hartford	
30.7776	07/19/2016	27 AL110 A104175.00		0.50	87.50	ARCH
					Klementi, Helmut adv. Spencer, Jeffrey L110 Fact Investigation/Development; A104 Review/analyze defendants eight supplemental early case conference report. The Hartford	
Transaction Date 07/26/2016						
30.7776	07/26/2016	27 AL110 A101175.00		4.00	700.00	ARCH
					Klementi, Helmut adv. Spencer, Jeffrey L110 Fact Investigation/Development; A101 Plan and prepare for the deposition of Jeff Spencer. The Hartford	
Transaction Date 07/27/2016						
30.7776	07/27/2016	27 AL110 A101175.00		2.50	437.50	ARCH
					Klementi, Helmut adv. Spencer, Jeffrey L110 Fact Investigation/Development; A101 Plan and prepare for for deposition of Marylin Spencer. The Hartford	
Transaction Date 07/28/2016						
30.7776	07/28/2016	27 AL330 A101175.00		8.00	1,400.00	ARCH
					Klementi, Helmut adv. Spencer, Jeffrey L330 Depositions; A101 Plan and prepare for and attend the deposition of Jeff Spencer The Hartford	
Transaction Date 07/29/2016						
30.7776	07/29/2016	27 AL110 A108175.00		0.50	87.50	ARCH
					Klementi, Helmut adv. Spencer, Jeffrey L110 Fact Investigation/Development; A108 Communicate (other external) telephone conference with Julie Haick re: status and summary of deposition of Jeff Spencer The Hartford	
Transaction Date 08/03/2016						
30.7776	08/03/2016	27 AL110 A108175.00		0.20	35.00	ARCH
					Klementi, Helmut adv. Spencer, Jeffrey L110 Fact Investigation/Development; A108 Communicate (other external) review letter from co-defense counsel re: status and produciton of documents. The Hartford	
30.7776	08/03/2016	27 AL110 A104175.00		0.40	70.00	ARCH
					Klementi, Helmut adv. Spencer, Jeffrey L110 Fact	

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Transaction Date 08/03/2016						
30.7776	08/03/2016	27 AL110 A104	175.00	0.40	70.00	ARCH
Investigation/Development; A104 Review reply in support of motion to compel. The Hartford Klementi, Helmut adv. Spencer, Jeffrey						
Transaction Date 08/10/2016						
30.7776	08/10/2016	27 AL110 A108	175.00	1.00	175.00	ARCH
Investigation/Development; A104 Review/analyze counterdefendants' first disclosures The Hartford Klementi, Helmut adv. Spencer, Jeffrey						
30.7776	08/10/2016	27 AL110 A108	175.00	0.30	52.50	ARCH
Investigation/Development; A108 Communicate (other external) plan and prepare for status hearing including review of pending motions. The Hartford Klementi, Helmut adv. Spencer, Jeffrey						
Transaction Date 08/11/2016						
30.7776	08/11/2016	27 AL110 A109	175.00	1.00	175.00	ARCH
Investigation/Development; A109 Appear for/attend status hearing. The Hartford Klementi, Helmut adv. Spencer, Jeffrey						
Transaction Date 08/22/2016						
30.7776	08/22/2016	27 AL110 A108	175.00	0.20	35.00	ARCH
Investigation/Development; A108 Communicate (other external) review and respond to email from Court Clerk re: pending motion and upcoming hearing on same. The Hartford Klementi, Helmut adv. Spencer, Jeffrey						
Transaction Date 08/25/2016						
30.7776	08/25/2016	27 AL230 A108	175.00	0.20	35.00	ARCH
Review and respond to email from court re: setting hearing dates. The Hartford Klementi, Helmut adv. Spencer, Jeffrey						
30.7776	08/25/2016	27 AL110 A104	175.00	0.30	52.50	ARCH
Review opposition to renewed motion to amend complaint The Hartford Klementi, Helmut adv. Spencer, Jeffrey						

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Transaction Date 09/08/2016								
30.7776	09/08/2016	27	AL110 A108175.00		1.00	175.00	Meet with expert Ira Victor to discuss strategy. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 09/30/2016								
30.7776	09/30/2016	27	AL110 A108175.00		0.40	70.00	Telephone conference with Mike Pinter re: status. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	09/30/2016	27	AL110 A107175.00		0.30	52.50	Review Egon Klementi's request for production of documents. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 10/11/2016								
30.7776	10/11/2016	27	AL110 A107175.00		0.30	52.50	Review and respond to email from co-counsel re: reservation of rights letter. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 10/28/2016								
30.7776	10/28/2016	27	AL110 A108175.00		0.60	105.00	Review proposed protocol from Mr. Victor (.2); prepare letter to opposing counsel re: digital forensics protocol (.4). The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 10/31/2016								
30.7776	10/31/2016	27	AL110 A108175.00		0.40	70.00	Review counter defendant Egon Klementi's supplemental disclosures. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 11/08/2016								
30.7776	11/08/2016	27	AL110 A107175.00		0.50	87.50	Review file status, including finalizing status report to claims professional. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 11/28/2016								
30.7776	11/28/2016	27	AL110 A108175.00		0.40	70.00	Review Spencer's Responses to Egon Klementi's discovery requests. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 12/14/2016								
30.7776	12/14/2016	27	AL110 A101175.00		1.50	262.50	Prepare for motions hearing. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 12/15/2016								
30.7776	12/15/2016	27	AL110 A109175.00		4.50	787.50	attend hearing on pending motions. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH

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Transaction Date 03/10/2017								
30.7776	03/10/2017	27	AL110 A108175.00		0.60	105.00	Telephone conference with expert re: new matter. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/20/2017								
30.7776	03/20/2017	27	AL110 A108175.00		6.50	1,137.50	Prepare for and attend continued deposition of Mr. Spencer The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/21/2017								
30.7776	03/21/2017	27	AL110 A108175.00		3.50	612.50	plan and prepare for the deposition of Marylin Spencer. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/21/2017	27	AL110 A108175.00		0.40	70.00	Telephone conference with William Routsis re: provision of lost wage information. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/22/2017								
30.7776	03/22/2017	27	AL110 A109175.00		6.50	1,137.50	Attend deposition of Marylin Spencer The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/22/2017	27	AL110 A108175.00		1.50	262.50	Continue preparing for deposition of Marylin Spencer. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/24/2017								
30.7776	03/24/2017	27	AL110 A108175.00		1.50	262.50	Begin drafting motion for preferential setting The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/28/2017								
30.7776	03/28/2017	27	AL110 A108175.00		0.40	70.00	Review Answer to Amended Counterclaim filed by Egon Klementi and Mary Ellen Kinion The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/30/2017								
30.7776	03/30/2017	27	AL110 A108175.00		2.00	350.00	Prepare motion for preferential setting The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/12/2017								
30.7776	04/12/2017	27	AL110 A108175.00		0.60	105.00	Review file status for remaining discovery and status of pending motion for preferential trial setting The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/13/2017								
30.7776	04/13/2017	27	AL110 A104175.00		0.40	70.00	Review reply in support of motion for attorneys fees by Mary Ellen	ARCH

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Transaction Date 04/13/2017						
30.7776	04/13/2017	27 AL110 A108175.00	0.40	70.00	Kinion The Hartford Klementi, Helmut adv. Spencer, Jeffrey Review Kinion's motion to compel response to subpoena duces tecum The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/02/2017						
30.7776	05/02/2017	27 AL110 A108175.00	0.60	105.00	Confer with retained medical expert Dr. Phillips re: opinions after review of medical records. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	05/02/2017	27 AL110 A108175.00	0.40	70.00	Telephone conference with client re: settlement and status of case The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/11/2017						
30.7776	05/11/2017	27 AL110 A109175.00	1.50	262.50	Prepare for hearing on Motion to Bifurcate The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/12/2017						
30.7776	05/12/2017	27 AL110 A108175.00	2.20	385.00	Appear for attend hearing on Motion to Bifurcate The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/15/2017						
30.7776	05/15/2017	27 AL110 A108175.00	0.20	35.00	Review and respond to email from opposing counsel re: potential trial dates The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/16/2017						
30.7776	05/16/2017	27 AL110 A108175.00	0.40	70.00	Review and respond to email from Helmut Klementi re: status The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/17/2017						
30.7776	05/17/2017	27 AL110 A108175.00	0.40	70.00	Review and respond to email from opposing counsel re: status and settlement offer The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	05/17/2017	27 AL110 A108175.00	0.30	52.50	Confer with opposing counsel, David Zaniel re: offer of judgment The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/18/2017						
30.7776	05/18/2017	27 AL110 A108175.00	1.20	210.00	Prepare email to settlement judge re: settlement conference (.4); prepare email to opposing counsel re: same (.3); telephone conference	ARCH

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Transaction Date 05/18/2017						
					with client re: settlement conference and settlement offer (.5) The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 05/25/2017						
30.7776	05/25/2017	27 AL110 A108175.00		0.30	52.50 Prepare email to opposing counsel re: status of mediation The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	05/25/2017	27 AL110 A108175.00		0.60	105.00 Review Jeffrey Spencer's Eleventh Supplemental Early Case Conference list of witnesses and exhibits The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/26/2017						
30.7776	05/26/2017	27 AL110 A108175.00		0.50	87.50 Attend telephone conference with Dr. Steve Phillips The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 06/05/2017						
30.7776	06/05/2017	27 AL110 A108175.00		0.20	35.00 Review and respond to email from opposing counsel re: proposed Order The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 06/06/2017						
30.7776	06/06/2017	27 AL110 A108175.00		0.40	70.00 Confer with client re mediation preparation The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 08/28/2017						
30.7776	08/28/2017	27 AL110 A108175.00		0.40	70.00 Review file status The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 09/27/2017						
30.7776	09/27/2017	27 AL110 A108175.00		0.50	87.50 Telephone conference with defense counsel for Egon re defense strategy The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 10/16/2017						
30.7776	10/16/2017	27 AL110 A108175.00		0.40	70.00 Review file status including outstanding discovery and expert disclosures The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 10/26/2017						
30.7776	10/26/2017	27 AL110 A108175.00		0.40	70.00 Review order re: fees and costs for Mary Ellen Kinion The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	10/26/2017	27 AL110 A108175.00		0.30	52.50 Review file status	ARCH

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Transaction Date 10/26/2017						
					The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 11/07/2017						
30.7776	11/07/2017	27 AL110 A108175.00	0.40	70.00	Review correspondence from attorney Mark Pintar to Plaintiff's counsel re: dismissal of lawsuit The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 01/09/2018						
30.7776	01/09/2018	27 AL110 A107175.00	0.40	70.00	Telephone conference with new claims professional assigned to matter re: status The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 02/27/2018						
30.7776	02/27/2018	27 AL110 A108175.00	0.10	17.50	Review and respond to email from opposing counsel re: courtesy copy of pleadings filed in this matter The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/08/2018						
30.7776	03/08/2018	27 AL110 A108175.00	0.40	70.00	Communicate (other external) telephone conference with Lynn Pierce re: status of case and mediation The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/08/2018	27 AL110 A108175.00	0.50	87.50	Telephone conference with claims professional re: status of case The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/09/2018						
30.7776	04/09/2018	27 AL110 A108175.00	0.30	52.50	Review file status and leave claims professional a detailed voicemail re: same The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/27/2018						
30.7776	04/27/2018	27 AL110 A108175.00	0.30	52.50	Email to opposing counsel re: extension request for opposing Motion for Summary Judgment The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/27/2018	27 AL110 A109175.00	0.40	70.00	Review and respond to email from opposing counsel re: extension of time to respond to Motion for Summary Judgment The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/09/2018						
30.7776	05/09/2018	27 AL110 A108175.00	7.50	1,312.50	Prepare for and attend settlement conference The Hartford	ARCH

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Transaction Date 05/09/2018						
					Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 05/14/2018						
30.7776	05/14/2018	27 AL110 A108175.00		0.10	17.50 Review expert disclosure The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/24/2018						
30.7776	05/24/2018	27 AL110 A108175.00		0.10	17.50 Review and respond to email from opposing counsel re: hearing date The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/30/2018						
30.7776	05/30/2018	27 AL250 A104175.00		0.30	52.50 Review defendant's motion to strike The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/31/2018						
30.7776	05/31/2018	27 AL110 A108175.00		0.30	52.50 Prepare joinder to motion to strike expert The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 06/06/2018						
30.7776	06/06/2018	27 AL110 A108175.00		0.40	70.00 Email to opposing counsel re: extension of time to respond to opposition The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 06/07/2018						
30.7776	06/07/2018	27 AL110 A108175.00		0.50	87.50 Review, edit, and finalize Reply in support of motion for summary judgment The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	06/07/2018	27 AL110 A108175.00		0.30	52.50 Telephone conference with defense counsel to discuss motion strategy The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	06/07/2018	27 AL110 A108175.00		0.40	70.00 Telephone conference with opposing counsel to discuss settlement The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 06/27/2018						
30.7776	06/27/2018	27 AL110 A108175.00		0.30	52.50 Review motion to dismiss filed by Egon Klementi The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/02/2018						
30.7776	07/02/2018	27 AL110 A108175.00		0.40	70.00 Telephone conference with claims professional re: settlement authority The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/05/2018						
30.7776	07/05/2018	27 AL110 A108175.00		0.50	87.50 Communicate with opposing counsel to discuss settlement	ARCH

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Transaction Date 07/05/2018							
30.7776	07/05/2018	27	AL110 A108175.00	0.10	17.50	The Hartford Klementi, Helmut adv. Spencer, Jeffrey Email to claims professional re: status The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/09/2018							
30.7776	07/09/2018	27	AL100 A101175.00	0.10	17.50	Email communication with Lynn Pierce re: settlement The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	07/09/2018	27	AL110 A108175.00	0.50	87.50	Telephone conference with Lynn Pierce re: continued settlement discussions The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	07/09/2018	27	AL100 A101175.00	0.30	52.50	Email communication with Fiona Webb re: confidential joint litigation The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	07/09/2018	27	AL110 A108175.00	4.50	787.50	Prepare for hearing The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/10/2018							
30.7776	07/10/2018	27	AL110 A108175.00	0.50	87.50	Confer with opposing counsel re: negotiations The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	07/10/2018	27	AL110 A108175.00	0.40	70.00	Telephone conference with client to discuss status of settlement The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	07/10/2018	27	AL110 A108175.00	0.30	52.50	Telephone conference with claims professional Fiona Webb re: status of settlement negotiations The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	07/10/2018	27	AL110 A107175.00	0.20	35.00	Email to opposing counsel re: withdrawal of settlement offer The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	07/10/2018	27	AL110 A108175.00	0.10	17.50	Review email from opposing counsel re: status of settlement negotiations The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	07/10/2018	27	AL110 A108175.00	1.50	262.50	Pprepare for hearing on motion for summary judgment The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	07/10/2018	27	AL110 A108175.00	0.20	35.00	Email to client re: status of settlement The Hartford	ARCH

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Transaction Date 07/10/2018						
					Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 07/11/2018						
30.7776	07/11/2018	27 AL110 A108175.00	7.50	1,312.50	Prepare for Motion for Summary Judgment hearing on all claims asserted against Helmut Klementi The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/12/2018						
30.7776	07/12/2018	27 AL110 A108175.00	7.00	1,225.00	Appear for Motion for Summary Judgment hearing on all claims and other pending motions The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	07/12/2018	27 AL110 A108175.00	0.20	35.00	Email to client re: status of hearing The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/13/2018						
30.7776	07/13/2018	27 AL110 A108175.00	0.30	52.50	Review and respond to email from client re: hearing and preparing proposed order on the motion for summary judgment The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/20/2018						
30.7776	07/20/2018	27 AL110 A108175.00	0.60	105.00	Telephone conference with claims adjuster Fiona re: status (.4); review substitution of attorneys (.2) The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 09/04/2018						
30.7776	09/04/2018	27 PL110 A108175.00	0.30	52.50	Review file status for motion deadlines. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	804
Transaction Date 09/10/2018						
30.7776	09/10/2018	27 PL110 A108175.00	0.50	87.50	Review, finalize and edit memorandum of costs. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	805
Transaction Date 09/14/2018						
30.7776	09/14/2018	27 PL110 A108175.00	0.40	70.00	review Egon Klementi's motion for Fees and Costs. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	807

GRAND TOTALS			
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Billable	137.60	24,080.00
Non-billable	1.20	210.00
Total	138.80	24,290.00

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Christian L. Moore

Timekeeper 10

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Transaction Date 03/31/2016							
30.7776	03/31/2016	10 AL330 A104	175.00	0.80	140.00	L330 Depositions; A104 Review/analyze file to identify topic areas for review with client to prepare client for deposition The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/31/2016	10 AL120 A107	175.00	0.90	157.50	L120 Analysis/Strategy; A107 Communicate (other outside counsel) confer with client's personal counsel Palmer re preparation of mutual client for deposition, case strengths and weaknesses, and possible resolution of case The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/31/2016	10 AL120 A108	175.00	0.10	17.50	L120 Analysis/Strategy; A108 Communicate (other external) telephone Julie Haick re status The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/31/2016	10 AL120 A107	175.00	0.30	52.50	L120 Analysis/Strategy; A107 Communicate (other outside counsel) exchange email with co-counsel Palmer re preparing mutual client for his deposition The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/31/2016	10 AL110 A104	175.00	0.70	122.50	L110 Fact Investigation/Development; A104 Review/analyze evidence presented at underlying criminal trial suggesting that counter-plaintiff Spencer's videos were edited, and review matter with forensic expert Ira Victor The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/31/2016	10 AL250 A103	175.00	0.10	17.50	L250 Other Written Motions/Submissions; A103 Draft association of counsel document The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/31/2016	10 AL120 A106	175.00	0.10	17.50	L120 Analysis/Strategy; A106 Communicate (with client) letter to client The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/31/2016	10 AL120 A107	175.00	0.60	105.00	L120 Analysis/Strategy; A107 Communicate (other outside counsel) confer with defense attorney Woodman re his representation of codefendants	ARCH

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Transaction Date 03/31/2016						
					The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 04/06/2016						
30.7776	04/06/2016	10 AL120 A108	175.00	0.20	35.00 L120 Analysis/Strategy; A108 Communicate (other external) telephone insurer re status and strategy	ARCH
					The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
30.7776	04/06/2016	10 AL120 A106	175.00	1.80	315.00 L120 Analysis/Strategy; A106 Communicate (with client) plan and prepare for and attend meeting with client and his personal attorney Nik Palmer to prepare client for his deposition and discuss case strategy, including review of surveillance video with client and his personal counsel	ARCH
					The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
30.7776	04/06/2016	10 AL110 A104	175.00	1.40	245.00 L110 Fact Investigation/Development; A104 start reviewing 159 page summary of criminal trial provided by client's attorney Palmer	ARCH
					The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 04/07/2016						
30.7776	04/07/2016	10 AL110 A104	175.00	1.20	210.00 L110 Fact Investigation/Development; A104 Finish reviewing 159 page summary of criminal trial provided by client's attorney Palmer	ARCH
					The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
30.7776	04/07/2016	10 AL330 A101	175.00	0.90	157.50 L330 Depositions; A101 Plan and prepare for deposition of Deputy Sheriff McKone, including review of late produced police report from counterclaimant	ARCH
					The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
30.7776	04/07/2016	10 AL330 A109	175.00	2.60	455.00 L330 Depositions; A109 Appear for/attend deposition of Deputy Sheriff McKone	ARCH
					The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
30.7776	04/07/2016	10 AL330 A109	175.00	3.20	560.00 L330 Depositions; A109 Appear for/attend deposition of M. Kinion	ARCH
					The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
30.7776	04/07/2016	10 AL330 A109	175.00	1.20	210.00 L330 Depositions; A109 Appear for/attend deposition of R. Shaw	ARCH

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Transaction Date 04/07/2016						
					The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 04/08/2016						
30.7776	04/08/2016	10 AL120 A107	175.00	0.60	105.00 L120 Analysis/Strategy; A107 Communicate (other outside counsel) telephone conference with co-counsel Palmer re status of deposing mutual client Klementi and case posture and strategy The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/08/2016	10 AL110 A104	175.00	0.20	35.00 L110 Fact Investigation/Development; A104 Review/analyze documents disclosed to date from underlying criminal file, and arrange for follow up on same by paralegal The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/08/2016	10 AL120 A106	175.00	0.10	17.50 L120 Analysis/Strategy; A106 Communicate (with client) letter to client The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/08/2016	10 AL350 A103	175.00	0.50	87.50 L350 Discovery Motions; A103 Draft required meet and confer letter re counterclaimant's failure to comply with NRCP 16.1 The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/08/2016	10 AL120 A107	175.00	0.70	122.50 L120 Analysis/Strategy; A107 Communicate (other outside counsel) telephone conference with counsel Pintar re joint defense issues The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/08/2016	10 AL250 A103	175.00	1.40	245.00 Start preparing motion seeking sanctions against counterclaimant and his counsel for discovery abuse and misconduct. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/09/2016						
30.7776	04/09/2016	10 AL120 A107	175.00	0.10	17.50 L120 Analysis/Strategy; A107 Communicate (other outside counsel) exchange email with cocounsel Palmer re preparation of client for his deposition The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/11/2016						
30.7776	04/11/2016	10 AL110 A104	175.00	0.20	35.00 L110 Fact	ARCH

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Transaction Date 04/11/2016						
					Investigation/Development; A104 Review/analyze current file information from court criminal case and arrange for basic outline of contents of court file instead of incurring cost of copying everything at this time The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 04/12/2016						
30.7776	04/12/2016	10 A L330 A104	175.00	0.20	35.00 L330 Depositions; A104 Review/analyze correspondence re transcript of Deputy Sheriff McKone, reply to same, and follow up on status of obtaining prior video testimony to assist client in deposition preparation The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/12/2016	10 A L120 A108	175.00	0.10	17.50 L120 Analysis/Strategy; A108 Communicate (other external) telephone Elfriedi Klementi re her request for information The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/12/2016	10 A L110 A104	175.00	0.80	140.00 L110 Fact Investigation/Development; A104 Review/analyze additional information obtained from Tahoe Justice Court pertaining to other charges filed against plaintiff, and review video of attorney Routsis questioning to be used in preparing client for deposition The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/13/2016						
30.7776	04/13/2016	10 A L330 A101	175.00	2.90	507.50 L330 Depositions; A101 Plan and prepare for and confer with client, along with client's personal attorney Nik Palmer, as well as witness Elfriedi Klementi, to prepare them for their depositions The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/14/2016						
30.7776	04/14/2016	10 A L330 A106	175.00	0.40	70.00 L330 Depositions; A106 Communicate (with client) confer with client prior to his deposition The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/14/2016	10 A L330 A109	175.00	4.30	752.50 L330 Depositions; A109 Appear for/attend deposition of Elfried	ARCH

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Transaction Date 04/14/2016						
30.7776	04/14/2016	10 AL330 A109175.00	2.90	507.50	Klementi The Hartford Klementi, Helmut adv. Spencer, Jeffrey L330 Depositions; A109 Appear for/attend deposition of client Helmut Klementi The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/14/2016	10 AL120 A107175.00	0.30	52.50	L120 Analysis/Strategy; A107 Communicate (other outside counsel) confer with defense attorney Pintar, and cocounsel Palmer, re joint defense agreement and client issues The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/15/2016						
30.7776	04/15/2016	10 AL250 A104175.00	0.10	17.50	L250 Other Written Motions/Submissions; A104 Review/analyze correspondence from co-counsel Palmer re client's claimed damages The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/15/2016	10 AL250 A103175.00	0.90	157.50	L250 Other Written Motions/Submissions; A103 Draft Joint Defense Agreement among all defendants The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/15/2016	10 AL120 A107175.00	0.20	35.00	L120 Analysis/Strategy; A107 Communicate (other outside counsel) email co-counsel Palmer and defense attorneys Capar and Pintar re joint defense agreement The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/18/2016						
30.7776	04/18/2016	10 AL120 A104175.00	0.10	17.50	L120 Analysis/Strategy; A104 Review/analyze email from defense attorney Capers discussing Joint Defense Agreement The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/18/2016	10 AL250 A103175.00	0.30	52.50	L250 Other Written Motions/Submissions; A103 Revise Joint Defense Agreement to comply with requests of defense counsel The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/18/2016	10 AL120 A107175.00	0.20	35.00	L120 Analysis/Strategy; A107 Communicate (other outside counsel) email attorneys Palmer,	ARCH

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Transaction Date 04/18/2016						
					Pintar, and Capers re Joint Defense Agreement with current request The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 04/19/2016						
30.7776	04/19/2016	10 A L250 A104	175.00	0.30	52.50 L250 Other Written Motions/Submissions; A104 Review/analyze email from defense attorney Pintar seeking to narrow scope of Joint Defense Agreement, and prepare a separate Joint Defense Agreement to comply with Pintar request The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/19/2016	10 A L120 A107	175.00	0.50	87.50 L120 Analysis/Strategy; A107 Communicate (other outside counsel) confer with client's personal attorney Palmer re joint issues for mutual client The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/19/2016	10 A L120 A103	175.00	0.40	70.00 L120 Analysis/Strategy; A103 Draft email outlining current procedural issues to all defense counsel The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/19/2016	10 A L120 A103	175.00	0.30	52.50 L120 Analysis/Strategy; A103 Revise a separate JDA to be executed by attorney Palmer on behalf of his clients Egon Klementi and Elfie Klementi The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/19/2016	10 A L120 A107	175.00	0.10	17.50 L120 Analysis/Strategy; A107 Communicate (other outside counsel) prepare separate email to co-counsel Palmer re separate Joint Defense Agreement for his clients Egon Klementi and Elfie Klementi The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/20/2016						
30.7776	04/20/2016	10 A L250 A107	175.00	0.10	17.50 L250 Other Written Motions/Submissions; A107 Communicate (other outside counsel) exchange email with cocounsel Palmer re executed Joint Defense Agreement The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/20/2016	10 A L120 A104	175.00	0.10	17.50 L120 Analysis/Strategy; A104 Review/analyze email received from	ARCH

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Transaction Date 04/20/2016							
						defense attorney Pintar discussing procedural issues caused by failure of counterclaimant to follow correct procedural rule The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 04/22/2016							
30.7776	04/22/2016	10	AL120 A106	175.00	0.50	87.50 L120 Analysis/Strategy; A106 Communicate (with client) review multiple correspondence received from client and confer with client The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/22/2016	10	AL120 A107	175.00	0.40	70.00 L120 Analysis/Strategy; A107 Communicate (other outside counsel) confer with defense attorney Pintar re multiple joint defense issues and motion for summary judgment The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/25/2016							
30.7776	04/25/2016	10	AL120 A104	175.00	0.50	87.50 L120 Analysis/Strategy; A104 Review/analyze NRS 41.660 anti-SLAPP law and determine how to trigger application of law to utilize in motion to dismiss certain claims against client The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/02/2016							
30.7776	05/02/2016	10	AL330 A104	175.00	0.40	70.00 L330 Depositions; A104 Review/analyze client's deposition transcript, and arrange for review of transcript by client that must occur within defined time period The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/03/2016							
30.7776	05/03/2016	10	AL120 A106	175.00	0.30	52.50 L120 Analysis/Strategy; A106 Communicate (with client) telephone call from client re case status and his participation in upcoming depositions The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	05/03/2016	10	AL120 A104	175.00	0.20	35.00 L120 Analysis/Strategy; A104 Review/analyze correspondence from defense attorney Capers re Joint Defense Agreement, and follow up on same The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH

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Transaction Date 05/03/2016							
30.7776	05/03/2016	10	AL120 A107	175.00	0.20	35.00 L120 Analysis/Strategy; A107 Communicate (other outside counsel) exchange email with defense attorney Mike Pintar re defense of respective clients The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/04/2016							
30.7776	05/04/2016	10	AL330 A104	175.00	0.20	35.00 L330 Depositions; A104 Review/analyze multiple email from attorneys David Zaniel and Mike Pintar discussing depositions, and reply to same The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/05/2016							
30.7776	05/05/2016	10	AL120 A106	175.00	0.60	105.00 L120 Analysis/Strategy; A106 Communicate (with client) confer with client re his requested corrections to his deposition transcript The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	05/05/2016	10	AL120 A104	175.00	0.10	17.50 L120 Analysis/Strategy; A104 Review/analyze email from attorney David Zaniel discussing depositions of Mr. and Mrs. Spencer The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	05/05/2016	10	AL330 A104	175.00	0.50	87.50 L330 Depositions; A104 Review/analyze correspondence from client providing additional information to be compared to his deposition testimony, and prepare reply letter to client with final errata sheet for his deposition transcript corrections The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/06/2016							
30.7776	05/06/2016	10	AL160 A107	175.00	0.50	87.50 L160 Settlement/Non-Binding ADR; A107 Communicate (other outside counsel) confer with opposing attorney David Zaniel re strategies for achieving a global settlement of case The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/10/2016							
30.7776	05/10/2016	10	AL330 A108	175.00	0.20	35.00 L330 Depositions; A108 Communicate (other external) letter to court reporter re client's deposition transcript errata sheets	ARCH

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Transaction Date 05/10/2016						
					The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 07/25/2016						
30.7776	07/25/2016	10 AL120 A107175.00		0.20	35.00 L120 Analysis/Strategy; A107 Communicate (other outside counsel) telephone defense attorney Pintar re coordination of upcoming depositions of Mr. and Mrs. Spencer, as well as correspondence recieved directly from his clients The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/26/2016						
30.7776	07/26/2016	10 AL130 A108175.00		0.50	87.50 L130 Experts/Consultants; A108 Communicate (other external) confer with forensic expert I. Victor re capture of metadata and original surveillance video generated by Mr. Spencer The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/27/2016						
30.7776	07/27/2016	10 AL130 A104175.00		0.10	17.50 L130 Experts/Consultants; A104 Review/analyze email re engagement from forensic expert Victor, and follow up on same The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 08/23/2016						
30.7776	08/23/2016	10 AL130 A108175.00		0.20	35.00 Communicate (other external) confer with I. Victor re forensic investigation of plaintiff's hard drive used to store surveillance video The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 09/05/2016						
30.7776	09/05/2016	10 AL340 A108175.00		0.20	35.00 Email expert Ira Victor re his investigation of Spencer hard drive containing digital video data The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 09/09/2016						
30.7776	09/09/2016	10 AL130 A106175.00		0.50	87.50 Communicate (with client) confer with expert Ira Victor re digital data forensic investigation The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 09/22/2016						
30.7776	09/22/2016	10 AL130 A108175.00		0.30	52.50 Confer with forensic expert Ira Victor re protocol for forensic investigation The Hartford	ARCH

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Transaction Date 09/22/2016							
Klementi, Helmut adv. Spencer, Jeffrey							
Transaction Date 10/04/2016							
30.7776	10/04/2016	10	AL130 A104175.00	0.30	52.50	Review proposed ESI protocol from forensic expert Ira Victor The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	10/04/2016	10	AL120 A108175.00	0.50	87.50	Communicate (other external) confer with forensic expert Ira Victor re changes to protocol for forensic testing of video data files The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 10/05/2016							
30.7776	10/05/2016	10	AL130 A104175.00	0.10	17.50	Review/analyze revised protocol from expert Ira Victor, and arrange for follow up on same The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 12/29/2016							
30.7776	12/29/2016	10	AL130 A108175.00	0.30	52.50	Meet with forensic expert Ira Victor re protocol and status of ESI investigation The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 01/16/2017							
30.7776	01/16/2017	10	AL310 A108175.00	0.60	105.00	Confer with expert Ira Victor to identify technical evidence that a prior forensic investigator has likely worked on hard drive containing digital surveillance video of incident at issue The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 01/25/2017							
30.7776	01/25/2017	10	AL120 A107175.00	0.40	70.00	Telephone conference with defense attorney Michael Pinter re joint defense issues The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 01/27/2017							
30.7776	01/27/2017	10	AL320 A104175.00	0.20	35.00	Review/analyze multiple correspondence exchanged between counsel Michael Pinter and counsel David Zaniel discussing 1300 plus pages of missing District Attorney records, and follow up on same The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 01/28/2017							
30.7776	01/28/2017	10	AL230 A101175.00	0.80	140.00	Plan and prepare for court hearing on all pending motions, including motions for leave to amend and for	ARCH

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Transaction Date 01/28/2017						
					summary judgment The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 01/30/2017						
30.7776	01/30/2017	10 AL230 A109175.00		6.20	1,085.00	ARCH
					Appear for/attend court hearing on all pending motions The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 02/02/2017						
30.7776	02/02/2017	10 AL120 A104175.00		0.10	17.50	ARCH
					Review/analyze correspondence from attorney David Zaniel discussing procedural irregularities, and follow up on same The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 03/06/2017						
30.7776	03/06/2017	10 AL110 A108175.00		0.60	105.00	ARCH
					Communicate (other external) confer with forensic expert Ira Victor re continuing investigation of plaintiff Spencer's video files The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 03/08/2017						
30.7776	03/08/2017	10 AL110 A104175.00		0.40	70.00	ARCH
					Review/analyze file for forensic hash information that may be used for motion for sanctions based on spoliation of evidence The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 03/16/2017						
30.7776	03/16/2017	10 AL120 A104175.00		0.60	105.00	ARCH
					Review/analyze correspondence from attorney Zaniel providing additional technical information on recording hardware that was previously misrepresented in his client's written discovery responses, and compare to technical information provided by forensic expert Ira Victor The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 03/17/2017						
30.7776	03/17/2017	10 AL350 A107175.00		0.50	87.50	ARCH
					Correspond to all counsel discussing supplemental verified interrogatory answers to be provided by Mr. Spencer The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 03/21/2017						
30.7776	03/21/2017	10 AL120 A107175.00		0.10	17.50	ARCH
					Exchange correspondence with counsel Pintar re anticipated discovery and joint defense agreement	

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Transaction Date 03/21/2017							
30.7776	03/21/2017	10	AL120 A107175.00	0.10	17.50	The Hartford Klementi, Helmut adv. Spencer, Jeffrey Exchange correspondence with attorney Capers re joint defense planning pursuant to joint defense agreement The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/14/2017							
30.7776	04/14/2017	10	AL110 A104175.00	0.50	87.50	Review/analyze compact disc received from court reported to contain video files disclosed by Mr. Spencer in his underlying criminal matter, and establish security protocol because of report of virus on files received from court clerk, including discussion with forensic expert Ira Victor to establish security protocol The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/26/2017							
30.7776	04/26/2017	10	AL120 A101175.00	0.40	70.00	Confer with defense attorney Tanika Capers re motion to bifurcate The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/26/2017	10	AL120 A104175.00	0.10	17.50	Review/analyze correspondence from attorney Tanika Capers discussing motion to bifurcate The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/26/2017	10	AL250 A103175.00	2.80	490.00	Prepare motion to bifurcate trial The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/26/2017	10	AL120 A107175.00	0.10	17.50	Correspond to all counsel discussing proposed agreement to shorten briefing schedule The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/26/2017	10	AL120 A104175.00	0.10	17.50	Review/analyze correspondence from attorney David Zaniel objecting to trial The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 04/27/2017							
30.7776	04/27/2017	10	AL120 A104175.00	0.10	17.50	Review/analyze correspondence from attorney William Routsis objecting to trial The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	04/27/2017	10	AL250 A101175.00	0.20	35.00	Finalize ex parte motion for order shortening time	ARCH

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Transaction Date 04/27/2017						
					The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 04/28/2017						
30.7776	04/28/2017	10 AL120 A104	175.00	0.10	17.50 Review/analyze correspondence from defense attorney Tanika Capers re status The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/02/2017						
30.7776	05/02/2017	10 AL130 A108	175.00	0.10	17.50 Exchange correspondence with expert Ira Victor re his forensic investigation The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 09/12/2017						
30.7776	09/12/2017	10 AL120 A106	175.00	0.70	122.50 Confer with client, at his request, to update him on status of case and explain case posture and strategy The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH

GRAND TOTALS		
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Billable	57.00	9,975.00
Non-billable	2.00	350.00
Total	59.00	10,325.00

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Sarah M. Molleck

Timekeeper 65

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Transaction Date 09/25/2017							
30.7776	09/25/2017	65	AL120 A104145.00		3.40	493.00 Review entire court file, particularly counterclaims asserted against client in preparation for motion for summary judgment, including client correspondence and discovery The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	09/25/2017	65	AL240 A102145.00		0.90	130.50 Research case law for summary judgment motion, including elements of each cause of action asserted by counter-plaintiff, Mr. Spencer The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 09/29/2017							
30.7776	09/29/2017	65	AL240 A104145.00		0.40	58.00 Review/analyze court minutes from prior evidentiary hearings and proposed order granting Kinion summary judgment motion The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 11/07/2017							
30.7776	11/07/2017	65	AL110 A104145.00		0.20	29.00 Review/analyze correspondence from Mr. Pintar regarding dismissal of malicious prosecution claim The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 01/18/2018							
30.7776	01/18/2018	65	AL240 A104145.00		2.20	319.00 Review/analyze applicable discovery in preparation for summary judgment motion on all claims, including counterclaim by Spencer against our client The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 01/19/2018							
30.7776	01/19/2018	65	AL310 A104145.00		0.90	130.50 Continue review and analysis of pertinent discovery in preparation for summary judgment, specifically deposition of Spencer (60 pages) The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 01/20/2018							
30.7776	01/20/2018	65	AL310 A104145.00		0.90	130.50 Continue review and analysis of Spencer deposition transcript in preparation for summary judgment (50 pages) The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 01/21/2018							
30.7776	01/21/2018	65	AL310 A104145.00		2.80	406.00 Continue review and analysis of Spencer deposition (100 pages) and prepare claims matrix to	ARCH

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Transaction Date 01/21/2018						
					analyze elements of Spencer's counterclaims as applied to facts in case in preparation for summary judgment motion The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 01/23/2018						
30.7776	01/23/2018	65 AL330 A104145.00		0.50	72.50 Review/analyze 2016 deposition of Jeffrey Spencer in preparation for summary judgment motion, making note of all his deficient answers to defamation or malicious prosecution (127 pages plus exhibits) The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 02/05/2018						
30.7776	02/05/2018	65 AL330 A104145.00		2.00	290.00 Review/analyze 2017 deposition of Jeffrey Spencer in preparation for motion for summary judgment, making note of all instances where he failed to support his claims of defamation and malicious prosecution (147 pages plus exhibits) The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 02/06/2018						
30.7776	02/06/2018	65 AL120 A104145.00		0.50	72.50 Review/analyze video footage of incident and timeline of video clips produced by Jeffrey Spencer from his surveillance cameras in preparation for summary judgment motion. The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	02/06/2018	65 AL330 A104145.00		0.90	130.50 Review/analyze deposition of Marilyn Spencer in preparation for motion for summary judgment The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 02/07/2018						
30.7776	02/07/2018	65 AL240 A104145.00		1.60	232.00 Review/analyze hearing transcript dated January 30, 2017 of district attorney testimony dispositive of second claim for relief for malicious prosecution The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 02/08/2018						
30.7776	02/08/2018	65 AL240 A104145.00		0.90	130.50 Continue review and analysis of January 30, 2017 hearing transcript of deputy district attorney for	ARCH

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Transaction Date 02/08/2018							
						malicious prosecution claim The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 02/13/2018							
30.7776	02/13/2018	65	AL210 A105145.00	0.10	14.50	Confer with Mr. Brown whether answer to Spencer's Amended Counterclaim was ever filed The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	02/13/2018	65	AL430 A103145.00	0.50	72.50	Begin drafting Motion for Summary Judgment on all counterclaims alleged by Spencer The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 02/19/2018							
30.7776	02/19/2018	65	AL210 A103145.00	1.50	217.50	Draft/revise answer to amended counterclaim and third party complaint on behalf of client Helmut Klementi, reviewing pertinent documents to admit or deny certain facts The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 02/21/2018							
30.7776	02/21/2018	65	AL240 A104145.00	1.20	174.00	Review/analyze specific authority regarding defamation and absolute privilege as applied to our client, Helmut Klementi, for motion for summary judgment The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 02/27/2018							
30.7776	02/27/2018	65	AL250 A104145.00	0.10	14.50	Review/analyze order from court holding that Jeffrey Spencer must show cause or be held in contempt regarding attorney fees The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	02/27/2018	65	AL240 A106145.00	0.10	14.50	Communicate (with client) regarding his affidavit for motion for summary judgment The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	02/27/2018	65	AL110 A107145.00	0.10	14.50	Communicate (other outside counsel) with Ms. Capers regarding inaccurate fact about our client in her summary judgment motion The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	02/27/2018	65	AL240 A104145.00	0.30	43.50	Review/analyze motion for summary judgment filed by co-defendant Shaws The Hartford	ARCH

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Transaction Date 02/27/2018							
						Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 03/01/2018							
30.7776	03/01/2018	65	AL240 A104145.00	0.80	116.00	Review/analyze motion for summary judgment filed by co-defendant Shaws, including attached exhibits The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/01/2018	65	AL240 A104145.00	1.70	246.50	Review/analyze deposition transcripts for Deputy Jesse McKone, Effie Klementi, and Helmut Klementi for undisputed statement of facts section of motion for summary judgment The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/01/2018	65	AL240 A103145.00	3.70	536.50	Draft/revise introduction and statement of undisputed material facts for motion for summary judgment on all causes of action The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/02/2018							
30.7776	03/02/2018	65	AL240 A103145.00	1.10	159.50	Continue drafting motion for summary judgment on all causes of action by counter-defendant Spencer against Helmut Klementi The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/03/2018							
30.7776	03/03/2018	65	AL240 A103145.00	1.70	246.50	Draft/revise motion for summary judgment statement of facts, standard of review, and begin first claim for relief The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/05/2018							
30.7776	03/05/2018	65	AL210 A104145.00	0.30	43.50	Review/analyze Counter-plaintiff's Response to Motion for Order to Show Cause and Request for Order to Set Settlement Conference and to Pend Further Pleading The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/05/2018	65	AL210 A103145.00	3.10	449.50	Draft/revise our Answer to Counterclaimant's Amended Counterclaim and Third Party Complaint containing 107 allegations against our client and prepare 25 affirmative defenses to counterclaims The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH

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Transaction Date 03/06/2018							
30.7776	03/06/2018	65	AL210 A103145.00		0.90	130.50 Draft/revise our Answer to Mr. Spencer's Answer to Amended Complaint and Amended Counterclaim and Third Party Complaint The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/06/2018	65	AL240 A103145.00		5.90	855.50 Continue drafting motion for summary judgment on all causes of action, working specifically on first cause of action for defamation and establishing that summary judgment is appropriate on our affirmative defenses of absolute and qualified privilege The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/07/2018							
30.7776	03/07/2018	65	AL240 A103145.00		6.30	913.50 Continue drafting motion for summary judgment on all causes of action, working on defamation defenses and malicious prosecution claim of plaintiff's amended counterclaim against our client The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/08/2018							
30.7776	03/08/2018	65	AL240 A103145.00		3.70	536.50 Continue drafting motion for summary judgment on counterclaims, specifically malicious prosecution, claims for civil conspiracy, and begin punitive damages section The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/11/2018							
30.7776	03/11/2018	65	AL240 A103145.00		2.10	304.50 Continue drafting motion for summary judgment on all claims, specifically punitive damages section and intentional infliction of emotional distress The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/12/2018							
30.7776	03/12/2018	65	AL240 A103145.00		3.90	565.50 Continue drafting motion for summary judgment on all counterclaims, completing section on punitive damages and revisions to statement of facts The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/14/2018							
30.7776	03/14/2018	65	AL240 A103145.00		2.50	362.50 Draft/revise Affidavit of Helmut	ARCH

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Transaction Date 03/14/2018						
					Klementi in support of motion for summary judgment and edits to motion for summary judgment The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 03/15/2018						
30.7776	03/15/2018	65 AL240 A103145.00		1.40	203.00 Revisions to motion for summary judgment on all claims for relief on Spencer's counterclaim against our client and finalize for review by claims adjuster The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/20/2018						
30.7776	03/20/2018	65 AL120 A105145.00		0.20	29.00 Communicate (in firm) with Mr. Moore regarding facts supporting a potential motion for case-concluding sanctions due to discovery abuses The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/22/2018						
30.7776	03/22/2018	65 AL240 A103145.00		0.30	43.50 Revisions to Helmut Klementi's affidavit in support of motion after speaking with him The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/26/2018						
30.7776	03/26/2018	65 AL240 A106145.00		0.20	29.00 Receive email from client regarding his Affidavit and respond accordingly The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 03/29/2018						
30.7776	03/29/2018	65 AL240 A106145.00		0.10	14.50 Communicate (with client) regarding signing his affidavit in support of the motion for summary judgment The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/29/2018	65 AL240 A103145.00		0.30	43.50 Revisions to Helmut Klementi's Affidavit and motion for summary judgment The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	03/29/2018	65 AL240 A109145.00		0.70	101.50 Appear for/attend client meeting with Mr. Klementi The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/01/2018						
30.7776	05/01/2018	65 AL120 A103145.00		4.90	710.50 Begin drafting Confidential Mediation Statement in preparation of upcoming mediation The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH

Monday 09/17/2018 3:30 pm

Date: 09/17/2018

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<u>Case No.</u>	<u>Trans Date</u>	<u>Tmk</u>	<u>H Tcode/ P Task Co</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref</u>
Transaction Date 05/01/2018							
30.7776	05/01/2018	65	AL120 A104	145.00	0.30	43.50 Review/analyze Motion for Summary Judgment on all claims filed by Mary Ellen Kinion The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/02/2018							
30.7776	05/02/2018	65	AL120 A103	145.00	3.80	551.00 Continue drafting settlement/mediation statement in preparation for upcoming mediation The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/03/2018							
30.7776	05/03/2018	65	AL120 A103	145.00	0.30	43.50 Draft/revise Confidential Mediation Statement for upcoming mediation The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	05/03/2018	65	AL120 A106	145.00	0.10	14.50 Communicate (with client) with Ms. Fiona Webb, claims adjuster, regarding upcoming mediation and transmit Confidential Mediation Statement for her review The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	05/03/2018	65	AL120 A106	145.00	0.20	29.00 Telephone conference with Ms. Webb, claims adjuster, to discuss settlement strategy for upcoming mediation The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	05/03/2018	65	AL120 A106	145.00	0.10	14.50 Email correspondence to Ms. Webb explaining joinder to Motion for Spoliation of Evidence and transmitting Motion for her review The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/04/2018							
30.7776	05/04/2018	65	AL130 A109	145.00	0.30	43.50 Appear for/attend meeting with expert Ira Victor regarding video surveillance The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/07/2018							
30.7776	05/07/2018	65	AL120 A103	145.00	0.50	72.50 Draft/revise Confidential Settlement Statement and correspondence with Court for submission of statement The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	05/07/2018	65	AL120 A108	145.00	0.10	14.50 Communicate (other external) with District Court for service of settlement statement to Judge Kosach The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH

Monday 09/17/2018 3:30 pm

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<u>Case No.</u>	<u>Trans Date</u>	<u>Tmk</u>	<u>H Tcode/ P Task Co</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>		<u>Ref</u>
Transaction Date 05/07/2018								
30.7776	05/07/2018	65	AL120 A108	145.00	0.10	14.50	Email correspondence to settlement judge, Judge Kosach, transmitting Confidential Settlement Statement The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/08/2018								
30.7776	05/08/2018	65	AL120 A106	145.00	0.10	14.50	Communicate (with client) regarding mediation tomorrow, May 9, 2018 The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/09/2018								
30.7776	05/09/2018	65	AL160 A109	145.00	5.40	783.00	Appear for/attend settlement conference with client The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 05/16/2018								
30.7776	05/16/2018	65	AL240 A103	145.00	0.20	29.00	Draft/revise Joinder to Motion for Sanctions Based on Spoliation of Evidence The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 06/05/2018								
30.7776	06/05/2018	65	AL120 A104	145.00	1.10	159.50	Review/analyze video surveillance evidence produced by Jeffrey Spencer in support of his Opposition to our Motion to Summary Judgment and compare with previously produced video surveillance The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	06/05/2018	65	AL120 A104	145.00	1.30	188.50	Review/analyze Jeffrey Spencer's Opposition to our Motion for Summary Judgment and the evidence upon which Mr. Spencer relies The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	06/05/2018	65	AL240 A103	145.00	3.90	565.50	Begin drafting Reply in Support of Motion for Summary Judgment based on Jeffrey Spencer's Opposition The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 06/06/2018								
30.7776	06/06/2018	65	AL120 A107	145.00	0.40	58.00	Communicate (other outside counsel) with Mike Pintar, counsel for Elfie Klementi and Mary Ellen Kinion, regarding replies to Mr. Spencer's oppositions to motions for summary judgment and motion for spoliation The Hartford	ARCH

Monday 09/17/2018 3:30 pm

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<u>Case No.</u>	<u>Trans Date</u>	<u>Tmk</u>	<u>H Tcode/ P Task Co</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref</u>
Transaction Date 06/06/2018							
30.7776	06/06/2018	65	AL240 A103	145.00	6.10	884.50	ARCH
						Klementi, Helmut adv. Spencer, Jeffrey Continue drafting Reply in Support of Motion for Summary Judgment on all Counterclaims on behalf of client Helmut Klementi in response to Jeffrey Spencer's Opposition The Hartford	
30.7776	06/06/2018	65	AL120 A104	145.00	0.30	43.50	ARCH
						Klementi, Helmut adv. Spencer, Jeffrey Review/analyze Counterclaimant Jeffrey Spencer's Expert Witness Designation and Third-Party Defendant Kinion's Motion to Strike same The Hartford	
Transaction Date 06/07/2018							
30.7776	06/07/2018	65	AL240 A103	145.00	1.50	217.50	ARCH
						Klementi, Helmut adv. Spencer, Jeffrey Continue drafting and revisions to Helmut Klementi's Reply in Support of Motion for Summary Judgment on all counterclaims The Hartford	
30.7776	06/07/2018	65	AL120 A109	145.00	0.60	87.00	ARCH
						Klementi, Helmut adv. Spencer, Jeffrey Appear for/attend strategy session with counsel for Mary Ellen Kinion and Elfriede Klementi regarding responding to Jeffrey Spencer's Oppositions The Hartford	
30.7776	06/07/2018	65	AL120 A107	145.00	0.50	72.50	ARCH
						Klementi, Helmut adv. Spencer, Jeffrey Conference call with Pat Kealy, counsel for Mary Ellen Kinion and Elfriede Klementi, regarding motion for sanctions based on spoliation of evidence The Hartford	
Transaction Date 06/12/2018							
30.7776	06/12/2018	65	AL120 A104	145.00	0.20	29.00	ARCH
						Klementi, Helmut adv. Spencer, Jeffrey Review and respond to email from co-defense counsel for Ms. Kinion and Ms. Klementi regarding motion for sanctions and reply briefs to motion for summary judgment The Hartford	
Transaction Date 06/15/2018							
30.7776	06/15/2018	65	AL120 A104	145.00	0.80	116.00	ARCH
						Klementi, Helmut adv. Spencer, Jeffrey Review/analyze Reply in Support of Mary Ellen Kinon and Elfriede Klementi's Motion for Sanctions Based on Spoliation, and respective Motions for Summary Judgment The Hartford	

Monday 09/17/2018 3:30 pm

Case No.	Trans Date	Tmk	H Tcode/ P Task Co	Rate	Hours to Bill	Amount	Ref
Transaction Date 07/11/2018							
30.7776	07/11/2018	65	AL240 A104	145.00	1.50	217.50 Review/analyze authority cited by Jeffrey Spencer's Response to Motion for Summary Judgment and prepare detailed memorandum to Mr. Brown in preparation for oral argument on our Motion for Summary Judgment The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/12/2018							
30.7776	07/12/2018	65	AL240 A101	145.00	0.40	58.00 Plan and prepare for summary judgment hearing The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	07/12/2018	65	AL240 A109	145.00	6.00	870.00 Appear for/attend hearing on motion for summary judgment, motion for sanctions, and motion to strike expert witness designation The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/19/2018							
30.7776	07/19/2018	65	AL120 A104	145.00	0.30	43.50 Review/analyze Substitution of Counsel filed by Mr. Spencer and his attorneys The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/21/2018							
30.7776	07/21/2018	65	AL120 A102	145.00	0.80	116.00 Research post-judgment procedure to prepare for possible appeal by Spencer and draft correspondence to joint defense counsel regarding same The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/25/2018							
30.7776	07/25/2018	65	AL240 A103	145.00	2.50	362.50 Draft/revise proposed Order Granting Summary Judgment in Helmut Klementi's Favor on All Counterclaims, as instructed by the Court The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
Transaction Date 07/26/2018							
30.7776	07/26/2018	65	AL240 A103	145.00	0.30	43.50 Revisions to Proposed Order, pursuant to review of local rules on submissions of findings of fact and conclusions of law The Hartford Klementi, Helmut adv. Spencer, Jeffrey	ARCH
30.7776	07/26/2018	65	AL120 A107	145.00	0.20	29.00 Communicate (other outside counsel); email correspondence to	ARCH

Date: 09/17/2018

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<u>Case No.</u>	<u>Trans Date</u>	<u>Tmk</u>	<u>H Tcode/ P Task Co</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref</u>
Transaction Date 07/26/2018							
						joint defense counsel regarding proposed Order granting summary judgment for Helmut The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
30.7776	07/26/2018	65	AL120 A107145.00	0.10	14.50	Communicate (other outside counsel) with former counsel for Plaintiff Jeffrey Spencer regarding submission of proposed order to him	ARCH
						The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
30.7776	07/26/2018	65	AL120 A107145.00	0.20	29.00	Multiple emails with joint defense counsel for counter-defendants regarding proposed orders entering summary judgment	ARCH
						The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 07/31/2018							
30.7776	07/31/2018	65	AL240 A104145.00	0.80	116.00	Review/analyze proposed order for co-defendant Mary Ellen Kinion	ARCH
						The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
30.7776	07/31/2018	65	AL120 A107145.00	0.30	43.50	Communicate (other outside counsel) with Mike Pintar, counsel for co-defendants,	ARCH
						The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 08/01/2018							
30.7776	08/01/2018	65	AL240 A103145.00	0.40	58.00	Draft/revise revisions to proposed Order Granting Motion for Summary Judgment on all Claims in favor of client in preparation to submit to judge	ARCH
						The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 08/02/2018							
30.7776	08/02/2018	65	AL120 A107145.00	0.10	14.50	Communicate (other outside counsel) with Mr. Pintar, counsel for co-defendants, regarding proposed orders to Judge Kosach	ARCH
						The Hartford Klementi, Helmut adv. Spencer, Jeffrey	
Transaction Date 08/03/2018							
30.7776	08/03/2018	65	AL120 A104145.00	0.10	14.50	Review/analyze correspondence from co-defendants' counsel with proposed orders to Judge Kosach	ARCH
						The Hartford	

Monday 09/17/2018 3:30 pm

Date: 09/17/2018

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<u>Case No.</u>	<u>Trans Date</u>	<u>Tmk</u>	<u>H Tcode/ P Task Co</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	<u>Ref</u>
Transaction Date 08/03/2018							
30.7776	08/03/2018	65	AL120 A108145.00		0.20	29.00 Klementi, Helmut adv. Spencer, Jeffrey Prepare email correspondence to Court attaching proposed Order Granting Motion for Summary Judgment in favor of client The Hartford	ARCH
Transaction Date 08/30/2018							
30.7776	08/30/2018	65	AL120 A104145.00		0.30	43.50 Klementi, Helmut adv. Spencer, Jeffrey Review/analyze Court's order granting our motion for summary judgment in favor of client and prepare notice of entry of order to start time for appeal The Hartford	ARCH
Transaction Date 09/06/2018							
30.7776	09/06/2018	65	PL120 A104145.00		1.10	159.50 Klementi, Helmut adv. Spencer, Jeffrey Review/analyze statute on filing memorandum of costs and Nevada Rule of Civil Procedure regarding filing motion for attorney's fees after receiving notice of entry of order granting summary judgment The Hartford	802
30.7776	09/06/2018	65	PL120 A103145.00		3.00	435.00 Klementi, Helmut adv. Spencer, Jeffrey Draft/revise Memorandum of Costs on behalf of client to recover all costs expended in this matter and review all invoices associated with costs to determine if permitted to be included under NRS 18.005 The Hartford	803
Transaction Date 09/12/2018							
30.7776	09/12/2018	65	PL120 A103145.00		0.40	58.00 Klementi, Helmut adv. Spencer, Jeffrey Begin drafting motion for attorney's fees The Hartford	806
Transaction Date 09/14/2018							
30.7776	09/14/2018	65	PL120 A103145.00		3.90	565.50 Klementi, Helmut adv. Spencer, Jeffrey Continue drafting Motion for Attorney's Fees The Hartford	808

GRAND TOTALS

Billable	101.60	14,732.00
Non-billable	17.30	2,508.50
Total	118.90	17,240.50

Monday 09/17/2018 3:30 pm

1 Case No. 14-CV-0260

2 Dept. No. I

RECEIVED

NOV 05 2018

Douglas County
District Court Clerk

FILED

2018 NOV -5 PM 3:29

BOBBIE R. WILLIAMS

A. NEWTON

BY DEPUTY

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

6 IN AND FOR THE COUNTY OF DOUGLAS

8 HELMUT KLEMENTI,

9 Plaintiff,

10 vs.

11 JEFFREY D. SPENCER & DOES 1-5,

12 Defendant. /

13 JEFFREY D. SPENCER,

14 Counterclaimant,

15 vs.

ORDER

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

22 Counterdefendants &
23 Third Party Defendants. /

24 THIS MATTER comes before the court upon three unopposed motions for attorney fees
25 following entry of summary judgment. All three motions rely upon NRS 18.010(2)(b) as authority
26 for issuing an award of attorney's fees. The moving parties also have provided their memoranda of
27 costs; no objection or motion to retax costs has been received.

28 Having now examined all relevant pleadings and papers on file herein, the court enters the
following order, good cause appearing:

THAT the unopposed motions are GRANTED; costs are also awarded as set forth herein.

Nevada Revised Statute 18.010(2)(b) provides that "the court may make an allowance of
attorney's fees to a prevailing party:"

1 Without regard to the recovery sought, when the court finds that the claim, counterclaim,
2 cross-claim or third-party complaint or defense of the opposing party was brought or maintained
3 without reasonable ground or to harass the prevailing party. The court shall liberally construe the
provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations.
/ / /

4 Furthermore, DCR 13(3) notes that "failure of the opposing party to serve and file his
5 written opposition may be construed as an admission that [a] motion is meritorious and a consent
6 to granting the same." The court construes Jeffrey Spencer's failure to oppose the motions as a
7 concession that his counterclaims should not have been brought given the applicable privileges and
8 the lack of admissible evidence produced, as reflected within the written orders issued following
9 the summary judgment hearing of July 12, 2018. As reflected within those resulting written orders,
10 Jeffrey Spencer's counterclaims were not alleged upon reasonable ground. Liberally construing
11 NRS 18.010(2)(b), and hearing no objection via opposition to the motions, the court finds
12 awarding movants' attorney's fees appropriate for having to defend against Jeffrey Spencer's
13 counterclaims and third party claims.

14 **Counter-Defendant Helmut Klementi's Motion for Attorney's Fees**

15 An Order Granting Counter-Defendant Helmut Klementi's Motion for Summary Judgment
16 on All Claims was entered on August 23, 2018, following oral argument heard on July 12, 2018.
17 After ruling from the bench, the court invited motions for attorney's fees, emphasizing that any
18 amount sought should be reasonable. Helmut Klementi's motion seeks an award of \$30,000.00,
19 reducing the amount actually billed by his attorney's from \$48,787.00.

20 In determining whether an award of attorneys' fees is reasonable, four factors are to be
21 considered, as provided within *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d
22 31, 33 (1969):

23 1. Professional Qualities: The law firm of Lemons, Grundy & Eisenberg is a well-
24 established firm, having practiced in many different areas of law in Northern Nevada for decades.
25 As attached to the motion, the resumes of the three attorneys representing Helmut Klementi's
26 interests in this matter speak for themselves, reflecting qualified and well-trained advocates and
27 litigators.

28 2. Character Of Work To Be Done: Obtaining entry of summary judgment successfully

1 resolving causes of action for defamation, malicious prosecution, civil conspiracy, punitive
2 damages, and intentional infliction of emotional distress presents a challenge for any attorney,
3 requiring gathering of factual support during the discovery process and the application of the law to
4 those facts, conveyed concisely via advocacy set forth before the court in writing and during oral
5 argument.

6 3. The Work Actually Performed: Based upon the quality of the analysis and advocacy
7 contained within the pleadings and presented on behalf of Helmut Klementi during oral arguments,
8 both of which have been observed by the court, the court finds the work presented on behalf of
9 Helmut Klementi to be excellent.

10 4. The Result Obtained: Summary judgment was entered entirely in favor of Helmut
11 Klementi, a high value achievement by counsel.

12 Furthermore, as reflected within the billing attached to the motion, billing nearly 300 hours
13 results in a more than reasonable rate of \$100 per hour to reach the \$30,000.00 total requested.
14 Paralegals now often bill at a rate of more than \$100 per hour, further demonstrating the inherent
15 reasonableness of the award sought for having to defend against Jeffrey Spencer's unfounded
16 counterclaims. Three attorneys billing a total of two and a half weeks each during the course of a
17 nearly four year old case is not unexpected given the nature of the counterclaims; Jeffrey Spencer
18 himself retained multiple attorneys. Therefore, balancing all the factors set forth above, as well as
19 the overall reasonableness of the fee requested, the full \$30,000.00 is awarded to Helmut Klementi.

20 Regarding Helmut Klementi's memorandum of costs filed on September 10, 2018,
21 NRS 18.020(3) requires costs be allowed to the prevailing party against any adverse party against
22 whom judgment is rendered in an action for the recovery of money or damages, where the plaintiff
23 seeks to recover more than \$2,500. Reviewing the memorandum of costs from the prevailing
24 party, without opposition or a motion to retax costs the court accepts all costs presented as falling
25 within the definitions provided within NRS 18.005, including the settlement conference related fee
26 constituting a reasonable and necessary expense pursuant to NRS 18.005(17). The presented costs
27 total \$12,820.30, the full amount of which are also awarded to Helmut Klementi.

28 / / /

1 **Third Party Defendants' Motions for Attorney's Fees and Costs**

2 Third party defendants Elfriede Klementi and Mary Ellen Kinion seek an award of roughly
3 \$20,000 each for fees incurred during this round of motion practice resulting in the entry of
4 summary judgment against third party plaintiff Jeffrey Spencer. This is in addition to the award of
5 attorney's fees issued previously in favor of Mary Ellen Kinion in the amount of \$14,870.00.

6 As stated previously regarding the same counsel while issuing the earlier award benefiting
7 Mary Ellen Kinion:

8 1. Professional Qualities: The law firm of Glogovac & Pintar is known to practice
9 regularly and successfully in the State of Nevada, serving clients well during formal litigation of
10 disputes. Based upon the quality of the pleadings contained within the record and the breadth of
11 knowledge required to properly conduct the motion practice and defense conducted in this matter,
12 the court finds the professional qualities of the primary billing attorney, Michael Pintar, as well as
13 the law firm of Glogovac & Pintar, to be quite satisfactory and reasonable, particularly considering
14 the maximum billing rate of only \$150.00 per hour or less reflected within the supporting affidavit
15 from counsel.

16 2. Character Of Work To Be Done: The motions for summary judgment, opposition, reply,
17 and supporting documentation reflect the substance of the disputes between the parties, with the
18 nature of the matter being important to both sides. The legal work necessary consisted of
19 conducting and participating in contested litigation, which in turn required legal analysis and
20 research in preparation for, and specific to, this matter as it has progressed now to the conclusion
21 of the matter. Motion practice is an acquired skill possessed by the parties' counsel, including the
22 presentation of oral arguments during multiple hearings in this instance. Pursuit of discovery in
23 factual support of the analyses presented has also been necessary.

24 3. The Work Actually Performed: Based upon the court's observations during oral
25 argument and while analyzing the substance of the pleadings during the course of the most recent
26 motion practice, the court finds the work presented by Glogovac & Pintar to continually be
27 excellent and reasonable.

28 4. The Result Obtained: After pursuit of discovery, submission of written briefs, and oral

1 arguments in open court, summary judgment was entered against Jeffrey Spencer regarding all of
2 his remaining claims. Entry of summary judgment entirely resolving a case is a result not often
3 achieved in litigation practice.

4 “[G]ood judgment would dictate that each of these factors be given consideration by the
5 trier of fact and that no one element should predominate or be given undue weight.” *Brunzell*, 85
6 Nev. at 349, 455 P.2d at 33. Considering the subject matter presented during the motion practice,
7 the quality and character of the work, the work actually performed, and the result achieved, the
8 court finds the amount of attorney’s fees now requested to be reasonable and in accordance with
9 the *Brunzell* factors.

10 Furthermore, comparing the billing in support of the two motions, along with the billing
11 supporting the prior award of attorney’s fees, the attorney appears to have split his billing
12 appropriately where work overlapped, with no recurring bills from the prior award being present.
13 The same holds true for costs also sought.

14 Regarding the requested award of costs, NRS 18.020(3) requires costs be allowed to the
15 prevailing party against any adverse party against whom judgment is rendered in an action for the
16 recovery of money or damages, where the plaintiff seeks to recover more than \$2,500. Reviewing
17 the two memoranda of costs, without opposition or a motion to retax costs, the court accepts all
18 costs presented pursuant to the definitions contained within NRS 18.005, including the settlement
19 conference related court reporter fees as a reasonable and necessary expense pursuant to NRS
20 18.005(17) and NRS 18.005(8).

21 Therefore, Mary Ellen Kinion is awarded her costs of \$601.23, separate from the costs
22 awarded previously, and attorney’s fees in the amount of \$20,398.50 in addition to the \$14,870.00
23 awarded previously. Elfriede Klementi is awarded her costs of \$581.23 and attorney’s fees in the
24 amount of \$20,500.00.

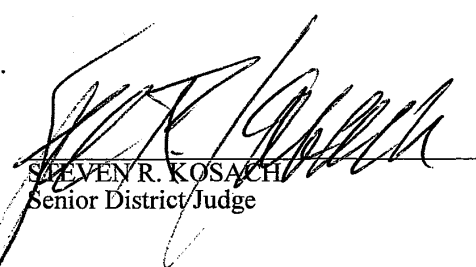
25 Conclusion

26 With no basis factually or legally to bring his claims, the court finds and concludes that
27 Jeffrey Spencer’s counterclaims and third party claims were alleged without reasonable basis.
28 Therefore, pursuant to NRS 18.010(2)(b), reasonable attorney’s fees have been awarded to the

1 prevailing parties as set forth herein. Costs have also been awarded pursuant to NRS 18.020(3).

2 IT IS SO ORDERED.

3 Dated this 2 day of November, 2018.

4
5 
6 STEVEN R. KOSACH
7 Senior District Judge

8 Copies served by mail this 5 day of November, 2018, to:

9 Douglas R. Brown, Esq.
10 Lemons, Grundy & Eisenberg
11 6005 Plumas St., 3rd Floor
12 Reno, NV 89519

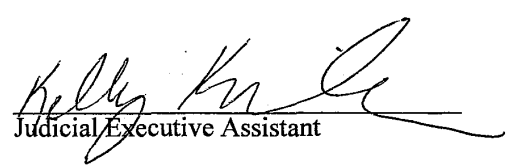
13 David Zaniel, Esq.
14 Ranalli & Zaniel, LLC
15 50 W. Liberty St., Ste. 1050
16 Reno, NV 89509

17 Michael A. Pintar, Esq.
18 Glogovac & Pintar
19 427 West Plumb Lane
20 Reno, NV 89509

21 Tanika M. Capers, Esq.
22 6750 Via Austi Parkway, Ste. 310
23 Las Vegas, NV 89119

24 Kerry S. Doyle, Esq.
25 4600 Kietzke Ln., Ste. I-207
26 Reno, NV 89502

27 Jeffrey D. Spencer
28 P.O. Box 2326
Stateline, NV 89449

29 
30 Judicial Executive Assistant

9TH JUDICIAL DISTRICT COURT
Bobbie R. Williams
Clerk of the Court
Ph 782-9820 Fax 782-9954
1038 Buckeye Rd.
P.O. Box 218
Minden, NV 89423-0000
(775)-782-9820, TTY for Deaf: (775)-782-9964
(775) 782-9820

04/04/19

Case Number: 14-CV-00260-DC CV-OTH
Date Filed: 12/19/14
Status: Re-Closed
Judge Assigned: Kosach, Steven

Klementi V Spencer

C A S E H I S T O R Y

INVOLVED PARTIES

Type Num	Name (Last, First, Mid, Title)	Dispo	Entered
TPD 001	Klementi, Egon		05/09/16
	Attorney: 003789 Pintar, Michael		
	50 West Liberty St., Suite 700		
	Reno,, NV 89501		
TPD 002	Klementi, Elfriede		05/09/16
PLT 001	Klementi, Helmut		12/17/14
	Attorney: 003664 Laub, Joe	Removed: 05/09/16	
	003777 Moore, Christian		
	Lemons, Grundy & Eisenberg		
	6005 Plumas Street, Suite 300		
	Reno, NV 89509		
	7620 Brown, Douglas R		
	6005 Plumas St, Suite 300		
	Reno, NV 89509-6000		
OTH 001	Kinion, Mary Ellen	AH JSUM 04/03/	03/19/15
	Attorney: 003789 Pintar, Michael		
	50 West Liberty St., Suite 700		
	Reno,, NV 89501		
DEF 001	Spencer, Jeffrey D.		12/17/14
	Attorney: 003567 Pierce, Lynn	Removed: 07/18/18	
	7962 Zaniel, David M	Removed: 07/18/18	

1111 Person, Proper
P. O. Box 218
Minden, NV 89423

Type	Num	Name (Last,First,Mid,Title)	Dispo	Entered
DEF	002	Shaw, Rowena		07/10/17
		Attorney: 10867 Capers, Tanika M		
		6775 Edmond Street, Suite 210		
		Las Vegas, NV 89118		
		(702)733-4989		
DEF	003	Shaw, Peter		07/10/17
		Attorney: 10867 Capers, Tanika M		
		6775 Edmond Street, Suite 210		
		Las Vegas, NV 89118		
		(702)733-4989		

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Jdg	L Day	Of	Rslt	By	ResultDt	Jdg	T Notice	Rec
09/08/16	01:00P	001	yes	MOTN	NTY	D	01	/01	VAC	C	08/26/16	TWG	
10/05/16	01:30P	001	yes	MOTN	TWG	D	01	/01	VAC	C	10/04/16	SRK	
12/05/16	09:00A	007	yes	CIJT	NTY	D	01	/01	VAC	C	11/02/16	SRK	
12/07/16	09:00A	007	yes	CIJT	NTY	D	01	/02	VAC	C	11/02/16	SRK	
12/08/16	09:00A	007	yes	CIJT	NTY	D	02	/02	VAC	C	11/02/16		
12/14/16	09:00A	007	yes	CIJT	NTY	D	01	/02	VAC	C	11/02/16	SRK	
12/15/16	01:30P	001	yes	CALL	NTY	D	01	/01	CON	C	12/15/16	NTY P	N
12/16/16	09:00A	001	yes	CIJT	NTY	D	01	/01	VAC	C	11/02/16	SRK	
01/30/17	01:30P	001	yes	CALL	NTY	D	01	/01	CON	C	01/30/17	NTY P	N
07/12/18	10:00A	001	yes	OTSC	NTY	D	01	/01	CON	C	07/12/18	NTY	N
10/08/18	09:00A	001	yes	CIJT	NTY	D	01	/01	VAC	C	07/12/18	SRK	
10/10/18	09:00A	001	yes	CIJT	NTY	D	01	/03	VAC	C	07/12/18	NTY	
10/11/18	09:00A	001	yes	CIJT	NTY	D	02	/03	VAC	C	07/12/18		
10/12/18	09:00A	001	yes	CIJT	NTY	D	03	/03	VAC	C	07/12/18		

Date	Time	Dur	Cer	Evnt	Jdg	L	Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec
10/15/18	01:30P	001	yes	CIJT	NTY	D	01	/01	VAC	C	07/12/18	NTY			
10/17/18	09:00A	001	yes	CIJT	NTY	D	01	/03	VAC	C	07/12/18	NTY			
10/18/18	09:00A	001	yes	CIJT	NTY	D	02	/03	VAC	C	07/12/18				
10/19/18	09:00A	001	yes	CIJT	NTY	D	03	/03	VAC	C	07/12/18				

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal	RSN
MPG Gibbons, Michael	J	12/17/14	ER	07/01/15
NTY Young, Nathan Tod	J	07/01/15	ER	07/24/15
SRK Kosach, Steven	J	07/24/15		

DOCUMENT TRACKING

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
001000	Complaint	12/17/14		MPG	PLT001			MB MB
002000	Summons Issued	12/17/14		MPG	PLT001			MB MB
003000	Summons Filed	01/28/15		DRG	PLT001			MB MB
004000	Summons Issued	02/03/15		DRG	PLT001			N/A MB
005000	Summons Issued	02/03/15		DRG	PLT001			N/A MB
006000	Answer and Counterclaim	02/03/15		DRG	DEF001			N/A MB
007000	Summons Issued	02/03/15		DRG	PLT001			N/A MB
008000	Summons Issued	02/03/15		DRG	PLT001			N/A MB
009000	Answer to Counterclaim	02/23/15		DRG	PLT001			N/A MB
010000	Summons Filed	02/25/15		DRG	000			N/A MB
011000	Summons Issued	02/25/15		DRG	000			N/A MB
012000	Summons Filed	02/25/15		DRG	000			N/A MB
013000	Answer to Counterclaim	02/26/15		DRG	PLT001			N/A MB

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
057000	Request to Submit Motion to Compel Response to Subpoena Duces Tecum	08/05/16		TWG	DEF001		KW	KW
058000	Amended Complaint	08/12/16		NTY	PLT001		N/A	KW
059000	Order Setting Hearing	08/12/16		NTY	000		KW	KW
060000	Second Amended Counterclaim & Third Party Complaint	08/19/16		NTY	DEF001		N/A	KW
061000	Renewed Motion to Amend Counterclaim & Third Party Complaint	08/19/16		NTY	DEF001		N/A	KW
062000		08/19/16		TBA	000		N/A	KW
063000	Notice of Change of Address	08/19/16		NTY	DEF001		N/A	KW
064000	Notice of Hearing	08/24/16		NTY	DEF001		N/A	KW
065000	Defendant's Non-Opposition to Counterclaimants Motion to Amend Counterclaim and Third Party Complaint	08/24/16		NTY	DEF001		N/A	KW
066000	Opposition to Renewed Motion to Amend Counterclaim and Third Party Complaint Filed by TPD001-Klementi, Egon, TPD002-Klementi, Elfriede	08/24/16		NTY	TPD001		N/A	KW
067000	Order Setting Hearing	08/26/16		NTY	000		N/A	KW
068000	Joinder to Third-Party Defendant Mary Kinion, Egon Klementi, and Elfriede Klementis Opposition to Renewed Motion to Amend Counterclaim and Third Party Complaint	09/06/16		TWG	000		N/A	KW
069000	Notice of Appearance	09/06/16		NTY	000		N/A	KW
070000	Amended Order Setting Hearing and Vacating Trial Dates Schedule for December 2016	11/02/16		NTY	000		KW	KW
071000	Order Setting Hearing and Vacating Trial Dates Scheduled for December 2016	11/02/16		NTY	000		KW	KW
072000	Order	12/15/16		SRK	000		DG	DG
073000	Order Granting Helmut Klementi's Motion For Leave to Amend a Complaint	12/15/16		SRK	000		DG	DG
074000	Supplemental Opposition to Motion for Summary Judgment	01/30/17		NTY	DEF001		DG	DG
075000	Transcript of Proceedings (Hearing)	02/01/17		NTY	000		AN	AN

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
076000	Amended Notice of Taking Depositions	02/09/17	NTY	PLT001			KW	KW
077000	Answer to Amended Complaint & Amended Counterclaim and Third Party Complaint	03/03/17	NTY	DEF001			AN	AN
078000	Memorandum of Costs and Disbursements	03/21/17	NTY	OTH001			AN	AN
079000	Motion for Attorney's Fees and Costs	03/21/17	NTY	OTH001			AN	AN
080000		03/21/17	TBA	000			AN	AN
081000	Answer to Amended Counterclaim and Third Party Complaint	03/24/17	TWG	OTH001			AN	AN
082000	Answer to Amended Counterclaim and Third Party Complaint Filed by TPD001-Klementi, Egon, TPD002-Klementi, Elfriede	03/24/17	TWG	TPD001			AN	AN
083000	Opposition to Motion for Attorney's Fees & Costs & to Memorandum of Costs and Disbursements	03/27/17	TWG	DEF001			AN	AN
084000	Order	04/03/17	TWG	000			AN	AN
085000	Plaintiff Helmut Klementi's Motion for Preferential Trial Setting	04/03/17	NTY	PLT001			AN	AN
086000		04/04/17	TBA	000			AN	AN
087000	Reply in Support of Motion for Attorney's Fees and Costs	04/05/17	NTY	OTH001			AN	AN
088000	Counterdefendant's Motion to Compel Response to Subpoena Duces Tecum	04/05/17	TWG	OTH001			AN	AN
089000		04/06/17	TBA	000			AN	AN
090000	Order Granting Helmut Klementi's Motion for Preferential Trial Setting	04/07/17	NTY	000			AN	AN
091000	Notice of Entry of Order	04/21/17	NTY	PLT001			AN	AN
092000	Plaintiff/Counterdefendant Helmut Klementi's Motion to Bifurcate Trial	04/26/17	SRK	PLT001			AN	AN
093000		04/27/17	TBA	000			AN	AN
094000	Notice to Set Trial	04/27/17	NTY	PLT001			AN	AN
095000	Exparte Motion for Order Shortening Time	04/27/17	NTY	PLT001			AN	AN

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
096000		04/27/17	TBA	000			AN	AN
097000	Defendant Jeff Spencer's Opposition to Counterclaimant's Motion to Bifurcate Trial	05/02/17	NTY	DEF001			AN	AN
098000	Motion to Bifurcate Filed by OTH001-Kinion, Mary Ellen, TPD001-Klementi, Egon, TPD002-Klementi, Elfriede	05/03/17	NTY	OTH001			AN	AN
099000		05/03/17	TBA	000			AN	AN
100000	Plaintiff/Counterdefendant Helmut Klementi's Reply in Support of Motion to Bifurcate Trial	05/04/17	NTY	PLT001			AN	AN
101000	Order	05/04/17	NTY	000			AN	AN
102000	Counterclaimant's Opposition to Helmut Klementi's Motion to Bifurcate Trial	05/04/17	NTY	DEF001			AN	AN
103000	Order	05/08/17	NTY	000			AN	AN
104000	Defendant Jeffrey D. Spencer's Motion to Continue Trial	05/12/17	NTY	DEF001			KW	KW
105000		05/12/17	TBA	000			KW	KW
106000	Defendant Jeffrey D. Spencer's Ex-Parte Motion for an Order Shortening Time	05/12/17	NTY	DEF001			KW	KW
107000		05/12/17	TBA	000			KW	KW
108000	Summons Issued (Peter Shaw)	05/15/17	NTY	DEF001			AN	AN
109000	Summons Issued (Rowena Shaw)	05/15/17	NTY	DEF001			AN	AN
110000	Notice of Entry of Order Filed by TPD001-Klementi, Egon, TPD002-Klementi, Elfriede	05/15/17	NTY	TPD001			AN	AN
111000	Affidavit of Personal Service	05/18/17	NTY	000			AN	AN
113000		05/23/17	TBA	000			AN	AN
114000	Affidavit of Service	06/15/17	NTY	DEF001			AN	AN
115000	Affidavit of Service	06/15/17	NTY	DEF001			AN	AN
116000	Defendant Rowena Shaw and Peter Shaw's Answer to Defendant/Counter-Claimant/Third-Party Plaintiff Jeffrey Spencer's Amended Counterclaim and Third Party Complaint Filed by DEF002-Shaw, Rowena, DEF003-Shaw, Peter	07/10/17	TWG	DEF002			AN	AN

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
117000	Request for Trial Setting	08/01/17	NTY	OTH001			HC	HC
118000	Order (Calendar Call)	09/05/17	NTY	000			KW	KW
119000	Amended Order (Calendar Call)	09/06/17	NTY	000			KW	KW
120000	Stipulation for Dismissal with Prejudice Filed by DEF001-Spencer, Jeffrey D., DEF002-Shaw, Rowena, DEF003-Shaw, Peter, OTH001-Kinion, Mary Ellen, PLT001-Klementi, Helmut, TPD001-Klementi, Egon, TPD002-Klementi, Elfriede	09/12/17	NTY	DEF001			DG	DG
121000	Information Questionnaire	09/13/17	NTY	PLT001			DG	DG
122000	Information Questionnaire Filed by OTH001-Kinion, Mary Ellen, PLT001-Klementi, Helmut, TPD001-Klementi, Egon, TPD002-Klementi, Elfriede	09/14/17	NTY	OTH001			DG	DG
123000	Information Questionnaire	09/14/17	NTY	DEF001			DG	DG
124000	Order Setting Trial	09/19/17	NTY	000			DG	DG
126000	Scheduling Order	09/19/17	NTY	000			DG	DG
125000		09/20/17	TBA	000			DG	DG
127000	Information Questionnaire Filed by DEF002-Shaw, Rowena, DEF003-Shaw, Peter	09/20/17	NTY	DEF002			DG	DG
128000	Order	10/17/17	NTY	000			DG	DG
129000		10/18/17	TBA	000			DG	DG
130000	Order	10/19/17	NTY	000			AN	AN
131000		10/19/17	TBA	000			AN	AN
132000	Notice of Entry of Order Filed by TPD001-Klementi, Egon, TPD002-Klementi, Elfriede	10/26/17	TWG	TPD001			DG	DG
133000	Suggestion of Death on the Record	11/16/17	TWG	PLT001			DG	DG
134000	Motion for Order to Show Cause	01/12/18	SRK	OTH001		Ruled	02/16/18	DG BH
135000		01/16/18	TBA	000			DG	DG
136000	Order	02/26/18	NTY	000			HC	HC
138000	Third Party Defendant Rowena Shaw and Peter Shaw's Motion for Summary Judgment Filed by DEF003-Shaw, Peter, DEF002-Shaw, Rowena	02/26/18	TWG	DEF003			MB	MB

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User	ID
140000	Order	02/26/18	NTY	000			MB	MB	
137000		02/27/18	TBA	000			HC	HC	
139000		02/27/18	TBA	000			MB	MB	
141000	Response To Motion for Order to Show Cause	03/01/18	TWG	DEF001			MB	MB	
142000	Request for Order to Set Settlement Conferences & to Pend Further Pleading	03/01/18	TWG	DEF001			MB	MB	
143000	Notice of Association of Counsel	03/07/18	NTY	PLT001			AN	AN	
144000	Counter-Defendant Helmut Klementi's Answer to Amended Counterclaim and Third-Party Complaint	03/07/18	NTY	PLT001			AN	AN	
145000	Joinder to Motion for Summary Judgment Filed by TPD002-Klementi, Elfriede, OTH001-Kinion, Mary Ellen	03/12/18	NTY	TPD002			MB	MB	
146000	Order	03/14/18	SRK	000			AN	AN	
147000		03/15/18	TBA	000			AN	AN	
148000	Response To Motion for Summary Judgment Filed by DEF001-Spencer, Jeffrey D., DEF002-Shaw, Rowena, DEF003-Shaw, Peter	03/28/18	TWG	DEF001			MB	MB	
149000	Reply in Support of Third-Party Defendant Mary Kinion's Motion for Summary Judgment Filed by OTH001-Kinion, Mary Ellen, TPD002-Klementi, Elfriede	04/10/18	TWG	OTH001			MB	MB	
150000	Counter-Defendant Helmut Klementi's Motion for Summary Judgment on all Counterclaims	04/12/18	NTY	PLT001			MB	MB	
151000		04/13/18	TBA	000			MB	MB	
152000	Third-Party Defendant Kinion's Motion for Summary Judgment and Joinder in Helmut Klementi's Motion for Summary Judgment	04/24/18	NTY	OTH001			AN	AN	
153000		04/24/18	TBA	000			AN	AN	
154000	Third-Party Defendant Elfride Klementi's Motion for Summary Judgment and Joinder in Helmut Klementi's Motion for Summary Judgment	04/24/18	NTY	TPD002			AN	AN	
155000		04/24/18	TBA	000			AN	AN	
156000	Third-Party Defendant's Motion for Sanctions Based on Spoliation of Evidence	04/24/18	NTY	OTH001			AN	AN	

Filed by OTH001-Kinion, Mary Ellen, TPD002-Klementi, Elfriede

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
157000		04/24/18	TBA	000			AN	AN
158000	Request for Submission Filed by DEF003-Shaw, Peter, DEF002-Shaw, Rowena	05/14/18	TWG	DEF003			MB	MB
159000	Joinder to Motion for Sanctions	05/18/18	NTY	PLT001			AN	AN
160000	Joinder to Third-Party Defendant Mary Kinion's Motion to Strike Plaintiff's Expert Witness Designation	05/25/18	TWG	TPD002			AN	AN
161000	Motion to Strike Plaintiff's Expert Witness Designation	05/25/18	SRK	OTH001			AN	AN
162000		05/25/18	TBA	000			AN	AN
163000	Joinder to Motion to Strike Plaintiff's Expert Witness Designation	06/01/18	NTY	PLT001			AN	AN
164000	Video Exhibit in Support of Response to Motions for Summary Judgment & to Motion for Sanctions Based on Spoilation of Evidence	06/05/18	SRK	DEF001			DG	DG
165000	Response To Motion for Summary Judgment	06/05/18	SRK	DEF001			DG	DG
166000	Responses To Motion for Sanctions Based on Spoilation of Evidence	06/05/18	SRK	DEF001			DG	DG
167000	Response To Motion for Summary Judgment	06/05/18	SRK	DEF001			DG	DG
168000	Response To Motion for Summary Judgment	06/05/18	SRK	DEF001			DG	DG
169000	Amended Certificate of Service	06/05/18	SRK	DEF001			DG	DG
170000	Third Party Defendant Rowena Shaw and Peter Shaw's Joinder to Third Party Defendant Mary Ellen Kinion's Motion to Strike Plaintiff's Expert Witness Delegation Filed by DEF002-Shaw, Rowena, DEF003-Shaw, Peter	06/11/18	SRK	DEF002			MB	MB
171000	Elfriede Klementi's Reply in Support of Motion for Summary Judgment	06/13/18	SRK	TPD002			AN	AN
172000	Reply in Support of Third-Party Defendant's Motion for Sanctions Based on Spoilation of Evidence Filed by OTH001-Kinion, Mary Ellen, TPD002-Klementi, Elfriede	06/13/18	SRK	OTH001			AN	AN
173000	Reply in Support of Third-Party Defendant Mary Kinion's Motion for Summary Judgment	06/13/18	SRK	OTH001			AN	AN
174000	Order	06/13/18	NTY	000			AN	AN

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
176000	Counter-Defendant Helmut Klementi's Reply in Support of His Motion for Summary Judgment on All Counterclaims	06/13/18	NTY	PLT001			AN	AN
175000		06/14/18	TBA	000			AN	AN
177000	Motion to Dismiss	06/22/18	TWG	TPD002			AN	AN
178000		06/25/18	TBA	000			AN	AN
179000	Substitution of Counsel	07/18/18	SRK	DEF001			AN	AN
180000	Order	08/17/18	SRK	000			AN	AN
181000		08/17/18	TBA	000			AN	AN
182000	Order Granting Counter-Defendant Helmut Klementi's Motion for Summary Judgment on all Claims	08/23/18	NTY	000			MB	MB
183000	Order	08/23/18	TWG	000			MB	MB
184000	Order	08/23/18	TWG	000			MB	MB
185000	Order	08/23/18	TWG	000			MB	MB
186000	Confidential	08/24/18	SRK	000			MB	MB
187000	Order	08/29/18	SRK	000			AN	AN
188000		08/29/18	TBA	000			AN	AN
189000	Order	08/29/18	SRK	000			AN	AN
190000		08/29/18	TBA	000			AN	AN
191000	Notice of Entry of Order	08/31/18	SRK	OTH001			AN	AN
192000	Notice of Entry of Order	08/31/18	SRK	OTH001			AN	AN
193000	Notice of Entry of Order	08/31/18	SRK	PLT001			AN	AN
194000	Third-Party Defendant Kinion's Motion for Attorney's Fees and Costs	09/07/18	NTY	OTH001			AN	AN
196000	Third-Party Defendant Elfriede Klementi's Motion for Attorney's Fees and Costs	09/07/18	NTY	TPD002			AN	AN
195000		09/10/18	TBA	000			AN	AN
197000		09/10/18	TBA	000			AN	AN

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
198000	Counter-Defendant Helmut Klementi's Verified Memorandum of Costs	09/10/18		SRK	PLT001		AN	AN
199000	Notice of Appeal	09/17/18		SRK	DEF001		AN	AN
200000	Case Appeal Statement	09/17/18		SRK	DEF001		AN	AN
201000	Counter-Defendant Helmut Klementi's Motion for Attorney's Fees	09/20/18		NTY	PLT001		AN	AN
202000		09/21/18		TBA	000		AN	AN
203000	Request for Submission	09/27/18		SRK	TPD002		AN	AN
204000	Request for Submission	09/27/18		SRK	OTH001		AN	AN
205000	Notice of Entry of Order Filed by DEF003-Shaw, Peter, DEF002-Shaw, Rowena	09/28/18		SRK	DEF003		AN	AN
206000	Receipt for Documents (Supreme Court)	10/03/18		SRK	000		MB	MB
207000	Request for Submission	10/12/18		NTY	PLT001		AN	AN
208000	Affidavit of Mailing	10/18/18		NTY	PLT001		MB	MB
209000	Order	11/05/18		SRK	000		AN	AN
210000		11/06/18		TBA	000		AN	AN
211000	Transcript Request	11/07/18		SRK	DEF001		AN	AN
212000	Transcript Request	11/07/18		SRK	000		AN	AN
213000	Notice of Entry of Order	11/19/18		SRK	PLT001		AN	AN
214000	Request for Entry of Judgment Pursuant to NRCP 58 and NRS 17.130	11/28/18		SRK	PLT001		AN	AN
215000		11/28/18		TBA	000		AN	AN
216000	Third-Party Defendant Elfriede Kelemti's Request for Entry of Judgment Pursuant to NRCP 58 and NRS 17.130	12/06/18		SRK	TPD002		AN	AN
217000		12/06/18		TBA	000		AN	AN
218000	Third-Party Defendant Mayr Ellen Kinion's Request for Entry of Judgment Pursuant to NRCP 58 and NRS 17.130	12/06/18		SRK	OTH001		AN	AN
219000		12/06/18		TBA	000		AN	AN

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
220000	Notice of Appeal	12/17/18	SRK	DEF001			AN	AN
221000	Case Appeal Statement - Appeal From Attorneys' Fees Orders	12/17/18	SRK	DEF001			AN	AN
222000	Transcript of Proceedings (1/30/17)	12/17/18	SRK	000			AN	AN
223000	Judgment	12/20/18	SRK	000			AN	AN
224000	Judgment	12/20/18	SRK	000			AN	AN
225000	Receipt for Documents (Supreme Court)	12/24/18	SRK	000			AN	AN
226000	Notice of Entry of Judgment	12/28/18	SRK	OTH001			AN	AN
227000	Notice of Entry of Judgment	12/28/18	SRK	OTH001			AN	AN
228000	Notice of Entry of Judgment	12/31/18	NTY	PLT001			DG	DG
229000	Transcript Request	01/03/19	TWG	DEF001			AN	AN
230000	Notice of Change of Firm Name and Email Address	01/10/19	NTY	000			DG	DG
231000	Amended Notice of Appeal	01/23/19	NTY	DEF001			DG	DG
232000	Receipt for Documents (Supreme Court)	02/11/19	NTY	000			DG	DG

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type
RMON	Run Monthly Reports	OPEN	07/03/15	30	yes	no	DDJT	D

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:

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DATED this 3rd day of June, 2019.

_____/s Kerry S. Doyle
Kerry S. Doyle

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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. 7

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Case No. 14-CV-0260

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Douglas County
District Court Clerk

ROBERT R. WILLIAMS
CLERK
BY *[Signature]* 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, & DOES 1-5,

Defendant

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON
KLEMENTI, an individual, ELFRIDE
KLEMENTI, an individual, MARY ELLEN
KINION, an individual, ROWENA SHAW, an
individual, PETER SHAW, an individual, and
DOES 1-5,

Counter-defendants & Third-
Party Defendants.

**ORDER GRANTING COUNTER-DEFENDANT
HELMUT KLEMENTI'S MOTION FOR
SUMMARY JUDGMENT ON ALL CLAIMS**

Before this Court is Counterdefendant Helmut Klementi ("Helmut")'s *Motion for Summary Judgment on All Counterclaims*, filed April 12, 2018. After this Court extended the time to respond, Counterclaimant Jeffrey Spencer filed his *Response to Motion for Summary Judgment* on June 1, 2018. Helmut filed his *Reply in Support of Motion for Summary Judgment on all Counterclaims* on June 13, 2016. This Court held oral argument on July 12, 2018 on all outstanding motions, including Helmut's Motion for Summary Judgment, and

1 found that summary judgment was warranted. This Order, setting forth the Court's findings
2 of undisputed material fact and conclusions of law, follows.

3 **STANDARD OF REVIEW**

4 Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil
5 Procedure when the pleadings, depositions, answers to interrogatories, admissions, and
6 affidavits, if any, that are properly before the court demonstrate that no genuine issue of
7 material fact exists, and the moving party is entitled to judgment as a matter of law. NRCP 56;
8 *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). *Id.* A factual dispute is
9 genuine when the evidence is such that a rational trier of fact could return a verdict for the
10 nonmoving party. *Id.* The substantive law controls which factual disputes are material and will
11 preclude summary judgment; other factual disputes are irrelevant. *Id.* at 731.

12 Although the pleadings and proof must be construed in a light most favorable to the
13 nonmoving party, that party bears the burden to do more than simply show that there is
14 some metaphysical doubt as to the operative facts in order to avoid summary judgment. *Id.* at
15 732. The nonmoving party is not entitled to build a case on the gossamer threads of whimsy,
16 speculation and conjecture. *Id.*

17 Mr. Spencer asserts, both in his Response and during oral argument on Helmut's
18 Motion, that this Court may not enter summary judgment if there remains a "slightest doubt"
19 as to the facts. *Response*, p. 7. The Nevada Supreme Court, however, abrogated the slightest
20 doubt standard in *Wood v. Safeway*, *supra*. This Court rejects Mr. Spencer's invitation to
21 apply the slightest doubt standard and instead applies the correct standard for summary
22 judgment as set forth herein.

23 The manner in which each party satisfies its burden of production for summary
24 judgment "depends on which party will bear the burden of persuasion on the challenged claim
25 at trial." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134
26 (2007). If the nonmoving party will bear the burden of persuasion at trial, the moving party
27 "may satisfy the burden of production by either (1) submitting evidence that negates an
28 essential element of the nonmoving party's claim, or (2) 'pointing out ... that there is an

1 absence of evidence to support the nonmoving party's case.'" *Francis v. Wynn Las Vegas, LLC*,
2 127 Nev. Adv. Op. 60, 262 P.3d 705, 714 (2011) (internal citations omitted).

3 Finally, to withstand summary judgment, Mr. Spencer as the nonmoving party cannot
4 rely solely on the general allegations and conclusions set forth in the pleadings, but must
5 instead present specific facts demonstrating the existence of a genuine factual issue
6 supporting its claims. *Ransdell v. Clark County*, 124 Nev. 847, 860, 192 P.3d 756, 765 (2008).
7 With the summary judgment standard set forth, the Court enters its findings of undisputed
8 material fact and conclusions of law.

9 **FINDINGS OF UNDISPUTED MATERIAL FACT**

10 The Court finds the following material facts are undisputed:

11 1. Helmut Klementi is eighty-three years old and lives at 163 Pine Ridge Drive,
12 Stateline, Nevada, in the Kingsbury General Improvement District ("KGID").¹

13 2. Helmut had a twin brother, Egon Klementi ("Egon"), who lived with his wife
14 Elfriede "Elfie" Klementi at 187 Meadow Lane, Stateline, Nevada at the corner of Meadow
15 Lane and Charles Avenue.²

16 3. Counterclaimant Mr. Spencer resides at 321 Charles Avenue, Stateline Nevada,
17 with his wife Marilyn Spencer ("Ms. Spencer").³

18 4. In May 2012, there was a dispute between Mr. Spencer and the other
19 neighbors in the KGID district, including Helmut's brother Egon, regarding a fence that Mr.
20 Spencer had built on his property that May in violation of Douglas County Code.⁴

21 5. Later that year, in December 2012, Mr. Spencer operated a snow plow in the
22 neighborhood streets of KGID, including Charles Avenue, Meadow Lane, and Juniper Drive.⁵

23
24
25
26 ¹ Motion, Exhibit 1 ¶3; Exhibit 2, pp. 8:2-9, 12:15.

27 ² Motion, Exhibit 1, ¶4; Exhibit 2, p. 94:3—5. Egon Klementi passed away in fall 2017.

³ Motion, Exhibit 3, p. 8:8-15.

28 ⁴ Motion, Exhibit 1, ¶¶5-6; Exhibit 4.

⁵ Motion, Exhibit 3, p. 16:22-25, 17:1-4; 68:12-15.

1 6. During December 2012, residents of the neighborhood, including Egon and
2 Elfie, experienced issues with Mr. Spencer "berming-in" their driveways with snow and debris
3 in the course of his duties as a snow plow operator.⁶

4 7. On December 18, 2012, Helmut attended a meeting of the Board of Trustees
5 for the KGID with Egon and Elfie.⁷

6 8. Although he attended, Helmut did not make a statement or otherwise speak at
7 the December 18, 2012 meeting before the Board of Trustees for the KGID.⁸

8 9. At the December 18, 2012 KGID Board of Trustees meeting, Chairperson
9 Norman gave instructions for the neighbors concerned about the snow berms to take
10 pictures.⁹

11 10. When the December 18, 2012 KGID Board of Trustees meeting concluded,
12 Helmut went to Egon's and Elfie's home for dinner.¹⁰

13 11. After dinner, Helmut left Egon's house to take pictures of the snow berms in
14 front of Egon's property and to then return home.¹¹

15 12. As Helmut was taking pictures of the snow berm, he was knocked to the
16 ground by Mr. Spencer.¹²

17 13. Mr. Spencer admits he knocked Helmut to the ground, that it was not an
18 accident, that he knew it was a Klementi brother, and that he stood screaming over Helmut
19 after Mr. Spencer knocked Helmut to the ground.¹³

20 14. Mr. Spencer admits he pushed Helmut in order to stop Helmut from getting
21 away.¹⁴

22
23 ⁶ Motion, Exhibit 3, p. 68:12-15; Exhibit 5, pp. 46-50.

24 ⁷ Motion, Exhibit 1, ¶7; Exhibit 2, p. 86:8-11.

25 ⁸ Motion, Exhibit 1, ¶¶8-9; Exhibit 2, p. 92:21-22, p. 93:10-12; Exhibit 6.

26 ⁹ Motion, Exhibit 1, ¶10, Exhibit 2, 107:12-15, Exhibit 6.

27 ¹⁰ Motion, Exhibit 1, ¶11; Exhibit 2, p. 93:16-24.

28 ¹¹ Motion, Exhibit 1, ¶12; Exhibit 2, p. 97:18-25, p. 107:12-15.

¹² Motion, Exhibit 1, ¶13; Exhibit 2, p. 117:1-3; p. 119:19-24, p. 127:11-14; Exhibit 3, pp. 98:1-25—99:1-23, 100:15-19.

¹³ Motion, Exhibit 3, pp. 98:23-25—99:1-23.

¹⁴ Motion, Exhibit 1, ¶17; Exhibit 7.

1 15. It was Helmut's opinion and belief that Mr. Spencer punched him in his side
2 and knocked him to the ground.¹⁵

3 16. Because Helmut sustained injuries as a result of this incident, emergency
4 services were called and Douglas County Sheriff's Deputy Jesse McKone responded and
5 commenced an investigation.¹⁶

6 17. Helmut reported in good faith his belief to Deputy McKone that Mr. Spencer
7 had assaulted him and knocked him to the ground.¹⁷

8 18. After interviewing witnesses and investigating the scene, Deputy McKone
9 concluded that Mr. Spencer's testimony regarding the incident was not credible and he
10 opined that Mr. Spencer used the excuse of someone breaking into his truck as a reason to
11 confront and commit a battery upon Helmut when he saw Helmut taking photographs of the
12 snow berms.¹⁸

13 19. Accordingly, based on his investigation and opinion, Deputy McKone arrested
14 Mr. Spencer for battery/abuse of an elderly person.¹⁹

15 20. The decision to arrest Mr. Spencer was solely Deputy McKone's decision, based
16 on "the inconsistencies with what [he] had seen on scene and Mr. Spencer's rendition."²⁰

17 21. On or about December 26, 2012, Helmut obtained a Temporary
18 Restraining/Protective Order against Mr. Spencer.²¹

19 22. On January 8, 2013, Helmut attended a meeting before the Douglas County
20 Planning Commission and its members.²²

21 23. At that meeting, Helmut read a statement during public comment that stated
22 Mr. Spencer confronted and punched him while he was taking pictures of a snow berm
23

24
25 ¹⁵ Motion, Exhibit 1, ¶14; Exhibit 2, pp. 117:1-3, 119:19-24, 130:23-25—131:1-10.

¹⁶ Motion, Exhibit 1, ¶15; Exhibit 8, pp. 13:1-25—23:1-10.

¹⁷ Motion, Exhibit 1, ¶16.

¹⁸ Motion, Exhibit 7; Exhibit 8, p. 36:14-22; p. 62:2-9.

¹⁹ Motion, Exhibit 7; Exhibit 8, p. 62:2-9.

²⁰ Motion, Exhibit 8, p. 62:8-9.

²¹ Motion, Exhibit 1, ¶¶18-19; Exhibit 9.

²² Motion Exhibit 1, ¶¶20-21; Exhibit 10.

1 pushed against his brother Egon's fence and that Helmut had a restraining order against Mr.
2 Spencer.²³

3 24. Ultimately, Mr. Spencer was charged with committing a battery upon Helmut
4 and criminal complaints were filed against him by the Douglas County District Attorney's
5 office.²⁴

6 25. District Attorney Maria Pence testified before this Court on January 30, 2017
7 extensively regarding the charging decisions of the district attorney's office and she testified
8 that "no one is involved in the charging decision except for myself and ... the charging decision
9 is made solely by whichever Deputy District Attorney was assigned that case."²⁵

10 26. D.A. Pence also testified the decision to enhance the gross misdemeanor
11 battery charge against Mr. Spencer to a felony charge stemmed from her receipt of medical
12 records showing that Helmut had sustained substantial bodily harm.²⁶

13 27. The criminal proceedings against Mr. Spencer proceeded to a preliminary
14 hearing and criminal trial, where Helmut testified against Mr. Spencer on behalf of the State
15 of Nevada as a victim of a crime.²⁷

16 28. The Court finds the only statements Helmut made about Mr. Spencer were (1)
17 his statement to Deputy McKone on December 18, 2012, (2) his statement to the Douglas
18 County Planning Commission on January 8, 2013, and (3) his testimony at Mr. Spencer's
19 preliminary hearing and trial.²⁸

20 29. The Court finds that Jeffrey Spencer has failed to identify any other statements
21 that Helmut Klementi made in this case. The Court rejects Mr. Spencer's insinuation that
22 Helmut Klementi is liable for defamation for statements he made to his medical providers
23
24

25 ²³ Motion, Exhibit 1, ¶¶22-23; Exhibit 11.

26 ²⁴ Counterclaimant Jeffrey Spencer's Amended Counterclaim on file herein, ¶¶53-57; and
Counterclaimant's Opposition to Motion for Summary Judgment [Mary Ellen Kinion], Exhibits 1-2.

27 ²⁵ Motion, Exhibit 12.

28 ²⁶ Id., p. 14:8-24, p. 64:6-9.

²⁷ Motion, Exhibit 1, ¶23.

²⁸ Motion, Exhibit 1, ¶25, Exhibit 2, Exhibit 7, Exhibit 9, Exhibit 10, Exhibit 13

1 when seeking treatment after the December 18, 2012 incident and finds his assertion
2 completely unsupported by any authority. *Response*, p. 6, ¶28.

3 30. The Court finds that the statements of Helmut Klementi, that Jeffrey Spencer
4 punched him and knocked him to the ground, and that Helmut Klementi had a restraining
5 order against Mr. Spencer are true statements that Helmut Klementi made to law
6 enforcement, the Douglas County Planning Commission, and to the Ninth Judicial District
7 Court.

8 31. The Court finds that Helmut Klementi had a good faith belief he was punched
9 by Jeffrey Spencer on the evening of December 18, 2012 and that Helmut Klementi did not act
10 with malice when he reported the same to law enforcement, the Ninth Judicial District Court,
11 and the Douglas County Planning Commission.

12 32. The Court finds that Jeffrey Spencer has failed to produce any evidence in this
13 case that Helmut Klementi was "dishonest in [his] reporting, and/or repeated dishonest
14 reports of others... and/or tampered with evidence." *Response*, p. 12:16-18. Rather, the Court
15 finds that these are mere unsupported allegations.

16 33. The Court finds Jeffrey Spencer has failed to meet his burden on summary
17 judgment to come forward with any admissible evidence, other than allegations and
18 speculation, to raise a genuine issue of material fact for trial on all of his counterclaims against
19 Helmut Klementi.

20 34. The Court finds that the video tape produced and incorporated into Jeffrey
21 Spencer's *Response to Motion for Summary Judgment* does not create a genuine issue of
22 material fact; rather, it supports Helmut's belief that he was assaulted by Mr. Spencer on the
23 evening of December 18, 2012.

24 35. To the extent any of the following conclusions of law constitute findings of fact,
25 they are incorporated herein.

26 **CONCLUSIONS OF LAW**

27 1. To the extent any of the foregoing findings of fact constitute conclusions of
28 law, they are incorporated herein.

1 **Counterclaimant's Claim against Helmut Klementi for Defamation:**

2 2. Liability for defamation may only arise if the plaintiff proves the following: "(a)
3 a false and defamatory statement concerning another; (b) an unprivileged publication to a
4 third party; (c) fault amounting at least to negligence on the part of the publisher; and (d)
5 either actionability of the statement irrespective of special harm, or the existence of special
6 harm caused by the publication." *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422, 425 (2001)
7 (emphasis added).

8 3. Whether a statement is defamatory is generally a question of law, unless it is
9 subject to two different interpretations. *Id.*; *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1191,
10 866 P.2d 274, 281 (1993) ("Whether or not a statement is capable of defamatory construction
11 is a question of law for the court.").

12 4. A court reviewing an allegedly defamatory statement reviews "the words in
13 their entirety and in context in order to determine whether they are susceptible of
14 defamatory meaning." *Lubin*, 117 Nev. at 111, 17 P.3d at 426. This Court examines the
15 statements identified in paragraph 28 of its *Finding of Undisputed Material Fact* to determine
16 whether Helmut's statements were defamatory.

17 5. A statement is not defamatory "if it is absolutely true, or substantially true."
18 *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 715, 57 P.3d 82, 88 (2002). A statement is
19 also not defamatory if it is "an exaggeration or generalization" that a reasonable person could
20 interpret as mere rhetorical hyperbole. *Id.* Finally, statements of opinion are protected
21 speech under the First Amendment of the United States Constitution. *Lubin*, 117 Nev. at 112.

22 6. In this case, the Court concludes the statements of Helmut Klementi in this case
23 regarding Jeffrey Spencer and the incident of December 18, 2012 are true. Mr. Spencer
24 admitted in his deposition that he intended to collide with and stop the person in the street
25 who was Helmut Klementi. By Mr. Spencer's own admissions, the Court concludes Helmut's
26 statements were not defamatory, as they are true or substantially true. Notably, Mr. Spencer
27 fails to identify any other particular statement that Helmut made which is defamatory or
28 untrue.

1 7. The Court also concludes that Helmut's statements are protected by qualified
2 privilege. Where a person makes communications to law enforcement officers in good faith
3 before the initiation of criminal proceedings, the Nevada Supreme Court has recognized that
4 person enjoys a qualified privilege. *Pope v. Motel 6*, 121 Nev. 307, 114 P.3d 277 (2005).

5 8. After an individual has reported a crime, a plaintiff must prove, by a
6 preponderance of the evidence, "that the defendant abused the privilege by publishing the
7 defamatory communication [to law enforcement] with actual malice." *Id.* at 317. "Actual
8 malice is a stringent standard that is proven by demonstrating that a statement is published
9 with knowledge that it was false or with reckless disregard for its veracity." *Id.* citing *Pegasus*,
10 118 Nev. at 722, 57 P.3d at 92.

11 9. Whether a statement is conditionally privileged is a question of law for the
12 Court to decide; in fact, it is reversible error for this Court to submit to the jury the issue of
13 conditional, or qualified, privilege. The issue of qualified privilege does not even go to the jury
14 unless there is "sufficient evidence" for the jury to reasonably infer that the defendant made
15 the statement with actual malice. *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657
16 P.2d 101 (1983).

17 10. In applying the foregoing authority, the Court concludes the qualified privilege
18 applies to Helmut's reporting of the December 18, 2012 incident to law enforcement. The
19 Court also concludes Jeffrey Spencer failed to demonstrate (1) that Helmut did not have a
20 good faith belief regarding the incident, and (2) that Helmut acted with actual malice when he
21 reported the incident to law enforcement.

22 11. This Court also concludes the absolute privilege applies. Where a person
23 makes a statement in the course of a judicial proceeding, Nevada follows the "'long-standing
24 common law rule that communications uttered or published in the course of judicial
25 proceedings are absolutely privileged." *Circus Circus Hotels, Inc.*, 99 Nev. at 60-61, 657 P.2d at
26 104; *Nickovich v. Mollart*, 51 Nev. 306, 274 P. 809, 810 (1929) (a witness who testifies in the
27 course of judicial proceedings is not liable for the answers he makes to questions posed by the
28 court or counsel and all his answers are privileged).

1 12. The absolute privilege also extends to "quasi-judicial proceedings before
2 executive officers, boards, and commissions...." *Circus Circus Hotels, Inc.*, 99 Nev. at 60-61.

3 13. Even where defamatory statements are published with knowledge of their
4 falsity and ill will toward a plaintiff, the absolute privilege precludes liability as a matter of law.
5 *Id.*; *Knox v. Dick*, 99 Nev. 514, 518, 665 P.2d 267, 270 (1983) (holding that the absolute
6 privilege is applicable to quasi-judicial proceedings so "the right of individuals to express their
7 views freely upon the subject under consideration is protected.").

8 14. The scope of absolute privilege in Nevada is "quite broad." *Fink v. Oshins*, 118
9 Nev. 428, 433, 49 P.3d 640, 644 (2002). The defamatory communication "need not be strictly
10 relevant to any issue involved" in the judicial or quasi-judicial proceeding; rather, it needs only
11 to be "in some way pertinent to the subject of controversy." *Id.* citing *Circus Circus Hotels,*
12 *Inc.*, 99 Nev. at 61, 657 P.2d at 104 (defamatory material need only have "some relation" to
13 the proceeding and as long as it has "some bearing" on the subject matter, it is absolutely
14 privileged). Issues of absolute privilege and relevance are questions of law for this Court to
15 decide. *Circus Circus Hotels, Inc.*, 99 Nev. at 62, 657 P.2d at 105.

16 15. The Court concludes it is undisputed the absolute privilege applies to any and
17 all statements Helmut made in court during Jeffrey Spencer's criminal proceedings and liability
18 does not attach as a matter of law.

19 16. The Court concludes Helmut's statements to the Douglas County Planning
20 Commission are also protected by absolute privilege as a matter of law, because the Douglas
21 County Planning Commission is a quasi-judicial body and Helmut's statements to the
22 Commission are relevant to the subject controversy, which is Jeffrey Spencer's construction of
23 a fence that violated county code that resulted in a neighborhood dispute and ultimately
24 culminated in the December 18, 2012 incident.

25 17. The Court concludes summary judgment on the counterclaim for defamation
26 against Helmut is proper in Helmut's favor and against Jeffrey Spencer.

27 ///

28 ///

1 **Counterclaimant's Claim against Helmut Klementi for Malicious Prosecution:**

2 18. To establish a prima facie case of malicious prosecution in Nevada, a plaintiff
3 must prove the following: "(1) want of probable cause to initiate the prior criminal
4 proceeding; (2) malice; (3) termination of the prior criminal proceedings; and (4) damage."
5 *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002) citing *Jordan v. Bailey*, 113 Nev.
6 1038, 1047, 944 P.2d 828, 834 (1997). This claim also requires the plaintiff prove the
7 defendant "initiated, procured the institution of, or actively participated in the continuation of
8 a criminal proceeding against the plaintiff." *Id.*

9 19. "When a private person gives to a prosecuting officer information *that he*
10 *believes to be true*, and the officer in the exercise of his uncontrolled discretion initiates
11 criminal proceedings based upon that information, the informer is not liable under the rule
12 stated in this Section even though the information proves to be false and his belief was one
13 that a reasonable man would not entertain." *Lester v. Buchanan*, 112 Nev. 1426, 929 P.2d 910
14 (1996) citing Restatement (Second) of Torts § 653 (1977).

15 20. The Court concludes that Jeffrey Spencer has failed to come forward with any
16 evidence that Helmut Klementi initiated, procured the institution of, or actively participated in
17 the continuation of criminal proceedings against Mr. Spencer. Mr. Spencer has failed to
18 produce any evidence that Helmut requested or pressured law enforcement or D.A. Pence to
19 commence criminal proceedings against Mr. Spencer.

20 21. Rather, this Court heard testimony from Deputy District Attorney Maria Pence
21 at the January 30, 2017 hearing in this case that she was the only person involved in charging
22 Mr. Spencer in his criminal case. It is also undisputed that Deputy McKone's decision to arrest
23 Mr. Spencer was solely the decision of the Deputy, who based his decision on "the
24 inconsistencies with what [he] had seen on the scene and Mr. Spencer's rendition." *Findings*
25 *of Undisputed Material Fact*, ¶¶18-20. The Court also concludes that probable cause existed
26 for Mr. Spencer's criminal case when the justice court bound Mr. Spencer over for trial on the
27 charges filed by D.A. Pence after the April 24, 2013 hearing preliminary hearing.
28

1 22. The Court concludes that Jeffrey Spencer's "dispute" with the conclusions that
2 Deputy McKone and Deputy District Attorney Maria Pence reached in Mr. Spencer's criminal
3 investigation and trial are insufficient, as a matter of law, to create a genuine issue of material
4 fact for the purpose of defeating summary judgment. *Response*, p. 5, ¶18-21, p. 6, ¶25-26.
5 *Disagreeing with Deputy McKone and D.A. Pence's decisions to arrest and charge Mr. Spencer*
6 does not satisfy Mr. Spencer's burden to come forward with specific evidence in order to
7 preclude entry of summary judgment against him.

8 23. Finally, as set forth above, the Court concludes Helmut's statements are
9 protected by absolute immunity in the context of this malicious prosecution claim. As the
10 Nevada Supreme Court recently confirmed in *Harrison v. Roitman*, 131 Nev. Adv. Op. 92, 362
11 P.3d 1138 (2015), the absolute immunity privilege is not limited to claims of defamation. In
12 applying the three-pronged functional approach set forth in *Harrison*, supra, the Court
13 concludes the following: (1) that, as a witness involved and testifying in a judicial proceeding,
14 Helmut enjoys absolute immunity from liability resulting from his testimony; (2) the likelihood
15 of harassment or intimidation was sufficient to interfere with Helmut's ability to testify as the
16 victim of a crime; and (3) procedural safeguards by way of cross-examination of Helmut were
17 exercised by Mr. Spencer in his criminal trial. Thus, the Court concludes Helmut enjoys
18 absolute immunity from Mr. Spencer's claim for malicious prosecution against him because he
19 was a testifying witness in Spencer's criminal trial.

20 24. The Court concludes summary judgment on the counterclaim for malicious
21 prosecution against Helmut should be granted in Helmut's favor and against Jeffrey Spencer.

22 **Counterclaimant's Claims against Helmut for Civil Conspiracy:**

23 25. An actionable claim for civil conspiracy "consists of a combination of two or
24 more persons who, by some concerted action, intend to accomplish an unlawful objective for
25 the purpose of harming another, and damage results from the act or acts." *Consol. Generator-*
26 *Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998).

27 26. In order to prevail on a claim for civil conspiracy, a plaintiff must show the
28 commission of the underlying tort and an agreement between defendants to commit that

1 tort. *Jordan v. Dept. of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75, 110 P.3d 30, 51
2 (2005).²⁹

3 27. This Court has already concluded that Jeffrey Spencer failed to demonstrate
4 genuine issues of material fact remain on his claims against Helmut Klementi for defamation
5 and malicious prosecution. In the absence of any specific evidence, Mr. Spencer cannot
6 demonstrate the commission of the underlying tort, which is a necessary predicate to a civil
7 conspiracy. It is well-established that the arguments of counsel are not evidence and
8 do not establish the facts of the case. See Nevada Ass'n Servs., Inc. v. Eighth Jud. Dist. Ct., 130
9 Nev. Adv. Op. 94, 338 P.3d 1250, 1255 (2014). The Court concludes Mr. Spencer has
10 demonstrated no evidence of a conspiracy existing between the counter-defendants.

11 28. Accordingly, the Court concludes summary judgment on the counterclaims for
12 civil conspiracy (defamation) and civil conspiracy (malicious prosecution) against Helmut
13 should be granted in Helmut's favor and against Jeffrey Spencer.

14 **Counterclaimant's Claim against Helmut for Punitive Damages:**

15 29. Punitive damages are not a standalone claim, which Mr. Spencer concedes.
16 *Response*, p. 17:1-3. Rather, the district court has discretion to determine if a party's conduct
17 merits punitive damages as a matter of law. *Winchell v. Schiff*, 124 Nev. 938, 948, 193 P.3d
18 946, 953 (2008); *Bongiovi v. Sullivan*, 122 Nev. 556, 580, 138 P.3d 433, 450 (2006).

19 Punitive damages are governed by statute and may only be awarded when the plaintiff
20 proves, by clear and convincing evidence, that the "defendant has been guilty of oppression,
21 fraud, or malice, express or implied" NRS 42.005(1); *In re Discipline of Drakulich*, 111 Nev.
22 1556, 1566, 908 P.2d 709, 715 (1995) (defining "clear and convincing evidence").

23 30. In this case, Mr. Spencer has failed to come forward with any evidence, let
24 alone clear and convincing evidence, that Helmut's conduct in the underlying criminal case
25 merits an award of punitive damages. Mr. Spencer's complete response in opposition to
26 Helmut's argument on punitive damages is contained in a single line: "Mr. Spencer does not
27

28 ²⁹ Abrogated on other grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008).

1 dispute that this is just a measure of damages, which would be addressed at the time of trial."
2 *Response*, p. 17:2-3. This one line completely fails to satisfy Mr. Spencer's burden on
3 summary judgment to present specific facts and evidence in response to Helmut's Motion.
4 *Ransdell v. Clark County*, 124 Nev. 847, 860, 192 P.3d 756, 765 (2008). The Court concludes
5 Mr. Spencer has failed to meet his burden. The Court further concludes, as a matter of law,
6 that Helmut's conduct in reporting the December 18, 2012 incident does not constitute
7 conduct for which punitive damages are appropriate.

8 31. The Court concludes that summary judgment on the punitive damages claim is
9 appropriate in favor of Helmut and against Jeffrey Spencer.

10 **Counterclaimant's Claim against Helmut for Intentional Infliction of Emotional Distress:**

11 32. In a claim for intentional infliction of emotional distress ("IIED"), a plaintiff must
12 prove the following: "(1) extreme and outrageous conduct with either the intention of, or
13 reckless disregard for, causing emotional distress, (2) the plaintiff's having suffered severe or
14 extreme emotional distress, and (3) actual or proximate causation." *Barmettler v. Reno Air,*
15 *Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998) (concluding summary judgment was
16 proper where plaintiff failed to establish either the first or second elements of this claim)
17 citing *Star v. Rabello*, 97 Nev. 124, 125, 625 P.2d 90, 91-92 (1981) (citation omitted).

18 33. A prima facie claim of intentional infliction of emotional distress requires a
19 plaintiff to prove that the defendant's conduct was "extreme and outrageous." *Maduikie v.*
20 *Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998). Extreme and outrageous conduct
21 "is that which is outside all possible bounds of decency and is regarded as utterly intolerable
22 in a civilized community." *Id.* citing California Book of Approved Jury Instruction 12.74
23 (internal citations omitted).

24 34. The Court concludes that Helmut's actions of reporting the December 18, 2012
25 incident, testifying in a criminal proceeding, and, making a statement about that incident do
26 not rise to the level of extreme and outrageous conduct as a matter of law. Mr. Spencer's
27 own authority cited in his *Response* supports the Court's conclusion that Helmut's conduct in
28 this case is not extreme and outrageous. *Branda v. Sanford*, 97 Nev. 643, 645, 637 P.2d 1223,

1 1224 (1981) (jury to consider whether extreme outrage existed where defendant called 15
2 year old plaintiff f—k—g b—ch," "f—k—g c—t" and "no lady."). The Court concludes Mr.
3 Spencer's IIED claim fails as a matter of law on the first element.

4 35. The Court also concludes Mr. Spencer's IIED claim fails on the second element.
5 When a plaintiff claims emotional distress that precipitates physical symptoms, then, in the
6 absence of a physical impact, the plaintiff must prove "serious emotional distress causing
7 physical injury." *Barmettler*, 114 Nev. at 448, 956 P.2d at 1387.

8 36. The stress "must be so severe and of such intensity that no reasonable person
9 could be expected to endure it." *Alam v. Reno Hilton Corp.*, 819 F. Supp. 905, 911 (D. Nev.
10 1993). "Insomnia and general physical or emotional discomfort are insufficient to satisfy the
11 physical impact requirement." *Id.* The physical impact requirement is not met even where a
12 party has "great difficulty in eating, sleeping, and suffers outward manifestations of stress and
13 is generally uncomfortable." *Churchill v. Barach*, 863 F. Supp. 1266, 1275 (D. Nev. 1994); *Alam*,
14 819 F. Supp. at 911 (feelings of inferiority, headaches, irritability and weight loss did not
15 amount to severe emotional distress).

16 37. The Court concludes that Mr. Spencer's claimed "emotional distress" does not,
17 as a matter of law, rise to the level of "severe or extreme emotional distress" required to
18 satisfy the second element of his IIED claim. Mr. Spencer claims the following symptoms:
19 heartburn, stomach aches, depression, lack of concentration, difficulty sleeping. These
20 symptoms, as a matter of law, are insufficient to satisfy the physical impact requirement for
21 purposes of an IIED claim. The Court notes that many of Mr. Spencer's physical issues with
22 depression and heartburn pre-existed this case by ten to fifteen years. *Motion*, Exhibit 15.

23 38. The Court also declines to consider "Exhibit 3" to Mr. Spencer's *Response*,
24 which appears to be a medical record from a Dr. Allison Steinmetz, M.D. Mr. Spencer failed to
25 rebut Helmut's assertion that "Exhibit 3" was never produced in this case. On its face, Exhibit
26 3 is unauthenticated because it fails to include the requisite certification of the custodian of
27 records. Rule 56(e) of the Nevada Rules of Civil Procedure requires this Court to consider
28 only "sworn or certified copies" and the fact Mr. Spencer attached this document to his

1 affidavit does not satisfy the authentication requirement. *Orr v. Bank of Am., NT & SA*, 285
2 F.3d 764, 773 (9th Cir. 2002) (excluding the majority of plaintiff's exhibits that were attached
3 to her counsel's declaration for failure to properly authenticate).

4 39. The Court concludes that summary judgment on the claim for intentional
5 infliction of emotional distress is appropriate in favor of Helmut and against Jeffrey Spencer.

6 **CONCLUSION**

7 It is well-established that "there is no issue for trial unless there is sufficient evidence
8 favoring the nonmoving party for a jury to return a verdict for that party." *Anderson v. Liberty*
9 *Lobby*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511 (1986) (internal citations omitted). The Court
10 concludes that Mr. Spencer has failed to satisfy his burden to provide sufficient evidence to
11 defeat Helmut Klementi's Motion for Summary Judgment.

12 Accordingly, and good cause appearing therefor,

13 **IT IS HEREBY ORDERED** Counter-defendant Helmut Klementi's *Motion for Summary*
14 *Judgment on All Claims* is granted in its entirety;

15 **IT IS FURTHER ORDERED** summary judgment on all counterclaims alleged in the
16 *Amended Counterclaim* is entered in favor of Counter-defendant Helmut Klementi and against
17 Counterclaimant Jeffrey Spencer.

18 Dated this 21 day of August, 2018.

19
20
21 
22 DISTRICT JUDGE

23 Submitted by:
24 DOUGLAS R. BROWN, ESQ.
25 SARAH M. MOLLECK, ESQ.
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1 CASE NO.: 14-CV-0260

2 DEPT. NO.: II

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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,

ORDER

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,
19 ELFRIDE KLEMENTI, an individual,
20 MARY ELLEN KINION, an individual,
21 ROWENA SHAW, an individual, PETER
22 SHAW, an individual, and DOES 1-5,

23 Counterdefendants & Third Party
24 Defendants.

25 On April 24, 2018, Third-Party Defendant, Mary Kinion ("Kinion"), by and
26 through her counsel, Glogovac & Pintar, filed a Motion for Summary Judgment. On
27 June 5, 2018, Defendant/Counterclaimant, Jeffrey Spencer ("Spencer") filed an
28 Opposition. Kinion replied on June 13, 2018. On July 12, 2018, a hearing and oral
argument was held, where the Court granted summary judgment in favor of Kinion on

1 all remaining claims. This order setting forth the Court's findings of fact and
2 conclusions of law follows.

3 **I. Background**

4 This action arises out of a dispute between neighbors that live in the Kingsbury
5 Grade General Improvement District ("KGID"). In 2013, Spencer was criminally
6 prosecuted by the Douglas County District Attorney's office for the alleged assault of
7 an elderly neighbor, Helmut Klementi. Spencer was acquitted of those criminal
8 charges. Helmut Klementi then filed a civil action against Spencer seeking recovery for
9 personal injuries arising from the alleged assault. In turn, Spencer asserted a counter-
10 claim against Helmut Klementi as well third-party claims against Kinion, Egon and
11 Elfriede Klementi, and Rowena and Peter Shaw.

12 On January 30, 2017, Kinion was granted summary judgment on Spencer's
13 third-party claim against her for malicious prosecution. By way of the motion before the
14 court, Kinion seeks summary judgment as to Spencer's remaining third-party claims
15 against her, i.e. defamation, civil conspiracy (defamation), civil conspiracy (malicious
16 prosecution), punitive damages, and infliction of emotional distress.

17 **II. Summary Judgment Standard**

18 Summary judgment is appropriate when the record demonstrates that no
19 genuine issue of material fact exists and the moving party is entitled to judgment as a
20 matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).
21 The pleadings and the record are construed in the light most favorable to the
22 nonmoving party. *Id.* However, the nonmoving party must do more than simply show
23 that there is some metaphysical doubt as to the material facts. *Id.* at 732 See also
24 *Torrealba v. Kesmetis*, 124 Nev. 95, 100, 178 P.3d 716, 720 (2008) (explaining the
25 burden on the moving party is to set forth facts demonstrating the existence of a
26 genuine issue in order to withstand a disfavorable summary judgment.")

27 The Supreme Court of Nevada follows the federal approach outlined in *Celotex*
28 *Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) with respect to

1 burdens of proof and persuasion in the summary judgment context. See *Cuzze v.*
2 *Univ. & Commty. College Sys. Of Nevada*, 123 Nev. 598, 601, 172 P.3d 131, 134
3 (2007). The party moving for summary judgment bears the initial burden of production
4 to show the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323, 106
5 S.Ct. 2548. If such a showing is made, then the party opposing summary judgment
6 assumes a burden of production to show the existence of a genuine issue of material
7 fact. *Wood*. 121 Nev. At 732, 121 P.3d at 1031. The manner in which a party may
8 satisfy its burden of production depends on which party is moving for summary
9 judgment. A party may satisfy the burden of production by either (1) submitting
10 evidence that negates an essential element of the nonmoving party's claim, or (2)
11 "pointing out ... that there is an absence of evidence to support the nonmoving party's
12 case." *Cuzze*, 123 Nev. At 302-03, 172 P.3d at 134.

13 Kinion filed a properly supported motion for summary judgment that showed
14 why, both factually and legally, she should prevail. Although Spencer opposed the
15 motion, he did so mainly on procedural grounds, arguing the old "slightest doubt"
16 standard in *Posadas v. City of Reno*, 109 Nev. 448, 452 (1993). In reply, Kinion
17 demonstrated that under *Wood v. Safeway, Inc.*, 121 Nev. at 730-31, the "slightest
18 doubt" standard no longer applies. While Spencer challenged Kinion's position,
19 Spencer did not offer or identify competent evidence to contradict or cast doubt on the
20 facts Kinion identified as being undisputed. On this record, summary judgment in favor
21 of Kinion is appropriate.

22 **III. Discussion**

23 **A. Defamation**

24 Liability for defamation may only arise if the plaintiff proves the following: "(a) a
25 false and defamatory statement concerning another; (b) an unprivileged publication to
26 a third party; (c) fault amounting at least to negligence on the part of the publisher; and
27 (d) either actionability of the statement irrespective of special harm, or the existence of
28

1 special harm caused by the publication." *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d
2 422, 425 (2001).

3 Whether a statement is defamatory is generally a question of law, unless it is
4 subject to two different interpretations. *Id.*; *K-Mart Corp. v. Washington*, 109 Nev.
5 1180, 1191, 866 P.2d 274, 281 (1993) ("Whether or not a statement is capable of
6 defamatory construction is a question of law for the court."). A court reviewing an
7 allegedly defamatory statement reviews "the words in their entirety and in context in
8 order to determine whether they are susceptible of defamatory meaning." *Lubin*, 117
9 Nev. At 111, 17 P.3d at 426.

10 In this case, Spencer asserts that Kinion made defaming statements to the
11 Douglas County Sheriff Department, the Douglas County District Attorney, KGID, the
12 Douglas County Planning Commission and/or the South Lake Tahoe Justice of the
13 Peace. Both the qualified privilege and the absolute privilege are defenses to
14 Spencer's defamation claim and Kinion has asserted these privileges in her affirmative
15 defenses to Spencer's Second Amended Counterclaim and Third-Party Complaint.

16 In *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657 P.2d 101 (1983),
17 the Nevada Supreme Court explained that a qualified or conditional privilege exists
18 where an allegedly defamatory statement is made in good faith "on any subject matter
19 in which the person communicating has an interest, or in reference to which he has a
20 right or a duty, if it is made to a person with a corresponding interest or duty." Whether
21 a statement is conditionally privileged is a question of law for this Court. *Id.* The
22 burden then shifts to the plaintiff to prove that the defendant abused the privilege by
23 making the defamatory statement with malice in fact. *Id.*, This issue does not go to the
24 jury unless there is sufficient evidence for the jury to reasonably infer that the
25 defendant made the statement with actual malice. *Id.*

26 Spencer asserts that statements made by Kinion during his criminal
27 proceedings are defamatory statements. Notably, however, Spencer fails to identify
28 any particular statement that Kinion made which is defamatory or untrue, other than a

1 statement she made to police concerning witnessing Spencer driving a snowplow and
2 propelling snow and other road debris onto Egon Klementi.

3 The Nevada Supreme Court has held that, where a person makes
4 communications to police before initiation of criminal proceedings, that person enjoys
5 a qualified privilege if the statement are made in good faith. In *Pope v. Motel 6*, 121
6 Nev. 307, 114 P.3d 277 (2005), the court clarified its holding in *K-Mart Corp v.*
7 *Washington*, by finding that a qualified privilege satisfied the balance between
8 safeguarding reputations and encouraging full disclosure by citizens "in order to
9 discharge public duties and protect individual rights." *Id.* at 316-317. This privilege
10 exists so that citizens, like Kinion, can report what they perceive in good faith as th
11 commission of a crime and not be subject to "frivolous lawsuits." *Id.* at 317.

12 Importantly, the *Pope* court held that after an individual has reported a crime, a
13 plaintiff must prove, by a preponderance of the evidence, "that the defendant abused
14 the privilege by publishing the defamatory communication [to law enforcement] with
15 actual malice." *Id.* "Actual malice is a stringent standard that is proven by
16 demonstrating that a statement is published with knowledge that it was false or with
17 reckless disregard for its veracity." *Id.* citing *Pegasus v. Reno Newspapers, Inc.*, 118
18 Nev. 706, 722, 57 P.3d 92, 92 (2002).

19 Spencer also cites to a letter that Kinion wrote on February 22, 2013, to Maria
20 Pence, the Deputy District attorney who prosecuted Spencer. Spencer claims that this
21 letter from Kinion became the basis for the amended criminal charges. However, that
22 assertion was specifically rejected by Ms. Pence at the hearing on January 30, 2017.
23 In addition, any statements made by Kinion to the district attorney or in any criminal
24 proceeding are absolutely privileged. Nevada recognizes and follows the "long-
25 standing common law rule that communications uttered or published in the course of
26 judicial proceedings are absolutely privileged." *Circus Circus Hotels, Inc.*, 99 Nev. at
27 60-61, 657 P.2d at 104; *Nickovich v. Mollart*, 51 Nev. 306, 274 P. 809, 810 (1929).

1 The absolute privilege also applies to "quasi-judicial proceedings before
2 executive officers, boards, and commissions..." *Id.* The absolute privilege precludes
3 liability as a matter of law even where the defamatory statements are "published with
4 knowledge of their falsity and personal ill will toward the plaintiff." *Id.* The policy behind
5 this privilege is that, "in certain situations, the public interest in having people speak
6 freely outweighs the risk that individuals will occasionally abuse the privilege" by
7 making defamatory statements. *Id.*; *Knox v. Dick*, 99 Nev. 514, 518, 665 P.2d 267, 270
8 (1983).

9 The Court finds that the KGID and the Douglas County Planning Commission
10 are quasi-judicial bodies to which the absolute privilege extends. *Circus Circus Hotels*,
11 99 Nev. at 60-61. The Court concludes the absolute privilege extends to any
12 statements Kinion made to the KGID and/or Douglas County Planning Commission.

13 For these reasons, summary judgment on the claim for defamation is
14 GRANTED.

15 **B. Conspiracy**

16 Spencer's Third and Fourth Claims for Relief assert claims for civil conspiracy
17 based on defamation and malicious prosecution. An actionable claim for civil
18 conspiracy "consists of a combination of two or more person who, by some concerted
19 action, intend to accomplish an unlawful objective for the purpose of harming another,
20 and damage results from the act or acts. *Consol. Generator-Nevada, Inc. v. Cummins*
21 *Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (finding summary
22 judgment was appropriate on civil conspiracy claim where there was no evidence
23 defendants agreed and intended to harm plaintiff); *Sharda v. Sunrise Hosp. & Med.*
24 *Ctr., LLC*, 2017 WL 2870086, at *10 (D. Nev. July 3, 2017) (plaintiff's claim for civil
25 conspiracy failed where he did not plead plausible underlying agreement).

26 In order to prevail on a claim for civil conspiracy, a plaintiff must show the
27 commission of the underlying tort and an agreement between defendants to commit
28 that tort. *Jordan v. Dept. of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75 110 P.3d

1 30, 51 (2005), (the underlying tort is a "necessary predicate" to a cause of action for
2 conspiracy); *Sharda*, 2017 WL 2870086 at *10.

3 Because Spencer's claims for defamation and malicious prosecution fail as a matter of
4 law, his claims for civil conspiracy likewise must fail because he is unable to prove the
5 commission of the underlying tort. Moreover, the Court concludes that Spencer failed
6 to produce any evidence of a conspiracy between the co-defendants.

7 For these reasons, the Court concludes summary judgment should be entered
8 in favor of Kinion and against Spencer on Spencer's third and fourth claims for relief.

9 C. IIED

10 Spencer's Sixth Claim for Relief asserts that Kinion acted intentionally or with
11 reckless disregard for the likelihood of causing emotional distress when she testified at
12 Spencer's criminal proceedings. In a claim for intentional infliction of emotional
13 distress, a plaintiff must prove the following: "(1) extreme and outrageous conduct with
14 either the intention of, or reckless disregard for, causing emotional distress, (2) the
15 plaintiff's having suffered severe or extreme emotional distress, and (3) actual or
16 proximate causation." *Barnettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382,
17 1386 (1998) (concluding summary judgment was proper where plaintiff failed to
18 establish either the first or second elements of this claim)

19 A prima facie claim of intentional infliction of emotional distress requires a
20 plaintiff to prove that the defendant's conduct was "extreme and outrageous." *Maduike*
21 *v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998). Extreme and
22 outrageous conduct "is that which is outside all possible bounds of decency and is
23 regarded as utterly intolerable in a civilized community." *Id.*, citing *California Book of*
24 *Approved Jury Instruction 12.74* (internal citations omitted). In *Maduike*, the Nevada
25 Supreme Court upheld the trial court's decision that the first element of the tort was not
26 met when a car rental agency's employees were rude and refused to provide a family
27 with a new rental car after the brakes on the car they rented failed and caused a
28 collision. *Id.* at 4-5. The court agreed with the rental agency's argument that its

1 employee's conduct was, at most, unkind or inconsiderate behavior but that it did not
2 rise to the level of being "atrocious, intolerable, or outside all possible bounds of
3 decency." *Id.*, at 5.

4 Speaking to the police, the district attorney, or testifying in a criminal proceeding
5 is not extreme and outrageous conduct. Subjecting a person to damages when they
6 exercise their civil obligation to report a crime and testify in judicial proceedings is
7 simply against public policy and would set dangerous precedent. Victims and
8 witnesses report crimes and testify multiple times a day and the Court concludes this
9 conduct is simply not "extreme and outrageous" as a matter of law. *See, e.g., Churchill*
10 *v. Barach*, 863 F. Supp. 1266, 1275 (D. Nev. 1994) (customer's conduct was not
11 extreme and outrageous as a matter of law when he wrote letter to airline complaining
12 about employee because this type of conduct occurs "thousands of times each day").

13 Moreover, Spencer cannot demonstrate that Kinion intended to cause Spencer
14 emotional distress or acted with reckless disregard in causing Spencer severe
15 emotional distress. Therefore, Spencer's Sixth Claim for Relief for infliction of
16 emotional distress fails as a matter of law on the first element and summary judgment
17 must be granted in Kinion's favor.

18 **IV. Conclusion**

19 The Court has considered the pleadings, the exhibits attached thereto, and the
20 record in its entirety and concludes no genuine issue of material fact remains for trial.
21 Accordingly, and good cause appearing,

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IT IS HEREBY ORDERED the Motion for Summary Judgment filed by Mary
Ellen Kinion is granted in its entirety.

DATED this 21 day of August, 2018.



Steven R. Kosach
SENIOR DISTRICT JUDGE

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AUG 29 2018

Douglas County
District Court Clerk

FILED

2018 AUG 29 PM 1:48

BOBBIE R. WILLIAMS
A. NEWTON
CLERK

BY _____ DEPUTY

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: II

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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,
19 ELFRIEDE KLEMENTI, an individual,
MARY ELLEN KINION, an individual,
ROWENA SHAW, an individual, PETER
SHAW, an individual, and DOES 1-5,

20 Counterdefendants & Third Party
21 Defendants.

ORDER

22 On April 24, 2018, Third-Party Defendants, Egon and Elfriede Klementi
23 ("Klementi"), by and through their counsel, Glogovac & Pintar, filed a Motion for
24 Summary Judgment.¹ On June 5, 2018, Defendant/Counterclaimant, Jeffrey Spencer
25 ("Spencer") filed an Opposition. Klementi replied on June 13, 2018. On July 12, 2018,
26 a hearing and oral argument was held, where the Court granted summary judgment in
27

28 ¹ Egon Klementi passed away while this lawsuit was pending.

1 favor of Klementi on all remaining claims. This order setting forth the Court's findings
2 of fact and conclusions of law follows.

3 **I. Background**

4 This action arises out of a dispute between neighbors that live in the Kingsbury
5 Grade General Improvement District ("KGID"). In 2013, Spencer was criminally
6 prosecuted by the Douglas County District Attorney's office for the alleged assault of
7 an elderly neighbor, Helmut Klementi. Spencer was acquitted of those criminal
8 charges. Helmut Klementi then filed a civil action against Spencer seeking recovery for
9 personal injuries arising from the alleged assault. In turn, Spencer asserted a counter-
10 claim against Helmut Klementi as well as third-party claims against Egon and Elfriede
11 Klementi, Mary Ellen Kinion and Rowena and Peter Shaw.

12 By way of the motion before the court, Klementi seeks summary judgment as to
13 Spencer's third-party claims against her, i.e. defamation, malicious prosecution, civil
14 conspiracy (defamation), civil conspiracy (malicious prosecution), punitive damages,
15 and infliction of emotional distress.

16 **II. Summary Judgment Standard**

17 Summary judgment is appropriate when the record demonstrates that no
18 genuine issue of material fact exists and the moving party is entitled to judgment as a
19 matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).
20 The pleadings and the record are construed in the light most favorable to the
21 nonmoving party. *Id.* However, the nonmoving party must do more than simply show
22 that there is some metaphysical doubt as to the material facts. *Id.* at 732 See also
23 *Torrealba v. Kesmetis*, 124 Nev. 95, 100, 178 P.3d 716, 720 (2008) (explaining the
24 burden on the moving party is to set forth facts demonstrating the existence of a
25 genuine issue in order to withstand a disfavorable summary judgment.")

26 The Supreme Court of Nevada follows the federal approach outlined in *Celotex*
27 *Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) with respect to
28 burdens of proof and persuasion in the summary judgment context. See *Cuzze v.*

1 *Univ. & Commty. College Sys. Of Nevada*, 123 Nev. 598, 601, 172 P.3d 131, 134
2 (2007). The party moving for summary judgment bears the initial burden of production
3 to show the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323, 106
4 S.Ct. 2548. If such a showing is made, then the party opposing summary judgment
5 assumes a burden of production to show the existence of a genuine issue of material
6 fact. *Wood*. 121 Nev. At 732, 121 P.3d at 1031. The manner in which a party may
7 satisfy its burden of production depends on which party is moving for summary
8 judgment. A party may satisfy the burden of production by either (1) submitting
9 evidence that negates an essential element of the nonmoving party's claim, or (2)
10 "pointing out ... that there is an absence of evidence to support the nonmoving party's
11 case." *Cuzze*, 123 Nev. At 302-03, 172 P.3d at 134.

12 Klementi filed a properly supported motion for summary judgment that showed
13 why, both factually and legally, she should prevail. Although Spencer opposed the
14 motion, he did so mainly on procedural grounds, arguing the old "slightest doubt"
15 standard in *Posadas v. City of Reno*, 109 Nev. 448, 452 (1993). In reply, Kinion
16 demonstrated that under *Wood v. Safeway, Inc.*, 121 Nev. at 730-31, the "slightest
17 doubt" standard no longer applies. While Spencer challenged Klementi's position,
18 Spencer did not offer or identify competent evidence to contradict or cast doubt on the
19 facts Klementi identified as being undisputed. On this record, summary judgment in
20 favor of Klementi is appropriate.

21 **III. Discussion**

22 **A. Defamation**

23 Liability for defamation may only arise if the plaintiff proves the following: "(a) a
24 false and defamatory statement concerning another; (b) an unprivileged publication to
25 a third party; (c) fault amounting at least to negligence on the part of the publisher; and
26 (d) either actionability of the statement irrespective of special harm, or the existence of
27 special harm caused by the publication." *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d
28 422, 425 (2001).

1 Whether a statement is defamatory is generally a question of law, unless it is
2 subject to two different interpretations. *Id.*; *K-Mart Corp. v. Washington*, 109 Nev.
3 1180, 1191, 866 P.2d 274, 281 (1993) ("Whether or not a statement is capable of
4 defamatory construction is a question of law for the court."). A court reviewing an
5 allegedly defamatory statement reviews "the words in their entirety and in context in
6 order to determine whether they are susceptible of defamatory meaning." *Lubin*, 117
7 Nev. At 111, 17 P.3d at 426.

8 In this case, Spencer asserts that Klementi made defaming statements to the
9 Douglas County Sheriff Department, the Douglas County District Attorney, KGID, the
10 Douglas County Planning Commission and/or the South Lake Tahoe Justice of the
11 Peace. Both the qualified privilege and the absolute privilege are defenses to
12 Spencer's defamation claim and Klementi has asserted these privileges in her
13 affirmative defenses to Spencer's Second Amended Counterclaim and Third-Party
14 Complaint.

15 In *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657 P.2d 101 (1983),
16 the Nevada Supreme Court explained that a qualified or conditional privilege exists
17 where an allegedly defamatory statement is made in good faith "on any subject matter
18 in which the person communicating has an interest, or in reference to which he has a
19 right or a duty, if it is made to a person with a corresponding interest or duty." Whether
20 a statement is conditionally privileged is a question of law for this Court. *Id.* The
21 burden then shifts to the plaintiff to prove that the defendant abused the privilege by
22 making the defamatory statement with malice in fact. *Id.*, This issue does not go to the
23 jury unless there is sufficient evidence for the jury to reasonably infer that the
24 defendant made the statement with actual malice. *Id.*

25 Spencer asserts that statements made by Klementi during his criminal
26 proceedings are defamatory statements. Notably, however, Spencer fails to identify
27 any particular statement that Klementi made which is defamatory or untrue. Nevada
28 recognizes and follows the "long-standing common law rule that communications

1 uttered or published in the course of judicial proceedings are absolutely privileged."
2 *Circus Circus Hotels, Inc.*, 99 Nev. at 60-61, 657 P.2d at 104; *Nickovich v. Mollart*, 51
3 Nev. 306, 274 P. 809, 810 (1929).

4 In addition, Spencer cites to letters read by Klementi at the December 18, 2012
5 and January 15, 2014 KGID Board Meetings. The Court concludes that the statements
6 read by Klementi are true. Moreover, the absolute privilege also applies to "quasi-
7 judicial proceedings before executive officers, boards, and commissions..." *Id.* The
8 absolute privilege precludes liability, as a matter of law, even where the defamatory
9 statements are "published with knowledge of their falsity and personal ill will toward
10 the plaintiff." *Id.* The policy behind this privilege is that, "in certain situations, the public
11 interest in having people speak freely outweighs the risk that individuals will
12 occasionally abuse the privilege" by making defamatory statements. *Id.*; *Knox v. Dick*,
13 99 Nev. 514, 518, 665 P.2d 267, 270 (1983).

14 The Court finds that the KGID and the Douglas County Planning Commission
15 are quasi-judicial bodies to which the absolute privilege extends. *Circus Circus hotels*,
16 99 Nev. at 60-61. This Court concludes the absolute privilege extends to any
17 statements Klementi made to KGID and/or the Douglas County Planning Commission.

18 In this case there is simply no question that any statement Klementi made is
19 protected by privilege for which liability cannot attach. For these reasons, summary
20 judgment on the claim for defamation is GRANTED.

21 **B. Malicious Prosecution**

22 To establish a prima facie case of malicious prosecution in Nevada, a plaintiff
23 must prove the following: "(1) want of probable cause to initiate the prior criminal
24 proceeding; (2) malice; (3) termination of the prior criminal proceedings; and (4)
25 damage." *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002) citing *Jordan*
26 *v. Bailey*, 113 Nev. 1038, 1047, 944 P.2d 828, 834 (1997). This claim also requires
27 the plaintiff prove the defendant "initiated, procured the institution of, or actively
28 participated in the continuation of a criminal proceeding against the plaintiff." *Id.*

1 "When a private person gives to a prosecuting officer information *that she*
2 *believes to be true*, and the officer in the exercise of his uncontrolled discretion
3 initiates criminal proceedings based upon that information, the informer is not liable
4 under the rule stated in this section even though the information proves to be false and
5 his belief was one that a reasonable man would not entertain." *Lester v. Buchanan*,
6 112 Nev. 1426, 929 P.2d 910 (1996) citing Restatement (Second) of Torts § 653
7 (1977).

8 The Court concludes that Spencer has failed to come forward with any
9 evidence that Klementi initiated, procured the institution of, or actively participated in
10 the continuation of criminal proceedings against Spencer. Spencer has failed to
11 produce any evidence that Klementi requested or pressured law enforcement to
12 commence criminal proceedings against Spencer. Rather, this Court heard testimony
13 from Deputy District Attorney, Maria Pence, at the January 30, 2017 hearing that she
14 was the only person involved in charging Mr. Spencer. It is also undisputed that
15 Deputy McKone's decision to arrest Spencer was solely the decision of the Deputy,
16 who based on his decision on "the inconsistencies with what [he] had seen on the
17 scene and Spencer's rendition." The Court also concludes that probable cause existed
18 for Spencer's criminal case when the justice court bound Spencer over for trial on the
19 charges filed by Deputy District Attorney Pence after the April 24, 2013 preliminary
20 hearing.

21 The Court further concludes Klementi's statements are protected by absolute
22 immunity in the context of this malicious prosecution claim. As the Nevada Supreme
23 Court stated in *Harrison v. Roitman*, 131 Nev. Adv. Op. 92, 362 P.3d 1138 (2015), the
24 absolute immunity privilege is not limited to claims of defamation. In applying the
25 three-pronged functional approach set forth in *Harrison*, *supra*, the Court concludes
26 the following: (1) that, as a witness involved and testifying in a judicial proceeding,
27 Klementi enjoys absolute immunity from liability resulting from her testimony; (2) the
28 likelihood of harassment or intimidation was sufficient to interfere with Klementi's

1 ability to testify as a witness; and (3) procedural safeguards by way of cross-
2 examination of Klementi that were exercised by Spencer in his criminal trial.

3 The Court concludes summary judgment on the counterclaim for malicious
4 prosecution against Klementi should be granted in Klementi's favor and against
5 Spencer.

6 **B. Conspiracy**

7 Spencer's Third and Fourth Claims for Relief assert claims for civil conspiracy
8 based on defamation and malicious prosecution. An actionable claim for civil
9 conspiracy "consists of a combination of two or more person who, by some concerted
10 action, intend to accomplish an unlawful objective for the purpose of harming another,
11 and damage results from the act or acts. *Consol. Generator-Nevada, Inc. v. Cummins*
12 *Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (finding summary
13 judgment was appropriate on civil conspiracy claim where there was no evidence
14 defendants agreed and intended to harm plaintiff); *Sharda v. Sunrise Hosp. & Med.*
15 *Ctr., LLC*, 2017 WL 2870086, at *10 (D. Nev. July 3, 2017) (plaintiff's claim for civil
16 conspiracy failed where he did not plead plausible underlying agreement).

17 In order to prevail on a claim for civil conspiracy, a plaintiff must show the
18 commission of the underlying tort and an agreement between defendants to commit
19 that tort. *Jordan v. Dept. of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75 110 P.3d
20 30, 51 (2005), (the underlying tort is a "necessary predicate" to a cause of action for
21 conspiracy); *Sharda*, 2017 WL 2870086 at *10.

22 Because Spencer's claims for defamation and malicious prosecution fail, as a
23 matter of law, his claims for civil conspiracy likewise must fail because he is unable to
24 prove the commission of the underlying tort. Moreover, the Court concludes that
25 Spencer failed to produce any evidence of a conspiracy between the co-defendants.

26 For these reasons, the Court concludes summary judgment should be entered
27 in favor of Klementi and against Spencer on Spencer's third and fourth claims of relief.

28 ///

1 C. IIED

2 Spencer's Sixth Claim for Relief asserts that Ms. Klementi acted intentionally or
3 with reckless disregard for the likelihood of causing emotional distress when she
4 testified at Spencer's criminal proceedings. In a claim for intentional infliction of
5 emotional distress, a plaintiff must prove the following: "(1) extreme and outrageous
6 conduct with either the intention of, or reckless disregard for, causing emotional
7 distress, (2) the plaintiff's having suffered severe or extreme emotional distress, and
8 (3) actual or proximate causation." *Barnettler v. Reno Air, Inc.*, 114 Nev. 441, 447,
9 956 P.2d 1382, 1386 (1998) (concluding summary judgment was proper where plaintiff
10 failed to establish either the first or second elements of this claim)

11 A prima facie claim of intentional infliction of emotional distress requires a
12 plaintiff to prove that the defendant's conduct was "extreme and outrageous." *Maduike*
13 *v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998). Extreme and
14 outrageous conduct "is that which is outside all possible bounds of decency and is
15 regarded as utterly intolerable in a civilized community." *Id.*, citing *California Book of*
16 *Approved Jury Instruction 12.74* (internal citations omitted). In *Maduike*, the Nevada
17 Supreme Court upheld the trial court's decision that the first element of the tort was not
18 met when a car rental agency's employees were rude and refused to provide a family
19 with a new rental car after the brakes on the car they rented failed and caused a
20 collision. *Id.* at 4-5. The court agreed with the rental agency's argument that its
21 employee's conduct was, at most, unkind or inconsiderate behavior but that it did not
22 rise to the level of being "atrocious, intolerable, or outside all possible bounds of
23 decency." *Id.*, at 5.

24 Speaking to the police, the district attorney, or testifying in a criminal proceeding
25 is not extreme and outrageous conduct. Subjecting a person to damages when they
26 exercise their civil obligation to report a crime and testify in judicial proceedings is
27 simply against public policy and would set dangerous precedent. Victims and
28 witnesses report crimes and testify multiple times a day and the Court concludes this

1 conduct is simply not "extreme and outrageous" as a matter of law. See, e.g., *Churchill*
2 *v. Barach*, 863 F. Supp. 1266, 1275 (D. Nev. 1994) (customer's conduct was not
3 extreme and outrageous as a matter of law when he wrote letter to airline complaining
4 about employee because this type of conduct occurs "thousands of times each day").

5 Moreover, Spencer cannot demonstrate that Klementi intended to cause
6 Spencer emotional distress or acted with reckless disregard in causing Spencer
7 severe emotional distress. Therefore, Spencer's Sixth Claim for Relief for infliction of
8 emotional distress fails as a matter of law on the first element and summary judgment
9 must be granted in Klementi's favor.

10 **IV. Conclusion**

11 The Court has considered the pleadings, the exhibits attached thereto, and the
12 record in its entirety and concludes no genuine issue of material fact remains for trial.
13 Accordingly, and good cause appearing,

14 IT IS HEREBY ORDERED the Motion for Summary Judgment filed by Elfriede
15 Klementi is granted in its entirety.

16 DATED this 20 day of August, 2018.

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22 Steven R. Kosach
23 SENIOR DISTRICT JUDGE
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1 CASE NO.: 14-CV-0260

RECEIVED

2 DEPT. NO.: II

AUG 31 2018

**Douglas County
District Court Clerk**

FILED

2018 AUG 31 PM 4:01

**ROBERT P. WILLIAMS
CLERK**

BY ANOME 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.

14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

17 HELMUT KLEMENTI, an individual,
18 EGON KLEMENTI, an individual,
19 ELFRIEDE KLEMENTI, an individual,
20 MARY ELLEN KINION, an individual,
21 ROWENA SHAW, an individual, PETER
22 SHAW, an individual, and DOES 1-5,

23 Counterdefendants & Third Party
24 Defendants.

NOTICE OF ENTRY OF ORDER

25 PLEASE TAKE NOTICE that on the 29th day of August, 2018 the above-entitled
26 court entered its Order granting summary judgment on behalf of Elfriede Klementi. A
27 copy of said Order is attached.

28 ///

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GLOGOVAC & PINTAR
ATTORNEYS AT LAW
427 W. Plumb Lane
RENO, NEVADA 89508
(775) 333-0400

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 30 day of August, 2018.

GLOGOVAC & PINTAR

By: 

MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorneys for Third-Party Defendant,
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 ____ day
4 of September, 2016, I served the foregoing document(s) described as follows:

5 NOTICE OF ENTRY OF ORDER

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
15 Tanika Capers, Esq.
16 6750 Via Austi Parkway, Suite 310
17 Las Vegas, NV 89119

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

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

19 Jeffrey Spencer
20 PO Box 2326
21 Stateline, Nevada 89449
22 **In Pro Per**

23 Dated this 30 day of August, 2018.

24 
Employee of Glogovac & Pintar

RECEIVED

AUG 31 2018

Douglas County
District Court Clerk

FILED

2018 AUG 31 PM 4:00

DOBBIE R. WILLIAMS
CLERK

BY *Anoma* 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.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Granting Counter-Defendant Helmut Klementi's

Motion for Summary Judgment on All Claims was entered on August 23, 2018.

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LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

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A copy of said Order is attached hereto as Exhibit 1.

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

Dated: August 30, 2018.

Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
(775) 786-6868

By: 

Douglas R. Brown, Esq.
Christian L. Moore, Esq.
Sarah M. Molleck, Esq.
*Attorneys for Counter-Defendant
Helmut Klementi*

LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg
3 and that on August 30, 2018, I deposited in the United States Mail, with postage fully
4 prepaid, a true and correct copy of the within **NOTICE OF ENTRY OF ORDER**, addressed to the
5 following:
6

7 Jeffrey D. Spencer
8 P. O. Box 2326
9 Stateline, NV 89449
10 *In Pro Per*

11 David M. Zaniel, Esq.
12 Ranalli & Zaniel, LLC
13 50 West Liberty Street, Suite 1050
14 Reno, Nevada 89501
15 *Attorney for Jeffrey Spencer*

Michael A. Pintar, Esq.
Glogovac & Pintar
427 West Plumb Lane
Reno, Nevada 89509
*Attorney for Mary Ellen Kinion,
Egon Klementi and Elfriede Klementi*

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

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Susan G. Davis

LEMONS, GRUNDY
& EISENBERG
105 PLUMAS ST.
SUITE 300
RENO, NV 89519
(75) 786-6868

INDEX OF EXHIBITS

<i>Exhibit No.</i>	<i>Description</i>	<i>Length of Exhibit</i>
1	Order Granting Counter-Defendant Helmut Klementi's Motion for Summary Judgment on All Claims	16 pages

1 CASE NO.: 14-CV-0260

RECEIVED

2 DEPT. NO.: II

AUG 31 2018

Douglas County
District Court Clerk

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2018 AUG 31 PM 4:01

DOBBIE R. WILLIAMS
CLERK

BY: *Amber* DEPUTY

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6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS
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9 HELMUT KLEMENTI,

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12 JEFFREY D. SPENCER & DOES 1-5,

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14 _____/

15 JEFFREY D. SPENCER,

16 Counterclaimant,

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20 ELFRIDE KLEMENTI, an individual,
21 MARY ELLEN KINION, an individual,
22 ROWENA SHAW, an individual, PETER
23 SHAW, an individual, and DOES 1-5,

24 Counterdefendants & Third Party
25 Defendants.

NOTICE OF ENTRY OF ORDER

23 PLEASE TAKE NOTICE that on the 29th day of August, 2018, the above-
24 entitled court entered its Order granting summary judgment on behalf of Mary Ellen
25 Kinion. A copy of said Order is attached.

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 7th day of August, 2018.

GLOGOVAC & PINTAR

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
3 Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the
4 foregoing document(s) described as follows:

5 **NOTICE OF ENTRY OF ORDER**

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15 Douglas R. Brown, Esq.
16 Sarah M. Molleck, Esq.
17 Lemons, Grundy & Eisenberg
18 6005 Plumas St., 3rd Floor
Reno, NV 89519

Attorneys for Helmut Klementi

19 Tanika Capers, Esq.
20 6750 Via Austi Parkway, Suite 310
21 Las Vegas, NV 89119

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

Jeffrey Spencer
PO Box 2326
Stateline, Nevada 89449
In Pro Per

22
23 Dated this 30 day of August, 2018.

24 
25 _____
Employee of Glogovac & Pintar
26
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1 CASE NO.: 14-CV-0260

2 DEPT. NO.: I

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4 RECEIVED

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BODDIE R. WILLIAMS
CLERK

Douglas County
District Court Clerk

BY *M. S. Klementi*

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.

**THIRD-PARTY DEFENDANT ELFRIEDE
KLEMENTI'S MOTION FOR
ATTORNEY'S FEES AND COSTS**

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14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

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

20 Counter-defendants & Third-Party
21 Defendants.

22 Third-party defendant, Elfriede Klementi ("Elfie"), by and through her attorneys
23 of record, Glogovac & Pintar, and pursuant to NRS 18.005 and NRS 18.010,
24 respectfully submits this motion for attorney's fees and costs.

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

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I.
MEMORANDUM OF POINTS AND AUTHORITIES

A. Introduction

On February 3, 2015, Spencer filed an Answer and Third-party claim. In his Third-party claim, Spencer asserted causes of action for malicious prosecution, defamation, civil conspiracy (defamation), civil conspiracy (malicious prosecution), punitive damages and infliction of emotion distress against Elfie and others.

On April 24, 2018, Elfie filed a motion for summary judgment. By way of the motion for summary judgment, Elfie sought summary judgment as to all of Spencer's claims against her. Following a hearing on July 12, 2018, the Court granted Elfie's motion and dismissed all of the claims against her.

In asserting his third-party claims against Elfie, neither Spencer nor his counsel, conducted a reasonable investigation into the facts and/or applicable law that established the impropriety of the third-party claims. Because Spencer's third-party claims were brought and maintained without reasonable grounds, Elfie is therefore entitled to an award of attorney's fees and costs pursuant to NRS 18.010(2).

B. Factual Background

On December 18, 2012, Elfie attended a neighborhood KGID meeting. At that meeting, Elfie informed KGID of past events that had taken place between Spencer and her husband, Egon Klementi ("Egon"). She further told the KGID Board about berms of snow found in front of her house and driveway which had been left by Spencer while operating a snow plow on behalf of KGID.

Later, following the KGID meeting, Spencer knocked down Elfie's brother-in-law, Helmut Klementi ("Helmut") while Helmut was taking pictures of the snow berms in front of Elfie's house as they were directed to do at the KGID meeting. The Douglas County Sheriff's Office responded and conducted an investigation.

As part of their investigation, the investigating officers from the Douglas County Sheriff's department interviewed Elfie. According to the Douglas County Sheriff's

1 Report and deposition testimony, Spencer told the investigating officers that he went
2 out into the street and knocked Helmut to the ground because he believed Helmut was
3 a burglar breaking into his truck in the driveway. Spencer further claimed that he
4 thought Helmut was a teenager in a hoodie. Ultimately, the investigating officers did
5 not find Spencer's account to be credible. As a result, Spencer was arrested for
6 battery and abuse of an elder.

7 Following Spencer's arrest, the Douglas County Deputy District Attorney's office
8 pursued criminal charges. Elfie was subpoenaed to testify at Spencer's preliminary
9 hearing and criminal trial and gave testimony in response to questions posed.

10 Following his acquittal of the criminal charges, Spencer turned around and
11 asserted the third-party claims against Elfie and others. During discovery, Spencer
12 again sought to justify his actions by claiming that he saw Helmut in his driveway near
13 his pick-up just before he went outside into the street and knocked him to the ground.
14 Contrary to Spencer's testimony, however, Helmut testified that he was never in
15 Spencer's driveway that evening. In light of this contradiction, during discovery,
16 Spencer was requested to produce the hard drive which stored the videotapes taken
17 from the various cameras at his residence on the evening of December 18, 2012. The
18 videotapes and hard drive, of course, would show the interaction between Spencer
19 and Helmut on the evening of December 18, 2012. The videotapes would essentially
20 prove or disprove Spencer's testimony as to what occurred on the evening of
21 December 18, 2012. Spencer's failed to produce the hard drive containing the
22 videotape of his encounter with Helmut on December 18, 2012, claiming the hard
23 drive had been corrupted.

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1 C. Discussion.

2 1. Attorney's Fees

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

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

20 In this case, Spencer asserted that Elfie made defaming statements to the
21 Douglas County Sheriffs Department, the Douglas County District Attorney, KGID, the
22 Douglas County Planning Commission and/or the South Lake Tahoe Justice of the
23 Peace. In addition, Spencer asserts that statements made by Elfie during Spencer's
24 criminal proceedings were defamatory in nature.

25 Notwithstanding, as established at the hearing on July 12, 2018, because each
26 of the alleged statements made by Elfie were made during either a judicial and/or
27 quasi-judicial proceeding, they are not actionable. As recently confirmed by the
28 Nevada Supreme Court in *Fitzgerald v. Mobile Billboards, LLC.*, 134 Nev.Adv.Op. 30
 (decided May 3, 2018), Nevada recognizes the common law absolute privilege that
 protects defamatory statements made during a judicial or quasi-judicial proceeding.
 The common law absolute privilege bars any civil litigation for defamatory statements
 even when the defamatory statements were published with malicious intent. *Id. at p.2.*
 For this reason, even if the statements made by Elfie were not true and/or were made

1 with malicious intent, Elfie would be immune from liability. Spencer failed to know this
2 settled law when asserting his defamation claims.

3 In addition, there is also a strong presumption that each of the statements Elfie
4 made about Spencer were true. In his defense, Spencer claimed that he had video
5 evidence that captured the events of December 18, 2012. In particular, Spencer
6 claimed that he had video evidence which showed Helmut to be trespassing in his
7 driveway and which showed him to "inadvertently" collide with Helmut in the street who
8 he thought was trying to get away. However, when pushed to produce the video
9 evidence Spencer did not do so, and instead, claimed that the hard drive storing the
10 video evidence had been corrupted and could not be salvaged. The spoliation and
11 failure to provide the hard drive and video evidence is a clear indication of
12 consciousness of wrongdoing and guilt.

13 As to Spencer's claims for malicious prosecution, this Court has previously
14 found and determined that claim to be without merit. In this regard, the Court stated:

15 Thus, by his own admission it is uncontroverted that Jeffrey
16 Spencer knocked down Helmut Klementi, who is known to be a man over
17 sixty years of age. "It is firmly established. ..that the finding of probable
18 cause may be based on slight, even marginal, evidence. *Sheriff v.*
19 *Badillo*, 95 Nev. 593, 600 P.2d 221 (1979); *Perkins v. Sheriff*, 92 Nev.
20 180, 547 P.2d 312 (1976). The state need only present enough evidence
21 to create a reasonable inference that the accused committed the offense
22 with which he or she is charged. *LaPena v. Sheriff*, 91 Nev. 692, 541
23 P.2d 907 (1975)." *State v. Boueri*, 99 Nev. 790, 795, 672 P.2d 33, 36
24 (1983).

25 The Court finds it is established that Jeffrey Spencer knocked
26 Helmut Klementi down as alleged within the relevant criminal complaint.
27 The Court concludes that such act in and of itself provides probable
28 cause for the crime originally alleged, noting that a magistrate also
previously concluded probable cause was present, thereby allowing the
criminal prosecution of Jeffrey Spencer to have moved forward; with
probable cause established, the first element of a claim for malicious
prosecution, specifically that there be want of probable cause, cannot be
satisfied and no reasonable jury could so find.

With no basis factually or legally to bring the claim, the Court finds
and concludes that Jeffrey Spencer's claim for malicious prosecution
was alleged without reasonable basis. Therefore, pursuant to NRS

1 18.010 (2)(b), attorney's fees are hereby awarded to the prevailing party,
2 Mary Ellen Kinion, in the amount of \$14,870.00 with regard to that claim.¹

3 Order dated October 17, 2017.

4 As to Spencer's claim for civil conspiracy against Elfie, the claim was dismissed
5 because Spencer could not prove the underlying torts, i.e. defamation or malicious
6 prosecution. The claim for malicious prosecution has previously been found by this
7 Court to have been brought without reasonable basis and, as shown above, all of the
8 alleged defamatory statements that were allegedly made by Elfie are protected by the
9 common law absolute privilege. As such, Spencer again failed to research the
10 applicable law before asserting his claims for civil conspiracy.

11 As to the claim for intentional infliction of emotional distress, Elfie's cooperation
12 with the police investigation and/or her testimony in Spencer's criminal proceedings is
13 simply "not extreme and outrageous conduct" as a matter of law. In addition, like his
14 failure to produce evidence of Helmut ever being in his driveway on the evening of
15 December 18, 2012, Spencer also failed to produce any evidence that he experienced
16 a *physical manifestation of the severe emotional distress* that is necessary to support
17 a claim for intentional infliction of emotional distress.

18 Finally, of course, Spencer's claim for "punitive damages" is not a stand-alone
19 cause of action.

20 From the beginning, the claims against Elfie and the other third-party
21 defendants were frivolous, vexatious, and without merit. What began as a criminal
22 case against Spencer evolved into an abuse of legal process in which Spencer
23 sought to harass and intimidate Elfie and the other third-party defendants. As a result
24 of these frivolous and vexatious claims, Elfie was forced to seek counsel. Thereafter,
25 when her homeowner's insurance company, i.e., The Hartford, refused to defend her,
26 Elfie was compelled to sue them for insurance bad faith. That case is on-going.

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¹ To date, Spencer has only paid \$700.00 toward that award.

1 Working up a case to the point where summary judgment is granted requires
2 much time and effort. It requires specific written discovery and deposition questions
3 which focus in on the pertinent issues in dispute. As a culmination of the time and
4 attention, the law firm of Glogovac & Pintar has incurred \$20,500.00 in attorney's fees
5 defending Elfie from Spencer's third-party claims for defamation, civil conspiracy
6 (defamation), civil conspiracy (malicious prosecution), punitive damages and infliction
7 of emotional distress. See Affidavit of Michael A. Pintar, attached hereto as Exhibit 1.

8 **2. Costs.**

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

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

17 As set forth in Exhibit 2, Elfie has also incurred costs in the amount of \$581.23
18 in defending this matter through the July 12, 2018 hearing.

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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 6th day of September, 2018.

GLOGOVAC & PINTAR

By: 
MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorneys for Elfriede Klementi

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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 I served the foregoing document(s) described as follows:

MOTION FOR ATTORNEY'S FEES AND COSTS

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:

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
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***

Jeffrey Spencer
P. O. Box 2326
Stateline, NV 89449
In-Pro Per

Dated this 7th day of September, 2018.

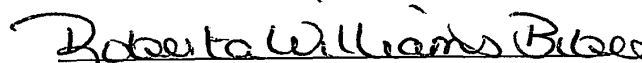

Employee of Glogovac & Pintar

EXHIBIT 1

EXHIBIT 1

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: I

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4

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 & DOES 1-5,

11 Defendants.

12

13 JEFFREY D. SPENCER,

14 Counterclaimant,

15 vs.

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

22 Counterdefendants & Third-Party
23 Defendants.

24 STATE OF NEVADA)

25) ss.

26 COUNTY OF WASHOE)

27

28 MICHAEL A. PINTAR, ESQ., does hereby swear under penalty of perjury that

the following assertions are true:

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

AFFIDAVIT OF MICHAEL A. PINTAR
IN SUPPORT OF THIRD-PARTY
DEFENDANT ELFRIEDE KLEMENTI'S
MOTION FOR ATTORNEY'S FEES

2. I am the attorney of record for Third-Party Defendant, Elfride Klementi ("Elfie") in the above-entitled action. I make this affidavit in support of Elfie's Motion for Attorney's Fees.


3. That attorneys' fees in the amount of \$20,500.00 (82 hours @ \$250/hr.) have been incurred by the law firm of Glogovac & Pinter with respect to defending Elfie against the claims brought by Plaintiff Jeffrey D. Spencer since April 1, 2018. (Attached hereto as Exhibit 1 are copies of the redacted invoices reflecting the legal work performed).

4. These fees do not include the extra amount of time spent by the law firm of Glogovac & Pinter in requesting coverage for Ms. Klementi through her homeowners insurance company, The Hartford.

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

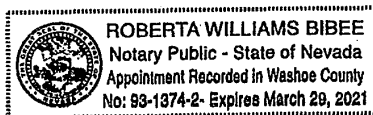
6. Further affiant sayeth not.

Dated this 6 day of September, 2018.


MICHAEL A. PINTAR, ESQ.

SUBSCRIBED and SWORN to before me,
this 6th day of September, 2018.

Roberta Williams Bibeau
NOTARY PUBLIC



Glogovac & Pinter
427 W. Plumb Ln.
Reno, NV 89509
Phone: 775.333.0400
Tax ID: 88-0340418

INVOICE

Egon & Elfie Klementi
PO Box 3155
Stateline, NV 89449

Invoice 10431

Date	May 17, 2018
Terms	Due upon receipt
Service Thru	Apr 26, 2018

In Reference To: Klementi v. Spencer (Fees)

Matter ID: KLEMENTI.0001

Date	By	Services	Hours	Rates	Amount
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04/09/2018	MAP	Research: legal research into claims of ILED	1.00	\$ 250.00/hr	\$ 250.00
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04/17/2018	MAP	Review: review Jeff Spencer deposition transcript volume 1 for purposes of preparing motion for summary judgment.	2.00	\$ 250.00/hr	\$ 500.00
04/17/2018	MAP	Documentation: prepare motion for sanctions based on spoliation of evidence	2.50	\$ 250.00/hr	\$ 625.00
04/19/2018	MAP	Revise: revise motion to dismiss based on spoliation of evidence	1.20	\$ 250.00/hr	\$ 300.00
04/20/2018	MAP	Documentation: prepare motion for summary judgment and joinder to Helmut's motion for summary judgment	3.50	\$ 250.00/hr	\$ 875.00
04/22/2018	MAP	Documentation: revise, finalize motion to dismiss as sanctions for spoliation of evidence	1.80	\$ 250.00/hr	\$ 450.00
04/22/2018	MAP	Documentation: prepare motion for summary judgment and joinder to Helmut Klementi motion for summary judgment	4.00	\$ 250.00/hr	\$ 1,000.00
04/22/2018	MAP	Documentation: read and review Elfie Klementi deposition transcript in preparation of motion for summary judgment and joinder to Helmut Klementi motion for summary judgment	1.50	\$ 250.00/hr	\$ 375.00
04/23/2018	MAP	Revise: revise and finalize motion for summary judgment and joinder to Helmut Klementi motion for summary judgment	1.50	\$ 250.00/hr	\$ 375.00

In Reference To: Klementi v. Spencer (Expenses)

Matter ID: KLEMENTI.0001

Date	By	Expenses	Amount
04/24/2018	AV	Court Fees: Paid to 9th Judicial District Court for filing fee for Motion for Summary of Judgment	\$ 200.00
			<hr/>
			Total Hours 32.90 hrs
			Total Fees \$ 8,225.00
			Total Expenses \$ 200.00
			Total Invoice Amount \$ 8,425.00
			Previous Balance \$ 0.00
			Balance (Amount Due) \$ 8,425.00

Glogovac & Pinter
427 W. Plumb Ln.
Reno, NV 89509
Phone: 775.333.0400
Tax ID: 88-0340418

INVOICE

Egon & Elfie Klementi
PO Box 3155
Stateline, NV 89449

Invoice 10465

Date	Jun 07, 2018
Terms	Due upon receipt
Service Thru	May 31, 2018

In Reference To: Klementi v. Spencer (Fees)

Matter ID: KLEMENTI.0001

Date	By	Services	Hours	Rates	Amount
05/01/2018	MAP	Prepare: Prepare confidential mediation statement	2.50	\$ 250.00/hr	\$ 625.00
05/02/2018	MAP	Meeting: Meeting with Elfie in preparation for mediation	1.00	\$ 250.00/hr	\$ 250.00
05/06/2018	MAP	Prepare: Prepare letter to Spencer Attorney regarding extensions of time to file opposition briefs	0.30	\$ 250.00/hr	\$ 75.00
05/09/2018	MAP	Court Time: attend mediation	7.00	\$ 250.00/hr	\$ 1,750.00
05/16/2018	MAP	Email: exchange email with client regarding order for court setting	0.20	\$ 250.00/hr	\$ 50.00
05/16/2018	MAP	Email: review email from court regarding order from court setting	0.20	\$ 250.00/hr	\$ 50.00
05/24/2018	MAP	Documentation: prepare joinder to Kinion motion to strike plaintiff's expert	0.40	\$ 250.00/hr	\$ 100.00
Total Hours					18.60 hrs

	Total Fees	\$ 3,577.50
	Total Invoice Amount	\$ 3,577.50
	Previous Balance	\$ 37,235.00
06/07/2018	Payment - Trust Account	(\$8,425.00)
06/07/2018	Payment - Trust Account	(\$28,810.00)
	Balance (Amount Due)	\$ 3,577.50

Glogovac & Pinter
427 W. Plumb Ln.
Reno, NV 89509
Phone: 775.333.0400
Tax ID: 88-0340418

INVOICE

Egon & Elfie Klementi
PO Box 3155
Stateline, NV 89449

Invoice 10506

Date	Jul 02, 2018
Terms	Due upon receipt
Service Thru	Jun 30, 2018

In Reference To: Klementi v. Spencer (Fees)

Matter ID: KLEMENTI.0001

Date	By	Services	Hours	Rates	Amount
06/01/2018	MAP	Review: Review Helmut Klementi joinder to Motion to Strike Plaintiff's expert witness designation	0.10	\$ 250.00/hr	\$ 25.00
06/05/2018	MAP	Review: Review the Shaw's Joinder in Kinion's Motion for Sanctions based on Spoliation of Evidence	0.10	\$ 250.00/hr	\$ 25.00
06/05/2018	MAP	Review: Review the Shaw's Joinder in Kinion's Motion for Summary Judgment and Joinder to Helmut Klementi's Motion for Summary Judgment.	0.10	\$ 250.00/hr	\$ 25.00
06/05/2018	MAP	Review: Review and analyze Plaintiff's response to Helmut Klementi's Motion for Summary Judgment	0.20	\$ 250.00/hr	\$ 50.00
06/05/2018	MAP	Review: Review and analyze response to Egon and Elfie Klementi's Motion for Summary Judgment	0.30	\$ 250.00/hr	\$ 75.00
06/05/2018	MAP	Review: Review and analyze Plaintiff's Responses to Motion for Sanctions Based on Spoliation of Evidence	0.20	\$ 250.00/hr	\$ 50.00
06/05/2018	MAP	Review: Review Plaintiff's pleading entitled Video Exhibit in Support of Responses to Motions for Summary Judgment & to Motion for Sanctions Based on Spoliation of Evidence (pleading only)	0.10	\$ 250.00/hr	\$ 25.00
06/05/2018	MAP	Review: Review Shaw's Joinder to Motion for Sanctions based on Spoliation	0.10	\$ 250.00/hr	\$ 25.00

06/07/2018	MAP	Research: Conduct legal research regarding the discoverability of evidence used to prepare a witness for a deposition	0.90	\$ 250.00/hr	\$ 225.00
06/07/2018	MAP	Research: Conduct legal research regarding the attorney client privilege and whether person notes qualify as a communication with legal counsel	0.50	\$ 250.00/hr	\$ 125.00
06/07/2018	MAP	Review: Review plaintiffs Amended Certificate of Service	0.10	\$ 250.00/hr	\$ 25.00
06/07/2018	MAP	Research: legal research regarding plaintiff's failure to substitute Egon Klementi's estate into the action after suggestion of death and ramifications of that failure.	1.50	\$ 250.00/hr	\$ 375.00
06/08/2018	MAP	Documentation: Begin reply brief to plaintiff's opposition to motion for summary judgment	3.00	\$ 250.00/hr	\$ 750.00
06/08/2018	MAP	Documentation: revisions to reply in support of motion for summary judgment	2.50	\$ 250.00/hr	\$ 625.00
06/09/2018	MAP	Documentation: additional revisions to reply in support of motion for summary judgment	1.40	\$ 250.00/hr	\$ 350.00
06/10/2018	MAP	Documentation: prepare reply in support of motion for sanctions based on spoliation of evidence.	4.50	\$ 250.00/hr	\$ 1,125.00
06/10/2018	MAP	Documentation: Review hearing transcript from January 30, 2017 to address defamation claims based on letter written by Kinion to Deputy DA Pence	0.60	\$ 250.00/hr	\$ 150.00
06/10/2018	MAP	Documentation: Revise reply in support of motion sanctions based on spoliation of evidence	2.00	\$ 250.00/hr	\$ 500.00
06/12/2018	MAP	Documentation: revisions to reply brief to include legal research regarding defamation claims and reviewing video recently produced by Spencer	2.40	\$ 250.00/hr	\$ 600.00
06/12/2018	MAP	Email: emails with Elfie regarding Spencer videos	0.30	\$ 250.00/hr	\$ 75.00
06/12/2018	MAP	Review: Review Shaw joinder to motion to strike Spencer expert	0.10	\$ 250.00/hr	\$ 25.00

06/12/2018	MAP	Research: Legal research re: at-issue doctrine and revisions to reply brief	1.20	\$ 250.00/hr	\$ 300.00
06/13/2018	MAP	Documentation: review video produced by Spencer, revise reply brief in support of motion for sanctions	1.60	\$ 250.00/hr	\$ 400.00
06/13/2018	MAP	Documentation: Revise, finalize reply brief	1.80	\$ 250.00/hr	\$ 450.00
06/13/2018	MAP	Documentation: Revise, finalize reply in support of motion for sanctions	1.20	\$ 250.00/hr	\$ 300.00
06/14/2018	MAP	Review: Review Helmut Klementi's Reply in Support of Motion for Summary Judgment	0.20	\$ 250.00/hr	\$ 50.00
06/20/2018	MAP	Research: Conduct legas research regarding NRCP 25 and dismissal of deceased defendants.	2.00	\$ 250.00/hr	\$ 500.00
06/21/2018	MAP	Documentation: prepare motion to dismiss (Egon)	3.00	\$ 250.00/hr	\$ 750.00
06/21/2018	MAP	Documentation: legal research on NRCP 25 standards for motion to dismiss (Egon)	1.50	\$ 250.00/hr	\$ 375.00

Total Hours	40.70 hrs
Total Fees	\$ 10,175.00
Total Invoice Amount	\$ 10,175.00
Previous Balance	\$ 3,577.50
Balance (Amount Due)	\$ 13,752.50

Glogovac & Pinar
427 W. Plumb Ln.
Reno, NV 89509
Phone: 775.333.0400
Tax ID: 88-0340418

INVOICE

Egon & Elfie Klementi
PO Box 3155
Stateline, NV 89449

Invoice 10545

Date	Aug 07, 2018
Terms	Due upon receipt
Service Thru	Jul 31, 2018

In Reference To: Klementi v. Spencer (Fees)

Matter ID: KLEMENTI.0001

Date	By	Services	Hours	Rates	Amount
07/09/2018	MAP	Phone Call: phone call with Spencer counsel regarding settlement	0.30	\$ 250.00/hr	\$ 75.00
07/09/2018	MAP	Meeting: meeting with Elfie Klementi to review videotapes and prepare for upcoming hearing	1.50	\$ 250.00/hr	\$ 375.00
07/09/2018	MAP	Phone Call: telephone call with advising me of his telephone conversation with Lynn Pierce and his decision to offer Ms. Pierce \$17,000 to settle state court case. I discussed with Mr. Smith my conversations with Ms. Pierce this morning and her desire for a "global settlement" with all third-party plaintiffs	0.30	\$ 250.00/hr	\$ 75.00
07/09/2018	MAP	Phone Call: emails with Doug Brown (Helmut Klementi) and Tanika Capers (Shaws) regarding my conversations with Ms. Pierce this morning and her desire for a "global settlement." Follow-up emails with counsel over settlement authority they had.	0.30	\$ 250.00/hr	\$ 75.00
07/09/2018	MAP	Phone Call: phone call with Doug Brown regarding his position on settlement with Helmut Klementi	0.20	\$ 250.00/hr	\$ 50.00
07/11/2018	MAP	Email: exchange emails with regarding plaintiff's recent decision to reject all settlement offers and go forward with hearing	0.20	\$ 250.00/hr	\$ 50.00

07/11/2018	MAP	Email: exchange emails with plaintiff's counsel regarding plaintiff's decision to reject all settlement offers and go forward with hearing	0.20	\$ 250.00/hr	\$ 50.00
07/11/2018	MAP	Court Time: preparation for hearing and oral argument	2.50	\$ 250.00/hr	\$ 625.00
07/12/2018	MAP	Court Time: continued preparation and outline for hearing on various motions	1.50	\$ 250.00/hr	\$ 375.00
07/12/2018	MAP	Court Time: attend hearing and oral argument	3.00	\$ 250.00/hr	\$ 750.00
07/12/2018	MAP	Meeting: meeting with client regarding what ruling means and possible appeal by Spencer	0.60	\$ 250.00/hr	\$ 150.00
07/12/2018	MAP	Email: email to regarding court ruling following hearing	0.20	\$ 250.00/hr	\$ 50.00
07/19/2018	MAP	Email: email regarding plaintiff's attorney's withdraw of counsel	0.20	\$ 250.00/hr	\$ 50.00
07/25/2018	MAP	Documentation: prepare proposed order regarding motion for sanctions pursuant to court request	0.40	\$ 250.00/hr	\$ 100.00
07/25/2018	MAP	Documentation: prepare proposed order regarding summary judgment pursuant to court request	3.50	\$ 250.00/hr	\$ 875.00
07/25/2018	MAP	Documentation: further preparation of proposed order regarding summary judgment pursuant to court order and order dismissing Egan Klementi	2.20	\$ 250.00/hr	\$ 550.00
07/26/2018	MAP	Email: email with other counsel to coordinate submission of proposed orders	0.30	\$ 250.00/hr	\$ 75.00
07/31/2018	MAP	Phone Call: phone call with regarding proposed orders	0.30	\$ 250.00/hr	\$ 75.00
07/31/2018	MAP	Email: exchange emails with counsel regarding Spencer's email address so we can serve him with copies of the proposed orders	0.20	\$ 250.00/hr	\$ 50.00

wrong data

In Reference To: Klementi v. Spencer (Expenses)

Matter ID: KLEMENTI.0001

Date	By	Expenses	Amount
07/12/2018	MAP	Travel/Lodging: Travel to and from Gardnerville Courthouse to attend hearing	\$ 51.23
07/16/2018	AV	Court Fees: Paid to Sunshine Litigation for Hearing	\$ 330.00

Total Hours	21.60 hrs
Total Fees	\$ 5,400.00
Total Expenses	\$ 381.23
Total Invoice Amount	\$ 5,781.23
Previous Balance	\$ 13,752.50
08/07/2018 Payment - Check	(\$10,175.00)
Balance (Amount Due)	\$ 9,358.73

EXHIBIT 2

EXHIBIT 2

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: I

3

4

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 & DOES 1-5,

11 Defendants.

12

13 JEFFREY D. SPENCER,

14 Counterclaimant,

15 vs.

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

22 Counterdefendants & Third-Party
23 Defendants.

24 Third-Party Defendant, Elfride Klementi ("Elfie"), by and through her attorneys,

25 Glogovac & Pintar, hereby submits her Memorandum of Costs and Disbursements,

26 with attached documentation of such disbursements as follows:

27 **Clerks' Fees:**

28 Filing Fee - Motion for Summary Judgment \$200.00

Court Reporters' Fees:

Sunshine Litigation Services (July 12, 2018 Hearing) 330.00

Travel/Lodging Fees:

1 Roundtrip Mileage to and from Gardnerville for hearing on motions
2 (94 miles @\$.545/per mile) 51.23

3
4 **TOTAL COSTS AND DISBURSMENTS:** **\$581.23**

5
6 **AFFIRMATION**
Pursuant to NRS 239B.030

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

9 DATED this 6th day of September, 2018.

10 GLOGOVAC & PINTAR

11
12 By: 

13 MICHAEL A. PINTAR, ESQ.
14 Nevada Bar No. 003789
15 Attorneys for Third-Party Defendant
16 Elfride Klementi
17
18
19
20
21
22
23
24
25
26
27
28

9th Judicial District Court
Clerk of the Court,
Bobbie R. Williams
Ph 782-9820 Fax 782-9954
1038 Buckeye Rd.
P.O. Box 218
Minden, NV 89423-0000

Received From: Glogovac & Pintar

14-CV-00260-DC

Motion for Summary Judgment CK

\$200.00

TOTAL DUE: \$200.00

Other: \$0.00

TOTAL PAID: \$200.00

Balance Due 14-CV-00260-DC

0.00

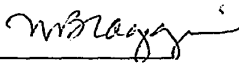
COMMENT:

Klementi v Spencer

Receipt #201800001098

Cashier: MB 04/24/18 11:53am

Signature: _____





151 Country Estates Circle
Reno, NV 89511
Phone: 800-330-1112
litigation@sunshinelitigation.com

Michael A. Pinter, Esq.
Glogovac & Pinter
427 West Plumb Lane
Reno, NV 89509

INVOICE

Invoice No.	Invoice Date	Job No.
1244965	7/13/2018	481197
Job Date	Case No.	
7/12/2018	14-CV-0260	
Case Name		
Klementi vs. Spencer		
Payment Terms		
Net 30		

Hearing (HOLD NOTES)				
Hourly	2.00	Hours	@	40.00
Court Per Diem				80.00
				250.00
				250.00
TOTAL DUE >>>				\$330.00
AFTER 8/12/2018 PAY				\$363.00
Please note, disputes or refunds will not be honored or issued after 30 days				

Tax ID: 20-3835523

Phone: 775-333-0400 Fax: 775-333-0412

Please detach bottom portion and return with payment.

Michael A. Pinter, Esq.
Glogovac & Pinter
427 West Plumb Lane
Reno, NV 89509

Invoice No. : 1244965
Invoice Date : 7/13/2018
Total Due : \$330.00
AFTER 8/12/2018 PAY \$363.00

Remit To: **Sunshine Reporting and Litigation Services,
LLC
P.O. Box 98813
Las Vegas, NV 89193-8813**

Job No. : 481197
BU ID : RN-CR
Case No. : 14-CV-0260
Case Name : Klementi vs. Spencer

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: I

RECEIVED

2018 SEP -7 AM 10:39

SEP -7 2018

Douglas County
District Court Clerk

BLAKE D. WILLIAMS

BY *msragini*

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.

THIRD-PARTY DEFENDANT KINION'S
MOTION FOR ATTORNEY'S FEES
AND COSTS

13 _____ /
14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

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

Counterdefendants & Third-Party
Defendants.

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

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

27 ///

I.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Introduction

On February 3, 2015, Spencer filed an Answer and Third-party claim. In his Third-party claim, Spencer asserted causes of action for malicious prosecution, defamation, civil conspiracy (defamation), civil conspiracy (malicious prosecution), punitive damages and infliction of emotion distress against Kinion and others.

On April 22, 2016, Kinion filed a motion for partial summary judgment as to Spencer's cause of action for malicious prosecution. Following a hearing and testimony from former Deputy District Attorney, Maria Pence, who prosecuted the criminal case against Spencer, that was motion granted. Moreover, based on Ms. Pence's testimony at the hearing, on October 19, 2017, this Court granted Kinion's motion for attorney's fees and costs associated with the motion.

In this regard, the Court stated:

Thus, by his own admission it is uncontroverted that Jeffrey Spencer knocked down Helmut Klementi, who is known to be a man over sixty years of age. "It is firmly established. ..that the finding of probable cause may be based on slight, even marginal, evidence. *Sheriff v. Badillo*, 95 Nev. 593, 600 P.2d 221 (1979); *Perkins v. Sheriff*, 92 Nev. 180, 547 P.2d 312 (1976). The state need only present enough evidence to create a reasonable inference that the accused committed the offense with which he or she is charged. *LaPena v. Sheriff*, 91 Nev. 692, 541 P.2d 907 (1975)." *State v. Boueri*, 99 Nev. 790, 795, 672 P.2d 33, 36 (1983).

The Court finds it is established that Jeffrey Spencer knocked Helmut Klementi down as alleged within the relevant criminal complaint. The Court concludes that such act in and of itself provides probable cause for the crime originally alleged, noting that a magistrate also previously concluded probable cause was present, thereby allowing the criminal prosecution of Jeffrey Spencer to have moved forward; with probable cause established, the first element of a claim for malicious prosecution, specifically that there be want of probable cause, cannot be satisfied and no reasonable jury could so find.

With no basis factually or legally to bring the claim, the Court finds and concludes that Jeffrey Spencer's claim for malicious prosecution was alleged without reasonable basis. Therefore, pursuant to NRS

1 18.010 (2)(b), attorney's fees are hereby awarded to the prevailing party,
2 Mary Ellen Kinion, in the amount of \$14,870.00 with regard to that claim.¹

3 Order dated October 17, 2017.

4 On April 24, 2018, Kinion filed a second motion for summary judgment. By way
5 of that second motion for summary judgment, Kinion sought to have Spencer's
6 remaining claims against her dismissed. Following a hearing on July 12, 2018, the
7 Court granted Kinion's motion for summary judgment and dismissed all of the
8 remaining claims.

9 The same reasoning that supported an award of attorney's fees and costs when
10 the malicious prosecution claims were dismissed, supports an award of attorney's fees
11 and costs now. As this Court previously determined when addressing Spencer's claim
12 for malicious prosecution, neither Spencer nor his counsel, conducted a reasonable
13 investigation into the facts and/or applicable law that established the impropriety of the
14 third-party claims. Because Spencer's the third-party claims against Kinion were
15 brought and maintained without reasonable grounds, Kinion is therefore entitled to
16 another award of attorney's fees and costs pursuant to NRS 18.010(2).

17 **B. Factual Background**

18 On December 18, 2012, Kinion attended a neighborhood KGID meeting. At that
19 meeting, Kinion informed KGID of events that had taken place several days earlier
20 regarding a snowplow incident between Spencer and Egon Klementi ("Egon"). Later,
21 following the KGID meeting, Spencer went into the street and assaulted Egon's
22 brother, Helmut Klementi ("Helmut") while Helmut was taking pictures of the snow
23 berms in front of his brother's house as directed by KGID personnel. The Douglas
24 County Sheriff's Office responded and conducted an investigation.

25 As part of their investigation, the investigating officers from the Douglas County
26 Sheriff's Department interviewed Helmut Klementi, Egon Klementi, Elfie Klementi,
27 Janet Wells, Spencer and his wife, Marilyn. The investigating officers did not speak to
28

¹ To date, Spencer has only paid \$700.00 toward that award.

1 Kinion. According to the Douglas County Sheriff's Report and deposition testimony,
2 Spencer told the investigating officers that he went out into the street and knocked
3 Helmut to the ground because he believed Helmut was breaking into his truck.
4 Spencer also claimed that he thought Helmut was a teenager in a hoodie. Ultimately,
5 the investigating officers did not find Spencer's account to be credible. As a result,
6 Spencer was arrested for battery and abuse of an elder.

7 Following Spencer's arrest, the Douglas County Deputy District Attorney's office
8 pursued criminal charges. In preparation for the criminal trial, Ms. Pence reached out
9 to Kinion and asked her to provide whatever information she had in regards to the
10 events. Kinion complied with that request and wrote a letter to the district attorney's
11 office. Kinion was later subpoenaed to testify at Spencer's criminal trial and gave
12 testimony in response to questions posed.

13 Following his acquittal of the criminal charges, Spencer turned around and
14 asserted the third-party claims against Kinion and others. During discovery, Spencer
15 again claimed that he saw Helmut in his driveway and near his pick-up just before he
16 went outside into the street and knocked him to the ground. Contrary to Spencer's
17 testimony, however, Helmut testified that he was never in Spencer's driveway that
18 evening. In light of this contradiction in testimony, during discovery, Spencer was
19 requested to produce the hard drive which stored the videotapes taken from various
20 cameras at Spencer's residence on the evening of December 18, 2012. The
21 videotapes and hard drive, of course, would show the interaction between Spencer
22 and Helmut Klementi on the evening of December 18, 2012. The videotapes would
23 essentially prove or disprove Spencer's testimony as to what occurred on the evening
24 of December 18, 2012. In response, Spencer's failed to produce the hard drive
25 containing all of the videotape of his encounter with Helmut on December 18, 2012.

26 ///

27 ///

28 ///

1 C. Discussion.

2 1. Sanctions

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

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

20 In this case, Spencer asserted that Kinion made defaming statements to the
21 Douglas County Sheriffs Department, the Douglas County District Attorney, KGID, the
22 Douglas County Planning Commission and/or the South Lake Tahoe Justice of the
23 Peace. In addition, Spencer asserts that statements made by Kinion during Spencer's
24 criminal proceedings were defamatory in nature.

25 As established at the hearing on July 12, 2018, because each of the alleged
26 statements made by Kinion were made during a judicial and/or quasi-judicial
27 proceeding, they are not actionable. As recently confirmed by the Nevada Supreme
28 Court in *Fitzgerald v. Mobile Billboards, LLC.*, 134 Nev.Adv.Op. 30 (decided May 3,
 2018), Nevada recognizes the common law absolute privilege that protects defamatory
 statements made during a judicial or quasi-judicial proceeding. The common law
 absolute privilege bars any civil litigation for defamatory statements even when the
 defamatory statements were published with malicious intent. *Id.* at p.2. For this reason,
 even if the statements made by Kinion were not true and/or were made with malicious

1 intent, Kinion would be immune from liability. Spencer failed to know this settled law
2 when asserting his defamation claims.

3 Moreover, there is a strong presumption that each of the statements Kinion
4 made about Spencer were true. In this regard, throughout the course of this matter,
5 Spencer claimed that he had video evidence on his home video system which
6 captured the events that took place on the evening of December 18, 2012.
7 Specifically, at his deposition, Spencer testified that he has video evidence which
8 showed: (1) Helmut to be trespassing in Spencer's driveway, and (2) that Spencer
9 inadvertently collided with Mr. Klementi in the street while he was trying to affect a
10 citizen's arrest on the unidentified trespasser who he thought was trying to break into
11 his truck. However, when pushed to produce the video evidence Spencer did not do
12 so, and instead, claimed that the hard drive storing all of video evidence had been
13 corrupted and could not be salvaged. The spoliation and failure to provide the hard
14 drive and video evidence is a clear indication of consciousness of wrongdoing and
15 guilt.

16 As to Spencer's claim for civil conspiracy against Kinion, the claim was
17 dismissed because Spencer could not prove the underlying torts, i.e. defamation or
18 malicious prosecution. The claim against Kinion for malicious prosecution was
19 previously dismissed and, as shown above, all of the alleged defamatory statements
20 that were allegedly made by Kinion are protected by the common law absolute
21 privilege. As such, Spencer again failed to research the applicable law before
22 asserting his claims for civil conspiracy.

23 As to the claim for intentional infliction of emotional distress, Kinion's
24 cooperation with the police investigation and/or her testimony in Spencer's criminal
25 proceedings is simply "not extreme and outrageous conduct" as a matter of law. In
26 addition, like his failure to produce and video evidence of Helmut being in his driveway
27 Spencer failed to produce any evidence that he experienced a *physical manifestation*
28

1 of the severe emotional distress that is necessary to support a claim for intentional
2 infliction of emotional distress in Nevada.

3 Finally, of course, Spencer's claim for "punitive damages" is not a stand-alone
4 cause of action.

5 From the beginning, the claims that Spencer brought against Kinion were
6 frivolous, vexatious, and without merit. They were designed solely to harass and
7 intimidate her. As a result, Kinion was forced to seek legal counsel and her attorneys
8 were required to perform written discovery and take depositions to establish that the
9 claims were without merit. What began as a criminal case against Spencer evolved
10 into an abuse of legal process by which Spencer sought to harass and intimidate
11 Kinion and the other third party defendants.

12 Working up a case to the point where summary judgment is granted requires
13 much time and effort. It requires specific written discovery and deposition questions
14 which focus in on the pertinent issues in dispute. As a culmination of the time and
15 attention, the law firm of Glogovac & Pintar incurred \$20,398.50 in attorney's fees
16 defending Kinion from Spencer's remaining claims for defamation, civil conspiracy
17 (defamation), civil conspiracy (malicious prosecution), punitive damages and infliction
18 of emotional distress. See Affidavit of Michael A. Pintar, attached hereto as Exhibit 1.

19 **2. Costs.**

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

22 "Costs must be allowed of course to the prevailing
23 party against any adverse party against whom judgment is
24 rendered . . . [i]n an action for the recovery of money or
25 damages, where the plaintiff seeks to recover more than
26 \$2,500." NRS 18.020(3). In actions not specifically
27 enumerated in NRS Chapter 18, the district court has
28 discretion in awarding fees to the prevailing party. NRS
18.050. Under either statute, a party must prevail before it
may win an award of costs." Golightly & Vannah, PLLC v.
TJ Allen, LLC, 132 Nev. Adv. Op. No. 41 at *8 (2016).

1 As put forth above, Kinion was the prevailing party. NRS 18.005 defines the
2 costs allowed to be recovered. As set forth in Exhibit 2, Kinion has also incurred
3 costs in the amount of \$601.23 in defending this matter through the July 12, 2018
4 hearing.

5 **AFFIRMATION**

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

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

9 DATED this 6th day of September, 2018.

10 GLOGOVAC & PINTAR

11
12 By: 

13 MICHAEL A. PINTAR, ESQ.
14 Nevada Bar No. 003789
15 Attorneys for Counterdefendant,
16 Mary Ellen Kinion
17
18
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27
28

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 I served the
4 foregoing document(s) 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,
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 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 Jeffrey Spencer
19 P. O. Box 2326
20 Stateline, NV 89449
In-Pro Per

21
22 Dated this 7th day of September, 2018.

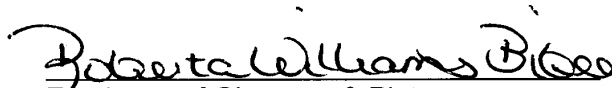
23
24 
25 Employee of Glogovac & Pintar
26
27
28

EXHIBIT 1

EXHIBIT 1

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,
19 ELFRIDE KLEMENTI, an individual,
20 MARY ELLEN KINION, an individual,
21 ROWENA SHAW, an individual, PETER
22 SHAW, an individual, and DOES 1-5,

23 Counterdefendants & Third-Party
24 Defendants.

25

26 STATE OF NEVADA)

27) ss.

28 COUNTY OF WASHOE)

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

31 1. I am an attorney duly licensed and admitted to practice before all courts

32

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

1 in the State of Nevada, and I am a member in good standing with the State Bar of
2 Nevada.

3 2. I am the attorney of record for Third-Party Defendant, Mary Ellen Kinion
4 ("Kinion") in the above-entitled action.

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

6 4. That since the October 19, 2017 filing of the Court's Order, additional
7 attorneys' fees and paralegal fees in the amount of \$20,398.50 (106.9 hours @
8 \$150/hr.; 34.5 hours @ \$125/hr. and .6 hours @ \$85/hr.) have been incurred by the
9 law firm of Glogovac & Pintar with respect to defending Kinion against the remaining
10 claims for defamation, civil conspiracy (defamation), civil conspiracy (malicious
11 prosecution), punitive damages and infliction of emotional distress. (Attached hereto
12 as Exhibit 1 are copies of the redacted invoices reflecting the legal work performed).
13

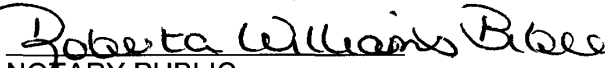
14 5. That the attorneys' and paralegal fees charged are just, reasonable and
15 fair under the circumstances.
16

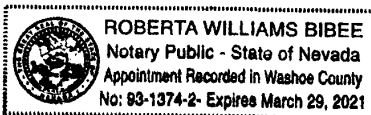
17 6. Further affiant sayeth not.

18 Dated this 6th day of September, 2018.

19
20 
21 MICHAEL A. PINTAR, ESQ.

22 SUBSCRIBED and SWORN to before me,
23 this 6th day of September, 2018.

24 
25 NOTARY PUBLIC



Glogovac & Pinter

427 W. Plumb Ln.
Reno, NV 89509
Phone: 775.333.0400
Tax ID: 88-0340418

Allstate Insurance Company

222 S. Mill Ave.
Ste. 521
Tempe, AZ 85281-6478

Invoice 10136

Date	Dec 01, 2017
Terms	Due upon receipt
Service Thru	Nov 30, 2017

In Reference To: Spencer v. Kinion (Fees)

Matter ID: 1741

Date	By	Services	Hours	Rates	Amount
09/13/2017	MAP	Review: Review stipulation for dismissal between Helmut Klementi and Spencer	0.10	\$ 150.00/hr	\$ 15.00
09/13/2017	MAP	Draft: Prepare trial setting memoranda for the court	0.40	\$ 150.00/hr	\$ 60.00
09/18/2017	MAP	Court Time: Attend Trial Setting	0.50	\$ 150.00/hr	\$ 75.00
09/18/2017	MAP	Phone Call: with regarding additional discovery and dispositive motions needed to be completed	0.50	\$ 150.00/hr	\$ 75.00
09/28/2017	MAP	Phone Call: with Doug Brown regarding transcript of January 30, 2017 hearing	0.20	\$ 150.00/hr	\$ 30.00
09/29/2017	RB	Review: Review email from office of Chris Moore, Esq., counsel for plaintiff Helmut Klementi regarding transcript of the January 30, 2017 hearing	0.20	\$ 85.00/hr	\$ 17.00
10/03/2017	RB	Review: email from Lemons, Grundy & Eisenberg regarding transcript of the January 30, 2017 hearing in the Ninth Judicial District Court	0.20	\$ 85.00/hr	\$ 17.00
10/03/2017	RB	Email: to Catherine Ammon of Lemons, Grundy & Eisenberg regarding transcript of the January 30, 2017 hearing in the Ninth Judicial District Court	0.20	\$ 85.00/hr	\$ 17.00
10/17/2017	MAP	Meeting: meeting with	1.20	\$ 150.00/hr	\$ 180.00
10/17/2017	MAP	Correspondence: Prepare status letter to	0.80	\$ 150.00/hr	\$ 120.00
10/23/2017	MAP	Review: review order granting attorneys fees	0.20	\$ 150.00/hr	\$ 30.00
10/23/2017	MAP	Phone Call: phone call with re: order awarding attorney's fees, future discovery	0.30	\$ 150.00/hr	\$ 45.00

10/23/2017	MAP	Email: email to attorney's fees re: order granting	0.20	\$ 150.00/hr	\$ 30.00
10/25/2017	MAP	Prepare: Prepare Notice of Entry of Order regarding attorneys fees and costs	0.30	\$ 150.00/hr	\$ 45.00
11/02/2017	MAP	Correspondence: prepare correspondence to attorney Routis re: dismissing the third-party complaint in light of judge finding and prior settlement with Helmut Klementi	1.80	\$ 150.00/hr	\$ 270.00
11/03/2017	MAP	Correspondence: revise, finalize letter to plaintiff's counsel demanding dismissal of third-party complaint in light of recent court order	0.40	\$ 150.00/hr	\$ 60.00
11/06/2017	PMK	Research: Conduct research regarding whether attorneys fees can be collected on in regard to a motion for partial summary judgment while a case is still pending.	1.00	\$ 125.00/hr	\$ 125.00
11/06/2017	PMK	Draft: draft memorandum regarding collecting attorneys fees ordered as a result of an order granting partial summary judgment.	0.50	\$ 125.00/hr	\$ 62.50
11/07/2017	PMK	Research: Conduct legal research regarding certifying a judgment with the court	0.90	\$ 125.00/hr	\$ 112.50
11/07/2017	MAP	Email: Email to re: execution on award of fees and costs	0.30	\$ 150.00/hr	\$ 45.00
11/15/2017	MAP	Phone Call: phone call with Spencer counsel re: case status	0.40	\$ 150.00/hr	\$ 60.00
11/15/2017	MAP	Correspondence: prepare correspondence to Spencer counsel regarding Spencer's winter snowplowing	0.60	\$ 150.00/hr	\$ 90.00
11/17/2017	MAP	Correspondence: revise letter to Lynn Pierce	0.30	\$ 150.00/hr	\$ 45.00
11/24/2017	MAP	Documentation: revise, finalize letter to Lynn Pierce agreeing to hold off filing motion to dismiss in return for Spencer agreeing not to plow insured's streets with winter.	0.20	\$ 150.00/hr	\$ 30.00

Total Hours	11.70 hrs
Total Fees	\$ 1,656.00
Total Invoice Amount	\$ 1,656.00
Previous Balance	\$ 0.00
Balance (Amount Due)	\$ 1,656.00

Glogovac & Pinter

427 W. Plumb Ln.
Reno, NV 89509
Phone: 775.333.0400
Tax ID: 88-0340418

Allstate Insurance Company

222 S. Mill Ave.
Ste. 521
Tempe, AZ 85281-6478

Invoice 10248

Date	Feb 01, 2018
Terms	Due upon receipt
Service Thru	Jan 31, 2018

In Reference To: Spencer v. Kinion (Fees)

Matter ID: 1741

Date	By	Services	Hours	Rates	Amount
12/12/2017	MAP	Email: exchange emails with re: authority to use fee and cost award as leverage to get plaintiff to dismiss case	0.40	\$ 150.00/hr	\$ 60.00
12/14/2017	MAP	Email: exchange emails with re: approval for preparation of motion for order to show cause	0.20	\$ 150.00/hr	\$ 30.00
01/03/2018	PMK	Review: Review Order awarding attorney's fees and motion for summary judgment.	0.20	\$ 125.00/hr	\$ 25.00
01/03/2018	PMK	Research: Conduct legal research regarding standards for contempt for failing to pay and award of attorneys fees.	1.00	\$ 125.00/hr	\$ 125.00
01/03/2018	PMK	Review: Conduct legal research regarding standards for motions for orders to show cause.	1.00	\$ 125.00/hr	\$ 125.00
01/03/2018	PMK	Draft: Draft motion for order to show cause.	2.50	\$ 125.00/hr	\$ 312.50
01/04/2018	PMK	Draft: Revise motion for order to show cause.	1.50	\$ 125.00/hr	\$ 187.50
01/05/2018	MAP	Email: exchange emails with regarding coverage moving forward with dec relief action and me moving forward with motion for order to show cause	0.30	\$ 150.00/hr	\$ 45.00
01/10/2018	MAP	Phone Call: phone call with regarding case status	0.20	\$ 150.00/hr	\$ 30.00
01/11/2018	MAP	Revise: revise motion for order to show cause holding plaintiff in contempt	0.50	\$ 150.00/hr	\$ 75.00
01/12/2018	MAP	Other: revise, finalize motion for order to show cause	0.30	\$ 150.00/hr	\$ 45.00
01/12/2018	MAP	Travel: travel to courthouse to file motion for order to show cause	1.00	\$ 150.00/hr	\$ 150.00

Total Hours	9.10 hrs
Total Fees	\$ 1,210.00
Total Invoice Amount	\$ 1,210.00
Previous Balance	\$ 1,656.00
12/28/2017 Payment - Check	(\$1,656.00)
Balance (Amount Due)	\$ 1,210.00

Glogovac & Pinter

427 W. Plumb Ln.
Reno, NV 89509
Phone: 775.333.0400
Tax ID: 88-0340418

Allstate Insurance Company

222 S. Mill Ave.
Ste. 521
Tempe, AZ 85281-6478

Invoice 10342

Date	Apr 03, 2018
Terms	Due upon receipt
Service Thru	Mar 31, 2018

In Reference To: Spencer v. Kinion (Fees)**Matter ID: 1741**

Date	By	Services	Hours	Rates	Amount
02/05/2018	MAP	Email: exchange emails with plaintiff counsel re: extension to respond to motion to compel	0.20	\$ 150.00/hr	\$ 30.00
02/26/2018	MAP	Review: Review 3rd party defendants motion for summary judgment	0.20	\$ 150.00/hr	\$ 30.00
02/27/2018	MAP	Review: Review court's Order on Order to Show Cause	0.20	\$ 150.00/hr	\$ 30.00
02/28/2018	MAP	Review: review order granting motion to show cause	0.10	\$ 150.00/hr	\$ 15.00
02/28/2018	MAP	Email: email to regarding order granting motion to show cause	0.20	\$ 150.00/hr	\$ 30.00
02/28/2018	MAP	Email: email to regarding order granting motion to show cause	0.20	\$ 150.00/hr	\$ 30.00
02/28/2018	MAP	Email: email to regarding order granting motion to show cause	0.20	\$ 150.00/hr	\$ 30.00
03/01/2018	MAP	Review: review third-party defendant Shaw's motion for summary judgment	0.20	\$ 150.00/hr	\$ 30.00
03/01/2018	MAP	Documentation: prepare joinder to third-party defendant Shaw's motion for summary judgment	0.30	\$ 150.00/hr	\$ 45.00
03/04/2018	MAP	Review: review and analyze plaintiff's response to motion to show cause	0.20	\$ 150.00/hr	\$ 30.00
03/04/2018	MAP	Review: review and analyze plaintiff's request for settlement conference	0.10	\$ 150.00/hr	\$ 15.00
03/04/2018	MAP	Email: email to regarding plaintiff's response to order to show cause and request for settlement conference	0.20	\$ 150.00/hr	\$ 30.00

03/05/2018	MAP	Email: review email from court's law clerk regarding settlement conference	0.10	\$ 150.00/hr	\$ 15.00
03/05/2018	MAP	Email: email to _____ regarding her availability for settlement conference	0.20	\$ 150.00/hr	\$ 30.00
03/05/2018	MAP	Email: email to _____ regarding her availability for settlement conference	0.20	\$ 150.00/hr	\$ 30.00
03/05/2018	MAP	Phone Call: telephone call with _____	0.60	\$ 150.00/hr	\$ 90.00
03/05/2018	MAP	Correspondence: prepare correspondence to the court regarding availability for settlement conference and potentially including first-party claim as part of settlement conference	0.50	\$ 150.00/hr	\$ 75.00
03/06/2018	MAP	Phone Call: phone call with _____ regarding her availability for the settlement conference and case status	0.40	\$ 150.00/hr	\$ 60.00
03/06/2018	MAP	Phone Call: phone call with _____ regarding her availability for the settlement conference and case status	0.40	\$ 150.00/hr	\$ 60.00
03/06/2018	MAP	Email: email to _____ regarding availability for the settlement conference and case status	0.20	\$ 150.00/hr	\$ 30.00
03/07/2018	MAP	Review: Review Counter-Defendant Helmut Klementi's Answer to Amended Counterclaim and Third-Party Complaint received from Doug Brown, Esq.	0.20	\$ 150.00/hr	\$ 30.00
03/07/2018	MAP	Review: Review Notice of Association of Counsel received from Doug Brown, Esq.	0.20	\$ 150.00/hr	\$ 30.00
03/07/2018	MAP	Phone Call: phone call with _____ to get him up to date on the status of the underlying case and requesting his attendance at the upcoming settlement conference	0.30	\$ 150.00/hr	\$ 45.00
03/07/2018	MAP	Review: review and analyze Helmut Klementi's answer to amended counter-claim and third-party complaint	0.20	\$ 150.00/hr	\$ 30.00
03/09/2018	MAP	Email: exchange emails with court regarding time and place of settlement conference	0.30	\$ 150.00/hr	\$ 45.00
03/09/2018	MAP	Email: exchange emails with clients regarding time and place of settlement conference	0.30	\$ 150.00/hr	\$ 45.00
03/09/2018	MAP	Email: exchange emails with court regarding adjusters personal attendance at settlement conference	0.20	\$ 150.00/hr	\$ 30.00
03/16/2018	MAP	Meeting: meeting with _____ regarding motion for summary judgment and upcoming settlement conference	0.50	\$ 150.00/hr	\$ 75.00
03/20/2018	MAP	Review: review order regarding settlement conference and briefing	0.10	\$ 150.00/hr	\$ 15.00
03/28/2018	MAP	Email: email to _____ regarding need to file reply brief	0.20	\$ 150.00/hr	\$ 30.00
03/28/2018	MAP	Email: review and analyze plaintiff's opposition to msj	0.30	\$ 150.00/hr	\$ 45.00

03/28/2018	MAP	Review: Review Spencer's lengthy Response to Motion for Summary Judgment	0.30	\$ 150.00/hr	\$ 45.00
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In Reference To: Spencer v. Kinion (Expenses)

Matter ID: 1741

Date	By	Expenses	Amount
03/08/2018	AV	Court Fees: Paid to Ninth Judicial Court for filing fees	\$ 200.00

Total Hours	8.00 hrs
Total Fees	\$ 1,200.00
Total Expenses	\$ 200.00
Total Invoice Amount	\$ 1,400.00
Previous Balance	\$ 1,210.00
03/06/2018 Payment - Check	(\$1,060.00)
03/06/2018 Payment - Other Write off	(\$150.00)
Balance (Amount Due)	\$ 1,400.00

Glogovac & Pinter

427 W. Plumb Ln.
Reno, NV 89509
Phone: 775.333.0400
Tax ID: 88-0340418

Allstate Insurance Company

222 S. Mill Ave.
Ste. 521
Tempe, AZ 85281-6478

Invoice 10391

Date	May 01, 2018
Terms	Due upon receipt
Service Thru	Apr 30, 2018

In Reference To: Spencer v. Kinion (Fees)

Matter ID: 1741

Date	By	Services	Hours	Rates	Amount
04/02/2018	PMK	Research: Conduct legal research on qualified privilege of statements made to law enforcement	1.00	\$ 125.00/hr	\$ 125.00
04/02/2018	MAP	Review: Review and analyze Defendant Shaws motion for summary judgment.	0.30	\$ 150.00/hr	\$ 45.00
04/02/2018	MAP	Review: Review and analyze Spencers opposition to motion summary judgment.	0.40	\$ 150.00/hr	\$ 60.00
04/02/2018	PMK	Research: Conduct legal research regarding what constitutes a quasi-judicial proceeding	0.90	\$ 125.00/hr	\$ 112.50
04/03/2018	PMK	Draft: Begin draft reply in support of joinder to Shaws motion for summary judgment.	3.00	\$ 125.00/hr	\$ 375.00
04/07/2018	MAP	Revise: review prior pleadings and revise reply in support of Shaws motion for summary judgment	2.50	\$ 150.00/hr	\$ 375.00
04/07/2018	MAP	Review: review records from Douglas County District Attorneys office in preparation for reply in support of motion for summary judgment.	1.00	\$ 150.00/hr	\$ 150.00
04/09/2018	MAP	Revise: legal research into claims of IIED	1.00	\$ 150.00/hr	\$ 150.00
04/09/2018	MAP	Revise: revise, finalize reply brief in support of Shaw's motion for summary judgment	2.00	\$ 150.00/hr	\$ 300.00
04/17/2018	MAP	Review: review Jeff Spencer deposition transcript volume 1 for purposes of preparing motion for summary judgment on remaining claim agent insured .	2.30	\$ 150.00/hr	\$ 345.00
04/17/2018	MAP	Documentation: prepare Kinion motion for summary judgment	6.50	\$ 150.00/hr	\$ 975.00

04/17/2018	MAP	Documentation: prepare motion for sanctions based on spoliation of evidence	4.50	\$ 150.00/hr	\$ 675.00
04/18/2018	MAP	Documentation: revise motion for summary judgment	2.80	\$ 150.00/hr	\$ 420.00
04/18/2018	MAP	Documentation: prepare status report	0.40	\$ 150.00/hr	\$ 60.00
04/19/2018	MAP	Revise: revise motion to dismiss based on spoliation of evidence	1.60	\$ 150.00/hr	\$ 240.00
04/20/2018	MAP	Email: exchange emails with counsel regarding continuance of settlement conference	0.40	\$ 150.00/hr	\$ 60.00
04/20/2018	MAP	Email: exchange emails with insured regarding continuance of settlement conference	0.20	\$ 150.00/hr	\$ 30.00
04/20/2018	MAP	Email: exchange emails with regarding continuance of settlement conference	0.20	\$ 150.00/hr	\$ 30.00
04/22/2018	MAP	Phone Call: phone call with regarding default taken by Allstate and it's effect on upcoming settlement conference	0.60	\$ 150.00/hr	\$ 90.00
04/22/2018	MAP	Documentation: revise and Kinion motion for summary judgment and joinder to Helmut Klementi motion for summary judgment	2.80	\$ 150.00/hr	\$ 420.00
04/22/2018	MAP	Correspondence: prepare follow-up correspondence to insured regarding upcoming settlement conference	0.40	\$ 150.00/hr	\$ 60.00
04/23/2018	MAP	Phone Call: phone call with regarding settlement authority and upcoming mediation	0.30	\$ 150.00/hr	\$ 45.00
04/23/2018	MAP	Revise: revise and finalize Kinion motion for summary judgment and joinder to Helmut Klementi motion for summary judgment	1.20	\$ 150.00/hr	\$ 180.00
04/23/2018	MAP	Revise: revise and finalize Kinion motion to dismiss based on the spoliation of critical evidence	0.80	\$ 150.00/hr	\$ 120.00
04/26/2018	MAP	Email: email with regarding upcoming settlement conference	0.20	\$ 150.00/hr	\$ 30.00
04/26/2018	MAP	Email: email from court regarding upcoming settlement conference and adjuster's ability to participate by phone	0.20	\$ 150.00/hr	\$ 30.00

In Reference To: Spencer v. Kinion (Expenses)

Matter ID: 1741

Date	By	Expenses	Amount
04/24/2018	AV	Court Fees: Paid to 9th Judicial Court for filing fee for Motion for Summary of Judgment	\$ 200.00

Total Hours	37.50 hrs
Total Fees	\$ 5,502.50
Total Expenses	\$ 200.00
Total Invoice Amount	\$ 5,702.50
Previous Balance	\$ 1,400.00

04/23/2018 Payment - Check	(\$200.00)
payment is for expenses only. Fees will be paid seperately	
Balance (Amount Due)	\$ 6,902.50

Glogovac & Pinter

427 W. Plumb Ln.
Reno, NV 89509
Phone: 775.333.0400
Tax ID: 88-0340418

Allstate Insurance Company

222 S. Mill Ave.
Ste. 521
Tempe, AZ 85281-6478

Invoice 10462

Date	Jun 04, 2018
Terms	Due upon receipt
Service Thru	May 31, 2018

In Reference To: Spencer v. Kinion (Fees)**Matter ID: 1741**

Date	By	Services	Hours	Rates	Amount
05/02/2018	MAP	Documentation: prepare confidential settlement conference statement	2.50	\$ 150.00/hr	\$ 375.00
05/02/2018	MAP	Documentation: meeting with to prepare for settlement conference	1.00	\$ 150.00/hr	\$ 150.00
05/07/2018	MAP	Phone Call: phone call with Lynn Pierce regarding her request to file an extension to the msj and motion for spoliation of evidence and also settlement discussions ahead of Wednesday's settlement conference to include our need for an itemization of Spencer's claims injuries and medical damages.	0.60	\$ 150.00/hr	\$ 90.00
05/07/2018	MAP	Prepare: Prepare letter to Spencer's attorney regarding extension of time to file opposition.	0.20	\$ 150.00/hr	\$ 30.00
05/08/2018	MAP	Email: exchange emails with regarding settlement conference tomorrow	0.30	\$ 150.00/hr	\$ 45.00
05/09/2018	MAP	Court Time: attend mediation	7.00	\$ 150.00/hr	\$ 1,050.00
05/10/2018	MAP	Documentation: prepare status report to	0.40	\$ 150.00/hr	\$ 60.00
05/11/2018	RB	Review: Review email from regarding motions previously file by our office	0.20	\$ 85.00/hr	\$ 17.00
05/11/2018	RB	Email: Responsive email to regarding motions	0.20	\$ 85.00/hr	\$ 17.00
05/14/2018	MAP	Review: Review the Shaw's Request for Submission	0.10	\$ 150.00/hr	\$ 15.00
05/14/2018	MAP	Review: Review Spencer's expert witness disclosure	0.20	\$ 150.00/hr	\$ 30.00
05/16/2018	MAP	Email: review email/order from court setting	0.20	\$ 150.00/hr	\$ 30.00

05/16/2018	MAP	Email: exchange email with regarding order from court setting	0.20	\$ 150.00/hr	\$ 30.00
05/17/2018	PMK	Research: Conduct legal research on late expert disclosures and prejudice of rebuttal experts.	0.90	\$ 125.00/hr	\$ 112.50
05/17/2018	RB	Review: Review email from regarding motions filed on behalf of insured and Elfie Klementi	0.20	\$ 85.00/hr	\$ 17.00
05/17/2018	PMK	Draft: Draft motion to strike plaintiff's expert.	2.00	\$ 125.00/hr	\$ 250.00
05/18/2018	MAP	Review: Review Helmut Klementi's Joinder in Motion for Sanctions	0.10	\$ 150.00/hr	\$ 15.00
05/22/2018	MAP	Email: exchange emails with regarding remaining parties to third-party action	0.20	\$ 150.00/hr	\$ 30.00
05/23/2018	MAP	Review: review and analyze letter from	0.20	\$ 150.00/hr	\$ 30.00
05/24/2018	MAP	Email: exchange emails with counsel and court regarding re-scheduling hearing on pending motions	0.20	\$ 150.00/hr	\$ 30.00
05/24/2018	MAP	Documentation: revise, finalize motion to strike plaintiff's expert	0.50	\$ 150.00/hr	\$ 75.00
05/24/2018	MAP	Research: review	0.10	\$ 150.00/hr	\$ 15.00
05/24/2018	MAP	Review: review Helmut Klementi joinder to motion for sanctions	0.10	\$ 150.00/hr	\$ 15.00

In Reference To: Spencer v. Kinion (Expenses)

Matter ID: 1741

Date	By	Expenses	Amount
05/23/2018	AV	Miscellaneous: Paid to Sunshine Litigation for Settlement Conference	\$ 150.00

Total Hours		17.60 hrs
Total Fees		\$ 2,528.50
Total Expenses		\$ 150.00
Total Invoice Amount		\$ 2,678.50
Previous Balance		\$ 6,902.50
05/22/2018 Payment - Check		(\$5,702.50)
Balance (Amount Due)		\$ 3,878.50

Glogovac & Pinter

427 W. Plumb Ln.
Reno, NV 89509
Phone: 775.333.0400
Tax ID: 88-0340418

Allstate Insurance Company

222 S. Mill Ave.
Ste. 521
Tempe, AZ 85281-6478

Invoice 10504

Date	Jul 02, 2018
Terms	Due upon receipt
Service Thru	Jun 30, 2018

In Reference To: Spencer v. Kinion (Fees)

Matter ID: 1741

Date	By	Services	Hours	Rates	Amount
06/01/2018	MAP	Review: Review counter-defendant Helmut Klementi's Joinder to our motion to strike plaintiff's expert witness designation.	0.10	\$ 150.00/hr	\$ 15.00
06/05/2018	MAP	Review: Review the Shaw's Joinder in Kinion's Motion for Sanctions Based on Spoliation of Evidence.	0.10	\$ 150.00/hr	\$ 15.00
06/05/2018	MAP	Review: Review the Shaw's Joinder in Kinion's Motion for Summary Judgment	0.10	\$ 150.00/hr	\$ 15.00
06/05/2018	MAP	Review: Review and analyze Plaintiff's response to Helmut Klementi's Motion for Summary Judgment	0.20	\$ 150.00/hr	\$ 30.00
06/05/2018	MAP	Review: Review and analyze Plaintiff's response to Egon and Elfie Klementi's Motion for Summary Judgment	0.30	\$ 150.00/hr	\$ 45.00
06/05/2018	MAP	Review: Review and analyze Plaintiff's Responses to Motion for Sanctions Based on Spoliation of Evidence	0.20	\$ 150.00/hr	\$ 30.00
06/05/2018	MAP	Review: Review and analyze Plaintiff's pleading entitled Video Exhibit in Support of Responses to Motions for Summary Judgment & to Motion for Sanctions Based on Spoliation of Evidence (pleading only)	0.20	\$ 150.00/hr	\$ 30.00
06/05/2018	MAP	Review: Review and analyze Plaintiff's Response to Kinion's Motion for Summary Judgment	0.30	\$ 150.00/hr	\$ 45.00
06/05/2018	MAP	Documentation: review and analyze amended declaration from plaintiff's counsel regarding reasons for lack of timing service	0.20	\$ 150.00/hr	\$ 30.00

06/05/2018	PMK	Research: Conduct legal research and shepardize cases cited by Spencer in opposing msj.	2.50	\$ 125.00/hr	\$ 312.50
06/06/2018	PMK	Research: Legal research on defamation cases where the issue of defamatory construction is submitted to a jury.	1.00	\$ 125.00/hr	\$ 125.00
06/06/2018	PMK	Research: Legal research re: attaching an exhibit to an opposition which has not previously been produced.	1.20	\$ 125.00/hr	\$ 150.00
06/06/2018	PMK	Research: Draft reply in support of motion for summary judgment.	5.00	\$ 125.00/hr	\$ 625.00
06/06/2018	MAP	Phone Call: phone call with Helmut Klementi counsel regarding respective responses to Spencer's oppositions to motions for summary judgment and request for extensions to file reply briefs	0.40	\$ 150.00/hr	\$ 60.00
06/07/2018	PMK	Draft: Draft and edit reply in support of Motion for Summary Judgment.	3.50	\$ 125.00/hr	\$ 437.50
06/07/2018	PMK	Research: Legal research regarding spoliation and the recovery of cyber data for spoliation motion	2.50	\$ 125.00/hr	\$ 312.50
06/07/2018	PMK	Research: Legal research regarding the discoverability of evidence used to prepare a witness for a deposition.	0.90	\$ 125.00/hr	\$ 112.50
06/07/2018	PMK	Research: Legal research regarding the attorney client privilege and whether personal notes qualify as a communication with legal counsel	0.60	\$ 125.00/hr	\$ 75.00
06/07/2018	MAP	Draft: Revise reply in support of motion for summary judgment.	2.00	\$ 150.00/hr	\$ 300.00
06/07/2018	MAP	Phone Call: telephone call with regarding coordination of arguments for motion for summary judgment	0.50	\$ 150.00/hr	\$ 75.00
06/07/2018	MAP	Documentation: Legal research regarding summary judgment standards cited by Spencer	1.40	\$ 150.00/hr	\$ 210.00
06/08/2018	MAP	Draft: Draft reply in support of motion for spoliation of evidence	4.50	\$ 150.00/hr	\$ 675.00
06/08/2018	MAP	Review: review letter from Keating extending defense to July 20	0.10	\$ 150.00/hr	\$ 15.00
06/10/2018	MAP	Documentation: revisions to reply in support of motion for summary judgment	2.10	\$ 150.00/hr	\$ 315.00
06/10/2018	MAP	Documentation: review hearing transcript from January 30, 2017 to address defamation claims based on letter written by Kinion to Deputy DA Pence	1.20	\$ 150.00/hr	\$ 180.00
06/10/2018	MAP	Documentation: revise reply in support of motion for sanctions based on spoliation of evidence.	3.00	\$ 150.00/hr	\$ 450.00
06/12/2018	MAP	Review: review Shaw joinder to motion to strike Spencer expert	0.10	\$ 150.00/hr	\$ 15.00
06/12/2018	MAP	Research: legal research re: at-issue doctrine and further revisions to reply brief	1.20	\$ 150.00/hr	\$ 180.00

06/13/2018	MAP	Documentation: revise, finalize reply brief in support of msj.	2.50	\$ 150.00/hr	\$ 375.00
06/13/2018	MAP	Documentation: revise, finalize reply in support of motion for sanctions	2.50	\$ 150.00/hr	\$ 375.00
06/14/2018	MAP	Review: Review Helmut Klementi's Reply in Support of Motion for Summary Judgment	0.20	\$ 150.00/hr	\$ 30.00
06/15/2018	MAP	Review: Review court's Order ordering Spencer to appear and show cause as to why he has not paid in full the attorney's fees and costs	0.10	\$ 150.00/hr	\$ 15.00
06/19/2018	MAP	Phone Call: phone call with _____ regarding Spencer's settlement offer to Allstate	0.40	\$ 150.00/hr	\$ 60.00
06/19/2018	MAP	Documentation: review and analyze letter from Spencer regarding settlement offer to Allstate	0.20	\$ 150.00/hr	\$ 30.00
06/19/2018	MAP	Documentation: review order to show cause	0.10	\$ 150.00/hr	\$ 15.00
06/19/2018	MAP	Email: email to _____ regarding order to show cause	0.20	\$ 150.00/hr	\$ 30.00
06/20/2018	PMK	Research: Conduct legal research regarding NRCP 25 and dismissal of deceased defendants.	0.90	\$ 125.00/hr	\$ 112.50
06/21/2018	MAP	Email: exchange emails with _____ regarding Spencer demand letter	0.20	\$ 150.00/hr	\$ 30.00

Total Hours	42.70 hrs
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Total Fees	\$ 5,952.50
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Total Invoice Amount	\$ 5,952.50
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Previous Balance	\$ 3,878.50
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06/05/2018 Balance Adjustment Write off for duplicate charges on invoice.	(\$100.00)
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06/05/2018 Payment - Check	(\$1,100.00)
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06/14/2018 Payment - Check no invoice number with check	(\$200.00)
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07/02/2018 Payment - Check	(\$2,528.50)
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Balance (Amount Due)	\$ 5,902.50
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Glogovac & Pinter

427 W. Plumb Ln.
Reno, NV 89509
Phone: 775.333.0400
Tax ID: 88-0340418

Allstate Insurance Company

222 S. Mill Ave.
Ste. 521
Tempe, AZ 85281-6478

Invoice 10543

Date	Aug 07, 2018
Terms	Due upon receipt
Service Thru	Jul 31, 2018

In Reference To: Spencer v. Kinion (Fees)**Matter ID: 1741**

Date	By	Services	Hours	Rates	Amount
07/03/2018	MAP	Phone Call: phone call with regarding potential settlement	0.30	\$ 150.00/hr	\$ 45.00
07/03/2018	MAP	Phone Call: phone call with regarding potential settlement	0.30	\$ 150.00/hr	\$ 45.00
07/03/2018	MAP	Email: exchange emails with regarding potential settlement	0.30	\$ 150.00/hr	\$ 45.00
07/09/2018	MAP	Phone Call: phone call with plaintiff's counsel regarding settlement	0.30	\$ 150.00/hr	\$ 45.00
07/09/2018	MAP	Email: email to defense counsel regarding potential global settlement.	0.40	\$ 150.00/hr	\$ 60.00
07/09/2018	MAP	Email: emails with Doug Brown (Helmut Klementi) and Tanika Capers (Shaws) regarding my conversations with Ms. Pierce this morning and her desire for a "global settlement." Follow-up emails with counsel over settlement authority they had.	0.30	\$ 150.00/hr	\$ 45.00
07/09/2018	MAP	Other: phone call with regarding his position on settlement with Helmut Klementi	0.20	\$ 150.00/hr	\$ 30.00
07/11/2018	MAP	Email: exchange emails with plaintiff's counsel regarding her client's decision to reject all settlement offers and go forward with hearing	0.20	\$ 150.00/hr	\$ 30.00
07/11/2018	MAP	Email: exchange emails with out regarding plaintiff's recent decision to reject all settlement offers and go forward with hearing	0.20	\$ 150.00/hr	\$ 30.00
07/11/2018	MAP	Court Time: preparation for hearing and oral argumetn	2.50	\$ 150.00/hr	\$ 375.00

07/12/2018	MAP	Prepare: preparation and outline for hearing on various motions	1.50	\$ 150.00/hr	\$ 225.00
07/12/2018	MAP	Travel: travel to courthouse in Gardnerville (47miles) for hearing	0.80	\$ 150.00/hr	\$ 120.00
07/12/2018	MAP	Travel: travel back from Gardnerville to Reno (47 miles) after hearing	0.80	\$ 150.00/hr	\$ 120.00
07/12/2018	MAP	Court Time: attend hearing and oral argument in Gardnerville	3.00	\$ 150.00/hr	\$ 450.00
07/12/2018	MAP	Meeting: meeting with regarding what ruling means and possible appeal by Spencer	0.60	\$ 150.00/hr	\$ 90.00
07/12/2018	MAP	Email: email to regarding court ruling following hearing	0.20	\$ 150.00/hr	\$ 30.00
07/17/2018	MAP	Email: email to regarding timeframe for appeal	0.30	\$ 150.00/hr	\$ 45.00
07/17/2018	MAP	Email: emails with regarding time frame of appeal	0.20	\$ 150.00/hr	\$ 30.00
07/19/2018	MAP	Documentation: review attorney's withdraw of counsel	0.20	\$ 150.00/hr	\$ 30.00
07/19/2018	MAP	Email: email to regarding attorney's withdraw of counsel	0.20	\$ 150.00/hr	\$ 30.00
07/19/2018	MAP	Email: email to regarding plaintiff's attorney's withdraw of counsel	0.20	\$ 150.00/hr	\$ 30.00
07/24/2018	MAP	Documentation: prepare proposed order pursuant to court's request	3.50	\$ 150.00/hr	\$ 525.00
07/25/2018	MAP	Documentation: revision to proposal after granting motion for summary judgment	1.80	\$ 150.00/hr	\$ 270.00
07/26/2018	MAP	Email: email with other counsel to coordinate submission of proposed orders	0.30	\$ 150.00/hr	\$ 45.00
07/31/2018	MAP	Phone Call: phone call with regarding proposal orders	0.30	\$ 150.00/hr	\$ 45.00
07/31/2018	MAP	Email: exchange emails with counsel regarding Spencer's email address so we can serve him with copies of the proposed orders	0.20	\$ 150.00/hr	\$ 30.00
07/31/2018	MAP	Documentation: revise, finalize proposed order granting motion for partial summary judgment	0.80	\$ 150.00/hr	\$ 120.00

In Reference To: Spencer v. Kinion (Expenses)

Matter ID: 1741

Date	By	Expenses	Amount
07/12/2018	MAP	Travel/Lodging: Travel to and from Gardnerville to Reno for hearing in Gardnerville total of 94 miles. 47 miles each way.	\$ 51.23
			Total Hours 19.90 hrs
			Total Fees \$ 2,985.00

Total Expenses	\$ 51.23
Total Invoice Amount	\$ 3,036.23
Previous Balance	\$ 5,902.50
Balance (Amount Due)	\$ 8,938.73

EXHIBIT 2

EXHIBIT 2

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: I

3
4
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,
20 ELFRIDE KLEMENTI, an individual,
21 MARY ELLEN KINION, an individual,
22 ROWENA SHAW, an individual, PETER
23 SHAW, an individual, and DOES 1-5,

24 Counterdefendants & Third-Party
25 Defendants.

26 Third-Party Defendant, Mary Ellen Kinion ("Kinion"), by and through her
27 attorneys, Glogovac & Pintar, hereby submit her Memorandum of Costs and
28 Disbursements, with attached documentation of such disbursements as follows:

///

///

///

**MEMORANDUM OF COSTS AND
DISBURSEMENTS**

1	<u>Clerks' Fees:</u>	
2	Filing Fee - Joinder in Motion for Summary Judgment	\$200.00
3	Filing Fee - Motion for Summary Judgment	200.00
4	<u>Court Reporters' Fees:</u>	
5	Sunshine Litigation Services (May 9, 2018 Settlement Conference)	150.00
6	<u>Travel/Lodging Fees:</u>	
7	Roundtrip Mileage to and from Gardnerville for hearing on motions	
8	(94 miles @\$.545/per mile)	<u>51.23</u>
9		
10	TOTAL COSTS AND DISBURSMENTS:	\$601.23

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

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

15 DATED this 6th day of September, 2018.

16 GLOGOVAC & PINTAR

17 By: 

18 MICHAEL A. PINTAR, ESQ.
19 Nevada Bar No. 003789
20 Attorneys for Third-Party Defendant
21 Mary Ellen Kinion
22
23
24
25
26
27
28

9th Judicial District Court
Clerk of the Court,
Bobbie R. Williams
Ph 782-9820 Fax 782-9954
1038 Buckeye Rd.
P.O. Box 218
Minden, NV 89423-0000

Received From: Glogovac & Pintar

14-CV-00260-DC
Motion for Summary Judgment CK \$200.00

TOTAL DUE: \$200.00

Other: \$0.00

TOTAL PAID: \$200.00

Balance Due 14-CV-00260-DC 0.00

COMMENT:
Klementi V. Spencer - Joinder to Motion for
Summary Judgment

Receipt #201800000655
Cashier: AN 03/12/18 3:28pm

Signature: ANOMA

RECEIVED
MAR 14 2018
GLOGOVAC & PINTAR

9th Judicial District Court
Clerk of the Court,
Bobbie R. Williams
Ph 782-9820 Fax 782-9954
1038 Buckeye Rd.
P.O. Box 218
Minden, NV 89423-0000

Received From: Glogovac & Pintar

14-CV-00260-DC

Motion for Summary Judgment CK

\$200.00

TOTAL DUE: \$200.00

Other: \$0.00

TOTAL PAID: \$200.00

Balance Due 14-CV-00260-DC

0.00

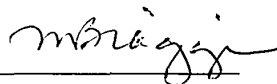
COMMENT:

Klementi v Spencer

Receipt #201800001099

Cashier: MB 04/24/18 11:56am

Signature: _____





151 County Estates Circle
 Reno, NV 89511
 Phone: 800-330-1112
 litigation-services.com

Michael A. Pintar, Esq.
 Glogovac & Pintar
 427 West Plumb Lane
 Reno, NV 89509

INVOICE

Invoice No.	Invoice Date	Job No.
1233395	5/22/2018	465361
Job Date	Case No.	
5/9/2018	14-CV-0260	
Case Name		
Klementi vs. Spencer		
Payment Terms		
Net 30		

Conference Room Rental
 Settlement Conference

150.00

TOTAL DUE >>> \$150.00

AFTER 6/21/2018 PAY \$165.00

Please note, disputes or refunds will not be honored or issued after 30 days

Tax ID: 20-3835523

Phone: 775-333-0400 Fax: 775-333-0412

Please detach bottom portion and return with payment.

Michael A. Pintar, Esq.
 Glogovac & Pintar
 427 West Plumb Lane
 Reno, NV 89509

Job No. : 465361 BU ID : RN-MISC
 Case No. : 14-CV-0260
 Case Name : Klementi vs. Spencer

Invoice No. : 1233395 Invoice Date : 5/22/2018

Total Due : \$150.00

AFTER 6/21/2018 PAY \$165.00

Remit To: **Sunshine Reporting and Litigation Services,
 LLC
 P.O. Box 98813
 Las Vegas, NV 89193-8813**

PAYMENT WITH CREDIT CARD



Cardholder's Name: _____
 Card Number: _____
 Exp. Date: _____ Phone#: _____
 Billing Address: _____
 Zip: _____ Card Security Code: _____
 Amount to Charge: _____
 Cardholder's Signature: _____
 Email: _____

Case No. 14-CV-0260

Dept. No. 1

RECEIVED

SEP 10 2018

Douglas County
District Court Clerk

FILED

2018 SEP 10 AM 10:30

BOBBIE R. WILLIAMS
CLERK

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.

COUNTER-DEFENDANT HELMUT KLEMENTI'S VERIFIED MEMORANDUM OF COSTS

Pursuant to NRS 18.020 and NRS 18.110, Counter-defendant Helmut Klementi respectfully submits his *Verified Memorandum of Costs* as follows:

1.	Clerk's Fees (Exhibit 1)	\$ 200.00
2.	Reporters' fees for depositions (Exhibit 2)	\$ 8,872.70
3.	Juror's Fees - N/A	N/A
4.	Fees for deposing witnesses (Exhibit 3)	\$ 154.76
5.	Reasonable expert witness fees (Exhibit 4)	\$ 1,500.00
6.	Interpreter Fees - N/A	N/A
7.	Sheriff or licensed process server fees (Exhibit 5)	\$ 821.50

8.	Compensation for official court reporter (Exhibit 6)	\$ 685.25
9.	Costs for bonds – N/A	N/A
10.	Bailiff or deputy overtime fees	N/A
11.	Reasonable costs for telecopies	N/A
12.	Reasonable costs for photocopies (Exhibit 7)	\$ 350.80
13.	Long distance calls – N/A	N/A
14.	Reasonable costs for postage – N/A	N/A
15.	Reasonable costs for travel to conduct discovery (Exhibit 8)	\$ 65.34
16.	Fees charged pursuant to NRS 19.0335 – N/A	N/A
17.	Any other reasonable and necessary expense incurred (Exhibit 9)	\$ 169.95
	TOTAL:	\$ 12,820.30

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

State of Nevada)
) ss.
County of Washoe)

Douglas R. Brown, being duly sworn, deposes and says that the items contained in the above Memorandum are correct, to the best of his knowledge and belief, and that said costs have been necessarily incurred in said action or proceeding by Helmut Klementi (NRS 18.005).

Dated this 16 day of September, 2018.

By: D. R. Brown
Douglas R. Brown, Esq.
Attorney for Counter-Defendant
Helmut Klementi

Subscribed and sworn to before me
this 16th day of September, 2018.

Susan G. Davis
Notary Public



CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on September 10, 2018, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within ***Counter-Defendant Helmut Klementi's Verified Memorandum of Costs***, addressed to the following:

Jeffrey D. Spencer
P. O. Box 2326
Stateline, NV 89449
In Pro Per

David M. Zaniel, Esq.
Ranalli & Zaniel, LLC
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Attorney for Jeffrey Spencer

Michael A. Pintar, Esq.
Glogovac & Pintar
427 West Plumb Lane
Reno, Nevada 89509
*Attorney for Mary Ellen Kinion,
Egon Klementi and Elfriede Klementi*

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



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. II
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.	:	
<hr/>		

HEARING
July 12, 2018
Minden, Nevada

Reported by: Lesley A. Clarkson, CCR #182

A_P_P_E_A_R_A_N_C_E_S

FOR THE PLAINTIFF/
COUNTERDEFENDANTS:

MICHAEL A. PINTAR, ESQ.
GLOGOVAC & PINTAR
427 West Plumb Lane
Reno, Nevada 89509

DOUGLAS R. BROWN, ESQ.
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Ste. 300
Reno, Nevada 89519

TANIKA M. CAPERS, ESQ.
6750 Via Austi Parkway, Ste 310
Las Vegas, Nevada 89119

FOR THE DEFENDANT/
COUNTERCLAIMANT:

LYNN G. PIERCE, ESQ.
515 Court Street, Ste. 2F
Reno, Nevada 89501

WILLIAM J. ROUTSIS, II, ESQ.
1070 Monroe Street
Reno, Nevada 89509

1 MINDEN, NEVADA, THURSDAY, JULY 12, 2018, 10:05 A.M.

2 -o0o-

3

4 THE COURT: We are on case number CV -- excuse me,
5 14-CV-0260. The balance of the case is the third amended
6 counterclaim and third-party complaint filed on March 3, 2017, by
7 Mr. Jeffrey Spencer.

8 Good morning to you, Mr. Spencer.

9 MR. SPENCER: Good morning, Judge.

10 THE COURT: Good morning to you, Mr. Routsis.

11 MR. ROUTSIS: Good morning to you.

12 THE COURT: Good morning to you, Miss Pierce.

13 MS. PIERCE: Good morning, Your Honor.

14 THE COURT: Beautiful morning. Mr. Spencer was as the
15 counterclaimant in this case versus Helmut Klementi. Is
16 Mr. Klementi present? Wait a minute. Hang on, don't tell me,
17 because I don't want to mix up the person that died. Egon passed
18 away.

19 MR. BROWN: Yes, Your Honor.

20 THE COURT: Yes. Forgive me. So Mr. Klementi is
21 represented by Mr. Michael Pintar. Good morning to you, Mr.
22 Pintar.

23 MR. PINTAR: Thank you, Your Honor. I am here on
24 behalf of Egon Klementi deceased, his wife, Elfie Klementi, and
25 Mary Ellen Kinion.

1 THE COURT: Forgive me. I'm really sorry. That's why
2 I hesitated at first. Egon passed away, and we have the notice
3 of the death and we have a motion pending and all that. And I
4 understand that. We will get to it. Egon passed away. But
5 Helmut I don't see is present.

6 MR. BROWN: He is not present.

7 THE COURT: But you are representing him, Mr. Brown?

8 MR. BROWN: Correct. He's in Austria.

9 THE COURT: Oh, is he?

10 MR. BROWN: Yes.

11 THE COURT: In Austria. The hills are alive right now
12 in Austria.

13 There's Mrs. Klementi.

14 MR. BROWN: Right.

15 THE COURT: And then we have -- where's Miss Capers,
16 Tanika?

17 MR. BROWN: We assume she won't, we know she was
18 planning on attending. None of us have seen her this morning,
19 Your Honor. We have had communications with her this morning.

20 THE COURT: She usually flies in of course to Reno and
21 then drives down.

22 MR. BROWN: Right.

23 THE COURT: Well, and we have, good morning to you

24 Mrs. Spencer. I see you out there. 800-330-1112
www.litigationservices.com

25 MS. SPENCER: Good morning, Judge.

1 THE COURT: We have, Mr. Spencer has alleged in the
2 third amended complaint, remember there was a second amended
3 complaint, but then when we cleaned things up it became a third
4 amended complaint, and the causes of action are defamation,
5 malicious prosecution, civil conspiracy, defamation and malicious
6 prosecution, punitive damages, and infliction of emotional
7 distress. The prayer was for special, general, and punitive
8 damages, prejudgment interest, attorney's fees, and costs.

9 Now, there IS a motion for summary judgment pending
10 fully briefed, and that's one of the reasons we are having a
11 hearing today.

12 Good morning, Miss Capers.

13 MS. CAPERS: Good morning.

14 THE COURT: How are you. Come on forward. I just was
15 in the process of identifying, and I said where's Tanika. So
16 here you are. Good morning to you.

17 MS. CAPERS: Good morning.

18 THE COURT: And Miss Capers has a summary judgment
19 motion that I granted against Mary Ellen Kinion, the allegations
20 against Mary Ellen Kinion, I granted that previously.

21 So we have Dr. and Mrs. Shaw's motion for summary
22 judgment. I just saw Mrs. Shaw come in, Dr. Shaw and Mrs. Shaw
23 come in. Good morning to you.

24 And we have Helmut Klement's motion for summary
25 judgment, and we have Mary Kinion's summary judgment on

1 everything but the malicious prosecution. You might remember I
2 dismissed the malicious prosecution before. And Elfriede's
3 motion for summary judgment. And today's hearing, because I have
4 everything, seek dispositive rulings regarding all the cases.

5 And we also have a motion for spoliation of evidence
6 that's fully briefed. We also have a motion to strike
7 plaintiff's expert witness, and again plaintiffs are referred to
8 as Mr. Spencer in that sense.

9 So, and then as I mentioned before, Mr. Pintar, we have
10 got a motion to dismiss for failing to timely substitute a party
11 after death, which was very well taken, by the way.

12 So what I'd like to do is go through and have the
13 moving party briefly, once you identify the case, the section of
14 the case, briefly, very briefly, just give me a summary, and then
15 the opposition summary. We don't need a reply, unless I ask for
16 it, because I feel that I'm ready.

17 I want to show everybody, just so you know, when it
18 takes the judge five minutes to introduce the case, why it takes
19 five minutes. This is file one through four. This is file five
20 through -- that's one through three, this is file four through
21 six, and this is file five -- no, that was three and four, and
22 this is five and six. And I have had this case since the
23 beginning of the civil case after the criminal trial when Judge
24 Young was challenged and he removed himself and a senior judge
25 was appointed.

1 Mr. Pintar, please.

2 MR. PINTAR: Your Honor, just for the record, and
3 obviously in light of that, I want to also remind the Court that
4 there is the motion for order to show cause.

5 THE COURT: I'm going to have that at the very end.
6 And thank you, forgive me, it is on my check sheet, if you will.

7 So what I'd like to do, and I just got concerned for
8 about two seconds when I didn't see, but what I'd like to do is
9 start with you, Miss Capers, in regards to Rowena and Peter
10 Shaw's motion for summary judgment. And again a brief, just a
11 brief summation. And I'll hear from the counterclaimant, Miss
12 Pierce or Mr. Routsis, in response. And we will just move on.

13 So whenever you are ready, if you would, please, Miss
14 Capers. And if you are not ready, I see you going through stuff
15 right now --

16 MS. CAPERS: If you wouldn't mind.

17 THE COURT: -- I can ask Mr. Brown.

18 MS. CAPERS: Thank you.

19 THE COURT: Or Mr. Pintar. But go ahead, Mr. Brown,
20 please. Your motion for --

21 MR. BROWN: Summary judgment.

22 THE COURT: Motion for summary judgment.

23 MR. BROWN: Your Honor, I'm going to try and be brief.

24 I spent a lot of time yesterday --
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www.litigationservices.com

25 THE COURT: Trying to be brief?

1 MR. BROWN: I did. But if I'm going too long and/or
2 I'm getting to an area you don't think needs to be addressed, let
3 me know and I'll move on.

4 Your Honor, thank you for scheduling this hearing
5 today. I want to start out in this by making sure we are all
6 clear on the standard for summary judgment. As the Court is well
7 aware, around 13 years ago the Nevada Supreme Court in the Wood
8 v. Safeway decision abrogated the slightest doubt standard in the
9 motions for summary judgment, which was cited in the opposition.
10 And so I want to make sure that we are clear on the standard
11 going forward. And it's really, the standard is summary judgment
12 is appropriate where the pleadings, depositions, answers to
13 interrogatories, admissions, and affidavits, if any, demonstrate
14 that no genuine issues of material fact exist and the moving
15 party is entitled to summary judgment. In this case we think, we
16 believe strongly we have established that standard.

17 Jumping to the defamation real quickly. The defamation
18 that has been alleged in this case really centers around three
19 areas. One is the statements made by Helmut Klementi to the
20 police officer who investigated the incident that is the subject
21 of this dispute. Two, the statements or the testimony given by
22 Helmut Klementi at the criminal trial for Mr. Spencer. And
23 three, the planning commission statements that were given by

24 Mr. Klementi. **Litigation Services | 800-330-1112**
www.litigationervices.com

25 Before we get into a discussion of privilege, I want to

1 talk about the truth of these allegations. You have seen the
 2 video of the assault in this case, Your Honor. You have seen
 3 that Mr. Klementi was struck by Mr. Spencer, violently, causing
 4 him injuries. So the statements that he has stated in this case
 5 about being struck by Mr. Klementi, I mean Mr. Spencer, and being
 6 injured are true. And we think on that basis alone you can grant
 7 the motion for summary judgment. But even if you are assuming
 8 for the sake of argument that they are not, we have some
 9 privilege issues that I want to talk about.

10 With respect to the Douglas County Sheriff, the
 11 statements that Mr. Klementi made we believe fall within a
 12 qualified privilege to law enforcement, the investigating
 13 officer. Mr. Klementi reported that he had been assaulted by
 14 Mr. Spencer and that he was knocked to the ground. Even if that
 15 statement was false, which it's not, Spencer, Mr. Spencer needs
 16 to show that the statement was made with actual malice. There's
 17 no evidence in this case that there was actual malice. We have
 18 seen the video. Mr. Klementi reported that he had been
 19 assaulted, was cooperating with law enforcement. There was no
 20 malice, and there was no evidence that malice was part of that
 21 statement when it was made. In fact Helmut didn't even call the
 22 police to begin with. I understand that, based on the testimony
 23 in evidence, it was actually the Spencers that called. The
 24 statement was made in good faith.

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 www.litigationservices.com

25 Really, once we have established this and all the

1 evidence shows that it was made in good faith, there's nothing to
 2 the contrary, the burden shifts to the Spencers to show that it
 3 was made in bad faith. They haven't done so in their opposition,
 4 and they can't do so here today. They do attempt, plaintiffs
 5 attempt to cloud this issue, arguing there was no privilege,
 6 despite clear Nevada case law to the contrary. And I think you
 7 should look at the Circus Circus decision, 99 Nevada 56, which
 8 stands for the general proposition that communications uttered or
 9 published in the course of judicial proceedings are absolutely
 10 privileged. And again, in this case we are talking more about a
 11 qualified privilege, but there has been no showing of actual
 12 malice in this case or the statement was not made in good faith.
 13 So we believe the law requires a grant of summary judgment with
 14 respect to that issue.

15 Let's talk for a minute about the planning commission,
 16 which is by Douglas County code a quasi-judicial body. That's an
 17 absolute privilege. It's a judicial proceeding privilege. The
 18 statements were made about the assault in that planning
 19 commission meeting, which was there to discuss the subject matter
 20 of a code violation regarding the Spencers' fence. The Spencers
 21 have argued well, Helmut had no interest in being at the meeting
 22 and had no interest in testifying, which is patently false. This
 23 involved, this fence created a neighborhood dispute, a

24 neighborhood in which Mr. Klementi lives in
 Litigation Services | 800-330-1112
 www.litigationservices.com

25 If you take the reasoning of the Spencers to the next

1 level, any witness who testifies in a trial who is not a party to
2 the trial, witness to a car accident, for example, that was just
3 passing by, doesn't know the two parties, comes in and testifies
4 here's what I saw, that could subject, under their analysis, that
5 would subject that witness to potential defamation claims, which
6 we know is not the case. It's hornbook law that that's, in
7 judicial proceedings that's not the case. It's protected
8 privilege.

9 It's the same thing here. Mr. Klementi has come in to
10 testify to the issues that resulted from the Spencers fence.
11 It's clearly related. He enjoys an absolute protection. To hold
12 otherwise would have a chilling effect on litigation or testimony
13 in quasi-judicial proceedings, and it would quite frankly be
14 against public policy of the state of Nevada.

15 Lastly, we have the testimony at trial, which again is
16 an absolute privilege. And there's been no evidence to show
17 otherwise, Your Honor, and we believe that summary judgment
18 should be granted, easily granted on the defamation claims.

19 You also previously ruled on Miss Kinion's malicious
20 prosecution claim, and we believe for the same reasons a
21 malicious prosecution claim against Helmut should likewise be
22 dismissed, or you should grant judgment in our favor, summary
23 judgment in our favor. We heard Miss Pence's testimony that
24 she's the one that decides to prosecute crimes. Helmut has no
25 say in that. Helmut is cooperating in an investigation, telling

1 her what he knows, goes on to testify to that. That's certainly
2 a privileged communication. In fact as we previously discussed,
3 it's an absolute privilege.

4 The Spencers try and cloud the water, and I'm a little
5 confused by this, but they try and cloud the water on this
6 malicious prosecution claim by saying his testimony was false,
7 and they used the video to say his testimony was false, he gave a
8 conflicting statement. Again, we have seen the video, we have
9 seen Mr. Spencer coming out of his house, violently colliding,
10 knock down, assaulting Mr. Spencer, stand over him, yell at him.
11 All the evidence in this case shows Mr. Klementi's testimony has
12 been consistent with what we have all seen on that video, Your
13 Honor. He certainly had a good-faith belief when he was
14 testifying that he had been assaulted. And I think that based on
15 those facts the malicious prosecution claims should die.

16 Likewise, I'm going to jump to the civil conspiracy
17 claims. Again, we have this general allegation that there's been
18 a conspiracy amongst the defendants in this case to commit the
19 underlying torts, and as we have already discussed, the
20 underlying torts of defamation and malicious prosecution. In
21 order to have the malicious prosecution claim you got to, one,
22 show an agreement between the actors and the commission of the
23 underlying tort. We have already argued and established they
24 can't show the torts in this case are actionable. And two,
25 there's no evidence to suggest that there's been any sort of an

1 agreement.

2 The Spencers cite to the Short case as a case where
3 they try to defeat our arguments. The Short case is not a good
4 case to rely on in this case, because, one, it relies on the
5 slightest doubt standard that was shot down by the supreme court
6 13 years ago. And in that case the nonmoving party actually
7 offered evidence, go figure, evidence of this conspiracy in the
8 form of depositions, affidavits, testimony taken at a hearing.
9 We have none of that in this case, so for that reason we believe
10 that summary judgment should be granted on the conspiracy claim
11 as well.

12 I'm going to jump to the punitive damages, and then
13 I'll do the infliction of emotional distress claim.

14 I have argued this before in other cases in front of
15 you, and I know you are well aware of the standard for punitive
16 damages, but we need clear and convincing evidence of oppression,
17 fraud, or malice. What we have got in this case is Helmut being
18 assaulted by Mr. Spencer, reporting it to an officer that he
19 didn't even call in the first place, cooperating with a district
20 attorney in this case, in the investigation of a crime, and
21 giving a statement at a quasi-judicial body, a planning
22 commission. There is no conceivable way that the plaintiffs can
23 show clear and convincing evidence that any of those statements
24 were given with malice, oppression, or fraud. And we believe
25 that claim as well is ripe for decision and a grant of summary

1 judgment.

2 We also have the emotional distress claim again.

3 Mr. Spencer's got a lot of problems with this claim. He's
4 claiming that he suffered extreme or serious emotional distress
5 as a result of these statements. He needs to show the evidence
6 of physical injury or distress, which we contend he has not, and
7 that my client's conduct was extreme. In this case, as we have
8 talked about, it was reasonable for him to report the statements
9 truthfully to the officers, testify in court and the
10 quasi-judicial proceeding. That does not rise to the level of
11 extreme and outrageous conduct as cited in, I believe it's the
12 Motel 6 case, the Pranda versus Sanford case, Your Honor, where a
13 15-year-old bus girl was working in a hotel when a celebrity
14 confronted her and accosted her with sexual innuendoes and then
15 verbally abused her. He screamed at her terms like "fucking
16 bitch," "fucking cunt," "no lady." He screamed at her in front
17 of other hotel patrons and coworkers. And the Nevada Supreme
18 Court found that to be extreme and outrageous conduct.

19 That is not the kind of conduct we are dealing with in
20 Mr. Klementi's case. We have established those statements were
21 made with a good faith belief that a crime had been committed.

22 We also have Mr. Spencer claiming he's having stomach
23 issues, hard time sleeping, anxiety, stress related to
24 litigation. We have cited numerous cases in our brief to show
25 that is not sufficient to carry the case.

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1 Lastly, Mr. Spencer, in an attempt to defeat the motion
2 for summary judgment, obtained new evidence that's never been
3 disclosed in this case. I don't know if it helps his case, but
4 it is a medical statement from a doctor saying he suffers from
5 PTSD and has digestive issues. Not only has that not been
6 discovered or not been disclosed in this case prior to this,
7 which I think, I believe prevents the Court from even considering
8 it under the Wood v. Safeway case and Rule 56 -- and I'm sorry, I
9 lost my train of thought.

10 We haven't seen any of the medical records. The
11 statement given by the doctor was not to a reasonable degree of
12 medical probability, and there's been no direct causal link
13 established other than maybe the statement made by Mr. Spencer to
14 his doctor. And again, that's not sufficient to establish his
15 claim, and we would ask for motion for summary judgment as to all
16 claims.

17 THE COURT: Thank you. Mr. Routsis or Miss Pierce,
18 respond in regards to Mr. Klementi's, the allegations against
19 Mr. Klementi.

20 MR. ROUTSIS: Judge, if we may, she's going to respond
21 directly to the three claims, and I would like to give a short
22 statement at the end regarding the malicious prosecution aspect.
23 And I will be brief, and I'll just save my until the end.

24 MR. BROWN: Your Honor, I would object to that. I mean
25 this is, typically when we go in the court, the practice in this

1 community, no matter how many attorneys you have, one person is
2 either speaking, arguing, or objecting. In this case, they need
3 to decide who that is. If I would have known that was the case,
4 I would have had Miss Molleck up here with me arguing other
5 things.

6 I would object to that, and I would just lodge that
7 objection.

8 THE COURT: Okay. Fine. Thank you.

9 Miss Pierce, go ahead, if you would. Are you planning
10 on responding one at a time or all three in general? That's my
11 first question. I wish you would respond, my request is that you
12 respond to Mr. Klementi's, Mr. Brown's argument first and then
13 the next one and then the next one. But I want you to go ahead.

14 I don't mind Mr. Routsis -- the objection is overruled.
15 You go ahead and sum up.

16 MR. ROUTSIS: Thank you very much.

17 THE COURT: But you said on the malicious prosecution,
18 right?

19 MR. ROUTSIS: Correct.

20 THE COURT: All right. That's fine.

21 MS. PIERCE: Okay.

22 THE COURT: Please, go ahead, Miss Pierce, and respond
23 briefly to Mr. Brown's comments if you will.

24 MS. PIERCE: Very briefly, Your Honor. And I have
25 fully briefed, and I know that's a lot of reading, you showed us
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1 the number of stacks. But in terms of the standard for summary
2 judgment, the question is not whether there remains, to what
3 extent the doubt is removed. If there's the slightest doubt,
4 which there is in a number of these, the jury should have the
5 opportunity to rule upon it. And we can show that there is good
6 grounds for going forward to trial.

7 In terms of the defamation claim, and it also applies
8 to malicious prosecution. The privilege is in respect to
9 malicious prosecution. Specifically it only qualified prior to
10 the initiation of criminal proceedings. So statements that were
11 made prior to the initiation of the criminal proceeding are not
12 fully qualified. They are only qualified, I mean they are not
13 fully privileged. They are only qualified privilege.

14 And with respect to defamation, one of the
15 qualifications is was it relevant to what was being addressed.
16 To stand up in a hearing about whether a fence should go up or
17 not in variance of a fence standard and say I was battered, and
18 this man committed this crime against me is totally irrelevant to
19 that. There's no privilege for that. It's a totally irrelevant
20 subject to even be raised there, and it should not have been.

21 Now, as far as the basis in truth and good faith.
22 Malice can be shown by evidence of motive and intent. And
23 recklessness in things that are said is grounds for a finding of
24 malice. That's something that the jury needs to be able to look
25 at, because there's plenty of evidence in this case that there

1 was bad faith, not good faith, and that things that were said
2 were not true.

3 There was a collision, that's been seen on the video.
4 A collision does not equal a battering. Just because there is
5 some kind of connection between two people or two cars or two
6 whatever that causes damage does not mean there was criminal
7 action there that was intentional, which is what Mr. Spencer was
8 charged with. That's a battery.

9 And in terms of the conspiracy, that can be inferred
10 from the combined actions. That's not just what Mr. Helmut
11 Klementi did, but what all the parties that are in this action
12 did. And it's not necessary to show by direct evidence that they
13 sat down and discussed it and proceeded from there. It can be
14 inferred from the combined actions that these parties took.

15 And in Mr. Helmut Klementi's case, Mr. Brown is right,
16 he's not the one who called the police. The Spencers called the
17 police because they thought somebody was invading their property
18 and possibly damaging their vehicle, because there had been other
19 circumstances of that. So they called the police. Then the
20 things that happened after that, the statements that were made,
21 the behaviors of both Egon and Elfie Klementi, the subsequent
22 statements of other parties. When you take them collectively, it
23 shows there was a conspiracy here at various times with various
24 parties, not all of them together at one time, but their
25 collective actions show an intent to cause harm to Mr. Spencer,

1 both by proceeding in prosecution against him, and there were
2 other claims added later by two of these other parties, and by
3 the defamatory statements, which were made by all of these
4 parties at one time or another in no connection to the actual
5 criminal proceeding or prior to the initiation of a proceeding.
6 And they were statements that were not based on truth, and as a
7 general rule of law, credibility is an issue for the jury.

8 In terms of emotional distress claims, which is a
9 matter basically of damages, and it's set out as a separate
10 claim, but it's also a matter of damages in the other claims, the
11 parties all requested releases of medical records, which
12 Mr. Spencer signed. According to what his doctors told him, they
13 received those medical records. So they were on notice of what
14 his medical problems were. And it was not, there were, there is
15 evidence in there of physical manifestations from what he was
16 going through.

17 And he was accused of heinous crimes. He was accused
18 of assaulting elderly people, including Helmut Klementi, and
19 that's a horrible thing to be accused of. He was found innocent
20 of that. There was so much put out there.

21 And I, to use an example, Your Honor, there's a story
22 in Jewish writings about a man who was slandering a rabbi of his
23 community for many years, and then one day he woke up and
24 realized what he was doing, and he went to the rabbi and asked
25 for forgiveness for what he had done. The rabbi said fine, if

1 you will do a couple of things for me. First go home and get
2 your feather pillow and cut it open and shake all the feathers
3 out and come back. The man did what the rabbi said. He came
4 back, and the rabbi said fine, now go pick up all those feathers.

5 Thank you.

6 THE COURT: I got to remember that. That's good.

7 I know that you wanted to --

8 MR. ROUTSIS: I would just wait to the end.

9 THE COURT: I understand. I'm talking to Miss Pierce.
10 I'm going to turn to the next motion, and then I'll have Miss
11 Pierce respond.

12 And Miss Capers, are you ready?

13 MS. CAPERS: Yes, sir.

14 THE COURT: Very briefly, go ahead on behalf of, and
15 remember only Miss Kinion, everything but the malicious
16 prosecution, because the malicious prosecution has already been
17 dealt with.

18 MS. CAPERS: Right. So just clarification, though. We
19 never got an order that it didn't apply to my client, so that was
20 the first issue I was going to address, and the malicious
21 prosecution would be dismissed against the Shaws as well.

22 THE COURT: There was no order.

23 MS. CAPERS: No, sir.

24 THE COURT: I didn't give you an order on that.
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MS. CAPERS: No, sir.

1 THE COURT: My wife said never say sorry on the bench
2 or that you made a mistake, but I just did. My bad.

3 MS. CAPERS: It happens. No problem.

4 THE COURT: So here we go with the others.

5 MS. PIERCE: Your Honor, excuse me. Could I interrupt
6 for a minute? I didn't understand what that --

7 THE COURT: There was a hearing earlier on Miss --

8 MS. CAPERS: In January 2017.

9 THE COURT: Right. Miss Capers filed a motion for
10 summary judgment that I granted on behalf of Mary Ellen Kinion in
11 regards to the motion for summary judgment on malicious
12 prosecution.

13 MS. PIERCE: That was Mr. Pintar's motion that was
14 granted, and at the same time you gave us the opportunity to file
15 an amended counterclaim and third-party complaint, with the only
16 limitation that we could not file again against Miss Kinion on
17 the malicious prosecution.

18 MS. CAPERS: But I think the facts and the law remain
19 the same, so I don't know how it wouldn't be dismissed against my
20 clients when it was dismissed against Miss Kinion. We relied on
21 the same information.

22 MR. ROUTSIS: That was never brought before the court.

23 MS. CAPERS: I was there that day and argued and asked
24 the questions.

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25 THE COURT: All right. Wait a minute, let me get it

1 straight. I could have been confused.

2 Mr. Pinter, you, I granted a motion on your client's
3 behalf.

4 MR. PINTER: Correct.

5 THE COURT: So when Miss Capers is talking about a, I'm
6 very sorry, on behalf of the Shaws.

7 MS. CAPERS: Shaws, yes, sir.

8 THE COURT: Oh, my bad. That's why I said my mistake.
9 You argue for summary judgment on behalf of the Shaws.

10 MS. CAPERS: Right.

11 THE COURT: For malicious prosecution and everything
12 else.

13 MS. CAPERS: Yes, sir.

14 THE COURT: I just put it down in the wrong column in
15 my program if you will.

16 MS. CAPERS: I thought you did when you were speaking
17 earlier. No problem.

18 THE COURT: Do we understand now that that was my
19 problem?

20 So Miss Capers, please, I want you to summarize it very
21 similarly in time to what Mr. Brown, kind of like in time to what
22 Mr. Brown took, and give me a summary of all of your thoughts and
23 in regards to backing up the motion for summary judgment on
24 behalf of the Shaws.

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25 MS. CAPERS: Yes, sir. The first thing I just wanted

1 to mention, going back to the standard for summary judgment, it's
2 no longer the slightest doubt standard. Submitted evidence,
3 there must be submitted evidence to negate an essential element.
4 And also if there's absence of information to support an element.
5 And that's important, because let's look at the civil conspiracy.

6 For the civil conspiracy claim, that must fail because
7 what they must show is that there was a lawful agreement, and a
8 lawful agreement between what parties, I don't know if it's all
9 the parties or was it just between Kinion and or was it the
10 Shaws? We don't have any evidence specifically who they are
11 alleging the civil conspiracy was with. We can assume they are
12 saying that all of them got together and agreed to do what? To
13 defame Mr. Spencer, in what capacity, and saying that he
14 assaulted Mr. Klementi. I don't know. And that is important,
15 because what we would have to do as defense counsel is speculate
16 as to what facts they have to support that there is a civil
17 conspiracy.

18 So number one, what was the civil conspiracy? Number
19 two, who was it with? And also when you look at that, that
20 becomes very important when we get to whether or not the civil
21 conspiracy claim can stay. Because when we look at what
22 statements were made, it has to be, if they were talking about
23 statements made in a defaming manner, they have to show what
24 those statements are. And I think generally, if I guess or
25 speculate as to what those statements are, it's a reference to

1 the assault as well as the statements that were made before the
2 planning commission. And again, my co-counsel has already argued
3 the quasi proceedings, the absolutely privilege.

4 But what I'm getting to with the civil conspiracy is
5 you have a malicious prosecution claim that is gone, so then for
6 the civil conspiracy, what else, what is the underlying tort? It
7 would have to be the defamation, right? Because the defamation
8 is covered under privilege, therefore the civil conspiracy claim
9 cannot stay, because they don't have an underlying tort. The two
10 being defamation or the malicious prosecution.

11 Next, if you go to just simply the punitive damages
12 claim. What is important is that if you take away the civil
13 conspiracy, the malicious prosecution, and the defamation,
14 punitive damages can't stand alone. So the only thing we have
15 left is the intentional infliction of emotional distress.

16 So as we know, in the intentional infliction of
17 emotional distress, there must be a physical manifestation.
18 Again, as my colleague stated, the letter claiming posttraumatic
19 stress disorder, we think that should be stricken because it
20 wasn't given timely. So when you look at the actual, look at the
21 medical records and what physical manifestations that Mr. Spencer
22 had, they are very general. We are talking about tummy aches, we
23 are talking about stress, we are talking about anxiety. And the
24 Court has clearly addressed these issues in *Nelson v. City of Las*
25 *Vegas* and also in *Ailem v. Reno Hilton Corporation*. And talking

1 about general, physical, or emotional discomfort are insufficient
2 to satisfy the physical impact requirement. Also, when you look
3 at the intentional infliction of emotional distress, it has to be
4 severe or extreme actions, those that are unconscionable.

5 So the actions of what my clients, the Shaws, in
6 speaking at the commission meetings, how was that unconscionable
7 conduct? How was it them speaking to police officers
8 unconscionable conduct? How was it them talking to the district
9 attorney unconscionable conduct? How was it when law enforcement
10 asked them to turn over computer, a computer drive, how was that
11 unconscionable conduct? And so that's the standard that must be
12 met for the intentional infliction of emotional distress.

13 And again, just some other symptoms that the court has
14 said are insufficient is thoughts, difficulty sleeping, lack of
15 concentration, inability to deal with stressful situations,
16 negative thoughts, depression, anxiety, of which Mr. Spencer says
17 he has, are not sufficient to, is not sufficient for the element
18 of the physical manifestation under the emotional distress.

19 So Your Honor, looking at these overall, again,
20 malicious probation should be out the door. When we look at the
21 defamation, that should be covered under privilege. And when you
22 kick out the defamation and the malicious prosecution, then you
23 don't have a civil conspiracy. So the only thing you have left
24 is an intentional infliction of emotional distress, you have the
25 two prongs looking at the behavior by my clients, and then number

1 two, whether or not they can satisfy the physical manifestation
2 element.

3 THE COURT: Thank you.

4 Miss Pierce.

5 MS. PIERCE: Summary judgment is fact driven, Your
6 Honor, and it requires the party present facts with citations to
7 actual evidence, whether it's a statement of the party or it's a
8 letter or it's a prior testimony or it's a transcript of a
9 deposition. In this case, with respect to the Shaws, they don't
10 go through a recitation of here's facts and here's the basis for
11 the facts in their motion in terms of the summary judgment for
12 malicious prosecution.

13 Their involvement in this case, because they weren't
14 even around when any of these things supposedly happened, their
15 involvement in this case was that they had cameras that taped
16 what happened in that initial evening when there was the
17 collision between Helmut Klementi and Jeff Spencer. They were
18 specifically told by law enforcement to preserve that tape. They
19 did not. Worse, they presented a copy of it to the Klementis
20 before they presented a copy of it to law enforcement, and with
21 the copy they presented to law enforcement was missing time.

22 Now, malice can be inferred by their failure to
23 preserve that evidence, and conspiracy can be inferred why would
24 they be giving copies of it to someone else involved here prior
25 to giving a copy to law enforcement. That doesn't even make

1 sense, unless there was a concerted effort to try and get
2 Mr. Spencer prosecuted.

3 In terms of the letters and the speeches they made,
4 they were, they were not witness to anything that they were
5 saying. They were passing on gossip from other parties. That's
6 all it was. And it was gossip that was targeted at Mr. Spencer
7 to diminish him in the standing of the community, to attempt to
8 get him fired from his job, and to support the criminal
9 prosecution against him.

10 So there's no basis for dismissal of the Shaws from
11 this action.

12 THE COURT: Thank you.

13 MS. CAPERS: Judge, I know you said no reply. I
14 apologize. But I think it's kind of important, because I'm not
15 sure what facts she was referencing, but there's absolutely no
16 evidence of my clients tampering with evidence. They were asked
17 to present a video with the cameras, and it was done per
18 instruction and guidance of law enforcement. So I'm sorry, but I
19 just think that's a very important fact.

20 MR. ROUTSIS: Judge, I think she's correct in that
21 regard, that our position was they doctored the tapes that were
22 presented and took about three minutes out. But she's correct in
23 terms of the procedure. That was a misstatement. The tape --

24 THE COURT: I get you. Thank you. I understand. I
25 obviously immediately started thinking, and you helped me,

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1 Mr. Routsis, three minutes, three minutes versus an 18-minute
2 gap.

3 MR. ROUTSIS: Correct.

4 THE COURT: Hello. Anybody understand that? How many
5 years ago? 1974, 18-minute gap, resignation. Ooh, ooh, ooh.
6 The conspiracy. I'm not a crook. That's just me. That's just a
7 little bit of histrionics on my part because of what was going on
8 back in 1974.

9 Mr. Pinter, let's do yours in regards to motion for
10 summary judgment on Elfriede and also the balance of Mary Ellen
11 Kinion.

12 MR. PINTAR: Your Honor, I'm going to be short. The
13 reason that the time has been spent on the burden of proof is
14 that, as the Court knows, Mr. Spencer has the burden to prove his
15 various claims, so he has the burden to prove that certain
16 statements that were made are defamatory in nature. And that's
17 kind of the source of the issue in this case, because they have
18 never identified what those claimed defamatory statements are.

19 For example, in his deposition, Mr. Spencer on, and I'm
20 quoting from his, this is Exhibit 3 to Mr. Brown's motion for
21 summary judgment, it's the deposition transcript of Jeffrey
22 Spencer dated July 28, 2016.

23 "Question: What statements?

24 "Answer: Defamatory stuff against me.
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25 "Answer: I'm sorry.

1 "Answer: Derogatory stuff against me."

2 And then it goes on, and it says, and then he goes on
3 to say, "Question, okay. Which ones? That's what I'm trying to
4 get at is where, where can I look? You have alleged that my
5 client made false statements. I'm entitled know when those
6 statements were made and who they were made to, and so I'm trying
7 to get a better on handle on who, what, when, and where with
8 respect to those statements during the time frame that we just
9 talked about.

10 "Answer, correct. So I need to add those to discovery,
11 I guess.

12 "Question: What do you mean? Those statements that
13 you haven't provided yet?

14 "Answer: There is a lot of stuff I haven't provided
15 yet.

16 "Question: Like what?

17 "There's a lot of video, a lot of statements.

18 "Question: Why haven't you provided it?

19 "Answer: Because I think we went over this this
20 morning. I work, and I haven't had time to do it."

21 So the point being, Judge, is that what's we are faced
22 with. They have these, they have made these accusations, but
23 they have no beef. There's no patty there. There's nothing
24 behind them. So what we are left to do is address the context in
25 which the statements were made, and the context in which the

1 statements were made are either quasi-judicial or judicial
2 proceedings, which has the privilege.

3 So that's, so basically that's our position.

4 Everything that Miss Klementi, everything that Miss Kinion said
5 were all done in either a quasi or a judicial proceeding and
6 therefore are privileged.

7 THE COURT: Thank you.

8 Miss Pierce.

9 MS. PIERCE: Your Honor, the quotations from that
10 deposition are correct, but as the parties should all know,
11 Mr. Spencer was ill that day and was not functioning very well.
12 But there's been plenty of production and responses and
13 discussions and evidence that he was accused of supposedly
14 creating berms in the driveways of elderly people to trap them in
15 and/or in retaliation for them opposing his fence. There was no
16 evidence of that. Not one of the parties that accused him of
17 that ever was capable of saying under oath yes, I saw him do it.
18 It was always, oh, I think it was him, or it must have been him.
19 But there was no evidence of that.

20 There was a supposed snowplow attack on Egon Klementi,
21 of his Miss Kinion claims she was a witness, and then she
22 backtracked on that later from saying she clearly saw his face to
23 saying well, I think it was him. And that was one of the claims
24 that ended up in the original trial, of which Mr. Spencer was
25 acquitted.

1 There was a supposed assault and perhaps even battery,
2 depending on which story you listen to, of Egon Klementi by
3 Mr. Spencer going back into the, I think it was May, before the,
4 the year before the actual collision between Helmut Klementi and
5 Jeff Spencer. And that never happened. And none of these
6 parties were a witness to it, and yet they were all talking about
7 it and making accusations about it, and it even ended up as part
8 of the criminal proceeding of which he was acquitted.

9 So there has been, starting in the May before this
10 December collision between Helmut Klementi and Mr. Spencer, there
11 were accusations being made, stories being told, things being
12 said, and admitted attempt to get him fired from his job. And
13 the variance on the fence had nothing to do with any of these
14 things other than the initial encounter where Jeff Spencer called
15 the police to say Egon Klementi keeps coming on our property, and
16 he's taking pictures, and we have got a couple of young boys here
17 with their shirts off, and he needs to stop this behavior.

18 And the law enforcement officer went out to the
19 Klementis' house and said you have got to stop this behavior, and
20 if you keep doing it you are going to be arrested for trespass.
21 And at that time there was nothing stated about supposedly Egon
22 was threatened or punched in the face or anything. That came up
23 later.

24 So this has been a pattern of attack all going back to
25 a handful of neighbors didn't want them to build a fence they

1 were building. And instead of following the proper procedure in
2 doing it, simply addressing the fence issue alone in the proper
3 forum, they accused him of a whole slew of heinous crimes, and
4 none of it was true, and most of the people repeating these
5 stories weren't witnesses to anything that they claimed. They
6 were just passing on stories.

7 And as they were not witnesses, unless there was some
8 kind of conspiracy, where did they even get the stories? How
9 does someone show up and say oh, yes, Jeff Spencer did this.
10 They weren't a witness. They weren't even in town. They were
11 nowhere around. They were simply passing on gossip. And they
12 used that gossip to try and get him fired, they used that gossip
13 to get him prosecuted, and they used that gossip to try and
14 diminish his standing in the community. And that's all it was,
15 was gossip. And he had to go through all of that. And he still
16 has to live with the fact that there's records of all of
17 that.

18 THE COURT: We heard, thank you Miss Pierce, we heard
19 about, I'm going to say Elfriede. Tell me about Mary Ann Kinion,
20 the balance of those motions.

21 MR. PINTAR: The only thing that I understand that with
22 regard to Mary Ellen are twofold. One, her testimony which she
23 made at deposition and in open court that she saw or she thinks
24 she saw Mr. Spencer in a snowplow driving down the street, lower
25 the blade, and the snow was thrown on him. Mr. Klementi is the

1 one who called in the initial complaint, and Miss Kinion was
2 simply a witness to that. She testified to that. I mean she
3 stands by her testimony, it's true, it's accurate.

4 And anything else, I don't know what it's to say. The
5 other thing that Miss Kinion did, which we talked about at the
6 last hearing with Miss Pence, was that Miss Kinion wrote the
7 letter at Miss Pence's request that you probably remember, asking
8 her what she remembers or she can account.

9 So those are two things that Miss Kinion has supposedly
10 said that I assume they are claiming are defamatory in nature.
11 So they are both done in the course of made to either a police
12 officer or the district attorney. So they are absolutely
13 privileged.

14 THE COURT: Thank you. I have to ask this before
15 Mr. Routsis sums up. I honestly have to ask this out of
16 curiosity, out of probably legal curiosity. But why, why was
17 Elfriede Klementi sued? Why? Tell me. I want either Miss
18 Pierce or Mr. Routsis to answer. If you don't want to answer, I
19 mean it's on paper, I understand that. But I'm really curious
20 why now.

21 MR. ROUTSIS: I'll address, Judge, in my summation.

22 Judge, what's interesting is, I want to give a
23 summation on malicious prosecution, because I tried the case, and
24 we hear bits and pieces, and it's, you know, the old expression,
25 the elephant in the room has not been dealt with. This is a

1 clearcut case where every party, including Mary Ellen Kinion, we
2 are going to ask you to reconsider based on proof at trial is
3 part and parcel of clearcut malicious prosecution.

4 What has not been pieced together or put in any
5 coherent form for the Court was Jeff Spencer was originally
6 arrested on the evening in question on a misdemeanor battery for
7 running into a man, maybe intentionally, at night. Those charges
8 were then changed, amended to felony charges because of the
9 alleged injuries, which we believe were untrue based on what was
10 alleged at trial. The injuries elevated it to felony.
11 Substantial bodily injury.

12 What this Court never understood, in my humble opinion,
13 regarding Mary Ellen Kinion, when you let her out of the case,
14 was after that Mary Ellen Kinion and Egon Klementi, who were
15 never part of the criminal proceedings regarding Helmut,
16 interjected themselves into the legal situation and to say on
17 December 18 this man here drove down the street in a giant
18 snowplow and physically assaulted Egon Klementi. And then on
19 Memorial Day another false statement was given, which I will get
20 into. And as a result of that, Judge, the district attorney
21 filed elderly abuse charges alleging Egon Klementi as a victim
22 not related to Helmut, and these charges were based on, we know
23 it was perjury, and let me explain why, and malicious prosecution
24 is clearcut, and Miss Mary Ellen Kinion
25 It's declared if we go to jury trial on it, and I'm

1 saying this -- so what do we know about the 18th of December? We
 2 know that Egon Klementi, Mary Ellen Kinion says she saw Jeff
 3 driving in front of her with a giant snowplow. She testifies
 4 under oath, interjects herself to the D.A. and says I saw Jeffrey
 5 Spencer driving the snowplow and taking debris and speeding up
 6 and turning into Egon Klementi and committing assault and battery
 7 on an elderly man. But she never called the police. She went
 8 back into her house that day and waited two hours. Egon Klementi
 9 then contacts her, and she becomes a part of this conspiracy.

10 Now, the police come out, the officer testifies under
 11 oath, I didn't even write a report because what Egon told me,
 12 there was debris, rubbish, all this stuff that was shot into the
 13 driveway. Nothing was in the driveway. The conditions that day
 14 of the plow was that there was almost no snow on the ground. So
 15 the officer said there just wasn't factual enough information to
 16 even file a police report, let alone file charges.

17 Now --

18 THE COURT: Go ahead. Tell me. Hang on. Tell me,
 19 Mr. Pintar, you are standing.

20 MR. PINTAR: I have no idea what Mr. Routsis is talking
 21 about. None of the stuff he's talking about is in evidence in
 22 this case.

23 MR. ROUTSIS: It's all in evidence.

24 THE COURT: You didn't even answer my question. What
 25 does this have to do with Elfriede?

1 MR. BROWN: I would join in the objection. He's
2 testifying as a witness.

3 THE COURT: I understand. I addressed Mr. Pintar
4 because he was standing and interrupted.

5 MR. ROUTSIS: He did it again, and he makes a statement
6 that's untruthful. It's all in the pleadings. He does it all
7 the time, Judge. That's all in the pleadings.

8 THE COURT: Mr. Routsis, please.

9 MR. ROUTSIS: Okay.

10 THE COURT: If you want to answer, Miss Pierce can
11 answer.

12 MR. ROUTSIS: I'll get there.

13 THE COURT: If you wanted to answer on behalf, what,
14 she is Egon's wife?

15 MR. ROUTSIS: Why can't I make my argument and let me
16 get there, Judge. Because he objects I got to jump into it right
17 now? I'll lead into it.

18 THE COURT: Okay.

19 MR. ROUTSIS: So first of all, she testified, if you
20 want to know the truth, Elfie Klementi testified at the
21 preliminary examination, she had made allegations that on certain
22 days my client bermed her into her residence so she couldn't get
23 out, later were withdrawn and found to be completely unreliable
24 and untrue because she went to work. And then we finally got
25 admissions in court that that is commonplace, that everybody gets

1 a berm, and he had done no extra berming than was originally
2 done.

3 Secondly, and I will get to that, I was going to get to
4 that, Judge, what happened on Memorial Day. But we talk about
5 malicious prosecution. We have Mr. Spencer that had charges
6 trumped up against him on, Judge, she testified under oath, it's
7 in the pleadings, at trial that she saw my client driving by with
8 a big smile on his face, and then she saw, we took pictures of
9 the snowplow. She saw him swerve in, speeding, and dumping
10 debris and committing a battery. It got so embarrassing for her,
11 and her later testimony was she didn't know if it was Jeff. She
12 did that, she changed her testimony at the depositions. She
13 wasn't sure it was Jeff. But criminal charges were brought
14 against him based on the perjury she committed. And if that
15 isn't malicious prosecution, Judge, I don't know what is. She
16 interjected herself.

17 And the D.A. gets on the stand and says well, nothing
18 that she said or that Egon said affected my desire, that changed
19 my position. She never filed elderly abuse charges until this
20 evidence came forward.

21 Now, Mary Ellen Kinion asserted herself and called law
22 enforcement, but she admitted Egon contacted her after that
23 alleged snowplow incident, she did nothing about it until that
24 conversation. We believe, as the jury found, that's clear
25 conspiracy. They got together and they created a crime that the

1 jury, now look at the implicit finding of the jury, Judge. Mary
 2 Ellen Kinion testified to that, Egon Klementi testified to that
 3 December 18 snowplow incident, and Jeff Spencer testified. And
 4 they found them not to be credible. It got so bad, I asked her
 5 do you have X-ray vision, Miss Kinion? Because the snowplow was
 6 so big that from her position she could not see debris going into
 7 the driveway of Egon Klementi. We had picture after picture done
 8 by my investigator. She could not see it. And I asked her, I
 9 said you must have X-ray vision, because it's impossible to see.
 10 Well, later she's changed her testimony.

11 And we are going to ask the Court to reverse your
 12 decision, and let's go to trial on malicious prosecution. Let's
 13 see how good these attorneys really are, because they will lose
 14 on it. They will lose. They will get hammered. Because it gets
 15 worse.

16 Then we come up to Memorial Day. On Memorial Day Egon
 17 Klementi, these are all the bases for the enhanced charges of
 18 elderly abuse. My client, they pumped this in -- on Memorial Day
 19 my client is there with guests. Egon Klementi is apparently out
 20 taking pictures. They have a disagreement. Jeff comes out and
 21 asks him not to take pictures. The Spencers call law enforcement
 22 because of the conduct of the picture taking. Law enforcement
 23 comes out, it's all in the briefs, interviews the Spencers,
 24 knocks on the Klementis' door and said look -- are you taking
 25 pictures? They've got young kids over there, et cetera,

1 et cetera, they don't want to be harassed. We are giving you
2 notice we don't want you to do that. Okay?

3 The Klementis, they don't say at that point officer,
4 Jeff Spencer threatened to punch my husband in the face, which is
5 what they alleged at trial. We put the police officer on the
6 stand. After that the cops came out and gave them a notice,
7 don't take pictures. The Klementis go to the sheriff's
8 department and start amending what happened. And then it moves
9 into Jeff Spencer threatened to beat him up that day and assault
10 him. Elderly abuse.

11 Goes to trial on it, put the police officer on the
12 stand, I said officer, interesting the Spencers called you that
13 day, right? And now they are alleging that Jeff Spencer
14 threatened to battery them so they can put elderly abuse charges
15 and make him look real bad and convict him of everything. You
16 knocked on the door. Did they ever mention that Jeff Spencer did
17 anything to him on the day in question? No. Why, if he was just
18 assaulted, these people made complaints about a fence being six
19 inches too long, and he was just assaulted, and they don't even
20 mention it. Oh. So the jury had all that before them.

21 Reality is that that's malicious prosecution. They
22 interjected themselves, there was no pending case, they contacted
23 the D.A., the D.A. filed charges. And the D.A. that testified in
24 this case, Judge, didn't just lose the case - it was a two-week
25 war of attrition. And I knew when you called her to the stand

1 she was as biased as can be. But we could get her transcripts.

2 They virtually make no sense at all. She actually testified that

3 nothing that these people did led to the charges.

4 Those were the two witnesses of the elderly abuse, Egon

5 Klementi and Mary Ellen Kinion, and on both situations the jury

6 heard the evidence. But not only is it perjury, and not only if

7 we go to trial on a civil suit will the jury, I mean forget the

8 summary judgment standard. A man was brought to trial on two

9 claims that perjury has been committed on them, they were found

10 un -- is it a triable issue? It's a compelling issue. I mean I

11 don't know what their defense is going to be. I mean she's

12 committed two different statements, I saw him driving, I think it

13 was him. The jury is going to hammer. Punitive damages. I

14 think that could get a half a million dollars on that when you

15 take a man to trial on elderly abuse charges and then you add in

16 the Helmut Klementi case.

17 What this Court doesn't understand is that Helmut

18 Klementi and what happened that night, the jury, wasn't just

19 peculiar, it looks like it was a setup from the get-go, because

20 Helmut Klementi, they had just taken pictures earlier that day,

21 they go to a meeting, Helmut Klementi walks up the street late at

22 night, when there's evidence there's car thefts going on in the

23 neighborhood, is taking pictures for no reason right on Jeff's

24 property. Jeff yells out who are you what are you doing. He

25 doesn't say I'm Helmut. He denied, he walks back, and Jeff runs

1 out and hits him, knocks him down and says I'm sorry, and then a
2 lot of shenanigans go on.

3 Number one, the Shaws present a video with enhanced
4 camera that is far lighter than the Spencers. The Spencers had
5 cameras that showed, that showed that Klementi was right near or
6 on his property. The Shaw video of the same time, which is a
7 clear light, doesn't show Helmut there, and we know Helmut was
8 there. We know it. Helmut admits it. He got knocked down
9 there. He's never on the video. Never on the video. How can
10 that be? Their video was better than the Spencers.

11 Judge, where there's perception there's deception. You
12 have seen a bunch of people come in against the Spencers. We
13 went to trial, and we put on the community, and these were the
14 people that were listened to, that were believed, that were
15 trusted. Where there's perception there's deception, and the
16 Court should reverse its ground, let us go to trial on malicious
17 prosecution, and let these three high-end civil attorneys, let's
18 go, let's stand up and go to trial. Because clearly it's
19 malicious prosecution. There's no question about it. And they
20 don't want to address the facts. They piecemeal it.

21 Well, Judge, but that's the facts of the case. They
22 amended the charges. They interjected themselves into a criminal
23 proceeding. They committed perjury. The jury didn't believe
24 them.

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25 You know, there are implicit findings, Judge, where the

1 jury heard the testimony of Egon Klementi and Mary Ellen Kinion
2 about what happened on that Memorial Day, and I'm saying Egon,
3 why didn't you tell the officer that this man assaulted you on
4 that day? He knocked on your door. Why didn't you call the
5 police? It got so bizarre. Well, we don't know how to do things
6 like that. What do you mean you don't know how? We don't make
7 complaints. Judge, it was transparent, it was obvious.

8 A jury should hear the case. Summary judgment is a
9 vehicle to take away fraud where there's no case. Not only do we
10 have a case, we have a compelling case. And it's been tested on
11 the man that was accused of multiple heinous crimes, and even
12 though it was a different standard of review, the jury implicitly
13 did not believe them. It was a credibility issue, and they found
14 for the defendant. That's why they are so afraid, and that's why
15 this whole story gets morphed into tidbits.

16 Well, Judge, that's the malicious prosecution. You
17 know, you take away malicious prosecution, defamation, it ain't
18 worth the trouble, because you take away the truth of the case.
19 The truth of the case we don't have anymore. So it's like go to
20 trial for what? The damages aren't going to be as great as the
21 problems and the risk of trial. The case has always been about
22 malicious prosecution. And the damages of them are
23 straightforward. A man went to trial, he paid for an attorney,
24 he was in trial for two weeks. And give us a chance to go to
25 trial, and we will win the trial.

1 THE COURT: Thank you, Mr. Routsis.

2 MR. PINTAR: Your Honor, may I just address one short
3 thing? I think that Mr. Routsis' diatribe shows the reason why
4 Elfie Klementi should not only be dismissed from this case, but
5 she should be awarded her fees and costs under 18.010. Your
6 Honor simply asked Mr. Routsis why is Elfie Klementi in this
7 case, and he can't say it. He stands up here ten minutes, and he
8 didn't give you a single reason as to why Elfie Klementi should
9 be in this case. He addressed Mary Ellen Kinion, he addressed
10 Egon Klementi. He did not --

11 MR. ROUTSIS: That's not true. I'm going to object to
12 a misstatement of record. I --

13 MR. PINTAR: He did not address --

14 MR. ROUTSIS: I specifically --

15 THE REPORTER: I'm sorry, I didn't get all that.

16 MR. PINTAR: It was a simple question, and he goes on
17 this diatribe. Elfie Klementi has done absolutely nothing.
18 Absolutely nothing. And yet she's been dragged through this case
19 for three years. She's got into a dispute with her homeowner's
20 insurance company, who denied coverage for a number of years. I
21 mean the carnage that these people are causing to everybody
22 simply because --

23 MR. ROUTSIS: Your Honor, I'm going to object to the
24 reply. There's no reply you said.

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25 THE COURT: Overruled.

1 MR. PINTAR: I mean this is outrageous what they are
2 doing. And to claim that Mr. Spencer is a victim is beyond
3 belief. The facts, the video shows that he's the perpetrator
4 here. And he subjected all of these neighbors, nice people, to
5 this circus, if you will. I mean this case needs to end. He
6 needs to pay fees and costs for the carnage that he has invoked.

7 MR. ROUTSIS: If I could reply to that. That's a
8 complete misstatement. Elfie Klementi testified at the trial
9 that Jeff Spencer threatened Egon Klementi on Memorial Day, and
10 then we found out she wasn't even present. She said that it
11 happened, but then we found out it was a statement made by Egon.
12 So Elfie Klementi had testified about, at the prelim, getting
13 elderly abuse charges presented against my client, that Jeff was
14 berming people in, and then that turned out not to be the case.
15 Elfie Klementi cooperated in Egon's statements that what happened
16 on Memorial Day was an assault when she wasn't present.

17 We think these are very important issues that a jury
18 would love to look at to see if they maliciously prosecuted the
19 man. Because in sum and total, we have a man that was tried on
20 perjury by people interjecting themselves into the court system,
21 and that shouldn't happen, and the jury should be able to decide
22 what if any damages are appropriate.

23 THE COURT: Thank you. We are going to take just a
24 ten-minute stretch break. Let's be back at 11:30.

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25 (Recess taken.)

1 THE COURT: We are back on the record in Case No.
2 14-CV-0260. Let the record show that the parties are present
3 with counsel. And we can proceed.

4 So we have done the Shaws, we have done Helmut motions,
5 we have done Mary Kinion's motion, we have done Elfriede's
6 motion. We have before us a motion to reconsider on Mary
7 Kinion's, the Court granted Mary Kinion's motion for summary
8 judgment in regards to malicious prosecution.

9 Now, what we have next is Mary Kinion and Elfriede's
10 joint motions for sanctions based on spoliation of evidence. And
11 what I want you to do, Mr. Pintar, please, and of course I want
12 the Spencers' attorneys to reflect on Mr. Pintar's motion for
13 sanctions based on that particular spoliation of evidence, that
14 particular piece of evidence, of course. So if you would,
15 please.

16 MR. PINTAR: Thank you, Your Honor. The spoliation
17 motion basically boils down, what we are talking about is events
18 that occurred on December 18 of 2012. At his deposition, at the
19 criminal trial, and in his statement to the police Mr. Spencer
20 made repeated representations that he had video evidence that
21 showed that he inadvertently collided with Mr. Klementi in the
22 street while he was trying to effect a citizen's arrest, and also
23 that he has video evidence that shows Mr. Klementi being in his
24 driveway near his truck on that evening - that's what made him
25 think he was protecting his property and was defending his

1 property when he assaulted Mr. Klementi. He, at his criminal
2 trial Mr. Spencer specifically stated as follows: Question, this
3 is from his criminal trial transcript at page 287. Question of
4 Mr. Spencer: "And what happened, what happened next? I think
5 you said you heard something.

6 "Answer: I heard somebody walking on the snow, on the
7 ice, the crunching from walking on it, so I looked out over my
8 deck, and that's when I saw a figure in my driveway.

9 "Question: And do you have video of that?

10 "Answer, yes."

11 So based on that testimony, which Mr. Spencer said
12 under oath, I did a follow-up request for production of
13 documents, give us the video.

14 THE COURT: Hang on a second. Miss Pierce, will you
15 break that up, please. It's rude. Neither one of them are
16 listening.

17 MS. SPENCER: I apologize, Your Honor.

18 THE COURT: Please.

19 MR. PINTAR: So we ask for the video. We are told oh,
20 we don't have it, our hard drive has been corrupted. So the very
21 essence of the case is caught on video. Mr. Spencer admits under
22 oath that he has it, and yet they don't produce it. And now they
23 are claiming that it is corruption. That is simply
24 straightforward spoliation of evidence. They knew it, they had
25 it, and they have destroyed it.

1 THE COURT: But it's their, I got to get it straight.
2 Earlier, and help me with this, when Mr. Routsis was speaking,
3 and when Miss Pierce was speaking, there is evidence that the
4 three-minute gap, that's not the tape that you are talking about.

5 MR. PINTAR: No. And that's, as Miss Molleck pointed
6 out, the pot calling the kettle black. What the Spencers are
7 claiming is that Miss Shaw, in her video from across the street
8 and around the corner, that's the missing three minutes from that
9 one.

10 THE COURT: Three minutes. That's not what Spencer is
11 talking about.

12 MR. PINTAR: We are talking about video from the
13 Spencers' camera that they used at their criminal trial, which
14 they have not produced in this case. That's, so the evidence,
15 the video that they had as the moving party, that they are
16 obligated to preserve has not been produced.

17 The second thing is the notes which we have asked
18 produced. And again I go back to Mr. Spencer's testimony at his
19 criminal trial. And I'm looking at page 265 from his trial. On
20 line 265: Question: Okay let's go ahead and put that on. Thank
21 you. And this is all going to be on the same flash drive,
22 correct?

23 "Answer: I sure hope so. So which one do you want?

24 "Question: We want the notes that you have there,
25 Mr. Spencer?

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1 "Answer: The file folders tell you what's going on
2 that day.

3 So basically at the criminal trial Mr. Spencer is
4 testifying from notes, and so again, as part of my case, I have
5 asked in a request for production for those notes. We got no
6 response. And now they are claiming that it's attorney-client
7 privilege.

8 Again, they needed to produce this stuff, and they
9 needed to produce it years ago, and they haven't. And their
10 entire case is prefaced on the lack of production, and their case
11 should be dismissed because they haven't produced this
12 information.

13 THE COURT: Let's address Mr. Pintar's motion. When I
14 identify with the attorneys, I should obviously identify the
15 party that he's filing the motion on behalf of. Mary Kinion and
16 Elfriede. How come just Elfriede as far as the motion for
17 spoliation?

18 MR. PINTAR: It wasn't. It was on behalf of Miss
19 Kinion as well.

20 THE COURT: Right. But how come just Mrs. Klementi as
21 opposed to Mr. Klementi?

22 MR. PINTAR: Your Honor, that was my oversight. I had
23 assumed that Mr. Klementi, he had been deceased by that time, and
24 so I was just going forward with representing Miss Klementi. I
25 filed the motion --

1 THE COURT: Okay. Now I know why, in my mind, why.

2 The motion was filed later. I understand.

3 MR. PINTAR: Yeah. So that's the only reason why.

4 THE COURT: Thank you for clearing that up on
5 Mrs. Klementi. It's a technicality, and I understand. Okay.

6 Miss Pierce, please.

7 MS. PIERCE: Your Honor, first of all, the, and this
8 is, a lot of this is prior to when I got involved in the case.
9 And David Zaniel produced a video, which I then filed with the
10 court as a, under separate, a separate pleading entitled video
11 exhibit in support of responses to motions for summary judgment,
12 motion for sanctions based on spoliation of evidence. And that
13 was a copy of the video that had already been produced by David
14 Zaniel long before I was involved in this case.

15 THE COURT: Identical copy.

16 MS. PIERCE: Pardon me?

17 THE COURT: Identical copy.

18 MS. PIERCE: Oh, yes. Oh, absolutely.

19 In terms of the deposition testimony, the question
20 about the time log and the notes. At the time that Mr. Spencer
21 was questioned about that, he said I believe it's a
22 client-attorney privilege and I shouldn't have to tell you.
23 Well, let your attorney make that objection. Well, the attorney
24 did make the objection. In the request for production, the,
25 and this is all part of my objection, or my response to this, is

1 that, and this was from David Zaniel, that he produced the video,
2 and that the request for notes was being rejected on the grounds
3 that it was attorney-client privilege. There were notes that he
4 made for purposes of his defense in the, first of all, for his
5 defense in the underlying criminal matter. And then he made
6 additional notes in the representation that he was receiving from
7 Mr. Zaniel and Mr. Routsis.

8 One of the things that was requested was notes relative
9 to what was said at a KGID meeting at which Mr. Spencer wasn't
10 even present. And the minutes of that meeting speak for
11 themselves. So he did comply with the request. He did produce
12 what was outside of the attorney-client privilege.

13 And you may recall the last time we had a hearing on
14 this he freely admitted his hard drive got corrupted. He had
15 saved it onto a flash drive, but he didn't have the hard drive
16 anymore, and he took it to experts to try and get the tape that
17 was on it retrieved.

18 And part of my response is a declaration under oath
19 from an expert, who then also referred it to another expert, and
20 they couldn't retrieve anything. And when we were here in court
21 the last time, there was discussion of having a mutual expert
22 look at the hard drives, both of my client and of the Shaws, to
23 try and get this matter resolved. And it has not been a
24 deliberate spoliation. It has been, it was preserved, it was
25 preserved in the format in which it was originally taped. Not in

1 any kind of a modifiable or, what's the word, editable software,
2 and the only notes beyond what would be attorney-client privilege
3 were some notes that were at the front of each section saying
4 this is what the tape shows. And that was produced. There's no
5 spoliation here.

6 THE COURT: Thank you. Only if you feel the need. I
7 mean I wasn't inviting it when I looked up.

8 Hang on a second. I'm just writing notes.

9 The next thing I have in order is the defendants'
10 motion to strike plaintiff's expert witness designation. This
11 was joint, am I correct?

12 MR. BROWN: Your Honor, I think all the motions have
13 been joint.

14 THE COURT: That's right.

15 MR. BROWN: So the answer to your question, yes.

16 THE COURT: No opposition. Time went by and that type
17 of thing. You don't have to say anything, Miss Pierce or
18 Mr. Routsis, but my conclusion is no opposition is no opposition.
19 So that's granted.

20 The motion to dismiss based on failure to timely
21 substitute a party after death, that's unopposed also, so that's
22 granted. And that's what I meant when I first came on. And I
23 totally understand, it's happened before, obviously. So no harm
24 no foul at all.

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25 And now, we set the order to show cause for failure to

1 pay the award of attorney's fees, and then I started, then I said
2 let's get it all done in one day, because we are, when is the
3 trial going to be? October? Right? When is the trial date?

4 THE CLERK: It starts October 8.

5 THE COURT: So let's get it done. So if we go to
6 trial, we can have enough time to prepare. And so the order to
7 show cause is still pending, Mr. Spencer's failure to pay the
8 award of attorney's fees and partial costs. Mr. Routsis just now
9 asked that Mary Kinion's motion for summary judgment that I
10 granted be reconsidered.

11 So again, it's last, and I will address that today.
12 But what I'm going to say right now is anything, is there
13 anything else anybody wants to put forward on the record in
14 regards to what we have talked about for this last hour and 45
15 minutes? In summary, anybody want to correct, cross the Ts, dot
16 the Is? Anybody dying to say anything that we really need to
17 say, you feel that you need to say?

18 Miss Capers.

19 MS. CAPERS: Yes, Your Honor. I just made a mistake
20 when I was originally arguing in regards to the intentional
21 infliction of emotional distress, that it would be unconscionable
22 conduct. That was actually the standard for punitive damages.
23 But either way, I still wanted to address both again, just to put
24 forth to the Court how case law has interpreted the conduct for
25 punitive damages and the conduct for intentional infliction of

1 emotional distress.

2 So when we look at the claim of the intentional
3 infliction of emotional distress, it must be extreme and
4 outrageous. Okay? And when we look at case law, a prima facie
5 case of infliction of emotional distress requires a plaintiff to
6 prove that the conduct was extremely outrageous. However, I
7 would turn your attention to a case called, I may pronounce it,
8 M-a-d-u-i-k-e versus Agency Rent-a-Car. And the court in
9 evaluating this case said extreme and outrageous conduct is that
10 which is outside all possible bounds of decency and is regarded
11 as utterly intolerable in a civilized community. That's
12 important for this case. The court also said that the behavior
13 should be atrocious, intolerable, or outside all possible bounds
14 of decency.

15 And I bring that up, because what struck me when Miss
16 Pierce was responding, I don't remember to whomever's motion, is
17 that she said they participated in gossip. She said it at least
18 three times, that the behavior was gossip. Gossip does not rise
19 to the level of conduct for an intentional infliction of
20 emotional distress claim.

21 Also, when you look at the punitive damages, beyond the
22 fact that there's no underlying tort that we believe should go
23 forth to have this claim survive, there must be malice, a
24 despicable conduct, and malice can be express or implied, which
25 means conduct that is intended to injure a person or despicable

1 conduct which is engaged in with conscious disregard of the
2 rights or safety of others.

3 Also the court said, excuse me, it has been said that
4 in accordance with the statutory language in regards to express
5 or implied malice, that the conscious disregard of malice denotes
6 that at a minimum the conduct must exceed mere recklessness or
7 gross negligence.

8 I think that's important again for us to evaluate this
9 case in regards to, in a means of analyzing the standards that
10 the courts have promulgated. And the gossip that was said was I
11 guess the unconscionable conduct or the extreme or outrageous
12 conduct for infliction of emotional distress or punitive damages
13 claim, it doesn't hold water. Because at the end of the day
14 people gossip all the time. But that isn't a basis for punitive
15 damages or extreme or emotional conduct, excuse me, or the
16 infliction of emotional distress.

17 And the last thing I just wanted to bring to your
18 attention again in regards to the civil conspiracy, especially as
19 it relates to the Shaws. A lot hasn't been said in regards to
20 the Shaws, but I just want to make sure I hit this again so the
21 Court wouldn't be misled, but I'm pretty sure you aren't because
22 of all of the information that the Court has read, that the video
23 that was given to law enforcement was asked from law enforcement
24 to my clients. It's not as if my clients went out to the court
25 or anything of that nature, to the police station, and said hey,

1 I have this video which may cover the incident on the night in
2 question, let alone the fact that they weren't even there. But I
3 just want to make it clear that the video that they gave was at
4 the request of law enforcement. Not only the request to give it,
5 but the amount of time that should be on the video. That's very
6 important, because I don't want the Court to go away thinking
7 there was some malfeasance on behalf of the Shaws.

8 In addition, we hear about the conspiracy or alleged
9 conspiracy with the other defendants, but with regards to the
10 Shaws, I'm not quite sure what unlawful agreement they made with
11 anyone, when it was made, who it was made with, and what was it.

12 So if you allow this claim to survive, what's going to
13 happen is the jurors are going to have to speculate and guess as
14 to what did the Shaws do. Mr. Shaw didn't even testify. So what
15 actions did Mr. Shaw take? You have heard none. And what
16 actions did Mrs. Shaw take? None. However, if I'm going to
17 guess as to their theory of the case, it would be they made the
18 statements at the commission hearing. That's what we can guess
19 or speculate at this point. And if that's the case, absolute
20 privilege.

21 THE COURT: Is your motion submitted?

22 MS. CAPERS: Yes, sir.

23 THE COURT: Is your motion submitted, Mr. Brown?

24 MR. BROWN: It is, Your Honor.
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25 THE COURT: Is your motion, motions plural, submitted?

1 MR. PINTAR: They are, Your Honor.

2 THE COURT: Miss Pierce, anything to add or any
3 comment?

4 MS. PIERCE: No, Your Honor.

5 THE COURT: Mr. Routsis, any comments, anything to add?

6 MR. ROUTSIS: No, Your Honor.

7 THE COURT: Therefore, both of you submit it?

8 MR. ROUTSIS: Yes.

9 THE COURT: In regards to the motion for summary
10 judgment on behalf of Helmut Klementi by Mr. Brown, I see no
11 malice whatsoever. I see true statements given to the police,
12 given at trial, given to TGI, what is it?

13 MR. BROWN: The Douglas County Planning Commission.

14 THE COURT: I do not see that they led to any
15 defamation whatsoever. I do not see there's a civil conspiracy
16 amongst the neighbors, and especially on behalf of Mr. Helmut
17 Klementi. I do not see any evidence whatsoever in regards to
18 malice, fraud, nothing in regards to punitive damages,
19 intentional infliction of emotional distress, I think is all, all
20 one-sided on behalf of Mr. Spencer.

21 I can totally understand why Mr. Spencer is upset,
22 distressed. I know that people get themselves into this. It's
23 almost like, like I said to you personally, with Mr. Routsis and
24 Miss Pierce present, the worst thing that ever happened to you
25 was getting acquitted, because it just gave you a license to

1 think that you could just strike out.

2 So the case against Mr. Helmut Klementi is dismissed.

3 In regards to Miss Kinion, the motion to reconsider is
4 denied. I do not see any new evidence whatsoever for me to
5 reconsider Miss Kinion. It's an emotional state on behalf of
6 Mr. and Mrs. Spencer. It's an emotional state on behalf of
7 Mr. Routsis because he tried the case. I can totally understand
8 someone that has tried and defended and acquitted on a two-week
9 case can get so emotionally involved.

10 But by the same token, when the pleadings were cleaned
11 up, my words, there was just these bare allegations without any
12 proof whatsoever. I can't even call a fact, I can't even say
13 that there is any facts that could go forward, because there have
14 been no facts proven. None. And the only thing I can go on
15 slightly is an absolute privilege or a qualified privilege to
16 speak, because I cannot say in any way, shape, or form that it's
17 not an absolute privilege to talk to the cops, to speak under
18 oath at a trial. And I don't know what happened, because as you
19 said, Miss Pierce, the minutes speak for themselves at the
20 Douglas County Planning Commission.

21 So no facts. There are no facts to take forward to the
22 jury in regards to any of the allegations on behalf of, against
23 Mr. Klementi and Miss Kinion.

24 Miss Kinion, especially Miss Kinion, Mr. Pinter said
25 it, where's the beef, that old, old commercial, where's the beef?

1 I do not see one scintilla of evidence except for allegations
2 that have not been brought out, and of course will not be able to
3 be proved because her case is dismissed also.

4 In regards to the Shaws. What evidence? There is no,
5 there are no facts. There are no civil conspiracies. And this
6 is not to be used against you, Miss Pierce, but I really thought
7 of it when you were talking. Yeah, it's only gossip. And I
8 think the Spencers are suing the neighbors based on the way they
9 feel about gossip. That just doesn't hold it to go to a jury to
10 ask for damages in that regard. So the Shaws are dismissed in
11 this case.

12 In regards to Mrs. Klementi, Elfriede Klementi, that's
13 why I asked the question. Why was she sued? Because she's the
14 wife of, I just, I don't get that at all. There's no facts.
15 Allegations only. Allegations only. Not proved, not brought
16 out, no facts.

17 In regards to spoliation, button, button, who's got the
18 button. Where's the tape, three-minute gap, 18-minute gap, who's
19 zooming who, who's seeing what. I think the motion is well
20 taken. But, you know, enough, enough, enough.

21 The motion on spoliation is denied, Mr. Pintar. I kind
22 of got lost in regards, that's why I asked you the question, in
23 good faith, by the way, good faith denial on my part. You know,
24 because if I thought for one second that Mr. Spencer hid the tape
25 because it's self-incriminatory, of course the motion would have

1 been granted. But you know, I'm just piling on right now. And
2 so that's why I'm denying that motion.

3 As far as the other tape, it's not an issue, so I'm not
4 even going to bring it up, the one that David Zaniel produced.
5 We saw it. You know, one person can take that one way, the other
6 person could take it another way. But it's not an issue.

7 In regards to the order to show cause, I know that you
8 asked, Mr. Routsis, on behalf of Spencers, and Miss Pierce, I
9 know that you asked for a time for me to decide that, and this
10 indeed was the order to show cause hearing, but I'm right at that
11 stage where I really must say this. I'm going to ask counsel,
12 Miss Capers, Mr. Brown, and Mr. Pintar, to draft the orders
13 granting summary judgment. And I am inviting attorney's fees, of
14 course. And I don't want, I really mean this professionally,
15 because I practiced law for a long time before I took the bench,
16 I don't want you to have to spend time on your own, by the way, I
17 know this, I feel I know it, to respond to the attorney's fees.
18 And I'm talking Miss Pierce and Mr. Routsis, because I want this
19 over, go on with your lives, and forget this and become
20 neighbors. God bless you.

21 What I'm saying is if there's any attorney's fees, that
22 should be about the same amount, around the same amount that I
23 granted to Mr. Pintar. I think he asked something to the effect
24 of \$20,000. And I respect it. I put it down to I think 16 plus
25 costs or 14 plus costs. And I'm really saying, you know, I just

1 dismissed the case, a very emotional case that I have had for
2 four years, and so be careful. Because I'm the one that decides
3 the attorney's fees, and I know that Mr. Routsis and Miss Pierce
4 really worked hard and, you know, I have been there. So really
5 be careful with the attorney's fees. Of course I will grant
6 them, but I'm just warning you just to be careful.

7 Thank you all sincerely for your presentations. I know
8 it was difficult. I know it was hard for the defense to
9 speculate, to put together, to try to piecemeal, just like Mr.
10 Routsis said. But you had to, you had to piecemeal, you had to
11 follow the bouncing ball. Sincerely, when you cleaned it up, I
12 know you had to do what you did. But, you know, when you start
13 charging neighbors conspiracy and malicious prosecution and
14 everything else based on rumors, it just doesn't pack it.

15 And I just wish that somehow Mr. and Mrs. Spencer can
16 go on with their life understanding that they got a guy to look
17 at this case in the most objective, fair-minded way that you
18 possibly could, and that's what I came up with after all the hard
19 work that both sides put into this.

20 Everybody have a pleasant day, sincerely, the rest of
21 your stay on earth. And let's just remember that this is
22 civility versus, well, you weren't either involved with civility
23 for a year, where the resolution of something is on the other end
24 of an AK47 or an M16. And thank God you don't have that.

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25 Thank you very much for everybody's attention. And we

1 will be in recess.

2 (12:00 p.m., proceedings concluded.)

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25 www.litigation-services.com

1 STATE OF NEVADA)
) ss
2 COUNTY OF WASHOE)

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5 I, LESLEY A. CLARKSON, Official Reporter of the
6 Second Judicial District Court of the State of Nevada, in
7 and for the County of Washoe, DO HEREBY CERTIFY:

8 That I was present in Department No. II of the
9 within-entitled Court on Thursday, July 12, 2018, and took
10 stenotype notes of the proceedings entitled herein and
11 thereafter transcribed them into typewriting as herein appears;

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

14 Dated this 18th day of August, 2018.

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Lesley A. Clarkson, CCR #182

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BOBBIE R. WILLIAMS
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Fax: (877) 888-1396
tcapers@amfam.com
Attorney for Defendants Rowena Shaw and Peter Shaw

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. 14-CV-0260
Dept. II

ORDER

JEFFREY D. SPENCER,

Counterclaimant,

vs.

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

Counterdefendants &
Third Party Defendants.

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ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Defendant's Motion for Summary Judgment came before this Court for hearing and oral argument on July 12, 2018, the Court having considered the pleadings and arguments submitted by counsel for the parties and being fully advised, enters the following findings and orders:

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FINDINGS OF UNDISPUTED FACTS

1. This is an action stemming from disputes in the Kingsbury Grade General Improvement District ("KGID") on the south shore of Lake Tahoe.

2. Peter and Rowena Shaw ("Shaws") have lived in the KGID neighborhood for over thirty-seven (37) years. During the summer of 2012, Helmut and Egon Klementi also lived in the neighborhood. Since then, Mr. Egon Klementi has passed. His brother Helmut still lives in the neighborhood with his wife Elfie Klementi. Helmut and Elfie Klementi live across the street from Defendant/Third-Party Plaintiff Jeffrey Spencer ("Spencer").

3. Spencer is employed as a snowplow operator during winter months.

4. In the summer of 2012, a dispute arose between the aforementioned neighbors including Mary Ellen Kinion ("Kinion") and Spencer. The dispute escalated to the point that in 2013, Spencer was criminally prosecuted for assault on Helmut Klementi. In response, Spencer asserted a counterclaim against Helmut Klementi, Kinion, Egon and Elfie Klementi and the Shaws.

5. During the spring of 2012, Spencer built a six foot tall fence around his property.

6. The height of the fence created a blind intersection in front of the Shaws residence and created a public safety risk. Due to her belief of the risk factor the fence presented, Rowena Shaw contacted KGID because she believed they were responsible for code enforcement and was eventually referred to the DA's Office and the Planning

1 Commission.

2 7. The Shaws wrote a letter to the Planning Commission regarding the risk the
3 fence presented and was informed the Spencers requested a variance.

4 8. Eventually, the fence was required to be removed.

5 9. The Shaws have approximately 6 security cameras on their property. The hard
6 drive stores what the video records. Mrs. Shaw is not sure if the storage is 15 or 30 days.

7 10. Around December of 2012, the Shaws installed the cameras because of
8 difficulties between the Spencers and neighbors.

9 11. In mid-December 2012, the Shaws' driveway was bermed and their flower bed
10 was destroyed by the plow.

11 12. On December 18, 2012, the Shaws went to a KGID meeting for the first time
12 due to concerns regarding their driveway being bermed and flowerbed being destroyed.
13 They spoke at the meeting during the public comment portion and also commented on the
14 Spencer's fence.

15 13. The Board President at the KGID meeting, Dr. Norman suggested the Shaws
16 "keep documenting and to take pictures."

17 14. After the KGID meeting, the Shaws went out of town and have no first-hand
18 knowledge of the incident involving Spencer and Helmut Klementi.

19 15. When the Shaws returned home two days after the KGID meeting, a voicemail
20 from Elfie Klementi informed them that Helmut had been assaulted.

21 16. Around two weeks after the incident, a police agency contacted the Shaws and
22 asked to look at any videos from their cameras from the night of the incident.

23 17. The DA's office eventually contacted the Shaws and asked for a copy of their
24 video.

25 18. Mrs. Shaw made a copy of the video and Officer Schultz picked it up at her
26 home.

27 19. There is no evidence that the Shaws had any involvement in Deputy McKone's
28

1 decision to arrest Spencer on December 18, 2012.

2 20. The Shaws were not involved in the criminal prosecution against Spencer until
3 the Deputy District Attorney contacted them and requested they provide any information that
4 they may have regarding the incident and events relevant to the neighborhood.

5 21. As part of Spencer's trial, only Mrs. Shaw was subpoenaed and required to
6 provide testimony. Her only testimony was regarding her security cameras.

7 22. During a January 30, 2017 hearing before this Court, Deputy District Attorney
8 Maria Pence testified that the Shaws had no involvement in her charging decisions regarding
9 Spencer.

10 23. The Court finds no evidence to support Spencer's claim for malicious
11 prosecution.

12 24. The Court could not identify any defamatory statements or untrue statements
13 made by Peter or Rowena Shaw.

14 24. The Court finds that any statements made by Peter or Rowena Shaw to the
15 Douglas County Sheriff's Department, Douglas County District Attorney, KGID and the
16 Douglas County Planning Commission are protected by a qualified and absolute privilege.

17 25. The Court finds that because Spencer's claims for defamation and malicious
18 prosecution fail as a matter of law, his claims for civil conspiracy likewise must fail because
19 he is unable to prove the commission of the underlying tort.

20 26. The Court finds that there is no evidence to demonstrate that Rowena or Peter
21 Shaw engaged in any conduct that was "extreme and outrageous" nor any conduct that was
22 intended to cause Spencer emotional distress.

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27. The Court finds because punitive damages are not a standalone claim and there has been no evidence of "oppression, fraud, or malice, express or implied" committed by Rowena or Peter Shaw, Mr. Spencer's claim fails as a matter of law.

CONCLUSIONS OF LAW

1. The Court concludes any statements made by Rowena or Peter Shaw were not defamatory.

2. The Court also concludes any statements made by Peter or Rowena Shaw to law enforcement, KGID, Douglas County District Attorney or Douglas County planning commission are protected by a qualified and absolute privilege.

3. The Court concludes there has been no evidence that Rowena or Peter Shaw requested or pressured law enforcement or Maria Pence to commence criminal proceedings against Mr. Spencer.

4. The Court concludes that because Mr. Spencer's claims for defamation and malicious prosecution fail as a matter of law, his claims for civil conspiracy likewise must fail because he is unable to prove the commission of the underlying tort.

5. The Court finds that there is no evidence to demonstrate that Rowena or Peter Shaw engaged in any conduct that was "extreme and outrageous" nor any conduct that was intended to cause Spencer emotional distress.

6. The Court concludes there has been no evidence to support a punitive damages claim against Rowena or Peter Shaw.

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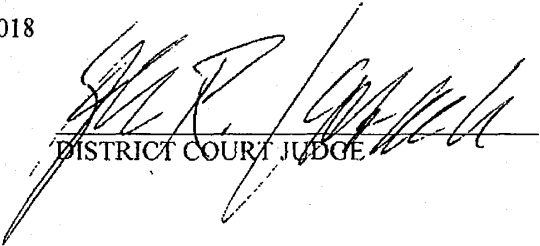
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CONCLUSION

This Court having considered the pleadings, exhibits, and the record in its entirety, and good cause appearing, grants Rowena and Peter Shaw's Motion for Summary Judgment.

IT IS SO ORDERED

Dated this 15 day of August, 2018


DISTRICT COURT JUDGE

Submitted by:
TANIKA M. CAPERS
Nevada Bar No. 10867
6750 Via Austi Parkway, Suite 310
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Phone: (702) 733-4989, Ext. 51652
Attorney for Defendant Rowena and Peter Shaw

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: II

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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.

ORDER

13 JEFFREY D. SPENCER,

14 Counterclaimant,

15 vs.

16
17 HELMUT KLEMENTI, an individual,
18 EGON KLEMENTI, an individual,
19 ELFRIEDE KLEMENTI, an individual,
20 MARY ELLEN KINION, an individual,
21 ROWENA SHAW, an individual, PETER
22 SHAW, an individual, and DOES 1-5,

23 Counterdefendants & Third Party
24 Defendants.

25 On June 22, 2018, Third-Party Defendants, Egon and Elfriede Klementi
26 ("Klementi"), filed a Motion to Dismiss all third-party claims asserted against Egon
27 Klementi (deceased). No opposition has been filed.
28

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GLOGOVAC & PINTAR
ATTORNEYS AT LAW
427 W. Pruned Lane
RENO, NEVADA 89509
(775) 333-0400

1 Accordingly, and good cause appearing, IT IS HEREBY ORDERED that the
2 Motion to Dismiss all claims against Egon Klement in its entirety is GRANTED.

3 DATED this 21 day of August, 2018.

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6 Steven R. Kosach
7 SENIOR DISTRICT JUDGE
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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:

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DATED this 3rd day of June, 2019.

_____/s Kerry S. Doyle
Kerry S. Doyle

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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

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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 TUESDAY, SEPTEMBER 24, 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 Q Just yes or no, all I'm asking.
2 A Sorry.
3 Q Were you informed that an additional
4 complaint, supplemental, if you will, complaint was made
5 by Mrs. Spencer a few days later regarding pictures?
6 A Yes, I found out.
7 MR. ROUTSIS: Okay. And, Your Honor, at this
8 time, I'd like to get into that.
9 THE COURT: Using a document?
10 MR. ROUTSIS: No, but this is the ruling that
11 the Court had made, and I think it goes now to a bias
12 and --
13 MS. PENCE: Your Honor, the Court's already
14 ruled on --
15 MR. ROUTSIS: And it goes to the document --
16 MS. PENCE: -- what I believe defense counsel
17 -- Actually, may we approach, Your Honor?
18 THE COURT: Yes.
19 (WHEREUPON, a bench conference was held.)
20 MR. ROUTSIS: Your Honor, at this point --
21 THE COURT: What is this related to?
22 MR. ROUTSIS: This is related to the picture
23 taking of the juveniles, and it's my theory of the
24 defense that they were informed of it. It was addressed

1 in their document that they wrote to the police that
2 she's excised out, and it goes to my theory that they
3 were furious, and this is a lot of misguided animosity.
4 That's my defense in this case. That goes to bias, and
5 there's no reason to exclude it. I mean, we're not
6 arguing it for an improper act. We're using it to show
7 the effect on both of them because as the Court knows, we
8 believe that all of these events have led up to a rage
9 by --

10 THE COURT: How does this witness know
11 anything about that?

12 MR. ROUTSIS: Oh, because the following day,
13 it addresses that she was there with Egon, that Egon was
14 taking photographs of two juveniles who were working.
15 She was made aware of that, we believe, and they went
16 down there to say that that didn't happen or what have
17 you. And I don't see what the rule of exclusion would be
18 in this regard. Clearly, it goes on the effect of the
19 hearer.

20 MS. PENCE: Your Honor, in this Court's order
21 after hearing on motions in limine and any other pending
22 motions filed on September 9th, of 2013, this Court
23 ordered, and I quote, "Number five. State's motion in
24 limine number one to exclude reference to irrelevant

1 prejudicial information filed on August 31st, 2013 is
2 granted at the hearing prior to this Court's written
3 order. This information was discussed at length. It's
4 irrelevant. It is highly prejudicial. The documents
5 thus far introduced into evidence with any sort of
6 mention have been redacted in full. At this point, the
7 State's continued objection, which should not be
8 necessary with this Court's ruling prior to court, is
9 that it's irrelevant and it's highly prejudicial.

10 MR. ROUTSIS: Again, she --

11 THE COURT: That's the ruling. That is what
12 the Court said as a reference that photographs were taken
13 of people working in the yard. It's the crew. I said
14 workers earlier, and the workers were including a
15 neighbor and his teenage children.

16 MS. PENCE: And if that's all that's coming
17 in, the State has no objection. Any words other than
18 that, Your Honor --

19 MR. ROUTSIS: Judge, the State has --

20 MS. PENCE: It's going to call for sanctions
21 or contempt of the Court's order.

22 MR. ROUTSIS: Judge, Ms. Pence is again
23 misstating and attempting to utilize the power of the
24 D.A. for improper conduct, and I'll explain what I mean.

1 She reversed a very serious ruling in this case in the
2 middle of trial. She reversed herself on admitting my
3 character witnesses.

4 This Court's ruling was opened to determine
5 later at trial to see if it has an effect on the hearer.
6 She's wrong on every ground she's stated. She's
7 attempting to bully the Court with improper information.
8 It's clearly admissible on the effect of the hearer, and
9 these are really antics that are quite concerning.

10 THE COURT: Well, it's admissible to a
11 degree. You can't to the point of suggesting improper --

12 MR. ROUTSIS: Of course not. Of course not.
13 That wasn't what I was doing. I was just showing that
14 that was mentioned, and I'm leaving it alone to show that
15 they were angry as a response to all of this conduct.

16 THE COURT: I don't know how you're going to
17 get it from this witness, but you can keep going, and
18 we'll see what happens.

19 MS. PENCE: So to be clear, Your Honor,
20 there's not to be any mention of picture taking of young
21 children.

22 THE COURT: Right.

23 MS. PENCE: Thank you.

24 THE COURT: But there can be reference to

1 other people. Yeah.

2 Q (BY MR. ROUTSIS:) Now, Mrs. Klementi, on May
3 29th, the prosecution just showed you a redacted version
4 of a statement that was made by your husband, and that is
5 actually the State's Exhibit 42. Do you recall?

6 A Yes.

7 Q And was this provided to the sheriff's
8 department on the same day that you went down on May
9 30th, referring to Defense Exhibit O, or was this
10 document -- it says May 30th at 4:00 p.m. Did you
11 provide both the handwritten and a typed document to the
12 sheriff?

13 A I don't know. I don't remember.

14 Q Okay. Now, the prosecution asked you to
15 refer to what's been the State's Exhibit 42.

16 A Uh-huh.

17 Q And you recall seeing that document?

18 A Yeah, I think I recognized the handwriting of
19 my husband.

20 MR. ROUTSIS: Okay. And what I'd like to do
21 now is mark defense next in order, which is an unredacted
22 version of that document.

23 THE COURT: 42-A.

24 (Whereupon, Defendant's Exhibit 42-A

1 was marked for identification.)

2 MR. ROUTSIS: Counsel, is this is the full,
3 complete version? And if we could mark that defense next
4 in order.

5 THE CLERK: Oh.

6 THE COURT: I mentioned earlier it's 42-A.
7 We have two versions.

8 MR. ROUTSIS: Of the same document.

9 THE CLERK: Yeah. That one is 42. We're
10 going to do 42-A on that one. Is that okay?

11 Q (BY MR. ROUTSIS:) Thank you. Are you
12 familiar with this document? Did you read it?

13 A Yeah. I mean, I know that my husband wrote
14 that.

15 Q Right. So after May 27th, when several hours
16 transpired and the police officers gave you warning and
17 they came to your home, did either one of you -- because
18 you weren't out there. Did you think of telling the
19 police anything regarding your husband was assaulted?
20 I'm going to punch you? Did that cross your mind at that
21 point?

22 A No, I did not. The deputy was talking to my
23 husband.

24 Q All right. And in fact, there had been

1 allegations made of continuing photographs being taken by
2 Mrs. Spencer; correct?

3 A I'm sorry? You said Mrs. Spencer took
4 pictures.

5 Q No. That your husband, Mr. Klementi, took
6 pictures.

7 A My husband didn't take any picture after the
8 warning from the deputy.

9 Q But did you receive an indication that
10 Mrs. Spencer was complaining that your husband was taking
11 pictures of not just his property, but the people that
12 were on the property, his friend and their young -- and
13 their children?

14 A No. My husband didn't take pictures.

15 Q Okay. But in the document, didn't your
16 husband respond to that and wanted to make a correction
17 that he didn't take such pictures? You are aware you are
18 accused of such an act; correct? Your husband was.

19 A Yes.

20 Q And you were aware that your husband was not
21 only accused of taking pictures of the defendant's
22 property, but he was accused of taking pictures of people
23 working on the property; correct?

24 A Yes.

1 Q And was that true?

2 A No, it's not true.

3 Q How do you know that?

4 A Because he didn't take any pictures.

5 Q Okay. He never took pictures of the

6 defendant's property?

7 A Oh, before.

8 Q Numerous times before; correct?

9 A Only about his truck.

10 Q Well, actually, we have a picture in evidence

11 of his backyard.

12 A Okay. Yes.

13 Q And we have a picture of the defendant on his

14 property doing various items.

15 A Yes. I know those pictures.

16 Q And we have a picture of -- and I believe

17 your husband said he took pictures on May 27th.

18 A He took -- He tried to take a picture on the

19 27th when he was walking the dog when he built the fence

20 on Juniper, and this was all.

21 Q Okay. So he was taking pictures on May 27th?

22 A Before 27th.

23 Q On May 27th?

24 A No. On 27th, he tried to take the picture

1 from the fence, but he -- it was too dark, my husband
2 told me.

3 Q Do you remember testifying under oath at a
4 prior hearing in this case?

5 A Yes.

6 Q Do you remember testifying that your husband
7 took pictures of the defendant's property on May 27th?

8 A No.

9 Q Okay. Let me refer to that for you, ma'am.
10 Here it is. Page 100. Now, do you remember testifying
11 -- and I'll get back to that question -- that your
12 husband -- after the police gave you a warning about
13 infringing on the Spencers' privacy, trespassing and
14 harassment, you testified under oath that your husband
15 never took pictures of the property again?

16 A Correct.

17 Q Okay. So -- and maybe I'm incorrect. On May
18 27th, do you remember your husband going on the property
19 before the police came and taking pictures?

20 A He didn't go on their property. He was on
21 Juniper.

22 Q And he took pictures from Juniper?

23 A He tried to take a picture from the fence.

24 Q Okay. How do you try to take a picture? Did

1 he take a picture or didn't he?

2 A He tried to take a picture, but he told me it
3 was too dark. He couldn't take the picture. It was
4 around 7:00, 8:00 when he walked the dog.

5 Q I'll get back to that. So the Spencers saw
6 him trying to take a picture, but he never actually
7 flashed it?

8 A No.

9 Q You don't know?

10 A No, I don't know.

11 Q Okay. So there's truthful allegations by the
12 Spencers that your husband had taken pictures for quite a
13 period of time of the defense's property.

14 A Prior to the 27th.

15 Q I think your husband testified he took
16 pictures on the 27th, ma'am.

17 A Yes. I told you he tried to take a picture
18 on the 27th on Juniper when he was passing the fence.

19 Q Okay. So when the police came over a couple
20 of hours later, you forgot to mention the assault again;
21 correct?

22 MS. PENCE: Objection, Your Honor. Asked and
23 answered. Argumentative.

24 THE COURT: Sustained.

1 Q (BY MR. ROUTSIS:) I'll move on. I'll move
2 on. Within a couple days, you received further
3 information that the defendant or his wife were concerned
4 that pictures were also being taken of other individuals
5 on the property. Whether he took them or not, that was
6 the allegations that were being made by the Spencers;
7 correct?

8 A Yeah. I found out a few days later when I
9 went to court to get a report from the deputy, we could
10 see that Mrs. Spencer made a few days later a report
11 about my husband maybe taking pictures.

12 Q Of what?

13 A Of -- she said in this taking pictures of --
14 MS. PENCE: Objection, Your Honor. I'm going
15 to ask that we approach.

16 THE COURT: All right. Well, we already
17 discussed this.

18 MR. ROUTSIS: Thank you.

19 THE COURT: So we don't need to discuss it
20 again.

21 MR. ROUTSIS: You can continue.

22 THE WITNESS: Mrs. Spencer -- how do you say
23 -- let me just -- She wrote on this report that my
24 husband -- accusing. This is the word. She accused my

1 husband that my husband took pictures of juveniles.

2 Q Or when juvenile were on the property;
3 correct?

4 A Yes.

5 Q And this made you and your husband very
6 angry; correct?

7 A Of course it made us angry. It's absurd.

8 Q You were very angry also about the fact that
9 they accused you or that the sheriff's officer gave you a
10 warning for trespassing and harassment; correct?

11 A Yes. My husband did not trespass and harass
12 the Spencers.

13 Q And he was furious and this, wasn't he?

14 A About what?

15 Q Taking -- being accused of taking pictures
16 and invading the Spencers' property.

17 A He was very upset, my husband, to be accused
18 of taking pictures of juveniles.

19 Q Well, taking pictures of -- for years, you've
20 been taking pictures of the defendant's property;
21 correct?

22 A That's not true.

23 Q I'd like to show you what's been marked as
24 Defense Exhibit J. I'd like to publish this, ma'am.

1 A Uh-huh.

2 Q Is that your husband's handwriting there,
3 ma'am?

4 A Yes.

5 Q It says, "Egon Klementi. Delivered between"
6 --

7 A No, this is not my husband's handwriting.

8 Q Well, he's already testified it was.

9 A Yeah, well, my husband can be mistaken.

10 Q Okay. Now, that's a picture of motorcycles
11 on the defendant's side of the street?

12 A Yes.

13 Q And you actually provided that document, you
14 and your husband, to Shane Perrin at the code enforcement
15 to show in 2012; correct?

16 A Correct.

17 Q But that picture wasn't taken in 2012, was
18 it?

19 A We know that.

20 Q And in fact, I'd like to mark what's defense
21 next in order. In fact, once you realized that the
22 defendants contacted Shane Perrin and said that you were
23 sending pictures, inferring that the defendant was having
24 parties on his property in May of 2012, but it was really

1 enforcer in 2012 when the picture was actually taken
2 three years earlier?

3 A We had -- my husband had this picture taken
4 before, and it was just to show them what happened
5 already in the years before. My husband did not say that
6 this picture came from 2012.

7 Q You didn't say it came from 2009?

8 A No.

9 Q Okay. Oh, if you could jump ahead just real
10 quick before I get to the video.

11 A Okay.

12 Q People's -- What's been admitted as People's
13 Exhibit A, and I just want to -- that's a picture of
14 Helmut on the night of the 18th?

15 A Yes.

16 Q And you said you gave your husband a pillow
17 or something to put under his head?

18 A Something. Something. I don't remember
19 what.

20 Q Okay. Well, there's nothing under his head,
21 ma'am.

22 MS. PENCE: Objection, Your Honor. Counsel
23 is.

24 MR. ROUTSIS: Okay. Well, let's look at the

1 Q And you've been telling other neighbors in
2 the neighborhood that he's been doing that to you;
3 correct? Yes or no ma'am?

4 A Yes. Yes.

5 Q Okay. And you've been telling the Kinions
6 and the Wells that; correct?

7 A To whom?

8 Q Marry Ellen Kinion, Janet Wells, the Shaws?

9 A Yes.

10 Q And you even made complaints and rallied them
11 up to make complaints on the 8th -- Well, strike that.
12 You made complaints even on the night of December 18th,
13 did you not, about the berms?

14 A Yes, when we had the KGID meeting.

15 Q All right. And I asked you at that hearing
16 if you could bring us just one photograph, one photograph
17 of a berm that the defendant left in front of your
18 residence that was -- and could be even argued was an
19 improper berm. Do you have that photo? Do you remember
20 I asked you that?

21 A No.

22 Q Do you have a photograph?

23 A No.

24 Q Your husband is a professional photographer.

1 Q Okay. Now, did he exchange anything with
2 you?
3 A No. He was just trying to get as fast as
4 possible to his brother.
5 Q So he never gave you a camera or anything?
6 A No.
7 Q And what is -- What are you bringing out to
8 him here, ma'am? Let's see. He's running out on the
9 street; correct? Right?
10 A Yes.
11 Q Now, does he run over to his brother right
12 away?
13 A Yes.
14 Q Let's look at that. His brother is laying
15 down, and he slows down, and he doesn't even go to his
16 brother. He goes to the fence; right?
17 A Yes.
18 Q So he didn't go to his brother to give him a
19 hand to see how he's doing?
20 A He's screaming at me.
21 Q To get him?
22 A To bring him something to put something under
23 to cover Helmut under his head.
24 Q Okay. Well, let's look at the pictures of

1 him. You didn't bring him anything. I'd like to show
2 what's again Defense Exhibit 23, and 23 is admitted and
3 A. Can you see if there's anything under Helmut's head?
4 A No, not really. It could be. I don't know
5 if this is his hair.
6 Q Right. So at that point, you're saying he's
7 asking you to get something for his head?
8 A Uh-huh.
9 Q And what did you get?
10 A I'm sorry?
11 Q What did you get?
12 A I don't remember.
13 Q Did you get a pillow or a blanket?
14 A Sir, I really don't remember. I would tell
15 you.
16 Q A jacket?
17 A I don't remember.
18 Q Or did you get a camera?
19 A No.
20 Q Okay. Now, and Egon has how many cameras?
21 He has lots of cameras; correct?
22 A Two or three.
23 Q Okay. And that's you walking out to Egon,
24 who hasn't gone to his brother yet; correct?

1 A Yes.

2 Q And he gets -- Let's go back on that a
3 second. So you're walking out. Now let's go slow. I
4 want to ask if you can see a flash in the camera over
5 here, ma'am, right about this area that you show him the
6 camera has flash on it. Right about here. There. Do
7 you see that? Did you see that flash?

8 A No.

9 Q I think it's quite obvious, ma'am. We'll
10 look at it again. Right here. And I'll hit the pause
11 maybe. You could see that you're bringing a very tiny
12 item out there, and there's a flash that goes. And if
13 you could tell us, is that a pillow? It's on the other
14 side of the tree, right, Jeff?

15 THE DEFENDANT: Just before the tree.

16 Q (BY MR. ROUTSIS:) Okay. See that?

17 A Yeah, but I don't remember my --

18 Q Well, we have a photographer coming in, but
19 that's a flash, isn't it?

20 A I don't know.

21 Q You actually brought him a camera, didn't
22 you?

23 A I don't remember, sir.

24 Q Your husband didn't go out to see how Helmut

1 was doing. Isn't it true your husband was out here
2 taking pictures with a different camera? Didn't come out
3 the front gate which opens because he wanted to give you
4 his camera, and you gave him another camera; correct?

5 A No.

6 Q He then takes the camera, and at this point,
7 he still hasn't gone to see how his brother is; correct?
8 Okay. So the flash -- looks like a flash goes off, and
9 then he then gets the pillow, is it, or do you think it
10 may not be a pillow at this point?

11 MS. PENCE: Objection, Your Honor. I don't
12 believe the witness has ever referred to it as a pillow.
13 I'm not understanding. Repeat his question.

14 MR. ROUTSIS: So let's see what Egon does at
15 this point.

16 THE COURT: Sustained.

17 MR. ROUTSIS: Can I speed it up a little
18 Jeff, 116?

19 THE DEFENDANT: Yeah. Right there. Yeah.

20 Q (BY MR. ROUTSIS:) Okay. Okay. So Egon is
21 walking over, and you're on the phone; correct?

22 A Yes.

23 Q Okay. And he's about -- so he's still a few
24 feet away from Helmut; correct?

1 A Yes.

2 Q Now, let me -- This is a good time to pause
3 it, Mrs. Klementi. When Helmut left that evening, did
4 Egon -- What did he do with the camera? Do you know?

5 A I'm sorry?

6 Q What did he do with the camera?

7 A Which camera?

8 Q Well, were there more than one?

9 A I don't know.

10 Q Okay. This camera, do you know what he did
11 with that camera?

12 A I think it was Helmut's camera.

13 Q Okay. So at some point, Egon is taking
14 pictures; correct?

15 A Yes.

16 Q And where did he get the camera from? Do you
17 know?

18 A I think from Helmut.

19 Q Okay. So we've got one, two, three, four,
20 five, six, seven, eight. So there's quite a few pictures
21 he was taking that evening; correct? Now, the only
22 question, Mrs. Klementi, that I have at this time is --
23 Well, strike that. That's not accurate. During the time
24 that Jeff comes out of his house and has a confrontation

Exhibit 5

Exhibit 5

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
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9 Plaintiff,

10 vs.

11 JEFFREY DALE SPENCER,

12 Defendant.
13 _____/

14 REPORTER'S 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—

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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?

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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.

CAPITOL REPORTERS (775) 882-5322

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.

CAPITOL REPORTERS (775) 882-5322

Exhibit 6

Exhibit 6

**MINUTES OF THE REGULAR MEETING OF THE
KINGSBURY GENERAL IMPROVEMENT DISTRICT BOARD OF TRUSTEES
TUESDAY, DECEMBER 18, 2012**

CALL TO ORDER – The meeting was called to order at the Kingsbury General Improvement District office located at 160 Pineridge Dr., Stateline, Nevada at 6:00 p.m. by Chairperson Norman.

PLEDGE OF ALLEGIANCE – Norman led the pledge to the flag.

ROLL CALL – Present were Trustees Norman, Treanor, Yanish, Vogt and Nelson. Also present was Legal Counsel Scott Brooke, General Manager Cameron McKay, Michelle Runtzel, Business and Contracts Manager, Eric Johnson, Operations Supervisor and Matt Van Dyne of Farr West Engineering.

PUBLIC COMMENT – Pete Shaw talked about ongoing issues with snow removal in his neighborhood regarding a specific plow driver. He and his wife Rowena have had increased berms in front of their driveway. This issue has been experienced by other neighbors as well. Mr. Shaw made a proposal for a stop sign to be placed at the intersection of Charles Ave. and Juniper Drive. This is directly in front of his home. He understands that this request is on the agenda for the 2013 January meeting. There has been no need for a stop sign at this location for 30 years. He strongly opposes the placement of a stop sign at this intersection because of elevated emissions, increased and loss of street parking. He wanted it to be on record that he strongly opposes a stop sign at that intersection. Rowena Shaw wanted it to be on record that it was very difficult for her to get up to the meeting with all the stairs and no handicap parking. Norman said that will be addressed. Dr. Rowena Shaw said she emailed the Board and Mr. McKay about snow removal in her neighborhood (read from emails). Dr. Shaw talked about the fence that was built by the snow plow driver in question (read from emails). Dr. Shaw wanted to go on record as her husband did, that she strongly opposes a stop sign in front of her residence. Norman asked Dr. Shaw where the stop sign would be relative to the photo that she submitted. She believed that the stop sign was going to be right at the corner of Charles, right by the fence. Runtzel said it would be stopping the traffic on Juniper passing the Charles intersection. McKay said there would be two stop signs. McKay said it would be in front of the Wells house. The requests for the stop signs are from the snow plow driver in question, who is also the owner of that property. McKay said that Manchester told him that the snow plow driver would be removed from that particular route.

Mrs. Klementi spoke regarding snow plow removal (read from a letter). The neighborhood problems started in April of 2012 when the Spencer's parked an 18 wheeler on Charles. It took several weeks and several police reports for the vehicle to be removed. Mrs. Klementi talked about the fence that the Spencer's built which was in violation of county codes. The fence is 6 ft. and the code is 3 ft. Mrs. Klementi spoke about how her husband felt threatened by the Spencer's. Since then they have had horrible berms in front of their driveway. She and her husband want Mr. Spencer removed from his position. Mrs. Klementi asked that her letter be put on record.

Mr. Shaw talked about how Mr. Spencer keeps the snow plow equipment running the whole time he is inside the home on a lunch break or whatever. These vehicles are also left on during the summer months as well.

Vogt asked if there was a rule as to how far back a fence should be for snow removal. McKay said yes, but his property line is out to the edge of the road.

Mrs. Klementi talked about how aggressive Mr. Spencer is and that they know that they have a gun. She is afraid. Norman asked how Mr. Spencer threatened Mr. Klementi. Brooke said that this seemed to be a subject that should be put on another agenda for discussion. It appears to involve F&B and he felt that they should be part of the discussion.

Runtzel asked Klementi if he was bermed in by Jeff Spencer yesterday. Mr. Klementi said Spencer was speeding and put the blade down and splashed the snow over Mr. Klementi's face. Runtzel asked if they had reported it and the Klementi's said no because they knew they were going to be going to the Board meeting.

Mary Ellen Kinion from 176 Meadow Lane spoke. She had the large berm that was put in front of her driveway. She has known the Spencer's for about six years and had stopped talking to them last year because they were harassing the neighbors regarding the ridiculous fence that they built. She called McKay about the berm and he immediately sent somebody with a plow as she does not have a commercial plow and there was no way she could clear it out herself. Spencer came by later in the day and Mary Ellen said Spencer had a big grin on his face and turned the blade and that is when Klementi got splashed with the snow. She then called KGID about what had happen and was told that something would be done. Mary Ellen called Flipper and he said he would do something about it. Mary Ellen said today there was a different snow plow driver. Mary Ellen said Mrs. Spencer wants her day in court. Mary Ellen said we are all here tonight because of this one person and her obsession. She has harassed these people and it has got to stop.

Norman asked Janet Wells if she had any comment to make about the fence. Mrs. Wells had a comment. She has a daycare home on 183 Juniper. She said it is very dangerous for the parents to get to her house the way the fence is. Mrs. Wells said the reason she hasn't had snow berms is because Mrs. Spencer talked to her all summer about what was going to happen. Mrs. Wells took it as gossip and felt that she was unstable. She said that Mrs. Spencer told her that she was going to go after these people and the Shaw's with the snow plow. Mrs. Wells said Mrs. Spencer is always talking about her gun. Mrs. Wells said Rebecca was with her when Mrs. Spencer spoke with her that day. Mrs. Wells read from her prepared speech.

McKay asked that everybody that made a statement tonight give him a copy of the same. McKay said the stop signs are on the Agenda for January and the hearing for the fence is on January 8th at the Douglas County Planning Commission.

Norman said they can't really deal with the feud in the neighborhood, but they can certainly deal with safety and snow plow issues.

Runtzel stated for the record that it is part of her responsibility and she was out last week when some of those issues happened. Managing the snow removal contract is a large part of her job. Runtzel asked the residents to please call her with concerns.

Norman would like Flipper or Charlena to be present and to make a statement as to what a reasonable berm would be.

Dr. Shaw said that prior to writing the letters to KGID; they surveyed the driveways in their area.

KGID MEETING DEC. 18 -

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 driver, 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 Spencers 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.

**MINUTES OF THE REGULAR MEETING OF THE
KINGSBURY GENERAL IMPROVEMENT DISTRICT BOARD OF TRUSTEES
TUESDAY, JANUARY 15, 2013**

CALL TO ORDER – The meeting was called to order at the Tahoe Transportation Center located at 169 Highway 50, Stateline, Nevada at 6:00 p.m. by Chairperson Norman.

PLEDGE OF ALLEGIANCE – Norman led the pledge to the flag.

ROLL CALL – Present were Trustees Norman, Yanish, McDowell, and Nelson. Vogt was not present. Also present was Legal Counsel Scott Brooke, General Manager Cameron McKay, Business & Contracts Manager Michelle Runtzel, Operations Supervisor Eric Johnson, Matt Van Dyne of Farr West Engineering and employee Jason Hudak. Approximately twenty members of the general public were also in attendance.

PUBLIC COMMENT –

John Petz. Does the Farr West presentation have to do with the water rate structures and having a water system in their home?

Pete Shaw wanted to readdress the issue of snow removal and stop signs. The stop sign issue was taken off the Agenda. He believes KGID and Manchester share the liability by the actions of their employees (read from written speech).

McKay said the Planning Commission will meet on April 9th to discuss the removal or the variance of the Spencer fence. McKay said he sent a letter agreeing that a variance should not be given. McKay said the District is aware that the stop sign is not compliant.

Mary Ellen from Meadow Lane said that she wanted Marilyn Spencer to know that she is not intimidated by the gentlemen taping the meeting for the Spencer's.

Rowena Shaw thanked the District for moving the meeting to the Transportation Center as the District Office is not ADA compliant. She was also thankful that there was a Douglas County Sheriff present at the meeting as per her request (read from written speech).

Mrs. Klementi spoke about why she felt threatened by Mr. Spencer. Her brother-in-law took pictures of the fence and was pushed down and beat up by Mr. Spencer. The police came and arrested Mr. Spencer. The Klementi's are opposed to the stop sign.

Janet Wells spoke and said that the fence has been taken down at the Spencer house. She very much opposes the stop sign. Mr. Norman asked if the entire fence has been taken down. Mrs. Wells said no. The fence on the portion of Charles has not been removed. There is now visual site of that intersection.

Mr. Shaw said the District Attorney required them to remove the fence.

Mary Ellen from Meadow Lane had a question for Mr. Manchester.

Brooke said this is for Public Comment only.

ELECTION OF OFFICERS –

McKay said this next year is going to be very demanding. There will be a lot of time spent dealing with the Tahoe Beach Club and LT2.

Nelson asked if anyone was interested in that position. Norman is willing to continue, but does not want to exert any dominance in any way.

Since Norman has been going to the meetings, Yanish suggested that Norman continue as Chair. McDowell felt that Norman had a fair amount of experience to do this.

Nelson asked Yanish if she would like to be Vice Chair. Yanish thought that maybe Vogt might like to. Yanish is open for whatever.

Nelson nominated Norman as Chairperson, Yanish as Vice Chairperson and Vogt as Secretary/Treasurer. This was seconded by McDowell. There were no oppositions.

APPROVAL OF AGENDA –

M-1/15/13-1 – Motion by Nelson, seconded by Yanish, and unanimously passed to approve the agenda.

APPROVAL OF CONSENT CALENDAR –

The power was out at on Kingsbury for most of Friday, so staff was not able to put everything in the Board packets at that time and some items were given to the Board at the meeting.

M-1/15/13-2 – Motion by McDowell, seconded by Nelson, and unanimously passed to approve Consent Calendar A. and to push the List of Claims back to the February 19th meeting.

A. Minutes of the regular meeting of December 18, 2012 ;

UNFINISHED BUSINESS – There was no unfinished business.

NEW BUSINESS

Norman requested that Farr West present their presentation now as there were customers waiting to hear the presentation.

FARR WEST PRESENTATION ON FIRE PROTECTION CHARGES –

John Petz from Lake Village spoke. His unit was one of the units that burned down in Lake Village. He has a separate meter for the water extinguishing system that he now has in his rebuilt unit. He said the line only gets used once a year for testing. He doesn't understand why he is getting charged for that. They are being charged \$33.54 for the system. He doesn't feel this is

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CASE NO. 14-CV-0260

JUN - 5 2018

Dept. No. II

Douglas County
District Court Clerk

2018 JUN -5 AM 11:38

DOBBIE R. WILLIAMS

D. GOELZ

BY DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

RESPONSE TO MOTION
FOR SUMMARY JUDGMENT

JEFFREY D. SPENCER

Defendant.

JEFFREY D. SPENCER,

Counterclaimant,

vs.

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

Counterdefendant &
Third Party Defendants.

Counterclaimant JEFFREY SPENCER, by and through his attorneys WILLIAM J. ROUTSIS

II, Esq. and LYNN G. PIERCE, Esq., hereby responds to Counterdefendant HELMUT
KLEMENTI's Motion for Summary Judgment. This Opposition is made and based upon and
incorporates all of the pleadings and papers on file herein, and upon the Points and Authorities and
Exhibits following hereto, and such other evidence as may be presented at time of hearing on this
matter.

///

1 **POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

3 This case arose out of conflicts between a very small group among residents of a neighborhood
4 on the south shore of Lake Tahoe where all the parties reside, except HELMUT KLEMENTI. In the
5 spring of 2012, Mrs. and Mrs. SPENCER put up a fence around their property to give themselves
6 some privacy from certain intrusive neighbors. Only a few neighbors objected to the fence. Nearly
7 all of these proceeded to make unfounded accusations against Mr. SPENCER in his job as a
8 snowplow driver for KGID, and ultimately to criminal accusations against Mr. SPENCER.

9 On December 18, 2012, HELMUT KLEMENTI trespassed on their property, and Mr.
10 SPENCER, believing the trespasser was vandalizing his truck, began yelling for the trespasser to
11 identify himself, told Mrs. SPENCER to call 911, and ran down his stairs and into the street after the
12 departing trespasser. The trespasser, who would not respond nor identify himself, suddenly turned
13 around and Mr. SPENCER collided with him in the dark on the icy street. Mr. SPENCER saw it was
14 either EGON KLEMENTI, a neighbor, or his brother HELMET KLEMENTI, identifying HELMUT
15 KLEMENTI when the two brothers spoke. Mrs. SPENCER had meanwhile called 911 and the
16 Douglas County Sheriff's responded.

17 After a brief, very incomplete, investigation, Mr. SPENCER was arrested that night for
18 misdemeanor battery and released. A Criminal Complaint was filed January 16, 2013, charging him
19 with a misdemeanor Battery on a person over 60 years of age,, that "he struck Mr. Klementi in the
20 back and knocked him to the ice covered road of Charles Avenue, and a second Criminal Complaint
21 was filed charging him with a felony Intimidation of a Witness to Influence Testimony, that he struck
22 Helmut Klementi "who was to testify at January 8, 2013 Planning Commission Meeting" and had
23 caused "Mr. Klementi to be hospitalized multiple times", and charging him with a gross misdemeanor
24 Exploitation of an Elderly Person, that he "used bullying and/or intimidation tactics with Helmut
25 Klementi, Egon Klementi and Elfride Klementi" and alleging this included offensive language, yelling,
26 covering EGON KLEMENTI with snow and street debris with a snow plow, and trapping Mr. and
27 Mrs. KLEMENTI in their home by piling up berms in their driveway. Mr. SPENCER was acquitted
28 of all charges.

1 Mr. SPENCER was very ill when he was deposed on July 28, 2016, which affected his ability
2 to recall and respond to several questions. Consequently that deposition testimony upon which this
3 Motion heavily relies is admittedly incomplete. Further, the references to that deposition testimony
4 is at times is misstated in the Motion, and that one deposition certainly does not contain all the
5 evidence necessary for the Court's consideration. Mr. SPENCER's Declaration is attached hereto as
6 Exhibit 1. The legal arguments are addressed below with legal authorities.

7 **II. CLAIMED UNDISPUTED STATEMENTS OF MATERIAL FACT & OTHER**
8 **RELEVANT UNDISPUTED MATERIAL FACTS**

9 The statement of undisputed facts includes both undisputed and disputed facts, and leaves out
10 some very relevant undisputed facts.

11 1. through 3. Mr. SPENCER does not dispute the addresses of himself, HELMUT
12 KLEMENTI, and EGON and ELFRIDE KLEMENTI. Motion pg 5, ln 27 - pg 6, ln 9.

13 4. Mr. SPENCER does not dispute that a small group of neighbors objected to the fence Mr.
14 and Mrs. SPENCER erected on their property. Motion pg 6, lns 10-14.

15 5. Mr. SPENCER does not dispute that he operated a snowplow in the neighborhood under
16 a contract between his employer and KGID. Motion pg 6, lns 15-17.

17 6. Mr. SPENCER does dispute the allegation that he ever bermed in any neighbor, which is
18 a material fact. Motion pg 6, lns 18-21. The Motion cites to Mr. SPENCER's Deposition, Motion
19 Exhibit 3, pg 68, lns 12-15.

20 Q. At this point in time, had there been **allegations** of you, as a snowplow driver in the
neighborhood, berming in their driveway?

21 A. Yes.

22 An "allegation" is **not** a fact. There is no evidence HELMUT KLEMENTI ever saw Mr. SPENCER
23 berm anyone's driveway. The various Third Party Defendants have also admitted various times under
24 other that they never saw Mr. SPENCER berm any driveway.

25 7. through 10. Mr. SPENCER does not dispute that there was a KGID meeting on December
26 18, 2012, which HELMUT KLEMENTI attended but at which he did not speak; that a representative
27 of KGID said that if someone had concerns about berms to photograph them; nor that after the
28 meeting HELMUT KLEMENTI went to EGON and ELFRIDE KLEMENTI's home. Motion pg 6,

1 In 22-pg 7, ln 10.

2 11. HELMUT KLEMENTI's actions and motivations when he went outside his brother's
3 house the night of December 18, 2012, is a material fact which is directly disputed. Motion pg 7, lns
4 11-13. In the context of all the events and the facts that EGON KLEMENTI was always taking
5 photographs and it was his home, and that it was late at night in the dark which is not the best time for
6 such photographs, Mr. SPENCER is informed and believes this was part of a effort to frame him for
7 something he did not do or to incite him to try and create a conflict.

8 12. HELMUT KLEMENTI's claim he was taking pictures of the berm when knocked to the
9 ground is a material fact which is directly disputed. Motion pg 7, lns 14. HELMUT KLEMENTI
10 testified with different answers, and his testimony is contrary to the video tape of his actions. Exhibit
11 filed under separate pleading heading contemporaneously, videotape of events.

12 13. through 15. HELMUT KLEMENTI's characterization of the incident on the night of
13 December 18, 2012, includes material facts which are directly disputed. Motion pg 7, 17-26. Mr.
14 SPENCER's testimony at his deposition is mischaracterized. The testimony was that: it was dark with
15 no street lights so he could not see the person he was chasing; he has poor distance vision, does not
16 see well at night and was not wearing his glasses when it happened; he was yelling for the trespasser
17 to identify himself and with no response he assumed the person was up to no good; he only saw the
18 person when he was about 5' away, and could not stop on the icy street to avoid the collision; the
19 person was then walking toward him, he put his arms up and they collided; the collision with the
20 trespasser was next to his property; he only knew it was a KLEMENTI after the collision because he
21 heard the brothers speaking; he was upset that HELMUT KLEMENTI had not identified himself
22 because "then I wouldn't have come out" (the collision would never had occurred); HELMUT
23 KLEMENTI was trying to kick him and EGON KLEMENTI had come out, so after telling them 911
24 had already been called, he returned to his home; when he got back to his home Mrs. Spencer was
25 still talking to the 911 operator who instructed them to remain in their home. Motion Exhibit 3, pg
26 91, ln 22- pg 92, ln 15; pg 93, lns 1-20; pg 94, lns 18-23; pg 95, lns 15-21; pg 96, ln 10 - pg 97, ln
27 10; pg 98, ln 18 - pg 101 ln 18. Mr. SPENCER's testimony is validated by the videotape of this
28 incident. Exhibit filed under separate pleading.

1 16. The call to Douglas County Sheriff's Office to which Deputy McKone responded was
2 not as represented, "because Helmut sustained injuries". Motion pg 7, ln 27-pg 8, ln 2. Mrs. Spencer
3 had already called 911 to report a trespasser and suspected vandal on their property as Mr. SPENCER
4 was pursuing the trespasser intending to effect a citizen's arrest and Deputy McKone was responding
5 to that call.

6 17. That HELMET KLEMENTI's description of the incident to Deputy McKone, which was
7 actually a collision, was made in "good faith" is directly disputed when viewed in the context of all the
8 events prior to and after that evening. Motion pg 8, lns 3-4. HELMUT KLEMENTI told the Deputy
9 that night that he was walking back to his home and Mr. SPENCER "struck him on the back then
10 knocked him to the ground. Motion Exhibit 7. He told medical transport that night he was "punched
11 in the chest"; Barton Memorial emergency physician he was "struck with fist to chest, fell backwards
12 striking head"; December 21, 2012 follow up doctor he was punched twice; and, April 4, 2013, follow
13 up doctor his neighbor "punched him very hard several times in the torso and he landed on the ground
14 hitting his head." Exhibit 2 medical records attached hereto.

15 18. through 20. While Mr. SPENCER does not dispute the statement what conclusions
16 Deputy McKone reached and upon which he acted, Mr. SPENCER does dispute those conclusions.
17 Motion pg 8, lns 5-17. Deputy McKone testified he had not obtained statements from all of the
18 persons present when or shortly after the officers arrived; he had not recorded any interview nor made
19 notes at the time so relied on his later recollection when using quotation marks as to what Mr.
20 SPENCER allegedly said; he had not taken any picture nor measurement of the evidence of a footprint
21 in the snow on the Spencer's property; he had not gone to the location from which Mr. SPENCER
22 said he had seen the intruder, believing Mr. SPENCER could not have seen the driveway from there,
23 even though later evidence showed he could; he had not questioned the alleged victim about Mr.
24 SPENCER's statement of attempting to effect a citizen's arrest of an unidentified trespasser apparently
25 breaking into his truck; and, he had no eyewitnesses to the supposed battery. Motion Exhibit 8, pgs
26 50-95.

27 21. While Mr. SPENCER does not dispute that HELMUT KLEMENTI obtained a
28 Temporary Order Against Stalking, Aggravated Stalking or Harassment, Mr. SPENCER does dispute

1 that there was any legitimate basis for such an order. Motion pg 8, lns 18-21. After hearings, the
2 Temporary Order was dissolved.

3 22. through 23. Mr. SPENCER does not dispute that HELMUT KLEMENTI attended the
4 Douglas County Planning Commission meeting on January 8, 2013, nor that HELMUT KLEMENTI
5 read a statement of allegations against Mr. SPENCER at that meeting, which statements had nothing
6 to do with the fence variance issue before the Commission. Motion pg 8, lns 22-28.

7 24. Mr. SPENCER does not dispute that he was charged with battery upon HELMUT
8 KLEMENTI with criminal charges filed. Motion pg 9, lns 1-4.

9 25. though 26. Mr. SPENCER does not dispute that former DA Pence testified to this Court
10 that it was the charging decision was solely hers, and that her decision to enhance the misdemeanor
11 to a felony was based upon her receipt of HELMUT KLEMENTI's medical records. Motion pg 9,
12 lns 5-14. Mr. SPENCER does dispute Ms. Pence's position that no witness to anything had any
13 involvement in nor were a cause of her charging decisions since she had to rely on something, that
14 something being the investigative reports, which included statements made by others to the
15 investigators. No DA decides to press criminal charges against an individual in a vacuum, so making
16 her claim that the persons who made statements to the deputies and officers, in person and/or in
17 writing and/or in presentation of claimed evidence, such as video records, had no connection to her
18 decision to charge is disingenuous.

19 27. Mr. SPENCER does not dispute that there was a preliminary hearing and criminal trial,
20 at each of which HELMUT KLEMENTI testified. Motion pg 9, lns 15-17. Even though that
21 testimony itself would not provide a basis for liability, some of that testimony is directly relevant, since
22 a change in one's story under oath may be a material fact as to the veracity and/or motivation and
23 intent of a witness.

24 28. Mr. SPENCER does not dispute that the identified statements made by HELMUT
25 KLEMENTI were made, but disputes that these were the only statements he made. Motion pg 9, ln
26 18 - pg 10, ln 1. Ms. Pence testified that she relied upon HELMUT KLEMENTI's medical records,
27 which includes statements made by HELMUT KLEMENTI to medical providers, changing and
28 contradicting other statements he made under oath.

1 **III. STANDARD OF REVIEW**

2 At the summary judgment stage, a Court's function is **not** to weigh the evidence and determine
3 the truth, but to determine whether there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*,
4 477 U.S. 242, 249 (1986). Further, the evidence of the nonmovant is "**to be believed, and all**
5 **justifiable inferences are to be drawn in his favor.**" *Id.* at 255, *emphasis added*.

6 In *Posadas*, the Nevada Supreme Court said: "Trial judges are to exercise great caution in
7 granting summary judgment, **which is not to be granted if there is the slightest doubt as to the**
8 **operative facts.**" *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438 (1993), citing to *Mullis*
9 *v. Nevada National Bank*, 98 Nev. 510, 512, 654 P.2d 533, 535 (1982), *emphasis added*.

10 **IV. LEGAL ANALYSIS**

11 **A. JEFFERY SPENCER HAS STATED A CLAIM FOR DEFAMATION**

12 Mr. SPENCER rebuts both the assertion of what facts underlie this claim and the argument
13 regarding the relevant legal authorities. Motion pg 11, ln 8-pg 9, ln 7. None of HELMUT
14 KLEMENTI's statements are subject to an absolute privilege, and many statements are not privileged
15 at all. Of equal importance, the law supports having the jury decide a claim of defamation.

16 Defamation is defined as "(1) a false and defamatory statement by [a] defendant concerning
17 the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least
18 negligence; and (4) actual or presumed damages." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706,
19 718, 57 P.3d 82 (2002). Publication occurs when the statement is communicated to a third person.
20 *M & R Investment Co. v. Mandarino*, 103 Nev. 711, 715, 748 P.2d 488 (1987).

21 **1. Defamatory Statements Made About JEFFERY SPENCER Prior to the**
22 **Initiation of the Criminal Proceeding Do Not Meet the Standard for a**
Qualified Privilege

23 Mr. SPENCER disputes the assertion that HELMET KLEMENTI's statements were protected
24 speech, and that malice cannot be proved. Motion pg 12, ln 8-pg 14, ln 15.

25 In *Pope V. Motel 6*, 121 Nev. 307, 114 P.3d 277, 282 (2005), the Nevada Supreme Court
26 addressed privilege in a defamation case regarding statements made to law enforcement, stating:

27 We have not previously decided if defamatory statements made to police before the
28 initiation of criminal proceedings are absolutely privileged or enjoy only a qualified
privilege. ...

1 The competing policies of safeguarding reputations and full disclosure are best served
2 by a **qualified privilege**. To the extent that we suggested in K-Mart that statements
3 made to police before the initiation of criminal proceedings could be deemed
“communications preliminary to a judicial proceeding” under the Restatement
(Second) of Torts, section 587, we recede from that premise.

4 *Id.*, P.3d at 282-283, *emphasis added*.

5 In *Circus Circus Hotels, Inc. v. Witherspoon*, 657 P.2d 101 (1983), a defamation case, the
6 Nevada Supreme Court addressed a qualified privilege, stating:

7 Whether a particular communication is conditionally privileged by being published on
8 a “**privileged occasion**” is a **question of law** for the court; **the burden then shifts**
9 to the plaintiff **to prove to the jury’s satisfaction** that the defendant abused the
privilege by publishing the communication with malice in fact. ... A conditional
10 privilege may be abused by publication in **bad faith, with spite or ill will or some**
other wrongful motivation toward the plaintiff, and without belief in the statement’s
probable truth.

11 *Id.* P.2d at 105, citing with approval to *Gallues v. Harrah’s Club*, 87 Nev. 624, 626 n.2 & 627, 491
12 P.2d 1276 (1971), *emphasis added*. As stated in the Nevada Constitution, Article 1, §9:

13 In all criminal prosecutions and civil actions for libels, the truth may be given in
14 evidence to the Jury; and if it shall appear to the Jury that the matter charged as
libelous is true and was published **with good motives and for justifiable ends**, the
15 party shall be acquitted or exonerated.

16 *Emphasis added*. Free speech does not come without limitations.

17 HELMUT KLEMENTI told Deputy McKone he was hit from behind as he was walking away
18 toward his brother’s home. He told the medical providers various versions, that he was hit from
19 behind, that he was punched in the chest, and that he was punched hard several times. His story
20 changed in the Preliminary Hearing and at trial. These statements are further contradicted by the
21 video which shows it was a collision when HELMET KLEMENTI he turned suddenly around and
22 collided with Mr. SPENCER. Although court testimony is not the basis for this claim, his changing
23 story goes directly to his veracity and his motives.

24 **2. Defamatory Statements Made About JEFFERY SPENCER Should
Properly Go to the Jury to Determine the Issues of Fact**

25 Mr. SPENCER disputes the assertion that HELMET KLEMENTI’s statements were subject
26 to an absolute privilege. Motion pg 14, ln 16-pg 17, ln 10.

27 HELMUT KLEMENTI only had a qualified privilege, and he abused that privilege. A
28 conditional privilege may be abused by publication in bad faith, with spite or ill will or some other

1 wrongful motivation toward the plaintiff, and without belief in the statement's probable truth.

2 The Nevada Supreme Court, reversing the District Court in *Branda v. Sanford*, 97 Nev. 643,
3 637 P.2d 1223 (1981), ruled that:

4 [While] it is a question of law and, therefore, within the province of the court, to
5 determine if a statement is capable of a defamatory construction ... **[i]f susceptible of
6 different constructions, one of which is defamatory, resolution of the ambiguity
7 is a question of fact for the jury.**

8 *Id.* at 646, *emphasis added*. In *Posadas*, the Nevada Supreme Court reaffirmed this ruling saying:

9 We conclude, as a matter of law, that the statement is capable of a defamatory
10 construction in that it imputes dishonest and possibly unlawful conduct to Posadas.
11 Accordingly, **a jury must be allowed to determine whether the statement has any
12 "basis in truth,"** Wellman, 108 Nev. at 88, 825 P.2d at 211, **since the truth or
13 falsity of an allegedly defamatory statement is an issue of fact properly left to the
14 jury for resolution.** 2 Nevada Ind. Broadcasting v. Allen, 99 Nev. 404, 413, 664 P.2d
15 337, 343 (1983).

16 *Posadas*, *supra* at 453, *emphasis added*.

17 In *Lubin v. Kunin*, 117 Nev. 107, 17 P.3d 422 (2001), the Nevada Supreme Court,
18 considering a statement regarding a lawsuit which had been filed but not yet tried nor resolved, ruled:

19 In reviewing an allegedly defamatory statement, "[t]he words must be reviewed **in
20 their entirety and in context** to determine whether they are susceptible of a
21 defamatory meaning." Chowdhry v. NLVH, Inc., 109 Nev. 478, 484, 851 P.2d 459,
22 463 (1993). Whether a statement is defamatory is generally a question of law;
23 however, **where a statement is "susceptible of different constructions, one of
24 which is defamatory, resolution of the ambiguity is a question of fact for the
25 jury."** *Posadas v. City of Reno*, 109 Nev. 448, 453, 851 P.2d 438, 442 (1993)
26 (quoting *Branda v. Sanford*, 97 Nev. 643, 646, 637 P.2d 1223, 1225-26 (1981)).

27 *Id.* P.3d at 426, *emphasis added*. The *Lubin* Court quoted to the Restatement (Second) of Torts:
28 Expressions of Opinion Section 566 comment b (1977):

[I]t may be actionable to state an opinion that plaintiff is a thief, if the statement is
made in such a way as to imply the existence of information which would prove
plaintiff to be a thief. In such situations, where a statement is ambiguous, the question
of whether it is a fact or evaluative opinion is left to the jury.

Id. P.3d at 426, *cites omitted*. This example is particularly relevant to this matter. Further, in *Meyer*
v. Johnson, 281 P.3d 1201 (Nev., 2009), citing to *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422,
425-26 (2001), the Nevada Supreme Court reaffirmed:

While the determination of whether a statement is defamatory is generally a question
of law, when there are different possible constructions of the statement, one of which
is defamatory and the other not, **the determination of whether it is defamatory is
left to the fact finder.**

1 In addition to the statements addressed above, HELMUT KLEMENTI attended a Douglas
2 County Planning meeting on January 8, 2013, and during the public comment took the opportunity
3 to say:

4 On Dec. 18th, I attended a KGID Board meeting about snow removal problems we
5 had with Mr. Spencer, snow plow driver ... After the meeting, I had dinner in my
6 twin brother and sister in law's house ... I offered to take a picture of the berm pushed
7 against my brother's fence on Charles Ave. before I drove home. While I was taking
8 the picture, all of a sudden, Mr. Spencer came down from his house screamig (sic)
9 and yelling, to the place I was standing. Mr. Spencer punched and assaulted me. He
went back to his house and left me laying on the ice, in the dark. I was in so much
pain because he broke a rib. I could not get up. The police, ambulance and fire
engine came and I was brought to Barton Memorial Hospital. Mr. Spencer was
arrested, put in handcuffs and was brought to jail four hours later, he was out on bail.
I have a restraining order at this time against him. ...

10 Motion Exhibits 10 & 11.

11 HELMUT KLEMENTI's statement is subject to a understanding that Mr. SPENCER was out
12 of control, horribly abusive, uncaring, a criminal, and an ongoing physical threat to an elderly man.
13 The yelling was out of context; Mr. SPENCER was first yelling for the trespasser and suspected
14 vandal to identify himself, and then yelling why HELMUT KLEMENTI had not identified himself
15 because then he never would have come out of his home and the collision would never have occurred.
16 The representation that HELMUT KLEMENTI was "punched" is not true, and this is not a matter
17 of semantics; the video shows that when HELMUT KLEMENTI suddenly turned around they
18 collided, and Mr. SPENCER has testified he was unable to stop on the icy street. Mr. SPENCER did
19 not callously walk away leaving an injured man alone in the dark on the street; he heard EGON
20 KLEMENTI speaking and Mr. SPENCER told them that 911 had already been called, after which
21 he returned to his home where he was advised to remain by the 911 operator. Mr. SPENCER was
22 not a criminal; criminal charges had not even been filed, and at trial Mr. SPENCER was acquitted of
23 all charges. Mr. SPENCER was not a threat to this elderly man; the restraining order was only a
24 "Temporary" order, issued without JEFFREY having an opportunity to respond to the accusations,
25 and after hearings that order was dissolved.

26 In addition, the Nevada Supreme Court in *Jacobs v. Adelson*, 130 Nev. Adv.Op. 44, 325 P.3d
27 1282, 1286 (2014), "recognized that communications are **not sufficiently related to judicial**
28 **proceedings when they are made to someone without an interest in the outcome.**" *See also, Fink*

1 v. *Oshins*, 118 Nev. 428, 436, 49 P.3d 640 (2002). The statements made to the Douglas County
2 Planning Commission and all the public present were made to those “without an interest in the
3 outcome” of either the criminal or the restraining order matters. They were made regarding a request
4 for a variance on a fence, a completely and totally unrelated matter, in a neighborhood where he did
5 not even live. HELMUT KLEMENTI had no privilege.

6 **3. Defamatory Statements About JEFFERY SPENCER Were Not**
7 **Substantially True Nor Expressions of Opinion; the Statements Were**
8 **Derogatory, Contemptible and Would Damage A Reputation**

9 Mr. SPENCER disputes the assertion that HELMET KLEMENTI’s statements were not
10 defamatory because they were “substantially true” and because they were a matter of opinion. Motion
11 pg 17, ln 11-pg 19, ln 21.

12 As addressed hereinabove in detail, Mr. SPENCER has testified he ran into and collided with
13 HELMUT KLEMENTI because HELMUT KLEMENTI suddenly turned and began walking toward
14 him, on an icy dark street at night, and he could not avoid the collision. HELMUT KLEMENTI has,
15 among other assertions, testified that Mr. SPENCER punched twice on the chest so hard he flew
16 backwards. This is not a “substantially true” statement, nor is it a matter of opinion. The video of that
17 encounter supports Mr. SPENCER’s statements and the matter should go to a jury.

18 The Nevada Supreme Court in *Posadas* defined a defamatory statement as follows:

19 [A] statement is defamatory when, “[u]nder any reasonable definition[,] such charges
20 would tend to lower the subject in the estimation of the community and to excite
21 derogatory opinions against him and to hold him up to contempt.” *Las Vegas Sun v.*
22 *Franklin*, 74 Nev. 282, 287, 329 P.2d 867, 869 (1958).

23 *Posadas*, *supra* at 453, *emphasis added*.

24 No one can reasonably dispute that the statements made to the Douglas County Sheriff on
25 December 18, 2012, to medical personnel, and at the Douglas County Planning Commission meeting
26 “would tend to lower the subject in the estimation of the community and to excite derogatory opinions
27 against him and to hold him up to contempt.” These statements were defamatory.

28 **4. Defamatory Statements About JEFFERY SPENCER Evidenced Actual**
Malice, With a Lack of Good Faith And/or Unrelated to the Litigation

In *Jacobs*, the Nevada Supreme Court reaffirmed *Fink*, that for the privilege to apply the
proceeding must be contemplated “in good faith” and the statement must be “related to the litigation”.

1 *Jacobs, supra* at 433-34. Further, as the *Posadas* Court said:

2 Reckless disregard for the truth may be defined as a high degree of awareness of the
3 probable falsity of a statement. It may be found where the defendant entertained
4 serious doubts as to the truth of the statement, but published it anyway. As such, it is
5 a subjective test, focusing on what the defendant believed and intended to convey, and
6 not what a reasonable person would have understood the message to be. **Evidence
of negligence, motive, and intent may cumulatively establish necessary
recklessness to prove actual malice** in a defamation action.

6 *Posadas, supra* at 455, *emphasis added*.

7 When Mr. and Mrs. SPENCER sought a variance for their fence, they had to give notice of
8 their request to all neighbors within a 300' radius around their home, which was 42 residences.
9 HELMUT KLEMENTI was not one of those neighbors. Of all those, his brother and sister-in-law
10 EGON and ELFRIEDE KLEMENTI, MARY ELLEN KINION, ROWENA and PETER SHAW,
11 and only four other neighbors made any objection, while eight neighbors supported the variance. Of
12 those who objected, the Third Party Defendants also made various accusations and defamatory
13 statements to the Douglas County Sheriff, KGID, the Douglas County DA, the Douglas County
14 Planning Commission, and mostly used their objections to defame Mr. SPENCER rather than
15 addressing the matter of the fence variance.

16 As addressed herein and in other pleading, HELMUT KLEMENTI and the Third Party
17 Defendants were dishonest in their reporting, and/or repeated dishonest reports of others in some cases
18 with no personal knowledge of the actual facts, and/or tampered with evidence. Even where there
19 may not be direct evidence of motive and intent, there is strong circumstantial evidence of motive and
20 intent, and there were certainly "cumulative actions".

21 Nevada criminal law provides that:

22 [In] all prosecutions for libel the truth may be given in evidence to the jury, and, **if it**
23 **shall appear to the jury that the matter charged as libelous is true and was**
24 **published for good motive and for justifiable ends, the party shall be acquitted,**
and the jury shall have the right to determine the law and the fact.

25 NRS §200.510(3), *emphasis added*. Although this is a civil case, not a prosecution for libel, the law
26 provides a guideline for evaluation of defamatory statements in conformity with the civil cases cited
27 hereinabove and the Nevada Constitution, Article 1, §9.

28 ///

1 The statements made by HELMUT KLEMENTI were not for any good motive nor for
2 justifiable ends. These statements were made as an attack on a private person, not a public figure, to
3 damage his reputation and standing, get his fence variance denied, and punish him for standing up for
4 his legal rights as against those individuals who behaved inappropriately.

5 **5. JEFFERY SPENCER Is Entitled to Damages for Defamation Per Se**

6 In *Branda*, the Nevada Supreme Court defined four categories of “slander per se”, actionable
7 without a showing of special damages, two of which are directly relevant to this matter: (1)
8 imputations that the person had committed a crime; and, (2) imputations that would injure the person’s
9 trade, business or office. *Branda, supra* at. 646. The defamatory statements made, before initiation
10 of any criminal proceeding and outside of and unconnected to the criminal proceeding, included
11 accusing Mr. SPENCER of crimes which he did not commit, and accusing him of being unfit for his
12 business or profession. This is defamation per se, for which Mr. SPENCER does not, as a matter of
13 law, have to even prove damages.

14 **B. JEFFERY SPENCER’S CLAIM FOR MALICIOUS PROSECUTION**
15 **SHOULD PROPERLY GO TO THE TRIER OF FACT - THE JURY**

16 Mr. SPENCER disputes the assertion that the claim of Malicious Prosecution fails as a matter
17 of law, and that HELMET KLEMENTI’s statements were “absolutely privileged.” Motion pg 20, ln
18 1-pg 24, ln 25.

19 *LaMantia v. Redisi*, 118 Nev. 27, 38 P.3d 877 (2002), identifies the elements of malicious
20 prosecution as:

- 21 1) initiating, procuring the institution of, or actively participating in the continuation
22 of a criminal proceeding;
23 2) malice, shown by statements made with the knowledge they were false and/or
24 making such statements with a reckless disregard for the truth;
25 3) termination of the criminal proceeding in favor of the accused; and
26 4) damages.

27 If the Motion’s argument is accepted, there is no such tort as malicious prosecution. The
28 former Deputy DA who testified to the Court said the Deputy DA assigned a case is the sole decider
of whether to initiate a criminal prosecution, and a DA is immune to suit for malicious prosecution.
That is not the law. By law, any individual (outside of law enforcement who have immunity) who can
be said to have acted for the purpose of “**procuring the institution of, or actively participating in**

1 **the continuation of a criminal proceeding”** can be liable for malicious prosecution.

2 Further, as addressed hereinabove, statements made prior to the initiation of a criminal
3 proceeding are only subject to qualified privilege, not absolute privilege. Malice can be inferred from
4 the statements made prior to any arrest or initiation of any criminal proceeding, which statements were
5 false and/or made with a reckless disregard for the truth as itemized hereinabove. Mr. SPENCER was
6 acquitted of all charges, but sustained harm in his business and/or profession, loss to his reputation,
7 good name and standing in the community as a result of the charges.

8 **C. JEFFERY SPENCER’S CLAIM FOR CIVIL CONSPIRACY SHOULD**
9 **PROPERLY GO TO THE TRIER OF FACT - THE JURY**

10 The Motion argues that based upon the arguments that there was no defamation or malicious
11 prosecution, and that “[t]here are no facts demonstrating the existence of an agreement”, so there can
12 be no claim for conspiracy. Motion pg 25, ln 1-pg 26, ln 11.

13 The sound legal basis for proceeding to trial on the defamation and malicious prosecution
14 claims is addressed hereinabove. The issue of the existence of an agreement between the
15 Counterdefendant and Third Party Defendants is not a question of law for the Court. As addressed
16 clearly and at length in *Short v. Hotel Riviera, Inc.*, 79 Nev. 94, 378 P.2d 979 (1963), with citations
17 to numerous cases over the years, the Nevada Supreme Court reversed a Summary Judgment on civil
18 conspiracy and remanded the matter for trial.

19 The *Short* Court stated:

20 It is true that in the discovery depositions witnesses categorically denied any concert
21 with others in the performance of the asserted acts constituting the conspiracy.

22 “We agree that there are cases in which a trial would be farcical. * * * **But where, as**
23 **here, credibility, including that of the defendant, is crucial, summary judgment**
24 **becomes improper and a trial indispensable.** It will not do, in such a case, to say
25 that, since the plaintiff, in the matter presented by his affidavits, has offered nothing
26 which discredits the honesty of the defendant, the latter’s deposition must be accepted
27 as true. **We think that Rule 56 was not designed thus to foreclose plaintiff’s**
28 **privilege of examining defendant at a trial,** especially as to matters peculiarly within
defendant’s knowledge. * * * We do not believe that, in a case in which the decision
must turn on the reliability of witnesses, the Supreme Court, by authorizing summary
judgments, intended to permit a ‘trial by affidavits,’ if either party objects. That
procedure which, so the historians tell us, began to be outmoded at common law in the
16th century, would, if now revived, often favor unduly the party with the more
ingenious and better paid lawyer. Grave injustice might easily result.”

Id. at 101, *cites omitted, emphasis added.*

1 The *Short* Court continued:

2 "It does not follow from the fact that there is no direct evidence ... that the motion for
3 summary judgment should be granted. * * * **It is for the triers of the facts to
determine how much of her testimony, if any, is to be accepted or rejected.**"

4 ...
5 "We have in this case one more regrettable instance of an effort to save time by an
improper reversion to 'trial by affidavit,' improper because there is involved an issue
6 of fact, turning on credibility. **Trial on oral testimony, with the opportunity to
examine and cross-examine witnesses in open court, has often been acclaimed as
one of the persistent, distinctive, and most valuable features of the common-law
7 system. For only in such a trial can the trier of the facts (trial judge or jury)
observe the witnesses' demeanor; and that demeanor--absent, of course, when
trial is by affidavit or deposition--is recognized as an important clue to witness'
8 credibility. When, then, as here, the ascertainment (as near as may be) of the
facts of a case turns on credibility, a triable issue of fact exists, and the granting
9 of a summary judgment is error. * * *** Particularly where, as here, the facts are
peculiarly in the knowledge of defendants or their witnesses, should the plaintiff have
10 the opportunity to impeach them at trial; and their demeanor may be the most effective
impeachment. Indeed, it has been said that a witness' demeanor is a kind of 'real
11 evidence'; obviously such 'real evidence' cannot be included in affidavits."

12 *Id.* at 102, *cites omitted, emphasis added.*

13 The *Short* Court quotes to several federal, including U.S. Supreme Court, cases as follows:

14 **"A court is not at liberty to engage in a credibility evaluation for the purposes of
a summary judgment."**

15 ...
16 **"Summary judgment should not be granted if there remains a genuine issue of
material fact, and credibility of witnesses or of parties may be such genuine
issue."**

17 ...
18 **"In cases of this kind where no single factor controls the equation, and the court is
necessarily required to resolve the question of alleged intent in arriving at its judgment,
we are of the opinion that justice can best be served by a trial of the question on its
19 merits." Scores of cases are in accord with these views.**

20 *Id.* at 102-103, *cites omitted, emphasis added.*

21 Citing to Rule 56, the *Short* Court stated:

22 **The rule is of course well recognized that in deciding the propriety of a summary
judgment all evidence favorable to the party against whom such summary
23 judgment was rendered will be accepted as true. ...**

24 Rule 56 authorizes summary judgment only where the moving party is entitled to
judgment as a matter of law, where it is quite clear what the truth is, that no genuine
issue remains for trial, and that the purpose of the rule is not to cut litigants off from
25 their right of trial by jury if they really have issues to try. *Sartor v. Arkansas Gas
Corp.*, 321 U.S. 620, 64 S.Ct. 724, 88 L.Ed. 967. In *McColl v. Scherer*, 73 Nev.
26 226, 231-232, 315 P.2d 807, we for the second time approved the language of a
federal case to the effect that **the trial judge should exercise great care in granting
27 motions for summary judgment, and held that a litigant has a right to trial where
there is the slightest doubt as to the facts.** In 6 *Moore*, Federal Practice, 2070, it
28 is said that in such motions **'the trial court should not pass upon the credibility of**

1 **opposing affidavits, unless the evidence tendered by them is too incredible to be**
2 **accepted by reasonable minds.’ And the burden of establishing the lack of a**
3 **triable issue of fact is upon the moving party. 6 Moore, Federal Practice, 2070.**

4 *Id.* at 103, *cites omitted, emphasis added.*

5 The *Short* Court, quoting from 11 Am.Jur. 578, Conspiracy §46, and U.S. Supreme Court
6 cases, and citing to several other cases from several other states, observed:

7 “A more reasonable view, however, is that where an act done by an individual, though
8 harmful to another, is not actionable because justified by his rights, yet the same act
9 becomes actionable when committed in pursuance of a combination of persons
10 actuated by malicious motives and not having the same justification as the individual.”

11 ...
12 The United States Supreme Court has thus stated the rule: “**An act lawful when done**
13 **by one may become wrongful when done by many acting in concert, taking on the**
14 **form of a conspiracy which may be prohibited if the result be hurtful to the public**
15 **or to the individual against whom the concerted action is directed.**”

16 ...
17 When an act done by an individual is not actionable because justified by his rights,
18 though harmful to another, such act becomes actionable when done in pursuance of
19 combination of persons actuated by malicious motives and not having same
20 justification as the individual.

21 *Id.* at 105-106, *cites omitted, emphasis added.*

22 In conclusion, the *Short* Court ruled:

23 **Many other cases could be cited. The great weight of authority is in support of**
24 **the rule last discussed and we accept the same as the correct one.**

25 *Id.* at 106, *emphasis added.* After remand and trial, at which *Short* prevailed, there was an appeal
26 of the judgment in *Hotel Riviera, Inc. v. Short*, 80 Nev. 505, 396 P.2d 855 (1964). On the appeal,
27 the Court ruled: “The judgment and order denying new trial are affirmed with costs.” *Id.* at 521.

28 In this case, numerous statements were disseminated by the Counterdefendant and Third Party
29 Defendants which could have no purpose other than to harm Mr. SPENCER to have his fence
30 variance request denied, to compromise his employment, to cause him to suffer public disgrace of
31 being called a criminal and abuser of the elderly, and to compel him to endure criminal charges and
32 trial. Whether each act was done with explicit or tacit agreement would be a question for the jury.
33 To publically accuse another of a crime, especially a heinous crime of attacking an elderly person,
34 when a jury has since ruled there was no such crime, and to publically accuse another of deliberately
35 creating hardships for elderly neighbors by berming them into their homes, when there was never was
36 any evidence other than controverted testimony of any such act, a jury can infer malice.

1 **D. JEFFERY SPENCER SHOULD HAVE THE RIGHT TO CLAIM**
2 **PUNITIVE DAMAGES AT TRIAL**

3 Mr. SPENCER does not dispute that this is just a measure of damages, which would be
4 addressed at time of trial. Motion pg 26, ln 12-pg 28, ln 28.

5 **E. JEFFERY SPENCER'S CLAIM FOR INFLICTION OF EMOTIONAL**
6 **DISTRESS PROPERLY GO TO THE TRIER OF FACT - THE JURY**

7 The Motion argues that HELMUT KLEMENTI's conduct was not extreme and outrageous
8 or done with a reckless disregard, and there is no evidence Mr. SPENCER has not presented evidence
9 of severe or extreme emotional distress. Motion pg 29, ln 1-pg 31, ln 28.

10 Mr. SPENCER would refer to the facts and evidence cited hereinabove. HELMUT
11 KLEMENTI did not just report a crime and make a statement of what happened to him.

12 In *Star v. Rabello*, 97 Nev. 124, 125, 625 P.2d 90 (1981), the Nevada Supreme Court stated:

13 Generally, the elements of this cause of action are (1) extreme and outrageous conduct
14 with either the intention of, or reckless disregard for, causing emotional distress, (2)
15 the plaintiff's having suffered severe or extreme emotional distress and (3) actual or
16 proximate causation.

17 In *Branda*, a case alleging slander and intentional infliction of emotional distress in which a
18 Summary Judgment ruling was reversed, the Nevada Supreme Court held:

19 **The jury was entitled to determine**, considering prevailing circumstances,
20 contemporary attitudes and [the appellant's] own susceptibility, **whether the conduct**
21 **in question constituted extreme outrage.**

22 *Branda, supra* at 649, *emphasis added*. The *Posadas* Court reiterated this ruling, stating:

23 Whether the issuance of a press release which could be interpreted as stating that a
24 police officer committed perjury **is extreme and outrageous conduct is a question**
25 **for the jury. The jury should also make the factual determination, similar to the**
26 **"actual malice" determination in Posadas's defamation claim,** whether the press
27 release was intended to cause emotional distress or whether it was issued with reckless
28 disregard as to such a probability.

29 *Posadas, supra* at 456, *emphasis added*.

30 The *Posadas* Court went on to rule:

31 *Posadas's* affidavit asserts that, as a result of the press release, he "was subjected to
32 great ridicule and embarrassment" and was harmed both professionally and personally.
33 His affidavit also asserts that, as a result of the entire incident, he suffered "severe
34 emotional distress as evidenced by depression and physical ailments that have required
35 hospitalization," and he "sought the assistance of both medical and psychological
36 professionals to deal with the physical and psychological symptoms."

1 We conclude that genuine issues of material fact remain concerning Posadas's claim
2 for intentional infliction of emotional distress which precludes summary judgment.
3 Posadas supplied sufficient evidence during the summary judgment proceeding to raise
4 the issues of whether the press release constituted extreme and outrageous conduct,
5 whether the press release was issued with the intent of, or reckless disregard for,
6 causing emotional distress, and whether Posadas suffered severe and extreme
7 emotional distress occasioned by the press release. **These are questions for a jury,**
8 **and the district court erred in deciding them in a summary proceeding.**

9 *Id.* at 456, *emphasis added*.

10 Mr. SPENCER has actually suffered from the actions against him. The report of Dana
11 Anderson, MFT, diagnosed Mr. SPENCER as suffering from PTSD, and provides a long list of
12 symptoms. Motion, Exhibit 14. The report of Gastroenterology Consultants reflects Mr. SPENCER
13 being referred for “nausea and vomiting; GERD and dysphagia” and also reported symptoms of
14 persistent infections, choking episodes, heartburn, abdominal pain, fainting, anxiety and depression.
15 Motion Exhibit 15.

16 While Mr. SPENCER had GERD for over 15 years, which can cause heartburn and
17 regurgitation, it had been well controlled with diet modification and occasion use of Tums prior to the
18 matters in issue here. That he had a pre-existing condition does not make the claim invalid. All law
19 students learn about the “eggshell head” plaintiff; if one causes injury to a person it does not excuse
20 the behavior because the person had a pre-existing condition that made him susceptible to the injury.
21 Further, the vomiting and diarrhea was not a pre-existing condition. In addition, Mr. SPENCER’s
22 primary care physician, Dr. Steinmetz, who has been treating him since October 1, 2014, reported
23 high blood pressure and a poor immune response which she attributed to the “extreme stress” from
24 problems with his neighbors. Exhibit 3 attached hereto. These are all physical manifestations of the
25 emotional distress, and whether this is sufficient evidence of an emotional distress claim is a matter
26 for the jury.


27 **Conclusion**

28 JEFFERY SPENCER has demonstrated numerous genuine issues of fact to support his claims.
NRCP 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986). Pursuant to Nevada law he
should be given the opportunity to make his case before a jury as the fact finder. The Motion for
Summary Judgment should be denied.

1 The undersigned affirms pursuant to NRS §239B.030 that this pleading does not contain the
2 social security number of any person.

3 DATED this 1st day of June, 2018.

4
5 /s/
6 WILLIAM J. ROUTSIS, II, Esq.
7 Nevada State Bar No. 5474
8 1070 Monroe Street
9 Reno, Nevada 89509
10 Phone 775-337-2609/Fax 775-737-9321
11 *Attorneys for Counterclaimant/Third Party Plaintiff Jeffrey D. Spencer*


LYNN G. PIERCE, Esq.
Nevada State Bar No. 3567
515 Court Street, Suite 2f
Reno, Nevada 89501
Phone 775-785-9100/Fax 775-785-9110

1 CERTIFICATE OF SERVICE

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

6 Douglas R. Brown, Esq.
7 Christian L. Moore, Esq.
8 Lemons, Grundy & Eisenberg
9 6005 Plumas Street, Suite 300
Reno, NV 89519
Attorneys for Helmut Klementi

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

10 Michael A. Pinter, Esq.
11 Glogovac & Pinter
12 427 W. Plumb Lane
13 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
Attorney for Jeffrey D. Spencer

14 DATED this 1st day of June, 2018.

15 
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23
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28

EXHIBIT LIST

- Exhibit 1 Declaration of Jeffrey D. Spencer
- Exhibit 2 Medical Records of HELMUT KLEMENTI
- Exhibit 3 Letter from Mr. SPENCER's primary care physician Dr. Steinmetz

Exhibit 1

Exhibit 1

Declaration of Jeffrey D. Spencer

Pursuant to NRS §53.045(1), I, Jeffrey D. Spencer, declare under penalty of perjury, that:

1. I am the Counter and Third Party Plaintiff in this matter.
2. The medical records of Helmut Klementi attached hereto as Exhibit 2 are true and correct copies of records produced by him in this matter.
3. The letter from my primary care physician Dr. Steinmetz attached hereto as Exhibit 3 is a true and correct copy of her letter which describes some of my medical problems which have resulted from the matters at issue with the Counter and Third Party Defendants in this matter.
4. I have reviewed the foregoing statements are true of my own knowledge, except for those matters stated therein upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 1st day of June, 2018, in Harps, Kansas.

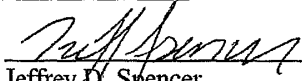

Jeffrey D. Spencer

Exhibit 2

Exhibit 2

2101	B. Spry	C-Spine	N/A	1	No
		Precautions-Immobilization			
2110	W. Morgan	IV Start (Bag)	N/A	1	No
2105	B. Cranch	Oxygen	4.00 LPM INH	1	No
2112	W. Morgan	EKG monitor	N/A	1	No
2121	W. Morgan	Blood Glucose	N/A	1	No

Narrative History Text:

MATCHING NUMBER:161

E23 AND R23 DISPATCHED TO ABOVE LOCATION FOR AN ASSAULT. UNITS ARRIVE ON SCENE AND MET WITH DCSO. PT CONTACT MADE IN THE MIDDLE OF THE STREET.

PER DCSO, THE PT GOT INTO AN ALTERCATION WITH A NEIGHBOR. THE PT WAS PUNCHED IN THE CHEST BY THE NEIGHBOR AND THEN FELL ON THE ICE ONTO HIS BACK. THE PT WAS AOX4 UPON DCSO ARRIVAL. THE PT STATES THE FOLLOWING: THE PT WAS OUTSIDE HIS BROTHER-IN-LAW'S HOUSE TAKING PICTURES OF THE HOUSE WHEN A NEIGHBOR CAME OUTSIDE TO SEE WHO THE PT WAS. THE PT TRIED TO EXPLAIN WHO HE WAS. THE NEIGHBOR GOT ANGRY AT THE PT. THE NEIGHBOR THEN PUNCHED THE PT ONCE IN THE CHEST. WHEN THE PT WAS HIT IN THE CHEST, HE SLIPPED AND FELL BACK ONTO HIS BACK ON THE ICE. THE PT REMEMBERS THE WHOLE EVENT AND DENIES LOC. THE PT DID NOT HIT HIS HEAD. 911 WAS CALLED BY ANOTHER NEIGHBOR. THE PT IS A RESIDENT OF LAKE TAHOE. THE PT HAS THE MEDICAL HX AS ABOVE, NKDA, AND TAKES THE MEDICATIONS AS ABOVE. THE PT HAS STOPPED TAKING LISINAPRIL RECENTLY BECAUSE HIS DOCTOR SAID HE DID NOT NEED TO TAKE IT ANYMORE. THE PT DOES NOT SMOKE AND DRINKS SOCIALLY. THE PT DENIES ANY RECENT TRAUMA BESIDES THIS EVENT AND DENIES RECENT SURGERIES.

UPON PT CONTACT WE FIND A 78 YO MALE LYING SUPINE ON THE GROUND IN THE MIDDLE OF THE ROAD ON ICE. THE PT APPEARS TO BE IN MINOR DISTRESS. THE PT STATES HE HAS L RIB PAIN, 7/10 DESCRIBED AS "SHARP" THAT RADIATES TO HIS BACK. THE PT ALSO HAS R SHOULDER PAIN NON RADIATING, AND L KNEE PAIN NON RADIATING. THE PT STATES THAT HIS L RIBS HURT THE MOST. THE PT STATES THAT IT HURTS TO TAKE A DEEP BREATH DUE TO THE RIB PAIN. THE PT DENIES ANY LOC, DENIES ANY CHEST PAIN, DENIES HA, NV, BLURRED VISION, OR DIZZINESS. THE PT WISHES TO BE TRANSPORTED TO THE HOSPITAL.

CARDIAC- WNL

RESP- HYPERVENTILATION, NO OBVIOUS INCREASE WOB, BBS CTA, AIRWAY OPENED AND MAINTAINED BY PT. CNS- AOX4, GCS15, CMS X4, PUPILS ERRL 4MM, CLEAR SPEECH WITHOUT SLURRED WORDS, MOVES ALL EXTREMITIES WELL.

HEENT- NO OBVIOUS TRAUMA OR INJURY TO HEAD. EARS AND NOSE CLEAR. MOUTH CLEAR.

NECK- UNREMARKABLE.

SHOULDERS- NEG DCAPBTLS, GOOD MOVEMENT OF R SHOULDER

CHEST- CHEST WALL STABLE. EQUAL RISE AND FALL. NEG DCAPBTLS

BACK- UNREMARKABLE.

ABN- SOFT, NON-TENDER, NO OBVIOUS INJURY OR TRAUMA.

PELVIS- STABLE, NO EVIDENCE OF INCONTINENCE.

REMAINING SECONDARY UNREMARKABLE.

PT ASSESSED. C-SPINE PRECAUTIONS TAKEN AS BELOW. RAPID TRAUMA ASSESSMENT DONE WITH FINDINGS ABOVE. PT WITH GOOD CMS X4 PRE AND POST BACKBOARD. PT MOVED ONTO BACKBOARD. PT SECURED TO BACKBOARD. PT MOVED TO GURNEY AND SECURED TO GURNEY. PT MOVED TO THE BACK OF R23 AND LOADED INTO THE AMBULANCE. EMS REMOVED PT'S JACKET AND OUTER LAYER OF HIS SHIRT. VITALS TAKEN. O2 AS BELOW. EMS BEGAN COACHING PT ON SLOWING HIS BREATHING DOWN.

RX- AT 21:00:00 MORGAN, WILLIAM PROVIDED THE FOLLOWING: ALS ASSESSMENT AOX4, GCS 15

AT 21:01:00 SPRY, BRANDON PROVIDED THE FOLLOWING: C-SPINE PRECAUTIONS-IMMOBILIZATION CMS X4 PRE AND POST BACKBOARD

AT 21:05:00 CRANCH, BRYCE PROVIDED THE FOLLOWING: OXYGEN 4.0 LPM INHALATION VIA NC

AT 21:10:00 MORGAN, WILLIAM PROVIDED THE FOLLOWING: IV START (BAG) GAUGE:20G

LOCATION: L FOREARM

FLUID: 1000ML 0.9% NS

TOTAL INFUSED: 50ML

AT 21:12:00 MORGAN, WILLIAM PROVIDED THE FOLLOWING: EKG MONITOR NSR @ 86 BPM

AT 21:21:00 MORGAN, WILLIAM PROVIDED THE FOLLOWING: BLOOD GLUCOSE VIA IV START

EN ROUTE TO BARTON HOSPITAL. IV START AS ABOVE. MONITOR AS ABOVE. SECONDARY ASSESSMENT DONE WITH UNREMARKABLE RESULTS. EMS CONTINUE TO COACH PT ON HIS BREATHING. BBS CTA THROUGHOUT. WHEN ASKED IF PT WANTS PAIN MEDICINE, PT STATES "ABSOLUTELY NOT." PT STATES THAT HIS L RIBS ARE STILL THE MOST PAINFUL THING HE IS FEELING 7/10. PT CARRIED ON CASUAL CONVERSATION WITH EMS THROUGHOUT. PT BREATHING HAS SLOWED DOWN TO A NORMAL RATE. A TOTAL OF A 50ML OF 0.9% NS INFUSED EN ROUTE TO BARTON. REPORT CALLED TO BARTON WITH NO FURTHER ORDERS. U/A AT BARTON, PT TAKEN TO ROOM 4A. REPORT AND CARE TRANSFERRED TO RN HOWARD. PT UNABLE TO SIGN DUE TO BEING IN C-SPINE PRECAUTIONS.

Physician Documentation

Name: Helmut Klementi

Age: 78 years Sex: Male DOB: 04/11/1934

Arrival Date: 12/18/2012 Time: 21:30

Bed RAD-READY

Barton Memorial Hospital

MRN: 006375

Account#: 101080624

Private MD:

HPI:

12/18 Trauma demographics: Location of Injury: The injury occurred outdoors, Date: December 18, 2012. Onset: tj
22:01 The symptoms/episode began/occurred acutely, just prior to arrival. Associated injuries: The patient sustained injury to the head, pain, neck injury, decreased range of motion, pain, injury to the chest, specifically the left anterior chest, injury to the abdomen, specifically the anterior aspect of left lateral abdomen, posterior aspect of left lateral abdomen and left upper quadrant. Mechanism of injury: Alleged assault: with struck with fist to chest, fell backwards striking head, by neighbor. Details of fall: The patient fell from an upright position, while standing. Severity of symptoms: At their worst the symptoms were moderate, just prior to arrival, in the emergency department the symptoms are unchanged. Associated signs and symptoms: Loss of consciousness: the patient experienced no loss of consciousness, Pertinent positives: headache, neck pain. The patient has not experienced similar episode(s) in the past. The patient has not recently seen a physician.

Historical:

- **Allergies:** NKDA (No Known Drug Allergies)
- **Home Meds:**
 1. Simvastatin PO
- **PMHx:** Hypertension; High Cholesterol
- **Immunization history::** H1N1 Vaccine: No, pt did not receive within the past year..
- **The history from nurses notes was reviewed:** and I generally agree with what's documented up to this point..
- **Social history::** The patient lives with family, The patient denies tobacco use, uses alcohol: but reports only rare drinking, denies use of street drugs, The patient / family speaks fluent English,.
- **Family history::** Not pertinent.

ROS:

22:17 **Eyes:** Negative for injury, pain, redness, and discharge. **Skin:** Negative for injury, rash, and discoloration. tj
Constitutional: Negative for fever, chills. **Neck:** Positive for as noted above. **Cardiovascular:** Positive for chest pain. **Respiratory:** Positive for L SIDE CP W RESOP. **Abdomen/GI:** Positive for abdominal pain, of the left upper quadrant, Negative for nausea, vomiting. **Neuro:** Negative for altered mental status. **Psych:** Negative for acute changes.

12/19 **Back:** Negative for pain with movement, vertebral tenderness. **MS/extremity:** Negative for acute changes, php
00:38 injury or acute deformity, pain. **Skin:** Negative for abrasions, ecchymosis.

Exam:

12/18

22:18 **Cardiovascular:** Normal heart sounds with no murmurs, rubs, or gallop.
Skin: Warm, dry with normal turgor. Normal color with no rashes, no lesions.
Neuro: Awake and alert, oriented x4, moves all four without difficulty
Psych: Awake, alert, with orientation to person, place and time. Behavior, mood, and affect are within normal limits.
Constitutional: The patient appears alert, awake, uncomfortable.
Head/face: Exam is negative for mid-face instability, jaw pain or instability.
ENT: Nose: is normal, Mouth: all normal.
Neck: Inspection: no obvious abnormalities, C-spine: Back board PTA C-collar placed PTA, vertebral tenderness, appreciated at C4 and C5.
Resp: Resp/effort: even and unlabored, chest movement is symmetrical, Breath sounds: clear, throughout.
Chest/axilla: Inspection: normal chest wall excursion, Palpation: no crepitus is appreciated, tender in the left anterior chest.
Abdomen/GI: Inspection: abdomen appears normal, distension, is not seen, Bowel sounds: normal, in all quadrants, Palpation: soft, moderate abdominal tenderness, in the left upper quadrant, voluntary guarding.

php

12/19

00:37 **Neck:** ROM/movement: is supple, Trachea: is midline with no obvious abnormalities.

Physician Documentation Con't.

Cardiovascular: Heart sounds: normal, rate is 78bpm, rhythm is regular.

Back: vertebral tenderness, not appreciated.

Skin: Rash: is not appreciated.

Musculoskeletal/extremity: Exam is negative for injury, pain, swelling, tenderness.

Neuro: Orientation: appropriate for stated age, to person, place & time. Mentation: appropriate for stated age, lucid, Motor/peripheral: moves all fours, Cranial nerves: CN II- XII are normal as tested.

00:39

php

Head/face: Exam is negative for laceration(s), Noted is contusion, of the left side of the back of head.

Eyes: Pupils: equal, round, and reactive to light, Lids and lashes: appear normal, bilaterally. Extraocular movements: intact throughout. Conjunctiva: normal.

Vital Signs:

Time	B/P	Pulse	Resp	Temp	Pulse Ox	Weight	Height	Pain	Staff
12/18	172 / 88	83	24	97.2	96% on R/A	77.10Kg /	5 ft. 10 in.	8/10	ab
21:34						170.01Lbs (R)	(177.80 cm) (R)		
22:28	158 / 82	80	22		98% on R/A			8/10	ab
23:32	148 / 88	78	18		96% on R/A			6/10	ab
12/19	142 / 80	78	16	97.8(T)	97% on R/A			3/10	ab
00:46									

12/18 REFUSES PAIN MED

ab

23:32 MORE COMFORTABLE NOW WITHOUT BACKBOARD AND C COLLAR, STILL NOT WANTING PAIN MEDS

ab

Glasgow Coma Score:

Time	Eye Response	Verbal Response	Motor Response	Modifying Factors	Total	Staff
21:35	spontaneous(4)	oriented(5)	obeys commands(6)		15	ab

Procedures:

22:00 **ULTRASOUND** Indication: blunt trauma. FAST exam for trauma Morrison's view is negative for free fluid in Morrison's pouch. splenic view is negative for free fluid in the splenorenal junction. bladder view is negative for free fluid outside the urinary bladder not distended cardiac view is negative for pericardial effusion.

tj

MDM:

21:31 Patient medically screened.

tj

22:19

tj

Transition of care: After a detail discussion of the patient's case, care is transferred to PROTELL.

23:23 Registration complete.

lt2

12/19

php

00:34

Differential diagnosis: intra-abdominal injury, closed head injury, C spine fracture, Rib fracture.

Counseling: I had a detailed discussion with the patient and/or guardian regarding: the historical points, exam findings, and any diagnostic results supporting the discharge or admit diagnosis, the need to return to the emergency department if symptoms worsen or persist or if there are any questions or concerns that arise at home as well as specific warning signs or symptoms that should prompt immediate return to this or the nearest ER, the need for outpatient follow up within 2 to 3 days, Or with the Barton clinic.

INFUSION INTENT: Hydration, under my direct supervision, done to treat dehydration. Patient was signed out to me by my colleague Dr. Jantos. 4 mild physical examination of the patient's which agrees with Dr. Jantos his examination above the CT scans were negative as noted above. The patient is able to ambulate without difficulty. He continues to have some left-sided chest wall pain consistent with a rib contusion is

Name: Helmut Klementi

MRN: 006375
Account#: 101080624
Page 2 of 3

Physician Documentation Con't.

given a dose of 800 mg of Motrin. He is discharged with outpatient course of Motrin. Followup with his primary care physician.

Time	Order name	Complete Time	Staff
21:50	CBC	23:23	tj
21:50	Interpretation: no significant abnormalities noted		php
21:50	CHEM 7 / BMP	23:23	tj
21:50	Interpretation: hyperglycemia		php
21:31	CT HEAD	23:36	tj
21:31	Interpretation: neg, by nighthawk.		php
21:31	CT C-SPINE	23:36	tj
21:31	Interpretation: neg, by nighthawk		php
22:00	CTab&pel IV contrast only	23:36	tj
22:00	Interpretation: neg for acute injury/ process per nighthawk		php
22:00	CTchestTrauma W/C	00:33	tj
22:00	Interpretation: NEG PER RAD REPORT		php
00:46	Ibuprofen 800 mg PO now X 1 (for pain)		ab
23:20	Cancel Lab	23:28	php
21:54	TRAUMA MODIFIED Activation	21:58	tj
00:33	RN NOTE: incentive spirometer with teaching	00:45	php

Dispensed Medications:

Time	Drug	Dose/Amt	Fluid	Route	Rate	Site	Delivery	Staff
00:15	Ibuprofen	800 mg		By Mouth				ab
00:47	Follow up to Ibuprofen at 2012/12/19 00:15:00 - Response: No Adverse Reaction; Pain is decreased							ab

Disposition:

00:37 Problem is new. Symptoms have improved.

php

Impression: Chest Contusion Rib Injury, Assault. Patient discharged to Home in Stable condition with instructions on Assault, General, Bruise Contusion Hematoma, Bruised Ribs, a prescription for Motrin 600mg #30 tab 1 tablet by mouth every 6 hours for pain. Follow up: Primary Care Doctor 3-4 days.

Signatures:

Dispatcher MedHost	EDMS	Neumann, Howard, RN	RN	hn1
Jantos, Thomas, MD	MD tj	Borgman, Aran, RN	RN	ab
Guinee, Aaron, RN	RN ag	Thornton, Liz		lt2
Protell, Peter, MD	MD php			

Name: Helmut Klementi

MRN: 006375
Account#: 101080624
Page 3 of 3

6 AA 1277

Helmut Klementi
12/21/2012 9:45 AM Office Visit
MRN: 4037977

Description: 78 year old male
Provider: Paul W Rork, M.D.
Department: Barton Urgent Care

Reason for Visit

Follow-Up BMH ER visit. Assault 12/18/12 by neighbor. punched in abdomen

Reason For Visit History Recorded

Diagnoses

Shoulder pain - Primary	719.41
Multiple contusions	924.8

BMI Data

Body Mass Index	Body Surface Area
26.26 kg/m ²	2.02 m ²

Problem List as of 12/21/2012

Date Reviewed: 11/27/2012

	Codes	Priority	Class	Noted - Resolved
HTN (hypertension)	401.9			Unknown - Present
Anxiety	300.00			Unknown - Present
Nasal septal deviation	470			Unknown - Present
Prostate cancer	185			Unknown - Present
High cholesterol	272.0			Unknown - Present
Osteoporosis	733.00			Unknown - Present
Increased glucose level	790.29			Unknown - Present
DM type 2 (diabetes mellitus, type 2)	250.00			Unknown - Present
Calciuria	791.9			Unknown - Present

Overview Signed 11/25/2012 3:49 PM by Lauren M. Eades, Med Ass't
hyper

Allergies as of 12/21/2012

Reviewed on: 12/21/2012

No Known Allergies

Immunizations

Name	Date
Influenza Vaccine Adult	10/06/09
Influenza Vaccine Adult	10/01/08
MMR Vaccine	01/01/04
Tetanus Vaccine	09/08/07

Vitals - Last Recorded

BP	Pulse	Temp	Resp	Ht	Wt	BMI	SpO2
120/72	85	98.8 °F (37.1 °C)	16	5' 10" (177.8 cm)	183 lb (83.008 kg)	26.26 kg/m ²	96%

Goals (5 Years of Data)

None

History

Last Reviewed by Sami L. Miller, Med Ass't on 2/5/2013 at 1:47 PM

Sections Reviewed

Tobacco

Social History**Substances and Sexuality**

Smoking Status	Amount
Never Smoker	N/A

Smokeless Tobacco Status
Never Used

Alcohol Use	Amount
Yes	3.5 oz per week. 7 drinks per week

Drug Use	Frequency	Types
No	N/A	

Sexually Active	Partners
No	N/A

Medications**Medications the Patient Reported Taking**

hydrocodone-acetaminophen (NORCO) 7.5-325 MG per tablet (Taking/Discontinued)

Medications at Start of Encounter

	Disp	Refills	Start	End
simvastatin (ZOCOR) 40 MG TABS	90 Tab	3	11/27/2012	
Sig - Route: Take 1 Tab by mouth every evening. - Oral				
hydrochlorothiazide (HYDRODIURIL) 25 MG TABS	90 Tab	3	11/27/2012	
Sig - Route: Take 1 Tab by mouth every day. - Oral				
alendronate (FOSAMAX) 70 MG TABS	12 Tab	4	11/27/2012	
Sig - Route: Take 1 Tab by mouth every 7 days. - Oral				
aspirin (ASA) 325 MG TABS				
Sig - Route: Take 325 mg by mouth every day. - Oral				
Class: Historical Med				
alprazolam (XANAX) 0.5 MG TABS				
Sig - Route: Take 0.5 mg by mouth at bedtime as needed. - Oral				
Class: Historical Med				
lisinopril (PRINIVIL) 10 MG TABS				
Sig - Route: Take 5 mg by mouth every day. - Oral				
Class: Historical Med				

Medications (continued)

Medications Last Reviewed During Encounter By (continued)

STEVEN L BROOKS, M.D. on 12/27/2012 at 9:42 AM

Reviewed Medications

Outpatient Medications	Ordered On	Taking
aspirin (ASA) 325 MG TABS	11/25/2012	No
alprazolam (XANAX) 0.5 MG TABS	11/25/2012	No
lisinopril (PRINIVIL) 10 MG TABS	11/25/2012	No
cholecalciferol (HM VITAMIN D3) 4000 UNITS CAPS	11/25/2012	No
simvastatin (ZOCOR) 40 MG TABS	11/27/2012	No
hydrochlorothiazide (HYDRODIURIL) 25 MG TABS	11/27/2012	No
alendronate (FOSAMAX) 70 MG TABS	11/27/2012	No
ibuprofen (MOTRIN) 600 MG TABS	12/21/2012	No
hydrocodone-acetaminophen (NORCO) 7.5-325 MG per tablet	12/26/2012	No

Medications Ordered This Encounter

	Disp	Refills	Start	End
hydrocodone-acetaminophen (NORCO) 7.5-325 MG per tablet (Discontinued)	30 Tab	2	12/27/2012	1/8/2013
Take 1-2 Tabs by mouth every four hours as needed for Mild Pain. - Oral				

Orders

Orders Placed This Encounter

AMB REFERRAL TO GENERAL SURGERY [AMB66022 Custom]
DX-RIBS-UNILATERAL (WITH 1-VIEW CXR) [71101 Custom]
DX-SHOULDER 2+ [73030 Custom]

Results are available for this encounter

All Results

DX-RIBS-UNILATERAL (WITH 1-VIEW CXR) [62584248] Resulted: 12/27/12 0000, Result Status: Final result

DX-SHOULDER 2+ [62585978] Resulted: 12/27/12 0000, Result Status: Final result

Progress Notes

Steven L Brooks, M.D. 4/4/2013 10:32 AM Addendum

HPI:

Helmut is a 78 y.o. 4/11/1934 male presenting with a followup from his assault on December 18, 2012. The patient was photographing his brother's house which had a very large snow berm front of it and the neighbor across the street who does the snowplowing saw him and got very angry and assaulted him. He punched him very hard several times in the torso and he landed on the ground hitting his head, at first he was unable to move, finally when he came to his senses he was able to call his brother who lives right nearby and his brother came to help him and called 911. He was transported to the Barton emergency room and had a CT of his head performed as well as a CT of his neck and abdomen and pelvis. There were no acute injuries noted on these studies however he does have multiple bilateral kidney stones which he has had for a while. There is also a suggestion of a left inguinal hernia. The patient states that he had a hernia repair in 2010 and since the injury he's noticed the hernia has returned he has pain and swelling in his left inguinal area. He denies any nausea vomiting or constipation. He also denies any kidney stone type flank pain or hematuria. He is also complaining of a lot of pain in his left lower chest where he was struck as well as his right shoulder. He was

Progress Notes (continued)

seen last week in urgent care and an x-ray performed in his left shoulder which was negative. He denies any shortness of breath coughing or hemoptysis .

Current outpatient prescriptions:hydrocodone-acetaminophen (NORCO) 7.5-325 MG per tablet, Take 1-2 Tabs by mouth every 6 hours as needed. Called in on 12/24 patient went to pharmacy they didn't have it so called it in again today., Disp: 20 Each, Rfl: 0; ibuprofen (MOTRIN) 600 MG TABS, Take 600 mg by mouth every 6 hours as needed. , Disp: , Rfl: ; simvastatin (ZOCOR) 40 MG TABS, Take 1 Tab by mouth every evening., Disp: 90 Tab, Rfl: 3

hydrochlorothiazide (HYDRODIURIL) 25 MG TABS, Take 1 Tab by mouth every day., Disp: 90 Tab, Rfl: 3; alendronate (FOSAMAX) 70 MG TABS, Take 1 Tab by mouth every 7 days., Disp: 12 Tab, Rfl: 4; aspirin (ASA) 325 MG TABS, Take 325 mg by mouth every day. , Disp: , Rfl: ; alprazolam (XANAX) 0.5 MG TABS, Take 0.5 mg by mouth at bedtime as needed. , Disp: , Rfl: ; lisinopril (PRINIVIL) 10 MG TABS, Take 5 mg by mouth every day., Disp: , Rfl:

Cholecalciferol (HM VITAMIN D3) 4000 UNITS CAPS, Take 1 Tab by mouth every day. , Disp: , Rfl:

Allergies as of 12/27/2012

- (No Known Allergies)

Past Medical History

Diagnosis

Date

- HTN (hypertension)
- Anxiety
mild situational anxiety
- Nasal septal deviation
- Prostate cancer
- High cholesterol
- Osteoporosis
- Adenomatous colon polyp
HX
- Increased glucose level
- DM type 2 (diabetes mellitus, type 2)
controlled with diet
- Kidney stones
- Calciuria
hyper

2004

ROS:

Review of Systems

Constitutional: Negative.

HENT: Negative for neck pain.

Eyes: Negative for blurred vision and double vision.

Respiratory: Negative for shortness of breath.

Cardiovascular: Positive for chest pain (from rib injury).

Gastrointestinal: Positive for abdominal pain (left groin pain since altercation).

Genitourinary: Negative for hematuria and flank pain.

Musculoskeletal: Positive for falls (during assault).

Left rib pain 10/10 burning

Left shoulder pain 10/10 sharp

Skin: Negative.

Neurological: Positive for dizziness (slight since assault). Negative for tingling, sensory change, focal weakness, loss of consciousness and headaches.

Endo/Heme/Allergies: Negative.

Klementi, Helmut (MR # 4037977) Printed by Jacey M.

Eakle [BAR8220] at 9/13/13 9:31 AM

Page 4 of 7

RECEIVED

JUN -5 2018

Douglas County
District Court Clerk

FILED

2018 JUN -5 AM 11:39

BOBBIE R. WILLIAMS
CLERK

D. GOELZ
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.

RESPONSE TO MOTION
FOR SUMMARY JUDGMENT

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON
KLEMENTI, an individual, ELFRIEDE
KLEMENTI, an individual, MARY ELLEN
KINION, an individual, ROWENA SHAW,
an individual, PETER SHAW, an individual,
& DOES 1-5,

Counterdefendant &
Third Party Defendants.

Counterclaimant JEFFREY SPENCER, by and through his attorneys WILLIAM J. ROUTSIS
II, Esq. and LYNN G. PIERCE, Esq., hereby responds to Third Party Defendant MARY ELLEN
KINION'S Motion for Summary Judgment. This Opposition is made and based upon and
incorporates all of the pleadings and papers on file herein, and upon the Points and Authorities and
Exhibits following hereto, and such other evidence as may be presented at time of hearing on this
matter.

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1 **POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

3 This case arose out of conflicts between a very small group among residents of a neighborhood
4 on the south shore of Lake Tahoe where all the parties reside, except HELMUT KLEMENTI. In the
5 spring of 2012, Mrs. and Mrs. SPENCER put up a fence around their property to give themselves
6 some privacy from certain intrusive neighbors. Only a few neighbors objected to the fence. Nearly
7 all of these proceeded to make unfounded accusations against Mr. SPENCER in his job as a
8 snowplow driver for KGID, and ultimately to criminal accusations against Mr. SPENCER.

9 On December 18, 2012, HELMUT KLEMENTI trespassed on their property, and Mr.
10 SPENCER, believing the trespasser was vandalizing his truck, began yelling for the trespasser to
11 identify himself, told Mrs. SPENCER to call 911, and ran down his stairs and into the street after the
12 departing trespasser. The trespasser, who would not respond nor identify himself, suddenly turned
13 around and Mr. SPENCER collided with him in the dark on the icy street. Only then did Mr.
14 SPENCER see it was either EGON KLEMENTI, a neighbor, or his twin brother HELMET
15 KLEMENTI. Mrs. SPENCER had meanwhile called 911 and the Douglas County Sheriff's
16 responded. Neither EGON KLEMENTI nor ELFRIEDE KLEMENTI was a witness to the collision.

17 After a brief, very incomplete, investigation, Mr. SPENCER was arrested that night for
18 misdemeanor battery and released. A Criminal Complaint was filed January 16, 2013, charging him
19 with a misdemeanor Battery on a person over 60 years of age,, that "he struck Mr. Klementi in the
20 back and knocked him to the ice covered road of Charles Avenue, and a second Criminal Complaint
21 was filed charging him with a felony Intimidation of a Witness to Influence Testimony, that he struck
22 Helmut Klementi "who was to testify at January 8, 2013 Planning Commission Meeting" and had
23 caused "Mr. Klementi to be hospitalized multiple times", and charging him with a gross misdemeanor
24 Exploitation of an Elderly Person, that he "used bullying and/or intimidation tactics with Helmut
25 Klementi, Egon Klementi and Elfride Klementi" and alleging this included offensive language, yelling,
26 covering EGON KLEMENTI with snow and street debris with a snow plow, and trapping Mr. and
27 Mrs. KLEMENTI in their home by piling up berms in their driveway. Mr. SPENCER was acquitted
28 of all charges. Mr. SPENCER's Declaration is attached hereto as Exhibit 1.

1 **II. DISPUTED AND UNDISPUTED STATEMENTS OF MATERIAL FACT**

2 There is an extensive "Background" which includes some undisputed facts, several disputed
3 facts, and leaves out some very relevant undisputed facts, followed by a very short "Statement of
4 Relevant Facts" Mr. SPENCER will respond to both.

5 **A. "BACKGROUND" FACTS**

6 Mr. SPENCER does not dispute that Ms. KINION's general statements about herself,
7 residence, Mr. and Mrs. SPENCER's residence, and that he is employed by a company for snow
8 plowing under contract with KGID. Motion pg 2, lns 22-26.

9 Mr. SPENCER does dispute that the matters in issue herein began with a dispute over Mr. and
10 Mrs. SPENCER building a fence on their property in May 2012. Motion pg 3, 1-5. Upon
11 information and belief, the genesis of the dispute arose from EGON KLEMENTI trespassing on Mr.
12 and Mrs. SPENCER's property and taking photographs of two minor sons of their friends, who were
13 helping build the fence and had taken off their shirts due to heat. Mrs. Spencer called 911 on May
14 27, 2012, to complain about EGON KLEMENTI coming on their property and taking photographs.
15 Douglas County Sheriff's Responding Officer Flagg came to their home and spoke to EGON
16 KLEMENTI that same day to advise him of the complaint and to tell him if he went on the Spencer's
17 property again he would be subject to arrest for trespassing. EGON KLEMENTI was very angry
18 since the complaint included taking pictures of minors.

19 Despite the Officer being at their home, EGON KLEMENTI made no report about a supposed
20 assault and/or battery upon him that day by Mr. SPENCER, which later was included in the criminal
21 charges made against Mr. SPENCER. Ms. KINION was not a witness to this supposed assault, just
22 repeating what she heard. Exhibit 2, Trial Transcript of 9/19/13 attached hereto, pg 270, lns 13-pg
23 271, ln 15. Exhibit 3, Trial Transcript of 9/20/13, pg 3, ln 14-pg 4, ln 16. This alleged assault of May
24 27, 2012, was one basis for criminal charges against Mr. SPENCER of which he was acquitted.

25 Mr. SPENCER disputes that the fence was any kind of significant problem with the neighbors.
26 When Mr. and Mrs. SPENCER sought a variance for their fence, they had to give notice of their
27 request to all neighbors within a 300' radius around their home, which was 42 residences. Of those
28 42 neighboring residences, besides Ms. KINION, only EGON and ELFRIEDE KLEMENTI,

1 ROWENA and PETER SHAW and 4 other neighbors (a total of 7) made any objection, while 8
2 neighbors supported the variance. Those objecting Third Party Defendants also made various
3 accusations and defamatory statements to the Douglas County Sheriff, KGID, the Douglas County
4 DA, the Douglas County Planning Commission, and mostly used their objections to defame Mr.
5 SPENCER rather than addressing the matter of the fence variance. Mr. SPENCER does not dispute
6 that their request for a variance was denied and they had to remove their fence.

7 Mr. SPENCER not only disputes that he put very high berms in front of driveways in
8 retaliation, he disputes he put very high berms in front of anyone's driveway when plowing that area
9 of the neighborhood. Motion, pg 3, lns 6-17. As with most of the accusations she has made, after
10 saying she saw him, and saying she was "pretty sure it was him", Ms. KINION admitted she did not
11 see Mr. SPENCER ever berm her driveway or anyone's driveway. Motion pg 3, lns 14-17; Exhibit
12 3 pg 28, lns 1-13, pg 29, lns 5-10. Ms. KINION also stated under oath that she "suspected" it was
13 Mr. SPENCER, because Exhibit 4, pg 49, ln 25-pg 50, ln 11. That Ms. KINION "thinks" or
14 "suspects" it was Mr. SPENCER is not evidence, she had contradicted herself under oath, and she has
15 shown ill will in making such an accusation. There can be up to six snowplows in use in that
16 neighborhood at any time so she did not know if Mr. SPENCER was even plowing their street that
17 day. Various other Third Party Defendants have also admitted at various times under other that they
18 never actually saw Mr. SPENCER berm any driveway. Mr. SPENCER specifically, and repeatedly,
19 denies he ever deliberately bermed a driveway. The alleged deliberate creation of berms was also one
20 basis for criminal charges against Mr. SPENCER of which he was acquitted.

21 Mr. SPENCER does dispute that he used a snowplow to "propel the 'old' snow along with
22 other road debris onto" EGON KLEMENTI on December 12, 2012, or at any time. Motion pg 3,
23 lns 18-26. Although she made repeated statements that she saw Mr. SPENCER driving the
24 snowplow, significantly her Motion does not say that the driver of the snowplow was Mr. SPENCER.
25 Further, this alleged attack makes no sense. Ms. KINION said under oath that on December 12,
26 2012, a snowplow which she "thinks" Mr. SPENCER was driving, sped up, picked up old snow and
27 road debris which was propelled onto EGON KLEMENTI in his driveway, she "immediately called"
28 EGON KLEMENTI, and then "later" called 911 to advise that she was a witness. Ms. KINION's

1 sworn testimony is in direct conflict with the sworn testimony of EGON KLEMENTI in the
2 preliminary hearing on February 22, 2013, when he said he had called Ms. KINION, not the other
3 way around. This allegation was investigated that same day by Sheriff Officer Sanchez, who
4 responded to the 911 call from EGON KLEMENTI, and the Officer found no evidence of a crime
5 and did not even write a report. Exhibit 5, Trial Transcript of 9/20/13, pg 46, ln 13-pg 49, ln 18. A
6 reasonable inference is that EGON KLEMENTI called Ms. KINION and she agreed to be a "witness"
7 for him. This accusation was part of the criminal charges of which Mr. SPENCER was acquitted.

8 Mr. SPENCER does not dispute that Ms. KINION attended a KGID meeting on December
9 18, 2012, at which she made accusations against him. Motion pg 4, lns 1-6. At that meeting, the
10 Board Minutes reflect Ms. KINION said:

11 She had the large berm that was put in front of her driveway. She has known the
12 Spencer's for about six years and had stopped talking to them last year because they
13 were harassing the neighbors regarding the ridiculous fence that they built. She called
14 McKay about the berm and he immediately sent somebody with a plow as she does
15 not have a commercial plow and there was no way she could clear it out herself.
16 Spencer came by later in the day and Mary Ellen said Spencer had a big grin on his
face and turned the blade and that is when Klementi got splashed with snow. She then
called KGID about what had happened and was told that something would be done.
Mary Ellen called Flipper [Mr. SPENCER's employer] and he said he would do
something about it. ...

17 Exhibit 6 attached hereto, KGID Board Meeting Minutes of December 18, 2012. The accusations
18 against Mr. SPENCER were not true, she was accusing him of a crime and trying to interfere with his
19 employment. Ms. KINION also wrote a letter to then Deputy DA Pence with these accusations and
20 more, and she testified the purpose of that letter was "to try and get her to prosecute Mr. Spencer."
21 Exhibit 3 pg 11, lns 5-8, & Exhibit 7, letter to Deputy DA Pence, attached hereto.

22 Dr. SHAW's letter to KGID December 13, 2012, five days prior to the meeting, addressed
23 the fence; a number of issues with plowing and berming in 2012, none of which identify Mr.
24 SPENCER as the snowplow driver but it is implied by saying a neighbor "had a prior conflict with Mr.
25 Spencer's wife"; what Ms. KINION told her alleging a deliberate berm at her driveway (Ms. KINION
26 has admitted she does not know which snowplow driver created that berm); what Ms. KINION told
27 her about the alleged snowplow assault on December 12, 2012, "that she witnessed Mr. Spencer lower
28 the plow ... [and] hit a pile of snow when he drove by the Klementis' driveway" (which Ms. KINION

1 has admitted she did not witness). Exhibit 8, December 13, 2012 letter from Dr. SHAW to KGID
2 with several ccs. These statements and Ms. KINION's passing on of these allegations is strong
3 circumstantial evidence of coordination of the allegations to be presented.

4 Mr. SPENCER does disputes HELMUT KLEMENTI went outside his brother's house the
5 night of December 18, 2012, just to take pictures of a claimed berm; that he assaulted HELMUT
6 KLEMENTI; and that HELMUT KLEMENTI's back was to the Spencers' property; and, the video
7 evidence confirms these are untrue. Motion pg 4, lns 7-11; *See* video Exhibit filed under separate
8 pleading. The evidence actually shows HELMUT KLEMENTI had been walking away from Mr. and
9 Mrs. SPENCER's home after Mr. SPENCER yelled at him as a trespasser and suspected vandal, and
10 when he suddenly turned around toward their home is when he and Mr. SPENCER collided. Mr.
11 SPENCER was acquitted of all charges. In the context of all the events and the facts that EGON
12 KLEMENTI was always taking photographs and it was his home, and that it was late at night in the
13 dark which is not the best time for such photographs, Mr. SPENCER is informed and believes this
14 was part of a effort to frame him for something he did not do or to incite him to try and create a
15 conflict.

16 Mr. SPENCER does dispute Ms. KINION's characterization of the incident on the night of
17 December 18, 2012. Motion pg 4, 12-19. The call to Douglas County Sheriff's Office to which
18 Deputy McKone responded was not "after the assault", since Mrs. Spencer had already called 911
19 to report a trespasser and suspected vandal on their property as Mr. SPENCER was pursuing the
20 trespasser intending to effect a citizen's arrest. Further, Ms. KLEMENTI supposedly was asked by
21 EGON KLEMENTI to get a pillow or something to put under HELMUT KLEMENTI's head, and
22 she handed him something, but he did not approach his brother but appeared to be taking pictures of
23 him lying on the icy road, and the photos of HELMUT KLEMENTI that night do not show anything
24 under his head.

25 Mr. SPENCER does dispute some of the statements in Deputy McKone's report, as well as
26 conclusions he reached and upon which he acted. Motion pg 4, lns 20-27. Deputy McKone testified
27 he had not obtained statements from all of the persons present when or shortly after the officers
28 arrived, and some of those statements, specifically of EGON and ELFRIEDE KLEMENTI, are

1 seriously inconsistent; he had not recorded any interview nor made notes at the time so relied on his
2 later recollection when using quotation marks as to what Mr. SPENCER allegedly said; he had not
3 taken any picture nor measurement of the evidence of a footprint in the snow on the Spencer's
4 property even though they had called 911 to report a trespasser and suspected vandal; he had not gone
5 to the location from which Mr. SPENCER said he had seen the intruder, believing Mr. SPENCER
6 could not have seen the driveway from there, even though later evidence showed he could; and, he
7 had not questioned the alleged victim about Mr. SPENCER's statement of attempting to effect a
8 citizen's arrest of an unidentified trespasser apparently breaking into his truck. Exhibit 9, Deposition
9 of Jesse McKone, pg 78, ln 11-pg 108, ln 18.

10 Mr. SPENCER testified at his deposition that: it was dark with no street lights so he could not
11 see the person he was chasing; he has poor distance vision, does not see well at night and was not
12 wearing his glasses when it happened; he was yelling for the trespasser to identify himself and with
13 no response he assumed the person was up to no good; he only saw the person when he was about
14 5' away, and could not stop on the icy street to avoid the collision; the person was then walking toward
15 him, he put his arms up and they collided; the collision with the trespasser was next to his property;
16 he only knew it was a KLEMENTI after the collision because he heard the brothers speaking; he was
17 upset that HELMUT KLEMENTI had not identified himself because "then I wouldn't have come out"
18 (the collision would never had occurred); HELMUT KLEMENTI was trying to kick him and EGON
19 KLEMENTI had come out, so after telling them 911 had already been called, he returned to his home;
20 when he got back to his home Mrs. Spencer was still talking to the 911 operator who instructed them
21 to remain in their home. See also video Exhibit filed under separate pleading.

22 Mr. SPENCER does dispute the representation of why she sent the previously addressed letter
23 to then Deputy DA Pence, and does dispute the implication in the statement that following his acquittal
24 he asserted claims against Ms. KINION. Motion pg 5, ln 1-11. Despite all Mr. SPENCER had been
25 put through, when he was acquitted he decided not to pursue claims against those who had wronged
26 him. Only when HELMUT KLEMENTI initiated a lawsuit just before the statute of limitations ran,
27 did Mr. SPENCER make his Counterclaim and Third Party Claims.

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1 **B. “STATEMENT OF RELEVANT FACTS”**

2 1. through 3. As addressed hereinabove, Mr. SPENCER does not dispute these basic facts,
3 except to note that the dispute with neighbors was a very small group most of whom are parties herein.
4 Motion, pg 8, lns 8-12.

5 4. As addressed hereinabove, Mr. SPENCER does dispute that he caused snow and debris
6 to spray over EGON KLEMENTI on December 12, 2012, and while Ms. KINION may not have
7 “file[d] any report” or made any “written statement”, as addressed above, she broadcast this alleged
8 assault and battery to neighbors, to Mr. SPENCER’s employer, and to the public KGID meeting.
9 Motion, pg 8, lns 16-20.

10 5. As addressed hereinabove, Mr. SPENCER does not dispute that Ms. KINION attended
11 the KGID meeting, and the “events” she informed KGID of at that meeting never happened. Motion,
12 pg 8, lns 21-23.

13 6. through 7. As addressed hereinabove in detail, Mr. SPENCER does dispute Ms. KINION’s
14 representations regarding the alleged assault on HELMUT KLEMENTI on December 18, 2012, the
15 investigation and the conclusions of Deputy McKone. Motion, pg 8 ln 24-pg 9, ln 12.

16 9. Mr. SPENCER does dispute Ms. KINION’s representation that she never spoke to Deputy
17 McKone on the night of December 18, 2012, as she is visible on the video talking to him and another
18 Deputy. *See* video Exhibit filed under separate pleading.

19 **III. STANDARD OF REVIEW**

20 At the summary judgment stage, a Court’s function is **not** to weigh the evidence and determine
21 the truth, but to determine whether there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*,
22 477 U.S. 242, 249 (1986). Further, the evidence of the nonmovant is “**to be believed, and all**
23 **justifiable inferences are to be drawn in his favor.**” *Id.* at 255, *emphasis added*.

24 In *Posadas*, the Nevada Supreme Court said: “Trial judges are to exercise great caution in
25 granting summary judgment, **which is not to be granted if there is the slightest doubt as to the**
26 **operative facts.**” *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438 (1993), citing to *Mullis*
27 *v. Nevada National Bank*, 98 Nev. 510, 512, 654 P.2d 533, 535 (1982), *emphasis added*.

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1 **IV. LEGAL ANALYSIS**

2 **A. JEFFERY SPENCER HAS STATED A CLAIM FOR DEFAMATION**

3 Mr. SPENCER rebuts both the assertion of what facts underlie this claim and the argument
4 regarding the relevant legal authorities. Motion pg 11, ln 3-pg 12, ln 2. None of Ms. KINION's
5 statements are subject to an absolute privilege (except in the trial which is not the basis for this claim),
6 and many statements are not privileged at all. Of equal importance, the law supports having the jury
7 decide a claim of defamation.

8 Defamation is defined as "(1) a false and defamatory statement by [a] defendant concerning
9 the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least
10 negligence; and (4) actual or presumed damages." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706,
11 718, 57 P.3d 82 (2002). Publication occurs when the statement is communicated to a third person.
12 *M & R Investment Co. v. Mandarino*, 103 Nev. 711, 715, 748 P.2d 488 (1987).

13 **1. Defamatory Statements Made About JEFFERY SPENCER Prior to the**
14 **Initiation of the Criminal Proceeding Do Not Meet the Standard for a**
Qualified Privilege

15 Mr. SPENCER disputes any assertion that Ms. KINION's statements were protected speech,
16 and that malice cannot be proved. Motion pg 12, ln 3-pg 13, ln 21.

17 In *Pope V. Motel 6*, 121 Nev. 307, 114 P.3d 277, 282 (2005), the Nevada Supreme Court
18 addressed privilege in a defamation case regarding statements made to law enforcement, stating:

19 We have not previously decided if defamatory statements made to police before the
20 initiation of criminal proceedings are absolutely privileged or enjoy only a qualified
privilege. ...

21 The competing policies of safeguarding reputations and full disclosure are best served
22 by a **qualified privilege**. To the extent that we suggested in *K-Mart* that statements
made to police before the initiation of criminal proceedings could be deemed
23 "communications preliminary to a judicial proceeding" under the Restatement
(Second) of Torts, section 587, we recede from that premise.

24 *Id.*, P.3d at 282-283, *emphasis added*.

25 In *Circus Circus Hotels, Inc. v. Witherspoon*, 657 P.2d 101 (1983), a defamation case, the
26 Nevada Supreme Court addressed a qualified privilege, stating:

27 Whether a particular communication is conditionally privileged by being published on
28 a **"privileged occasion" is a question of law for the court; the burden then shifts**
to the plaintiff to prove to the jury's satisfaction that the defendant abused the

1 privilege by publishing the communication with malice in fact. ... A conditional
2 privilege may be abused by publication in **bad faith, with spite or ill will or some**
3 **other wrongful motivation** toward the plaintiff, and without belief in the statement's
4 probable truth.

5 *Id.* P.2d at 105, citing with approval to *Gallues v. Harrah's Club*, 87 Nev. 624, 626 n.2 & 627, 491

6 P.2d 1276 (1971), *emphasis added*. As stated in the Nevada Constitution, Article 1, §9:

7 In all criminal prosecutions and civil actions for libels, the truth may be given in
8 evidence to the Jury; and if it shall appear to the Jury that the matter charged as
9 libelous is true and was published **with good motives and for justifiable ends**, the
10 party shall be acquitted or exonerated.

11 *Emphasis added*. Free speech does not come without limitations.

12 Ms. KINION made statements to KGID, Deputies and other Third Party Defendants which
13 were not true, regarding an alleged assault and/or battery on EGON KLEMENTI which never
14 happened, regarding alleged berms in front of her driveway which Mr. SPENCER did not create, and
15 regarding the alleged assault on HELMET KLEMENTI which she did not witness and which did not
16 happen. Although their court testimony is not the basis for this claim, the conflicts in her testimony
17 in Court goes directly to her veracity and motives.

18 **2. Defamatory Statements Made About JEFFERY SPENCER Should**
19 **Properly Go to the Jury to Determine the Issues of Fact**

20 Mr. SPENCER disputes the assertion that Ms. KINION's statements were subject to an
21 absolute privilege. Motion pg 13, ln 22-pg 15, ln 21.

22 She only had a qualified privilege at law, and she abused that privilege. A conditional privilege
23 may be abused by publication in bad faith, with spite or ill will or some other wrongful motivation
24 toward the plaintiff, and without belief in the statement's probable truth.

25 The Nevada Supreme Court, reversing the District Court in *Branda v. Sanford*, 97 Nev. 643,
26 637 P.2d 1223 (1981), ruled that:

27 [While] it is a question of law and, therefore, within the province of the court, to
28 determine if a statement is capable of a defamatory construction ... [i]f **susceptible of**
different constructions, one of which is defamatory, resolution of the ambiguity
is a question of fact for the jury.

Id. at 646, *emphasis added*. In *Posadas*, the Nevada Supreme Court reaffirmed this ruling saying:

We conclude, as a matter of law, that the statement is capable of a defamatory
construction in that it imputes dishonest and possibly unlawful conduct to Posadas.
Accordingly, **a jury must be allowed to determine whether the statement has any**

1 **“basis in truth,”** Wellman, 108 Nev. at 88, 825 P.2d at 211, **since the truth or**
2 **falsity of an allegedly defamatory statement is an issue of fact properly left to the**
3 **jury for resolution.** 2 Nevada Ind. Broadcasting v. Allen, 99 Nev. 404, 413, 664 P.2d
4 337, 343 (1983).

5 *Posadas, supra* at 453, *emphasis added*.

6 In *Lubin v. Kunin*, 117 Nev. 107, 17 P.3d 422 (2001), the Nevada Supreme Court,
7 considering a statement regarding a lawsuit which had been filed but not yet tried nor resolved, ruled:

8 In reviewing an allegedly defamatory statement, “[t]he words must be reviewed in
9 **their entirety and in context** to determine whether they are susceptible of a
10 defamatory meaning.” Chowdhry v. NLVH, Inc., 109 Nev. 478, 484, 851 P.2d 459,
11 463 (1993). Whether a statement is defamatory is generally a question of law;
12 however, **where a statement is “susceptible of different constructions, one of**
13 **which is defamatory, resolution of the ambiguity is a question of fact for the**
14 **jury.”** *Posadas v. City of Reno*, 109 Nev. 448, 453, 851 P.2d 438, 442 (1993)
15 (quoting *Branda v. Sanford*, 97 Nev. 643, 646, 637 P.2d 1223, 1225-26 (1981)).

16 *Id.* P.3d at 426, *emphasis added*. The *Lubin* Court quoted to the Restatement (Second) of Torts:
17 Expressions of Opinion Section 566 comment b (1977):

18 [I]t may be actionable to state an opinion that plaintiff is a thief, if the statement is
19 made in such a way as to imply the existence of information which would prove
20 plaintiff to be a thief. In such situations, where a statement is ambiguous, the question
21 of whether it is a fact or evaluative opinion is left to the jury.

22 *Id.* P.3d at 426, *cites omitted*. This example is particularly relevant to this matter. Further, in *Meyer*
23 *v. Johnson*, 281 P.3d 1201 (Nev., 2009), citing to *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422,
24 425-26 (2001), the Nevada Supreme Court reaffirmed:

25 While the determination of whether a statement is defamatory is generally a question
26 of law, when there are different possible constructions of the statement, one of which
27 is defamatory and the other not, **the determination of whether it is defamatory is**
28 **left to the fact finder.**

29 Ms. KINION’s statements are subject to a understanding that Mr. SPENCER was a criminal.
30 In fact, the criminal charges subsequently were the same things she had been accusing him of, that he
31 was abusive of the elderly, threatening an elderly man, trapping elderly in their homes by berms, and
32 physically battering elderly men. Mr. SPENCER was not a criminal; criminal charges had not even
33 been filed when these accusations were made, and at trial Mr. SPENCER was acquitted of all charges.

34 In addition, the Nevada Supreme Court in *Jacobs v. Adelson*, 130 Nev. Adv.Op. 44, 325 P.3d
35 1282, 1286 (2014), “recognized that communications are **not sufficiently related to judicial**
36 **proceedings when they are made to someone without an interest in the outcome.**” *See also, Fink*

1 v. *Oshins*, 118 Nev. 428, 436, 49 P.3d 640 (2002). The statements made to the KGID Board at their
2 public meeting and to the other Third Party Defendants, were made to those “without an interest in
3 the outcome” of the criminal matter. Ms. KINION had no privilege.

4 **3. Defamatory Statements About JEFFERY SPENCER Were Derogatory,**
5 **Contemptible and Would Damage A Reputation**

6 The Nevada Supreme Court in *Posadas* defined a defamatory statement as follows:

7 [A] statement is defamatory when, “[u]nder any reasonable definition[,] such charges
8 would tend to lower the subject in the estimation of the community and to excite
derogatory opinions against him and to hold him up to contempt.” *Las Vegas Sun v.*
Franklin, 74 Nev. 282, 287, 329 P.2d 867, 869 (1958).

9 *Posadas, supra* at 453, *emphasis added*.

10 No one can reasonably dispute that the statements made to the other Third Party Defendants,
11 at the KGID Board meeting, and to the Douglas County Sheriff’s Office regarding the alleged
12 snowplow and personal assaults and batteries “would tend to lower the subject in the estimation of the
13 community and to excite derogatory opinions against him and to hold him up to contempt.” These
14 statements were defamatory.

15 **4. Defamatory Statements About JEFFERY SPENCER Evidenced Actual**
16 **Malice, With a Lack of Good Faith And/or Unrelated to the Litigation**

17 In *Jacobs*, the Nevada Supreme Court reaffirmed *Fink*, that for the privilege to apply the
18 proceeding must be contemplated “in good faith” and the statement must be “related to the litigation”.

19 *Jacobs, supra* at 433-34. Further, as the *Posadas* Court said:

20 Reckless disregard for the truth may be defined as a high degree of awareness of the
21 probable falsity of a statement. It may be found where the defendant entertained
22 serious doubts as to the truth of the statement, but published it anyway. As such, it is
23 a subjective test, focusing on what the defendant believed and intended to convey, and
not what a reasonable person would have understood the message to be. **Evidence
of negligence, motive, and intent may cumulatively establish necessary
recklessness to prove actual malice** in a defamation action.

24 *Posadas, supra* at 455, *emphasis added*.

25 When Mr. and Mrs. SPENCER sought a variance for their fence, they had to give notice of
26 their request to all neighbors within a 300' radius around their home, which was 42 residences. Of
27 all those, in addition to Ms. KINION, EGON and ELFRIEDE KLEMENTI, MARY ELLEN
28 KINION, ROWENA and PETER SHAW, and only four other neighbors made any objection (a total

1 of 7), while 8 neighbors supported the variance. Of those who objected, the Third Party Defendants
2 also made various accusations and defamatory statements to the Douglas County Sheriff, KGID, the
3 Douglas County DA, the Douglas County Planning Commission, and mostly used their objections
4 were to defame Mr. SPENCER rather than addressing the matter of the fence variance.

5 As addressed herein and in other pleading, Ms. KINION, the Counterdefendant and the other
6 Third Party Defendants were dishonest in their reporting, and/or repeated dishonest reports of others
7 in some cases with no personal knowledge of the actual facts, and/or tampered with evidence. Even
8 where there may not be direct evidence of motive and intent, there is strong circumstantial evidence
9 of motive and intent, and there were certainly "cumulative actions".

10 Nevada criminal law provides that:

11 [In] all prosecutions for libel the truth may be given in evidence to the jury, and, **if it**
12 **shall appear to the jury that the matter charged as libelous is true and was**
13 **published for good motive and for justifiable ends, the party shall be acquitted,**
and the jury shall have the right to determine the law and the fact.

14 NRS §200.510(3), *emphasis added*. Although this is a civil case, not a prosecution for libel, the law
15 provides a guideline for evaluation of defamatory statements in conformity with the civil cases cited
16 hereinabove and the Nevada Constitution, Article 1, §9.

17 The statements made by Ms. KINION were not for any good motive nor for justifiable ends.
18 These statements were made as an attack on a private person, not a public figure, to damage his
19 reputation and standing, get his fence variance denied, get him terminated from his job, and get him
20 criminally prosecuted.

21 **5. JEFFERY SPENCER Is Entitled to Damages for Defamation Per Se**

22 In *Branda*, the Nevada Supreme Court defined four categories of "slander per se", actionable
23 without a showing of special damages, two of which are directly relevant to this matter: (1)
24 imputations that the person had committed a crime; and, (2) imputations that would injure the person's
25 trade, business or office. *Branda, supra* at. 646. The defamatory statements made, before initiation
26 of any criminal proceeding and outside of and unconnected to the criminal proceeding, included
27 accusing Mr. SPENCER of crimes which he did not commit, and accusing him of being unfit for his

28 ///

1 business or profession. This is defamation per se, for which Mr. SPENCER does not, as a matter of
2 law, have to even prove damages.

3 **C. JEFFERY SPENCER'S CLAIM FOR CIVIL CONSPIRACY SHOULD**
4 **PROPERLY GO TO THE TRIER OF FACT - THE JURY**

5 The Motion argues that based upon the arguments that there was no defamation and that Mr.
6 SPENCER "cannot demonstrate any unlawful agreement between the parties." Motion pg 15, ln 22-
7 pg 17, ln 4.

8 The sound legal basis for proceeding to trial on the defamation claim is addressed hereinabove.
9 The issue of the existence of an agreement between and among the Third Party Defendants the
10 Counterdefendant and is not a question of law for the Court. As addressed clearly and at length in
11 *Short v. Hotel Riviera, Inc.*, 79 Nev. 94, 378 P.2d 979 (1963), with citations to numerous cases over
12 the years, the Nevada Supreme Court reversed a Summary Judgment on civil conspiracy and
13 remanded the matter for trial.

14 The *Short* Court stated:

15 It is true that in the discovery depositions witnesses categorically denied any concert
16 with others in the performance of the asserted acts constituting the conspiracy.

17 "... We agree that there are cases in which a trial would be farcical. * * * **But where, as**
18 **here, credibility, including that of the defendant, is crucial, summary judgment**
19 **becomes improper and a trial indispensable.** It will not do, in such a case, to say
20 that, since the plaintiff, in the matter presented by his affidavits, has offered nothing
21 which discredits the honesty of the defendant, the latter's deposition must be accepted
22 as true. **We think that Rule 56 was not designed thus to foreclose plaintiff's**
23 **privilege of examining defendant at a trial,** especially as to matters peculiarly within
24 defendant's knowledge. * * * We do not believe that, in a case in which the decision
25 must turn on the reliability of witnesses, the Supreme Court, by authorizing summary
26 judgments, intended to permit a 'trial by affidavits,' if either party objects. That
27 procedure which, so the historians tell us, began to be outmoded at common law in the
28 16th century, would, if now revived, often favor unduly the party with the more
ingenious and better paid lawyer. Grave injustice might easily result."

23 *Id.* at 101, *cites omitted, emphasis added.*

24 The *Short* Court continued:

25 "It does not follow from the fact that there is no direct evidence ... that the motion for
26 summary judgment should be granted. * * * **It is for the triers of the facts to**
27 **determine how much of her testimony, if any, is to be accepted or rejected.**"

28 "... We have in this case one more regrettable instance of an effort to save time by an
improper reversion to 'trial by affidavit,' improper because there is involved an issue
of fact, turning on credibility. **Trial on oral testimony, with the opportunity to**

1 examine and cross-examine witnesses in open court, has often been acclaimed as
2 one of the persistent, distinctive, and most valuable features of the common-law
3 system. For only in such a trial can the trier of the facts (trial judge or jury)
4 observe the witnesses' demeanor; and that demeanor--absent, of course, when
5 trial is by affidavit or deposition--is recognized as an important clue to witness'
6 credibility. When, then, as here, the ascertainment (as near as may be) of the
7 facts of a case turns on credibility, a triable issue of fact exists, and the granting
8 of a summary judgment is error. * * * Particularly where, as here, the facts are
9 peculiarly in the knowledge of defendants or their witnesses, should the plaintiff have
10 the opportunity to impeach them at trial; and their demeanor may be the most effective
11 impeachment. Indeed, it has been said that a witness' demeanor is a kind of 'real
12 evidence'; obviously such 'real evidence' cannot be included in affidavits."

13 *Id.* at 102, *cites omitted, emphasis added.*

14 The *Short* Court quotes to several federal, including U.S. Supreme Court, cases as follows:

15 "A court is not at liberty to engage in a credibility evaluation for the purposes of
16 a summary judgment."

17 "... Summary judgment should not be granted if there remains a genuine issue of
18 material fact, and credibility of witnesses or of parties may be such genuine
19 issue."

20 "... In cases of this kind where no single factor controls the equation, and the court is
21 necessarily required to resolve the question of alleged intent in arriving at its judgment,
22 we are of the opinion that justice can best be served by a trial of the question on its
23 merits." Scores of cases are in accord with these views.

24 *Id.* at 102-103, *cites omitted, emphasis added.*

25 Citing to Rule 56, the *Short* Court stated:

26 **The rule is of course well recognized that in deciding the propriety of a summary
27 judgment all evidence favorable to the party against whom such summary
28 judgment was rendered will be accepted as true. ...**

Rule 56 authorizes summary judgment only where the moving party is entitled to
judgment as a matter of law, where it is quite clear what the truth is, that no genuine
issue remains for trial, and that the purpose of the rule is not to cut litigants off from
their right of trial by jury if they really have issues to try. *Sartor v. Arkansas Gas
Corp.*, 321 U.S. 620, 64 S.Ct. 724, 88 L.Ed. 967. In *McColl v. Scherer*, 73 Nev.
226, 231-232, 315 P.2d 807, we for the second time approved the language of a
federal case to the effect that **the trial judge should exercise great care in granting
motions for summary judgment, and held that a litigant has a right to trial where
there is the slightest doubt as to the facts.** In 6 Moore, Federal Practice, 2070, it
is said that in such motions **'the trial court should not pass upon the credibility of
opposing affidavits, unless the evidence tendered by them is too incredible to be
accepted by reasonable minds.'** And the burden of establishing the lack of a
trialable issue of fact is upon the moving party. 6 Moore, Federal Practice, 2070.

29 *Id.* at 103, *cites omitted, emphasis added.*

30 The *Short* Court, quoting from 11 Am.Jur. 578, Conspiracy §46, and U.S. Supreme Court
31 cases, and citing to several other cases from several other states, observed:

1 "A more reasonable view, however, is that where an act done by an individual, though
2 harmful to another, is not actionable because justified by his rights, yet the same act
3 becomes actionable when committed in pursuance of a combination of persons
4 actuated by malicious motives and not having the same justification as the individual."

5 ...
6 The United States Supreme Court has thus stated the rule: "**An act lawful when done
7 by one may become wrongful when done by many acting in concert, taking on the
8 form of a conspiracy which may be prohibited if the result be hurtful to the public
9 or to the individual against whom the concerted action is directed.**"

10 ...
11 When an act done by an individual is not actionable because justified by his rights,
12 though harmful to another, such act becomes actionable when done in pursuance of
13 combination of persons actuated by malicious motives and not having same
14 justification as the individual.

15 *Id.* at 105-106, *cites omitted, emphasis added.*

16 In conclusion, the Short Court ruled:

17 **Many other cases could be cited. The great weight of authority is in support of
18 the rule last discussed and we accept the same as the correct one.**

19 *Id.* at 106, *emphasis added.* After remand and trial, at which Short prevailed, there was an appeal
20 of the judgment in *Hotel Riviera, Inc. v. Short*, 80 Nev. 505, 396 P.2d 855 (1964). On the appeal,
21 the Court ruled: "The judgment and order denying new trial are affirmed with costs." *Id.* at 521.

22 In this case, numerous statements were disseminated by the Third Party Defendants and the
23 Counterdefendant and which could have no purpose other than to harm Mr. SPENCER to have his
24 fence variance request denied, to compromise his employment, to cause him to suffer public disgrace
25 of being called a criminal and abuser of the elderly, and to compel him to endure criminal charges and
26 trial. Whether each act was done with explicit or tacit agreement would be a question for the jury.
27 To publically accuse another of a crime, especially a heinous crime of attacking an elderly person,
28 when a jury has since ruled there was no such crime, and to publically accuse another of deliberately
creating hardships for elderly neighbors by berming them into their homes, when there was never was
any evidence other than controverted testimony of any such act, a jury can infer malice.

24 **D. JEFFERY SPENCER SHOULD HAVE THE RIGHT TO CLAIM 25 PUNITIVE DAMAGES AT TRIAL**

26 Mr. SPENCER dispute Ms. KINION's arguments legally. Motion pg 17, ln 5-pg 19, ln 16.
27 Punitive damages is just a measure of damages, which would be addressed at time of trial and depends
28 on the evidence elicited.

1 **E. JEFFERY SPENCER'S CLAIM FOR INFLICTION OF EMOTIONAL**
2 **DISTRESS PROPERLY GO TO THE TRIER OF FACT - THE JURY**

3 The Motion argues that Ms. KINION's conduct was not extreme and outrageous or done with
4 a reckless disregard, and there is no evidence Mr. SPENCER has not presented evidence of severe
5 or extreme emotional distress. Motion pg 19, ln 17-pg 25, ln 5.

6 Mr. SPENCER would refer to the facts and evidence cited hereinabove. Ms. KINION made
7 repeated derogatory and untrue statements to numerous people, and she knew some of her statements
8 were not true, and some of those statements were made with no personal knowledge by her, and some
9 of those statements she should have known were not true and were made with a reckless disregard of
10 the truth. If Ms. KINION did not have a direct intent to harm Mr. SPENCER emotionally (as she
11 directly intended to cost him his job and have him criminally prosecuted), there was at least a reckless
12 disregard for the likelihood of causing him emotional distress.

13 In *Star v. Rabello*, 97 Nev. 124, 125, 625 P.2d 90 (1981), the Nevada Supreme Court stated:

14 Generally, the elements of this cause of action are (1) extreme and outrageous conduct
15 with either the intention of, or reckless disregard for, causing emotional distress, (2)
16 the plaintiff's having suffered severe or extreme emotional distress and (3) actual or
17 proximate causation.

18 In *Branda*, a case alleging slander and intentional infliction of emotional distress in which a
19 Summary Judgment ruling was reversed, the Nevada Supreme Court held:

20 **The jury was entitled to determine**, considering prevailing circumstances,
21 contemporary attitudes and [the appellant's] own susceptibility, **whether the conduct**
22 **in question constituted extreme outrage.**

23 *Branda, supra* at 649, *emphasis added*. The *Posadas* Court reiterated this ruling, stating:

24 Whether the issuance of a press release which could be interpreted as stating that a
25 police officer committed perjury **is extreme and outrageous conduct is a question**
26 **for the jury. The jury should also make the factual determination, similar to the**
27 **"actual malice" determination in Posadas's defamation claim**, whether the press
28 release was intended to cause emotional distress or whether it was issued with reckless
29 disregard as to such a probability.

30 *Posadas, supra* at 456, *emphasis added*.

31 The *Posadas* Court went on to rule:

32 *Posadas's* affidavit asserts that, as a result of the press release, he "was subjected to
33 great ridicule and embarrassment" and was harmed both professionally and personally.
34 His affidavit also asserts that, as a result of the entire incident, he suffered "severe
35 emotional distress as evidenced by depression and physical ailments that have required

1 hospitalization,” and he “sought the assistance of both medical and psychological
2 professionals to deal with the physical and psychological symptoms.”

3 We conclude that genuine issues of material fact remain concerning Posadas's claim
4 for intentional infliction of emotional distress which precludes summary judgment.
5 Posadas supplied sufficient evidence during the summary judgment proceeding to raise
6 the issues of whether the press release constituted extreme and outrageous conduct,
whether the press release was issued with the intent of, or reckless disregard for,
causing emotional distress, and whether Posadas suffered severe and extreme
emotional distress occasioned by the press release. **These are questions for a jury,
and the district court erred in deciding them in a summary proceeding.**

7 *Id.* at 456, *emphasis added.*

8 Mr. SPENCER has actually suffered from the actions against him. The report of Dana
9 Anderson, MFT, diagnosed Mr. SPENCER as suffering from PTSD, and provides a long list of
10 symptoms. Motion, Exhibit 5. The report of Gastroenterology Consultants reflects Mr. SPENCER
11 being referred for “nausea and vomiting; GERD and dysphagia” and also reported symptoms of
12 persistent infections, choking episodes, heartburn, abdominal pain, fainting, anxiety and depression.
13 Motion Exhibit 7.

14 While Mr. SPENCER had GERD for over 15 years, which can cause heartburn and
15 regurgitation, it had been well controlled with diet modification and occasion use of Tums prior to the
16 matters in issue here. That he had a pre-existing condition does not make the claim invalid. All law
17 students learn about the “eggshell head” plaintiff; if one causes injury to a person it does not excuse
18 the behavior because the person had a pre-existing condition that made him susceptible to the injury.
19 Further, the vomiting and diarrhea was not a pre-existing condition. In addition, Mr. SPENCER’s
20 primary care physician, Dr. Steinmetz, who has been treating him since October 1, 2014, reported
21 high blood pressure and a poor immune response which she attributed to the “extreme stress” from
22 problems with his neighbors. Exhibit 10 attached hereto. These are all physical manifestations of the
23 emotional distress, and whether this is sufficient evidence of an emotional distress claim is a matter
24 for the jury.

25 **Conclusion**

26 JEFFERY SPENCER has demonstrated numerous genuine issues of fact to support his claims.
27 NRCP 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986). Pursuant to Nevada law he
28 should be given the opportunity to make his case before a jury as the fact finder. The Motion for

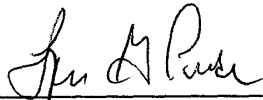
1 Summary Judgment should be denied.

2 The undersigned affirms pursuant to NRS §239B.030 that this pleading does not contain the
3 social security number of any person.

4 DATED this ____ day of June, 2018.

5
6 /s/

7 WILLIAM J. ROUTSIS, II, Esq.
8 Nevada State Bar No. 5474
9 1070 Monroe Street
10 Reno, Nevada 89509
11 Phone 775-337-2609/Fax 775-737-9321
12 *Attorneys for Counterclaimant/Third Party Plaintiff Jeffrey D. Spencer*


LYNN G. PIERCE, Esq.
Nevada State Bar No. 3567
515 Court Street, Suite 2f
Reno, Nevada 89501
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 vis email and depositing into the U.S. Postal Service, first class postage fully pre-
4 paid, addressed to the following:
5

6 Douglas R. Brown, Esq.
7 Christian L. Moore, Esq.
8 Lemons, Grundy & Eisenberg
9 6005 Plumas Street, Suite 300
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11 *Attorneys for Helmut Klementi*

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10 Michael A. Pinter, Esq.
11 Glogovac & Pinter
12 427 W. Plumb Lane
13 Reno, NV 89509
14 *Attorneys for Egon Klementi, Elfriede*
15 *Klementi & Mary Ellen Kinion*

David M. Zaniel, Esq.
Ranalli & Zaniel, LLC
50 W. Liberty Street, Suite 1050
Reno, NV 89501
Attorney for Jeffrey D. Spencer

14 DATED this 1st day of June, 2018.



EXHIBIT LIST

- Exhibit 1 Declaration of Jeffrey D. Spencer
- Exhibit 2 Portions of the Transcript of the Jury Trial on September 19, 2013
- Exhibit 3 Portions of the Transcript of the Jury Trial on September 20, 2013
- Exhibit 4 Portions of the Deposition of MARY ELLEN KINION on April 7, 2016
- Exhibit 5 Portions of the Transcript of the Jury Trial on September 20, 2013
- Exhibit 6 Minutes of the KGID Board on December 18, 2012
- Exhibit 7 Letter from Ms. KINION to Maria Pence stamped February 22, 2013
- Exhibit 8 Letter from ROWENA SHAW to the KGID Board dated December 13, 2012
- Exhibit 9 Portions of the Deposition of Jesse McKone on April 7, 2016
- Exhibit 10 Letter from Mr. SPENCER's primary care physician Dr. Steinmetz

Exhibit 1

Exhibit 1

Declaration of Jeffrey D. Spencer

Pursuant to NRS §53.045(1), I, Jeffrey D. Spencer, declare under penalty of perjury, that:

1. I am the Counter and Third Party Plaintiff in this matter.
2. Portions of the Transcript of the Jury Trial on September 19, 2013, attached hereto as Exhibit 2, are true and correct copies of that Transcript.
3. Portions of the Transcript of the Jury Trial on September 20, 2013, attached hereto as Exhibit 3, are true and correct copies of that Transcript.
4. Portions of the Deposition of MARY ELLEN KINION on April 7, 2016, attached hereto as Exhibit 4, are true and correct copies of that Deposition.
5. Portions of the Transcript of the Jury Trial on September 20, 2013, attached hereto as Exhibit 5, are true and correct copies of that Transcript.
6. The Minutes of the KGID Board on December 18, 2012, attached hereto as Exhibit 6, is a true and correct copy of those Minutes.
7. The letter from Ms. KINION to Maria Pence stamped February 22, 2013, attached hereto as Exhibit 7, is a true and correct copy of that letter.
8. The letter from ROWENA SHAW to the KGID Board dated December 13, 2012, attached hereto as Exhibit 8, is a true and correct copy of that letter.
9. Portions of the Deposition of Jesse McKone on April 7, 2016, attached hereto as Exhibit 9, are true and correct copies of that Deposition Transcript.
10. The letter from my primary care physician Dr. Steinmetz attached hereto as Exhibit 10 is a true and correct copy of her letter which describes some of my medical problems which have resulted from the matters at issue with the Counter and Third Party Defendants in this matter.

///

11. I have reviewed the foregoing and all statements are true of my own knowledge, except for those matters stated therein upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 15th day of June, 2018, in Hayes, Kansas.

Jeff Spencer
Jeffrey D. Spencer

Exhibit 2

Exhibit 2

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 THURSDAY, SEPTEMBER 19, 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 THE COURT: Hold on. He just repeated his
2 question, not the letter.

3 MS. PENCE: Okay. I thought he was reading
4 from the letter.

5 Q (BY MR. ROUTSIS:) Did you ever say that?

6 A I don't remember saying that. It's not in
7 that letter.

8 Q Well, did you write that line?

9 A Yes, I did.

10 Q And can you tell us what that says?

11 A "Jeff accosted Egon in the street and yelled
12 at him about coming on his property and taking pictures.
13 Marilyn and Janet Wells, a neighbor, joined him."

14 Q So what does that mean, Ms. Klementi? I
15 mean, Ms. Kinion. Janet joined against Egon.

16 A I was told that Janet and Marilyn came down
17 and were there with Egon and Jeff.

18 Q Could you read that line again, ma'am.

19 A "Jeff accosted Egon in the street and yelled
20 at him about coming on his property and taking pictures.
21 Marilyn and Janet Wells, a neighbor, joined him."

22 Q Joined Jeff, who accosted Egon.

23 A Yes. They were there, too.

24 Q So when you said that Marilyn joined Jeff and

1 -- Ms. Wells joined Jeff and Marilyn, who accosted Egon,
2 what did you mean by that?

3 MS. PENCE: Objection, Your Honor. That's
4 not what she said.

5 THE COURT: Sustained.

6 Q (BY MR. ROUTSIS:) Well, what did you mean by
7 that?

8 A Just what I was told, that they came down and
9 were with Jeff and Egon in the street.

10 Q And Marilyn and Janet Wells was with Jeff?

11 A Yes. The two of them were with them.

12 Q Against Egon?

13 A I don't know exactly if -- I didn't hear
14 about Marilyn saying anything or Janet saying anything,
15 just that they were there.

16 Q So what does the English language mean when
17 you say, if I may, "Jeff accosted Egon in the street and
18 yelled at him about coming on his property and taking
19 pictures. Marilyn and Janet Wells, a neighbor, joined
20 him."

21 MS. PENCE: Objection, Your Honor.
22 Argumentative.

23 Q (BY MR. ROUTSIS:) What did you mean by
24 joined him?

Exhibit 3

Exhibit 3

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 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

CAPITOL REPORTERS (775) 882-5322

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 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.

—CAPITOL REPORTERS (775) 882-5322—

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?

—CAPITOL REPORTERS (775) 882-5322—

Exhibit 5

Exhibit 5

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 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 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?

CAPITOL REPORTERS (775) 882-5322

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 6

Exhibit 6

**MINUTES OF THE REGULAR MEETING OF THE
KINGSBURY GENERAL IMPROVEMENT DISTRICT BOARD OF TRUSTEES
TUESDAY, DECEMBER 18, 2012**

CALL TO ORDER – The meeting was called to order at the Kingsbury General Improvement District office located at 160 Pineridge Dr., Stateline, Nevada at 6:00 p.m. by Chairperson Norman.

PLEDGE OF ALLEGIANCE – Norman led the pledge to the flag.

ROLL CALL – Present were Trustees Norman, Treanor, Yanish, Vogt and Nelson. Also present was Legal Counsel Scott Brooke, General Manager Cameron McKay, Michelle Runtzel, Business and Contracts Manager, Eric Johnson, Operations Supervisor and Matt Van Dyne of Farr West Engineering.

PUBLIC COMMENT – Pete Shaw talked about ongoing issues with snow removal in his neighborhood regarding a specific plow driver. He and his wife Rowena have had increased berms in front of their driveway. This issue has been experienced by other neighbors as well. Mr. Shaw made a proposal for a stop sign to be placed at the intersection of Charles Ave. and Juniper Drive. This is directly in front of his home. He understands that this request is on the agenda for the 2013 January meeting. There has been no need for a stop sign at this location for 30 years. He strongly opposes the placement of a stop sign at this intersection because of elevated emissions, increased and loss of street parking. He wanted it to be on record that he strongly opposes a stop sign at that intersection. Rowena Shaw wanted it to be on record that it was very difficult for her to get up to the meeting with all the stairs and no handicap parking. Norman said that will be addressed. Dr. Rowena Shaw said she emailed the Board and Mr. McKay about snow removal in her neighborhood (read from emails). Dr. Shaw talked about the fence that was built by the snow plow driver in question (read from emails). Dr. Shaw wanted to go on record as her husband did, that she strongly opposes a stop sign in front of her residence. Norman asked Dr. Shaw where the stop sign would be relative to the photo that she submitted. She believed that the stop sign was going to be right at the corner of Charles, right by the fence. Runtzel said it would be stopping the traffic on Juniper passing the Charles intersection. McKay said there would be two stop signs. McKay said it would be in front of the Wells house. The requests for the stop signs are from the snow plow driver in question, who is also the owner of that property. McKay said that Manchester told him that the snow plow driver would be removed from that particular route.

Mrs. Klementi spoke regarding snow plow removal (read from a letter). The neighborhood problems started in April of 2012 when the Spencer's parked an 18 wheeler on Charles. It took several weeks and several police reports for the vehicle to be removed. Mrs. Klementi talked about the fence that the Spencer's built which was in violation of county codes. The fence is 6 ft. and the code is 3 ft. Mrs. Klementi spoke about how her husband felt threatened by the Spencer's. Since then they have had horrible berms in front of their driveway. She and her husband want Mr. Spencer removed from his position. Mrs. Klementi asked that her letter be put on record.

Mr. Shaw talked about how Mr. Spencer keeps the snow plow equipment running the whole time he is inside the home on a lunch break or whatever. These vehicles are also left on during the summer months as well.

Vogt asked if there was a rule as to how far back a fence should be for snow removal. McKay said yes, but his property line is out to the edge of the road.

Mrs. Klementi talked about how aggressive Mr. Spencer is and that they know that they have a gun. She is afraid. Norman asked how Mr. Spencer threatened Mr. Klementi. Brooke said that this seemed to be a subject that should be put on another agenda for discussion. It appears to involve F&B and he felt that they should be part of the discussion.

Runtzel asked Klementi if he was bermed in by Jeff Spencer yesterday. Mr. Klementi said Spencer was speeding and put the blade down and splashed the snow over Mr. Klementi's face. Runtzel asked if they had reported it and the Klementi's said no because they knew they were going to be going to the Board meeting.

Mary Ellen Kinion from 176 Meadow Lane spoke. She had the large berm that was put in front of her driveway. She has known the Spencer's for about six years and had stopped talking to them last year because they were harassing the neighbors regarding the ridiculous fence that they built. She called McKay about the berm and he immediately sent somebody with a plow as she does not have a commercial plow and there was no way she could clear it out herself. Spencer came by later in the day and Mary Ellen said Spencer had a big grin on his face and turned the blade and that is when Klementi got splashed with the snow. She then called KGID about what had happen and was told that something would be done. Mary Ellen called Flipper and he said he would do something about it. Mary Ellen said today there was a different snow plow driver. Mary Ellen said Mrs. Spencer wants her day in court. Mary Ellen said we are all here tonight because of this one person and her obsession. She has harassed these people and it has got to stop.

Norman asked Janet Wells if she had any comment to make about the fence. Mrs. Wells had a comment. She has a daycare home on 183 Juniper. She said it is very dangerous for the parents to get to her house the way the fence is. Mrs. Wells said the reason she hasn't had snow berms is because Mrs. Spencer talked to her all summer about what was going to happen. Mrs. Wells took it as gossip and felt that she was unstable. She said that Mrs. Spencer told her that she was going to go after these people and the Shaw's with the snow plow. Mrs. Wells said Mrs. Spencer is always talking about her gun. Mrs. Wells said Rebecca was with her when Mrs. Spencer spoke with her that day. Mrs. Wells read from her prepared speech.

McKay asked that everybody that made a statement tonight give him a copy of the same. McKay said the stop signs are on the Agenda for January and the hearing for the fence is on January 8th at the Douglas County Planning Commission.

Norman said they can't really deal with the feud in the neighborhood, but they can certainly deal with safety and snow plow issues.

Runtzel stated for the record that it is part of her responsibility and she was out last week when some of those issues happened. Managing the snow removal contract is a large part of her job. Runtzel asked the residents to please call her with concerns.

Norman would like Flipper or Charlena to be present and to make a statement as to what a reasonable berm would be.

Dr. Shaw said that prior to writing the letters to KGID; they surveyed the driveways in their area.

Exhibit 7

Exhibit 7

E. KLEMENTI

12-25550 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 Effie 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

175-588-6916

Exhibit 8

Exhibit 8

December 13, 2012
Mr. Cameron
McKay

District Manager

Kingsbury General Improvement District
P.O. Box 2220
Stateline, NV 89449
Mr. McKay,

Following is a summary of background information and events regarding snow removal problems in our Lower Kingsbury neighborhood.

Last May 27, 2012, Mr. Jeff Spencer, plow driver for KGID, constructed a wooden fence around his house at 321 Charles Street. The solid wood fence was built without a permit and exceeded the county code limit of three feet in height. The solid structure resulted in a blind intersection. Additionally, the fence was built at the edge of the road, with no easement for snow removal. What is KGID's policy with regards easement or "set-back" space so as not to interfere with snow plow operation? Several residents called Mr. Shane Pieren, Douglas County Code Enforcer, about the sight restriction problem and the dangers posed to motorists and pedestrians. I spoke with Mr. Pieren and was told that Mr. Spencer received letters stating that the fence needed to be cut to comply with the code and resolve the blind intersection problem. To date, seven months later, no change had been made to the fence. (Please click on attached picture-003).

I called KGID last October 23, 2012, to express my anger about snow that was pushed up our lower flower bed. This was not an issue in the past. That day, other neighbors did not have snow from the roadway packed in front of their houses. The blade of the machine broke the edging we installed and moved the large rock that KGID had provided to deter parking on the dirt area. I was told to leave a message for Michelle. I did, but never received a call back. (Please click on attached picture-002).

I spoke with Mrs. Nancy Taylor, 158 Juniper Drive, last 12/12/12. The Taylors' driveway was "bermed in" on several occasions while other driveways in the neighborhood were clear. KGID's response was to send a pick-up truck with a plow to push the mass of ice and snow. The Taylors spoke with Brandy, KGID employee, to lodge multiple complaints in 2010 and 2011. KGID should have records of the concerns filed. Mrs. Taylor clarified that she had a prior conflict with Mr. Spencer's wife, Marilyn Spencer.

On 12/12/12, I spoke with Ms. Mary Ellen Kinion, 176 Meadow Lane. Ms. Kinion related that she called KGID that morning because a large pile of snow was left at the end of her driveway. Ms. Kinion observed that there was no snow accumulation left at the end of the other driveways on her street. KGID sent James, another plow driver, to clear the obstruction. James commented to Ms. Kinion that the "berming" seemed to be deliberate. James was to file a report pertinent to the matter. Additionally, Ms. Kinion called the Sheriff's office to report that she witnessed Mr. Spencer lower the plow in front of his truck, such that, the blade hit a pile of snow when he drove by the Klementis' driveway.

Mr. Egon Klementi, 187 Meadow Lane, described to me, in a phone conversation last 12/12/12 that he was covered with snow and street debris after a KGID snow truck passed by with its blade lowered, while he was clearing his driveway. Mr. Klementi called the Sheriff's Department to file a report. An officer came to take his statement. Mr. Klementi further shared that he drove to the KGID office the same day, to file a complaint. Mr. Klementi spoke with Mr. McKay, KGID District Manager, and was told that the situation would be addressed. Mr. McKay told Mr. Klementi that a deputy called KGID earlier about the incident.

Mr. Klementi, a 78 year old, slightly built gentleman, called me back the same day, to disclose that he feared for his personal safety around Mr. Spencer. Mr. Spencer confronted Mr. Klementi a few weeks back, on the road, about the fence issue, while Mr. Klementi was walking his dog.

It appears that the common denominator I share with Ms. Kinion and the Klementis was that we all contacted the Code Enforcement Office.

Given the number of formal complaints made to KGID, the problems have not abated. What is KGID doing to address this serious issue? This problem needs to stop, NOW! I would appreciate a reply.

Dr. Rowena Shaw 185 Juniper Drive tahoerms@aol.com

Cc: Dr. Dan Norman, Chairman, Carolyn Treanor, Vice Chair, Jodie Nelson, Darya Vogt, Natalie Yanish

Exhibit 10

Exhibit 10

Letter Details

	Barton Family Medicine - Third Street
	1090 3rd Street, Suite 1 - S Lake Tahoe, CA 96150-3462 Phone: 530-543-5660 - Fax: 530-542-1619

June 8, 2017

Jeffrey D Spencer has been a patient at my clinic since October 1, 2014. I started seeing the patient after he had an episode of fainting. He was under extreme stress due to an ongoing problem with his neighbors and a lawsuit. He developed high blood pressure from this. He also became depressed and anxious. He was not sleeping well. All of this has led to him having a poor immune response. We have referred him to counseling and a psychiatrist. We feel that he does have posttraumatic stress disorder due to this issue with his neighbors. I do think his health would be greatly improved once the situation has been resolved.

Allison H Steinmetz, M.D.

This letter was initially viewed by Jeffrey D Spencer at 5/7/2018 2:22 PM.

RECEIVED

JUN 13 2018

Douglas County
District Court Clerk

FILED

2018 JUN 13 PM 3:02

BODDIE R. WILLIAMS
CLERK

[Signature]
BY ANOM CLERK

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.

**ELFRIEDE KLEMENTI'S REPLY IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT**

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual,
EGON KLEMENTI, an individual,
ELFRIEDE KLEMENTI, an individual,
MARY ELLEN KINION, an individual,
ROWENA SHAW, an individual, PETER
SHAW, an individual, and DOES 1-5,

Counterdefendants & Third Party
Defendants.

Comes now, Third-party Defendant, Elfriede Klementi, ("Elfriede") by and through her counsel of record, Glogovac & Pintar, and hereby submits this reply in support of her motion for summary judgment and in support of her joinder to Helmut Klementi's motion for summary judgment.

This reply is based on NRCP 56, the pleadings and papers on file with the Court, the following memorandum of points and authorities, the exhibits properly

1 before this Court, and oral argument to be presented at the hearing of this matter on
2 July 12, 2018. In addition, Elfriede adopts and incorporates by this reference, the reply
3 briefs filed by Helmut Klementi and Mary Ellen Kinion on or about June 13, 2018.

4 I.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 Spencer's opposition brief is deficient for a number of reasons. These
7 deficiencies mandate that summary judgment be granted in Elfriede's favor. First of all,
8 Spencer's opposition brief is deficient because it fails to address either the context or
9 the location of where each of the alleged statements by Elfriede were made. Because
10 each of the statements was made by Elfriede in either a judicial or quasi-judicial
11 proceedings, the statements are absolutely privileged as a matter of law.

12 Secondly, Spencer's opposition is deficient because it fails to identify and/or
13 attribute any specific "defamatory statement" or act to Elfriede. Instead, the opposition
14 brief groups Elfriede's statements and actions together with those of the other third-
15 party defendants. As observed in Helmut Klementi's reply brief, Spencer's lack of
16 specificity is its downfall. For purposes of this summary judgment motion, the Court
17 must analyze each statement made, and each action taken by Elfriede.

18 Third, Spencer attempts to create material issues of fact against Elfriede by
19 referencing actions and statements made by Elfriede's deceased husband, Egon
20 Klementi. This is error because no motion for substitution has never been filed and so
21 Mr. Klementi is no longer a party to this case.

22 In essence, the undisputed facts show that, as a matter of law, Spencer cannot
23 meet the required elements to support his claims of defamation, malicious prosecution,
24 civil conspiracy, or emotional distress because all of Elfriede's communications at the
25 KGID meeting and/or at Spencer's criminal proceedings, are protected
26 communications and/or are immune from civil liability pursuant to NRS 41.650.

1 II.

2 LEGAL ARGUMENT

3 A. Spencer's Opposition Cites the Incorrect Standard for Summary
4 Judgment

5 Spencer cites to Posadas v. City of Reno, 109 Nev. 448 (1993) and contends
6 that "trial judges are to exercise great caution in granting summary judgment, which is
7 not to be granted if there is the slightest doubt as to the operative facts." 109 Nev. 448,
8 851 P.2d 483 (1993). However, the summary judgment standard set forth in Posadas
9 was overruled by the Nevada Supreme Court in Wood v. Safeway, Inc., 121 Nev. 724
10 (2005). In Wood the court held, "We take this opportunity to put to rest any questions
11 regarding the continued viability of the 'slightest doubt' standard." 121 Nev. 724, 731
12 P.3d 1026, 1031 (2005). As the Wood court recognized, "Rule 56 should not be
13 regarded as a 'disfavored procedural shortcut' but instead, 'as an integral part of the
14 Federal Rules as a whole, which are designed 'to secure the just, speedy and
15 inexpensive determination of every action.'" *Id.* citing Celotex Corp. v. Catrett, 477
16 U.S. 317, 106 S.Ct. 2548 (1986).

17 Under current summary judgment standards, the sole question for the court is
18 whether Spencer has come forward with specific, admissible evidence to support his
19 allegations in light of the fact he bears the burden of persuasion on the challenged
20 claims at trial. Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602, 172
21 P.3d 131, 134 (2007). To meet his burden, Spencer cannot rely on general or
22 conclusory allegations, but rather, must "present specific facts demonstrating the
23 existence of a genuine factual issue supporting [his] claims." Ransdell v. Clark County,
24 124 Nev. 847, 860, 192 P.3d 756, 765 (2008). Spencer has not done so in this case.

25 ///

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1 **B. Spencer Never Substituted Egon Klementi Estate into Action and**
2 **Therefore Any Actions or Statements Made by Egon Klementi Are Not**
3 **Relevant**

4 As an initial matter, throughout his opposition brief, Spencer makes reference to
5 various statements and actions committed by Egon Klementi. In doing so, Spencer
6 tries to attribute those statements and actions to Egon's wife, Elfriede, to create
7 questions of material fact. This is improper.

8 When a party to litigation has died, NRCP 25 governs the manner in which a
9 party may be substituted. NRCP 25(a) provides in relevant part:

10 **(a) Death.**

11 (1) If a party dies and the claim is not thereby extinguished, the
12 court may order substitution of the proper parties. The motion for
13 substitution may be made by any party or by the successors or
14 representatives of the deceased party and, together with the notice of
15 hearing, shall be served on the parties as provided in Rule 5 and upon
16 persons not parties in the manner provided in Rule 4 for the service of a
17 summons. **Unless the motion for substitution is made not later than
18 90 days after the death is suggested upon the record by service of a
19 statement of the fact of the death as provided herein for the service
20 of the motion, the action shall be dismissed as to the deceased
21 party.**

22 As shown above, if a party to the litigation dies and the claim is not thereby
23 extinguished, successors or representatives of the deceased party (such as executor
24 of the decedent's estate) may be substituted in by the court as a party to the litigation
25 in place of the decedent. The motion for substitution can be made by any party, or by
26 the successors or representatives of the deceased party. If, as in this case, a
27 defendant dies before judgment, counsel for the defendant can serve and file upon
28 opposing counsel "a suggestion of death upon the record." The service of the
 "suggestion of death" places opposing counsel on notice that a motion for substitution
 must be filed within ninety (90) days. If a motion for substitution is not filed within that
 timeframe, "the action **shall** be dismissed as to the deceased party." NRCP 25(a)(1).
 Wharton v. City of Mesquite, 113 Nev. 796 (1986). (emphasis added).

1 Here, a Suggestion of Death for Egon Klementi was filed with the Court on
2 November 16, 2017. No motion for substitution seeking to have Mr. Klementi's estate
3 substituted into the litigation in place of Mr. Klementi has been filed. Accordingly,
4 Egon Klementi must be dismissed from this case and the claims and assertions made
5 by Spencer pertaining to Egon Klementi are no longer relevant to this matter and are
6 moot.

7 **C. Spencer's "Disputed Facts" are *Not* Material Facts**

8 Nevada law long has held that only admissible evidence may be considered on
9 a motion for summary judgment. NRCP 56(e). *See, Adamson v. Bowker*, 85 Nev.
10 115, 119, 450 P.2d 796, 799 (1969) ("[E]vidence that would be inadmissible at the trial
11 of the case is inadmissible on a motion for summary judgment.").

12 In an attempt to avoid summary judgment, in his opposition brief, Spencer tries
13 to group the actions and statements of various third-party defendant's together.
14 Further, Spencer continually makes reference to his acquittal of the criminal charges to
15 claim that the testimony against him in the criminal proceedings was untrue. As
16 previously recognized by this Court, however, Spencer's acquittal of the criminal
17 charges only means that the prosecution did not meet its burden of proof. It does not
18 mean that the facts and testimony supporting the criminal charges was not true.

19 More importantly, Spencer's acquittal of the criminal charges does not raise an
20 issue of material fact. "There is no issue for trial unless there is *sufficient evidence*
21 favoring the nonmoving party for a jury to return a verdict for that party.' *Anderson*, 477
22 U.S. 242, 249, 106 S. Ct. 2505, 2511 (1986) (internal citations omitted) (emphasis at
23 the criminal trail and preliminary hearing added). "[I]f the evidence is merely
24 colorable...or is not significantly probative...summary judgment may be granted." *Id.*
25 (internal citations omitted).

26 The Nevada Supreme Court "has often stated that the nonmoving party may not
27 defeat a motion for summary judgment by relying on gossamer threads of whimsey,
28 speculation and conjecture." *Wood*, 121 Nev. at 731, 121 P.3d at 1030 (internal

1 citations omitted and quotations omitted). Disagreements over what the facts will show
2 at trial, without more, do not constitute "specific evidence" that is required to defeat
3 summary judgment.

4 Moreover, in an attempt to defeat summary judgment, Spencer also attaches as
5 Exhibit 3 to his opposition brief a letter dated June 8, 2017 that is purportedly from Dr.
6 Allison Steinmetz, M.D. Not only does this medical record fail to establish
7 compensable injuries for intentional infliction of emotional distress, the medical record
8 is inadmissible and not proper for this Court to consider on summary judgment
9 because it has never been produced by Spencer in this case. The medical record does
10 not bear a best-stamp number and is not reflected in any NRCP 16.1 disclosures of
11 any party in this matter.¹

12 **D. Spencer's Defamation Claim Fails Because its Fails to Address the**
13 **Location and Context of the Statements Made by Elfriede**

14 A defendant can only be liable for defamation if a plaintiff proves the following:
15 "(1) a false and defamatory statement concerning another; (2) **an unprivileged**
16 **publication to a third party**; (3) fault amounting at least to negligence on the part of
17 the publisher; and (3) either actionability of the statement irrespective of special harm,
18 or the existence of special harm caused by the publication." Lubin v. Kunin, 117 Nev.
19 107, 111, 17 P.3d 422, 425 (2001).(Emphasis added).

20
21 Spencer's defamation claims against Elfriede appear to boil down to three (3)
22 separate "statements" made by her: (1) Elfriede's testimony in Mr. Spencer's criminal
23 proceedings; (2) Elfriede's letter presented at the KGID meeting on December 18,
24 2012; and (3) Elfriede's statements made at a KGID meeting on January 15, 2013.
25 Examining the context and location in which the statement was made by Elfriede
26 confirms that each of the statements are privileged.
27
28

1 **1. December 18, 2012 KGID meeting**

2 Spencer cites to statements made by Elfriede at a KGID meeting on December
3 18, 2012 as being defamatory. He claims "these accusations were made to discredit
4 Spencer, attempt to get criminal charges filed against him, and an attempt to get him
5 fired from his employment. Opposition p.5:17-19. Spencer further claims – without any
6 analysis or legal support – that none of Elfriede's statements are subject to an
7 absolute privilege. Opposition p.9:8 –10.

8 The minutes of the December 18, 2012 KGID meeting are attached as Exhibit 6
9 to Spencer's opposition brief. The minutes reflect that at the meeting Ms. Klementi
10 read from a letter. This letter states:

11 My name is Elfie Klementi. My husband, Egon, and I live on 187
12 Meadow Lane.

13 In the early winter season of 2011, while Egon was shoveling the
14 berm away in front of our 2 gates by our fence on Charles Avenue, Mrs.
15 Spencer, wife of the snow plow diver, came over to Egon and offered
16 that her husband, Jeff Spencer, would take care of the snow if we like,
17 since he was driving a big snow plow. My husband declined.

18 Later in 2011, and earlier this year, we found out that Mr. Spencer
19 had been completely clearing certain driveways on Meadow Lane.

20 The neighborhood problem started in April, 2012, when the
21 Spencers parked an 18 wheeler on Charles. The large vehicle blocked
22 the view for drivers turning from Meadow Lane to Charles and from
23 Charles to Meadow. After several police reports, the 18 wheeler was
24 parked next to their house. It took several weeks for the vehicle to be
25 removed.

26 Around the same time of the 18 wheeler problem, the Spencers
27 built a six foot, solid wood fence. The six foot fence goes around their
28 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

¹ This is an admitted violation of Mr. Spencer's duty to supplement his NRCP 16.1 disclosures under NRCP 26(e). Elfriede will move for exclusion of this document for use at trial pursuant to NRCP 37(c), should summary judgment not be granted in his favor and this matter proceeds to trial.

1 corner property on Meadow and Charles. Our fence height was three
2 feet. Later, we changed to an iron fence.

3 While the Spencers were building their fence last Memorial Day
4 weekend, my husband walked by their house with our dog. Mr. Spencer
5 and his wife aggressively confronted my husband, which made him fear
6 for his safety.

7 During the 2012 winter season, Mr. Spencer was hired again to do
8 the snow removal in our neighborhood. First snow of the season, we got
9 the biggest berm in front of our driveway. No one else on Meadow Lane
10 had piles of snow on their driveway. We reported the problem to KGID.
11 With previous snowplow removers, if the snow pile up on the intersection
12 of Charles and Meadow or coming down from Charles to Meadow, the
13 snow was plowed toward the empty corner lot which belongs to Douglas
14 County, not pushed to our driveway.

15 On December 12th, while my husband was clearing our driveway,
16 Ms. Spencer drove by with the snow truck with the blade down which
17 caused my husband to be covered with snow and street debris. Egon
18 called the Sherriff's department and filed a report with an officer. Egon
19 also went to Mr. McKay and reported the incident. Mr. McKay told Egon
20 that the situation would be addressed. Apparently it was not! Yesterday,
21 December 17th, Mr. Spencer came back again with the snow plow and
22 pushed a large amount of snow, ice blocks and street debris from
23 Charles, against our fence, across the road from Mr. Spencers house.
24 Mr. Spencer then went into his house for a break.

25 Since Mr. Spencer became a snow plow operator, whenever Mr.
26 Spencer took a break, day or night time, he parked the large vehicle on
27 Charles, across from our property, blocking traffic, and went in his house
28 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 driers 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.

1 Nevada recognizes and follows the “long-standing common law rule that
2 communications uttered or published in the course of judicial proceedings are
3 absolutely privileged.” Circus Circus Hotels, Inc., 99 Nev. 56 (1983); Nickovich v.
4 Mollart, 51 Nev. 306, 274 P. 809, 810 (1929) (a witness who testifies in the course of
5 judicial proceedings is not liable for the answers he makes to questions posed by the
6 court or counsel and all his answers are privileged).

7 The absolute privilege applies to both attorney’s and parties to litigation. Clark Co.
8 School Dist. v. Virtual Education, 213 P.3d 496 (Nev. 2009). The absolute privilege
9 applies to “quasi-judicial proceedings before executive officers, boards, and
10 commissions...” Circus Circus, _____. 99 Nev. at 60-54. The absolute privilege
11 precludes liability, as a matter of law, even where the defamatory statements are
12 “published with knowledge of their falsity and personal ill will toward the plaintiff.” Id.

13 The policy behind the absolute privilege is that, “in certain situations, the public
14 interest in having people speak freely outweighs the risk that individuals will
15 occasionally abuse the privilege” by making defamatory statements. Id. See also,
16 Knox v. Dick, 99 Nev. 514, 518, 665 P.2d 267, 270 (1983) (holding that the absolute
17 privilege is applicable to quasi-judicial proceedings so “the right of individuals to
18 express their views freely upon the subject under consideration is protected.”).

19 In Circus Circus Hotels, Inc. supra, the court concluded that a letter written by
20 plaintiff’s former employer, Circus Circus, presented in the context of an administrative
21 proceeding was protected by the absolute privilege and should not have been
22 presented to the jury at plaintiff’s trial against Circus Circus for defamation. Because
23 the letter from Circus Circus was related to the unemployment security division’s
24 decision on whether to grant plaintiff unemployment benefits, it was deemed to be
25 privileged. The court also held the trial court erred by allowing the jury to decide
26 whether the letter’s content was relevant to fall under the absolute privilege. Id. at 62.

27 Here, there is simply no question that the letter read by Elfriede at the KGID
28 meeting is protected by the absolute privilege. Even if the statements in the letter

1 were false or malicious -- they are not -- Elfriede cannot be held liable for defamation
2 as a matter of law because the letter is related to Spencer's employment with KGID
3 and his actions in operating a snowplow for KGID.

4 **2. January 15, 2013 KGID meeting**

5 The above analysis applies to any statements made by Elfriede at the January
6 15, 2013, KGID meeting as well.

7 **3. Testimony at Spencer's Criminal Proceedings**

8 In his opposition brief, Spencer attaches transcripts of Elfriede's testimony at
9 Spencer's preliminary hearing and criminal trial. Spencer attaches these transcripts
10 supposedly as proof that Elfriede told the court that Spencer was a bully and that her
11 husband was afraid of Spencer, Opposition, p. 11:26-28, that Elfriede admitted that
12 she never personally saw Spencer put high berms in front of her driveway with his
13 snowplow, Opposition, p.4:11-12, and/or that Elfriede admitted that she personally
14 never took any photographs of the berms outside her driveway. Opposition, p.4:17-18.
15 Spencer also attaches these transcripts as evidence that Elfriede admitted that she
16 never witnessed Spencer use his snowplow to throw snow on her husband on
17 December 18, 2012. Opposition, p.4:26- 5:1.
18

19 Notwithstanding, other than to establish that Elfriede did not personally witness
20 Spencer's bad acts, and instead, was told about those acts by others, and it is unclear
21 what the purpose of the testimony is. To the extent the testimony is offered to support
22 Spencer's claim for defamation, it is not sufficient because any communications that
23 were uttered or published in the course of judicial proceedings are absolutely
24 privileged so long as they are in some way pertinent to the subject of controversy."
25 Circus-Circus Hotels v. Witherspoon, *supra*. In addition, of course, statements made
26

1 by Elfriede to the police or district attorney are immune from civil liability pursuant to
2 NRS 41.650.

3 **E. Spencer's Malicious Prosecution Claim Fails**

4 By reason of its order granting summary judgment Mary Ellen Kinion's motion
5 for attorney's fees on October 17, 2017, the law of this case is contained in that order.
6
7 In it's order, the Court stated:

8 The Court finds it is established that Jeffrey Spencer knocked
9 Helmut Klementi down as alleged within the relevant criminal complaint.
10 The Court concludes that such act in and of itself provides probable
11 cause for the crime originally alleged, noting that a magistrate also
12 previously concluded probable cause was present, thereby allowing the
13 criminal prosecution of Jeffrey Spencer to have moved forward; with
14 probable cause established, the first element of a claim for malicious
15 prosecution, specifically that there be want of probable cause, cannot be
16 satisfied and no reasonable jury could so find.

17 With no basis factually or legally to bring the claim, the Court finds
18 and concludes that Jeffrey Spencer's claim for malicious prosecution
19 was alleged without reasonable basis. Therefore, pursuant to NRS
20 18.010(2)(b), attorney's fees are hereby awarded to the prevailing party,
21 Mary Ellen Kinion, in the amount of \$14,870.00 with regard to that claim.

22 Order, dated October 17, 2017, p. 4:14-26.

23 Based on the Court's October 17, 2017 order, summary judgment in favor of
24 Elfriede on Spencer's claims for malicious prosecution must be granted.

25 **F. Spencer Has Proffered No Evidence of a Civil Conspiracy.**

26 In support of his contention that the civil conspiracy counterclaims should go to
27 the jury, Spencer cites to the Short v. Hotel Riviera, Inc. 79 Nev. 94 (1963). First, the
28 Short decision relies on the "slightest doubt" standard for summary judgment, which
was abrogated by Wood v. Safeway, supra. Second, and more glaring, the Short
decision contemplates that the nonmoving party actually offers evidence in support of
his or her claims in order for "the evidence, and any reasonable inferences drawn from

1 it, [to] be viewed in a light most favorable to the nonmoving party." Wood, 121 Nev. at
2 729, 121 P.3d at 1029; Short, 79 Nev. at 103, 378 P.2d at 984.

3 In Short, the plaintiff produced evidence in the form of "sundry discovery
4 depositions, affidavits, the testimony taken at a hearing of a motion for temporary
5 injunction, and numerous exhibits received in evidence." *Id.*, at 96, 378 P.3d at 981. By
6 contrast, here, Spencer has not offered to this Court (or the other parties for that
7 matter) any evidence of a civil conspiracy.

8 Other than his own, self-serving statement that there exists a "sound legal basis
9 for proceeding to trial on the defamation and malicious prosecution claims," Spencer
10 has failed to demonstrate the commission of the underlying torts, i.e., of either
11 defamation or malicious prosecution. See Jordan v. Dept. of Motor Vehicles & Pub.
12 Safety, 121 Nev. 44, 75 110 P.3d 30, 51 (2005) (the underlying tort is a "necessary
13 predicate" to a cause of action for conspiracy). Hence, summary judgment on
14 Spencer's claim for civil conspiracy must be granted.

15 **G. Spencer's Claim for Intentional Infliction of Emotional Distress Fails**

16 Elfriede moved for summary judgment on Spencer's intentional infliction of
17 emotional distress ("IIED") claim on two grounds: (1) Spencer has not produced
18 evidence or law that Elfriede's actions or testimony were "extreme and outrageous
19 conduct"; and, (2) Spencer has failed to produce any evidence of physical
20 manifestations of emotional distress that is required to sustain his claim for damages.

21 In opposition, Spencer states that he "would refer to the facts and
22 evidence cited hereinabove." Opposition, p.18:3-4. However, in order to overcome a
23 motion for summary judgment in regard to his claim for intentional infliction of
24 emotional distress, Spencer had to: (1) show that Elfriede's conduct was "extreme and
25 outrageous," and (2) produce evidence of physical manifestations of emotional
26 distress. He has done neither.

27 First, the behavior of Elfriede that Spencer complains of is neither "extreme or
28 outrageous" as a matter of law. See Maduike v. Agency Rent-A-Car, 114 Nev. 1, 4,

1 953 P.2d 24, 26 (1998) (A prima facie claim of intentional infliction of emotional
2 distress requires a plaintiff to prove that the defendant's conduct was "extreme and
3 outrageous"). Extreme and outrageous conduct "is that which is outside all possible
4 bounds of decency and is regarded as utterly intolerable in a civilized community." Id.
5 Moreover, conduct amounting to a valid claim for intentional infliction of emotional
6 distress can be described as "atrocious, intolerable, or outside all possible bounds of
7 decency." Id., at 5.

8 Elfriede's behavior and statements simply cannot be described as extreme,
9 outrageous, atrocious, intolerable, or outside all possible bounds of decency. In fact,
10 her statements made to law enforcement, and her testimony before judicial and quasi-
11 judicial bodies are absolutely privileged. Such privileges are afforded to protect
12 citizens performing their civil duty of bringing attention to matters of public concern,
13 even if, ultimately, such statements are not completely accurate. Indeed, "in certain
14 situations, the public interest in having people speak freely outweighs the risk that
15 individuals will occasionally abuse the privilege" by making defamatory statements."
16 Circus Circus Hotels, Inc., 99 Nev. At 60-61, 657 P.2d at 104; Knox v. Dick, 99 Nev.
17 514, 518, 665 P.2d 267, 270 (1983) (holding that the absolute privilege is applicable to
18 quasi-judicial proceedings so "the right of individuals to express their views freely upon
19 the subject under consideration is protected.").

20 Simply put, even if all of Elfriede's statements against Spencer are not true,
21 Elfriede's actions and statements cannot be considered "extreme and outrageous" as
22 a matter of law. Accordingly, summary judgment must be granted on the intentional
23 infliction of emotional distress.

24 III.

25 CONCLUSION

26 Because Spencer has failed to raise a genuine issue of material fact for this
27 Court on any of his third-party claims, Elfriede respectfully requests that this Court
28 enter summary judgment in her favor.

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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 13th day of June, 2018.

GLOGOVAC & PINTAR

By: 
MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorneys for Third-Party Defendant,
Elfriede Klementi

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:

ELFRIEDE KLEMENTI'S REPLY IN SUPPORT OF HER MOTION FOR SUMMARY JUDGMENT ON ALL COUNTERCLAIMS

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:


Lynn Pierce, Esq.
515 Court Street, Suite 2F
Reno, Nevada 89501
Attorneys for Jeffrey Spencer

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Lemons, Grundy & Eisenberg
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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 13th day of June, 2018.



Employee of Glogovac & Pintar

Case No. 14-CV-0260

Dept. No. I

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District Court Clerk

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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,

Counter-defendants.

Case No. 14-CV-0260

Dept. No. I

COUNTER-DEFENDANT HELMUT KLEMENTI'S
REPLY IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT ON ALL COUNTERCLAIMS

Comes now, Counter-Defendant HELMUT KLEMENTI, by and through his counsel of record, Lemons, Grundy & Eisenberg, and hereby files *Counter-Defendant Helmut Klementi's Reply in Support of His Motion for Summary Judgment on All Counterclaims* ("Reply") in support of his motion for summary judgment and in response to Counterclaimant Jeffrey Spencer's *Response to Motion for Summary Judgment* ("Response") served June 2, 2018. This Reply is based on NRCP 56, the pleadings and papers on file with the Court, the following memorandum of points and authorities, the exhibits properly before this Court, and oral argument to be presented at the hearing of this matter on July 12, 2018.

LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 This matter arises from a dispute between neighbors in the Kingsbury General
4 Improvement District (KGID) in Douglas County, Nevada that ultimately culminated in criminal
5 proceedings against Defendant/Counterclaimant Jeffrey Spencer ("Mr. Spencer") after he was
6 arrested for the battery of Plaintiff/Counter-Defendant Helmut Klementi ("Helmut"). After
7 Helmut filed a personal injury claim against Mr. Spencer, he filed counterclaims against Helmut,
8 as well as third parties Mary Ellen Kinon, Egon Klementi (deceased), Elfriede Klementi, and Peter
9 and Rowena Shaw. After years of discovery and depositions, including two depositions of Mr.
10 Spencer,¹ Helmut filed *Counter-Defendant Helmut Klementi's Motion for Summary Judgment on*
11 *All Counterclaims* ("Motion") on April 12, 2018 because Mr. Spencer has no evidence to support
12 his specious claims.

13 After a generous extension of time to respond to Helmut's Motion, Mr. Spencer filed his
14 Response. As expected, Mr. Spencer's Response strives to generate dramatic, but illusory,
15 disputes of fact in a futile effort to overcome summary judgment. Not only does Mr. Spencer
16 fail to provide this Court with a single shred of evidence that is material in order to defeat
17 summary judgment, he asks this Court to apply the incorrect legal standard reversed by the
18 Nevada Supreme Court in 2005. Over three and a half years after filing his counterclaims, Mr.
19 Spencer still fails to isolate and attribute a specific "defamatory" statement to Helmut, instead
20 electing to group Helmut's statements and those of the third-party defendants together for the
21 purpose of his Response. His lack of specificity is his downfall, as this Court must analyze the
22 statements that Helmut made for purposes of Helmut's Motion – not those of the third-party
23 defendants. Alleged statements by third-party defendants are not sufficient to create a genuine
24 issue of material fact for Helmut Klementi.

25
26 ¹ Apparently, feeling sick constitutes an excuse to provide perjured testimony during one's deposition.
27 Helmut's motion, however, is based on the statements Jeffrey Spencer himself provided to the questions
28 posed during his deposition. Moreover, on the day he was feeling sick, Mr. Spencer was specifically
asked if there was "any reason why you can't give accurate testimony here today," and his response
was, "No." (See Motion, Exhibit 3, *Deposition of Jeffrey Spencer* dated July 28, 2016, p. 7:14-16).

1 Mr. Spencer largely ignores entire arguments raised by Helmut in support of Helmut's
2 Motion. Moreover, the case law cited by Mr. Spencer in parts of his Response actually support
3 the entry of summary judgment in favor of Helmut and demonstrates Mr. Spencer's
4 fundamental misunderstanding of the law in regard to his counterclaims.

5 Finally, Mr. Spencer attaches inadmissible evidence to support his alleged intentional
6 infliction of emotional distress claim. His "Exhibit 3" in support of his Response was never
7 produced in this case and there is no custodian of records affidavit attesting to the authenticity
8 of this document. It is axiomatic that any documents relied upon to support or oppose summary
9 judgment must be authenticated and admissible. Spencer's failure to produce this document
10 during discovery is just another example of his stalling and gamesmanship in this case. His
11 failure to properly authenticate the document renders it inappropriate for this Court to consider
12 on summary judgment.

13 Thus, Helmut respectfully requests this Court grant his Motion and enter summary
14 judgment in his favor on his affirmative defenses, because this was Mr. Spencer's chance to
15 produce the evidence he has against Helmut to support his claims and he has wholly failed to
16 meet his burden. In the absence of any genuine issue of material fact, summary judgment in
17 favor of Helmut is proper.

18 II. LEGAL ARGUMENT

19 A. SPENCER'S MOTION CITES THE INCORRECT STANDARD FOR SUMMARY 20 JUDGMENT

21 In his Response, Mr. Spencer cites to *Posadas v. City of Reno* and contends that "trial
22 judges are to exercise great caution in granting summary judgment, which is not to be granted
23 if there is the slightest doubt as to the operative facts." 109 Nev. 448, 851 P.2d 483 (1993). The
24 standard cited by *Posadas* for summary judgment was overruled by the Nevada Supreme
25 Court's decision in *Wood v. Safeway, Inc.*, where it held "We take this opportunity to put to rest
26 any questions regarding the continued viability of the 'slightest doubt' standard." 121 Nev. 724,
27 731, 121 P.3d 1026, 1031 (2005). As the *Wood* court recognized, "Rule 56 should not be
28 regarded as a 'disfavored procedural shortcut' but instead 'as an integral part of the Federal

1 Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination
2 of every action.'" *Id.* citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986). The
3 "slightest doubt" standard has been abrogated and is not the correct standard of law under
4 which this Court may analyze Mr. Spencer's Response. See *Schuck v. Signature Flight Support of*
5 *Nevada, Inc.*, 126 Nev. 434, 439, 245 P.3d 542, 545 (2010) (where plaintiff opposed summary
6 judgment on old "slightest doubt" standard and failed to offer or identify competent evidence
7 to contradict defendant's undisputed facts, summary judgment was appropriate).

8 Moreover, Mr. Spencer maintains in his Response that "Jeffrey Spencer has stated a
9 claim for defamation." *Response*, p. 7:11. This is not a motion to dismiss and the inquiry is not
10 whether Mr. Spencer has a properly pled counter-complaint. The correct inquiry is whether
11 Spencer has come forward with specific, admissible evidence to support his allegations in light
12 of the fact he bears the burden of persuasion on the challenged claims at trial. *Cuzze v. Univ. &*
13 *Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). To meet his burden,
14 Mr. Spencer cannot rely on the general and conclusory allegations of his counterclaims; rather,
15 he must "present specific facts demonstrating the existence of a genuine factual issue
16 supporting [his] claims." *Ransdell v. Clark County*, 124 Nev. 847, 860, 192 P.3d 756, 765 (2008).
17 He has not done so in this case.

18 **B. SPENCER'S "DISPUTED FACTS" ARE NOT MATERIAL**

19 Helmut agrees that when a court reviews a summary judgment motion, "the evidence,
20 and any reasonable inferences drawn from it, must be viewed in a light most favorable to the
21 nonmoving party." *Wood*, 121 Nev. at 729, 121 P.3d at 1029; *Anderson v. Liberty Lobby, Inc.*,
22 477 U.S. 242, 249, 106 S. Ct. 2505, 2511 (1986). This does not mean, however that the
23 nonmoving party's contentions are simply accepted as truth. Rather, "there is no issue for trial
24 unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict
25 for that party." *Anderson*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511 (1986) (internal citations
26 omitted) (emphasis added). "[I]f the evidence is merely colorable. . . or is not significantly
27 probative . . . summary judgment may be granted." *Id.* (internal citations omitted). Significantly,
28 the Nevada Supreme Court "has often stated that the nonmoving party may not defeat a motion

1 for summary judgment by relying on gossamer threads of whimsy, speculation and conjecture."
2 *Wood*, 121 Nev. at 731, 121 P.3d at 1030 (internal citations and quotations omitted).

3 Here, Mr. Spencer attempts to defeat summary judgment with "merely colorable"
4 contentions full of speculation and conjecture that simply have no bearing on the substantive
5 law of this case, which is what *Wood* dictates. 121 Nev. at 731, 121 P.3d at 1031. Mr. Spencer
6 cannot prevent summary judgment by disagreeing with the conclusions that Deputy McKone
7 and District Attorney Maria Pence reached in this matter and the underlying criminal case.

8 For example, Mr. Spencer "does not dispute the statement what conclusions [sic]
9 Deputy McKone reached and upon which he acted," however, he "disputes those conclusions."
10 *Response*, p. 5:15-26. Mr. Spencer's disagreement on how Deputy McKone conducted his
11 criminal investigation and the conclusions he reached is not sufficient to create a genuine issue
12 of material fact.

13 Another example is Mr. Spencer's "dispute" with D.A. Pence's testimony on how she
14 charged the criminal case. *Response*, p. 6:9-18. In order for Mr. Spencer to properly rebut this
15 undisputed fact, he would have to come forward with evidence demonstrating, for example,
16 that D.A. Pence lied under oath before this Court and secretly took advice from other persons
17 on how to charge the underlying criminal case against Mr. Spencer. That is how to properly
18 rebut a fact – not to simply disagree with a witness's sworn testimony on her charging decisions.
19 His "dispute" of D.A. Pence's sworn testimony, upon which this Court entered summary
20 judgment in favor of third-party defendant Mary Ellen Kinion on the malicious prosecution
21 claim, is comical.

22 Yet another example is Mr. Spencer's "dispute" with Helmut's sworn affidavit that
23 Helmut possessed a good faith belief he was violently knocked to the ground when he reported
24 the incident to law enforcement and treating medical personnel. Mr. Spencer states he
25 "directly disput[es]" this, yet utterly fails to point to any specific fact in rebuttal and fails to
26 provide this Court with any evidence that Helmut acted with malice or reckless disregard for
27 the truth, which is what is required at this stage pursuant to binding case law.

28 Thus, although Mr. Spencer has many "disputes" and disagrees with Helmut's statement

1 of undisputed facts, the law is that Mr. Spencer's disagreements, without more, do not
2 constitute "specific evidence" that is required to defeat summary judgment.

3 **C. SPENCER STILL FAILS TO SPECIFICALLY IDENTIFY THE STATEMENTS MADE BY**
4 **HELMUT THAT HE CONTENTS ARE ALLEGEDLY DEFAMATORY**

5 Mr. Spencer agrees Helmut made three "statements" as set forth in his *Statement of*
6 *Undisputed Facts*, ¶ 28: (1) his privileged comments to responding law enforcement on
7 December 18, 2012; (2) his privileged comments to the Douglas County Planning Commission;
8 and, (3) his absolute privileged testimony in Mr. Spencer's criminal proceedings.

9 Mr. Spencer now, for the first time ever, apparently attributes another "statement" to
10 Helmut: "Ms. Pence testified that she relied upon HELMUT KLEMENTI's medical records, which
11 includes statements made by HELMUT KLEMENTI to medical providers, changing and
12 contradicting other statements he made under oath." *Response*, p. 6:24-28. It appears Mr.
13 Spencer now contends that Helmut should be liable for defamation for statements he made to
14 his treating physicians after he was violently knocked to the ground by Spencer.

15 This proposition is absurd and reveals Mr. Spencer desperately grasping at anything to
16 keep his defamation claim alive against Helmut. Mr. Spencer has cited absolutely zero authority
17 for his contention that a district attorney's review of a victim/patient's medical records and the
18 statements contained therein constitutes defamation. Counsel for Helmut has found no such
19 authority either, because the contention is simply ridiculous.

20 Further, Mr. Spencer misstates the sworn testimony of D.A. Pence in support of his
21 contention. D.A. Pence testified she decided to elevate the charges against Mr. Spencer
22 because she determined Helmut suffered substantial bodily harm and prolonged physical pain,
23 not because Helmut made statements about the incident to his treating providers. (See Motion,
24 Exhibit 12, "Transcript of Proceeding," pp. 14, 16, 17, 64). Mr. Spencer also ignores the entire
25 body of law on privileges: that Helmut had a good faith belief he was assaulted, that any
26 statements he made in the course of the criminal proceeding are protected by absolute
27 privilege, and, finally, that D.A. Pence's decision to charge Spencer's underlying criminal case
28 was her decision alone. Finally, Mr. Spencer has failed to cite to a single piece of evidence –

1 despite his possession of the entire record of the underlying criminal proceedings –
2 demonstrating that Helmut "changed and contradicted other statements he made under oath."
3 *Response*, p. 6:27-28. It is his burden to support his opposition with specific citations to the
4 record. *Schuck*, 126 Nev. at 438-39, 245 P.3d at 545 ("a district court is not obligated to wade
5 through and search the entire record for some specific facts which might support the
6 nonmoving party's claim."). He cannot cite to any evidence because this assertion is false.

7 The remainder of Mr. Spencer's Response makes repeated reference to "numerous
8 statements [being] disseminated by the Counterdefendant and Third Party Defendants," and
9 that "HELMUT KLEMENTI and the Third Party Defendants were dishonest in their reporting
10 and/or repeated dishonest reports of others in some cases with no personal knowledge of the
11 actual facts and/or tampered with evidence." *Response*, p. 12:16-18. This is a textbook example
12 of "gossamer threads of whimsy, speculation and conjecture" in an attempt to distract the Court
13 with tangential and speculative allegations. Not a single specific statement is attributed to
14 Helmut. These allegations are *per se* insufficient to defeat summary judgment. *Schuck*, 126 Nev.
15 at 439, 126 Nev. at 545. The requirement is competent, **specific** evidence, with reasonable
16 inferences to be drawn from that evidence. Mr. Spencer has utterly failed to satisfy his burden.

17 **D. THE VIDEO FOOTAGE DOES NOT SHOW HELMUT TRESPASSING AND, EVEN IF IT**
18 **DID, THIS EVIDENCE HAS NO BEARING ON ANY MATERIAL FACT RELEVANT TO**
19 **SPENCER'S COUNTERCLAIMS.**

20 Mr. Spencer's Response cites to video surveillance footage previously produced in this
21 case. He asserts Helmut's statements are "contradicted by the video which shows it was a
22 collision when HELMUT KLEMENTI he [sic] turned suddenly around and collided with Mr.
23 SPENCER." *Response*, p. 8. He asserts Helmut's characterization of the incident on
24 December 18, 2012 is incorrect because Mr. Spencer believed Helmut was trespassing.

25 These assertions are futile attempts to raise an illusory issue of fact. Whether or not
26 Helmut Klementi "trespassed" on Mr. Spencer's driveway is irrelevant and distracting. For some
27 reason, Mr. Spencer continues to re-litigate the underlying criminal case where he was
28 acquitted of all charges. Despite years of discovery and requests from Helmut and the third-

1 party defendants, Mr. Spencer has never produced video surveillance footage from Camera 3,
2 the camera directed on Spencer's truck in his driveway, for the timeframe of 8:42:11 p.m. to
3 8:42:50 p.m. This video footage would indeed reveal whether Helmut was on Mr. Spencer's
4 property. The video footage Mr. Spencer produced from the evening of December 18, 2012
5 and incorporated into his *Response* does not show Helmut on Mr. Spencer's property.

6 Even if the video footage showed Helmut on Mr. Spencer's property, this has no bearing
7 on the substantive elements of Mr. Spencer's counterclaims and is a complete red herring.
8 The evidence relevant to Mr. Spencer's defamation claim is whether Helmut made a false and
9 defamatory statement with fault amounting to at least negligence. *Lubin v. Kunin*, 117 Nev. 107,
10 111, 17 P.3d 422, 425 (2001). When a party has a good faith belief he is a victim of a crime,
11 however, and reports that suspicion to law enforcement, there exists a qualified privilege. *Pope*
12 *v. Motel 6*, 121 Nev. 309, 114 P.3d 277 (2005). Whether Mr. Spencer intended to collide with
13 Helmut (which, he did, per his testimony and his *Response* that he intended to stop the
14 "trespasser" and effectuate a citizen's arrest) or not, Mr. Spencer cannot, and has not, come
15 forward with any evidence that Helmut did not possess a good faith belief he was the victim of
16 an assault.

17 Mr. Spencer's disagreement with Helmut's characterization of the incident does not
18 create an issue of material fact. What would create an issue of material fact is if Mr. Spencer
19 had produced evidence demonstrating that Helmut knew Mr. Spencer thought he was a
20 trespasser and accidentally punched him, that Helmut knew that his own opinion of what
21 happened was false, and, despite that knowledge, instead proceeded to falsely tell others that
22 Mr. Spencer punched him. Mr. Spencer has not produced any evidence, other than his own
23 opinion that Helmut did not possess a good faith belief he was assaulted. This is not enough to
24 defeat summary judgment.

25 ///

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28 ///

1 E. SPENCER IGNORES CONTROLLING AUTHORITY ON THE SUBSTANTIVE LAW,
2 INCLUDING PRIVILEGE, AND INVITES THIS COURT TO COMMIT REVERSIBLE
3 ERROR.

4 Mr. Spencer's arguments in support of his *Response* demonstrate his fundamental
5 misunderstanding of the substantive law of his counterclaims, as explained below:

- 6 1. *Spencer ignores the absolute privilege, invites this Court to commit*
7 *reversible error, and misapplies the law on qualified privilege.*

8 Amazingly, Mr. Spencer contends that "none of HELMUT KLEMENTI's statements are
9 subject to an absolute privilege, and many statements are not privileged at all." *Response*, p. 7.
10 Mr. Spencer believes that Helmut is liable for defamation for the testimony he provided to the
11 court during Mr. Spencer's underlying criminal proceedings. This assertion completely ignores
12 binding Nevada (and nationwide) authority that "communications uttered or published in the
13 course of judicial proceedings are absolutely privileged." *Circus Circus Hotels, Inc. v.*
14 *Witherspoon*, 99 Nev. 56, 657 P.2d 101 (1983).

15 Mr. Spencer's contention that Helmut is liable for the statement he read to the Douglas
16 County Planning Commission is similarly without merit because it ignores binding authority
17 from the Nevada Supreme Court that the absolute privilege also extends to "quasi-judicial
18 proceedings before executive officers, boards, and commissions...." *Id.* at 60-61, 657 P.2d at
19 104. The absolute privilege precludes liability as a matter of law even where the defamatory
20 statements are "published with knowledge of their falsity and personal ill will toward the
21 plaintiff." *Id.*

22 Mr. Spencer cites to *Jacobs v. Adelson*, 130 Nev. Adv. Op. 44, 325 P.3d 1282, 1285 (2014)
23 for the position that Helmut's statements to the Douglas County Planning Commission are not
24 protected; however, *Jacobs* is completely distinguishable from this case. In *Jacobs*, the Nevada
25 Supreme Court examined whether a party's statements to the media were protected by the
26 absolute privilege. *Id.* at ---, 325 P.3d at 1285-86. The audience in that case was the media and
27 the court adopted the majority opinion that communications to the press are not protected by
28 absolute privilege. *Id.* In contrast, here, Helmut's statement was made to a quasi-judicial body

1 with a significant interest in the outcome of the controversy between Mr. Spencer and his
2 neighbors, because Mr. Spencer's violation of the Douglas County Code ultimately resulted in
3 the incident the night of December 18, 2012. The privilege is broad and need only be "in some
4 way pertinent to the subject of the controversy." *Fink v. Oshins*, 118 Nev. 428, 433, 49 P.3d 640,
5 644 (2002). The absolute privilege applies.

6 Finally, Mr. Spencer invites this Court to commit reversible error by submitting the issue
7 of qualified, or conditional, privilege to the jury regarding Helmut's statements to law
8 enforcement. The court in *Pope v. Motel 6* was clear: "although a few jurisdictions have
9 considered communications with police in aid of law enforcement as an initial step in judicial
10 proceedings and have therefore applied an absolute privilege, **we agree with those courts that**
11 **have adopted a qualified privilege.**" 121 Nev. 307, 317, 114 P.3d 277, 283 (2005) (emphasis
12 added).² The authority is unequivocal: whether a statement is protected by conditional
13 privilege is a question of law for the court to decide – not a jury. *Circus Circus*, 99 Nev. at 62,
14 657 P.2d at 105. The plaintiff then must prove by a preponderance of the evidence that the
15 defendant abused the privilege by publishing the communication with malice in fact. *Id.* ("the
16 question goes to the jury only if there is sufficient evidence for the jury to reasonably infer that
17 the publication was made with malice in fact.") (emphasis added).

18 Mr. Spencer asserts that Helmut's statements "evidenced actual malice," but he fails to
19 provide this Court with any evidence demonstrating actual malice by Helmut other than his
20 conclusory allegations that "the third-party defendants made various accusations and
21 defamatory statements." *Response*, pp. 11-12. Mr. Spencer's own authority even recognizes
22 that reckless disregard for the truth is a "subjective test, focusing on what the defendant
23 believed and intended to convey, and not what a reasonable person would have understood
24 the message to be." *Response*, p. 12:1-6, citing *Posadas v. City of Reno*, 109 Nev. 448, 454, 851
25 P.2d 438, 443 (1993). This is Mr. Spencer's own quote from his own opposition brief. Armed

27 ² Mr. Spencer conveniently omits this first part of the quote from *Pope* on page 8 of his *Response*.

1 with this knowledge of the law, he still fails to proffer any evidence that Helmut possessed
2 anything other than a good faith belief he was the victim of an assault on December 18, 2012.³

3 It would be error to submit this issue to the jury, as Mr. Spencer suggests. Rather,
4 because he failed to set forth any evidence that Helmut made his statements with actual malice,
5 which is the standard for the conditional privilege that applies here, Mr. Spencer has failed to
6 meet his burden on summary judgment. *Pope*, 121 Nev. at 217, 114 P.3d at 284 (plaintiff's
7 affidavit that implied statements were untrue but not made with knowledge they were false
8 was insufficient to defeat summary judgment).

9 2. *Spencer confuses the issue on his malicious prosecution claim.*

10 In a brief argument less than a page, Mr. Spencer asserts his claim of malicious
11 prosecution should go to the jury. His reason for this is because D.A. Maria Pence testified that
12 she is the "sole decider of whether to initiate a criminal prosecution, and a DA [sic] is immune
13 to suit for malicious prosecution," and he believes "[t]hat is not the law." *Response*, p. 13:24-
14 27. Because Mr. Spencer believes D.A. Pence misstated the law on malicious prosecution during
15 her testimony, he believes his claim for malicious prosecution against Helmut Klementi should
16 go to trial. This could not be more wrong and sorely confuses the issue on this point. In order
17 to defeat Helmut's summary judgment motion, Mr. Spencer needed to come forward with
18 specific, admissible evidence that Helmut initiated, procured the initiation of, or actively
19 participated in the continuing of Mr. Spencer's criminal proceeding by making malicious
20 statements with knowledge such statements were false or with reckless disregard for their
21 truth. *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002). Instead of doing so, he
22 argues that summary judgment is inappropriate because a deputy district attorney misstated
23

24
25 ³ In the *Posadas* case, upon which Mr. Spencer heavily relies, the plaintiff actually produced the following
26 evidence: a pattern of conduct by defendants suggesting the press release was issued with knowledge
27 it was false or reckless disregard for the truth because they were police officers knowledgeable in court
28 procedure; that plaintiff was in disfavor with defendants' administration and retaliated against; that
defendants would not speak to him at work; and, that an internal affairs investigation was not conducted
in the usual manner of investigation but instead directed by the defendants. *Id.* at 455. This was
sufficient evidence to submit the question of malice to the jury.

1 the law, in his opinion.⁴ Mr. Spencer has failed to meet his burden. *Id.* (where plaintiff failed to
2 present specific facts that defendant had an ulterior purpose in the underlying legal proceeding,
3 he failed to raise a genuine issue of material fact to survive summary judgment against him).⁵

4 3. *Spencer proffered no evidence of a civil conspiracy.*

5 In support of his contention that his civil conspiracy counterclaims should go to the jury,
6 Mr. Spencer cites to the *Short v. Hotel Riviera, Inc.* decision. Mr. Spencer's lengthy cut-and-
7 paste of the *Short* decision misses the point for several reasons. First, the *Short* decision relies
8 on the "slightest doubt" standard for summary judgment, which was abrogated by *Wood v.*
9 *Safeway*, supra. Second, and more glaring, the *Short* decision contemplates that the nonmoving
10 party actually offers evidence in support of his or her claims in order for "the evidence, and any
11 reasonable inferences drawn from it, [to] be viewed in a light most favorable to the nonmoving
12 party." *Wood*, 121 Nev. at 729, 121 P.3d at 1029; *Short*, 79 Nev. at 103, 378 P.2d at 984. In the
13 *Short* case, the plaintiff actually produced evidence in the form of "sundry discovery
14 depositions, affidavits, the testimony taken at a hearing of a motion for a temporary injunction,
15 and numerous exhibits received in evidence." *Id.*, at 96, 378 P.3d at 981. By contrast, here, Mr.
16 Spencer has not offered to this Court (or the other parties for that matter) any evidence of a
17 civil conspiracy to commit defamation or malicious prosecution. Mr. Spencer's conclusory
18 assertion that Helmut's "numerous statements....could have no other purpose than to harm Mr.
19 Spencer..." certainly does not satisfy Mr. Spencer's burden as contemplated in the *Short* or
20 *Wood* decisions. *Response*, p. 16:20-24.

21 Finally, other than his self-serving statement that there exists a "sound legal basis for
22 proceeding to trial on the defamation and malicious prosecution claims," Mr. Spencer has failed
23 to demonstrate the commission of the underlying torts, as repeatedly established by Helmut's
24

25
26 ⁴ Mr. Spencer is apparently unaware of the concept of prosecutorial immunity. *Dorsey v. City of Reno*,
27 124 Nev. 1462, 238 P.3d 807 (2008) ("A district attorney is immune from suit for damages arising out of
his performance of the criminal prosecutorial function.").

28 ⁵ It should be noted that Mr. Spencer does not dispute that the decision to arrest Mr. Spencer was solely
that of the investigating deputy, Deputy McKone. *Motion*, p. 8, ¶ 20.

1 Motion and this Reply. See *Jordan v. Dept. of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75, 110
2 P.3d 30, 51 (2005) (the underlying tort is a "necessary predicate" to a cause of action for
3 conspiracy).

4 There is no question summary judgment on Mr. Spencer's claims for civil conspiracy for
5 malicious prosecution and defamation is proper in favor of Helmut. *Consol. Generator-Nevada,*
6 *Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (finding
7 summary judgment was appropriate on civil conspiracy claim where there was no evidence
8 defendants agreed and intended to harm plaintiff); *Sharda v. Sunrise Hosp. & Med. Ctr., LLC*,
9 2017 WL 2870086, at *10 (D. Nev. July 3, 2017) (plaintiff's claim for civil conspiracy failed where
10 he did not plead a plausible underlying agreement).

11 4. *Spencer misses half the elements of his intentional infliction of emotional*
12 *distress claim and, worse, attempts to introduce evidence that has never*
13 *been produced in this case to support his claim.*

14 Helmut moved for summary judgment on Mr. Spencer's intentional infliction of
15 emotional distress ("IIED") claim on two grounds: (1) Mr. Spencer has produced no evidence or
16 law that Helmut's actions of reporting what happened to him and testifying in a criminal
17 proceeding are "extreme and outrageous conduct"; and, (2) Mr. Spencer has failed to produce
18 any evidence of physical manifestations of emotional distress required to sustain his claim for
19 damages.

20 In opposition to Helmut's first ground on the first element of the IIED claim, Mr. Spencer
21 states that he "would refer to the facts and evidence cited hereinabove." *Response*, p. 17. Given
22 that Mr. Spencer did not produce any material, specific evidence in support of his conclusory
23 statements that 82-year old Helmut Klementi ran around South Lake Tahoe slandering Mr.
24 Spencer after he had been knocked violently to the ground, it begs the question of how Mr.
25 Spencer can defeat summary judgment as to the very first element of his IIED claim. He must
26 prove that Helmut's conduct is extreme and outrageous, "outside all
27 possible bounds of decency and is regarded as utterly intolerable in a civilized community."
28 *Maduike v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998) (internal citations omitted).

1 In *Branda v. Sanford*, upon which Mr. Spencer heavily relies in support of his cursory
2 argument, the following facts occurred:

3 The suit arose out of an incident which occurred at the Silverbird Hotel in
4 Las Vegas on August 20, 1978. Cheryl Branda, then 15 years old, worked as a
5 busgirl at the hotel. That morning, as she performed her duties, she was
6 confronted by Foxx, who verbally accosted her with sexual innuendoes and
7 became verbally abusive when she ignored his remarks. Foxx allegedly began the
8 confrontation by asking Cheryl if her name was "like in cherry." According to
9 Cheryl and the testimony of two other witnesses, Foxx subsequently said or
10 yelled at Cheryl, among other things, that she was a "f—k—g bitch," "f—k—g c—
11 t" and "no lady." He is alleged to have also said that "This is the one I want. This
12 is her." He allegedly screamed at Cheryl causing a number of hotel patrons and
13 employees to watch and listen to the altercation.

14 *Branda v. Sanford*, 97 Nev. 643, 645, 637 P.2d 1223, 1224 (1981). It was this type of behavior
15 exhibited by the defendant in *Branda* that caused the Nevada Supreme Court to reverse the
16 trial court's decision in order for the jury to consider whether the conduct in question
17 constituted extreme outrage. *Id.* at 649, 637 P.2d at 1223. Helmut's conduct of reporting what
18 he perceived to be an assault upon his person and testifying in a criminal proceeding against
19 Mr. Spencer simply does not constitute extreme and outrageous behavior and this Court can
20 find such as a matter of law.

21 In a last-ditch attempt to defeat summary judgment, Mr. Spencer attaches as Exhibit 3
22 to his *Response* a letter dated June 8, 2017 that is purportedly from Dr. Allison Steinmetz, M.D.
23 Not only does this document fail to establish compensable damages for intentional infliction of
24 emotional distress, this document is improper and inadmissible for this Court to consider on
25 summary judgment.

26 First, the purported medical record asserts that Mr. Spencer has been a patient with Dr.
27 Steinmetz since October 2014, just before Helmut filed his *Complaint for Damages* on
28 December 17, 2014. The document states that Spencer "was under extreme stress due to an
ongoing problem with his neighbors and a lawsuit" and that he developed high blood pressure
from this, along with purported posttraumatic stress disorder. *Response*, "Exhibit 3" letter
dated June 8, 2017 (emphasis added). Essentially, Mr. Spencer seeks damages for the stress he
sustained as a result of this lawsuit.

Although the Nevada Supreme Court has not directly ruled on the issue of whether

1 stress-induced litigation damages are recoverable, other courts have. The majority of courts
2 who have examined this issue have held that the stress and anxiety one suffers as a result of
3 litigation is not compensable because "stress and anxiety normally attend the litigation
4 process." See *Picogna v. Bd. of Educ. of Twp. of Cherry Hill*, 671 A.2d 1035, 43 N.J. 391, 397–99
5 (1996) (collecting both state and federal cases); *MacCharles v. Bilson*, 231 Cal. Rptr. 155, 157
6 (Ct. App. 1986) ("it has always been understood in our system that attorney's fees and the
7 mental stress of litigation are burdens which the parties must ordinarily bear themselves);
8 *Ortega v. Pajaro Valley Unified Sch. Dist.*, 75 Cal. Rptr. 2d 777, 800 (1998) (litigation stress is
9 legally non-compensable); *Buoy v. ERA Helicopters, Inc.*, 771 P.2d 439 (Alaska 1989) (court did
10 not infringe on plaintiff's right to litigate claims when it permitted defendant to argue that
11 defendant was not liable for plaintiff's litigation induced-stress and depression).

12 Thus, Mr. Spencer's claims of depression and high blood pressure are simply part of the
13 ordinary stress of litigation that he voluntarily undertook when he asserted counterclaims
14 against Helmut in this case. Such damages are not legally compensable. Finally, Helmut must
15 again point out that Mr. Spencer's physical symptoms he attributes to this case are pre-existing
16 conditions and symptoms he suffered long before this case even started. His treating physicians
17 note that his past medical history includes pre-existing depression and a "long history of
18 gastrointestinal reflux disorder." (See Exhibit 15 to Motion, bates-stamped KINION-138–140,
19 151–156 (noting that heartburn and regurgitation issues started 10-15 years ago)). Their
20 relation to this case is suspect, especially in light of Mr. Spencer's evasive deposition testimony.

21 Second, the purported medical record dated June 8, 2017 is improper and inadmissible
22 for this Court to consider on summary judgment. This document has never been produced by
23 Mr. Spencer in this case – it does not bear a bates-stamp number and is not reflected in any
24 NRCP 16.1 disclosures of any party in this matter. ⁶

25 Rule 56 of the Nevada Rules of Civil Procedure specifically states how evidence must be
26

27
28 ⁶ This is an admitted violation of Mr. Spencer's duty to supplement his NRCP 16.1 disclosures under
NRCP 26(e). Helmut will move for exclusion of this document for use at trial pursuant to NRCP 37(c),
should summary judgment not be granted in his favor and this matter proceed to trial.

1 presented to the trial court in order for the court to consider it to support or oppose summary
2 judgment:

3 Supporting and opposing affidavits shall be made on personal
4 knowledge, shall set forth such facts as would be admissible in evidence, and
5 shall show affirmatively that the affiant is competent to testify to the matters
6 stated therein. **Sworn or certified copies** of all papers or parts thereof referred
7 to in an affidavit shall be attached thereto or served therewith.

8 NRCP 56(e) (emphasis added). A trial court can only consider admissible evidence when ruling
9 on a motion for summary judgment. *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 773 (9th Cir.
10 2002).⁷ Here, there is no custodian of records affidavit from Barton Family Medicine attesting
11 that this document is what it purports to be. This medical record is not properly authenticated
12 by the mere fact it is attached to Mr. Spencer's declaration. *Orr*, 285 F.3d at 773-74 (excluding
13 the majority of plaintiff's exhibits that were attached to her counsel's declaration for failure to
14 properly authenticate); and *Neal-Lomax v. Las Vegas Metro. Police Dept.*, 574 F. Supp. 2d 1170,
15 1182 (D. Nev. 2008) (same). Accordingly, at this late hour, Mr. Spencer cannot submit
16 unauthenticated medical records he has never produced in this case in an attempt to defeat
17 summary judgment against him.

18 5. *Spencer skirts his requirement to produce clear and convincing evidence*
19 *of oppression, fraud, or malice for punitive damages.*

20 Mr. Spencer devotes a single line to agree with Helmut that punitive damages are "just
21 a measure of damages, which would be addressed at the time of trial." *Response*, p. 17. There
22 is no need, however, to address punitive damages at trial because Mr. Spencer ignores the
23 remainder of Helmut's argument that Mr. Spencer has failed to proffer any evidence, let alone
24 clear and convincing evidence, to demonstrate that punitive damages are appropriate against
25 Helmut. By failing to address this contention or offer any admissible evidence to the contrary,
26 Mr. Spencer concedes he has no clear and convincing evidence to support an award of punitive

27 ⁷ "Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority,
28 because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (internal citations and quotations omitted).

1 damages against Helmut in this case. Thus, the matter does not even go to the jury. *Evans v.*
2 *Dean Witter Reynolds, Inc.*, 106 Nev. 598, 612, 5 P.3d 1043, 1052 (2000).

3 **III. CONCLUSION**

4 It is no surprise to Helmut that, after years of litigation, Mr. Spencer was unable to
5 provide this Court with material evidence sufficient to defeat summary judgment. A close
6 review of Mr. Spencer's arguments reveals they are based on incorrect legal standards and, in
7 some instances, even support the fact that Helmut is entitled to summary judgment in his favor
8 and against Mr. Spencer on all of Mr. Spencer's counterclaims against Helmut.

9 Because Mr. Spencer has failed to raise a genuine issue of material fact for this Court on
10 any one of his counterclaims, Helmut respectfully requests that this Court enter summary
11 judgment in his favor.

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

14 Dated: June 13, 2018.

15 Lemons, Grundy & Eisenberg

16
17 BY: 

18 Douglas R. Brown, Esq.
19 Sarah M. Molleck, Esq.
20 Attorneys for Counterdefendant
21 Helmut Klementi
22
23
24
25
26
27

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on June 13, 2018, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **COUNTER-DEFENDANT HELMUT KLEMENTI'S REPLY IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT ON ALL COUNTERCLAIMS**, addressed to the following:

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Attorney for Jeffrey Spencer

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Egon Klementi and Elfriede Klementi*

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Susan G. Davis

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District Court Clerk

2018 JUN 13 PM 3:02

DOUGLAS COUNTY
CLERK

ANOM

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: II

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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 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,
19 ELFRIDE KLEMENTI, an individual,
20 MARY ELLEN KINION, an individual,
21 ROWENA SHAW, an individual, PETER
22 SHAW, an individual, and DOES 1-5,

23 Counterdefendants & Third Party
24 Defendants.

**REPLY IN SUPPORT OF THIRD-PARTY
DEFENDANT MARY KINION'S MOTION
FOR SUMMARY JUDGMENT**

25 Third-Party Defendant, Mary Ellen Kinion ("Kinion"), by and through her
26 undersigned counsel, Glogovac & Pintar, hereby submits this reply in support of her
27 motion for summary judgment and in support of her joinder in Helmut Klementi's
28 motion for summary judgment.

This reply is based on NRCP 56, the pleadings and papers on file with the
Court, the following memorandum of points and authorities, the exhibits properly
before this Court, and any oral argument to be presented at the hearing of this matter

1 on July 12, 2018. In addition, Kinion adopts and incorporates by this reference, the
2 Reply brief filed by Helmut Klementi on June 13, 2018.

3 I.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 Kinion's motion for summary judgment and Spencer's opposition brief make
6 clear that in determining whether to grant summary judgment, this Court must decide
7 whether the statements made by Kinion, and the other third-party defendants, are
8 protected by way of absolute or qualified privilege?

9 As demonstrated below, summary judgment must be granted to Kinion because
10 Spencer misstates what Nevada law is on summary judgment. Second, Spencer's
11 opposition brief ignores the context and location in which each of the alleged
12 statements by Kinion were made. Because each of the alleged statements were made
13 by Kinion in a either judicial or quasi-judicial proceeding, the statements are privileged
14 as a matter of law.

15 The crux of Spencer's opposition brief is that because Spencer was acquitted
16 of the charges at his criminal trial, that all of the statements and testimony made by
17 Kinion (and the other third-party defendants) which were made in support of those
18 criminal charges are not true. However, as previously recognized by the court,
19 Spencer's acquittal of the criminal charges only means that the prosecution did not
20 meet its burden of proof. It certainly does not mean that the facts underlying the
21 criminal charges being brought are not true.

22 II.

23 **Law and Discussion**

24 **A. Spencer Cites Overruled Law in Regard to the Standard for**
25 **Summary Judgment**

26 In his opposition brief, Spencer relies on Posadas v. City of Reno, 109 Nev.
27 448, 851 P.2d 438 (1993) to argue that "trial judges are to exercise great caution in
28 granting summary judgment, which is not be granted if there is the slightest doubt as

1 to the operative facts.” However, the ‘slightest doubt’ standard has been expressly
2 overruled by the Nevada Supreme Court in subsequent opinions. In Wood v. Safeway
3 121 Nev. 724, 731, 121 P. 3d 1026, 1031 (2005) the court held, “we take this
4 opportunity to put to rest any questions regarding the continued viability of the
5 ‘slightest doubt’ standard.”

6 The correct standard is whether Spencer can provide specific, admissible
7 evidence to support his allegations. Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123
8 Nev. 598, 602, 172 P.3d 131, 134 (2007). To do this, Spencer cannot merely assert
9 general and conclusory allegations, but rather, must “present specific facts
10 demonstrating the existence of a genuine factual issue supporting his claims.”
11 Randsell v. Clark County, 124 Nev. 847, 860, 192 P.3d 756, 765 (2008).

12 **B. Spencer’s Defamation Claim Fails Because its Does Not Address**
13 **the Location and Context of the Statements Made by Kinion**

14 A defendant can only be liable for defamation if a plaintiff proves the following:
15 “(1) a false and defamatory statement concerning another; (2) **an unprivileged**
16 **publication to a third party**; (3) fault amounting at least to negligence on the part of
17 the publisher; and (3) either actionability of the statement irrespective of special harm,
18 or the existence of special harm caused by the publication.” Lubin v. Kunin, 117 Nev.
19 107, 111, 17 P.3d 422, 425 (2001). (Emphasis added).
20

21 Spencer’s defamation claims against Kinion are twofold. First, Spencer claims
22 that statements made by Kinion at the KGID board meeting on December 18, 2012 are
23 defamatory because the statements were not true and because she was accusing him
24 of a crime and trying to interfere with his employment. Opposition, p. 5:17-19. Second,
25 Spencer claims that Kinion wrote a letter to Deputy D.A. Pence with the intent to get
26 D.A. Pence to prosecute Spencer. Opposition, p. 5:19-20.

27 ///
28

1 **1. December 18, 2012 KGID meeting**

2 The minutes from the KGID meeting reflect that Kinon spoke at that meeting.
3 Spencer claims that the comments made by Kinion at the KGID meeting relate to
4 criminal proceedings and not to the KGID itself, and thus, are not privileged.
5 (Response, p. 11: 26-12:3). Spencer cites to the case of Jacobs v. Adelson, 130 Nev.
6 Adv. Op. 44, 325, P.3d 1282, 1286, to argue that "communications are not sufficiently
7 related to judicial proceedings when they are made to someone without an interest in
8 the outcome." (Response, p. 11:27-28). However, the assertion that Kinion's
9 comments at the KGID meeting relate to criminal proceedings is simply not true.¹
10 Exhibit 6 to Spencer's opposition brief are the minutes of the December 18, 2012
11 meeting. According to the minutes:
12

13 "Mary Ellen Kinion from 176 Meadow Lane spoke. She had a large berm
14 that was put in front of her driveway. She has known the Spencer's for
15 about six years and had stopped talking to them las year because they
16 were harassing the neighbors regarding the ridiculous fence that they
17 built. She called McKay about the berm and he immediately sent
18 somebody with a plow as she does not have a commercial plow and
19 there was no way she could clear it out herself. Spencer came by later
20 in the day and Mary Ellen said Spencer had a big grin on his face and
21 turned the blade and that is when Klementi got splashed with snow. She
22 then called KGID about what had happened and was told something
23 would be done. Mary Ellen called Flipper and he said he would do
24 something about it. Mary Ellen said today there was a different
25 snowplow driver. Mary Ellen said Mrs. Spencer wants her day in court.
26 Mary Ellen said we are all here tonight because of this one person and
27 her obsession. She has harassed these people and it has to stop."

28 As the court will remember, Spencer was contracted by the KGID to plow snow
in Kinion's neighborhood. It was Spencer's actions while operating the snow plow in
her neighborhood that were the subject matter of Kinion's statements to the KGID
board on December 18, 2012.

¹ The Court will remember that Spencer's assault on Helmut Klementi occurred approximately one hour
after the KGID meeting on December 18, 2012.

1 Moreover, Nevada recognizes and follows the "long-standing common law rule
2 that communications uttered or published in the course of judicial proceedings are
3 absolutely privileged." Circus Circus Hotels, Inc., 99 Nev. At 60-61, 657 P.2d at 104;
4 Nickovich v. Mollart, 51 Nev. 306, 274 P. 809, 810 (1929). The absolute privilege also
5 applies to "quasi-judicial proceedings before executive officers, boards, and
6 commissions..." Id. The absolute privilege precludes liability, as a matter of law, even
7 where the defamatory statements are "published with knowledge of their falsity and
8 personal ill will toward the plaintiff." Id. The policy behind the absolute privilege is that,
9 "in certain situations, the public interest in having people speak freely outweighs the
10 risk that individuals will occasionally abuse the privilege" by making defamatory
11 statements. Id.; Knox v. Dick, 99 Nev. 514, 518, 665 P.2d 267, 270 (1983) (holding
12 that the absolute privilege is applicable to quasi-judicial proceedings so "the right of
13 individuals to express their views freely upon the subject under consideration is
14 protected.").

15 In Circus Circus Hotels, Inc., supra the court concluded that a letter written by
16 plaintiff's former employer, Circus Circus, presented in the context of an administrative
17 proceeding was protected by the absolute privilege and should not have been
18 presented to the jury at plaintiff's trial against Circus Circus for defamation. Because
19 the letter from Circus Circus was related to the unemployment security division's
20 decision on whether to grant plaintiff unemployment benefits, it was privileged. The
21 court also held the trial court erred by allowing the jury to decide whether the letter's
22 content was relevant to fall under the absolute privilege. Id. at 62.

23 In his opposition brief, Spencer does not challenge the assertion that the
24 KGID is a quasi-judicial body. Thus, because the statements made by Kinion at the
25 KGID meeting are related to Spencer's actions as a snow plow driver for the KGID, the
26 statements are privileged.

27 ///

28 ///

1 **2. Kinion's Letter to D.A. is Protected by Qualified Privilege**

2 In his opposition brief, Spencer also states that his defamation claims against
3 Kinion are based upon a letter that she wrote to the Douglas County District Attorney
4 and her testimony at Spencer's criminal trial. Because Spencer was later acquitted of
5 the criminal charges, Spencer asserts that the statements contained in Kinion's letter
6 and testimony were false. Therefore, according to Spencer, the question of whether
7 such statements qualify as defamation is a question left for the jury.

8 In taking that position, Spencer relies on Branda v. Stanford, 97 Nev. 643, 637
9 P.2d 1223 (1981) to argue that if statements are susceptible of different constructions,
10 one of which defamatory, the resolution of the ambiguity is properly left to the jury.
11 (Response, p. 10:24-26). Further, Spencer cites Posadas, supra to assert that a
12 determination of whether the statement has any basis in truth is also a decision for the
13 jury. Opposition, p. 10:28-11:26.

14 Notwithstanding, neither Branda nor Posadas are applicable because they do
15 not involve the issue of privilege. Indeed, the issue of privilege was never raised or
16 asserted in either decision. In Branda, the plaintiff was a fifteen-year-old bus girl at a
17 Las Vegas hotel who was verbally accosted with sexual innuendos and obscenities by
18 a patron. The issue in that case was whether the innuendos, and specifically, the
19 word "bitch" constituted slander per se. Id. at 645. While the Supreme Court
20 determined that when terms are susceptible to different constructions the resolution of
21 the ambiguity is properly left to the jury, the question about whether the word "bitch"
22 was protected by a privilege was never raised or addressed.

23 The same is true for the Posadas decision. In that case, the Reno Police
24 Department issued a press release stating that one of its officers, Officer Posadas,
25 had lied under oath. 109 Nev. 448, 450, 851 P.2d at 440. The issue in Posadas was
26 whether the press release was capable of defamatory construction, and whether it was
27
28

1 made with actual malice. Id. Like in Branda, the issue of privilege was never
2 addressed.

3 As the court will remember, on July 20, 2017, Kinion's letter to Deputy D.A.
4 Pence was discussed. At that time, Ms. Pence testified as follows:

5 DIRECT EXAMINATION

6 BY THE COURT:

7 Q And do you remember receiving this letter?

8 A I remember seeing this letter before. I can tell the court
9 that the handwritten entry at the top was made by my legal secretary at
10 the time, so it would have come to the Douglas County District Attorney's
11 Office. she coded it to this particular criminal matter. That's a DA
12 number. Q was my number at the time. And the time that it was received
13 in our office was the February 22nd, 2013, time.

14 I'm not sure – I think that would be sometime several months after
15 I had originally charged this case, and I remember meeting Mr. Kinion at
16 the Tahoe Township Justice Court and her expressing that she had
17 some information.

18 And I told her, you know, "If there's something that you think is
19 relevant to the case, to please feel to write something and send it to the
20 District Attorney's Office."

21 And that's about the extent of what I remember without going back
22 and checking file notes, as far as this letter.

23 Q When you met Ms. Kinion at Justice Court, was that the
24 day of the Preliminary Hearing, if you're – on this date? (Inaudible).

25 A I don't remember when it was. I think there were several
26 Court appearances at the Justice Court level before it went to Prelim,
27 and I don't know when – if she was a ride for them, if she came – I don't
28 remember.

I just remember that's where I met her was at the Tahoe Township
Justice Court.

Q Did she say anything to you that – I'm going to use the
word unduly, unduly influence you to charge a felony or not? Anything
like that?

1 Was there anything in reaction on your part from what Ms. Kinion
2 either wrote or said to you?

3 A No. and I would just be guessing, but my guess is that – I
4 think when I originally charged this case, I don't remember if it was 2 or 3
5 counts, but she was not a part of the charging decision whatsoever at all.

6 I receive this – I received a lot of information before Prelim.
7 Specifically, I think the biggest thing was the medical documents, and I
8 remember there was voluminous records from doctors that Mr. Routsis
9 wasn't able to find, and kept losing, that there were all these reasons that
10 they were appearing.

11 But there was actually a ton of medical records, and I think
12 probably the biggest change – and I apologize because it's been so long.
13 I don't remember exactly, but I don't think the charges actually changed
14 substantially at all from what I charged the day I read the Sheriff's office
15 Report until the day we went to trial.

16 I think the only enhancement was based on medical records
17 because once there was substantial bodily harm, it elevated – I think it
18 was a gross misdemeanor to a felony.

19 Q And the medical records influenced you to the point of the
20 felony because of substantial bodily harm?

21 A Well, exactly. At the time that I charged it, I did not have
22 any medical records.

23 Q I see.

24 A At all. And then I think I was given his original medical
25 records, and I talked to the victim himself in that count, and he was still
26 seeing a doctor.

27 And by the time I actually understood what had actually happened
28 to him – when I believe that he was pushed down by Mr. Spencer, it was
much more severe than I had originally understood.

And the only reason it became a felony was because of the level
of proof that I would need for prolonged physical pain, where impairment
was met by the medical records.

Hearing Transcript dated January 30, 2017, p. 12:16-14:24. Attached hereto as
Exhibit 1.

1 In Harrison v. Roitman, 131 Nev.Adv.Op. 92 (decided December 17, 2015), the
2 Nevada Supreme Court addressed judicial immunity for a party-retained expert
3 witness. In Harrison, the husband in divorce proceedings retained a psychiatrist to
4 conduct a psychiatric analysis of his then-wife. The psychiatrist prepared and
5 submitted a report to the court which diagnosed the wife with a personality disorder. In
6 response, the wife sued the psychiatrist alleging the statements in the report
7 constituted medical malpractice, IIED, NIED, and civil conspiracy. The psychiatrist
8 then filed a motion to dismiss claiming to be absolutely immune from liability. The
9 psychiatrist's motion to dismiss was granted by the district court.

10 On appeal, the Nevada Supreme Court affirmed. Concluding that party-retained
11 expert witnesses play an integral role in the judicial process, the Supreme Court
12 concluded that the psychiatrist was entitled to absolute immunity for all claims arising
13 from the report. In reaching its decision, the Harrison court adopted the "functional
14 approach" to resolve the question of immunity.

15 According to Harrison, the functional approach is made up of three separate
16 inquiries. First, whether the person seeking immunity performed functions sufficiently
17 comparable to those who have traditionally been afforded absolute immunity at
18 common law. Second, whether the likelihood of harassment or intimidation by way of
19 personal liability is sufficiently great to interfere with the person's performance of her
20 duties, and third, whether procedural safeguards exist in the system that would
21 adequately protect against illegitimate conduct. Id.

22 Analyzing the functional approach adopted in Harrison to the facts in this matter
23 compels the conclusion that absolute immunity should be given to Kinion for the letter
24 she wrote. First, as a witness to the acts committed by Spencer and who then reported
25 what she saw to the police and district attorney, Kinion clearly falls within the category
26 of persons afforded absolute immunity at common law. The immunity of witnesses
27 from subsequent damages liability for their testimony in judicial proceedings is well
28 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 letter to the District Attorney and her testimony
11 of the events surrounding Spencer's actions toward the Klementi brothers is wrong,
12 various procedural safeguards are in place to protect against Kinion's recollection from
13 being used improperly. In this regard, like the expert witnesses in Harrison, Kinion is,
14 and indeed was, at Spencer's criminal trial, subject to cross-examination. It is up the
15 finder of fact to determine Kinion's credibility. Spencer's acquittal at his criminal trial
16 confirms the safeguards of cross-examination to be adequate.

17 To be actionable, any letters or statements made by Kinion to the Douglas
18 County Sheriff Department or the Douglas County District Attorney's office would have
19 to be either knowingly false or made with reckless disregard for their veracity in order
20 for them to be actionable. However, other than citing to his acquittal of the criminal
21 charges, Spencer has provided no evidence which would suggest the statements
22 made by Kinion to police or district attorney are knowingly false. Moreover, Spencer's
23 later settlement of the civil action brought against him Helmut Klementi strongly
24 suggests the statements were, in fact, true.

25 **C. Conspiracy Claims Must be Dismissed.**

26 "To establish a claim for civil conspiracy, a plaintiff must establish . . . the
27 commission of an underlying tort." Peterson v. Miranda, 991 F.Supp.2d 1109, 1120 (D.
28 Nev. 2014) citing GES, Inc. v. Corbitt, 117 Nev. 265, 21 P.3d 11, 15 (2001) (emphasis

1 added). In addition to establishing an underlying tort, a claim for civil conspiracy must
2 establish the following elements: (1) defendants acted in concert; (2) defendants
3 intended to accomplish an unlawful objective for the purpose of harming the plaintiff;
4 and (3) plaintiff sustained damages resulting from the defendants' acts. Consol.
5 Generator-Nevada, Inc. v. Cummins Engine Co., Inc., 114 Nev. 1304, 1311, 971 P.2d
6 1251, 1256 (1999). None of these elements are satisfied.

7 Initially defeating the conspiracy claim is the fact that Spencer's claim for malicious
8 prosecution against him has already been deemed by this Court to be without basis
9 and dismissed. Without a valid and actionable tort for malicious prosecution, Spencer's
10 claim for civil conspiracy based on malicious prosecution must fail. Similarly, since all
11 of the alleged defamatory statements made by Kinion were made in either a judicial or
12 quasi-judicial proceeding, the statements are privileged.

13 Without a valid and actionable tort for defamation, Spencer's claim for civil
14 conspiracy based on defamation must also fail.

15 **D. Spencer Has No Valid Claim For Punitive Damages.**

16 Punitive damages are governed by statute and may only be awarded when the
17 plaintiff proves by clear and convincing evidence that the "defendant has been guilty of
18 oppression, fraud, or malice, expressed or implied." NRS 42.005 (Motion, p. 18:3-5).

19 In his opposition brief, Spencer fails to argue or provide any caselaw
20 contradicting Kinion's assertion that punitive damages are not a standalone claim.
21 Moreover, he provides no evidence that Kinion's conduct amounts to oppression,
22 fraud, or malice. (Response, 25:25-28). This failure to provide any response is an
23 inherent admission of Kinion's arguments.

24 **E. Spencer Cannot Show the Elements Necessary for a Claim of**
25 **Intentional Infliction of Emotional Distress.**

26 In order to overcome a motion for summary judgment in regard to his claim for
27 intentional infliction of emotional distress, Spencer had to: (1) show that Kinion's
28

1 conduct was "extreme and outrageous," and (2) produce evidence of physical
2 manifestations of emotional distress. He has done neither.

3 First, the behavior of Kinion that Spencer complains of is neither "extreme or
4 outrageous" as a matter of law. See Maduike v. Agency Rent-A-Car, 114 Nev. 1, 4,
5 953 P.2d 24, 26 (1998) (A prima facie claim of intentional infliction of emotional
6 distress requires a plaintiff to prove that the defendant's conduct was "extreme and
7 outrageous"). Extreme and outrageous conduct "is that which is outside all possible
8 bounds of decency and is regarded as utterly intolerable in a civilized community." Id.
9 Moreover, conduct amounting to a valid claim for intentional infliction of emotional
10 distress can be described as "atrocious, intolerable, or outside all possible bounds of
11 decency." Id., at 5.

12 Kinion's behavior and statements simply cannot be described as extreme,
13 outrageous, atrocious, intolerable, or outside all possible bounds of decency. In fact,
14 her statements made to law enforcement, and her testimony before judicial and quasi-
15 judicial bodies are absolutely privileged. Such privileges are afforded to protect
16 citizens performing their civil duty of bringing attention to matters of public concern,
17 even if, ultimately, such statements are not completely accurate. Indeed, "in certain
18 situations, the public interest in having people speak freely outweighs the risk that
19 individuals will occasionally abuse the privilege" by making defamatory statements."
20 Circus Circus Hotels, Inc., 99 Nev. At 60-61, 657 P.2d at 104; Knox v. Dick, 99 Nev.
21 514, 518, 665 P.2d 267, 270 (1983) (holding that the absolute privilege is applicable to
22 quasi-judicial proceedings so "the right of individuals to express their views freely upon
23 the subject under consideration is protected.").

24 Simply put, even if all of Kinion's statements against Spencer are not true,
25 Kinion's actions and statements cannot be considered "extreme and outrageous" as a
26 matter of law. Accordingly, summary judgment must be granted on the intentional
27 infliction of emotional distress.

1 Second, Spencer has not produced admissible evidence to show a physical
2 manifestation of his alleged emotional distress. Attached as Exhibit 10 to Spencer's
3 opposition brief is a medical record from Barton Memorial Hospital. This document
4 has never been produced in any of Spencer's NRCP 16.1 disclosures. NRCP 56 (e)
5 requires:

6 Supporting and opposing affidavits shall be made on personal
7 knowledge, shall set forth such facts as would be admissible in evidence,
8 and shall show affirmatively that the affiant is competent to testify to the
9 matters stated therein. Sworn or certified copies of all papers or parts
thereof referred to in an affidavit shall be attached thereto or served
therewith.

10 A trial court can only consider admissible evidence when ruling on a motion for
11 summary judgment. Orr v. Bank of Am., NT & SA, 285 F.3d 764, 773 (9th Cir.
12 2002). This medical record is not properly authenticated by the mere fact it is attached
13 to Mr. Spencer's declaration. Orr, 285 F.3d at 773-74 (excluding the majority of
14 plaintiff's exhibits that were attached to her counsel's declaration for failure to properly
15 authenticate); and Neal-Lomax v. Las Vegas Metro. Police Dept., 574 F. Supp. 2d
16 1170, 1182 (D. Nev. 2008) (same). Spencer cannot submit unauthenticated medical
17 records he has never produced in this case in an attempt to defeat summary judgment
18 against him. This record is not admissible evidence, and thus, the Court cannot
19 consider in for the purposes of the Motion for Summary Judgment.

20 Thirdly, even assuming the Court were to consider this medical record,
21 Spencer's has failed to show a valid physical manifestation of emotional distress as a
22 matter of law. The document states that Spencer "was under extreme stress **due to an**
23 **ongoing problem with his neighbors and a lawsuit**" and that he developed high
24 blood pressure from this, along with purported posttraumatic stress disorder.
25 (Response, Exhibit 10).

26 Spencer cannot bring a claim for intentional infliction of emotional distress
27 arising from the stresses of litigation. While the Nevada Supreme Court has not
28 addressed this issue, the court has held that the stress and anxiety one suffers as a

1 result of litigation is not compensable because "stress and anxiety normally attend the
2 litigation process." See Picogna v. Bd. of Educ. of Twp. of Cherry Hill, 671 A.2d 1035,
3 43 N.J. 391, 397-99 (1996) (collecting both state and federal cases); MacCharles v.
4 Bilson, 231 Cal. Rptr. 155, 157 (Ct. App. 1986) "it has always been understood in our
5 system that attorney's fees and the mental stress of litigation are burdens which the
6 parties must ordinarily bear themselves); Ortega v. Pajaro Valley Unified Sch. Dist., 75
7 Cal. Rptr. 2d 777, 800 (1998) (litigation stress is legally non-compensable); Buoy v.
8 ERA Helicopters, Inc., 771 P.2d 439 (Alaska 1989) (court did not infringe on plaintiff's
9 right to litigate claims when it permitted defendant to argue that defendant was not
10 liable for plaintiff's litigation induced-stress and depression).

11 Accordingly, Spencer has failed to show any of the elements necessary to
12 sustain a claim for intentional infliction of emotional distress, and summary judgment is
13 appropriate.

14 II.

15 **CONCLUSION**

16 For these reasons, Kinion respectfully requests that summary judgment be
17 granted on all remaining claims asserted against her.

18 **AFFIRMATION**


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

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

22 DATED this 13 day of June, 2018.

23 GLOGOVAC & PINTAR

24
25 By:


26 MICHAEL A. PINTAR, ESQ.
27 Nevada Bar No. 003789
28 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, I served the
4 foregoing document(s) described as follows:

5 REPLY IN SUPPORT OF THIRD-PARTY DEFENDANT MARY KINION'S MOTION
6 FOR 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 addressed as follows:

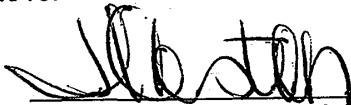
14 William Routsis, Esq.
15 1070 Monroe Street
16 Reno, NV 89509
17 **Attorneys for Jeffrey Spencer**

Lynn G. Pierce, Esq.
440 Ridge Street, Suite 2
Reno, NV 89501
Attorneys for Jeffrey Spencer

18 Douglas R. Brown, Esq.
19 Lemons, Grundy & Eisenberg
20 6005 Plumas St., 3rd Floor
Reno, NV 89519
Attorneys for Helmut Klementi

21 Tanika Capers, Esq.
22 6750 Via Austi Parkway, Suite 310
23 Las Vegas, NV 89119
Attorneys for Rowena Shaw and Peter Shaw

24
25 Dated this 13th day of June, 2018.

26 
27 _____
28 Employee of Glogovac & Pintar

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: II

RECEIVED

JUN 22 2018

Douglas County
District Court Clerk

2018 JUN 22 AM 10:01

CLERK
CLERK

[Signature]

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.

MOTION TO DISMISS

13
14 JEFFREY D. SPENCER,

15 Counterclaimant,

16 vs.

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

20 Counterdefendants & Third Party
21 Defendants.

22 Pursuant to Rule 25 of the Nevada Rules of Civil Procedure, Third-Party
23 Defendant, Elfriede Klementi ("Klementi"), hereby moves this Court to dismiss all third-
24 party claims asserted by Third-party Plaintiff, Jeffrey D. Spencer ("Spencer"), and
25 against Egon Klementi (deceased).

26 This reply is based on the pleadings and papers on file with the Court, the
27 following memorandum of points and authorities, and the exhibits properly before this
28

1 Court. Klementi joins and incorporates into this pleading her Motion for Summary
2 Judgment filed on April 24, 2018 as if fully set forth herein.

3 I.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 I.

6 **Introduction**

7 This is an action stemming from disputes between neighbors that live in the
8 Kingsbury Grade General Improvement District ("KGID") on the south shore of Lake
9 Tahoe. The dispute escalated to the point that in 2013, Spencer was criminally
10 prosecuted for assault and battery. Following the criminal trial, Helmut Klementi filed a
11 civil action against Spencer seeking recovery for his personal injuries arising from
12 being assaulted. In response, Spencer asserted a counterclaim against Mr. Klementi
13 as well as third-party claims against his brother and sister-in-law, Egon and Elfriede
14 Klementi, and his neighbors, Mary Ellen Kinion and Peter and Rowena Shaw.

15 The thrust of Spencer's third-party claims is that the third-party defendants are
16 conspiring against him and wrongfully accusing Spencer of using his snowplow to
17 assault and batter Egon Klementi on December 12, 2012, to berm the neighbors in
18 with snow, and also, assaulting and battering Helmut Klementi on December 18, 2012.

19 Amid this litigation, Egon Klementi passed away. A Suggestion of Death was
20 filed with this Court on November 16, 2017. Attached hereto as Exhibit 1. To date,
21 however, no motion to name a successor or substitute party in for Mr. Klementi has
22 been made. Also, no motion to enlarge or extend the time to file a motion for
23 substitution has been made. Accordingly, Egon Klementi must be dismissed from this
24 case.

25 ///

26 ///

27 ///

28 ///

1 II.

2 Legal Analysis

3 A. No Motion to Name a Substitute or Successor to Egon Klementi Has
4 Been Filed.

5 When a party to litigation has died, NRCP 25 governs the manner in which a
6 party may be substituted. NRCP 25(a) provides, in relevant part, as follows:

7 (a) Death.

8 (1) If a party dies and the claim is not thereby extinguished, the
9 court may order substitution of the proper parties. The motion for
10 substitution may be made by any party or by the successors or
11 representatives of the deceased party and, together with the notice of
12 hearing, shall be served on the parties as provided in Rule 5 and upon
13 persons not parties in the manner provided in Rule 4 for the service of a
14 summons. **Unless the motion for substitution is made not later than
90 days after the death is suggested upon the record by service of a
statement of the fact of the death as provided herein for the service
of the motion, the action shall be dismissed as to the deceased
party.** (Emphasis added)

15
16 As shown above, if a party to the litigation dies and the claim is not thereby
17 extinguished, successors or representatives of the deceased party (such as executor
18 of the decedent's estate) may be substituted in by the court as a party to the litigation
19 in place of the decedent. The motion for substitution can be made by any party, or by
20 the successors or representatives of the deceased party. If, as in this case, a
21 defendant dies before judgment, counsel for the defendant can serve and file upon
22 opposing counsel "a suggestion of death upon the record." The service of the
23 "suggestion of death" places opposing counsel on notice that a motion for substitution
24 must be filed within ninety (90) days. If a motion for substitution is not filed within that
25 timeframe, "the action **shall** be dismissed as to the deceased party." NRCP 25(a)(1).
26 Wharton v. City of Mesquite, 113 Nev. 796 (1986). (emphasis added).

27 ///

28 ///

1 Here, a Suggestion of Death for Egon Klementi was filed with the Court on
2 November 16, 2017. No motion for substitution seeking to have Mr. Klementi's estate
3 or any other party substituted into the litigation in place of Mr. Klementi has been filed.
4 Further, no motion to extend the time to file a motion for substitution has been filed.

5 Accordingly, Egon Klementi must be dismissed from this case.

6 **III.**

7 **CONCLUSION**

8 For these reasons, it is respectfully requested that all third-party claims
9 asserted against Egon Klementi be dismissed.

10 **AFFIRMATION**

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

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

14 DATED this 21st day of June, 2018.

15 GLOGOVAC & PINTAR

16
17 By: 

18 MICHAEL A. PINTAR, ESQ.
19 Nevada Bar No. 003789
20 Attorneys for Third-Party Defendants,
21 Elfriede and Egon Klementi
22
23
24
25
26
27
28

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, I served the
4 foregoing document(s) described as follows:

5 MOTION TO DISMISS

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.

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13 addressed as follows:

14 William Routsis, Esq.
15 1070 Monroe Street
16 Reno, NV 89509

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Reno, NV 89501

Attorneys for Jeffrey Spencer

17 Douglas R. Brown, Esq.
18 Lemons, Grundy & Eisenberg
19 6005 Plumas St., 3rd Floor
Reno, NV 89519

Attorneys for Helmut Klementi

20 Tanika Capers, Esq.
21 6750 Via Austi Parkway, Suite 310
22 Las Vegas, NV 89119

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

24 Dated this 21st day of June, 2018.


25 
26 _____
27 Employee of Glogovac & Pintar
28

EXHIBIT 15

EXHIBIT 15

NAME OF BUSINESS: Dr. Gao, Gastroenterology Consultants, Ltd.
RECORDS PERTAIN TO: See Schedule A

**** NOTICE TO CUSTODIAN OF RECORDS ****
PLEASE READ, MARK CORRECT BOX(ES), DATE AND SIGN. ENTIRE
CERTIFICATE IS TO BE RETURNED TO THE REQUESTING PARTY.

AFFIRMATION OF CUSTODIAN OF RECORDS

I, the undersigned, being the duly authorized custodian of records or other qualified witness in the employ of the above named business and having authority to certify the records, declare the following:

☐ The records were prepared by the personnel of the business in the ordinary course of business at or near the time of the act, condition or event.

☒ A true copy of all of the records described in the subpoena or authorization has been provided to the requesting party.

☐ The original records described in the subpoena or authorization were delivered to the attorney or the attorney's representative for copying at the witness' place of business.

☐ Part of the records described in the subpoena or authorization do not exist, cannot be found, or may not be released. All such records are listed as follows:

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF NEVADA THAT THE FOREGOING IS TRUE AND CORRECT.

MEDICAL RECORDS CO-ORDINATOR
Title

Jerry Hochman
Signature

CERTIFICATE OF NO RECORDS

☐ That a thorough search of our files made by me or under my direction and control revealed no records, documents, or other things described in the subpoena or authorization. And, it is understood that this declaration is limited to the information supplied to me in the attached subpoena or authorization; such records may exist under another name, spelling, or other identifying data.

☐ Records described in the subpoena or authorization did exist. Said records were probably disposed of as follows:

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF NEVADA THAT THE FOREGOING IS TRUE AND CORRECT.

Title

Signature

KINION 130



Gastroenterology Consultants

Gardnerville Clinic
1520 Virginia Ranch Rd
Gardnerville, NV 89410

phone: (775) 783-4618
fax: (775) 884-4560

Providing the highest quality of care to patients with digestive and liver problems

Date: 8/24/2016 1:00 PM
Patient Name: Jeffrey D. Spencer **Gender:** Male
Account #: 228108 **DOB(age):** 2/21/1963 (53)
Provider: Hong Gao, MD
Referring Physician: Alison H Steinmetz MD
1090 Third St Ste 1, South Lake Tahoe, CA 96150
(530) 543-5660 (phone)
(530) 542-1619 (fax)

Chief Complaint: GERD; diarrhea

History of Present Illness:

Jeffrey Spencer is seen today for a follow-up visit.

He is a 53 year old male. He has had GERD for > 15 years ago with heartburn and regurgitation. EGD 11/2015 revealed no Barrett's esophagus. He has excellent response to PPI, but his symptoms recur without PPI.

He also c/o diarrhea for 2-3 months. He has up to 12 BM a day with loose stool. NO nocturnal BM. Stress seems to make it worse. NO abdominal pain or weight loss or hematochezia. Screening colonoscopy in 11/2015 was normal.

NO recent antibiotic use or new medication before diarrhea. No recent history of travel.

Pertinent positive symptoms include change in bowel habits, diarrhea; pertinent negative symptoms include chest pain, dyspnea with exercise, irregular heart beat, orthopnea, palpitations, peripheral edema, syncope, fainting, fever, fatigue, loss of appetite, weight loss, dysphagia, abdominal pain, nausea, vomiting, abdominal swelling, rectal bleeding, gas, jaundice.

Past Medical History

Medical Conditions: Depression

Surgical Procedures: No Prior Procedures

Dx Studies: Colonoscopy, 11/20/2015, Moderate diverticulosis of the the left side of the colon
EGD, 11/20/2015, Stricture in the gastroesophageal junction. (Dilation), Normal mucosa in the distal esophagus. (Biopsy), Normal mucosa in the middle esophagus. (Biopsy), Hiatal Hernia, Erosions and erythema in the antrum compatible with erosive gastritis and Congestion and ulceration, thickened fold in the duodenal bulb compatible with duodenitis. (Biopsy)

Medications: cephalexin 250 mg 1 tablet by mouth once daily
Flonase 50 mcg/actuation daily
Nexium 40 mg Take 1 capsule by mouth every morning
sertraline 100 mg 1 tablet by mouth once daily

Allergies: Patient has no known allergies or drug allergies

Immunizations: No Immunizations

Social History

Alcohol: Alcoholic Beverages Consumed 1 5 times a week.

Tobacco: Never smoker

Drug: None

Caffeine: Coffee. Soft Drinks. Tea.

Marital Status: Married

Occupation: transportation manager

Family History No history of GI Conditions

Review Of Systems:

Cardiovascular: *Denies* chest pain, dyspnea with exercise, irregular heart beat, orthopnea, palpitations, peripheral edema, syncope, fainting.

Constitutional: *Denies* fever, fatigue, loss of appetite, weight gain, weight loss.

Gastrointestinal: *Complains of change in bowel habits, diarrhea.* *Denies* heartburn, dysphagia, abdominal pain, nausea, vomiting, abdominal swelling, constipation, fecal incontinence, rectal bleeding, gas, jaundice. Refer to HPI

Respiratory: *Denies* cough, dyspnea, excessive sputum, hemoptysis, shortness of breath with exercise, wheezing.

Vital Signs:

BP (mmHg)	Pulse (ppm)	Weight (lbs/oz)	Height (ft/in)	BMI
140/74	57	188 /	5 / 10	26.97

Physical Exam:**Constitutional:**

Appearance: well-developed, in no acute distress.

Communication: conversation appropriate.

Skin:

Inspection: no rashes, ulcers, or icterus..

Palpation: no induration or subcutaneous nodules.

Eyes:

Conjunctivae/lids: lids normal, anicteric sclerae, moist conjunctivae.

Pupils/irises: PERRLA.

ENMT:

Mallampati Score: Mallampati assessment not performed.

Neck:

Neck: full range of motion, midline trachea.

Thyroid: normal size, consistency and position; no masses or tenderness.

Respiratory:

Effort: normal respiratory effort.

Auscultation: normal breath sounds; no rubs, wheezes or rhonchi.

Cardiovascular:

Auscultation: regular rate and rhythm, normal S1 and S2.

Peripheral: no edema, varicosities or cyanosis.

Gastrointestinal/Abdomen:

Abdomen: soft to palpation, no tenderness, no masses, normal bowel sounds.

Liver/Spleen: no ascites appreciated, spleen not palpable, normal liver size, liver not palpable.

Hernias: no hernias appreciated.

Extremities:

Digits/Nails: no clubbing, cyanosis, inflammation, or petechiae.

General: no generalized swelling or edema.

Psychiatric:

Judgment/insight: normal judgement, normal insight.

Orientation: well oriented.

Impression: Gastroesophageal Reflux Disease
Diarrhea

Discussion:

He has long history of GERD, well controlled with PPI. He also has chronic diarrhea of unclear etiology. Will R/O thyroid dysfunction, celiac serology, CRP, and ESR.

Plan: omeprazole 40 mg Take 1 capsule by mouth once a day 30 minutes before breakfast meal
Vitamin D 2000 Iu daily
Total Serum IgA
Tissue Transglutaminase IgA Ab (TTG)
C-reactive protein, Quant
Sed Rate (ESR)

Printed on 9/20/2016 Jeffrey D. Spencer, 228108, 2/21/1963

Page 3 of 19

Stool Fecal Fat, Qual
IModium as needed

Risk & Medical Necessity: The patient requires Moderate to High Severity care for this visit. Diagnosis and management options are Extensive. The amount of data reviewed and/or ordered is Minimal/None. The level of risk is Moderate.

Hong Gao, MD

Hong Gao, MD
Version 1, Electronically signed on 8/24/2016 1:32:33 PM by Hong Gao, MD

Printed on 9/20/2016 Jeffrey D. Spencer, 228108, 2/21/1963

KINION 140

5 AA 1085

8/24/2016

Patient: Spencer, Jeffrey D (MR#4025713) Printed by NELSON, LORI (FOS1LXN)

BARTON MEMORIAL
2170 SOUTH AVENUE
SO LAKE TAHOE CA 96150-7026

SPENCER, JEFFREY D
MRN: 4025713
DOB: 2/21/1963, Sex: M
Adm: 8/12/2016, D/C: 8/12/2016

Order

TSH [LAB2894027] (Order 131373332)

Reviewed by List

Darlene R. Clark, R.N. on 8/16/2016 8:28 AM
Allison H Steinmetz, M.D. on 8/12/2016 4:43 PM

View SmartLink Info

TSH (Order #131373332) on 8/12/16

MyChart Released Result Comments

Entered by Allison H Steinmetz, M.D. at 8/12/2016 4:43 PM
Read by Jeffrey D Spencer at 8/14/2016 2:09 PM
Call patient to follow up on test results. High cholesterol

Result Notes

Notes Recorded by Darlene R. Clark, R.N. on 8/15/2016 at 8:28 AM
Has appointment pending

Notes Recorded by Allison H Steinmetz, M.D. on 8/12/2016 at 4:43 PM
Call patient to follow up on test results. High cholesterol

Component Results

Component	Value	Ref Range & Units	Status
TSH	1.83	0.36 - 3.74 uIU/mL	Final

Narrative

Request patient fasting?-->No

Lab Information**Lab**

BARTON MEMORIAL HOSPITAL

Last Resulted Time
Fri Aug 12, 2016 1:59 PM

Detailed Information**Priority and Order Details****Collection Information****Collection Information**

Collected: 8/12/2016 12:12 PM

Resulting Agency: BARTON MEMORIAL HOSPITAL

Order-Level Documents:

There are no order-level documents.

BARTON MEMORIAL
2170 SOUTH AVENUE
SO LAKE TAHOE CA 96150-7026

SPENCER, JEFFREY D
MRN: 4025713
DOB: 2/21/1963, Sex: M
Adm: 8/12/2016, D/C: 8/12/2016

Order

TSH [LAB2894027] (Order 131373332)

Patient Information

Patient Name

Sex

DOB

http://172.26.100.46/EpicCareLink/Common/epic_main.asp?menu=chartreview&sub=snapshot

1/4

Sign Off Info:

Signed by Hong Gao On 8/25/2016 8:37 AM

8/24/2016

Patient: Spencer, Jeffrey D (MR#4025713) Printed by NELSON, LORI (POS1LN)

BARTON MEMORIAL
2170 SOUTH AVENUE
SO LAKE TAHOE CA 96150-7026

SPENCER, JEFFREY D
MRN: 4025713
DOB: 2/21/1963, Sex: M
Adm: 8/12/2016, DIC: 8/12/2016

Order

CBC WITH DIFFERENTIAL [LAB2895032] (Order 131373341)

Reviewed by List

Darlene R. Clark, R.N. on 8/15/2016 8:28 AM
Allison H Steinmetz, M.D. on 8/12/2016 4:43 PM

View SmartLink Info

CBC WITH DIFFERENTIAL (Order #131373341) on 8/12/16

MyChart Released Result Comments

Entered by Allison H Steinmetz, M.D. at 8/12/2016 4:43 PM
Read by Jeffrey D Spencer at 8/14/2016 2:07 PM
Call patient to follow up on test results. High cholesterol

Result Notes

Notes Recorded by Darlene R. Clark, R.N. on 8/15/2016 at 8:28 AM
Has appointment pending

Notes Recorded by Allison H Steinmetz, M.D. on 8/12/2016 at 4:43 PM
Call patient to follow up on test results. High cholesterol

Component Results

Component	Value	Ref Range & Units	Status
WBC	4.3 (L)	4.8 - 10.8 K/uL	Final
RBC	5.31	4.70 - 6.10 M/uL	Final
Hemoglobin	16.1	14.0 - 18.0 g/dL	Final
Hematocrit	46.1	42.0 - 52.0 %	Final
MCV	86.8	80.0 - 94.0 fL	Final
MCH	30.3	28.7 - 33.1 pg	Final
MCHC	34.9	33.0 - 37.0 g/dL	Final
RDW	12.6	11.5 - 14.5 %	Final
Platelet Count	164	130 - 400 K/uL	Final
MPV	7.4	7.4 - 10.4 fL	Final
Neutrophils Automated	55.8	39.0 - 70.0 %	Final
Lymphocytes Automated	27.4	21.0 - 50.0 %	Final
Monocytes Automated	11.1 (H)	1.7 - 9.3 %	Final
Eosinophils Automated	1.7	0.0 - 5.0 %	Final
Basophils Automated	0.8	0.0 - 3.0 %	Final
Abs Neutrophils Automated	2.4	1.8 - 7.7 K/uL	Final
Abs Lymph Automated	1.2	1.2 - 4.8 K/uL	Final

Narrative

Request patient fasting?->No

Lab Information**Lab**

BARTON MEMORIAL HOSPITAL

http://172.26.100.46/EpicCareLink/common/epic_main.asp?menu=chartreview&sub=snapshot

1/4

Sign Off Info:

Signed by Hong Gao On 8/25/2016 8:37 AM

8/24/2016

Patient: Spencer, Jeffrey D (MR#4025713) Printed by NELSON, LORI [POSTLXN]

BARTON MEMORIAL
2170 SOUTH AVENUE
SO LAKE TAHOE CA 96150-7026

SPENCER, JEFFREY D
MRN: 4025713
DOB: 2/21/1963, Sex: M
Adm: 8/12/2016, D/C: 8/12/2016

Order COMP METABOLIC PANEL [LAB2891210] (Order 131373343)

Reviewed by List

Darlene R. Clark, R.N. on 8/15/2016 8:28 AM
Allison H Steinmetz, M.D. on 8/12/2016 4:43 PM

View SmartLink Info

COMP METABOLIC PANEL (Order #131373343) on 8/12/16

MyChart Released Result Comments

Entered by Allison H Steinmetz, M.D. at 8/12/2016 4:43 PM
Read by Jeffrey D Spencer at 8/14/2016 2:05 PM
Call patient to follow up on test results. High cholesterol

Result Notes

Notes Recorded by Darlene R. Clark, R.N. on 8/15/2016 at 8:28 AM
Has appointment pending

Notes Recorded by Allison H Steinmetz, M.D. on 8/12/2016 at 4:43 PM
Call patient to follow up on test results. High cholesterol

Component Results

Component	Value	Ref Range & Units	Status
Sodium	140	136 - 145 mmol/L	Final
Potassium	4.0	3.5 - 5.1 mmol/L	Final
Chloride	107	98 - 107 mmol/L	Final
Co2	26	20 - 29 mmol/L	Final
Anion Gap	11	10 - 18 mmol/L	Final
Glucose	91	70 - 100 mg/dL	Final
Bun	18	9 - 25 mg/dL	Final
Creatinine	1.1	0.7 - 1.3 mg/dL	Final
Calcium	8.9	8.5 - 10.1 mg/dL	Final
AST (SGOT)	16	5 - 37 U/L	Final
ALT (SGPT)	31	12 - 78 U/L	Final
Alkaline Phosphatase	57	46 - 116 U/L	Final
Total Bilirubin	0.6	0.1 - 1.2 mg/dL	Final
Albumin	3.7	3.5 - 5.0 g/dL	Final
Total Protein	6.8	6.4 - 8.3 g/dL	Final
A-G Ratio	1.2		Final

Narrative

Request patient fasting?->No

Lab InformationLab

BARTON MEMORIAL HOSPITAL

Last Resulted Time
Fri Aug 12, 2016 1:59 PM

http://172.26.100.46/EpicCareLink/common/epic_main.asp?monu=chartreview&sub=snapshot

1/4

Sign Off Info:

Signed by Hong Gao On 8/25/2016 8:37 AM

8/24/2016

Patient: Spencer, Jeffrey D (MR#025713) Printed by NELSON, LORI [POSILXN]

BARTON MEMORIAL
2170 SOUTH AVENUE
SO LAKE TAHOE CA 96150-7026

SPENCER, JEFFREY D
MRN: 4025713
DOB: 2/21/1963, Sex: M
Adm: 8/12/2016, D/C: 8/12/2016

Order

LIPID PROFILE [LAB2892011] (Order 131373349)

Reviewed by List

Darlene R. Clark, R.N. on 8/15/2016 8:28 AM
Allison H Steinmetz, M.D. on 8/12/2016 4:43 PM

View SmartLink Info

LIPID PROFILE (Order #131373349) on 8/12/16

MyChart Released Result Comments

Entered by Allison H Steinmetz, M.D. at 8/12/2016 4:43 PM
Read by Jeffrey D Spencer at 8/14/2016 2:03 PM
Call patient to follow up on test results. High cholesterol

Result Notes

Notes Recorded by Darlene R. Clark, R.N. on 8/15/2016 at 8:28 AM
Has appointment pending

Notes Recorded by Allison H Steinmetz, M.D. on 8/12/2016 at 4:43 PM
Call patient to follow up on test results. High cholesterol

Component Results

Component	Value	Ref Range & Units	Status
Cholesterol, Tot	249 (H)	0 - 200 mg/dL	Final
Triglycerides	163 (H)	35 - 150 mg/dL	Final
LDL	167 (H)	<100 mg/dL	Final
HDL	56	40 - 150 mg/dL	Final
Chol-Hdl Ratio	4.45		Final
Comment:			
Data from various studies suggests that the ratio of the total cholesterol/HDL may provide a Rule of Thumb guide in predicting increased risk to coronary heart disease.			
Total Cholesterol/HDL Ratio			
RISK	MEN	WOMEN	
1/2 Average	3.43	3.27	
Average	4.97	4.44	
2X Average	9.55	7.05	
3X Average	23.99	11.04	
Non HDL Cholesterol	193 (H)	30 - 160	Final

Narrative

Request patient fasting?~>No

Lab Information**Lab**

BARTON MEMORIAL HOSPITAL

Last Resulted Time

Fri Aug 12, 2016 1:59 PM

http://172.26.100.46/EpicCareLink/Common/epic_main.asp?menu=chartreview&sub=snapshot

1/4

Sign Off Info:

Signed by Hong Gao On 8/25/2016 8:37 AM



Gastroenterology Consultants, LTD
Pathology Laboratory
880 Ryland Street, Reno, NV 89502
Medical Director: Grant Hayashi, MD
CLIA #29D1102256
775-328-4600

Case Number: B2015-009029

Patient Name: Spencer, Jeffrey D

Physician: Hong Gao MD

DOB: 02 21 1963

Collection Date: 11 20 2015

Sex: M

Received Date: 11 23 2015

Medical Record Number: 228108

Source

- A. Duodenal Bulb Biopsy
- B. Distal Esophagus Biopsy
- C. Middle Esophagus Biopsy

Diagnosis

- A. Small bowel mucosa with reactive changes, consistent with clinical impression of peptic duodenitis.
- B. Focal area only suggesting metaplastic columnar epithelium (intestinal metaplasia; negative for dysplasia.
- C. Benign squamous mucosa; negative for eosinophilic esophagitis. Negative for intestinal metaplasia, dysplasia, or malignancy.
(gmh)

Gross

- A. Received in formalin, labeled with the patient's name, date of birth, and "duodenal bulb biopsy," are 3 fragments of tan-brown, soft tissue, measuring 0.6 x 0.5 x 0.2 cm in aggregate. Entirely submitted in a single cassette.
- B. Received in formalin, labeled with the patient's name, date of birth, and "distal esophagus biopsy," are multiple fragments of tan-brown, soft tissue, measuring 0.7 x 0.3 x 0.2 cm in aggregate. Entirely submitted in a single cassette.
- C. Received in formalin, labeled with the patient's name, date of birth, and "middle esophagus biopsy," are multiple fragments of tan-brown, soft tissue, measuring 0.7 x 0.3 x 0.2 cm in aggregate. Entirely submitted in a single cassette.

Microscopic

- A. Sections reveal small intestinal mucosa with intact villous architecture with no significant villous blunting or crypt hyperplasia. There is no significant surface intraepithelial lymphocytosis. Goblet cells, Paneth cells, and plasma cells are present. Giardia organisms are not identified. There is no significant dilatation of lacteals. There are no large areas with foamy macrophages. There is no evidence of dysplasia or malignancy. There is gastric surface metaplasia.
- B. Sections reveal segments of squamous mucosa and focal glandular mucosa with areas suggesting intestinal

1 of 2 on 11-25-2015 at 07:05

Duplicate copy

Sign Off Info

Reviewed and signed on 11/26/2015 11:40 AM by Hong Gao MD



Gastroenterology Consultants, LTD
Pathology Laboratory
880 Ryland Street, Reno, NV 89502
Medical Director: Grant Hayashi, MD
CLIA #29D1102256
775-329-4600

Case Number: B2015-009029

Patient Name: Spencer, Jeffrey D

Physician: Hong Gao MD

DOB: 02 21 1963

Collection Date: 11 20 2015

Sex: M

Received Date: 11 23 2015

Medical Record Number: 228108

Microscopic(continued)

metaplasia which are not confirmed by alcian blue stain (positive control is appropriate). The squamous mucosa demonstrates no significant neutrophilic or eosinophilic infiltrates. There is no evidence of dysplasia or malignancy. No H. pylori organisms are identified on H&E stained sections.
C. Sections demonstrate benign squamous mucosa with no significant intraepithelial neutrophilic or eosinophilic infiltrates. There is no evidence of intestinal metaplasia, dysplasia, or malignancy.

Electronic Signature

Grant Hayashi MD, Pathologist
(Case signed 11 24 2015)

ICD10 Codes by Specimen

Specimen	ICD10
A	K63.89
B	K22.70
C	K22.8

2 of 2 on 11-25-2015 at 07:05

Duplicate copy

Sign Off Info

Reviewed and signed on 11/26/2015 11:40 AM by Hong Gao MD



Gastroenterology Consultants, Ltd

Victor Chen M.D., Hong Gao M.D., John Gray M.D., Juan Gregory M.D., Timothy Harkman M.D., Phillip Harper M.D., Clark Harrison M.D., Jan Kamler M.D.,
Loth Lieberstein M.D., Christi Mateoni M.D., John McAfee M.D., James Nachiondo M.D., Daniel Nason M.D., Eric Osgard M.D., Jonathan Pezanoski M.D.,
Swarcop Pendyala M.D., Craig Sande M.D., Michael Solinger M.D., Hoan Tran M.D., Christopher Bartlett PAC, Paul Johns PAC, Lisa Mandell PAC

Carson Endoscopy Center
1385 Vista Lane Carson City, Nevada 89703
P: (775) 884-8818 F: (775) 884-4567

EGD-Colonoscopy Report

Date: 11/20/2015 12:45 PM

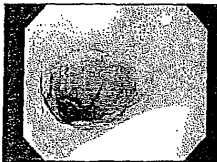
Patient Name: Jeffrey D. Spencer

Gender: Male

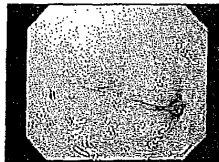
Account #: 228108

DOB(age): 02/21/1963 (52)

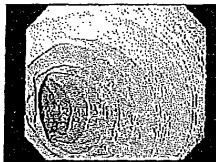
Endoscopist(s): Hong Gao, MD



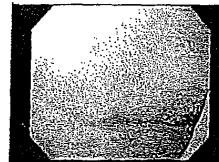
Stricture in the
gastroesophageal junction



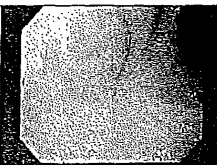
Congestion and ulceration,
thickened fold in the duodenal
bulb compatible with duodenitis



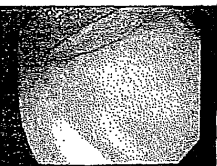
second part of the duodenum



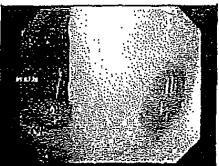
Congestion and ulceration,
thickened fold in the duodenal
bulb compatible with duodenitis



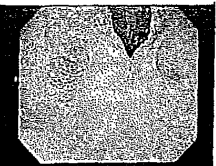
Congestion and ulceration,
thickened fold in the duodenal
bulb compatible with duodenitis



appendiceal orifice



descending colon



rectum

Referring Physician(s): Allison H Steinmetz MD
1090 Third St Ste 1, South Lake Tahoe, CA 96150
(530) 543-5660 (phone)
(530) 542-1619 (fax)

PCP: Allison H Steinmetz MD
Anesthesia Provider: Trina Antonelli, CRNA
Nurse(s):

Printed on 9/20/2016 Jeffrey D. Spencer, 228108, 2/21/1963

KINION 147

Staff:
 Darren Hill, RN (Pre-Procedure)
 Melissa Flickinger, RN (Pre-Procedure)
 April Woodward, RN (Intra-Procedure)
 Jessica Johnsen, RN (Post-Procedure)
 Deb Samson, Endo Tech (Intra-Procedure)

EGD Instrument(s): BCR(GIF Q180 2604422)

Colonoscopy Instrument(s): JR-2(CF Q180AL 2806455)

ASA Class: P2 - 11/20/2015 01:48:59 PM Hong Gao

History of Present Illness:

The patient is seen for EGD evaluation of dyspepsia, heartburn and dysphagia. The patient is seen for average risk screening colonoscopy.

Administered Medications: Fentanyl (VORB) 100 mcg IV
 Propofol per Anesthesia Record 250 mg

EGD Indications: Esophageal Dysphagia: 787.29 - R13.19
 Gastroesophageal Reflux Disease: 530.81 - K21.9
 Nausea: 787.02 - R11.0
 Nausea With Vomiting Unspecified: 787.01 - R11.2

Colonoscopy Indications: Screening for Colonic Neoplasia: V76.51 - Z12.11

Vital Signs:

Weight (lbs/oz)	Height (ft/in)	BMI				
178 /	5 / 10	25.54				
BP (mmHg)	Pulse (ppm)	Rhythm	Resp/min	Temp	SPO2 (%)	
142/95	55	Regular	20	97.2 (F)	96	

Physical Exam:

Physical exam was performed on 11/20/2015 at 01:49:27 PM.

Constitutional:

Appearance: well-developed, in no acute distress.

Respiratory:

Auscultation: normal breath sounds; no rubs, wheezes or rhonchi.

Cardiovascular:

Auscultation: regular rate and rhythm, normal S1 and S2.

Gastrointestinal/Abdomen:

Abdomen: soft to palpation, no tenderness, no masses, normal bowel sounds.

Liver/Spleen: no ascites appreciated, spleen not palpable, normal liver size, liver not palpable.

General Procedure:

The procedure, indications, preparation and potential complications were explained to the patient, who indicated understanding and signed the corresponding consent forms. Deep (Propofol) Sedation was administered by CRNA. Continuous pulse oximetry, blood pressure, cardiac monitoring and ETCO2 monitoring was done. Supplemental oxygen was used.

EGD

EGD Procedure:

Patient was placed in left lateral decubitus position. The flexible endoscope was introduced through the mouth and was advanced under direct visualization until second part of the duodenum is reached. The flexible endoscope was retroflexed in the stomach for detailed examination the fundus and cardia. The Z-line was noted. Site of diaphragmatic hiatus noted. Patient's tolerance to the procedure was good. The procedure was not difficult.

EGD Limitations/Complications:

There were no procedure limitations or complications

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EGD Findings:

<u>Esophagus</u>	<u>Lumen</u>	A benign intrinsic 15 mm stricture that appeared at 37 cm from the incisors was seen in the gastroesophageal junction. A wire guided polyvinyl dilator was introduced for dilation successfully.
	<u>Mucosa</u>	Normal mucosa was noted in the distal esophagus. Cold forceps biopsies were performed for histology. Normal mucosa was noted in the middle esophagus. Cold forceps biopsies were performed for histology.
<u>Stomach</u>	<u>Lumen</u>	A sliding medium size hiatal hernia was seen, displacing the Z-line to 37cm from the incisors, with hiatal narrowing at 40cm from the incisors. Retroflexion view in the stomach confirmed the size and morphology of the hernia.
	<u>Mucosa</u>	Segmental erosions and erythema of the mucosa was noted in the antrum. These findings are compatible with erosive gastritis.
<u>Duodenum</u>	<u>Mucosa</u>	Congestion and ulceration, thickened fold of the mucosa was noted in the duodenal bulb. These findings are compatible with duodenitis. Cold forceps biopsies were performed for histology.

Colonoscopy

Colonoscopy Procedure:

This is a average risk patient. This is a screening colonoscopy. The quality of preparation was good. Patient was placed in left lateral decubitus position. Digital exam was normal. With the following finding(s): The flexible colonoscope was introduced through rectum and advanced under direct visualization until cecum reached. The cecal sling folds were seen. The appendiceal orifice and the ileo-cecal valve were identified. The colonoscope was retroflexed within the rectum. Careful visualization was performed as the instrument was withdrawn. Patient tolerance to the procedure was good. The procedure was not difficult.

Colonoscopy Limitations/Complications:

There were no procedure limitations or complications

Colonoscopy Findings:

Excavated lesions Several diverticula with medium openings were seen in the the left side of the colon. Diverticulosis appeared to be of moderate severity.

EGD Impressions:

- Stricture in the gastroesophageal junction. (Dilation).
- Normal mucosa in the distal esophagus. (Biopsy).
- Normal mucosa in the middle esophagus. (Biopsy).
- Hiatal Hernia.
- Erosions and erythema in the antrum compatible with erosive gastritis.
- Congestion and ulceration, thickened fold in the duodenal bulb compatible with duodenitis. (Biopsy).

Colonoscopy Impressions:

- Moderate diverticulosis of the the left side of the colon.

Plan: Patient to be advised of pathology results via letter
Average Risk Colonoscopy in 10 years
omeprazole 40 mg Take 1 capsule by mouth every morning, 30 minutes before 1st meal of day

Samples:

Jar # A :
Biopsy in the duodenal bulb
Test(s) requested: Histology

Jar # B :
Biopsy in the distal esophagus
Findings: Normal
Test(s) requested: Histology
Comments: R/O EoE

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Page 13 of 19

Jar # C :

Blopsy in the middle esophagus

Findings: Normal

Test(s) requested: Histology

Comments: R/O EoE

Pathology: Pathology was sent to lab, waiting for results

Hong Gao, MD

Hong Gao, MD

Electronically signed on 11/21/2015 10:14:53 AM by Hong Gao, MD

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KINION 150

5 AA 1095



Gastroenterology Consultants, Ltd

Victor Chen M.D., Hong Gao M.D., John Gray M.D., Juan Gregory M.D., Timothy Halerman M.D., Phillip Harper M.D., Chuck Harrison M.D., Jan Kamler M.D.,
Lori Lieberstein M.D., Christa Mauceri M.D., John McAfee M.D., James Nachiondo M.D., Daniel Nason M.D., Eric Osgard M.D., Jonathan Pezaneski M.D.,
Swaroop Pendyala M.D., Craig Sando M.D., Michael Solinger M.D., Hoan Tran M.D., Christopher Bartlett PAC, Paul Johns PAC, Lisa Mandell PAC

Gardnerville Clinic

1520 Virginia Ranch Road Gardnerville, Nevada 89410
P: (775) 783-4818 F: (775) 884-4569

Date: 09/23/2015 11:00 AM
Patient Name: Jeffrey D. Spencer **Gender:** Male
Account #: 228108 **DOB(age):** 02/21/1963 (52)
Provider: Hong Gao, MD

Referring Physician: Alison H Steinmetz MD
1090 Third St Ste 1, South Lake Tahoe, CA 96150
(530) 543-5660 (phone)
(530) 542-1619 (fax)

Chief Complaint: GERD; nausea; dysphagia

History of Present Illness:

Jeffrey Spencer is a 52 year old male patient who is seen at the request of Alison H Steinmetz MD for a consultation/initial visit.

The patient is seen for the evaluation of GERD. Noted the onset of heartburn and regurgitation 10 - 15 years ago. Symptoms have been occurring a few time(s) per day. During a given day, they are most prevalent in the middle of the night. Currently takes OTC antacids dosed intermittently. On this therapy, symptom response has been minimal. Associated symptoms include nausea.

He has nausea.

He also has dysphagia. Symptoms started 1 year ago. Difficulty with swallowing has occurred intermittently with solids. Food seems to get stuck in the mid chest. Associated complaints include regurgitation and frequent heartburn.

Pertinent positive symptoms include weight loss, nausea; pertinent negative symptoms include chest pain, dyspnea with exercise, irregular heart beat, orthopnea, palpitations, peripheral edema, syncope, fever, fatigue, loss of appetite, abdominal pain, vomiting, abdominal swelling, change in bowel habits, constipation, diarrhea, fecal incontinence, rectal bleeding, gas, jaundice.

Medical History

Medications: Bactrim 400-80 mg take 1 by mouth twice daily
Flonase 50 mcg/actuation daily

Allergies: Patient has no known allergies or drug allergies

Conditions: Depression

Procedures: No Prior Procedures

Dx Studies: No Prior Diagnostic Studies

Immunization: No Immunizations

Social History

Marital Status: Married

Alcohol: Alcoholic Beverages Consumed 1-5 times a week.

Tobacco: Never smoker

Drug: None

Caffeine: Coffee. Soft Drinks. Tea.

Occupational History: transportation manager

Family History No history of GI Conditions

Review Of Systems:

Allergic/Immunologic: Denies persistent infections, strong allergic reactions or urticaria.
Cardiovascular: Denies chest pain, dyspnea with exercise, irregular heart beat, orthopnea, palpitations, peripheral edema, syncope.
Constitutional: Complains of **weight loss**. Denies fever, fatigue, loss of appetite, weight gain.
Refer to HPI
ENMT: Denies ear pain, nasal obstruction, nose bleeds, sore throat, post nasal drip.
Endocrine: Denies excessive thirst, hair loss, heat intolerance.
Eyes: Denies loss of vision, double vision.
Gastrointestinal: Complains of **heartburn**, **dysphagia**, **nausea**. Denies abdominal pain, vomiting, abdominal swelling, change in bowel habits, constipation, diarrhea, fecal incontinence, rectal bleeding, gas, jaundice.
Refer to HPI
Genitourinary: Denies dark urine, decrease in urine flow, dysuria, frequent urination, hematuria, pregnancy.
Hematologic/Lymphatic: Denies easy bruising, prolonged bleeding, bleeding gums, palpable lymph nodes.
Integumentary: Denies hives, itching, jaundice, lesions, rashes.
Musculoskeletal: Denies back pain, joint pain, muscle weakness.
Neurological: Denies dizziness, fainting, frequent headaches, seizures, memory loss.
Psychiatric: Denies anxiety, depression, difficulty sleeping, nervousness, panic attacks.
Respiratory: Denies cough, dyspnea, excessive sputum, hemoptysis, wheezing.

Vital Signs:

BP (mmHg)	Pulse (ppm)	Rhythm	Weight (lbs/oz)	Height (ft/in)	BMI
120/82	54	Regular	182 /	5 / 10	26.11

Physical Exam:

Constitutional:

Appearance: well-developed, in no acute distress.

Communication: conversation appropriate.

Skin:

Inspection: no rashes, ulcers, or icterus..

Palpation: no induration or subcutaneous nodules.

Eyes:

Conjunctivae/lids: lids normal, anicteric sclerae, moist conjunctivae.

Pupils/irises: PERRLA.

ENMT:

External: normal external inspection of the nose and ears.

Lips/teeth/gums: normal oral mucosa, lips and gums; good dentition, no masses.

Oropharynx: normal tongue, hard and soft palate; posterior pharynx without erythema, exudate or lesions.

Mallampati Score: Class I: Soft palate, uvula, fauces, pillars visible.

Neck:

Neck: full range of motion, midline trachea.

Thyroid: normal size, consistency and position; no masses or tenderness.

Jugular veins: No jugular venous distension.

Respiratory:

Effort: normal respiratory effort.

Auscultation: normal breath sounds; no rubs, wheezes or rhonchi.

Chest:

Inspection: symmetrical without visualized masses.

Palpation: no significant costal margin tenderness.

Cardiovascular:

Auscultation: regular rate and rhythm, normal S1 and S2.

Peripheral: no edema, varicosities or cyanosis.

Gastrointestinal/Abdomen:

Abdomen: soft to palpation, no tenderness, no masses, normal bowel sounds.
Liver/Spleen: no ascites appreciated, spleen not palpable, normal liver size, liver not palpable.
Hernias: no hernias appreciated.

Extremities:

Digits/Nails: no clubbing, cyanosis, inflammation, or petechiae.
General: no generalized swelling or edema.

Psychiatric:

Judgment/Insight: normal judgement, normal insight.
Orientation: well oriented.

Lymphatic:

Neck: within normal limits.
Axillae: not palpable.
Groin: not palpable.

Neurologic:

Motor: normal strength in all extremities.
Sensation: no sensory deficits evident.
Asterixis: no asterixis noted..

Impressions: Gastroesophageal Reflux Disease

Nausea
Esophageal Dysphagia
Chronic Depression
Loss of weight

Plan:

ranitidine HCl 150 mg Take 1 capsule by mouth twice a day
Esophagogastroduodenoscopy (EGD) with Dilatation with Propofol [CPT-43248]
The indications, technique, alternatives, and potential risks and complications were discussed with the patient including, but not limited to bleeding, perforation, missed lesions, infection, and anesthesia complications.
Written patient education information was provided to the patient.

Average Risk Screening Colonoscopy with Propofol - Golytely Prep [CPT-G0121]
The indications, technique, alternatives, and potential risks and complications were discussed with the patient including, but not limited to bleeding, perforation, missed lesions, infection, and anesthesia complications.
Written patient education information was provided to the patient.

Golytely 236-22.74-6.74 gram Follow GIC Handout

Risk & Medical Necessity: The patient requires Moderate to High Severity care for this visit. Diagnosis and management options are Extensive. The amount of data reviewed and/or ordered is Minimal/None. The level of risk is Moderate.

Hong Gao, MD

Hong Gao, MD
Electronically signed on 9/23/2015 11:29:46 AM by Hong Gao, MD



Gastroenterology Consultants, Ltd

Victor Chen M.D., Hong Gao M.D., John Gray M.D., Juan Gregory M.D., Timothy Halterman M.D., Phillip Harper M.D., Clark Harrison M.D., Jan Kamler M.D.,
Loth Lieberstein M.D., Christl Matteoni M.D., John McAfee M.D., James Nachiondo M.D., Daniel Nason M.D., Eric Osgard M.D., Jonathan Pezanowski M.D.,
Swaroop Pendyala M.D., Craig Sande M.D., Michael Solinger M.D., Hoan Tran M.D., Christopher Bartlett PAC, Paul Johns PAC, Lisa Mandell PAC

Gardnerville Clinic

1520 Virginia Ranch Road Gardnerville, Nevada 89410
P: (775) 783-4818 F: (775) 884-1569

Date: 05/06/2015 01:30 PM
Patient Name: **Jeffrey D. Spencer** **Gender:** Male
Account #: 228108 **DOB(age):** 02/21/1963 (52)
Provider: Hong Gao, MD

Referring Physician: Alison H Steinmetz MD
1090 Third St Ste 1, South Lake Tahoe, CA 96150
(530) 543-5660 (phone)
(530) 542-1619 (fax)

Chief Complaint: Nausea and vomiting; GERD; dysphagia

History of Present Illness:

Jeffrey Spencer is a 52 year old male patient who is seen at the request of Alison H Steinmetz MD for a consultation/initial visit.

The patient is seen for evaluation of vomiting/emetis. Emesis is described as a moderate amount of material that appears to contain undigested food and bilious. Symptoms started 1 year ago. Episodes occur 1-2 time(s) per day. They are preceded by nausea. Symptoms are alleviated by nothing specific.

He has long history of GERD. Noted the onset of heartburn and regurgitation a few years ago.

He also c/o dysphagia. Symptoms started 1 year ago. Difficulty with swallowing has occurred intermittently with solids. Symptoms have been progressive with time. Food seems to get stuck in the mid chest.

He takes ibuprofen 2-3 times a week. No Hx of PUD. No FHx of esophageal cancer.

Pertinent positive symptoms include abdominal pain; pertinent negative symptoms include chest pain, dyspnea with exercise, irregular heart beat, orthopnea, palpitations, peripheral edema, syncope, fever, fatigue, loss of appetite, weight gain, weight loss, abdominal swelling, change in bowel habits, constipation, diarrhea, fecal incontinence, rectal bleeding, gas, jaundice.

Medical History

Medications: Bactrim 400-80 mg take 1 by mouth twice daily
sertraline 50 mg take 1 by mouth once daily

Allergies: Patient has no known allergies or drug allergies

Conditions: Depression

Procedures: No Prior Procedures

Dx Studies: No Prior Diagnostic Studies

Immunization: No Immunizations

Social History

Marital Status: Married

Alcohol: Alcoholic Beverages Consumed 1-5 times a week.

Tobacco: Never smoker

Drug: None

Caffeine: Coffee, Soft Drinks, Tea.

Occupational History: transportation manager

Family History No history of GI Conditions

Review Of Systems:

Allergic/Immunologic: *Complains of persistent infections. Denies strong allergic reactions or urticaria.*

Cardiovascular: *Denies chest pain, dyspnea with exercise, irregular heart beat, orthopnea, palpitations, peripheral edema, syncope.*

Constitutional: *Denies fever, fatigue, loss of appetite, weight gain, weight loss.*

ENMT: *Complains of choking episodes. Denies ear pain, nasal obstruction, nose bleeds, sore throat, post nasal drip.*

Endocrine: *Denies excessive thirst, hair loss, heat intolerance.*

Eyes: *Denies loss of vision, double vision, yellow discoloration.*

Gastrointestinal: *Complains of heartburn, dysphagia, abdominal pain, nausea, vomiting. Denies abdominal swelling, change in bowel habits, constipation, diarrhea, fecal incontinence, rectal bleeding, gas, jaundice.*
Refer to HPI

Genitourinary: *Denies dark urine, decrease in urine flow, dysuria, frequent urination, hematuria, pregnancy.*

Hematologic/Lymphatic: *Denies easy bruising, prolonged bleeding, bleeding gums, palpable lymph nodes.*

Integumentary: *Denies hives, itching, jaundice, lesions, rashes.*

Musculoskeletal: *Denies back pain, joint pain, muscle weakness.*

Neurological: *Complains of fainting. Denies dizziness, frequent headaches, numbness or tingling, seizures, memory loss.*

Psychiatric: *Complains of anxiety, depression. Denies difficulty sleeping, nervousness, panic attacks.*

Respiratory: *Denies cough, dyspnea, excessive sputum, hemoptysis, wheezing.*

Vital Signs:

BP (mmHg)	Pulse (ppm)	Rhythm	Weight (lbs/oz)	Height (ft/in)	BMI
116/70	71	Regular	190 /	5 / 10	27.26

Physical Exam:

Constitutional:

Appearance: well-developed, in no acute distress.

Communication: conversation appropriate.

Skin:

Inspection: no rashes, ulcers, or icterus..

Palpation: no induration or subcutaneous nodules.

Eyes:

Conjunctivae/lids: lids normal, anicteric sclerae, moist conjunctivae.

Pupils/irises: PERRLA.

ENMT:

External: normal external inspection of the nose and ears.

Lips/teeth/gums: normal oral mucosa, lips and gums; good dentition, no masses.

Oropharynx: normal tongue, hard and soft palate; posterior pharynx without erythema, exudate or lesions.

Mallampati Score: Class I: Soft palate, uvula, fauces, pillars visible.

Neck:

Neck: full range of motion, midline trachea.

Thyroid: normal size, consistency and position; no masses or tenderness.

Jugular veins: No jugular venous distension.

Respiratory:

Effort: normal respiratory effort.

Auscultation: normal breath sounds; no rubs, wheezes or rhonchi.

Chest:

Inspection: symmetrical without visualized masses.

Palpation: no significant costal margin tenderness.

Cardiovascular:

Auscultation: regular rate and rhythm, normal S1 and S2.

Peripheral: no edema, varicosities or cyanosis.

Gastrointestinal/Abdomen:

Abdomen: soft to palpation, no tenderness, no masses, normal bowel sounds.

Liver/Spleen: no ascites appreciated, spleen not palpable, normal liver size, liver not palpable.

Hernias: no hernias appreciated.

Extremities:

Digits/Nails: no clubbing, cyanosis, inflammation, or petechiae.

General: no generalized swelling or edema.

Psychiatric:

Judgment/insight: normal judgement, normal insight.

Orientation: well oriented.

Lymphatic:

Neck: within normal limits.

Axillae: not palpable.

Groin: not palpable.

Neurologic:

Motor: normal strength in all extremities.

Sensation: no sensory deficits evident.

Asterixis: no asterixis noted..

Impressions: Nausea with vomiting, unspecified

Gastroesophageal reflux disease

Esophageal dysphagia

Chronic depression

Plan:

ranitidine HCl 150 mg Take 1 tablet by mouth twice a day

Esophagogastroduodenoscopy (EGD) with Dilatation with Propofol

The indications, technique, alternatives, and potential risks and complications were discussed with the patient including, but not limited to bleeding, perforation, missed lesions, infection, and anesthesia complications. Written patient education information was provided to the patient.

Average Risk Screening Colonoscopy with Propofol - Gatorade Prep

The indications, technique, alternatives, and potential risks and complications were discussed with the patient including, but not limited to bleeding, perforation, missed lesions, infection, and anesthesia complications. Written patient education information was provided to the patient.

Request Records: lab from Barton hospital

Stop ibuprofen

Risk & Medical Necessity: The patient requires Moderate to High Severity care for this visit. Diagnosis and management options are Extensive. The amount of data reviewed and/or ordered is Minimal/None. The level of risk is Moderate.

Hong Gao, MD

Hong Gao, MD

Electronically signed on 5/6/2015 2:08:50 PM by Hong Gao, MD

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: I

RECEIVED

APR 24 2018

Douglas County
District Court Clerk

FILED

2018 APR 24 AM 11:53

COBBIE R. WILLIAMS
CLERK

BY mba CITY

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 JEFFREY D. SPENCER,

14 Counterclaimant,

15 vs.

16
17 HELMUT KLEMENTI, an individual,
18 EGON KLEMENTI, an individual,
19 ELFRIDE KLEMENTI, an individual,
20 MARY ELLEN KINION, an individual,
21 ROWENA SHAW, an individual, PETER
22 SHAW, an individual, and DOES 1-5,

23 Counterdefendants & Third Party
24 Defendants.

**THIRD-PARTY DEFENDANT ELFRIDE
KLEMENTI'S MOTION FOR SUMMARY
JUDGMENT
AND JOINDER IN HELMUT KLEMENTI'S
MOTION FOR SUMMARY JUDGMENT**

25 Pursuant to Rule 56 of the Nevada Rules of Civil Procedure, Third-Party
26 Defendant, Elfride Klementi ("Ms. Klementi"), hereby moves this Court for summary
27 judgment on the claims asserted against her by Third-party Claimaint, Jeffrey Spencer
28 ("Spencer"). In addition, Ms. Klementi joins and incorporates into this pleading all of

1 the arguments set forth in Counter-defendant, Helmut Klementi's Motion for Summary
2 Judgment filed on April 11, 2018.¹

3 This motion is based upon the memorandum of points and authorities submitted
4 herewith, and upon all other papers, pleadings and documents on file herein.

5 I.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **A. Case Summary.**

8 This is an action stemming from disputes between neighbors that live in the
9 Kingsbury Grade General Improvement District ("KGID") on the south shore of Lake
10 Tahoe. The dispute escalated to the point that in 2013, Spencer was criminally
11 prosecuted for assault on Ms. Klementi's brother-in-law, Helmut Klementi. Following
12 trial in the criminal action, Helmut Klementi filed a civil action against Spencer seeking
13 recovery for personal injuries arising from the assault. In response, Spencer asserted
14 a counterclaim against Mr. Klementi as well as third-party claims against Ms. Klementi
15 and her husband, Egon Klementi (deceased), Mary Ellen Kinion, and Peter and
16 Rowena Shaw.²

17 By way of this motion, Klementi seeks summary judgment as all of Spencer's
18 third-party claims, i.e. defamation, malicious prosecution, civil conspiracy (defamation),
19 civil conspiracy (malicious prosecution), punitive damages, and infliction of emotional
20 distress.

21 **B. Background.**

22 Ms. Klementi is the 86-year-old widow of Egon Klementi. She lives across the
23 street from Spencer and his wife. The genesis of the dispute between the Ms.
24 Klementi and the Spencers pertains to the Spencer's building a six (6) foot tall fence
25 on their property in May of 2012. The fence sparked complaints from many neighbors
26 including Ms. Klementi who wrote letters to the County complaining about the fence.

27
28 ¹ Ms. Klementi previously filed a Joinder to Third-party Defendants, Peter and Rowena Shaw's Motion
for Summary Judgment dated February 23, 2018.

1 Ultimately, on November 13, 2012, the County made the Spencer's take the fence
2 down determining that the fence created a public safety hazard. Ms. Klementi's
3 involvement in the fence issue was as follows:

4
5 Did you make a complaint to a specific person or agency?

6 A: We came down to a meeting to the planning commission in
7 Minden.

8 Q: And was there anybody else from the neighborhood? "The
9 neighborhood" being your neighborhood?

10 A: Yeah.

11 Q: That was present at the commission?

12 A: Yes. Several neighbors.

13 Q: Could you tell me who they were?

14 A: Besides our family of three, Miss Kinion, Miss Tedrik.

15 Q: Tedrik?

16 A: Tedrik. I think you spell it T-E-D-R-I-K. Diane Tedrik.

17 Dr. Shaw and her husband.

18 I believe Mrs. Wells. I don't know if Mr. Wells was there,
19 too.

20 Q: Okay. What happened at the planning commission
21 meeting?

22 You all went there. Did you speak about the fence issue?

23 A: Correct.

24 Q: Was there any decisions made by the commissioners at
25 that meeting?

26 A: No. it was delayed for – they listened to the complaint.

27

28 ² Egon Klementi has passed away. See Suggestion of Death filed November 16, 2017.

1 Oh – and, of course, Mrs. Spencer – no, I'm sorry. Oh, I
2 know who else was there.

The builder of their fence.

3 Q: The company that was building their fence?

4 A: Their friend and a young gentleman with him.

5 Q: Okay. Was Mr. or Mrs. Spencer present?

6 A: No.

7 Q: Okay. So they listened to public comment at that meeting?

8 A: Correct.

9
10 Deposition of Ms. Klementi, dated April 14, 2016, p. 28:6 – 29:18, Exhibit 1.

11 In apparent spite over Elfie and Egon's complaints about the fence, Spencer
12 began putting excessively high berms of snow and ice in front of the Klementi's
13 driveway while he was plowing snow in the neighborhood. On December 12, 2012,
14 while Ms. Klementi was at work, she received a phone call from Egon informing her
15 that Spencer had covered him with snow and other roadway debris from the snow
16 plow. Specifically, Ms. Klementi testified:

17
18 Q: How did you find out about this incident?

19 A: My husband called me at work.

20 Q: Okay. And approximately what time did your husband call
21 you, if you remember?

22 A: Must be around noonish, 1 o'clock, something like that.

23 Q: And when your husband called you, what did he say?

24 A: He had a teary voice, and he said, guess what happened to
25 me?

26 That Mr. Spencer put snow and debris over his body, when
27 he was in the driveway.

28 Q: Okay. That was pretty specific.

1 Was that the exact words, or are you just kind of
2 summarizing?

3 A: I'm summarizing what happened.

4 Q: Fair enough.
5 And in response to that, what did you say?

6 A: I said, should I come home? And he said, no. he can deal
7 with it.

8 Q: Okay.

9 A: He knew it was a difficult day for me not to come home, so
10 he said he can deal with it.

11 Q: Okay. What do you mean it was a difficult day for you?

12 A: I had a lot of work there.

13 Q: Oh, busy day?

14 A: A busy, yeah, sorry.

15 Q: All right. So did you ask Mister – your husband, if he was
16 injured in the incident?

17 A: I don't remember.

18 Q: Did you recommend that the police be called for that
19 incident?

20 A: No.

21 Q: Okay. How long were you on the phone with your husband
22 about that? Couple minutes?

23 A: Yeah.

24 Q: Do you know if the police were called about that incident/

25 A: Yeah, he told me later.

26 Exhibit 1, p. 45:17 – 47:5.

27 Several days later, on December 18, 2012, Ms. Klementi also attended a KGID
28 meeting. At that meeting, Ms. Klementi provided the KGID members with a letter

1 documenting Spencer's actions in spraying snow over her husband and in leaving
2 excessively high berms in front of her driveways. Exhibit 1, p. 71:23 – 73:15. KGID
3 representatives informed the neighbors to photograph the berms.

4 Later that same evening, Ms. Klementi's brother-in-law, Helmut Klementi, went
5 into the street to take pictures of the snow berm piled up in front of Ms. Klementi's
6 property. While doing so, Helmut was assaulted by Spencer. Video evidence confirms
7 that when he was assaulted by Spencer, Helmut's back was to the Spencers' property
8 and he was facing Ms. Klementi's residence taking pictures.

9 Following the assault, the Douglas County Sheriff's Office was called out and
10 Deputy McKone arrived on the scene. See, Douglas County Sheriff Deputy Report,
11 attached as Exhibit 2. Deputy McKone called for medical assistance from the local
12 paramedics who attended to Helmut Klementi. Meanwhile, Deputy McKone with the
13 assistance of Deputy Almeida undertook a criminal investigation. As part of their
14 investigation, the DCSO deputies spoke with Helmut Klementi, his brother Egon,
15 Egon's wife Ms. Klementi, and neighbor, Janet Wells. Deputy McKone also
16 interviewed Spencer and his wife.

17 According to the Sheriff's Report, Spencer informed Deputy McKone that he
18 attacked Helmut because he believed Helmut was breaking into his truck. Also
19 claiming to believe Helmut was a teenager in a hoodie, Spencer admitted to Deputy
20 McKone that he grabbed Helmut and threw him to the ground. Deputy McKone did not
21 find Spencer's account to be credible. In particular, Deputy McKone did not believe
22 that Spencer could mistake his 82-year-old elderly neighbor for a teenager and he
23 found other inconsistencies with Spencer's account as well. As a result, Deputy
24 McKone arrested Spencer for battery and abuse of an elder. See, Exhibit 2. Ms.
25 Klementi was subpoenaed to testify at both the preliminary hearing and trial.

26 Following his acquittal, Spencer asserted third-party claims against Ms.
27 Klementi and her husband for defamation, malicious prosecution, civil conspiracy,
28

1 punitive damages and emotional distress. In Spencer's Second Amended
2 Counterclaim & Third-Party Complaint he has alleged as follows:

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

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

10 36. Based on the statements of HELMUT KLEMENTI, EGON
11 KLEMENTI and others, JEFFREY SPENCER was arrested that night for
12 misdemeanor batter of HELMUT KLEMENTI, and was released after
paying a bail that same evening.

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

17 38. On or about December 24, 2012, HELMUT KLEMENTI, EGON
18 KLEMENTI and ELFRIDE KLEMENTI filed for a restraining order against
JEFFREY SPENCER.

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

21 42. ELFRIDE KLEMENTI spoke at that KGID meeting stating that she
22 was afraid of JEFFREY SPENCER because he had pushed down and
beaten up HELMUT KLEMENTI and had been arrested.

23 48. On or about February 24, 2013, HELMUT KLEMENTI, EGON
24 KLEMENTI, ELFRIDE KLEMENTI testified at a preliminary hearing,
25 making accusations of criminal behavior against JEFFREY SPENCER.

26 50. ELFRIDE KLEMENTI testified at that preliminary hearing that on
27 May 27, 2012 JEFFREY SPENCER had threatened and then punched
EGON KLEMENTI in the face, even through she was not present and did
28 not see the alleged assault or battery. ELFRIDE KLEMENTI testified at
that preliminary hearing that on December 12, 2012, JEFFREY

1 SPENCER had deliberately used his snow plow to cover EGON
2 KLEMENTI with snow and ice, even through she was not present and did
3 not see the alleged battery. She also testified that JEFFREY SPENCER
4 deliberately created berms in their driveway, that EGON KLEMENTI is
5 frail and feels very threatened by JEFFREY SPENCER. ELFRIDE
6 KLEMENTI testified at that preliminary hearing that on December 18,
7 2012, JEFFREY SPENCER hurt HELMET KLEMENTI, even though she
8 did not see that alleged battery either.

9 59. HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE KLEMENTI,
10 MARY ELLEN KINION and ROWENA SHAW each testified at JEFFREY
11 SPENCER's trial against JEFFREY SPENCER.

12 Spencer's Second Amended Counterclaim & Third-Party Complaint dated August 10,
13 2016. Exhibit 3.

14 Even assuming that the foregoing factual allegations are true, as a matter of
15 law, Spencer cannot prevail on any of his claims against Ms. Klementi. As to
16 Spencer's claim for defamation against Ms. Klementi, all of the allegedly actionable
17 statements made by Ms. Klementi were made during either a judicial and/or a quasi-
18 judicial proceeding. Thus, even if the statements were not true – they are – the
19 statements are absolutely privileged and/or immune from liability under NRS 41.650.

20 As to Spencer's claim for civil conspiracy, the claim cannot stand because
21 Spencer cannot provide proof of the underlying torts, i.e. defamation or malicious
22 prosecution. As to the claim for intentional infliction of emotional distress, Ms.
23 Klementi's cooperation with the police investigation and her testimony in judicial
24 proceedings against Spencer is simply "not extreme and outrageous conduct" as a
25 matter of law. Spencer has presented no law to support his claim that show that Ms.
26 Klementi's conduct was extreme or outrageous. Moreover, Spencer has failed to
27 produce any evidence that he experienced a physical manifestation of the severe
28 emotional distress that is necessary to support his claim for damages.

Finally, of course, "punitive damages" is not a stand-alone claim. Spencer has
produced no evidence – let alone, clear and convincing evidence, that Ms. Klementi's

1 testimony against him is conduct that warrants an award of punitive damages.
2 Therefore, summary judgment is also appropriate on this claim.

3 II

4 **STANDARD OF REVIEW**

5 Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil
6 Procedure when the pleadings, depositions, answers to interrogatories, admissions,
7 and affidavits, if any, that are properly before the court demonstrate that no genuine
8 issue of material fact exists, and the moving party is entitled to judgment as a matter of
9 law. NRCP 56; *Wood v. Safeway, Inc.*, 121 Nev. 724, 731 P.3d 1026, 1031 (2005). *Id.*
10 A factual dispute is genuine when the evidence is such that a rational trier of fact could
11 return a verdict for the nonmoving party. *Id.* The substantive law controls which factual
12 disputes are material and will preclude summary judgment; other factual disputes are
13 irrelevant. *Id.* at 731.

14 Although the pleadings and proof must be construed in a light most favorable to
15 the nonmoving party, that party bears the burden to do more than simply show that
16 there is some metaphysical doubt as to the operative facts in order to avoid summary
17 judgment. *Id.* at 732. The nonmoving party is not entitled to build a case on the
18 gossamer threads of whimsy, speculation and conjecture. *Id.*

19 The manner in which each party satisfies its burden of production “depends on
20 which party will bear the burden of persuasions on the challenged claim at trial.” *Cuzze*
21 *v. Univ. & Cmty. Coll. Sys. Of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007).
22 If the nonmoving party will bear the burden of persuasion at trial, the moving party
23 “may satisfy the burden of productions by either (1) submitting evidence that negates
24 an essential element of the nonmoving party’s claim, or (2) ‘pointing out...that there is
25 an absence of evident to support the nonmoving party’s case.” *Francis v. Wynn Las*
26 *Vegas, LLC*, 127 Nev. Adv. Op. 60, 262, P.3d 705, 714 (2011) (internal citations
27 omitted). In this case, because Spencer bears the burden of persuasion at trial Kinion
28 may satisfy her burden of production by submitting evidence that negates essential

1 elements of Spencer's claims and by pointing out that there is an absence of evidence
2 to support Spencer's case.

3 To withstand summary judgment, Spencer, as the non-moving party, cannot
4 rely solely on the general allegations and conclusions set forth in the pleadings, but
5 must instead present specific facts demonstrating the existence of a genuine factual
6 issue supporting its claims. *Ransdell v. Clark County*, 124 Nev. 847, 860, 192 P.3d
7 756, 765 (2009). Again, the substantive law controls what factual disputes are material
8 to Spencer's claims – other factual disputes are simply irrelevant.

9 III.

10 **LEGAL ANALYSIS**

11 **A. Defamation**

12 Summary judgment on Ms. Klementi's affirmative defenses in response to
13 Spencer's claims for defamation is appropriate because Ms. Klementi's statements are
14 privileged as a matter of law. Liability for defamation may only arise if the plaintiff
15 proves the following: "(a) a false and defamatory statement concerning another; (b) an
16 unprivileged publication to a third party; (c) fault amounting at least to negligence on
17 the part of the publisher; and (d) either actionability of the statement irrespective of
18 special harm, or the existence of special harm caused by the publication." *Lubin v.*
19 *Kunin*, 117 Nev. 107, 111, 17 P.3d 422, 425 (2001).

20 Whether a statement is defamatory is generally a question of law, unless it is
21 subject to two different interpretations. *Id.*; *K-Mart Corp. v. Washington*, 109 Nev.
22 1180, 1191, 866 P.2d 274, 281 (1993) ("Whether or not a statement is capable of
23 defamatory construction is a question of law for the court."). A court reviewing an
24 allegedly defamatory statement reviews "the words in their entirety and in context in
25 order to determine whether they are susceptible of defamatory meaning." *Lubin*, 117
26 Nev. At 111, 17 P.3d at 426.

27 In this case, Spencer alleges Ms. Klementi is liable for defamation because of
28 statements she made to the Douglas County Sheriff Department, the Douglas County

1 District Attorney, KGID, and/or the Douglas County Planning Commission.
2 Notwithstanding, even if this Court found the alleged statements to not be true (they
3 are), Ms. Klementi is protected by either a qualified privilege or absolute privilege
4 because each statement was made in the context of reporting a crime or was made in
5 a quasi-judicial or judicial proceeding.

6 Both the qualified privilege and the absolute privilege are defenses to Spencer's
7 defamation claim and Ms. Klementi has asserted these privileges in her affirmative
8 defenses to Spencer's Second Amended Counterclaim and Third-Party Complaint.
9 See, *Lubin v. Kunin*, 117 Nev. At 114, 17 P.3d at 427.

10
11 **1. Klementi's statements to Douglas County Sheriff's Deputies**
are protected by qualified privilege.

12
13 The Nevada Supreme Court has held that, where a person makes
14 communications to police before initiation of criminal proceedings, that person enjoys
15 a qualified privilege if the statement are made in good faith. In *Pope v. Motel 6*, 121
16 Nev. 307, 114 P.3d 277 (2005), the court clarified its holding in *K-Mart Corp v.*
17 *Washington*, by finding that a qualified privilege satisfied the balance between
18 safeguarding reputations and encouraging full disclosure by citizens "in order to
19 discharge public duties and protect individual rights." *Id.* at 316-317. This privilege
20 exists so that citizens, like Ms. Klementi can report what they perceive in good faith as
21 the commission of a crime and not be subject to "frivolous lawsuits." *Id.* at 317.

22 Importantly, the *Pope* court held that after an individual has reported a crime, a
23 plaintiff must prove, by a preponderance of the evidence, "that the defendant abused
24 the privilege by publishing the defamatory communication [to law enforcement] with
25 actual malice." *Id.* "Actual malice is a stringent standard that is proven by
26 demonstrating that a statement is published with knowledge that it was false or with
27 reckless disregard for its veracity." *Id.* citing *Pegasus v. Reno Newspapers, Inc.*, 118
28 Nev. 706, 722, 57 P.3d 92, 92 (2002).

1 In *Pope*, the manager for Motel 6 believed that a former employee and her
2 husband were stealing from the motel and were responsible for "problems" on the
3 premises. The manager reported this fact to local law enforcement. The trial court
4 granted summary judgment in Motel 6's favor because the former employee could not
5 demonstrate that the manager's statements to the police were made with knowledge
6 that they were false. Upholding the trial court's decision on appeal, the Nevada
7 Supreme Court held:

8
9 Suspicious of criminal wrongdoing are commonly expressed to
10 police, and often the suspicion is misplaced. Without more, the mere
11 fact that an individual informs police of possible criminal wrongdoing
12 does not establish malice. To overcome the qualified privilege, Juanita
13 was required to establish the Inman acted with reckless disregard for
14 veracity or with knowledge of falsity. She failed to do so.

15
16 As a qualified privilege applies to Inman's statements to the police
17 and Juanita failed to advance any evidence of malice, we conclude that
18 the district court properly granted summary judgment to Motel 6 on this
19 issue.

20
21 *Pope*, 121 Nev. At 318, 114 P.3d at 284

22 Similarly, in *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657 P.2d
23 101 (1983), the Nevada Supreme Court explained that a qualified or conditional
24 privilege exists where the allegedly defamatory statement is made in good faith "on
25 any subject matter in which the person communicating has an interest, or in reference
26 to which he has a right or a duty, if it is made to a person with a corresponding interest
27 or duty." Whether a statement is conditionally privileged is a question of law for this
28 Court. *Id.* The burden then shifts to the plaintiff to provide that the defendant abused
the privilege by making the defamatory statement with malice in fact. *Id.*, This issue
does not even to the jury unless there is sufficient evidence for the jury to reasonably
infer that the defendant made the statement with actual malice. *Id.*, In fact, the court in
Circus Circus Hotels Inc. reversed the trial court for allowing the jury to decide the

1 initial question of whether an employer's statements were protected by qualified
2 privilege. *Id.* Both *Pope* and *Circus Circus Hotels, Inc.* are controlling in this case.

3
4 **2. Klementi's statement at Spencer's criminal proceedings are**
5 **protected by an absolute privilege as a matter of law.**

6 Spencer asserts that statements Ms. Klementi made at his criminal trial are
7 defamatory statements for which Ms. Klementi is liable. However, Nevada recognizes
8 and follows the "long-standing common law rule that communications uttered or
9 published in the course of judicial proceedings are absolutely privileged." *Circus Circus*
10 *Hotels, Inc.*, 99 Nev. At 60-61, 657 P.2d at 104; *Nickovich v. Mollart*, 51 Nev. 306, 274
11 P. 809, 810 (1929) (a witness who testifies in the course of judicial proceedings is not
12 liable for the answers he makes to questions posed by the court or counsel and all his
13 answers are privileged).

14 The absolute privilege also applies to "quasi-judicial proceedings before
15 executive officers, boards, and commissions..." *Id.* The absolute privilege precludes
16 liability as a matter of law even where the defamatory statements are "published with
17 knowledge of their falsity and personal ill will toward the plaintiff." *Id.* The policy behind
18 this privilege is that, "in certain situations, the public interest in having people speak
19 freely outweighs the risk that individuals will occasionally abuse the privilege" by
20 making defamatory statements. *Id.*; *Knox v. Dick*, 99 Nev. 514, 518, 665 P.2d 267, 270
21 (1983) (holding that the absolute privilege is applicable to quasi-judicial proceedings
22 so "the right of individuals to express their views freely upon the subject under
23 consideration is protected.").

24 The scope of the absolute privilege in Nevada is "quite broad." *Fink v. Oshins*,
25 118 Nev. 428, 433, 49 P.3d 640, 644 (2002). The defamatory communication "need
26 not be strictly relevant to any issue involved" in the judicial or quasi-judicial
27 proceeding; rather, it needs only to be "in some way pertinent to the subject of
28 controversy." *Id.* citing *Circus Circus Hotels, Inc.*, 99 Nev. At 61, 657 P.2d at 104

1 (defamatory material need only have "some relation" to the proceeding and as long as
2 it has "some bearing" on the subject matter, it is absolutely privileged). The privilege
3 applies even where actual judicial proceedings have not yet been initiated, so long as
4 the statement is made "in contemplation of the initiation of the proceeding." *Id.* (internal
5 quotations omitted) citing *Club Valencia Homeowners v. Valencia Assoc.*, 713 P.2d
6 1024, 10276 (Colo.Ct.App.1985) ("No strained or close construction will be indulged to
7 exempt a case from the protection of privilege") and *Chard v. Galton*, 277 Or. 109, 559
8 P.2d 1280, 1282 (1977) (noting that the absolute privilege should apply liberally).

9 The issues of absolute privilege and relevance are questions of law for this
10 Court to decide. *Circus Circus Hotels, Inc.*, 99 Nev. At 62, 657 P.2d at 105. In *Circus*
11 *Circus Hotels, Inc.*, the court concluded that a letter written by plaintiff's former
12 employer, Circus Circus, presented in the context of an administrative proceeding was
13 protected by the absolute privilege and should not have been presented to the jury at
14 plaintiff's trial against Circus Circus for defamation. Because the letter from Circus
15 Circus was related to the unemployment security division's decision on whether to
16 grant plaintiff unemployment benefits, it was privileged. The court also held the trial
17 court erred by allowing the jury to decide whether the letter's content was relevant to
18 fall under the absolute privilege. *Id.* at 62.

19 Similarly, in *Knox*, the court disagreed with the plaintiff that the quasi-judicial
20 privilege did not extend to the Clark County Personnel Grievance Board. 99 Nev. At
21 518, 665 P.2d at 270. Rather, the court found that the quasi-judicial privilege applied
22 because the board conducted its meetings in a quasi-judicial manner pursuant to the
23 guidelines set forth in the Clark County Code that permitted the taking of evidence and
24 examination of witnesses. *Id.*

25 Here, there is simply no question that any statement Ms. Klementi made during
26 Spencer's criminal proceedings are protected by absolute privilege for which liability
27 cannot attach. Even if the statements made by Ms. Klementi were false or malicious
28

1 (which, they are not), she cannot be liable for defamation as a matter of law.
2 *Nickovich*, 51 Nev. At 306, 274 P. at 810.

3 Further, Ms. Klementi's statements and letters to the KGID and/or Douglas
4 County Planning Commission are also protected since these are both quasi-judicial
5 agencies.

6 **C. Civil Conspiracy**

7 Summary judgment is appropriate on Spencer's claims for civil conspiracy in
8 Ms. Klementi's favor because torts underlying the civil conspiracy claims, i.e.
9 defamation and/or malicious prosecution, fail as a matter of law and Spencer cannot
10 demonstrate any unlawful agreement between the parties.

11 Spencer's Third and Fourth Claims for Relief assert civil conspiracy for
12 defamation and malicious prosecution. An actionable claim for civil conspiracy
13 "consists of a combination of two or more person who, by some concerted action,
14 intend to accomplish an unlawful objective for the purpose of harming another, and
15 damage results from the act or acts. *Consol. Generator-Nevada, Inc. v. Cummins*
16 *Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (finding summary
17 judgment was appropriate on civil conspiracy claim where there was no evidence
18 defendants agreed and intended to harm plaintiff); *Sharda . Sunrise Hosp. & med. Ctr.,*
19 *LLC*, 2017 WL 2870086, at *10 (D. Nev. July 3, 2017) (plaintiff's claim for civil
20 conspiracy failed where he did not plead plausible underlying agreement).

21 It is crucial that, in order to prevail on a claim for civil conspiracy, a plaintiff must
22 show the commission of the underlying tort and an agreement between defendants to
23 commit that tort. *Jordan v. Dept. of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75 110
24 P.3d 30, 51 (2005),³ (the underlying tort is a "necessary predicate" to a cause of action
25 for conspiracy); *Sharda*, 2017 WL 2870086 at *10 (same).

26 As shown above, the underlying claim for defamation fails as a matter of law
27 and the claim for malicious prosecution has been previously dismissed. There are no
28

1 genuine issues of material fact remaining as to the allegations of defamation and
2 malicious prosecution against Ms. Klementi – she is immune from liability under the
3 doctrines of qualified and absolute immunity. Because Spencer’s claims for
4 defamation and malicious prosecution fail as a matter of law, his claims for civil
5 conspiracy likewise fail.

6 Moreover, Spencer simply cannot meet the elements for a claim of civil
7 conspiracy. There are no facts demonstrating the existence of an agreement between
8 Ms. Klementi and any of the other third-party defendants in this case to accomplish an
9 unlawful objective, such as to maliciously prosecute or defame Spencer. That would
10 require Ms. Klementi and the others to concoct a scheme to get Spencer arrested and
11 then work with the other defendants to present false testimony against him. Such a
12 proposition is completely absurd. In the absence of admissible and authenticated
13 evidence establishing a genuine issue of material fact, Spencer’s claims for civil
14 conspiracy fail as a matter of law and summary judgment is appropriate.

15 **D. Punitive Damages**

16 Summary judgment is warranted on Spencer’s claim for punitive damages
17 because this claim is not a stand-alone claim and, more importantly, there is no
18 evidence that Ms. Klementi acted with malice, oppression or fraud.

19 Spencer asserts a claim for punitive damages as his Fifth Claim for Relief.
20 However, it is well-established that punitive damages is not a stand-alone claim;
21 rather, it is a prayer for relief tied to a specific cause of action. *Clark v. Lubritz*, 113
22 Nev. 1089, 1096, 944 P.2d 861, 865 (1997) (holding that Nevada’s statute on punitive
23 damages is a verbatim copy of the California statute); *McLaughlin v. Nat’l Union Fire*
24 *Ins. Co.*, 29 Cal. Rptr. 2d 559, 578 (1994) (there is no separate cause of action for
25 punitive damages and plaintiffs must still prove the underlying tortious act). Flatly put,
26 Spencer cannot assert a separate cause of action for punitive damages and the Fifth
27 Claim for Relief can be dismissed on this basis alone.

28 ³ Abrogated on other grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2208)

1 However, summary judgment is appropriate on the merits of Spencer's request
2 for punitive damages in this case because there is absolutely no evidence that Ms.
3 Klementi acted with malice, oppression, or fraud. Before even submitting the issue of
4 punitive damages to a jury, the district court should conduct a threshold inquiry of
5 whether the alleged misconduct is properly subject to this form of civil punishment.
6 *Evans v. Dean Witter Reynolds, Inc.*, 106 Nev. 598, 612, 5 P.3d 1043, 1052 (2000);
7 see also *Countrywide Home Loans, Inc., v. Thitchener*, 124 Nev. 725, 740, 192 P.3d
8 946, 953 (2008). "[T]he district court has discretion to determine whether the party's
9 conduct merits punitive damages as a matter of law." *Winchell v. Schiff*, 124 Nev. 938,
10 948, 193 P.3d 946, 952 (2008). Punitive damages are not a compensatory measure of
11 recovery; rather, they are intended to punish and deter a defendant's culpable
12 conduct. *Bongiovi v. Sullivan*, 122 Nev. 556, 580, 138 P.3d 433, 450 (2006).

13 Punitive damages are governed by statute and may only be awarded when the
14 plaintiff proves by clear and convincing evidence that the "defendant has been guilty of
15 oppression, fraud, or malice, express or implied..." NRS 42.005(1). "Oppression"
16 means "despicable conduct that subjects a person to cruel and unjust hardship with
17 conscious disregard of the rights of the person." NRS 42.001(4). "Fraud" means "an
18 intentional misrepresentation, deception or concealment of a material fact known to the
19 person with the intent to deprive another person of his rights of property or to
20 otherwise injure another person." NRS 42.001(2).⁴ "Malice, express or implied" means
21 "conduct which is intended to injure a person or despicable conduct which is engaged
22 in with conscious disregard of the rights or safety of others." NRS 42.001(3).

23 The statutory of definitions of "oppression" and "malice, express or implied"
24 include the term "conscious disregard," which means "knowledge of the probable
25 harmful consequences of a wrongful act and a willful and deliberate failure to act to
26 avoid those consequences." NRS 42.001(1). In accordance with that statutory

27
28 ⁴ Spencer's claim for punitive damages does not include a claim for fraud and, even if it did, he did not satisfy the
NRCP 9(g) heightened standard for pleading a fraud claim. Therefore, this motion does not address fraud.

1 language, conscious disregard “denotes conduct that, at a minimum, must exceed
2 mere recklessness or gross negligence.” *Countrywide Home Loans*, 124 Nev. At 743,
3 192 P.3d at 255.

4 Clear and convincing evidence is evidence that is “so strong and cogent as to
5 satisfy the mind and conscience of a common man, and so to convince him that he
6 would venture to act upon that conviction in matters of the highest concern and
7 importance to his own interest.” *In re Discipline of Drakulich*, 111 Nev. 1556, 1566,
8 908 P.2d 709, 715 (1995).

9 In this case, Spencer cannot come forward with any evidence – let alone clear
10 and convincing evidence – that Ms. Klementi’s conduct was “despicable conduct” that
11 was intended to injure Spencer or made in conscious disregard for his safety. As
12 stated, the existence of a good faith belief negates the presence of malice. *Lester*, 112
13 Nev. At 1430, 929 P.2d at 913 (good faith belief that a crime had been committed);
14 *Boren*, 2010 WL 493447 at *6 (the existence of a probable cause negates malice);
15 *Pope*, 121 Nev. At 318, 114 P.3d at 284 (no malice where reporting party believed
16 crime had been committed). Subjecting Ms. Klementi to punitive damages for her good
17 faith belief that she was fulfilling her civic duty smacks of injustice. Such an award in
18 this case would establish unwanted precedent and deter citizens and victims from
19 coming forward and reporting crimes out of fear that they will later be subject to liability
20 and obscene damage amounts for contacting local law enforcement and participating
21 in the judicial process. This result is clearly not the type of conduct that a punitive
22 damage award is meant to deter.

23 Because there is no evidence that Ms. Klementi’s conduct is the type where an
24 award of punitive damages is appropriate and because this Court can make this
25 determination as a matter of law, summary judgment should be granted in Ms.
26 Klementi’s favor on Spencer’s Fifth Claim for Punitive Damages.

27 ///

28 ///

1 **E. Intentional Infliction of Emotional Distress**

2 Summary judgment is appropriate on Spencer's claim for intentional infliction of
3 emotional distress because there is no evidence Ms. Klementi acted intentionally or
4 with a reckless disregard of causing emotional distress and Spencer's reported
5 symptoms do not satisfy the requirement of "physical manifestations" of emotional
6 distress.

7 **1. Klementi's conduct is not extreme and outrageous and the**
8 **record is devoid of evidence that Kinion acted intentionally or**
9 **with a reckless disregard of causing Spencer severe**
 emotional distress.

10 Spencer's Sixth Claim for Relief asserts that Ms. Klementi acted intentionally or
11 with reckless disregard for the likelihood of causing emotional distress when she
12 testified at Spencer's criminal proceedings regarding the same. However, there is
13 absolutely no evidence that Ms. Klementi acted intentionally or that her actions
14 constitute reckless disregard in this case.

15 In a claim for intentional infliction of emotional distress, a plaintiff must prove the
16 following: "(1) extreme and outrageous conduct with either the intention of, or reckless
17 disregard for, causing emotional distress, (2) the plaintiff's having suffered severe or
18 extreme emotional distress, and (3) actual or proximate causation." *Barnettler v. Reno*
19 *Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998) (concluding summary
20 judgment was proper where plaintiff failed to establish either the first or second
21 elements of this claim) citing *Star v. Rabello*, 97 Nev. 124, 125, 625 P.2d 90, 91-92
22 (1981) (citation omitted).

23 A prima facie claim of intentional infliction of emotional distress requires a
24 plaintiff to prove that the defendant's conduct was "extreme and outrageous." *Maduike*
25 *v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998). Extreme and
26 outrageous conduct "is that which is outside all possible bounds of decency and is
27 regarded as utterly intolerable in a civilized community." *Id.*, citing California Book of
28 Approved Jury Instruction 12.74 (internal citations omitted). In *Maduike*, the Nevada

1 Supreme Court upheld the trial court's decision that the first element of the tort was not
2 met when a car rental agency's employees were rude and refused to provide a family
3 with a new rental car after the brakes on the car they rented failed and caused a
4 collision. *Id.* at 4-5. The court agreed with the rental agency's argument that its
5 employee's conduct was, at most, unkind or inconsiderate behavior but it did not rise
6 to the level of being "atrocious, intolerable, or outside all possible bounds of decency."
7 *Id.*, at 5; and see, *Barnettler*, 114 Nev. At 443, 956 P.2ds at 1384 (no extreme and
8 outrageous conduct where employer violated its own policy to keep confidential the
9 fact that employee entered substance abuse rehabilitation); *Chowdhry v. NLVH, Inc.*,
10 109 Nev. 478, 483, 851 P.2d 459, 462 (1993) (accusations by hospital that surgeon
11 abandoned patient were insufficient to constitute extreme and outrageous behavior);
12 compare, *Olivero v. Lowe*, 116 Nev. 395, 400, 995 P.2d 1023, 1026 (2000) (conduct
13 was extreme and outrageous where construction laborer was physical attacked by
14 homeowner and threatened with handgun).

15 Testifying before a judge in Spencer's criminal trial is not extreme and
16 outrageous conduct. Subjecting a person to damages when they exercise their civil
17 obligation to report a crime and testify in judicial proceedings is simply against public
18 policy and would set dangerous precedent. Victims and witnesses report crimes and
19 testify multiple times a day and this conduct is simply not "extreme and outrageous" as
20 a matter of law. See, e.g., *Churchill v. Barach*, 863 F. Supp. 1266, 1275 (D. Nev.
21 1994) (customer's conduct was not extreme and outrageous as a matter of law when
22 he wrote letter to airline complaining about employee because this type of conduct
23 occurs "thousands of times each day").

24 Moreover, even if Ms. Klementi's conduct was extreme and outrageous (which,
25 it is not), Spencer cannot demonstrate that she intended to cause Spender emotional
26 distress or acted with reckless disregard in causing Spencer severe emotional
27 distress. This case is completely distinguishable from cases where the court has
28 found extreme and outrageous conduct. For example, in *Olivero*, the Nevada

1 Supreme Court found that a homeowner who physically attacked and threatened a
2 construction laborer with a handgun and forced him to work at gunpoint was liable for
3 intentional infliction of emotional distress because that conduct was extreme and
4 outrageous. 116 Nev. At 400, 995 P.2d 1026. That is the type of conduct this tort is
5 meant to address. Here, there is simply no evidence in the record supporting
6 Spencer's allegation that Ms. Klementi's conduct was extreme and outrageous with
7 the intention or reckless disregard of causing emotional distress. Therefore, Spencer's
8 Sixth Claim for Relief for infliction of emotional distress fails as a matter of law on the
9 first element and summary judgment must be granted in Ms. Klementi's favor.

10 **2. Spencer has failed to present proof of severe or extreme**
11 **emotional distress.**

12 In Nevada, when a party claims emotional distress damages that precipitate
13 physical symptoms (as opposed to emotional distress damages secondary to a
14 physical injury), then either a physical impact must have occurred or, in the absence of
15 a physical impact, the plaintiff must prove "serious emotional distress" causing
16 physical injury. *Barmettler*, 114 Nev. At 448, 956 P.2d at 1387.

17 Absent physical impact, "the less extreme the outrage, the more appropriate it
18 is to require evidence of physical injury or illness from the emotional distress."
19 *Chwodhry*, 109 Nev. At 483, 851 P.2d at 462 citing *Nelson v. City of Las Vegas*, 99
20 Nev. 548, 555 665 P.2d 1141, 1145 (1983); and *Churchill*, 863 F. Supp. At 1276
21 (where the outrage is less extreme, evidence of physical injury or illness is required).
22 The stress "must be so severe and of such intensity that no reasonable person could
23 be expected to endure it." *Alam v. Reno Hilton Corp.*, 819 F. Supp. 905, 911 (D. Nev.
24 1993). "Insomnia and general physical or emotional discomfort are insufficient to
25 satisfy the physical impact requirement." *Id.* The physical impact requirement is not
26 met even where a party has "great difficulty in eating, sleeping, and suffers outward
27 manifestations of stress and is generally uncomfortable." *Churchill*, 863 F. Supp. At
28

1 1276; *Alam*, 819 F. Supp. At 911 feelings of inferiority, headaches irritability and
2 weight loss did not amount to severe emotional distress).

3 At his deposition on March 20, 2017, Spencer testified as follows:

4 Q: I do need to get clarification. In regards to your intentional
5 infliction of emotional distress, and forgive me, I know you probably
6 testified to this at the last deposition, but I don't remember.

7 A: If you don't remember, I'm going to remember?

8 Q: Yeah, I think you should. What physical manifestations or
9 problems or elements do you allege occurred as a result of this lawsuit?

10 A: I don't know the medical terms for it.

11 Q: Okay, and I don't want you to give medical terms. I
12 understand you are not a doctor, but like if you have a stomach ache,
13 you have a headache, you can put it in layman's terms.

14 A: Yeah. Intestinal problems I guess you could say.

15 Q: Say that again.

16 A: Intestinal problems, stomach problems.

17 Q: It is like your stomach hurting, diarrhea?

18 A: Yeah, both of those.

19 Q: Any other physical ailments?

20 A: Yeah. I don't know what they call it.

21 Q: You can say something as simple as my hand hurts, my
22 arm hurts?

23 A: No, I don't want to say something that I don't know the right
24 thing on.

25 Q: All right. So what other body parts or ailments?

26 A: I have got a heart issue thing. I can't remember what they
27 call that, but I guess they don't call it anything, because they haven't
28 diagnosed it yet. They don't know what it causing it.

Q: Right. And so then what symptoms are you having for this
nondiagnosed issue?

1 A: Passing out.

2 Q: The fainting?

3 A: Yeah.

4 Q: But they haven't been able to diagnose –

5 A: No, I wore a heart monitor for the overnight thing. I've
6 done treadmill tests. They can't find it.

7 Q: All right. And the heart issue, when did this heart issue
8 manifest?

9 A: Three years ago, something like that. Whatever I said
10 before. I don't recall.

11 Q: all right. And your stomach or intestinal issues, when did
12 they commence?

13 A: I don't recall. A couple of years ago.

14 Q: Are you still having intestinal issues?

15 A: Yes.

16 Q: And if I'm not mistaken –

17 A: I did before the last meeting. Remember I was late?

18 Q: I'm sorry, I don't remember. In regards to your stomach
19 issues, I believe, and correct me if I'm wrong, that the last time you saw
20 a doctor in relation to your stomach issues was in July of 2016?

21 Deposition of Jeff Spencer dated March 20, 2017, p. 111:13-113:13. Exhibit 4.

22 In this case, the "emotional distress" suffered by Spencer does not rise to the
23 level of "severe or extreme emotional distress" that is required to recover damages for
24 this tort. Spencer has never produced any medical records or documentation of severe
25 and extreme emotional distress and the records that have been produced by Kinion
26 reveal that Spencer's claims for emotional distress fail as a matter of law. Spencer
27 may argue that the opinion of his therapist, Dana Anderson, is sufficient to prove that
28 Spencer has suffered severe and extreme emotional distress because Anderson

1 diagnosed him with "PTSD." However, a careful look at the specific symptoms
2 Spencer experiences demonstrates his symptoms are insufficient to constitute severe
3 and extreme emotional distress: "reliving the trauma," "stomach ache," "nervousness,"
4 "bad dreams," "frightening thoughts," "feeling tense," "difficulty sleeping," "lack of
5 concentration," "inability to deal with stressful situations," "negative thoughts,"
6 "depression, anxiety," and loss of having fun. Exhibit 5, letter from Dana Anderson
7 dates May 21, 2017, bates-stamped KINION 350351. As explained in case law above,
8 these symptoms do not constitute severe and extreme emotional distress. Spencer's
9 complaints of stress, fatigue, and weight loss similarly do not constitute severe and
10 extreme emotional distress. *Churchill*, 863 F. Supp. At 1276; *Alam*, 819 F. supp. At
11 911.

12 Moreover, Spencer physical symptoms he attributes to this case *are pre-*
13 *existing conditions and symptoms he suffered long before this case even started.* His
14 treating physicians note that his past medical history includes pre-existing depression
15 and a "long history of gastrointestinal reflux disorder." Exhibit 6, medical records of
16 Jeffrey Spencer, bates-stamped KINION 138-140, 151-156 (noting that heartburn and
17 regurgitation issues started 10-15 years ago). With this medical history, Spencer
18 simply cannot attribute his heartburn and depression to Ms. Klementi's actions in this
19 case.

20 Therefore, because Spencer has not suffered severe and extreme emotional
21 distress as a matter of law, summary judgment in Ms. Klementi's favor on the Sixth
22 Claim for Relief for infliction of emotional distress is appropriate.

23 III.

24 CONCLUSION

25 Based on the foregoing, Ms. Klementi respectfully requests this Court grant
26 summary judgment in her favor and against Spencer on each claim contained in
27 Spencer's Second Amended Counterclaim and Third-Party Complaint.
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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 April, 2018.

GLOGOVAC & PINTAR

By: 
MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorney for Third-party Defendant,
MS. KLEMENTI KLEMENTI

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:

THIRD-PARTY DEFENDANT ELFRIDE KLEMENTI'S MOTION FOR SUMMARY JUDGMENT AND JOINDER IN HELMUT KLEMENTI'S MOTION FOR SUMMARY JUDGMENT

On the party(s) set forth below by:

— 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:


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Dated this 24th day of April, 2018.



Jennifer Heston

INDEX OF EXHIBITS

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6.	Spencer's Medical Records – KINION 138-140, 151-156	9

1 CASE NO.: 14-CV-0260

2 DEPT. NO.: I

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DOBBIE R. WILLIAMS
CLERK

BY *[Signature]* 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 JEFFREY D. SPENCER,

14 Counterclaimant,

15 vs.

16
17 HELMUT KLEMENTI, an individual,
18 EGON KLEMENTI, an individual,
19 ELFRIDE KLEMENTI, an individual,
20 MARY ELLEN KINION, an individual,
21 ROWENA SHAW, an individual, PETER
SHAW, an individual, and DOES 1-5,

Counterdefendants & Third Party
Defendants.

**THIRD-PARTY DEFENDANT KINION'S
MOTION FOR SUMMARY JUDGMENT
AND JOINDER IN HELMUT KLEMENTI'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 Third-party Claimaint, Jeffrey Spencer ("Spencer").
25 In addition, Kinion joins and incorporates into this pleading all of the arguments set
26
27
28

1 forth in Counterdefendant Helmut Klementi's Motion for Summary Judgment filed on
2 April 11, 2018.¹

3 This motion is based upon the memorandum of points and authorities submitted
4 herewith, and upon all other papers, pleadings and documents on file herein.

5 I.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **A. Case Summary.**

8 This is an action stemming from disputes between neighbors that live in the
9 Kingsbury Grade General Improvement District ("KGID") on the south shore of Lake
10 Tahoe. The dispute escalated to the point that in 2013, Spencer was criminally
11 prosecuted for assault on an elderly neighbor, Helmut Klementi. Following trial in the
12 criminal action, Helmut Klementi filed a civil action against Spencer seeking recovery
13 for personal injuries arising from the assault. In response, Spencer asserted a
14 counterclaim against Mr. Klementi as well as third-party claims against Mr. Klementi's
15 brother and sister-in-law, Egon and Elfie Klementi, and Kinion.²

16 Kinion was previously granted summary judgment on Spencer's claims against
17 her for malicious prosecution. By way of this motion, Kinion now seeks summary
18 judgment as to Spencer's remaining third-party claims against her, i.e. defamation,
19 civil conspiracy (defamation), civil conspiracy (malicious prosecution), punitive
20 damages, and infliction of emotional distress.

21 **B. Background.**

22 Kinion is a seventy year-old (70) retired nurse. She has lived in the KGID
23 neighborhood for approximately twenty-seven (29) years. Jeff Spencer is fifty-four (54)
24 years old. Spencer and his wife, Marilyn, live around the corner from Kinion. Spencer
25 is employed during the winter months as a snowplow operator for a company that
26 contracts to provide snow plowing services for KGID.

27
28 ¹ Kinion previously filed a Joinder to third-party defendants, Peter and Rowena Shaw's Motion for
Summary Judgment dated February 23, 2018.

1 In the summer of 2012, a dispute between various neighbors and Spencer
2 developed. In that year, the Spencers unilaterally decided to build a six (6) foot tall
3 fence around their property. The height of that fence was out-of-compliance with
4 standards developed by Douglas County. As a result, the Spencers were ultimately
5 required to take the fence down.

6 In retaliation, later that year, as snow began to fall in the area and the
7 snowplows were clearing the streets, excessively high berms of snow and ice would
8 appear in front of driveways belonging to the neighbors who objected to the Spencers'
9 fence. On December 12, 2012, Kinion went outside and discovered that an
10 excessively high berm of snow and ice was blocking her driveway, but that all other
11 driveways on her street were clear. Exhibit 1, Deposition of Mary Ellen Kinion dated
12 April 7, 2016, pp. 47-49. In response, Kinion called KGID. Id. Soon thereafter, workers
13 from KGID appeared and cleared the snow berm from her driveway entrance.

14 A short time later, Marilyn Spencer stopped her car in the road in front of
15 Kinion's house, called someone with her phone, and drove away. Fifteen (15) minutes
16 later, another snowplow which Kinion thinks was driven by Spencer, put the berm of
17 snow back in front of Kinion's driveway. Exhibit 1, p. 50:11-25.

18 As the snowplow was driving away, Kinion went outside to try to identify the
19 driver. At that time, she saw the snowplow proceed toward Egon Klementi's house. At
20 that time, Egon Klementi was standing in his driveway shoveling snow. Kinion
21 observed the snowplow approach Mr. Klementi's residence, increased its speed and
22 capture "old" snow from the side of the road, and then propel the "old" snow along with
23 other road debris onto Mr. Klementi. Having witnessed this event, Kinion immediately
24 called and checked on Mr. Klementi who advised her that he was going to call 911 and
25 report the incident. Kinion later called 911 herself to advise them that she was a
26 witness. Exhibit 1, p. 77:24 – p. 80:12.

27
28 ² Egon Klementi has since passed away. See Suggestion of Death filed November 16, 2017.

1 Several days later, on December 18, 2012, Kinion attended a KGID meeting. At
2 that meeting, Kinion advised the KGID members of what she had witnessed days
3 earlier regarding the snowplow spraying snow over Egon Klementi. In addition, she
4 and other neighbors complained about the excessively high berms left by Spencer in
5 their driveways. Exhibit 1, p. 89:10 – 92:18. KGID representatives informed the
6 neighbors to photograph the berms.

7 Later that same evening, Helmut Klementi went into the street to take pictures
8 of the snow berm piled up in front of his brother's property. While doing so, Helmut
9 Klementi was assaulted by Spencer. Video evidence confirms that when he was
10 assaulted by Spencer, Helmut's back was to the Spencers' property and he was facing
11 his brother's residence taking pictures.

12 Following the assault, the Douglas County Sheriff's Office was called out and
13 Deputy McKone arrived on the scene. See, Douglas County Sheriff Deputy Report,
14 attached as Exhibit 2. Deputy McKone called for medical assistance from the local
15 paramedics who attended to Helmut Klementi. Meanwhile, Deputy McKone with the
16 assistance of Deputy Almeida undertook a criminal investigation. As part of their
17 investigation, the DCSO deputies spoke with Helmut Klementi, his brother Egon,
18 Egon's wife Elfie, and neighbor, Janet Wells. Deputy McKone also interviewed
19 Spencer and his wife.

20 According to the Sheriff's Report, Spencer informed Deputy McKone that he
21 attacked Helmut because he believed Helmut was breaking into his truck. Also
22 claiming to believe Helmut was a teenager in a hoodie, Spencer admitted to Deputy
23 McKone that he grabbed Helmut and threw him to the ground. Deputy McKone did not
24 find Spencer's account to be credible. In particular, Deputy McKone did not believe
25 that Spencer could mistake his 82-year-old elderly neighbor for a teenager and he
26 found other inconsistencies with Spencer's account as well. As a result, Deputy
27 McKone arrested Spencer for battery and abuse of an elder. See, Exhibit 2.

28

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 and a letter to
5 the district attorney was provided. Kinion was later subpoenaed to testify at Spencer's
6 trial and gave testimony in response to questions posed to her at trial. Exhibit 1, p.
7 141:15-18. Spencer was eventually acquitted of the criminal charges.

8 Following his acquittal, Spencer asserted third-party claims against Kinion for
9 defamation, malicious prosecution, civil conspiracy, punitive damages and emotional
10 distress. In Spencer's Second Amended Counterclaim & Third-Party Complaint,
11 Spencer has made the following factual allegations against Kinion:

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

14 ...

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

19 19. On or about December 12, 2012, Deputy Sanchez of the Douglas
20 County Sheriff's Department responded and spoke with EGON KLEMENTI and
21 MARY ELLEN KINION regarding their allegations against JEFFREY
SPENCER. Deputy Sanchez determined that no crime had been committed.

22 20. On or about December 12, 2012, MARY ELLEN KINION call KGID and
23 stated that she witnessed JEFFREY SPENCER intentionally use his snow plow
24 to strike EGON KLEMENTI with snow, ice and debris from the snow plow,
causing EGON KLEMENTI to suffer injuries.

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

....

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

...

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

....

46. On or about January 17, 2013, JEFFREY SPENCER presented himself to the Douglas County Sheriff's Department for re-arrest on felony charges from the December 18, 2012 incident based upon representations made by HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE KLEMENTI, MARY ELLEN KINION and others at their direction and/or instigation. He was released that same day.

47. In or about early 2013, MARY ELLEN KINION wrote an unsolicited letter to the Douglas County District Attorney which included an accusation that JEFFREY SPENCER had threatened to punch EGON KLEMENTI in the face on May 27, 2012, even though she was not claiming to be a witness to the alleged assault and even though EGON KLEMENTI himself had not reported any such alleged assault.

...

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

...

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

...

57. In or about April 2013, MARY ELLEN KINION, who was not a party to the restraining order proceeding initiated by HELMUT KLEMENTI, EGON KLEMENTI and ELFRIDE KLEMENTI, wrote an ex-parte letter to the Justice of

1 the Peace hearing that matter trying to get more restrictive restraining orders
2 against JEFFREY SPENCER.

3 ...

4 59. HELMUT KLEMENTI, EGON KLEMENTI, ELFRIDE KLEMENTI, MARY
5 ELLEN KINION and ROWENA SHAW each testified at JEFFREY SPENCER's
trial against JEFFREY SPENCER.

6 Spencer's Second Amended Counterclaim & Third-Party Complaint dated August 10,
7 2016, attached hereto as Exhibit 3.

8 As will be demonstrated below, even assuming that the factual allegations
9 contained in Spencer's third-party claim are true, as a matter of law, Spencer cannot
10 prevail on any of those claims. As to Spencer's claim for defamation against Kinion, all
11 of the allegedly actionable statements made by Kinion are alleged to have been made
12 to KGID, the Douglas County Sheriff's Department, the Douglas County District
13 Attorney's office, the Douglas County Planning Commission, and/or to the South Lake
14 Tahoe Justice of the Peace. In other words, each of the alleged statements were
15 made during either a judicial and/or quasi-judicial proceeding. Thus, even if the
16 statements were not true – they are – the statements are absolutely privileged and/or
17 immune from liability under NRS 41.650.

18 As to Spencer's claim for civil conspiracy against Kinion, the claim cannot stand
19 because Spencer cannot provide proof of the underlying torts, i.e. defamation or
20 malicious prosecution. The claim against Kinion for malicious prosecution has already
21 been dismissed and, as shown above, all of the alleged defamatory statements that
22 were allegedly made by Kinion are privileged.

23 As to the claim for intentional infliction of emotional distress against Kinion,
24 Kinion's cooperation with the police investigation and/or her testimony in judicial
25 proceedings against Spencer is simply "not extreme and outrageous conduct" as a
26 matter of law. Spencer has presented no law to support his claim that shows that
27 Kinion's conduct was extreme or outrageous in this case. Moreover, Spencer has
28 failed to produce any evidence that he experienced a *physical manifestation of the*

1 *severe emotional distress* that is necessary to support his claim for intentional infliction
2 of emotional distress.

3 Finally, of course, "punitive damages" is not a stand-alone claim. More
4 importantly, Spencer has produced no evidence – let alone, clear and convincing
5 evidence, that Kinion's testimony against him is conduct that warrants an award of
6 punitive damages. Therefore, summary judgment is also appropriate on this claim.

7 **C. Statement of Relevant Facts**

8 1. Spencer is employed seasonally as a snowplow operator for a company
9 contracted with KGID. Spencer's Answer and Counterclaims, attached hereto as
10 Exhibit 4, ¶ 8.

11 2. Spencer resides in a neighborhood with Helmut Klementi, Egon Klementi
12 and Kinion on the south end of Lake Tahoe. Deposition Transcript of Mary Kinion
13 attached as Exhibit 1, at pp.12:17 – 15:10.

14 3. Spencer and his wife were involved in disputes or issues with neighbors
15 since at least the summer of 2012. Exhibit 1, at pp. 34:4 – 39:12; pp.67:5 – 74:3.

16 4. On December 12, 2012 Spencer caused snow and debris to spray over
17 Egon Klementi. In response, Egon Klementi and Kinion called 911 to report the
18 incident. A brief investigation into the matter was conducted by the Douglas County
19 Sheriff's Office, however, Kinion did not file any report or make any written statement.
20 Exhibit 1, at 77:24 – 85:24.

21 5. On December 18, 2012, Kinion attended a neighborhood KGID meeting
22 wherein she informed KGID of the events that took place several days earlier
23 regarding the snowplow incident and Egon Klementi. Exhibit 1, at 89:22 – 92:18.

24 6. Later that evening, Spencer assaulted Helmut Klementi in the street
25 while Helmut Klementi was been taking pictures of the snow berm in front of his
26 brother's house. Exhibit 2, Douglas County Sheriff's Report dated December 18, 2012.

27 7. The Douglas County Sheriff's Office responded to the scene and
28 conducted an investigation of the incident. As part of that investigation, Deputy

1 McKone interviewed Helmut Klementi, Egon Klementi, Elfie Klementi, Janet Wells,
2 Spencer and Marilyn Spencer. From that investigation, Deputy McKone states that
3 Spencer's version of the incident was not credible and, in his opinion, Spencer "was
4 upset with the Klementis, saw Helmut taking photographs of the snowburm [sic] and
5 used the excuse of someone breaking into his truck to confront and commit a battery
6 on Helmut Klementi." Deputy McKone forwarded his investigation report to the District
7 Attorney's Office for a decision regarding prosecution. Deposition Transcript of Deputy
8 Jesse McKone, attached as Exhibit 5, pp. 36:11 – 37:16.

9 8. Ms. Kinion had no involvement in Deputy McKone's decision to arrest
10 Spencer on December 18, 2012. Deputy McKone confirmed that he never spoke with
11 Kinion and never obtained a written statement from Kinion prior to arresting Spencer.
12 Exhibit 5, at p. 37:9-16.

13 9. Ms. Kinion was not involved in the criminal prosecution against Spencer
14 until the Deputy District Attorney contacted her and requested that Kinion provide any
15 information that she may have regarding the incident and events relevant to the
16 neighborhood. Exhibit 1, at pp. 147:9 – 148:15.

17 10. As part of Spencer's trial, Kinion received a subpoena and was required
18 to provide testimony in response to the questions posed to her. Exhibit 1, at p. 141:13-
19 23.

20 II

21 STANDARD OF REVIEW

22 Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil
23 Procedure when the pleadings, depositions, answers to interrogatories, admissions,
24 and affidavits, if any, that are properly before the court demonstrate that no genuine
25 issue of material fact exists, and the moving party is entitled to judgment as a matter of
26 law. NRCP 56; *Wood v. Safeway, Inc.*, 121 Nev. 724, 731 P.3d 1026, 1031 (2005). *Id.*
27 A factual dispute is genuine when the evidence is such that a rational trier of fact could
28 return a verdict for the nonmoving party. *Id.* The substantive law controls which factual

1 disputes are material and will preclude summary judgment; other factual disputes are
2 irrelevant. *Id.* at 731.

3 Although the pleadings and proof must be construed in a light most favorable to
4 the nonmoving party, that party bears the burden to do more than simply show that
5 there is some metaphysical doubt as to the operative facts in order to avoid summary
6 judgment. *Id.* at 732. The nonmoving party is not entitled to build a case on the
7 gossamer threads of whimsy, speculation and conjecture. *Id.*

8 The manner in which each party satisfies its burden of production “depends on
9 which party will bear the burden of persuasions on the challenged claim at trial.” *Cuzze*
10 *v. Univ. & Cmty. Coll. Sys. Of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007).
11 If the nonmoving party will bear the burden of persuasion at trial, the moving party
12 “may satisfy the burden of productions by either (1) submitting evidence that negates
13 an essential element of the nonmoving party’s claim, or (2) ‘pointing out...that there is
14 an absence of evident to support the nonmoving party’s case.” *Francis v. Wynn Las*
15 *Vegas, LLC*, 127 Nev. Adv. Op. 60, 262, P.3d 705, 714 (2011) (internal citations
16 omitted). In this case, because Spencer bears the burden of persuasion at trial Kinion
17 may satisfy her burden of production by submitting evidence that negates essential
18 elements of Spencer’s claims and by pointing out that there is an absence of evidence
19 to support Spencer’s case.

20 To withstand summary judgment, Spencer, as the non-moving party, cannot
21 rely solely on the general allegations and conclusions set forth in the pleadings, but
22 must instead present specific facts demonstrating the existence of a genuine factual
23 issue supporting its claims. *Ransdell v. Clark County*, 124 Nev. 847, 860, 192 P.3d
24 756, 765 (2009). Again, the substantive law controls what factual disputes are material
25 to Spencer’s claims – other factual disputes are simply irrelevant.

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1 III.

2 LEGAL ANALYSIS

3 A. Defamation

4 Summary judgment on Kinion's affirmative defenses in response to Spencer's
5 claims for defamation is appropriate because Kinion's statements are privileged as a
6 matter of law. Liability for defamation may only arise if the plaintiff proves the following:
7 "(a) a false and defamatory statement concerning another; (b) an unprivileged
8 publication to a third party; (c) fault amounting at least to negligence on the part of the
9 publisher; and (d) either actionability of the statement irrespective of special harm, or
10 the existence of special harm caused by the publication." *Lubin v. Kunin*, 117 Nev.
11 107, 111, 17 P.3d 422, 425 (2001).

12 Whether a statement is defamatory is generally a question of law, unless it is
13 subject to two different interpretations. *Id.*; *K-Mart Corp. v. Washington*, 109 Nev.
14 1180, 1191, 866 P.2d 274, 281 (1993) ("Whether or not a statement is capable of
15 defamatory construction is a question of law for the court."). A court reviewing an
16 allegedly defamatory statement reviews "the words in their entirety and in context in
17 order to determine whether they are susceptible of defamatory meaning." *Lubin*, 117
18 Nev. At 111, 17 P.3d at 426.

19 In this case, Spencer alleges Kinion is liable for defamation because of
20 statements she made to the Douglas County Sheriff Department, the Douglas County
21 District Attorney, KGID, the Douglas County Planning Commission and/or the South
22 Lake Tahoe Justice of the Peace. Notwithstanding, even if this Court found the
23 alleged statement to not be true (they are), Kinion is protected by either a qualified
24 privilege or absolute privilege because each statement was made in the context of
25 reporting a crime or was made in a quasi-judicial or judicial proceeding.

26 Both the qualified privilege and the absolute privilege are defenses to Spencer's
27 defamation claim and Kinion has asserted these privileges in her affirmative defenses
28

1 to Spencer's Second Amended Counterclaim and Third-Party Complaint. See, *Lubin v.*
2 *Kunin*, 117 Nev. At 114, 17 P.3d at 427.

3 1. **Kinion's statements to Douglas County Sheriff's Deputies are**
4 **protected by qualified privilege.**

5 The Nevada Supreme Court has held that, where a person makes
6 communications to police before initiation of criminal proceedings, that person enjoys
7 a qualified privilege if the statement are made in good faith. In *Pope v. Motel 6*, 121
8 Nev. 307, 114 P.3d 277 (2005), the court clarified its holding in *K-Mart Corp v.*
9 *Washington*, by finding that a qualified privilege satisfied the balance between
10 safeguarding reputations and encouraging full disclosure by citizens "in order to
11 discharge public duties and protect individual rights." *Id.* at 316-317. This privilege
12 exists so that citizens, like Kinion, can report what they perceive in good faith as th
13 commission of a crime and not be subject to "frivolous lawsuits." *Id.* at 317.

14 Importantly, the *Pope* court held that after an individual has reported a crime, a
15 plaintiff must prove, by a preponderance of the evidence, "that the defendant abused
16 the privilege by publishing the defamatory communication [to law enforcement] with
17 actual malice." *Id.* "Actual malice is a stringent standard that is proven by
18 demonstrating that a statement is published with knowledge that it was false or with
19 reckless disregard for its veracity." *Id.* citing *Pegasus v. Reno Newspapers, Inc.*, 118
20 Nev. 706, 722, 57 P.3d 92, 92 (2002).

21 In *Pope*, the manager for Motel 6 believed that a former employee and her
22 husband were stealing from the motel and were responsible for "problems" on the
23 premises. The manager reported this fact to local law enforcement. The trial court
24 granted summary judgment in Motel 6's favor because the former employee could not
25 demonstrate that the manager's statements to the police were made with knowledge
26 that they were false. Upholding the trial court's decision on appeal, the Nevada
27 Supreme Court held:
28

1 Suspicions of criminal wrongdoing are commonly expressed to
2 police, and often the suspicion is misplaced. Without more, the mere
3 fact that an individual informs police of possible criminal wrongdoing
4 does not establish malice. To overcome the qualified privilege, Juanita
was required to establish the Inman acted with reckless disregard for
veracity or with knowledge of falsity. She failed to do so.

5 As a qualified privilege applies to Inman's statements to the police
6 and Juanita failed to advance any evidence of malice, we conclude that
7 the district court properly granted summary judgment to Motel 6 on this
issue.

8 *Pope*, 121 Nev. At 318, 114 P.3d at 284

9 Similarly, in *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657 P.2d
10 101 (1983), the Nevada Supreme Court explained that a qualified or conditional
11 privilege exists where the allegedly defamatory statement is made in good faith "on
12 any subject matter in which the person communicating has an interest, or in reference
13 to which he has a right or a duty, if it is made to a person with a corresponding interest
14 or duty." Whether a statement is conditionally privileged is a question of law for this
15 Court. *Id.* The burden then shifts to the plaintiff to provide that the defendant abused
16 the privilege by making the defamatory statement with malice in fact. *Id.*, This issue
17 does not even to the jury unless there is sufficient evidence for the jury to reasonably
18 infer that the defendant made the statement with actual malice. *Id.*, In fact, the court in
19 *Circus Circus Hotels Inc.* reversed the trial court for allowing the jury to decide the
20 initial question of whether an employer's statements were protected by qualified
21 privilege. *Id.* Both *Pope* and *Circus Circus Hotels, Inc.* are controlling in this case.

22
23 **2. Kinion's statement at Spencer's criminal proceedings are**
24 **protected by an absolute privilege as a matter of law.**

25 Spencer asserts that statements Kinion made at his criminal trial are
26 defamatory statements for which Kinion is liable. However, Nevada recognizes and
27 follows the "long-standing common law rule that communications uttered or published
28 in the course of judicial proceedings are absolutely privileged." *Circus Circus Hotels,*
Inc., 99 Nev. At 60-61, 657 P.2d at 104; *Nickovich v. Mollart*, 51 Nev. 306, 274 P. 809,

1 810 (1929) (a witness who testifies in the course of judicial proceedings is not liable for
2 the answers he makes to questions posed by the court or counsel and all his answers
3 are privileged).

4 The absolute privilege also applies to "quasi-judicial proceedings before
5 executive officers, boards, and commissions..." *Id.* The absolute privilege precludes
6 liability as a matter of law even where the defamatory statements are "published with
7 knowledge of their falsity and personal ill will toward the plaintiff." *Id.* The policy behind
8 this privilege is that, "in certain situations, the public interest in having people speak
9 freely outweighs the risk that individuals will occasionally abuse the privilege" by
10 making defamatory statements. *Id.*; *Knox v. Dick*, 99 Nev. 514, 518, 665 P.2d 267, 270
11 (1983) (holding that the absolute privilege is applicable to quasi-judicial proceedings
12 so "the right of individuals to express their views freely upon the subject under
13 consideration is protected.").

14 The scope of the absolute privilege in Nevada is "quite broad." *Fink v. Oshins*,
15 118 Nev. 428, 433, 49 P.3d 640, 644 (2002). The defamatory communication "need
16 not be strictly relevant to any issue involved" in the judicial or quasi-judicial
17 proceeding; rather, it needs only to be "in some way pertinent to the subject of
18 controversy." *Id.* citing *Circus Circus Hotels, Inc.*, 99 Nev. At 61, 657 P.2d at 104
19 (defamatory material need only have "some relation" to the proceeding and as long as
20 it has "some bearing" on the subject matter, it is absolutely privileged). The privilege
21 applies even where actual judicial proceedings have not yet been initiated, so long as
22 the statement is made "in contemplation of the initiation of the proceeding." *Id.* (internal
23 quotations omitted) citing *Club Valencia Homeowners v. Valencia Assoc.*, 713 P.2d
24 1024, 10276 (Colo.Ct.App.1985) ("No strained or close construction will be indulged to
25 exempt a case from the protection of privilege") and *Chard v. Galton*, 277 Or. 109, 559
26 P.2d 1280, 1282 (1977) (noting that the absolute privilege should apply liberally).

27 The issues of absolute privilege and relevance are questions of law for this
28 Court to decide. *Circus Circus Hotels, Inc.*, 99 Nev. At 62, 657 P.2d at 105. In *Circus*

1 *Circus Hotels, Inc.*, the court concluded that a letter written by plaintiff's former
2 employer, Circus Circus, presented in the context of an administrative proceeding was
3 protected by the absolute privilege and should not have been presented to the jury at
4 plaintiff's trial against Circus Circus for defamation. Because the letter from Circus
5 Circus was related to the unemployment security division's decision on whether to
6 grant plaintiff unemployment benefits, it was privileged. The court also held the trial
7 court erred by allowing the jury to decide whether the letter's content was relevant to
8 fall under the absolute privilege. *Id.* at 62.

9 Similarly, in *Knox*, the court disagreed with the plaintiff that the quasi-judicial
10 privilege did not extend to the Clark County Personnel Grievance Board. 99 Nev. At
11 518, 665 P.2d at 270. Rather, the court found that the quasi-judicial privilege applied
12 because the board conducted its meetings in a quasi-judicial manner pursuant to the
13 guidelines set forth in the Clark County Code that permitted the taking of evidence and
14 examination of witnesses. *Id.*

15 Here, there is simply no question that any statement Kinion made during
16 Spencer's criminal proceedings are protected by absolute privilege for which liability
17 cannot attach. Even if the statements made by Kinion were false or malicious (which,
18 they are not), Kinion cannot be liable for defamation as a matter of law. *Nickovich*, 51
19 Nev. At 306, 274 P. at 810.

20 Further, Kinion's statements to the KGID and/or Douglas County Planning
21 Commission are also protected since these are both quasi-judicial agencies.

22 **C. Civil Conspiracy**

23 Summary judgment is appropriate on Spencer's claims for civil conspiracy in
24 Kinion's favor, because torts underlying the civil conspiracy claims, i.e. defamation
25 and/or malicious prosecution, fail as a matter of law and Spencer cannot demonstrate
26 any unlawful agreement between the parties.
27
28

1 Spencer's Third and Fourth Claims for Relief assert civil conspiracy for
2 defamation and malicious prosecution. An actionable claim for civil conspiracy
3 "consists of a combination of two or more person who, by some concerted action,
4 intend to accomplish an unlawful objective for the purpose of harming another, and
5 damage results from the act or acts. *Consol. Generator-Nevada, Inc. v. Cummins*
6 *Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (finding summary
7 judgment was appropriate on civil conspiracy claim where there was no evidence
8 defendants agreed and intended to harm plaintiff); *Sharda . Sunrise Hosp. & med. Ctr.,*
9 *LLC*, 2017 WL 2870086, at *10 (D. Nev. July 3, 2017) (plaintiff's claim for civil
10 conspiracy failed where he did not plead plausible underlying agreement).

11 It is crucial that, in order to prevail on a claim for civil conspiracy, a plaintiff must
12 show the commission of the underlying tort and an agreement between defendants to
13 commit that tort. *Jordan v. Dept. of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75 110
14 P.3d 30, 51 (2005),³ (the underlying tort is a "necessary predicate" to a cause of action
15 for conspiracy); *Sharda*, 2017 WL 2870086 at *10 (same).

16 As shown above, the underlying claim for defamation fails as a matter of law
17 and the claim for malicious prosecution has been previously dismissed. There are no
18 genuine issues of material fact remaining as to the allegations of defamation and
19 malicious prosecution against Kinion – she is immune from liability under the doctrines
20 of qualified and absolute immunity. Because Spencer's claims for defamation and
21 malicious prosecution fail as a matter of law, his claims for civil conspiracy likewise fail
22 because he is unable to prove the commission of the underlying tort.

23 Moreover, Spencer simply cannot meet the elements for a claim of civil
24 conspiracy. There are no facts demonstrating the existence of an agreement between
25 Kinion and any of the other third-party defendants in this case to accomplish an
26 unlawful objective, such as to maliciously prosecute or defame Spencer. That would
27 require Kinion to concoct a scheme to get Spencer arrested and then work with the
28

1 other defendants to present false testimony against him. Such a proposition is
2 completely absurd. In the absence of admissible and authenticated evidence
3 establishing a genuine issue of material fact, Spencer's claims for civil conspiracy fail
4 as a matter of law and summary judgment is appropriate.

5 **D. Punitive Damages**

6 Summary judgment is warranted on Spencer's claim for punitive damages
7 because this claim is not a stand-alone claim and, more importantly, there is no
8 evidence that Kinion acted with malice, oppression or fraud.

9 Spencer asserts a claim for punitive damages as his Fifth Claim for Relief.
10 However, it is well-established that punitive damages is not a stand-alone claim;
11 rather, it is a prayer for relief tied to a specific cause of action. *Clark v. Lubritz*, 113
12 Nev. 1089, 1096, 944 P.2d 861, 865 (1997) (holding that Nevada's statute on punitive
13 damages is a verbatim copy of the California statute); *McLaughlin v. Nat'l Union Fire*
14 *Ins. Co.*, 29 Cal. Rptr. 2d 559, 578 (1994) (there is no separate cause of action for
15 punitive damages and plaintiffs must still prove the underlying tortious act). Flatly put,
16 Spencer cannot assert a separate cause of action for punitive damages and the Fifth
17 Claim for Relief can be dismissed on this basis alone.

18 Nonetheless, summary judgment is appropriate on the merits of Spencer's
19 request for punitive damages in this case because there is absolutely no evidence that
20 Kinion acted with malice, oppression, or fraud. Before even submitting the issue of
21 punitive damages to a jury, the district court should conduct a threshold inquiry of
22 whether the alleged misconduct is properly subject to this form of civil punishment.
23 *Evans v. Dean Witter Reynolds, Inc.*, 106 Nev. 598, 612, 5 P.3d 1043, 1052 (2000);
24 see also *Countrywide Home Loans, Inc., v. Thitchener*, 124 Nev. 725, 740, 192 P.3d
25 946, 953 (2008). "[T]he district court has discretion to determine whether the party's
26 conduct merits punitive damages as a matter of law." *Winchell v. Schiff*, 124 Nev. 938,
27 948, 193 P.3d 946, 952 (2008). Punitive damages are not a compensatory measure of

28 ³ Abrogated on other grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2208)

1 recovery; rather, they are intended to punish and deter a defendant's culpable
2 conduct. *Bongiovi v. Sullivan*, 122 Nev. 556, 580, 138 P.3d 433, 450 (2006).

3 Punitive damages are governed by statute and may only be awarded when the
4 plaintiff proves by clear and convincing evidence that the "defendant has been guilty of
5 oppression, fraud, or malice, express or implied..." NRS 42.005(1). "Oppression"
6 means "despicable conduct that subjects a person to cruel and unjust hardship with
7 conscious disregard of the rights of the person." NRS 42.001(4). "Fraud" means "an
8 intentional misrepresentation, deception or concealment of a material fact known to the
9 person with the intent to deprive another person of his rights of property or to
10 otherwise injure another person." NRS 42.001(2).⁴ "Malice, express or implied" means
11 "conduct which is intended to injure a person or despicable conduct which is engaged
12 in with conscious disregard of the rights or safety of others." NRS 42.001(3).

13 The statutory of definitions of "oppression" and "malice, express or implied"
14 include the term "conscious disregard," which means "knowledge of the probable
15 harmful consequences of a wrongful act and a willful and deliberate failure to act to
16 avoid those consequences." NRS 42.001(1). In accordance with that statutory
17 language, conscious disregard "denotes conduct that, at a minimum, must exceed
18 mere recklessness or gross negligence." *Countrywide Home Loans*, 124 Nev. At 743,
19 192 P.3d at 255.

20 Clear and convincing evidence is evidence that is "so strong and cogent as to
21 satisfy the mind and conscience of a common man, and so to convince him that he
22 would venture to act upon that conviction in matters of the highest concern and
23 importance to his own interest." *In re Discipline of Drakulich*, 111 Nev. 1556, 1566,
24 908 P.2d 709, 715 (1995).

25 In this case, Spencer cannot come forward with any evidence – let alone clear
26 and convincing evidence – that Kinion's conduct was "despicable conduct" that was

27
28 ⁴ Spencer's claim for punitive damages does not include a claim for fraud and, even if it did, he did not satisfy the
NRCF 9(g) heightened standard for pleading a fraud claim. Therefore, this motion does not address fraud.

1 intended to injure Spencer or made in conscious disregard for his safety. As stated,
2 the existence of a good faith belief negates the presence of malice. *Lester*, 112 Nev.
3 At 1430, 929 P.2d at 913 (good faith belief that a crime had been committed); *Boren*,
4 2010 WL 493447 at *6 (the existence of a probable cause negates malice); *Pope*, 121
5 Nev. At 318, 114 P.3d at 284 (no malice where reporting party believed crime had
6 been committed). Subjecting Kinion to punitive damages for her good faith belief that
7 she was fulfilling her civic duty smacks of injustice. Such an award in this case would
8 establish unwanted precedent and deter citizens and victims from coming forward and
9 reporting crimes out of fear that they will later be subject to liability and obscene
10 damage amounts for contacting local law enforcement and participating in the judicial
11 process. This result is clearly not the type of conduct that a punitive damage award is
12 meant to deter.

13 Because there is no evidence that Kinion's conduct is the type where an award
14 of punitive damages is appropriate and because this Court can make this
15 determination as a matter of law, summary judgment should be granted in Kinion's
16 favor on Spencer's Fifth Claim for Punitive Damages.

17 **E. Intentional Infliction of Emotional Distress**

18 Summary judgment is appropriate on Spencer's claim for intentional infliction of
19 emotional distress because there is no evidence Kinion acted intentionally or with a
20 reckless disregard of causing emotional distress and Spencer's reported symptoms do
21 not satisfy the requirement of "physical manifestations" of emotional distress.

22 **1. Kinion's conduct is not extreme and outrageous and the**
23 **record is devoid of evidence that Kinion acted intentionally or**
24 **with a reckless disregard of causing Spencer severe**
emotional distress.

25 Spencer's Sixth Claim for Relief asserts that Kinion acted intentionally or with
26 reckless disregard for the likelihood of causing emotional distress when she testified at
27 Spencer's criminal proceedings regarding the same. However, there is absolutely no
28

1 evidence that Kinion acted intentionally or that her actions constitute reckless
2 disregard in this case.

3 In a claim for intentional infliction of emotional distress, a plaintiff must prove the
4 following: "(1) extreme and outrageous conduct with either the intention of, or reckless
5 disregard for, causing emotional distress, (2) the plaintiff's having suffered severe or
6 extreme emotional distress, and (3) actual or proximate causation." *Barmettler v. Reno*
7 *Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998) (concluding summary
8 judgment was proper where plaintiff failed to establish either the first or second
9 elements of this claim) citing *Star v. Rabello*, 97 Nev. 124, 125, 625 P.2d 90, 91-92
10 (1981) (citation omitted).

11 A prima facie claim of intentional infliction of emotional distress requires a
12 plaintiff to prove that the defendant's conduct was "extreme and outrageous." *Maduike*
13 *v. Agency Rent-A-Car*, 114 Nev. 1, 4, 953 P.2d 24, 26 (1998). Extreme and
14 outrageous conduct "is that which is outside all possible bounds of decency and is
15 regarded as utterly intolerable in a civilized community." *Id.*, citing California Book of
16 Approved Jury Instruction 12.74 (internal citations omitted). In *Maduike*, the Nevada
17 Supreme Court upheld the trial court's decision that the first element of the tort was not
18 met when a car rental agency's employees were rude and refused to provide a family
19 with a new rental car after the brakes on the car they rented failed and caused a
20 collision. *Id.* at 4-5. The court agreed with the rental agency's argument that its
21 employee's conduct was, at most, unkind or inconsiderate behavior but it did not rise
22 to the level of being "atrocious, intolerable, or outside all possible bounds of decency."
23 *Id.*, at 5; and see, *Barmettler*, 114 Nev. At 443, 956 P.2ds at 1384 (no extreme and
24 outrageous conduct where employer violated its own policy to keep confidential the
25 fact that employee entered substance abuse rehabilitation); *Chowdhry v. NLVH, Inc.*,
26 109 Nev. 478, 483, 851 P.2d 459, 462 (1993) (accusations by hospital that surgeon
27 abandoned patient were insufficient to constitute extreme and outrageous behavior);
28 compare, *Olivero v. Lowe*, 116 Nev. 395, 400, 995 P.2d 1023, 1026 (2000) (conduct

1 was extreme and outrageous where construction laborer was physical attacked by
2 homeowner and threatened with handgun).

3 Testifying before a judge in Spencer's criminal trial is not extreme and
4 outrageous conduct. Subjecting a person to damages when they exercise their civil
5 obligation to report a crime and testify in judicial proceedings is simply against public
6 policy and would set dangerous precedent. Victims and witnesses report crimes and
7 testify multiple times a day and this conduct is simply not "extreme and outrageous" as
8 a matter of law. See, e.g., Churchill v. Barach, 863 F. Supp. 1266, 1275 (D. Nev.
9 1994) (customer's conduct was not extreme and outrageous as a matter of law when
10 he wrote letter to airline complaining about employee because this type of conduct
11 occurs "thousands of times each day").

12 Moreover, even if Kinion's conduct was extreme and outrageous (which, it is
13 not), Spencer cannot demonstrate that Kinion intended to cause Spender emotional
14 distress or acted with reckless disregard in causing Spencer severe emotional
15 distress. This case is completely distinguishable from cases where the court has
16 found extreme and outrageous conduct. For example, in *Olivero*, the Nevada
17 Supreme Court found that a homeowner who physically attacked and threatened a
18 construction laborer with a handgun and forced him to work at gunpoint was liable for
19 intentional infliction of emotional distress because that conduct was extreme and
20 outrageous. 116 Nev. At 400, 995 P.2d 1026. That is the type of conduct this tort is
21 meant to address. Here, there is simply no evidence in the record supporting
22 Spencer's allegation that Kinion's conduct was extreme and outrageous with the
23 intention or reckless disregard of causing emotional distress. Therefore, Spencer's
24 Sixth Claim for Relief for infliction of emotional distress fails as a matter of law on the
25 first element and summary judgment must be granted in Kinion's favor.

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1 2. Spencer has failed to present proof of severe or extreme
2 emotional distress.

3 In Nevada, when a party claims emotional distress damages that precipitate
4 physical symptoms (as opposed to emotional distress damages secondary to a
5 physical injury), then either a physical impact must have occurred or, in the absence of
6 a physical impact, the plaintiff must prove "serious emotional distress" causing
7 physical injury. *Barmettler*, 114 Nev. At 448, 956 P.2d at 1387.

8 Absent physical impact, "the less extreme the outrage, the more appropriate it
9 is to require evidence of physical injury or illness from the emotional distress."
10 *Chwodhry*, 109 Nev. At 483, 851 P.2d at 462 citing *Nelson v. City of Las Vegas*, 99
11 Nev. 548, 555 665 P.2d 1141, 1145 (1983); and *Churchill*, 863 F. Supp. At 1276
12 (where the outrage is less extreme, evidence of physical injury or illness is required).
13 The stress "must be so severe and of such intensity that no reasonable person could
14 be expected to endure it." *Alam v. Reno Hilton Corp.*, 819 F. Supp. 905, 911 (D. Nev.
15 1993). "Insomnia and general physical or emotional discomfort are insufficient to
16 satisfy the physical impact requirement." *Id.* The physical impact requirement is not
17 met even where a party has "great difficulty in eating, sleeping, and suffers outward
18 manifestations of stress and is generally uncomfortable." *Churchill*, 863 F. Supp. At
19 1276; *Alam*, 819 F. Supp. At 911 feelings of inferiority, headaches irritability and
20 weight loss did not amount to severe emotional distress).

21 At his deposition on March 20, 2017, Spencer testified as follows:

22 Q: I do need to get clarification. In regards to your intentional
23 infliction of emotional distress, and forgive me, I know you probably
24 testified to this at the last deposition, but I don't remember.

25 A: If you don't remember, I'm going to remember?

26 Q: Yeah, I think you should. What physical manifestations or
27 problems or elements do you allege occurred as a result of this lawsuit?

28 A: I don't know the medical terms for it.

1 Q: Okay, and I don't want you to give medical terms. I
2 understand you are not a doctor, but like if you have a stomach ache,
you have a headache, you can put it in layman's terms.

3 A: Yeah. Intestinal problems I guess you could say.

4 Q: Say that again.

5 A: Intestinal problems, stomach problems.

6 Q: It is like your stomach hurting, diarrhea?

7 A: Yeah, both of those.

8 Q: Any other physical ailments?

9 A: Yeah. I don't know what they call it.

10 Q: You can say something as simple as my hand hurts, my
11 arm hurts?

12 A: No, I don't want to say something that I don't know the right
13 thing on.

14 Q: All right. So what other body parts or ailments?

15 A: I have got a heart issue thing. I can't remember what they
16 call that, but I guess they don't call it anything, because they haven't
diagnosed it yet. They don't know what it causing it.

17 Q: Right. And so then what symptoms are you having for this
18 nondiagnosed issue?

19 A: Passing out.

20 Q: The fainting?

21 A: Yeah.

22 Q: But they haven't been able to diagnose –

23 A: No, I wore a heart monitor for the overnight thing. I've
24 done treadmill tests. They can't find it.

25 Q: All right. And the heart issue, when did this heart issue
26 manifest?

27 A: Three years ago, something like that. Whatever I said
before. I don't recall.

1 Q: All right. And your stomach or intestinal issues, when did
2 they commence?

3 A: I don't recall. A couple of years ago.

4 Q: Are you still having intestinal issues?

5 A: Yes.

6 Q: And if I'm not mistaken –

7 A: I did before the last meeting. Remember I was late?

8 Q: I'm sorry, I don't remember. In regards to your stomach
9 issues, I believe, and correct me if I'm wrong, that the last time you saw
10 a doctor in relation to your stomach issues was in July of 2016?

11 Deposition of Jeff Spencer dated March 20, 2017, p. 111:13-113:13, attached
12 hereto as Exhibit 6.

13 In this case, the "emotional distress" suffered by Spencer does not rise to the
14 level of "severe or extreme emotional distress" that is required to recover damages for
15 this tort. Spencer has never produced any medical records or documentation of severe
16 and extreme emotional distress and the records that have been produced reveal that
17 Spencer's claims for emotional distress fail as a matter of law. Spencer may argue that
18 the opinion of his therapist, Dana Anderson, is sufficient to prove that Spencer has
19 suffered severe and extreme emotional distress because Anderson diagnosed him
20 with "PTSD." However, a careful look at the specific symptoms Spencer experiences
21 demonstrates his symptoms are insufficient to constitute severe and extreme
22 emotional distress: "reliving the trauma," "stomach ache," "nervousness," "bad
23 dreams," "frightening thoughts," "feeling tense," "difficulty sleeping," "lack of
24 concentration," "inability to deal with stressful situations," "negative thoughts,"
25 "depression, anxiety," and loss of having fun. Exhibit 7, letter from Dana Anderson
26 dated May 21, 2017, bates-stamped KINION 350-351. As explained in case law
27 above, these symptoms do not constitute severe and extreme emotional distress.
28 Spencer's complaints of stress, fatigue, and weight loss similarly do not constitute

1 severe and extreme emotional distress. *Churchill*, 863 F. Supp. At 1276; *Alam*, 819 F.
2 supp. At 911.

3 Therefore, because Spencer has not suffered severe and extreme emotional
4 distress as a matter of law, summary judgment in Kinion's favor on the Sixth Claim for
5 Relief for infliction of emotional distress is appropriate.

6 **III.**

7 **CONCLUSION**

8 Based on the foregoing, Kinion respectfully requests this Court grant summary
9 judgment in her favor and against Spencer on each claim against Kinion in Spencer's
10 Second Amended Counterclaim and Third-Party Complaint.

11 **AFFIRMATION**


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

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

15 DATED this 23 day of April, 2018.

16 GLOGOVAC & PINTAR

17
18 By:


MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorney for Third-party Defendant,
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:

COUNTERDEFENDANT MARY ELLEN KINION'S MOTION FOR SUMMARY JUDGMENT AND JOINDER IN HELMUT KLEMENTI'S MOTION FOR SUMMARY JUDGMENT

On the party(s) set forth below by:

_____ 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:

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Jeffrey Spencer***

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Reno, NV 89501
***Attorneys for Counter-Claimant
Jeffrey Spencer***

Dated this 24th day of April, 2018.



Jennifer Heston

INDEX OF EXHIBITS

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CASE NO. 14-CV-0260

Dept. No. II

Douglas County
District Court Clerk

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RODDIE R. WILLIAMS
CLERK

D. GOELZ
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.

RESPONSE TO MOTION
FOR SUMMARY JUDGMENT

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON
KLEMENTI, an individual, ELFRIEDE
KLEMENTI, an individual, MARY ELLEN
KINION, an individual, ROWENA SHAW,
an individual, PETER SHAW, an individual,
& DOES 1-5,

Counterdefendant &
Third Party Defendants.

Counterclaimant JEFFREY SPENCER, by and through his attorneys WILLIAM J. ROUTSIS

II, Esq. and LYNN G. PIERCE, Esq., hereby responds to Third Party Defendants EGON and
ELFRIEDE HELMUT KLEMENTI's Motion for Summary Judgment. This Opposition is made and
based upon and incorporates all of the pleadings and papers on file herein, and upon the Points and
Authorities and Exhibits following hereto, and such other evidence as may be presented at time of
hearing on this matter.

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1 **II. DISPUTED AND UNDISPUTED STATEMENTS OF MATERIAL FACT**

2 There is no statement of undisputed facts in the Motion. The Motion simply provides
3 "Background" which includes some undisputed facts, several disputed facts, and leaves out some very
4 relevant undisputed facts.

5 Mr. SPENCER does not dispute that Ms. KLEMENTI is the widow of EGON KLEMENTI,
6 nor that she lives across the street from Mr. and Mrs. SPENCER. Motion pg 2, lns 22-23.

7 Mr. SPENCER does dispute that the "genesis of the dispute" was a result of Mr. and Mrs.
8 SPENCER building a fence on their property in May 2012. Motion pg 2, 23-25. Rather, upon
9 information and belief, the genesis of the dispute arose from EGON KLEMENTI trespassing on Mr.
10 and Mrs. SPENCER's property and taking photographs of two minor sons of their friends, who were
11 helping build the fence and had taken off their shirts due to heat. Mrs. Spencer called 911 to complain
12 on May 27, 2012, to complain about EGON KLEMENTI coming on their property and taking
13 photographs. Douglas County Sheriff's Responding Officer Flagg came to their home and spoke to
14 EGON KLEMENTI that same day to advise him of the complaint and to tell him if he went on the
15 Spencer's property again he would be subject to arrest for trespassing.

16 Despite the Officer being at their home, and EGON KLEMENTI made no report about a
17 supposed assault and/or battery upon him that day by Mr. SPENCER, which later was included in the
18 criminal charges made against Mr. SPENCER. Ms. KLEMENTI was not a witness to this supposed
19 assault. Exhibit 2, Preliminary Hearing Transcript pg 98, ln 25-101; Exhibit 3, Elfriede Klementi
20 Deposition pg 30, ln 10-pg 35, ln 10. EGON KLEMENTI was very angry since the complaint
21 included taking pictures of minors. Exhibit 4, Trial Transcript of 9/24/13, pg 78, ln 1-pg 79, ln 18.
22 The later alleged assault of May 27, 2012, was one basis for criminal charges against Mr. SPENCER
23 of which he was acquitted.

24 Mr. SPENCER disputes that the fence sparked complaints from many neighbors. Motion pg
25 2, ln 25. When Mr. and Mrs. SPENCER sought a variance for their fence, they had to give notice
26 of their request to all neighbors within a 300' radius around their home, which was 42 residences. Of
27 those 42 neighboring residences, EGON and ELFRIEDE KLEMENTI, MARY ELLEN KINION,
28 ROWENA and PETER SHAW and 4 other neighbors (a total of 7) made any objection, while 8

1 neighbors supported the variance. Interestingly, EGON KLEMENTI testified he did not complain
2 about the fence. Exhibit 2 pg 56, ln7-14. Those objecting Third Party Defendants also made various
3 accusations and defamatory statements to the Douglas County Sheriff, KGID, the Douglas County
4 DA, the Douglas County Planning Commission, and mostly used their objections to defame Mr.
5 SPENCER rather than addressing the matter of the fence variance.

6 Mr. SPENCER does not dispute that they had to remove fence boards in 2012 while applying
7 for a variance. Motion pg 3, lns 1-2. Mr. SPENCER does dispute Ms. KLEMENTI's description
8 of what she did to complain, just writing letters to the County to complain about the fence and
9 attending one meeting of the Douglas County Planning Commission. Motion pg 3, ln 2-pg 4, ln 9.

10 Mr. SPENCER does dispute that he very put high berms in front of the KLEMENTI's
11 driveway when plowing that area of the neighborhood. Motion, pg 4, lns 11-13. There is no evidence
12 ELFRIEDE or EGON KLEMENTI ever saw Mr. SPENCER berm their driveway or anyone's
13 driveway. Exhibit 2 pg 55, ln 2-pg 56, ln 6, pg 65, ln 1-pg 68, ln 19, pg 80, lns 11-20. That Ms.
14 KLEMENTI saw Mr. SPENCER driving a snowplow one day is not evidence he created a berm that
15 day. She saw him coming an going from his home that day, but there can be up to six snowplows in
16 use in that neighborhood at any time so she did not know if Mr. SPENCER was even plowing their
17 street that day. Further, ELFRIEDE KLEMENTI admitted she never took any photo of any berm,
18 and neither she nor EGON KLEMENTI, who was always taking pictures, produced any photos of
19 any such berm. Exhibit 2 pg 94, ln 23-pg 94, ln 9 & pg 96, lns 6-10; Exhibit 3 pg 48, ln 3-pg 49, ln
20 18 & pg 54, ln 3-pg 56, ln 11. Various other Third Party Defendants have also admitted various times
21 under other that they never actually saw Mr. SPENCER berm any driveway, including Ms. KINION
22 who testified under oath, she never saw Mr. SPENCER deliberately create a berm in her driveway
23 or in any other driveway. Mr. SPENCER specifically, and repeatedly, denies he ever deliberately
24 bermed a driveway. The alleged deliberate creation of berms was also one basis for criminal charges
25 against Mr. SPENCER of which he was acquitted.

26 Mr. SPENCER does dispute that he used a snowplow to cover EGON KLEMENTI "with
27 snow and other roadway debris..." on December 12, 2012, or at any time. Motion pg 4, ln 13-pg 5,
28 ln 26. The Motion evidences that Ms. KLEMENTI was not a witness to this alleged attack, as she

1 admitted under oath. Exhibit 2 pg 94, lns 14-15; Exhibit 3 pg 45, ln 14-48, ln 1. Further, the
2 evidence regarding this alleged attack makes no sense. Ms. KINION has said under oath that on
3 December 12, 2012, a snowplow which she "thinks" Mr. SPENCER was driving, sped up, picked up
4 old snow and road debris which was propelled onto EGON KLEMENTI in his driveway, she
5 "immediately called" EGON KLEMENTI, and then "later" called 911 to advise that she was a witness.
6 Ms. KINION's sworn testimony is in direct conflict with the sworn testimony of EGON KLEMENTI
7 in the preliminary hearing on February 22, 2013, when he said he had called Ms. KINION, not the
8 other way around. Exhibit 2 pg 62, lns 6-9 & 16-17. This allegation was investigated that same day
9 by Sheriff Officer Sanchez, who responded to the 911 call from EGON KLEMENTI, and the Officer
10 found no evidence of a crime and did not even write a report. Exhibit 5, Trial Transcript 9/20/13, pg
11 46, ln 13-pg 49, ln 18. A reasonable inference is that EGON KLEMENTI called Ms. KINION to
12 create a "witness" for him. This accusation was part of the criminal charges of which Mr. SPENCER
13 was acquitted.

14 Mr. SPENCER does not dispute that Ms. KLEMENTI attended a KGID meeting on
15 December 18, 2012, at which she accused him of assaulting EGON KLEMENTI with a snowplow
16 and accused him of deliberately creating high berms in their driveway. Motion pg 5, ln 27-p 6, ln 2.
17 These accusations, not facts, were not based on her personal knowledge or observations. Upon
18 information and belief, these accusations were made to discredit Mr. SPENCER, attempt to get
19 criminal charges filed against him, and attempt to get him fired from his employment. Ms.
20 KLEMENTI admitted in the criminal trial that she told other neighbors of her and EGON
21 KLEMENTI's complaints, specifically MARY ELLEN KINION, Mr. and Mrs. SHAW, and Mrs.
22 Wells. Exhibit 4, Trial Transcript 9/24/13, pg 86, lns 1-9. This alleged snowplow assault was part
23 of public complaints made by other Third Party Defendants prior to any criminal action along with
24 several other allegations.

25 At the KGID Board meeting on December 18, 2012, the accusations included: an 18 wheeler
26 being parked on Charles Street (which was the spring); fence code violations (for which a variance
27 request had already been filed with the Planning Commission); feeling "threatened by the Spencer's"
28 (without specifics); "horrible berms in front of their driveway" (with no witness that anyone ever saw

1 Mr. SPENCER create such a berm); leaving the snowplow running when on lunch break; Mr. Spenser
2 "aggressive" and "they know he has a gun"; "harassing neighbors" (again with no specifics); Mrs.
3 Spencer "was unstable"; that Mrs. Spencer said "she was going to go after these people with ... the
4 snow plow" (which is not true and Mrs. Spencer does not drive a snowplow); that Mr. SPENCER
5 "uses his influence with other snow plow drivers in our neighborhood to create problems" (which is
6 not true); etc. Exhibit 6, December 18, 2012 KGID Board Meeting Minutes and letter read by
7 ELFRIEDE KLEMENTI, and January 15, 2013 KGID Board Meeting Minutes.

8 Dr. SHAW's letter to KGID December 13, 2012, five days prior to the meeting, addressed
9 the fence; a number of issues with plowing and berming in 2012, none of which identify Mr.
10 SPENCER as the snowplow driver but it is implied by saying a neighbor "had a prior conflict with Mr.
11 Spencer's wife"; what Ms. KINION told her alleging a deliberate berm at her driveway (Ms. KINION
12 has admitted she does not know which snowplow driver created that berm); what Ms. KINION told
13 her about the alleged snowplow assault on December 12, 2012, "that she witnessed Mr. Spencer lower
14 the plow ... [and] hit a pile of snow when he drove by the Klementis' driveway" (which Ms. KINION
15 has admitted she did not witness); what EGON KLEMENTI told her about the alleged snowplow
16 assault on December 12, 2012 (which the initial responding deputy and the jury determined did not
17 happen); and, what EGON KLEMENTI told her when he called back that day, that "Mr. Spencer
18 confronted [him] a few weeks back, on the road, about the fence issue, while [he] was walking his
19 dog" (there is no evidence of any such confrontation from any witness). Exhibit 7, December 13,
20 2012 letter from Dr. SHAW to KGID with several ccs. The statements of the other Third Party
21 Defendants at that meeting is strong circumstantial evidence of coordination of the allegations to be
22 presented.

23 At the January 15, 2013, KGID meeting, Ms. KINION spoke to say "she wanted Marilyn
24 Spencer to know that she is not intimidated by the gentlemen taping the meeting for the Spencers's";
25 Mrs. SHAW spoke saying she was "thankful that there was a Douglas County Sheriff present at the
26 meeting as per her request"; and Ms. KLEMENTI spoke about HELMUT KLEMENTI being
27 "pushed down and beat up by Mr. Spencer. The police came and arrested Mr. Spencer. The
28 Klementi's are opposed to the stop sign." Exhibit 6.

1 Mr. SPENCER does disputes HELMUT KLEMENTI went outside his brother's house the
2 night of December 18, 2012, just to take pictures of a claimed berm; that he assaulted HELMUT
3 KLEMENTI; and that HELMUT KLEMENTI was facing Ms. KLEMENTI's residence. Motion pg
4 6, lns 4-8. Mr. SPENCER was acquitted of all charges, including the accusation of assault, and the
5 video and some versions of HELMUT KLEMENTI's story show he had been walking away from Mr.
6 and Mrs. SPENCER's home, he suddenly turned around toward their home, and that is when he and
7 Mr. SPENCER collided. In the context of all the events and the facts that EGON KLEMENTI was
8 always taking photographs and it was his home, and that it was late at night in the dark which is not
9 the best time for such photographs, Mr. SPENCER is informed and believes this was part of a effort
10 to frame him for something he did not do or to incite him to try and create a conflict.

11 Mr. SPENCER does dispute Ms. KLEMENTI's characterization of the incident on the night
12 of December 18, 2012. Motion pg 6, 9-16. The call to Douglas County Sheriff's Office to which
13 Deputy McKone responded was not "after the assault", since Mrs. Spencer had already called 911
14 to report a trespasser and suspected vandal on their property as Mr. SPENCER was pursuing the
15 trespasser intending to effect a citizen's arrest. Further, Ms. KLEMENTI supposedly was asked by
16 EGON KLEMENTI to get a pillow or something to put under HELMUT KLEMENTI's head, and
17 she handed him something, but he did not approach his brother but appeared to be taking pictures of
18 him lying on the icy road, and the photos of HELMUT KLEMENTI that night do not show anything
19 under his head. Exhibit 4, ln 1-pg 107, ln 15.

20 Mr. SPENCER does dispute some of the statements in Deputy McKone's report, as well as
21 conclusions he reached and upon which he acted. Motion pg 8, lns 5-17. Deputy McKone testified
22 he had not obtained statements from all of the persons present when or shortly after the officers
23 arrived, and some of those statements, specifically of EGON and ELFRIEDE KLEMENTI, are
24 seriously inconsistent; he had not recorded any interview nor made notes at the time so relied on his
25 later recollection when using quotation marks as to what Mr. SPENCER allegedly said; he had not
26 taken any picture nor measurement of the evidence of a footprint in the snow on the Spencer's
27 property even though they had called 911 to report a trespasser and suspected vandal; he had not gone
28 to the location from which Mr. SPENCER said he had seen the intruder, believing Mr. SPENCER

1 could not have seen the driveway from there, even though later evidence showed he could; and, he
2 had not questioned the alleged victim about Mr. SPENCER's statement of attempting to effect a
3 citizen's arrest of an unidentified trespasser apparently breaking into his truck. Exhibit 8, Deposition
4 of Jesse McKone, pg 78, ln 11-pg 108, ln 18.

5 Mr. SPENCER testified at his deposition that: it was dark with no street lights so he could not
6 see the person he was chasing; he has poor distance vision, does not see well at night and was not
7 wearing his glasses when it happened; he was yelling for the trespasser to identify himself and with
8 no response he assumed the person was up to no good; he only saw the person when he was about
9 5' away, and could not stop on the icy street to avoid the collision; the person was then walking toward
10 him, he put his arms up and they collided; the collision with the trespasser was next to his property;
11 he only knew it was a KLEMENTI after the collision because he heard the brothers speaking; he was
12 upset that HELMUT KLEMENTI had not identified himself because "then I wouldn't have come out"
13 (the collision would never had occurred); HELMUT KLEMENTI was trying to kick him and EGON
14 KLEMENTI had come out, so after telling them 911 had already been called, he returned to his home;
15 when he got back to his home Mrs. Spencer was still talking to the 911 operator who instructed them
16 to remain in their home. Motion Exhibit 3, pg 91, ln 22- pg 92, ln 15; pg 93, lns 1-20; pg 94, lns 18-
17 23; pg 95, lns 15-21; pg 96, ln 10 - pg 97, ln 10; pg 98, ln 18 - pg 101 ln 18; see also video Exhibit
18 filed under separate pleading.

19 Mr. SPENCER does dispute the implication in the statement that following his acquittal he
20 asserted claims against Ms. KLEMENTI and her husband. Motion pg 6, ln 21-pg 7, ln 1. Despite all
21 Mr. SPENCER had been put through, when he was acquitted he decided not to pursue claims against
22 those who had wronged him. Only when HELMUT KLEMENTI initiated a lawsuit just before the
23 statute of limitations ran, did Mr. SPENCER make his Counterclaim and Third Party Claims.

24 **III. STANDARD OF REVIEW**

25 At the summary judgment stage, a Court's function is **not** to weigh the evidence and determine
26 the truth, but to determine whether there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*,
27 477 U.S. 242, 249 (1986). Further, the evidence of the nonmovant is "**to be believed, and all**
28 **justifiable inferences are to be drawn in his favor.**" *Id.* at 255, *emphasis added*.

1 In *Posadas*, the Nevada Supreme Court said: "Trial judges are to exercise great caution in
2 granting summary judgment, **which is not to be granted if there is the slightest doubt as to the**
3 **operative facts.**" *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438 (1993), citing to *Mullis*
4 *v. Nevada National Bank*, 98 Nev. 510, 512, 654 P.2d 533, 535 (1982), *emphasis added*.

5 IV. LEGAL ANALYSIS

6 A. JEFFERY SPENCER HAS STATED A CLAIM FOR DEFAMATION

7 Mr. SPENCER rebuts both the assertion of what facts underlie this claim and the argument
8 regarding the relevant legal authorities. Motion pg 10, ln 11-pg 11, ln 9. None of EGON or
9 ELFRIEDE KLEMENTI's statements are subject to an absolute privilege, and many statements are
10 not privileged at all. Of equal importance, the law supports having the jury decide a claim of
11 defamation.

12 Defamation is defined as "(1) a false and defamatory statement by [a] defendant concerning
13 the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least
14 negligence; and (4) actual or presumed damages." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706,
15 718, 57 P.3d 82 (2002). Publication occurs when the statement is communicated to a third person.
16 *M & R Investment Co. v. Mandarino*, 103 Nev. 711, 715, 748 P.2d 488 (1987).

17 1. Defamatory Statements Made About JEFFERY SPENCER Prior to the 18 Initiation of the Criminal Proceeding Do Not Meet the Standard for a Qualified Privilege

19 Mr. SPENCER disputes any assertion that ELFRIEDE and EGON KLEMENTI's statements
20 were protected speech, and that malice cannot be proved. Motion pg 11, ln 10-pg 13, ln 2.

21 In *Pope V. Motel 6*, 121 Nev. 307, 114 P.3d 277, 282 (2005), the Nevada Supreme Court
22 addressed privilege in a defamation case regarding statements made to law enforcement, stating:

23 We have not previously decided if defamatory statements made to police before the
24 initiation of criminal proceedings are absolutely privileged or enjoy only a qualified
privilege. ...

25 The competing policies of safeguarding reputations and full disclosure are best served
26 by a **qualified privilege**. To the extent that we suggested in *K-Mart* that statements
27 made to police before the initiation of criminal proceedings could be deemed
"communications preliminary to a judicial proceeding" under the Restatement
(Second) of Torts, section 587, we recede from that premise.

28 *Id.*, P.3d at 282-283, *emphasis added*.

1 In *Circus Circus Hotels, Inc. v. Witherspoon*, 657 P.2d 101 (1983), a defamation case, the
2 Nevada Supreme Court addressed a qualified privilege, stating:

3 Whether a particular communication is conditionally privileged by being published on
4 a “**privileged occasion**” is a question of law for the court; **the burden then shifts**
5 to the plaintiff to prove to the jury’s satisfaction that the defendant abused the
6 privilege by publishing the communication with malice in fact. ... A conditional
privilege may be abused by publication in **bad faith, with spite or ill will or some**
other wrongful motivation toward the plaintiff, and without belief in the statement’s
probable truth.

7 *Id.* P.2d at 105, citing with approval to *Gallues v. Harrah’s Club*, 87 Nev. 624, 626 n.2 & 627, 491
8 P.2d 1276 (1971), *emphasis added*. As stated in the Nevada Constitution, Article 1, §9:

9 In all criminal prosecutions and civil actions for libels, the truth may be given in
10 evidence to the Jury; and if it shall appear to the Jury that the matter charged as
libelous is true and was published **with good motives and for justifiable ends**, the
11 party shall be acquitted or exonerated.

12 *Emphasis added*. Free speech does not come without limitations.

13 ELFRIEDE and EGON KLEMENTI made numerous statements to KGID, Deputies and
14 other Third Party Defendants which were not true, regarding an alleged assault and/or battery on
15 EGON KLEMENTI which never happened, regarding alleged berms in front of their driveway which
16 Mr. SPENCER did not create, and regarding the alleged assault on HELMET KLEMENTI which
17 neither of them witnessed and which did not happen. Although their court testimony is not the basis
18 for this claim, the conflicts in their testimony goes directly to their veracity and motives.

19 **2. Defamatory Statements Made About JEFFERY SPENCER Should**
Properly Go to the Jury to Determine the Issues of Fact

20 Mr. SPENCER disputes the assertion that ELFRIEDE or EGON KLEMENTI’s statements
21 were subject to an absolute privilege. Motion pg 14, ln 16-pg 17, ln 10.

22 They only have a qualified privilege at law, and they abused that privilege. A conditional
23 privilege may be abused by publication in bad faith, with spite or ill will or some other wrongful
24 motivation toward the plaintiff, and without belief in the statement’s probable truth.

25 The Nevada Supreme Court, reversing the District Court in *Branda v. Sanford*, 97 Nev. 643,
26 637 P.2d 1223 (1981), ruled that:

27 [While] it is a question of law and, therefore, within the province of the court, to
28 determine if a statement is capable of a defamatory construction ... [i]f **susceptible of**
different constructions, one of which is defamatory, resolution of the ambiguity

1 is a question of fact for the jury.

2 *Id.* at 646, *emphasis added*. In *Posadas*, the Nevada Supreme Court reaffirmed this ruling saying:

3 We conclude, as a matter of law, that the statement is capable of a defamatory
4 construction in that it imputes dishonest and possibly unlawful conduct to Posadas.
5 Accordingly, **a jury must be allowed to determine whether the statement has any**
6 **“basis in truth,”** Wellman, 108 Nev. at 88, 825 P.2d at 211, **since the truth or**
7 **falsity of an allegedly defamatory statement is an issue of fact properly left to the**
8 **jury for resolution.** 2 Nevada Ind. Broadcasting v. Allen, 99 Nev. 404, 413, 664 P.2d
9 337, 343 (1983).

10 *Posadas*, *supra* at 453, *emphasis added*.

11 In *Lubin v. Kunin*, 117 Nev. 107, 17 P.3d 422 (2001), the Nevada Supreme Court,
12 considering a statement regarding a lawsuit which had been filed but not yet tried nor resolved, ruled:

13 In reviewing an allegedly defamatory statement, “[t]he words must be reviewed in
14 **their entirety and in context** to determine whether they are susceptible of a
15 defamatory meaning.” Chowdhry v. NLVH, Inc., 109 Nev. 478, 484, 851 P.2d 459,
16 463 (1993). Whether a statement is defamatory is generally a question of law;
17 however, **where a statement is “susceptible of different constructions, one of**
18 **which is defamatory, resolution of the ambiguity is a question of fact for the**
19 **jury.”** *Posadas v. City of Reno*, 109 Nev. 448, 453, 851 P.2d 438, 442 (1993)
20 (quoting *Branda v. Sanford*, 97 Nev. 643, 646, 637 P.2d 1223, 1225-26 (1981)).

21 *Id.* P.3d at 426, *emphasis added*. The *Lubin* Court quoted to the Restatement (Second) of Torts:
22 Expressions of Opinion Section 566 comment b (1977):

23 [I]t may be actionable to state an opinion that plaintiff is a thief, if the statement is
24 made in such a way as to imply the existence of information which would prove
25 plaintiff to be a thief. In such situations, where a statement is ambiguous, the question
26 of whether it is a fact or evaluative opinion is left to the jury.

27 *Id.* P.3d at 426, *cites omitted*. This example is particularly relevant to this matter. Further, in *Meyer*
28 *v. Johnson*, 281 P.3d 1201 (Nev., 2009), citing to *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422,
425-26 (2001), the Nevada Supreme Court reaffirmed:

29 While the determination of whether a statement is defamatory is generally a question
30 of law, when there are different possible constructions of the statement, one of which
31 is defamatory and the other not, **the determination of whether it is defamatory is**
32 **left to the fact finder.**

33 ELFRIEDE and EGON KLEMENTI’s statements are subject to a understanding that Mr.
34 SPENCER was a criminal. In fact, the criminal charges subsequently brought based upon their
35 representations were that he was abusive of the elderly, threatening an elderly man, and trapping them
36 in their home by berms. Mr. SPENCER was not a criminal; criminal charges had not even been filed

1 when these accusations were made, and at trial Mr. SPENCER was acquitted of all charges.

2 In addition, the Nevada Supreme Court in *Jacobs v. Adelson*, 130 Nev. Adv.Op. 44, 325 P.3d
3 1282, 1286 (2014), “recognized that communications are **not sufficiently related to judicial**
4 **proceedings when they are made to someone without an interest in the outcome.**” *See also, Fink*
5 *v. Oshins*, 118 Nev. 428, 436, 49 P.3d 640 (2002). The statements made to the KGID Board at their
6 public meetings and to the other Third Party Defendants, were made to those “without an interest in
7 the outcome” of the criminal matter. Neither ELFRIEDE nor EGON KLEMENTI had a privilege.

8 **3. Defamatory Statements About JEFFERY SPENCER Were Derogatory,**
9 **Contemptible and Would Damage A Reputation**

10 The Nevada Supreme Court in *Posadas* defined a defamatory statement as follows:

11 [A] statement is defamatory when, “[u]nder any reasonable definition[,] such charges
12 would tend to lower the subject in the estimation of the community and to excite
derogatory opinions against him and to hold him up to contempt.” *Las Vegas Sun v.*
Franklin, 74 Nev. 282, 287, 329 P.2d 867, 869 (1958).

13 *Posadas, supra* at 453, *emphasis added*.

14 No one can reasonably dispute that the statements made to the other Third Party Defendants,
15 at the KGID Board meeting, and to the Douglas County Sheriff’s Office regarding the alleged
16 snowplow and personal assaults and batteries “would tend to lower the subject in the estimation of the
17 community and to excite derogatory opinions against him and to hold him up to contempt.” These
18 statements were defamatory.

19 **4. Defamatory Statements About JEFFERY SPENCER Evidenced Actual**
20 **Malice, With a Lack of Good Faith And/or Unrelated to the Litigation**

21 In *Jacobs*, the Nevada Supreme Court reaffirmed *Fink*, that for the privilege to apply the
22 proceeding must be contemplated “in good faith” and the statement must be “related to the litigation”.

23 *Jacobs, supra* at 433-34. Further, as the *Posadas* Court said:

24 Reckless disregard for the truth may be defined as a high degree of awareness of the
probable falsity of a statement. It may be found where the defendant entertained
25 serious doubts as to the truth of the statement, but published it anyway. As such, it is
a subjective test, focusing on what the defendant believed and intended to convey, and
26 not what a reasonable person would have understood the message to be. **Evidence**
of negligence, motive, and intent may cumulatively establish necessary
27 **recklessness to prove actual malice** in a defamation action.

28 *Posadas, supra* at 455, *emphasis added*.

1 When Mr. and Mrs. SPENCER sought a variance for their fence, they had to give notice of
2 their request to all neighbors within a 300' radius around their home, which was 42 residences.
3 HELMUT KLEMENTI was not one of those neighbors. Of all those, his brother and sister-in-law
4 EGON and ELFRIEDE KLEMENTI, MARY ELLEN KINION, ROWENA and PETER SHAW,
5 and only four other neighbors made any objection, while eight neighbors supported the variance. Of
6 those who objected, the Third Party Defendants also made various accusations and defamatory
7 statements to the Douglas County Sheriff, KGID, the Douglas County DA, the Douglas County
8 Planning Commission, and mostly used their objections to defame Mr. SPENCER rather than
9 addressing the matter of the fence variance.

10 As addressed herein and in other pleading, EGON and ELFRIEDE KLEMENTI and
11 Counterdefendant and other Third Party Defendants were dishonest in their reporting, and/or repeated
12 dishonest reports of others in some cases with no personal knowledge of the actual facts, and/or
13 tampered with evidence. Even where there may not be direct evidence of motive and intent, there is
14 strong circumstantial evidence of motive and intent, and there were certainly "cumulative actions".

15 Nevada criminal law provides that:

16 [In] all prosecutions for libel the truth may be given in evidence to the jury, and, **if it**
17 **shall appear to the jury that the matter charged as libelous is true and was**
18 **published for good motive and for justifiable ends, the party shall be acquitted,**
and the jury shall have the right to determine the law and the fact.

19 NRS §200.510(3), *emphasis added*. Although this is a civil case, not a prosecution for libel, the law
20 provides a guideline for evaluation of defamatory statements in conformity with the civil cases cited
21 hereinabove and the Nevada Constitution, Article 1, §9.

22 The statements made by EGON and ELFRIEDE KLEMENTI were not for any good motive
23 nor for justifiable ends. These statements were made as an attack on a private person, not a public
24 figure, to damage his reputation and standing, get his fence variance denied, and punish him for
25 standing up for his legal rights as against those individuals who behaved inappropriately.

26 5. JEFFERY SPENCER Is Entitled to Damages for Defamation Per Se

27 In *Branda*, the Nevada Supreme Court defined four categories of "slander per se", actionable
28 without a showing of special damages, two of which are directly relevant to this matter: (1)

1 imputations that the person had committed a crime; and, (2) imputations that would injure the person's
2 trade, business or office. *Branda, supra* at. 646. The defamatory statements made, before initiation
3 of any criminal proceeding and outside of and unconnected to the criminal proceeding, included
4 accusing Mr. SPENCER of crimes which he did not commit, and accusing him of being unfit for his
5 business or profession. This is defamation per se, for which Mr. SPENCER does not, as a matter of
6 law, have to even prove damages.

7 **B. JEFFERY SPENCER'S CLAIM FOR MALICIOUS PROSECUTION**
8 **SHOULD PROPERLY GO TO THE TRIER OF FACT - THE JURY**

9 The Motion does not address nor request summary judgment on Mr. SPENCER's claim of
10 Malicious Prosecution. Mr. SPENCER makes the following observations solely on the Motion's
11 concluding statement that all claims should be dismissed. Motion pg 24, lns 25-27.

12 *LaMantia v. Redisi*, 118 Nev. 27, 38 P.3d 877 (2002), identifies the elements of malicious
13 prosecution as:

- 14 1) initiating, procuring the institution of, or actively participating in the continuation
15 of a criminal proceeding;
- 16 2) malice, shown by statements made with the knowledge they were false and/or
17 making such statements with a reckless disregard for the truth;
- 18 3) termination of the criminal proceeding in favor of the accused; and
- 19 4) damages.

20 The former Deputy DA who testified to the Court said the Deputy DA assigned a case is the
21 sole decider of whether to initiate a criminal prosecution, and a DA is immune to suit for malicious
22 prosecution. However, by statute, any individual (outside of law enforcement who have immunity)
23 who can be said to have acted for the purpose of "**procuring the institution of, or actively**
24 **participating in the continuation of a criminal proceeding**" can be liable for malicious prosecution.

25 Further, as addressed hereinabove, statements made prior to the initiation of a criminal
26 proceeding are only subject to qualified privilege, not absolute privilege. Malice can be inferred from
27 the statements made prior to any arrest or initiation of any criminal proceeding, which statements were
28 false and/or made with a reckless disregard for the truth as itemized hereinabove. Mr. SPENCER was
acquitted of all charges, but sustained harm in his business and/or profession, loss to his reputation,
good name and standing in the community as a result of the charges.

///

1 **C. JEFFERY SPENCER'S CLAIM FOR CIVIL CONSPIRACY SHOULD**
2 **PROPERLY GO TO THE TRIER OF FACT - THE JURY**

3 The Motion argues that based upon the arguments that there was no defamation or malicious
4 prosecution, and that "[t]here are no facts demonstrating the existence of an agreement", so there can
5 be no claim for conspiracy. Motion pg 15, ln 6-pg 16, ln 14.

6 The sound legal basis for proceeding to trial on the defamation claim is addressed hereinabove.
7 The issue of the existence of an agreement between and among the Third Party Defendants the
8 Counterdefendant and is not a question of law for the Court. As addressed clearly and at length in
9 *Short v. Hotel Riviera, Inc.*, 79 Nev. 94, 378 P.2d 979 (1963), with citations to numerous cases over
10 the years, the Nevada Supreme Court reversed a Summary Judgment on civil conspiracy and
11 remanded the matter for trial.

12 The *Short* Court stated:

13 It is true that in the discovery depositions witnesses categorically denied any concert
14 with others in the performance of the asserted acts constituting the conspiracy.

15 ...
16 **"We agree that there are cases in which a trial would be farcical. * * * But where, as**
17 **here, credibility, including that of the defendant, is crucial, summary judgment**
18 **becomes improper and a trial indispensable.** It will not do, in such a case, to say
19 that, since the plaintiff, in the matter presented by his affidavits, has offered nothing
20 which discredits the honesty of the defendant, the latter's deposition must be accepted
as true. **We think that Rule 56 was not designed thus to foreclose plaintiff's**
privilege of examining defendant at a trial, especially as to matters peculiarly within
defendant's knowledge. * * * We do not believe that, in a case in which the decision
must turn on the reliability of witnesses, the Supreme Court, by authorizing summary
judgments, intended to permit a 'trial by affidavits,' if either party objects. That
procedure which, so the historians tell us, began to be outmoded at common law in the
16th century, would, if now revived, often favor unduly the party with the more
ingenious and better paid lawyer. Grave injustice might easily result."

21 *Id.* at 101, *cites omitted, emphasis added.*

22 The *Short* Court continued:

23 "It does not follow from the fact that there is no direct evidence ... that the motion for
24 summary judgment should be granted. * * * **It is for the triers of the facts to**
determine how much of her testimony, if any, is to be accepted or rejected."

25 ...
26 **"We have in this case one more regrettable instance of an effort to save time by an**
27 **improper reversion to 'trial by affidavit,' improper because there is involved an issue**
28 **of fact, turning on credibility. Trial on oral testimony, with the opportunity to**
examine and cross-examine witnesses in open court, has often been acclaimed as
one of the persistent, distinctive, and most valuable features of the common-law
system. For only in such a trial can the trier of the facts (trial judge or jury)
observe the witnesses' demeanor; and that demeanor--absent, of course, when

1 trial is by affidavit or deposition--is recognized as an important clue to witness'
2 credibility. When, then, as here, the ascertainment (as near as may be) of the
3 facts of a case turns on credibility, a triable issue of fact exists, and the granting
4 of a summary judgment is error. * * * Particularly where, as here, the facts are
5 peculiarly in the knowledge of defendants or their witnesses, should the plaintiff have
6 the opportunity to impeach them at trial; and their demeanor may be the most effective
7 impeachment. Indeed, it has been said that a witness' demeanor is a kind of 'real
8 evidence'; obviously such 'real evidence' cannot be included in affidavits."

9 *Id.* at 102, *cites omitted, emphasis added.*

10 The *Short Court* quotes to several federal, including U.S. Supreme Court, cases as follows:

11 "A court is not at liberty to engage in a credibility evaluation for the purposes of
12 a summary judgment."

13 "...
14 Summary judgment should not be granted if there remains a genuine issue of
15 material fact, and credibility of witnesses or of parties may be such genuine
16 issue."

17 "...
18 In cases of this kind where no single factor controls the equation, and the court is
19 necessarily required to resolve the question of alleged intent in arriving at its judgment,
20 we are of the opinion that justice can best be served by a trial of the question on its
21 merits." Scores of cases are in accord with these views.

22 *Id.* at 102-103, *cites omitted, emphasis added.*

23 Citing to Rule 56, the *Short Court* stated:

24 The rule is of course well recognized that in deciding the propriety of a summary
25 judgment all evidence favorable to the party against whom such summary
26 judgment was rendered will be accepted as true. ...

27 Rule 56 authorizes summary judgment only where the moving party is entitled to
28 judgment as a matter of law, where it is quite clear what the truth is, that no genuine
issue remains for trial, and that the purpose of the rule is not to cut litigants off from
their right of trial by jury if they really have issues to try. *Sartor v. Arkansas Gas*
Corp., 321 U.S. 620, 64 S.Ct. 724, 88 L.Ed. 967. In *McColl v. Scherer*, 73 Nev.
226, 231-232, 315 P.2d 807, we for the second time approved the language of a
federal case to the effect that the trial judge should exercise great care in granting
motions for summary judgment, and held that a litigant has a right to trial where
there is the slightest doubt as to the facts. In 6 Moore, Federal Practice, 2070, it
is said that in such motions 'the trial court should not pass upon the credibility of
opposing affidavits, unless the evidence tendered by them is too incredible to be
accepted by reasonable minds.' And the burden of establishing the lack of a
trialable issue of fact is upon the moving party. 6 Moore, Federal Practice, 2070.

29 *Id.* at 103, *cites omitted, emphasis added.*

30 The *Short Court*, quoting from 11 Am.Jur. 578, Conspiracy §46, and U.S. Supreme Court
31 cases, and citing to several other cases from several other states, observed:

32 "A more reasonable view, however, is that where an act done by an individual, though
33 harmful to another, is not actionable because justified by his rights, yet the same act
34 becomes actionable when committed in pursuance of a combination of persons

1 actuated by malicious motives and not having the same justification as the individual.”

2 ...
3 The United States Supreme Court has thus stated the rule: “**An act lawful when done
4 by one may become wrongful when done by many acting in concert, taking on the
5 form of a conspiracy which may be prohibited if the result be hurtful to the public
6 or to the individual against whom the concerted action is directed.**”

7 ...
8 When an act done by an individual is not actionable because justified by his rights,
9 though harmful to another, such act becomes actionable when done in pursuance of
10 combination of persons actuated by malicious motives and not having same
11 justification as the individual.

12 *Id.* at 105-106, *cites omitted, emphasis added.*

13 In conclusion, the Short Court ruled:

14 **Many other cases could be cited. The great weight of authority is in support of
15 the rule last discussed and we accept the same as the correct one.**

16 *Id.* at 106, *emphasis added.* After remand and trial, at which Short prevailed, there was an appeal
17 of the judgment in *Hotel Riviera, Inc. v. Short*, 80 Nev. 505, 396 P.2d 855 (1964). On the appeal,
18 the Court ruled: “The judgment and order denying new trial are affirmed with costs.” *Id.* at 521.

19 In this case, numerous statements were disseminated by the Third Party Defendants and the
20 Counterdefendant and which could have no purpose other than to harm Mr. SPENCER to have his
21 fence variance request denied, to compromise his employment, to cause him to suffer public disgrace
22 of being called a criminal and abuser of the elderly, and to compel him to endure criminal charges and
23 trial. Whether each act was done with explicit or tacit agreement would be a question for the jury.
24 To publically accuse another of a crime, especially a heinous crime of attacking an elderly person,
25 when a jury has since ruled there was no such crime, and to publically accuse another of deliberately
26 creating hardships for elderly neighbors by berming them into their homes, when there was never was
27 any evidence other than controverted testimony of any such act, a jury can infer malice.

28 **D. JEFFERY SPENCER SHOULD HAVE THE RIGHT TO CLAIM
PUNITIVE DAMAGES AT TRIAL**

 Mr. SPENCER does not dispute that this is just a measure of damages, which would be
addressed at time of trial. Motion pg 16, ln 15-pg 18, ln 26.

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1 **E. JEFFERY SPENCER'S CLAIM FOR INFLICTION OF EMOTIONAL**
2 **DISTRESS PROPERLY GO TO THE TRIER OF FACT - THE JURY**

3 The Motion argues that EGON and ELFRIEDE KLEMENTI's conduct was not extreme and
4 outrageous or done with a reckless disregard, and there is no evidence Mr. SPENCER has not
5 presented evidence of severe or extreme emotional distress. Motion pg 19, ln 1-pg 24, ln 22.

6 Mr. SPENCER would refer to the facts and evidence cited hereinabove. EGON and
7 ELFRIEDE KLEMENTI did not just report a crime and make a statement of what happened to them.

8 In *Star v. Rabello*, 97 Nev. 124, 125, 625 P.2d 90 (1981), the Nevada Supreme Court stated:

9 Generally, the elements of this cause of action are (1) extreme and outrageous conduct
10 with either the intention of, or reckless disregard for, causing emotional distress, (2)
11 the plaintiff's having suffered severe or extreme emotional distress and (3) actual or
12 proximate causation.

13 In *Branda*, a case alleging slander and intentional infliction of emotional distress in which a
14 Summary Judgment ruling was reversed, the Nevada Supreme Court held:

15 **The jury was entitled to determine**, considering prevailing circumstances,
16 contemporary attitudes and [the appellant's] own susceptibility, **whether the conduct**
17 **in question constituted extreme outrage.**

18 *Branda, supra* at 649, *emphasis added*. The *Posadas* Court reiterated this ruling, stating:

19 Whether the issuance of a press release which could be interpreted as stating that a
20 police officer committed perjury is **extreme and outrageous conduct is a question**
21 **for the jury. The jury should also make the factual determination, similar to the**
22 **"actual malice" determination in Posadas's defamation claim**, whether the press
23 release was intended to cause emotional distress or whether it was issued with reckless
24 disregard as to such a probability.

25 *Posadas, supra* at 456, *emphasis added*.

26 The *Posadas* Court went on to rule:

27 Posadas's affidavit asserts that, as a result of the press release, he "was subjected to
28 great ridicule and embarrassment" and was harmed both professionally and personally.
His affidavit also asserts that, as a result of the entire incident, he suffered "severe
emotional distress as evidenced by depression and physical ailments that have required
hospitalization," and he "sought the assistance of both medical and psychological
professionals to deal with the physical and psychological symptoms."

We conclude that genuine issues of material fact remain concerning Posadas's claim
for intentional infliction of emotional distress which precludes summary judgment.
Posadas supplied sufficient evidence during the summary judgment proceeding to raise
the issues of whether the press release constituted extreme and outrageous conduct,
whether the press release was issued with the intent of, or reckless disregard for,
causing emotional distress, and whether Posadas suffered severe and extreme
emotional distress occasioned by the press release. **These are questions for a jury,**

1 **and the district court erred in deciding them in a summary proceeding.**

2 *Id.* at 456, *emphasis added*.

3 Mr. SPENCER has actually suffered from the actions against him. The report of Dana
4 Anderson, MFT, diagnosed Mr. SPENCER as suffering from PTSD, and provides a long list of
5 symptoms. Motion, Exhibit 5. The report of Gastroenterology Consultants reflects Mr. SPENCER
6 being referred for “nausea and vomiting; GERD and dysphagia” and also reported symptoms of
7 persistent infections, choking episodes, heartburn, abdominal pain, fainting, anxiety and depression.
8 Motion Exhibit 6.

9 While Mr. SPENCER had GERD for over 15 years, which can cause heartburn and
10 regurgitation, it had been well controlled with diet modification and occasion use of Tums prior to the
11 matters in issue here. That he had a pre-existing condition does not make the claim invalid. All law
12 students learn about the “eggshell head” plaintiff; if one causes injury to a person it does not excuse
13 the behavior because the person had a pre-existing condition that made him susceptible to the injury.
14 Further, the vomiting and diarrhea was not a pre-existing condition. In addition, Mr. SPENCER’s
15 primary care physician, Dr. Steinmetz, who has been treating him since October 1, 2014, reported
16 high blood pressure and a poor immune response which she attributed to the “extreme stress” from
17 problems with his neighbors. Exhibit 9 attached hereto. These are all physical manifestations of the
18 emotional distress, and whether this is sufficient evidence of an emotional distress claim is a matter
19 for the jury.

20 **Conclusion**

21 JEFFERY SPENCER has demonstrated numerous genuine issues of fact to support his claims.
22 NRCP 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986). Pursuant to Nevada law he
23 should be given the opportunity to make his case before a jury as the fact finder. The Motion for
24 Summary Judgment should be denied.

25 ///

26 ///


27 ///

28 ///

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

DATED this 1st day of June, 2018.

/s/
WILLIAM J. ROUTSIS, II, Esq.
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Attorneys for Counterclaimant/Third Party Plaintiff Jeffrey D. Spencer

1 CERTIFICATE OF SERVICE

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

6 Douglas R. Brown, Esq.
7 Christian L. Moore, Esq.
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Attorney for Jeffrey D. Spencer

14 DATED this 1st day of June, 2018.

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EXHIBIT LIST

- | | |
|-----------|---|
| Exhibit 1 | Declaration of Jeffrey D. Spencer |
| Exhibit 2 | Portions of the Transcript of the Preliminary Hearing on April 24, 2013 |
| Exhibit 3 | Portions of the Deposition of ELFRIEDE KLEMENTI on April 14, 2016 |
| Exhibit 4 | Portions of the Transcript of the Jury Trial on September 24, 2013 |
| Exhibit 5 | Portions of the Transcript of the Jury Trial on September 20, 2013 |
| Exhibit 6 | Minutes of the KGID Board on December 18, 2012, with a letter from ELFRIEDE KLEMENTI, and Minutes of the KGID Board on January 15, 2013 |
| Exhibit 7 | Letter from ROWENA SHAW to the KGID Board dated December 13, 2012 |
| Exhibit 8 | Portions of the Deposition of Jesse McKone on April 7, 2016 |
| Exhibit 9 | Letter from Mr. SPENCER's primary care physician Dr. Steinmetz |

Exhibit 1

Exhibit 1

Declaration of Jeffrey D. Spencer

Pursuant to NRS §53.045(1), I, Jeffrey D. Spencer, declare under penalty of perjury, that:

1. I am the Counter and Third Party Plaintiff in this matter.
2. Portions of the Transcript of the Preliminary Hearing on April 24, 2013, attached hereto as Exhibit 2, are true and correct copies of that Transcript.
3. Portions of the Deposition of ELFRIEDE KLEMENTI on April 14, 2016, attached hereto as Exhibit 3, are true and correct copies of that Deposition Transcript.
4. Portions of the Transcript of the Jury Trial on September 24, 2013, attached hereto as Exhibit 4, are true and correct copies of that Transcript.
5. Portions of the Transcript of the Jury Trial on September 20, 2013, attached hereto as Exhibit 5, are true and correct copies of that Transcript.
6. The Minutes of the KGID Board on December 18, 2012, with a letter from ELFRIEDE KLEMENTI, and the Minutes of the KGID Board on January 15, 2013, attached hereto as Exhibit 6, are true and correct copies of those Minutes and letter.
7. The letter from ROWENA SHAW to the KGID Board dated December 13, 2012, attached hereto as Exhibit 7, is a true and correct copy of that letter.
8. Portions of the Deposition of Jesse McKone on April 7, 2016, attached hereto as Exhibit 8, are true and correct copies of that Deposition Transcript.
9. The letter from my primary care physician Dr. Steinmetz attached hereto as Exhibit 9 is a true and correct copy of her letter which describes some of my medical problems which have resulted from the matters at issue with the Counter and Third Party Defendants in this matter.

///

///

10. I have reviewed the foregoing and all statements are true of my own knowledge, except for those matters stated therein upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 1st day of June, 2018, in Hayes, Kansas.

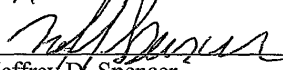

Jeffrey D. Spencer

Exhibit 2

Exhibit 2

Case No. CR-13-0069

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IN THE JUSTICE COURT OF TAHOE TOWNSHIP
CLERK
IN AND FOR THE COUNTY OF DOUGLAS, STATE OF NEVADA
BY Richard Glasson DEPUTY DISTRICT CLERK
BEFORE THE HONORABLE RICHARD GLASSON, JUDGE

-000-

THE STATE OF NEVADA,

Plaintiff,

-VS-

PRELIMINARY HEARING

JEFFREY DALE SPENCER,

Defendant.

Copy

TRANSCRIPT OF PROCEEDINGS

APRIL 24, 2013

STATELINE, NEVADA

APPEARANCES:

For the Plaintiff:

MARIA PENCE
District Attorney
Minden, Nevada

For the Defense:

WILLIAM Routsis
Attorney at Law
Reno, Nevada

REPORTED BY:

SUZANNE KUES ROWE
Nevada CCR #127

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1 A. Manchester.
2 Q. Manchester. And you called Manchester this winter, did
3 you not?
4 A. Yes.
5 Q. How many times did you call them regarding Mr. Spencer?
6 A. Perhaps one time.
7 Q. Perhaps one time?
8 A. Yeah. I don't recollect. Sorry.
9 Q. And you complained to them, did you not, about
10 Mr. Spencer?
11 A. Yeah, I gave them the report.
12 Q. And what did you tell them?
13 A. What I just told you.
14 Q. Okay. And did they ask you for pictures?
15 A. I don't recall.
16 Q. Did you offer to give them any photographs?
17 A. I don't believe they asked me for pictures.
18 Q. All right. It's your testimony here though that you
19 have photographs of these berms, correct?
20 A. Sir.
21 Q. Yes or no. Very simple questions. Do you have
22 pictures of these berms that you are alleging --
23 A. Not of these berms from this winter, because this --
24 Q. Yes, these berms from this winter.
25 A. This winter we didn't have many berms.

1 Q. Okay. So, you have also made allegations that you were
2 snowed in, or you were unable to get out of your driveway, or
3 snowed in your driveway due to the berms, is that correct?

4 A. No.

5 Q. That never happened?

6 A. No.

7 Q. Okay. Now, you have complained about the, of the
8 Spencers for a fence that you put up, correct? A fence that they
9 put up on their property, correct?

10 A. I didn't complain to them.

11 Q. No, not to them, but you made complaints about it?

12 A. No, we didn't.

13 Q. No?

14 A. I am sorry. I cannot remember.

15 Q. Okay. Let me just take a moment, Your Honor. On May
16 8th, do you recall making a complaint with the TRPA against the
17 Spencers regarding trees being removed?

18 MS. PENCE: Objection, Your Honor. Relevance.

19 THE COURT: It sounds to me like defense is trying to
20 establish motive for the crime. That's not his burden. So, what
21 is the relevance, sir?

22 MR. ROUTSIS: Your Honor, a great question. My answer
23 would be bias.

24 I think I'm trying to establish for the Court to judge
25 the credibility of the witness, that this individual, every time

1 my clients, complaint after complaint, and never going to the
2 Spencers, we believe unfounded complaints, we believe complaints
3 elicited with photographs that do not accurately depict this
4 present year, and the intent of showing a bias, an aggression and
5 animosity towards my client that goes to his credibility.

6 Now, I know a trial, the Supreme Court in Nevada has
7 said if it truly is bias, there's very limited discretion to
8 exclude it at a prelim, though, I don't know what the answer
9 would be.

10 THE COURT: I guess the answer is let's speed things
11 up, and it's irrelevant.

12 MR. ROUTSIS: Okay. Just a few follow-up questions,
13 Mr. Klementi.

14 BY MR. ROUTSIS:

15 Q. You and your brother are getting a civil attorney to
16 sue the Spencers for money, is that correct?

17 MS. PENCE: Objection, Your Honor. Relevance.

18 THE COURT: It will be allowed.

19 MR. ROUTSIS: Thank you.

20 THE COURT: Did you hire an attorney to sue somebody
21 for money?

22 THE WITNESS: I did not hire an attorney, no.

23 MR. ROUTSIS: You have been in discussion, though, to
24 hire an attorney, correct?

25 THE WITNESS: I don't need an attorney.

1 MS. PENCE: Same objection, Your Honor.
2 BY MR. ROUTSIS:
3 Q. You do plan on suing the Spencers, correct?
4 MS. PENCE: Objection, Your Honor. Relevance.
5 THE COURT: Overruled.
6 MR. ROUTSIS: You and brother Helmut plan on suing the
7 Spencers for money if you get a criminal conviction against
8 Mr. Spencer, is that correct?
9 THE COURT: Excuse me. That question is improper and
10 shall be stricken.
11 MR. ROUTSIS: Okay. Have you and your brother
12 discussed the fact that you intend on suing the Spencers?
13 MS. PENCE: Same objection, Your Honor.
14 THE COURT: Sustained, now. Now, I know where he's
15 going. This conviction will be some sort of a predicate for a
16 civil lawsuit. It's not relevant.
17 MR. ROUTSIS: Now, but I would --
18 THE COURT: That's not relevant.
19 MR. ROUTSIS: Very good, Your Honor. Now, what we will
20 be arguing, Judge, and maybe it's --
21 THE COURT: I don't care what you're arguing. Ask this
22 witness a question or leave him be.
23 MR. ROUTSIS: Okay.
24 BY MR. ROUTSIS:
25 Q. You, have you been -- let me phrase it this way.

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 THE COURT: Listen carefully. I'm listening carefully.
2 The man gives you an answer.
3 You ask a question, you strike it, then you ask him the
4 same question again. And I think eventually if you ask this
5 witness the same question 50 times you might, in fact, get 49
6 answers one way and one another way. But, it wastes my time.
7 BY MR. ROUTSIS:
8 Q. What did you talk --
9 THE WITNESS: With who?
10 MR. ROUTSIS: Maryellen.
11 THE COURT: Mr. Routsis, what's the relevance?
12 MR. ROUTSIS: Well, the relevance is he's saying there
13 was an eye witness.
14 THE COURT: Yeah.
15 MR. ROUTSIS: Yet he never mentioned it to the police.
16 I'm just trying to understand why that --
17 THE COURT: It's not why you need to understand
18 anything.
19 MR. ROUTSIS: Okay. Well, that's, the relevance is I
20 want to explore whether or not this really happened and to see if
21 it's a credible story and it makes sense.
22 THE COURT: The story's not relevant.
23 MR. ROUTSIS: Okay. Well, the purpose --
24 THE COURT: Move to another area.
25 BY MR. ROUTSIS:

1 Q. Okay. Now, I think I'm done. Thank you.

2 THE COURT: Ms. Pence?

3 EXAMINATION

4 BY MS. PENCE:

5 Q. Mr. Klementi, when you called KGID to report that
6 Mr. Spencer had left a snow berm at your driveway?

7 MR. ROUTSIS: Objection. Assumes facts not in
8 evidence.

9 THE COURT: That objection is always overruled when I'm
10 on the bench.

11 MR. ROUTSIS: Objection. Misstates the evidence. I
12 think it was regarding the getting snow plowed into him.

13 THE COURT: That objection is always overruled unless I
14 have a jury.

15 MR. ROUTSIS: Okay. Good enough.

16 BY MS. PENCE:

17 Q. You testified earlier that when there was a berm left
18 in your driveway, you called KGID to report it, is that correct?

19 A. Yes. But -- yeah.

20 Q. What did KGID do as a result of you calling?

21 A. This was not about this berm. Because this was not a
22 real berm. This was ice.

23 Q. Yes. I'm not talking about the incident where you were
24 sprayed.

25 A. Okay. Yes.

1 Q. I'm talking about an incident --
2 A. Different.
3 Q. -- where there was a berm left in your driveway?
4 A. Mm-hmm.
5 Q. And that you called KGID to complain?
6 A. Yes.
7 Q. When you called to say that there had been a berm
8 there, did KGID do anything, that you are aware of, or did they
9 tell you anything, or did they say anything to correct the
10 problem?
11 A. No.
12 Q. Okay. Do you know who was driving the day that you got
13 the berm?
14 A. Um.
15 Q. Which berm, ma'am?
16 A. Yeah, exactly. I'm sorry.
17 Q. I'm sorry. When you called to complain to KGID, who
18 did you call to complain about?
19 A. Her name is Michelle, but I usually went there in
20 person.
21 Q. Okay. That's the person that you talked to at KGID,
22 right?
23 A. Yes.
24 Q. And when you talked to Michelle, did you talk to her
25 about anyone -- did you complain about any particular snow plow

1 driver?

2 A. No.

3 Q. Okay. So, what did you tell them when you complained
4 about the berm?

5 A. I just told them that we get berms there, and that
6 other people that live on the same street don't have any berms,
7 and some of them even plowed the snow away, and so.

8 Q. And did you explain to Michelle why you thought you had
9 a berm and no one else did?

10 A. I usually talk, but I don't recall now what I said,
11 because it was so many times.

12 Q. Did you believe Mr Spencer drove on the day that you
13 got the berm that you complained to KGID about?

14 MR. ROUTSIS: Objection. Relevance.

15 THE COURT: Overruled.

16 THE WITNESS: I'm sorry. I didn't understand. You are
17 talking about the snow --

18 BY MS. PENCE:

19 Q. No, I'm not talking about the snow and ice on you.

20 A. Yes.

21 Q. I'm only talking about the berm in your driveway that
22 was at the end of your driveway.

23 A. Yes.

24 Q. Who do you think put the berm there?

25 MR. ROUTSIS: Objection. Relevance. Speculation.

1 THE COURT: Yeah, probably. It's overruled.

2 I didn't even know we were going to go back into this
3 area that the other side was objecting all about, but now it's
4 got my interest.

5 THE WITNESS: So, what was the question?

6 THE COURT: Well, sir, you've said that you don't know
7 who the drivers were, but you had a complaint you made to KGID,
8 and now Ms. Pence is asking for you to guess at who might have
9 been driving the plow that day. Was it me?

10 THE WITNESS: No.

11 THE COURT: Okay. It could have been anybody?

12 THE WITNESS: Yes.

13 THE COURT: I think your objection is correct.
14 Sustained. Go ahead.

15 MR. ROUTSIS: I withdraw the objection.

16 BY MS. PENCE:

17 Q. When you called KGID?

18 MR. ROUTSIS: Objection. Withdrawn.

19 BY MS. PENCE:

20 Q. Did they say anything about who would drive the snow
21 plow in your neighborhood?

22 A. No.

23 Q. Earlier defense Counsel asked you if you had ever been
24 trapped in your house by a berm. And you said had you never been
25 trapped.

1 Do you remember earlier when I was asking you about the
2 berms, you said it made it hard to go in and out of your
3 driveway?

4 A. You couldn't get out there.

5 Q. Okay. So, you couldn't get out when there were berms?

6 A. No.

7 Q. Okay. And if you can't leave, does that, would that be
8 the same as being trapped?

9 A. Yes.

10 MS. PENCE: I have nothing further, Your Honor.

11 THE COURT: Mr. Routsis?

12 MR. ROUTSIS: Just a quick follow-up.

13 EXAMINATION

14 BY MR. ROUTSIS:

15 Q. What, do you remember when you couldn't get out of your
16 driveway because of the berm?

17 A. No.

18 Q. And you don't know who left the berm?

19 A. No.

20 MR. ROUTSIS: Nothing further.

21 THE COURT: Mr. Klementi, thank you very much for your
22 help today.

23 THE WITNESS: I thank you.

24 THE COURT: You have some pictures up there. Can our
25 constable have those, and would you cap our writing instrument

1 before you had that berm?
2 A. Yes.
3 Q. Okay. And how do you know that the street was plowed
4 before the berm appeared?
5 A. Because I saw Mr. Spencer driving by with the snow
6 plow.
7 Q. Were you able to recognize him as he drove by?
8 A. Yes. I could see him.
9 Q. And did he just pass by your house, or does he stop, or
10 how did you have opportunity to recognize him?
11 A. I saw him driving by and then he drove to his house,
12 parked the snow plow there and went for a break in his house.
13 Q. So, you actually saw him park the snow plow and exit
14 the snow plow and go into his home?
15 A. Correct.
16 Q. Okay. And then after you saw him take that break, when
17 did the berm appear at your home?
18 A. I saw the berm later on.
19 Q. Did you see Mr. Spencer actually making the berm?
20 A. No, I did not.
21 Q. But, it was earlier the same day you saw him driving?
22 A. Correct.
23 Q. Do you believe that Mr. Spencer is the driver that made
24 the berm at the end of your driveway?
25 A. Yes.

1 A. I'm sorry. Could you repeat your question?
2 Q. Was there a berm that prevented you from leaving your
3 house one day because of the berm?
4 A. I'm sorry. I misunderstood your question. No. My
5 husband always tried to push the berm away, so I can drive to
6 work.
7 Q. So, you were never snowed in all winter where you
8 couldn't drive your car to work, correct?
9 A. We were snowed in until my husband put the berm away.
10 So, it took several hours.
11 Q. Did you ever see, did you ever personally take a
12 picture of any of the these berms?
13 A. No.
14 Q. Did you ever see your husband get snow blown on him?
15 By the snow plow?
16 A. No.
17 Q. Did you ever see your husband get verbally yelled at by
18 Mr. Spencer when he was walking?
19 A. No.
20 Q. Did you ever hear Mr. Spencer say anything to your
21 husband while he was walking that he was going to punch him?
22 A. No.
23 Q. Did you ever take any pictures of the berms?
24 A. No.
25 Q. Did your husband ever take any pictures of the berms?

1 A. I don't know.

2 Q. You would know if he did, wouldn't you?

3 A. No, I don't know. My husband makes so many pictures I
4 don't know when he's doing pictures.

5 Q. Certainly, Mrs. Klementi, you guys were very concerned
6 about these berms, correct?

7 A. Sure.

8 Q. And wouldn't the best evidence be to take a picture?

9 A. If you think about it.

10 THE COURT: I get to rule on what the best evidence is.
11 BY MR. ROUTSIS:

12 Q. Wouldn't it have been a good idea to take a picture to
13 preserve the evidence?

14 A. Could be.

15 Q. And your husband takes pictures as part of his
16 livelihood, doesn't he?

17 A. Yes.

18 Q. So, it's not like you don't have any cameras, is it?

19 A. It's not that. Some things are more important than
20 others, and you don't think all the time about taking pictures,
21 especially when you are stressed out.

22 Q. You are alleging a crime here, about these berms here?

23 A. Yes.

24 THE COURT: Mr. Routsis, the allegations of the
25 Complaint are under the oath of the District Attorney. This

1 witness is not alleging anything.
2 BY MR. ROUTSIS:
3 Q. You are stating facts that amount to intentional
4 misconduct by Mr. Spencer here today, are you not?
5 A. Yes.
6 Q. And you don't have any photographs?
7 A. I don't.
8 Q. Regarding the berms, do you remember any of the dates
9 when these berms were left?
10 A. No.
11 Q. Now, do you think, when you --
12 Do you think that it's illegal or improper to leave a
13 berm when someone is trying to plow a roadway?
14 A. It is not illegal for a berm if it's a normal berm when
15 you snow blow the street.
16 Q. But, these were abnormal berms?
17 A. These were abnormal, yes.
18 Q. How do you create an abnormal berm?
19 A. If it's a certain height, if I can not step over, if I
20 can not drive over with my car, for me this is a higher berm.
21 Q. And how many inches would be an abnormal berm to you?
22 A. Oh, my God. I am very, my knowledge with inches, but
23 maybe it's -- I don't know, I can't tell you. I need a
24 measurement. I am so used to meter and centimeter. And I still
25 don't know what is a yard or whatever. Sorry about that.

1 If something like that, here's the street and here is
2 the, no I don't consider this a berm; I would consider that this
3 a berm.

4 Q. What did you expect Mr. Spencer to do, take snow out of
5 your driveway and plow it to the other side of the street and
6 make a special effort to take care of your driveway?

7 A. No, it's not necessary. But, he made special efforts
8 for other people.

9 Q. How do you know that?

10 A. Because we saw where this was blown.

11 Q. Tell me who did he make a special effort on? Tell me
12 the person?

13 A. Say the question again.

14 Q. You said that Mr. Spencer made a special effort and did
15 not leave a berm in front of some people's driveways. Tell me
16 who.

17 A. I don't know their names.

18 Q. You don't know their names?

19 A. No.

20 Q. So, you expected if Mr. Spencer did a special favor for
21 somebody, that he had an obligation to do a special favor for you
22 as well?

23 A. No, not at all.

24 Q. Very good. Let's --

25 A. Excuse me. I don't cry. It's just that I have

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?

1 A. No. It's not true. My husband walked on the property
2 in the afternoon, before that. Before the deputy came to our
3 house.

4 Q. Okay. The deputy came to your house, and based on a
5 telephone call from the Spencers, allegedly, correct?

6 A. Correct.

7 Q. And they were alleging that your husband was
8 trespassing and taking pictures on their property?

9 A. This, my husband went on their property when they tried
10 to take a picture from the fence, this was in the early evening.
11 The deputy came after, about nine, ten o'clock, to our house.

12 Q. Okay. Now, are you saying that the deputy came after
13 your husband was allegedly threatened by Mr. Spencer?

14 A. Correct.

15 Q. But, he did come pursuant to a phone call from you or
16 Mr. Klementi, correct?

17 A. Correct. We are not familiar that you, and not scared
18 -- I mean familiar that we have to go on the phone right away and
19 call a deputy sheriff. We were raised different. We come from a
20 different country.

21 Q. And this was about that date. Was this in the middle
22 of May sometime?

23 A. 27th of May.

24 Q. Right. Isn't it true that you had made numerous
25 complaints, you or your husband had made numerous complaints to

1 the improvement district prior to that date?

2 A. This is, you are correct, sir.

3 Q. So, you are very well versed and very aware of the

4 rules of making complaints against your neighbors, should you

5 wish, aren't you?

6 A. Yes, if someone is violating something, then we called.

7 With other neighbors.

8 Q. Certainly if your husband had felt he was threatened to

9 be punched at, you were aware you could call the police?

10 A. Sure. But, we didn't think about that. My husband was

11 so shocked and shaking. We said -- he even didn't call his

12 brother so harassed my husband was, and out of his mind that this

13 happened to him.

14 Q. Do you know that we have videotape of that?

15 A. Yeah? Show us.

16 Q. Yeah. And your husband is saying he was threatened to

17 be beaten up by Mr. Spencer?

18 A. Yes.

19 Q. Okay. And the reason you didn't call the police was he

20 was too scared to pick up the phone and dial?

21 A. No, we didn't think about it.

22 Q. You thought about calling the improvement the district

23 several times, quite a bit regarding the Spencers. Why didn't

24 you think about calling the police if your husband was assaulted?

25 A. We were not the only people complaining --

Exhibit 3

Exhibit 3

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2

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6

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF DOUGLAS

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9

HELMUT KLEMENTI,

Case No. 14-CV-0260

10

Plaintiff,

Dept. No. II

11

vs.

12

JEFFREY D. SPENCER, et al.,

13

Defendants.

14

AND RELATED COUNTERCLAIMS.

15

16

DEPOSITION OF

17

ELFRIEDE KLEMENTI

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April 14, 2016

19

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Reno, Nevada

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JOB NO. 299004-A

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REPORTED BY: DEBORAH MIDDLETON GRECO, CCR #113, RDR, CRR

<p style="text-align: right;">Page 2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>FOR THE PLAINTIFF: Nicholas Palmer, Esq. Laub & Laub 630 E. Plumb Lane Reno, NV 89502 323-5282 Nik@lawlaub.com</p> <p>FOR THE DEFENDANTS: David M. Zaniel, Esq. Ranalli & Zaniel, LLC 50 West Liberty St., #1050 Reno, NV 89501 786-4441 Dzaniel@ranallilawyers.com</p> <p>FOR THE COUNTERCLAIMANT: William J. Routsis, II, Esq. 1070 Monroe Street Reno, NV 89509 337-2609</p> <p>FOR COUNTERDEFENDANTS KLEMENTIS: Christian L. Moore, Esq. Lemons, Grundy & Eisenberg 6005 Plumas Street, #300 Reno, NV 89509 786-6868 Clm@lge.net</p> <p>FOR COUNTERDEFENDANT KINION: Michael A. Pintar, Esq. Glogovac & Pintar 427 West Plumb Lane Reno, NV 89509 333-0400 Mpintar@gplawreno.net</p> <p>(Continued on Next Page)</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">I N D E X</p> <p>EXAMINATION PAGE</p> <p>Examination by Mr. Zaniel 5</p> <p>Examination by Mr. Routsis 107</p> <p>EXHIBITS</p> <p>NUMBER DESCRIPTION PAGE</p> <p>EXHIBIT 8 Brochure "The Klementis" 101</p> <p>EXHIBIT 9 Google Map of the Area 101</p> <p>(Original Exhibits Retained in Binders at Sunshine Litigation Services)</p>
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">A P P E A R A N C E S (Continued)</p> <p>FOR THE SHAWs: Tanika M. Capers, Esq. 6750 Via Austi Parkway, #310 Las Vegas, NV 89119 (702) 371-5657 Tcapers@amfam.com</p> <p>ALSO PRESENT: Mary Ellen Kinion Helmut Klementi Jeffrey Spencer Marilyn Spencer</p>	<p style="text-align: right;">Page 5</p> <p>BE IT REMEMBERED that on Thursday, April 14, 2016, at the hour of 9:11 a.m. of said day, at the offices of SUNSHINE LITIGATION SERVICES, 151 Country Estates Circle, Reno, Nevada, before me, DEBORAH MIDDLETON GRECO, a Certified Court Reporter, personally appeared ELFRIEDE KLEMENTI, who was by me first duly sworn and was examined as a witness in said cause.</p> <p style="text-align: center;">-oOo-</p> <p style="text-align: center;">ELFRIEDE KLEMENTI</p> <p>called as a witness, having been duly sworn, testified as follows:</p> <p style="text-align: center;">EXAMINATION</p> <p>BY MR. ZANIEL:</p> <p>Q Can you state your name for the record, ma'am?</p> <p>A My name is Elfriede Klementi. I'm known as Elfie.</p> <p>Q Okay. Maybe you could spell that just for the court reporter's sake?</p> <p>A I spell Elfriede, E-L-F-R-I-E-D-E. Last name, Klementi, with K-L-E-M-E-N-T-I.</p> <p>Q I'm going to call you Miss Klementi, if that's okay?</p> <p>A Whatever you want.</p> <p>Q Okay. So you were present at the depositions that were taken last Thursday, I believe, for each one of them?</p> <p>A Yes.</p> <p>Q I believe in each one of those depositions you heard some admonitions or rules of depositions that were given.</p>

<p style="text-align: right;">Page 30</p> <p>1 A I had no contact with the Spencers.</p> <p>2 Q Are you aware as we sit here today whether they</p> <p>3 retaliated in any capacity against Egon or Helmut Klementi?</p> <p>4 A I don't know about Helmut. I know about my husband.</p> <p>5 But I was not there.</p> <p>6 Q Okay. Well, considering the fact that we may not be</p> <p>7 able to get your husband's testimony, could you tell us what</p> <p>8 they were?</p> <p>9 What retaliations were you aware of?</p> <p>10 A My husband came home one evening, and when he was</p> <p>11 walking his dog, and he said that Mr. and Mrs. Spencer</p> <p>12 confronted him.</p> <p>13 And that Mr. Spencer say to my husband, I punch you in</p> <p>14 the face.</p> <p>15 Q Okay. That he would punch him in the face?</p> <p>16 A Yes.</p> <p>17 Q So a threat --</p> <p>18 A If he comes around again, threatening, I punch you in</p> <p>19 the face.</p> <p>20 Q Let's go over that a little bit more, because I'm not</p> <p>21 sure I understand it.</p> <p>22 So your husband came home one day after walking his</p> <p>23 dog, and your husband told you that he had met both Mr. and</p> <p>24 Mrs. Spencer somewhere outside?</p> <p>25 A Around the area. Around, yeah, where they build the</p>	<p style="text-align: right;">Page 32</p> <p>1 punch you in the face if something else happens.</p> <p>2 I'm trying to find out what that condition was. If</p> <p>3 they -- if you continue to fight me on the fence, if you come</p> <p>4 around here again, or do you remember what the condition was</p> <p>5 that the threat was made?</p> <p>6 A I don't know what Mr. Spencer had in mind by saying</p> <p>7 that.</p> <p>8 Q Okay. And whatever your husband said, you don't</p> <p>9 recall the exact words?</p> <p>10 A No.</p> <p>11 Q What did you and your husband do with regard to that</p> <p>12 threat?</p> <p>13 Did you contact the police?</p> <p>14 A No. My husband was quite upset and shaken up.</p> <p>15 Q Okay. Did a report get made to the sheriff's office?</p> <p>16 A No.</p> <p>17 Q Did you file a restraining, you or your husband, file</p> <p>18 a restraining order at that time?</p> <p>19 A No.</p> <p>20 Q Did you notify any of the neighbors about that</p> <p>21 conversation?</p> <p>22 A No.</p> <p>23 Q Okay. And that, approximately, that was after the</p> <p>24 18-wheeler and before the fence or after the fence?</p> <p>25 A During the fence.</p>
<p style="text-align: right;">Page 31</p> <p>1 fence.</p> <p>2 Q Okay. And the specific conversation that you, your</p> <p>3 husband told you was that Mr. Spencer said something?</p> <p>4 A Yes.</p> <p>5 Q And what specifically did he say, then?</p> <p>6 I heard that "I'm going to punch you in the face", but</p> <p>7 you also said some other things.</p> <p>8 If you come around here again or --</p> <p>9 A This are my words. This are not my husband's words.</p> <p>10 Q Do you remember specifically what your husband said?</p> <p>11 A I remember very clear that he said that Mr. Spencer</p> <p>12 say to him, I punch you in the face.</p> <p>13 Q And -- I'm sorry. I cut you off.</p> <p>14 A No.</p> <p>15 Q And you're summarizing or generalizing the "if you</p> <p>16 come around here again".</p> <p>17 When you said "if you come around here again", that</p> <p>18 may not have been exactly what your husband had said, but that's</p> <p>19 what you are summarizing it to be.</p> <p>20 Do you not understand?</p> <p>21 A No. No, I don't. Can you phrase it different?</p> <p>22 Q I can.</p> <p>23 So the conversation was that Mr. Spencer told Egon</p> <p>24 that he would punch him in the face.</p> <p>25 I guess there was a condition to that: I'm going to</p>	<p style="text-align: right;">Page 33</p> <p>1 Q During the fence.</p> <p>2 Before the planning commission meeting, or after the</p> <p>3 planning commission meeting?</p> <p>4 A I don't remember.</p> <p>5 Q Okay.</p> <p>6 A Oh, I'm sorry. I do remember. The planning</p> <p>7 commission was in December.</p> <p>8 Q December of --</p> <p>9 A 2012.</p> <p>10 Q Okay. So the planning commission, when you all went</p> <p>11 down there was in 2012, and that was about the fence?</p> <p>12 A Correct.</p> <p>13 Q Okay. That wasn't the same meeting, the KGID meeting,</p> <p>14 about the snow berm, so that's a different issue, right?</p> <p>15 A Yes.</p> <p>16 Q Okay. All right. So the threatening -- your husband</p> <p>17 told you about the threatening comments by Mr. Spencer.</p> <p>18 That would have been before December 2012?</p> <p>19 A Yes.</p> <p>20 Q Okay. But you are not sure how long before</p> <p>21 December 2012?</p> <p>22 A Yeah. It was around the time when they build the</p> <p>23 fence.</p> <p>24 Q Okay. So around December 2012?</p> <p>25 A No. May 2012, they build the fence.</p>

<p style="text-align: right;">Page 34</p> <p>1 Q And that's when the threatening comments were made?</p> <p>2 A Correct.</p> <p>3 Q Okay. And then did the fence continue to get built,</p> <p>4 up until December 2012 when the planning commission meeting</p> <p>5 happened?</p> <p>6 A The fence was built over the Memorial weekend. It was</p> <p>7 completely built.</p> <p>8 Q Okay. And the meeting with the commission wasn't</p> <p>9 until December 2012?</p> <p>10 A Correct.</p> <p>11 Q All right. So were there any other complaints or</p> <p>12 disputes that you made to any government agency other than the</p> <p>13 18-wheeler and the planning commission with regard to the fence?</p> <p>14 A No.</p> <p>15 Q Were there any other threatening remarks made by</p> <p>16 Mr. Spencer or Mrs. Spencer other than the one we talked about</p> <p>17 between the time that you first met the Spencers up until</p> <p>18 December 18th of 2012?</p> <p>19 A No.</p> <p>20 Q Is there a reason that you didn't, when I say "you",</p> <p>21 is there a reason that you or your husband didn't make a report,</p> <p>22 or call 911, or file a restraining order if Mr. Spencer</p> <p>23 threatened to physically harm your husband?</p> <p>24 A We didn't think about it. We never had anything to do</p> <p>25 with police or sheriff. And he was just shaken up, and we</p>	<p style="text-align: right;">Page 36</p> <p>1 Spencers prior to December 18th, 2012?</p> <p>2 A To us?</p> <p>3 Q Yes.</p> <p>4 A No.</p> <p>5 Q Helmut never told you or your husband about any</p> <p>6 threatening comments made by the Spencers before December 18th,</p> <p>7 2012?</p> <p>8 A No.</p> <p>9 Q Okay. All right. So let's go to December 12, 2012.</p> <p>10 There was a KGID, was there a KGID meeting on</p> <p>11 December 12, 2012?</p> <p>12 A No. 18th.</p> <p>13 Q Okay. Tell me about the snow plowing issue that --</p> <p>14 you were here during all these depositions last week?</p> <p>15 A Uh-huh (affirmative).</p> <p>16 Q Do you have any information regarding the snow removal</p> <p>17 issues?</p> <p>18 I guess, let's start with, you heard testimony last</p> <p>19 week that Mr. Spencer put snow on Egon in his driveway at some</p> <p>20 point.</p> <p>21 Did you hear that testimony?</p> <p>22 A Yes.</p> <p>23 Q And do you remember when that was?</p> <p>24 A December 12.</p> <p>25 Q Okay. And were you home at that time?</p>
<p style="text-align: right;">Page 35</p> <p>1 talked about it.</p> <p>2 Q Okay. But you called the Douglas County Sheriff's</p> <p>3 Department about the 18-wheeler, though, right?</p> <p>4 A Yeah. To find out if it's allowed to park in a</p> <p>5 residential area.</p> <p>6 Q Okay.</p> <p>7 A Because it was a hazard. It blocked half of the</p> <p>8 street. And people had a hard time to go around, from, coming</p> <p>9 from Juniper or driving up from Meadow Lane.</p> <p>10 Q I understand.</p> <p>11 Helmut and Egon are twin brothers?</p> <p>12 A Yes.</p> <p>13 Q Okay. And where does -- I mean, I could ask Helmut</p> <p>14 too, where does Helmut live relative to you guys?</p> <p>15 A Two streets lower. It's called Pine -- Pine Ridge?</p> <p>16 Q I'll ask him. That's fine. I just want to know the</p> <p>17 approximate location.</p> <p>18 Between May of 2012 and December of 2012, how often</p> <p>19 would you see Helmut?</p> <p>20 A Nearly daily.</p> <p>21 Q Did Helmut typically come to your house, or did you</p> <p>22 guys go to Helmut's house or a combination of both?</p> <p>23 A Mostly he comes to our house.</p> <p>24 Q Did Helmut ever report -- did Helmut ever speak to you</p> <p>25 about any physical comments or threatening comments made by the</p>	<p style="text-align: right;">Page 37</p> <p>1 A No.</p> <p>2 Q Where were you at?</p> <p>3 A I was working.</p> <p>4 Q Okay. I didn't get that part.</p> <p>5 Where do you work at, ma'am?</p> <p>6 A You have to do your homework.</p> <p>7 Q I have to do my homework.</p> <p>8 A No. I'm working at Harrah's. Harrah's Casino in</p> <p>9 Stateline.</p> <p>10 Q And what do you do there?</p> <p>11 A I work for entertainment.</p> <p>12 Q The entertainment department?</p> <p>13 A The department, yeah.</p> <p>14 Q What do you do specifically for the entertainment</p> <p>15 department?</p> <p>16 A I take care of all the entertainers, bands who come to</p> <p>17 the South Shore Room or outdoor concerts.</p> <p>18 Q Okay. So Miss Kinion described a job similar to that,</p> <p>19 I believe, when she was deposed.</p> <p>20 Is it a similar job that you have?</p> <p>21 A I think my job is more -- I don't know what she said.</p> <p>22 I don't remember.</p> <p>23 Q That's fine.</p> <p>24 So if Harrah's books a concert or a band, they contact</p> <p>25 you, and they say, you are responsible for meeting the needs of</p>

<p style="text-align: right;">Page 42</p> <p>1 A Oh, this is in the '80s.</p> <p>2 Q Okay. And this is in Caesar's Palace in Las Vegas?</p> <p>3 A This is different pictures.</p> <p>4 Q Okay.</p> <p>5 A I can tell you where the pictures were taken.</p> <p>6 Q So they were international?</p> <p>7 A Yes.</p> <p>8 Q This was an international act?</p> <p>9 A Yes.</p> <p>10 Q Okay. All right. So when you met -- do you all want</p> <p>11 to see this?</p> <p>12 MR. PALMER: Sure. Have not seen this before.</p> <p>13 BY MR. ZANIEL:</p> <p>14 Q When you met your husband, then, he was part of the</p> <p>15 act, and then you started to go on tour with the act?</p> <p>16 A Right.</p> <p>17 Q Okay. And you went internationally wherever they did?</p> <p>18 A Correct.</p> <p>19 Q What did you -- it was a bicycle act for two.</p> <p>20 What, where do you come in?</p> <p>21 A Well, I met him in Austria. Fell in love. Dated two</p> <p>22 years, and he asked me to marry.</p> <p>23 Q No. I understand that.</p> <p>24 But where did you come in, in the act, if it was a</p> <p>25 bicycle act for two? Did you perform?</p>	<p style="text-align: right;">Page 44</p> <p>1 Q So Egon had hip replacement?</p> <p>2 A Correct.</p> <p>3 Q Which hip did he have replaced?</p> <p>4 A The right one.</p> <p>5 Q And then from that point forward, he didn't work at</p> <p>6 all?</p> <p>7 A No. He was an artist. He did art and gave lessons</p> <p>8 and was in the art association.</p> <p>9 And then later on, he started driving limousines for</p> <p>10 Harrah's.</p> <p>11 Q Okay. So let's talk about the artist.</p> <p>12 So your husband was an artist. Did he have his own</p> <p>13 studio, or did he work out of the house on Meadow Lane?</p> <p>14 A He worked out of the house. At this time, he had no</p> <p>15 studio.</p> <p>16 Q Has he ever had a studio?</p> <p>17 A No. We just built on a room, and that's where he did.</p> <p>18 Q His artwork?</p> <p>19 A Yeah.</p> <p>20 Q And is it painting? Is that the type of art?</p> <p>21 A He is doing painting, mixed media, photography.</p> <p>22 Sculptures.</p> <p>23 He is a multi-talent, multimedia, I have to say.</p> <p>24 Q Okay. All right. And then he also drove limos for</p> <p>25 Harrah's.</p>
<p style="text-align: right;">Page 43</p> <p>1 A No.</p> <p>2 Q Okay.</p> <p>3 A You mean what I did private?</p> <p>4 Q I wanted -- my question was, did you perform in the</p> <p>5 show?</p> <p>6 Or did you just follow your husband with Helmut as</p> <p>7 they toured around?</p> <p>8 A I started being in the act 1965.</p> <p>9 Q Okay. And what was your role in the act?</p> <p>10 A I was always on top.</p> <p>11 Q Okay.</p> <p>12 A I mean --</p> <p>13 Q So it was a three-person show?</p> <p>14 A Yes.</p> <p>15 Q And how long did that act continue?</p> <p>16 A better question is, when was your last performance?</p> <p>17 A May '89 at Harrah's in Lake Tahoe.</p> <p>18 Q And is that the time that you started working for</p> <p>19 Harrah's in the capacity that you are?</p> <p>20 A Three months after, I started with Harrah's.</p> <p>21 Q Okay. After the last performance at Harrah's in May</p> <p>22 of 1989, do you know if your husband worked in any capacity</p> <p>23 after that?</p> <p>24 A No. He had hip replacement after we quit show</p> <p>25 business in May '89.</p>	<p style="text-align: right;">Page 45</p> <p>1 How long did he do that job for?</p> <p>2 A I think he did it for 6, 7 years.</p> <p>3 And after that, he was a butler for Harrah's for the</p> <p>4 VIPs at the 16th floor.</p> <p>5 Q Okay. Now if you know, I'm going to ask Helmut, but</p> <p>6 if you know, did Helmut have hip replacement surgery at some</p> <p>7 point as well?</p> <p>8 A No.</p> <p>9 Q Okay. So I think that takes us through your career.</p> <p>10 Yes?</p> <p>11 A Yes.</p> <p>12 Q All right. So let's go back to where we left off</p> <p>13 before we got into that.</p> <p>14 The December 12, 2012, incident. You were not home at</p> <p>15 the time you said?</p> <p>16 A No.</p> <p>17 Q How did you find out about this incident?</p> <p>18 A My husband called me at work.</p> <p>19 Q Okay. And approximately what time did your husband</p> <p>20 call you, if you remember?</p> <p>21 A Must be around noonish, 1 o'clock, something like</p> <p>22 that.</p> <p>23 Q And when your husband called you, what did he say?</p> <p>24 A He had a teary voice, and he said, guess what happened</p> <p>25 to me?</p>

<p style="text-align: right;">Page 46</p> <p>1 That Mr. Spencer put snow and debris over his body, 2 when he was in the driveway. 3 Q Okay. That was pretty specific. 4 Was that the exact words, or are you just kind of 5 summarizing? 6 A I'm summarizing what happened. 7 Q Fair enough. 8 And in response to that, what did you say? 9 A I said, should I come home? And he said, no. He can 10 deal with it. 11 Q Okay. 12 A He knew it was a difficult day for me not to come 13 home, so he said he can deal with it. 14 Q Okay. What do you mean it was a difficult day for 15 you? 16 A I had a lot of work there. 17 Q Oh, busy day? 18 A A busy, yeah, sorry. 19 Q All right. So did you ask Mister -- your husband, if 20 he was injured in this incident? 21 A I don't remember. 22 Q Did you recommend that the police be called for that 23 incident? 24 A No. 25 Q Okay. How long were you on the phone with your</p>	<p style="text-align: right;">Page 48</p> <p>1 body. 2 Q I just want to make sure. 3 Up until that point, with regard to snowplowing, you 4 don't have any information about Mr. Spencer doing anything 5 inappropriate with regard to his plowing around your home; is 6 that true? 7 A Yeah. Once we were bermed-in. 8 Q Okay. So when was that? 9 A Sometime in December. 10 Q Of 2012? 11 A I assume so, yeah. 12 Q I don't want you to assume. 13 A No. I say so. Sorry. 14 Q That's okay. 15 So in December 2012, was that before or after the 16 throwing of the snow onto Egon? 17 A This was before. 18 Q Okay. So before December 2012 there was an incident 19 where you were bermed-in? 20 A Correct. 21 Q Did you see that happen? 22 A No. 23 Q As we sit here today, do you know for a fact that 24 Mr. Spencer was the operator of the plow that bermed you in? 25 A Yes.</p>
<p style="text-align: right;">Page 47</p> <p>1 husband about that? Couple minutes? 2 A Yeah. 3 Q Do you know if the police were called about that 4 incident? 5 A Yeah, he told me later. 6 Q Okay. What time did you get home that day? 7 A I don't remember. 8 Q Did Egon, did he say he had any physical injuries as a 9 result of that incident? 10 A No. 11 Q Did you and your husband ever talk about that incident 12 after that day? 13 In other words, you had a phone call what happened. 14 When you got home from work, did you guys talk about 15 it again? 16 A Probably. 17 Q You don't have any specific recollection of 18 conversations? 19 A No. 20 Q Okay. Did Egon go show you where he was standing when 21 this happened? 22 A He said in front of the driveway, near to the street. 23 Q Okay. And did he describe with any detail how the 24 snow came out of the plow at all or anything like that? 25 A No, he said he saw him coming. And just came over his</p>	<p style="text-align: right;">Page 49</p> <p>1 Q How do you know that? 2 A Because I saw him coming from the Meadow Lane, driving 3 into Charles, to his house. 4 He parked his snowplow there and went in his house. 5 Q Okay. Was that after or before the berm was in your 6 driveway? 7 A I had the berm there already. 8 Q Okay. So just so I am clear. 9 You didn't see the snow being bermed into your 10 driveway. 11 You observed Mr. Spencer get out of a plow that was 12 parked in front of his residence and go in. 13 And your conclusion was that it must have been 14 Mr. Spencer that was operating the plow at that time? 15 A Because he came -- I don't know where east and west 16 is, sorry. 17 He came by our house. 18 Q Yes. 19 A I didn't see that. 20 And usually to turn around, end of Meadow Lane, and 21 come back down Meadow Lane, and I saw the snowplow going from 22 Meadow Lane in the intersection going up to his house, and he 23 stopped there, and he went into his house. 24 Q Okay. So he passed -- a snowplow passed your house on 25 Meadow Lane.</p>

<p style="text-align: right;">Page 50</p> <p>1 Went to the end, made a U-turn, came down Meadow Lane, 2 and then made a left on Charles? 3 A Correct. 4 Q Okay. And you saw the snowplow make the left turn 5 onto Charles? 6 A Yes. 7 Q And you watched the snowplow from that point up until 8 it stopped, and you saw Mr. Spencer get out? 9 A Correct. 10 Q Where -- were you outside or inside at this time? 11 A Inside. 12 Q Where were you inside your home? 13 A In the -- in our computer room facing Meadow Lane, 14 second floor. 15 Q Okay. So your home is a two-story home, then? 16 A Correct. 17 Q You were on the second floor, which you labeled the 18 computer room, and there is a window there, and that faces out 19 to Meadow Lane? 20 A Meadow Lane. 21 Q From that vantage point, you were able to see the 22 snowplow go by on Meadow Lane? 23 A Correct. 24 Q You were able to see the snowplow make a left turn on 25 Charles?</p>	<p style="text-align: right;">Page 52</p> <p>1 realize that you were bermed-in? 2 A When I watched the snowplow going to Charles, I came 3 back to the room, and then I saw that we had the snow berm 4 there. 5 Q Okay. 6 A And my husband saw it earlier. 7 Q So your husband was home at that time, as well? 8 A Yeah, he was downstairs. 9 Q Okay. And we talked about berming-in, I think a few 10 times, and I guess for definition purposes, let's be on the same 11 page with it. 12 So berming-in, as far as you would define it -- I 13 don't want to testify for you, but I just wanted to make sure I 14 understand. 15 Berming-in is when snow, ice, debris is deposited in 16 front of your driveway making it impossible for you to enter or 17 exit your driveway? 18 A Correct. 19 Q Would you define it any other way? 20 A No, I agree with you. 21 Q Okay. On that particular day, which was before 22 December 12 of 2012, did any other driveways that you could see 23 have any berming-in issues? 24 A Before this time? 25 Q Before that time?</p>
<p style="text-align: right;">Page 51</p> <p>1 A Yes. 2 Q Were you able to see Mr. Spencer from that vantage 3 point? 4 A I saw the snowplow. 5 And I saw that Mr. Spencer is parked at his house and 6 came out of the snowplow, so he was in the snow driving by. 7 Q I understand that. 8 But just from your vantage point of being in the 9 computer room, you were able to see the parked snowplow, and 10 Mr. Spencer get out of it? 11 A No. We have more windows. 12 I followed. I went to a different room and looked 13 where the snowplow is going. 14 Q Okay. 15 A Sorry about that. 16 Q That's fine. I just want to follow that. 17 A Yeah. 18 Q So did you stay on the second floor, or did you go 19 down to the first floor to follow the snowplow? 20 A No. I stayed on the second floor. 21 Q So there is a window on your second floor that looks 22 out over Charles Street? 23 A Correct. 24 Q Okay. When you were in the computer room, were you 25 able to observe the berming-in part of it, or when did you</p>	<p style="text-align: right;">Page 53</p> <p>1 A Yes. 2 Q That was -- let me go back. 3 On that day, whenever that day was when you got 4 bermed-in, it was before December 12. 5 You are not sure of the exact day, though? 6 A No. Sorry. 7 Q But on that specific day that you watched the snowplow 8 come around, when you looked out the window, did other driveways 9 also have bermed-in issues? 10 A I didn't check on this day. 11 Q Okay. But on prior days, you had seen that? 12 A Yes. 13 Q Okay. So we can talk about that in a minute. 14 As a result of that berming-in issue, did you contact 15 anybody, on that day now, the day that you actually observed the 16 snowplow come around. 17 Did you contact the Douglas County Sheriff's Office? 18 A No. 19 Q Did you contact KGID? 20 A No, I did not. 21 Q Did you make any reports to anyone? 22 A I did not. 23 Q Okay. How did the snow and debris get out of the 24 berming-in? 25 Did your husband have to go out and shovel it?</p>

<p style="text-align: right;">Page 54</p> <p>1 A We both had to shovel it, at least to make one space 2 so we can leave with the car. 3 Q Okay. Did you or your husband ever go talk to 4 Mr. and Mrs. Spencer about that? 5 A No. 6 Q Did you take any pictures of that? 7 A No. 8 Q Did your husband take any pictures of that? 9 A No. 10 Q Did Helmut take any pictures of that? 11 A No. He doesn't live there. 12 Q Okay. So then you mentioned some other berming-in 13 issues that you observed, but weren't part of, yourself? 14 A We were always included in different berms, too. 15 Q So that -- before December 2012, before December 12, 16 2012, when you specifically have that recollection of the 17 snowplow coming around, prior to that, you also had issues of 18 being bermed-in? 19 A Yes. 20 Q Okay. And how many times would you say that you have 21 been bermed-in? 22 A Oh, I could not tell you. 23 Q More than ten, or less than ten? 24 A Less than ten. I don't know. 25 Q I don't want you to guess at anything.</p>	<p style="text-align: right;">Page 56</p> <p>1 December 12th, when this happened, he reported it to KGID. 2 Q Okay. Now it had happened before, though, correct? 3 The berming-in had happened before? 4 A Yes. 5 Q At least one time we know? 6 A Yes. 7 Q There was no complaints made at that time? 8 A No. 9 Q On any of those prior times, do you have any evidence 10 that Mr. Spencer was operating the plow at that time? 11 A No. 12 Q Okay. Is there a reason that it had happened on prior 13 occasions, and there was no complaints made to KGID, but on 14 December 12th, there was a complaint made? 15 A This was when he got sprayed with the snow and debris. 16 Q Okay. 17 A So he had to report it. 18 Q Okay. The one time, though, that you actually 19 observed, and I don't want to keep asking the same question. 20 But the one time that you actually observed 21 Mr. Spencer coming around Charles Street and getting out of his 22 plow, that was before December 12, 2012? 23 A Correct. 24 Q But you didn't report it, then? 25 A No.</p>
<p style="text-align: right;">Page 55</p> <p>1 A So I don't know. 2 Q Okay. But more than one? 3 A Yes. 4 Q Have you ever taken any photographs of your driveway 5 in a condition where it's been bermed-in? 6 A I did not. 7 Q Did Helmut or Klementi -- or did Helmut or your 8 husband take any photographs? 9 A Helmut did some pictures. 10 Q Okay. 11 A December 18th. 12 Q Okay. Before December 18th -- let's go from 13 December 12th right now. 14 Before December 12th, did anybody that you are aware 15 of take any pictures of bermed-in areas? 16 A I don't know. 17 Q As we sit here today, have you ever seen any 18 photographs of any bermed-in driveways before December 12th, 19 2012? 20 A I don't think so. 21 Q Okay. But it happened, but there was just no photos? 22 A Yeah. 23 Q Were there any complaints made by you or Egon or 24 Helmut to KGID about the berming-in issue? 25 A Yeah. I think, I believe my husband went on</p>	<p style="text-align: right;">Page 57</p> <p>1 Q And that particular time wasn't the first time that 2 you had been bermed-in? 3 A Yes. 4 Q Is there a reason you hadn't reported it up through 5 that time? 6 A We live in a snow country. We know you have certain 7 berms. 8 But if the berms are too high, like on this one day, 9 then, you know, it's different. 10 Q Okay. So just so I'm clear, then. 11 Up until that time before December 12th, 2012, there 12 was berms, but you didn't think they were too high? 13 A Good question. There were some berms too high. 14 Q But how come you didn't report those? 15 A We reported all this December 18th. 16 Q No. I understand that. 17 But how come you didn't report it at the time? 18 A We don't run every time to an office and report it. 19 Q Okay. All right. December 12th happens. 20 Your husband makes a complaint to KGID. 21 Do you know if he physically went down and wrote a 22 report, or did he just call? 23 A I think he went down physically. 24 Q Okay. Have you ever seen a copy of a report that was 25 written on that day?</p>

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:

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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

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EXHIBIT 5

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

7 IN AND FOR THE COUNTY OF DOUGLAS

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10 HELMUT KLEMENTI, Case No. 14-CV-0260
Plaintiff,

Dept. No. II

11

vs.

12 JEFFREY D. SPENCER, et al.,

Defendants.

13 AND RELATED COUNTERCLAIMS.

14

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16

DEPOSITION OF

17

ELFRIEDE KLEMENTI

18

April 14, 2016

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Reno, Nevada

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21

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JOB NO. 299004-A

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REPORTED BY: DEBORAH MIDDLETON GRECO, CCR #113, RDR, CRR

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5	630 E. Plumb Lane	5	Examination by Mr. Routsis 107
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<p style="text-align: right;">Page 6</p> <p>1 So what I'm about to tell you is probably redundant</p> <p>2 for you, but I think I should probably go over those rules just</p> <p>3 so you are understanding now that you are the deponent in the</p> <p>4 case, okay?</p> <p>5 A Thank you.</p> <p>6 Q The court reporter placed you under oath this morning.</p> <p>7 A Uh-huh (affirmative).</p> <p>8 Q And we're sitting in an informal setting in a</p> <p>9 conference room.</p> <p>10 But the oath that was provided to you was the same</p> <p>11 oath that would be given in a courtroom, and that oath requires</p> <p>12 you to tell the truth today under the penalty of perjury.</p> <p>13 Do you understand that?</p> <p>14 A Yes.</p> <p>15 Q If you don't understand a question that is asked of</p> <p>16 you by myself or any of the attorneys, then stop us and let us</p> <p>17 know.</p> <p>18 If you answer the question today, then we will assume</p> <p>19 that you have understood the question and answered it to the</p> <p>20 best of your ability; is that fair?</p> <p>21 A Yes, sir.</p> <p>22 Q The last major rule is that after today, if you change</p> <p>23 your testimony, the attorneys may be able to comment upon those</p> <p>24 changes, and it may affect your credibility.</p> <p>25 Do you understand that?</p>	<p style="text-align: right;">Page 8</p> <p>1 incident, and any information you may know about after the</p> <p>2 incident.</p> <p>3 So with that said, let's get started.</p> <p>4 What is your date of birth, ma'am?</p> <p>5 A August 14, 1941.</p> <p>6 Q And where were you born?</p> <p>7 A In Austria.</p> <p>8 Q And when did you move from Austria to the United</p> <p>9 States?</p> <p>10 A The first time we came to the United States was 1975.</p> <p>11 And we are here since, permanent, since -- oh, my</p> <p>12 goodness. 1989.</p> <p>13 Q Okay. So 1975, you came to the United States?</p> <p>14 A Yes.</p> <p>15 Q And then you moved back to Austria?</p> <p>16 A We traveled worldwide. So we came and left Lake</p> <p>17 Tahoe.</p> <p>18 But since 1989, we are permanent.</p> <p>19 Q Okay. And how long have you lived -- well, what's</p> <p>20 your address, ma'am?</p> <p>21 A Physical address? 187 Meadow Lane, Stateline, Nevada,</p> <p>22 89449.</p> <p>23 Q Okay. And when did you obtain your, or when did you</p> <p>24 purchase that residence?</p> <p>25 A Oh, nearly 30 years ago. About 26 years ago.</p>
<p style="text-align: right;">Page 7</p> <p>1 Do you understand that?</p> <p>2 A Yes, I do.</p> <p>3 Q Those are the major rules.</p> <p>4 If you need to take a break or talk to your attorney,</p> <p>5 I don't have any problem with that.</p> <p>6 If there's a question that's pending, I'd like to just</p> <p>7 have that response before we break, but we'll know when the good</p> <p>8 times to break are.</p> <p>9 But if you need to go to the bathroom right away or</p> <p>10 something, just let me know, and we'll stop the deposition.</p> <p>11 Have you taken any medications in the last 24 hours?</p> <p>12 A Yes.</p> <p>13 Q Okay. What medications have you taken?</p> <p>14 A Blood pressure pill.</p> <p>15 Q Okay. That blood pressure pill doesn't effect your</p> <p>16 ability to recall information or testify clearly here today?</p> <p>17 A No.</p> <p>18 Q And you are feeling in overall good health to go</p> <p>19 forward this morning?</p> <p>20 A I feel fantastic.</p> <p>21 Q Very good.</p> <p>22 What I would like to do is get a little background</p> <p>23 information from you.</p> <p>24 And then we'll talk about some incidents leading up to</p> <p>25 the main incident, and then information that you know about the</p>	<p style="text-align: right;">Page 9</p> <p>1 Q What year would that be?</p> <p>2 A Oh, I can't tell exactly.</p> <p>3 Q Make me do math in the morning.</p> <p>4 A '92.</p> <p>5 Q Okay. 1992?</p> <p>6 A Yeah.</p> <p>7 Q So that was after you were permanently in the United</p> <p>8 States, then?</p> <p>9 A Correct.</p> <p>10 Q Okay. The first time you were in the United States in</p> <p>11 '75, how long did you stay that time approximately?</p> <p>12 A We stayed about 6, 8 months.</p> <p>13 Q Okay.</p> <p>14 A And then we traveled back to Europe, and coming and</p> <p>15 going since '89.</p> <p>16 Q Okay. And that 6 to 8 months the first time you came,</p> <p>17 was that, were you in the Lake Tahoe area?</p> <p>18 A No. The first time we came was to Anaheim.</p> <p>19 Q Okay.</p> <p>20 A We did sport shows, Anaheim and Kansas City, and then</p> <p>21 we flew back to Austria and came back again.</p> <p>22 Q So 1989, when you came back, did you come back to the</p> <p>23 Nevada area at that time?</p> <p>24 A Yes.</p> <p>25 Q Okay. So had you been to Lake Tahoe before 1989?</p>

<p style="text-align: right;">Page 10</p> <p>1 A Yes.</p> <p>2 Q So you had visited on your last occasion?</p> <p>3 A Yes.</p> <p>4 Q You felt that to be a nice place to live, and when you</p> <p>5 returned in 1989, that's where you knew that you were going to,</p> <p>6 eventually, buy a home and reside?</p> <p>7 A Correct.</p> <p>8 Q Okay. All right. So 1992 is when you moved into the</p> <p>9 Meadow Lane?</p> <p>10 A Yes.</p> <p>11 Q Okay. And when you moved into the Meadow Lane, do you</p> <p>12 know who your neighbors were in that area?</p> <p>13 A No. We never met the neighbor who was living before</p> <p>14 the Spencers.</p> <p>15 Q Okay. You have heard some of the other deponents in</p> <p>16 the case, like the Shaws and Miss Kinion?</p> <p>17 A No, I did not know anyone.</p> <p>18 Q Okay. So let's go over when you met these particular</p> <p>19 people, so we have kind of got a background in terms of the</p> <p>20 timeline.</p> <p>21 Do you remember when you first would have met</p> <p>22 Miss Kinion?</p> <p>23 A Oh, my God.</p> <p>24 Q You can estimate for me.</p> <p>25 A Yeah. At least, I'm sure at least we're there five</p>	<p style="text-align: right;">Page 12</p> <p>1 himself.</p> <p>2 Q Do you know approximately when that was that</p> <p>3 Miss Spencer introduced herself when she was building the home?</p> <p>4 A I don't remember when they started building the house.</p> <p>5 Q Was it 20 years ago, 15 years ago, or just don't</p> <p>6 recall?</p> <p>7 A At least 15 years ago. I don't know.</p> <p>8 Q Okay. All right. And you are married, ma'am?</p> <p>9 A Yes.</p> <p>10 Q And who are you married to?</p> <p>11 A I'm married to Egon Klementi.</p> <p>12 Q And what year were you and Egon married?</p> <p>13 A 1964. We are married over 52 years.</p> <p>14 Q That's a long time.</p> <p>15 Where were you married?</p> <p>16 A In Austria.</p> <p>17 Q Have you been married to anybody else other than Egon?</p> <p>18 A No. Not in 52 years.</p> <p>19 Q Do you have any children?</p> <p>20 A Yes.</p> <p>21 Q How many children do you have?</p> <p>22 A I have one son.</p> <p>23 Q And what's your son's name?</p> <p>24 A Rene, R-E-N-E, apostrophe.</p> <p>25 Q Last name? I'm sorry.</p>
<p style="text-align: right;">Page 11</p> <p>1 years already in our house at least.</p> <p>2 Q Five years ago or five years --</p> <p>3 A No. In the house. So makes it 1998, 1999, something</p> <p>4 like that.</p> <p>5 Q Okay. When you moved in, was Miss Kinion already</p> <p>6 living there in her residence?</p> <p>7 A Not until her residence now. She was in a different</p> <p>8 house.</p> <p>9 Q Okay. But she was in that area?</p> <p>10 A Correct.</p> <p>11 Q Okay. All right. So that's Miss Kinion.</p> <p>12 How about Dr. Shaw and Mr. Shaw? Do you remember when</p> <p>13 you first would have met them?</p> <p>14 A I met them about 15 years ago. Actually only Dr. Shaw</p> <p>15 and her daughter. But only by name.</p> <p>16 Q Okay.</p> <p>17 A I never met them in person.</p> <p>18 Q Okay. And then when -- as we sit here today, what do</p> <p>19 you recall the first time you would have met Mr. or Mrs.</p> <p>20 Spencer?</p> <p>21 And by "met", I mean, introduced yourself as, hello, I</p> <p>22 am Miss Klementi?</p> <p>23 A Mrs. Spencer introduced herself to us when they</p> <p>24 started building the house.</p> <p>25 We never met Mr. Spencer. He did not introduce</p>	<p style="text-align: right;">Page 13</p> <p>1 A No. I said after the last "E", it's apostrophe. I</p> <p>2 don't know to say in English.</p> <p>3 Q How do you spell apostrophe?</p> <p>4 THE REPORTER: Apostrophe.</p> <p>5 BY MR. ZANIEL:</p> <p>6 Q Apostrophe. I thought it was an Austrian grammatical</p> <p>7 thing. Okay.</p> <p>8 Where is Rene living at?</p> <p>9 A He lives in Austria.</p> <p>10 Q Since, so you moved into the residence, you said, in</p> <p>11 1992.</p> <p>12 A Correct.</p> <p>13 Q Was the house already built when you moved into it?</p> <p>14 A The house was built. But we remodeled the house.</p> <p>15 Q Over the years, how many times have you remodeled the</p> <p>16 house?</p> <p>17 A We remodeled when we moved in.</p> <p>18 Q Did you add onto the house at that time?</p> <p>19 A No.</p> <p>20 Q Okay. You just remodeled the inside?</p> <p>21 A Correct.</p> <p>22 Q Okay. Since 1992 until we sit here today, have you</p> <p>23 and your husband visited Austria?</p> <p>24 A Yes.</p> <p>25 Q How many -- would you say it's more than ten times?</p>

<p style="text-align: right;">Page 14</p> <p>1 A About 8 to 10 times.</p> <p>2 Q The incident that we're here to talk about today was</p> <p>3 in 2012, correct?</p> <p>4 A Correct.</p> <p>5 Q Okay. From December 2012, until we sit here today,</p> <p>6 have you and your husband been to Austria at all?</p> <p>7 A Yes.</p> <p>8 Q How many times have you been to Austria since December</p> <p>9 of 2012?</p> <p>10 A Only one time.</p> <p>11 Q And can you tell me approximately when that was?</p> <p>12 A You know, I have to recall. It was before 2012.</p> <p>13 It was 2011. I apologize.</p> <p>14 Q That's all right. Just to make the record clear,</p> <p>15 then, from December 2012 until we sit here today, you and your</p> <p>16 husband have not been to Austria?</p> <p>17 A No.</p> <p>18 Q Okay. So in 2011, do you remember what time frame</p> <p>19 that was approximately?</p> <p>20 A Yeah, in spring, because my granddaughter got married.</p> <p>21 Q Spring 2011, you and your husband returned to Austria</p> <p>22 for your granddaughter's marriage?</p> <p>23 A Correct.</p> <p>24 Q And how long were you there for during that time?</p> <p>25 A Three weeks.</p>	<p style="text-align: right;">Page 16</p> <p>1 A No. No conversations.</p> <p>2 Q Okay. So you never went over to their house for any</p> <p>3 reason whatsoever, and they never came over to your house?</p> <p>4 A No.</p> <p>5 Q It's a pretty small neighborhood there. So if you see</p> <p>6 each other out, did you wave to each other, or, no?</p> <p>7 A We said "hi".</p> <p>8 Q Okay. And did that continue on up until a certain</p> <p>9 point?</p> <p>10 A Yes.</p> <p>11 Q And at what point did that continue on until?</p> <p>12 A When Mr. Spencer parked his a 18-wheeler on Charles</p> <p>13 Street.</p> <p>14 Q Okay. And do you know approximately what time that</p> <p>15 was?</p> <p>16 A It was in May of 2012.</p> <p>17 Q Okay. So I think we can dispense with a lot of years</p> <p>18 here.</p> <p>19 So from the time that the Spencers moved in, up until</p> <p>20 May of 2012, there was no disputes that you can recall between</p> <p>21 you and the Spencers?</p> <p>22 A We had no contact at all.</p> <p>23 Q Other than "hi" if you saw each other?</p> <p>24 A Yes.</p> <p>25 Q Okay. Were you yourself ever on the Spencer property</p>
<p style="text-align: right;">Page 15</p> <p>1 Q Do you know if Helmut went with you on that visit?</p> <p>2 A No.</p> <p>3 Q And I'm using first names between Helmut and Egon, not</p> <p>4 to be disrespectful, but if I said Mr. Klementi, I don't want</p> <p>5 there to be a confusion.</p> <p>6 A Okay.</p> <p>7 Q Okay. So as we sit here today, you said you had met</p> <p>8 Miss Spencer. She introduced herself to you when they were</p> <p>9 building their house; is that true?</p> <p>10 A Yeah, she came over.</p> <p>11 Q And how was the relationship between you and</p> <p>12 Mrs. Spencer at that point, in the early points, at the early</p> <p>13 times?</p> <p>14 A We never had a contact.</p> <p>15 Q Okay. So it was, basically, just an introduction?</p> <p>16 A Yes.</p> <p>17 Q Very simple conversation?</p> <p>18 A In fact, she came over, introduced herself and</p> <p>19 borrowed a cup of sugar. This was the introduction.</p> <p>20 Q Okay. As we sit here today, do you have any</p> <p>21 recollection of a dispute between you and Mrs. Spencer before</p> <p>22 December of 2012?</p> <p>23 A No.</p> <p>24 Q Before December 2012, do you have any recollections of</p> <p>25 conversations between you and Mrs. Spencer or Mr. Spencer?</p>	<p style="text-align: right;">Page 17</p> <p>1 at all?</p> <p>2 A No.</p> <p>3 Q Did you ever knock on the door for any reason?</p> <p>4 A Not one time.</p> <p>5 Q Okay. The home that you live in on Meadow Lane, is</p> <p>6 that equipped with security cameras?</p> <p>7 A Yes.</p> <p>8 Q And at what point did you purchase the security</p> <p>9 cameras?</p> <p>10 A After the trial. After we are advised to put security</p> <p>11 camera on our house.</p> <p>12 Q Okay. So after December 2012?</p> <p>13 A Correct.</p> <p>14 Q And how many cameras did you install at that time?</p> <p>15 A Four.</p> <p>16 Q And could you tell us just the location of those</p> <p>17 cameras?</p> <p>18 A One is pointed to our entrance to the garage.</p> <p>19 One was pointed on the corner for the intersection</p> <p>20 Charles and Meadow Lane.</p> <p>21 One is pointed to Charles.</p> <p>22 And the fourth one is pointed to Charles and</p> <p>23 intersection Juniper.</p> <p>24 Q Which is the next street down from Meadow?</p> <p>25 A Yeah.</p>

<p style="text-align: right;">Page 18</p> <p>1 Q Where the Shaws live?</p> <p>2 A Correct.</p> <p>3 Q Okay. And if you know the answers to these, great. I</p> <p>4 may ask Helmut as to how the security system works.</p> <p>5 Do you have any information about that?</p> <p>6 A What do you mean exactly?</p> <p>7 Q Well, who installed the cameras?</p> <p>8 A A professional.</p> <p>9 Q Do you know the name of the company?</p> <p>10 A I think it was Accurate, but I'm not hundred percent</p> <p>11 sure.</p> <p>12 Q I understand.</p> <p>13 So Accurate Electronics or something like that?</p> <p>14 A Yeah.</p> <p>15 Q Where are they located?</p> <p>16 A In South Lake Tahoe.</p> <p>17 Q Okay. And then in terms of how the video works, is it</p> <p>18 recorded onto a drive? If you don't know, don't guess, and</p> <p>19 don't -- just tell me you don't know.</p> <p>20 A I don't know.</p> <p>21 Q Okay. So you wouldn't know how long the video stays</p> <p>22 on a certain device, but it gets recirculated?</p> <p>23 A Yeah. I think it's every two weeks or four weeks, it</p> <p>24 deletes.</p> <p>25 Q Okay.</p>	<p style="text-align: right;">Page 20</p> <p>1 Q Up until that time, had you or Egon made any</p> <p>2 complaints to any government agencies, such as KGID or the</p> <p>3 police or anything about the Spencers?</p> <p>4 A No.</p> <p>5 Q In May of 2012, when you first noticed an 18-wheeler</p> <p>6 on Charles Street, what did you do about that?</p> <p>7 A We asked the code enforcer if this is allowed to park</p> <p>8 on this residential area.</p> <p>9 Q Okay. And when you say the code enforcer, do you</p> <p>10 remember who you called?</p> <p>11 Was that KGID?</p> <p>12 A No, down in Minden.</p> <p>13 Q So a county entity?</p> <p>14 A Correct.</p> <p>15 Q And did you make a phone call? Or did you write a</p> <p>16 letter to them?</p> <p>17 A No. We drove there.</p> <p>18 Q Okay. And did you speak to anybody?</p> <p>19 A Yes.</p> <p>20 Q And when you say "we", that's you and Egon?</p> <p>21 A We drove together.</p> <p>22 Q Okay. And do you remember who you talked to?</p> <p>23 A I don't remember his name.</p> <p>24 Q Okay. At that conversation, you indicated that</p> <p>25 there's an 18-wheeler that's parked on Charles Street, and you</p>
<p style="text-align: right;">Page 19</p> <p>1 A Automatically.</p> <p>2 Q And have you ever saved any of the video that you have</p> <p>3 recorded since the installation of your security cameras?</p> <p>4 In other words, have you ever put any type of device</p> <p>5 into a machine and taken it out and saved information that you</p> <p>6 observed on the cameras?</p> <p>7 A Yeah.</p> <p>8 Q And how many times have you done that approximately?</p> <p>9 A Twice maybe.</p> <p>10 Q Okay. Do you do that, or does Helmut do that?</p> <p>11 A Helmut doesn't live in our house. He has nothing to</p> <p>12 do with the camera.</p> <p>13 Q My mistake. Egon.</p> <p>14 A Oh, no. My husband doesn't know what to do. I am</p> <p>15 doing it.</p> <p>16 Q Okay. My understanding is that Egon's --</p> <p>17 Egon has Alzheimer's.</p> <p>18 Q And it's got progressively worse?</p> <p>19 A Yes. Otherwise, he would be here.</p> <p>20 Q Okay. All right. We'll talk about that in a little</p> <p>21 bit.</p> <p>22 All right. So at some point in May of 2012, is that</p> <p>23 the first time you observed an 18-wheeler parked on Charles</p> <p>24 Street?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 21</p> <p>1 wanted to know if that was legal or a violation of a code?</p> <p>2 A Correct.</p> <p>3 Q And what were you told?</p> <p>4 A That it was illegal.</p> <p>5 Q Okay. And at that time, what did the person that you</p> <p>6 spoke to say?</p> <p>7 Were they going to do anything about it? Or did you</p> <p>8 just kind of walk out of there with the understanding that you</p> <p>9 advised them, and that was -- and then they were going to do it,</p> <p>10 or they were going to do something about it, or they were not</p> <p>11 going to do something about it?</p> <p>12 A The code enforcer said he would check it out.</p> <p>13 Q Okay. And do you know what happened with regard to</p> <p>14 that complaint that was made to the code enforcer?</p> <p>15 Did they follow up on that?</p> <p>16 A I don't know.</p> <p>17 Q Did you ever receive any correspondence from the code</p> <p>18 enforcer or the county regarding that issue?</p> <p>19 A I don't think so.</p> <p>20 Q Did the 18-wheeler continue to park there after that</p> <p>21 meeting?</p> <p>22 A Yes.</p> <p>23 Q Okay. And how long did that last for before you</p> <p>24 stopped seeing an 18-wheeler?</p> <p>25 A The 18-wheeler was coming and going, being parked on</p>

<p style="text-align: right;">Page 22</p> <p>1 the street, and later on, it was parked against their property.</p> <p>2 Q Okay. So when you say it was parked against their</p> <p>3 property, I guess the first time you saw it, was it parked on</p> <p>4 Charles Street or --</p> <p>5 A On Charles Street in front of our windows.</p> <p>6 Q On which side of Charles Street? On the Spencer side</p> <p>7 or your side?</p> <p>8 A On the right side, on the Spencer side.</p> <p>9 Q Okay. And then you saw that truck coming and going</p> <p>10 after you went to the code violation folks, and did it continue</p> <p>11 to park in the same area?</p> <p>12 A Yes.</p> <p>13 Q Okay. Did there come a time where you stopped seeing</p> <p>14 the 18-wheeler?</p> <p>15 A When he went on a trip.</p> <p>16 Q Okay. And when was that?</p> <p>17 A This was in May. I can't tell you the date.</p> <p>18 Q May of two thousand --</p> <p>19 A '12.</p> <p>20 Q Okay. So in May of 2012, you noticed it parked there,</p> <p>21 and then he left, the truck left.</p> <p>22 Did the truck return after that?</p> <p>23 A Yes.</p> <p>24 Q Okay. And then did it, did this kind of leaving and</p> <p>25 coming with the 18-wheeler go on for a period of time?</p>	<p style="text-align: right;">Page 24</p> <p>1 residence about that?</p> <p>2 A A deputy sheriff came, and went to the Spencers'</p> <p>3 house, and after that, he came to our house and told us that he</p> <p>4 told him he is not allowed to park there. It's a violation.</p> <p>5 Q Okay. Okay. With regard to the 18-wheeler, any other</p> <p>6 agencies or entities that you talked to?</p> <p>7 A About what?</p> <p>8 Q The 18-wheeler?</p> <p>9 A No.</p> <p>10 Q Okay. So now we're done with the 18-wheeler?</p> <p>11 A Correct.</p> <p>12 Q So any other issues that exist in which you made a</p> <p>13 complaint or just a request for information or anything like</p> <p>14 that with regard to Mr. and Mrs. Spencer to any government</p> <p>15 entity or agency?</p> <p>16 A Yeah. They started building an illegal fence.</p> <p>17 Q And approximately when was that?</p> <p>18 A This was end of May, too. Memorial Day weekend 2012.</p> <p>19 Q Okay. And tell me what, what did you see happen? Did</p> <p>20 you see the fence start to get built up?</p> <p>21 A Correct.</p> <p>22 Q Okay. And what made you think it was illegal at that</p> <p>23 time?</p> <p>24 Did you know that there was certain rules of the KGID</p> <p>25 or that area, that it was a violation?</p>
<p style="text-align: right;">Page 23</p> <p>1 A Correct.</p> <p>2 Q And is it still going on?</p> <p>3 A No.</p> <p>4 Q When is the last time that you have seen the</p> <p>5 18-wheeler?</p> <p>6 A I don't recall. End of May or later.</p> <p>7 Q Okay. End of May which year?</p> <p>8 A 2012.</p> <p>9 Q Okay. So in 2013, you didn't see an 18-wheeler there?</p> <p>10 A No.</p> <p>11 Q And from that point until we sit here today, you</p> <p>12 haven't seen it?</p> <p>13 A No.</p> <p>14 Q Okay. So you went to the code enforcer. You made a</p> <p>15 request about the legality of the 18-wheeler being parked there.</p> <p>16 Did you contact any other government agency or entity</p> <p>17 about any disputes or problems or violations with regard to</p> <p>18 Mr. and Mrs. Spencer?</p> <p>19 A I think I called the sheriff in Douglas County, if</p> <p>20 this is allowed to park there.</p> <p>21 Q Okay. So we're still referring now to the 18-wheeler?</p> <p>22 A Correct.</p> <p>23 Q Okay. And when did you call Douglas County sheriff?</p> <p>24 A Must have been in May, as well.</p> <p>25 Q Okay. And did they send an officer out to your</p>	<p style="text-align: right;">Page 25</p> <p>1 A Yes. You could see that they tried to put up a</p> <p>2 six-foot fence, and in this area, you are only allowed</p> <p>3 three-foot fence or three feet.</p> <p>4 Q And you are talking about the height of the fence?</p> <p>5 A Correct.</p> <p>6 Q Are there provisions in that area about how far a</p> <p>7 fence line has to be off property, back from the street?</p> <p>8 A I think it's 2 to 3 feet, but I'm not sure.</p> <p>9 Q Where are these provisions located?</p> <p>10 Do you know what -- is it in a KGI handbook? You</p> <p>11 don't have a homeowners association, do you?</p> <p>12 A No.</p> <p>13 Q Where are these provisions located as to what can and</p> <p>14 cannot be done within the neighborhood where you reside?</p> <p>15 A I assume KGID.</p> <p>16 Q Okay. Because when you said that you can only build a</p> <p>17 fence three feet high, you must be referring to, like, some</p> <p>18 manual or policy book that allows a fence to be built three feet</p> <p>19 high.</p> <p>20 A Yeah.</p> <p>21 Q And I'm just trying to find out what the name of that</p> <p>22 is, that book?</p> <p>23 A I don't know.</p> <p>24 Q But you know it exists? Something exists.</p> <p>25 A I assume. I don't know.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q Okay. How did you find out about the fact that they 2 can only build three feet high? Did somebody tell you that, or 3 did you read it? 4 A I think because we built a fence. We had a 5 three-foot -- I don't know these things, three-foot or three 6 feet, high fence, a wooden fence. 7 And then this got rotten. We rebuilt it with a 8 six-foot steel fence, and that's why we know how it's allowed to 9 do. 10 Q So at this time, do you have a six-foot steel fence? 11 A Yes. 12 Q Yes? 13 A Is it four? I don't know how high it is. We are in 14 the KGID restrictions, permissions. 15 Q Okay. 16 A Sorry about my confusing. 17 Q It's not a problem at all. We will definitely get 18 through it. 19 So I guess my question is, is it 3 or 4 feet, do you 20 know, that you can build? 21 Because yours sounds like it may be four feet high. 22 Do you know if it's three feet or four feet? 23 A No. It's higher than three feet. It's six feet. 24 I'm sorry. I can't answer the question. 25 Q If you don't know, just tell me you don't know.</p>	<p style="text-align: right;">Page 28</p> <p>1 And what the Spencers were doing were above that 2 height restriction? 3 A Yes. 4 Q When you saw them building that fence, what did you do 5 at that point? 6 Did you make a complaint to a specific person or 7 agency? 8 A We came down to a meeting to the planning commission 9 in Minden. 10 Q And was there anybody else from the neighborhood? 11 "The neighborhood" being your neighborhood? 12 A Yeah. 13 Q That was present at that commission? 14 A Yes. Several neighbors. 15 Q Could you tell me who they were? 16 A Besides our family of three, Miss Kinion, Miss Tedrik. 17 Q Tedrik? 18 A Tedrik. I think you spell it T-E-D-R-I-K. Diane 19 Tedrik. 20 Dr. Shaw and her husband. 21 I believe Mrs. Wells. I don't know if Mr. Wells was 22 there, too. 23 Q Okay. What happened at that planning commission 24 meeting? 25 You all went there. Did you speak about the fence</p>
<p style="text-align: right;">Page 27</p> <p>1 A Yeah. 2 Q So when you moved in there, you had a wooden fence 3 around your property? 4 A Yes. 5 Q And that rotted out, so the -- you and your husband 6 wanted to put a new fence in there, and you decided to do steel, 7 so it wouldn't rot? 8 A Well, yeah. 9 Q And did you put in a request to KGID to get that 10 approved? 11 A We had it done professional. And the gentleman who 12 built the thing made all those arrangements. 13 Q Okay. And do you know when that was, approximately, 14 when you had that built? 15 A I couldn't tell you the date. 16 Q Whatever the case is, whatever it was built, the 17 person that built it told you that it was acceptable within the 18 KGID standards? 19 A Correct. 20 Q Did you -- you built your fence, though, the iron 21 fence, before the Spencers started building their wooden fence? 22 A Yes. 23 Q Okay. So the people that you had contracted to must 24 have, you must have known somehow that there was a certain 25 height restriction.</p>	<p style="text-align: right;">Page 29</p> <p>1 issue? 2 A Correct. 3 Q Was there any decisions made by the commissioners at 4 that meeting? 5 A No. It was delayed for -- they listened to the 6 complaint. 7 Oh -- and, of course, Mrs. Spencer -- no, I'm sorry. 8 Oh, I know who else was there. 9 The builder of their fence. 10 Q The company that was building their fence? 11 A Their friend and a young gentleman with him. 12 Q Okay. Was Mr. or Mrs. Spencer present? 13 A No. 14 Q Okay. So they listened to public comment at that 15 meeting? 16 A Correct. 17 Q And then what happened after that? Did they say that 18 they would issue a ruling down the road? 19 A We will find out what happens in the future. 20 Q Okay. From the time of the 18-wheeler, up until the 21 time of the fence issue, were there any retaliations by 22 Mr. and Mrs. Spencer that you are aware of, against you, Helmut 23 or Egon? 24 A There was nothing against me. 25 Q Okay.</p>

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<p>1 Q Okay. After this incident took place, up until we sit 2 here today, do you know if Helmut had taken any photographs that 3 night before this incident happened? 4 A No. Only on the 18th. 5 Q On the evening of the incident? 6 A Right. 7 Q Did he take photographs on the evening of the 18th? 8 A That's what he said. 9 Q Okay. Have you seen those photographs? 10 A No. 11 Q Do you know how many photographs there were taken? 12 A No. 13 Q We went over some photographs last week in Exhibits, I 14 think, 4 and 5. 15 Do you remember seeing some of these photographs? 16 There's actually -- these are photographs of the snow area 17 there. 18 A Uh-huh (affirmative). 19 Q One of them actually has, I believe, Helmut in it. 20 There's some feet -- right here. So this is Exhibit 21 Number 2. 22 A Yes. 23 Q Did you take this photograph? 24 A No. 25 Q Do you know who took this photograph?</p>	<p>1 A Usual, once a year. 2 Q Have you ever -- Helmut is not married? 3 A No. 4 Q He lives by himself? 5 A Yes. 6 Q When, in going to doctor's appointments and things 7 like that, have you ever helped him out in that capacity? 8 A No. 9 Q Has Egon? 10 A No. 11 Q When was Egon officially diagnosed with dementia? 12 A May 2013. 13 Q Okay. Before May of 2013, did you ever notice a 14 decline in Egon's cognitive abilities? 15 A I saw -- I got the first shock at the preliminary 16 hearing, when he was asked questions, and he answered them 17 completely wrong. 18 Q Did he have a doctor at that time? 19 A No. 20 Q How -- I'm sorry. I cut you off. 21 A I apologize. 22 But when I realized that, then I made a contact with a 23 doctor right away. 24 Q And is it that same doctor that we know that is 25 treating him now? Which I don't know the name of.</p>
Page 103	Page 105
<p>1 A I don't know. My husband maybe. I don't know. 2 Q Okay. Do you know when this photograph was taken? 3 A On the 18th. 4 Q Okay. So you believe Egon took this photograph on the 5 18th? 6 A Yeah. 7 Q Where is Egon's camera now? 8 Well, did -- does Egon still have the same camera that 9 he had on December 18th? 10 A I think Egon took Helmut's cameras, not Egon's 11 cameras. 12 Q So these photographs were taken with Helmut's cameras? 13 A Correct. 14 Q Do you know if there were any photographs taken by 15 Egon the night of the accident? 16 A I don't know. Egon ran out from his studio and had no 17 camera on his body. 18 Q So tell me, they took Helmut to the hospital that 19 night? 20 A Yes. 21 Q And you -- how often have you seen Helmut between that 22 night and today, almost daily? 23 A Almost daily, if he is not in Austria. 24 Q How many times has Helmut gone to Austria from 25 December 18th until today?</p>	<p>1 A His name is Dr. Doyle. 2 Q How long has Dr. Doyle been treating Egon? 3 A Since May 13th. 4 Q Since May 13, it has just progressively gotten worse? 5 A Yes. Sorry to say, yes. 6 Q But as we sit here today, your first thought process 7 on when there was a problem was at the preliminary hearing? 8 A Correct. 9 Q In terms of Helmut's injuries, did he, as far as we 10 know, did he have any hip problems before this incident that you 11 are aware of? 12 A No. 13 Q Any shoulder problems before this incident? 14 A No. 15 Q Does he still walk around the neighborhood? 16 A Very little. 17 Q He has a dog? 18 A No. 19 Q Do you have a dog? 20 A Yes. 21 Q Do you -- who walks your dog? 22 A My husband and I. 23 Q Does Helmut ever talk about any discomfort or pain he 24 is in now? 25 A Yes.</p>

<p style="text-align: right;">Page 106</p> <p>1 Q Tell me what he mentions to you. What does he talk 2 about? 3 A His hip and walking. 4 Q Which hip? 5 A I couldn't tell you. 6 Q So he mentions his hip, but does he mention it every 7 time he sees you, or just occasionally? 8 A No. Occasionally. 9 Q And when you say walking, does he say that if he 10 walks, it hurts more, or something like that? 11 A He knows he cannot walk like he walked before. 12 Q Any other areas of his body he is complaining about 13 now other than his hip? 14 A No. 15 Q Have you noticed any cognitive issues with Helmut at 16 all? 17 A What means "cognitive"? 18 Q Like your husband, the dementia issues, forgetfulness? 19 A No. 20 Q He has none of those issues? 21 A No. 22 Q All right. I'm going to pass you to the other 23 attorneys, so they may or may not have questions for you. 24 A Can I go quick to the ladies' room? 25 Q We can take a break. Yes, ma'am.</p>	<p style="text-align: right;">Page 108</p> <p>1 remembered things falsely? 2 MR. PALMER: Objection. It's a compound question. 3 BY MR. ROUTSIS: 4 Q Did he also testify to facts that didn't happen? 5 A No. 6 Q So your recollection is that his testimony failed to 7 remember facts that did happen? 8 A Yes. 9 Q Did he also remember things differently than you 10 remembered them? 11 A Yes. 12 Q Did you bring that up to the prosecutor, prior to 13 trial? 14 A No. 15 Q Now the preliminary hearing occurred sometime in May, 16 I believe. Correct? 17 A I don't remember. 18 Q When was the trial? 19 Now the trial occurred about, approximately 5 or 6 20 months later in September. 21 Does that sound right to you? 22 A Yes. 23 Q And prior to trial, had Egon gone to see any, excuse 24 me, doctor or address the issue on the memory? 25 MR. PALMER: Objection. It's two questions.</p>
<p style="text-align: right;">Page 107</p> <p>1 A I'm first. 2 (A recess was taken) 3 EXAMINATION 4 BY MR. ROUTSIS: 5 Q Okay. Very good. 6 A Hi, Mr. Routsis. 7 Q How are you again? It's been a while, hasn't it? 8 I wanted to ask you some questions about Egon. 9 A Yes. 10 Q His memory. 11 You testified at the preliminary hearing that you saw 12 him testify. 13 And I had asked him questions at that hearing, as 14 well, correct? 15 Do you remember me asking him questions? 16 A Yeah. 17 Q And you have testified that after the preliminary 18 examination, that you were concerned about the manner in which 19 he answered the questions? 20 A Yeah. 21 Q Did you feel some of the questions were answered in a 22 manner that showed a failure to remember, or would look like the 23 wrong answer? 24 A A failure to remember. 25 Q Did he also testify to things that were untrue or</p>	<p style="text-align: right;">Page 109</p> <p>1 MR. ROUTSIS: No, it isn't. It really isn't. 2 MR. PALMER: Well, your question is, did he go to see 3 a doctor. 4 BY MR. ROUTSIS: 5 Q Right. 6 Did he go see a doctor and address his memory? 7 A When? 8 Q After the preliminary examination? 9 A Yes. 10 Q And was there a diagnosis done as to what, if 11 anything, was wrong? 12 A Yes. 13 Q And what was that diagnosis? 14 A They took an MRI, and they saw that my husband has 15 Alzheimer's. 16 Q So they made a diagnosis prior to trial that he had 17 Alzheimer's? 18 A In May, yes. 19 Q And was that information provided to the prosecutor 20 prior to trial? 21 A I think I mentioned it. 22 Q And did you tell the prosecutor the doctor that gave 23 Egon the MRI? 24 A No. 25 Q What was the name of the doctor that gave him the MRI?</p>

<p style="text-align: right;">Page 110</p> <p>1 A Dr. Doyle.</p> <p>2 Q Okay. Now when he testified at the trial, months</p> <p>3 later in September, was he provided with any type of medication</p> <p>4 for his memory?</p> <p>5 A Yes.</p> <p>6 Q What kind of medication was he given?</p> <p>7 A Namenda.</p> <p>8 Q Okay.</p> <p>9 A And Donepezil.</p> <p>10 Q Okay. Now you are aware that he testified at trial</p> <p>11 for hours and hours, correct?</p> <p>12 A Not hours and hours.</p> <p>13 Q Really? I thought it was.</p> <p>14 MR. MOORE: Is that a question?</p> <p>15 MR. ROUTSIS: We call those comments.</p> <p>16 MR. MOORE: Thank you for clarifying.</p> <p>17 BY MR. ROUTSIS:</p> <p>18 Q Now you weren't in the room, or were you, in the -- I</p> <p>19 think you were a witness at the trial, were you not?</p> <p>20 A Yes.</p> <p>21 Q So at the preliminary hearing, you got to see your</p> <p>22 husband testifying, correct?</p> <p>23 A Yes.</p> <p>24 Q At the trial, you did not get to see him testify,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 112</p> <p>1 A Yes.</p> <p>2 Q All right. Does he know his name, and can he answer</p> <p>3 simple questions?</p> <p>4 A He knows his name.</p> <p>5 Q And so the Alzheimer's is not that progressed?</p> <p>6 A You can read this in the doctor's report, it has</p> <p>7 progressed.</p> <p>8 Q Can you have conversations with him?</p> <p>9 A Yes.</p> <p>10 Q Does he remember his name and childhood? Let</p> <p>11 me strike that.</p> <p>12 Does he remember where he was born?</p> <p>13 A I hope so.</p> <p>14 Q So is his problem mostly with long-term memory or</p> <p>15 short-term memory?</p> <p>16 A Short-term and long-term.</p> <p>17 Q Okay. If we were to question him about what happened</p> <p>18 on the 18th of December 2012, do you think his memory would be</p> <p>19 pretty good about that or not?</p> <p>20 A I don't know.</p> <p>21 Q Okay. Moving ahead Miss Klementi, Mrs. Klementi.</p> <p>22 A Mrs. Klementi.</p> <p>23 Q Klementi.</p> <p>24 A You better learn it now.</p> <p>25 Q Okay. Okay. Very good.</p>
<p style="text-align: right;">Page 111</p> <p>1 A No.</p> <p>2 Q So you don't know if his testimony was inaccurate at</p> <p>3 trial, as well?</p> <p>4 A No.</p> <p>5 Q Didn't you have concerns with the prosecutor -- let me</p> <p>6 rephrase it.</p> <p>7 Did the prosecutor address with you prior to the</p> <p>8 testimony at trial her concerns about his Alzheimer's?</p> <p>9 A No.</p> <p>10 Q Did she express to you at all, or did Egon express, or</p> <p>11 let me ask you -- strike that.</p> <p>12 Did you talk with Egon and discuss with him, you know,</p> <p>13 you are testifying in a criminal matter about a man's liberty.</p> <p>14 Perhaps the defense should be made aware that your</p> <p>15 memory isn't very good?</p> <p>16 A No.</p> <p>17 Q You indicated that at the present time, your</p> <p>18 understanding is he has Alzheimer's, correct?</p> <p>19 A Which present time?</p> <p>20 Q This, right now.</p> <p>21 A Today, yeah.</p> <p>22 Q Alzheimer's is difficult to diagnose, isn't it, as far</p> <p>23 as you know?</p> <p>24 A I don't know.</p> <p>25 Q But someone has told you he has Alzheimer's?</p>	<p style="text-align: right;">Page 113</p> <p>1 A I don't care.</p> <p>2 Q Prior, prior to December 12th, 2012, it's been your</p> <p>3 testimony here today that you recall an event where you believed</p> <p>4 Jeffrey Spencer had left the berm in front of your residence up</p> <p>5 at South Lake Tahoe, correct?</p> <p>6 A Correct.</p> <p>7 Q And that your testimony today was that you were</p> <p>8 looking out through a window, and you changed rooms and saw the</p> <p>9 snowplow turn around, and then drive to the Spencer house, and</p> <p>10 Mr. Spencer got out; is that correct?</p> <p>11 A Yes.</p> <p>12 Q That's how you know it was Mr. Spencer that left the</p> <p>13 berm, correct?</p> <p>14 A Yes.</p> <p>15 Q Are you sure of that as you sit here today that that's</p> <p>16 what happened?</p> <p>17 A Yes.</p> <p>18 Q Now do you remember the approximate date, other than</p> <p>19 it was before December 12th, 2012?</p> <p>20 A Can you ask me this question again, please?</p> <p>21 Q Yes.</p> <p>22 I'm talking about the incident where you apparently</p> <p>23 saw Jeff Spencer leave a berm in front of your residence prior</p> <p>24 to December 12, 2012.</p> <p>25 And I'm asking you, approximately how much prior? Was</p>

<p style="text-align: right;">Page 114</p> <p>1 it a week?</p> <p>2 MR. PALMER: I'll object to that question.</p> <p>3 I think she testified earlier she did not see</p> <p>4 Mr. Spencer leave a berm in front of her house.</p> <p>5 BY MR. ROUTSIS:</p> <p>6 Q Well, you testified that you saw Mr. Spencer get out</p> <p>7 of his vehicle, and you followed the snowplow after the berm was</p> <p>8 left.</p> <p>9 And it's your testimony as a result of that, it was</p> <p>10 Mr. Spencer you saw leave the berm in front of your house,</p> <p>11 correct?</p> <p>12 A Yes.</p> <p>13 MR. ROUTSIS: Come on, Counsel.</p> <p>14 MR. MOORE: Is that a question or a comment?</p> <p>15 MR. ROUTSIS: "Come on, Counsel" was a question, it</p> <p>16 was a comment that it's exactly what she testified to, so</p> <p>17 perhaps we can be more mindful in our objections.</p> <p>18 MR. MOORE: Is your intention here to ask questions or</p> <p>19 make comments?</p> <p>20 BY MR. ROUTSIS:</p> <p>21 Q Anyway, Miss Klementi, getting back to the incident</p> <p>22 we're talking about that was prior to December 12th, 2012, do</p> <p>23 you know how long prior it was to December 12?</p> <p>24 Was it a week prior? Two weeks prior?</p> <p>25 A I couldn't answer this.</p>	<p style="text-align: right;">Page 116</p> <p>1 A I could not drive out with my car on this day.</p> <p>2 Q Certainly that can happen, if there's a large</p> <p>3 snowfall, correct?</p> <p>4 A Yes.</p> <p>5 Q And you indicated that, in fact, at some point,</p> <p>6 Mr. Spencer had approached your husband in 2011 and offered to</p> <p>7 avoid the berms.</p> <p>8 But Egon preferred to do it himself and shovel out.</p> <p>9 Is that correct?</p> <p>10 A Yes.</p> <p>11 Q So there was no problem on the berm. It was</p> <p>12 understood that he refused any special type of snowplowing from</p> <p>13 Mr. Spencer?</p> <p>14 A I don't think that Mr. Spencer is allowed, if he is</p> <p>15 doing commercial snowplowing, to offer a private citizen to dig</p> <p>16 out the berm on his driveway.</p> <p>17 Q Well, Mr. Spencer never did make that offer.</p> <p>18 A Mrs. Spencer did.</p> <p>19 Q Those are two different people, are they not?</p> <p>20 A Right. But they are one unit.</p> <p>21 Q In any event, Mr. Spencer never said that he offered</p> <p>22 not to leave a berm?</p> <p>23 A Not Mr. Spencer.</p> <p>24 But if my husband would have said, yes, I'm sure we</p> <p>25 would have gotten the pleasure to taking out the snow berm from</p>
<p style="text-align: right;">Page 115</p> <p>1 Q And in that event, you never took any photographs,</p> <p>2 correct?</p> <p>3 A No.</p> <p>4 Q Never made any complaints, correct, about the berm?</p> <p>5 A No.</p> <p>6 Q And -- but you did comment on the evening of the</p> <p>7 December 18th at the meeting regarding that berming incident,</p> <p>8 correct?</p> <p>9 A Yes.</p> <p>10 Q And you also testified at the preliminary hearing</p> <p>11 about that berming incident, did you not?</p> <p>12 A I don't remember.</p> <p>13 Q Do you recall that you testified that you were</p> <p>14 snowed-in on that date?</p> <p>15 A That I was snowed-in prior to the 12th?</p> <p>16 Q Yes. Correct?</p> <p>17 A I don't remember.</p> <p>18 Q And regarding that berm, was there anything about that</p> <p>19 berm that would have been different than any other berm that was</p> <p>20 left that day by a snowplow in the normal course of berming the</p> <p>21 streets?</p> <p>22 A It was a higher berm.</p> <p>23 Q How do you know that?</p> <p>24 A Because I saw the differences in berms.</p> <p>25 Q So you compared the berms on that day?</p>	<p style="text-align: right;">Page 117</p> <p>1 our driveway.</p> <p>2 Q In any event, your husband denied the request for</p> <p>3 assistance or special courtesy, if you will, from Mrs. Spencer.</p> <p>4 And you had indicated that he preferred to do it</p> <p>5 himself, correct? Clear the berm in front of your driveway?</p> <p>6 A Yes.</p> <p>7 Q So there was no problem on this preDecember 12th</p> <p>8 berming incident, because this was normal operating procedure at</p> <p>9 this point, wasn't it?</p> <p>10 A Yes.</p> <p>11 Q Did you -- and you never called the police on that, or</p> <p>12 made a complaint about that until December 18th, correct?</p> <p>13 A We did not call the police.</p> <p>14 Q Okay. Okay. Now I want to draw your attention back</p> <p>15 to 2010.</p> <p>16 You recalled the Spencers had some friends that drive</p> <p>17 motorcycles, and there was, like, ten or 20 motorcycles parked</p> <p>18 on Charles Avenue?</p> <p>19 A Yes.</p> <p>20 Q And do you recall that your husband Egon took pictures</p> <p>21 of them?</p> <p>22 A Yes.</p> <p>23 Q And do you recall that your husband submitted those</p> <p>24 photographs in a complaint, either to KGID or some other agency?</p> <p>25 A My husband did not submit this picture to the code</p>

<p style="text-align: right;">Page 118</p> <p>1 enforcer for the complaint about the 18-wheeler.</p> <p>2 Q No. No. I'm talking about the motorcycles.</p> <p>3 A Yes.</p> <p>4 Q Sometimes in 2010, you have a memory that there were</p> <p>5 numerous motorcycles parked out on Charles Street in front of</p> <p>6 Mr. Spencer's residence, correct?</p> <p>7 A Yes.</p> <p>8 Q And my question is, do you recall your husband Egon</p> <p>9 taking pictures of that?</p> <p>10 A Yes.</p> <p>11 Q He wasn't, both you and him were not happy about that,</p> <p>12 correct?</p> <p>13 A Yes.</p> <p>14 Q And these were apparently friends of Mr. Spencer's</p> <p>15 that had parked their motorcycles on the street for an</p> <p>16 afternoon, correct?</p> <p>17 A Yes.</p> <p>18 Q And it bothered the two of you, did it not?</p> <p>19 A Yes.</p> <p>20 Q And as a result of that, your husband took</p> <p>21 photographs, correct?</p> <p>22 A He took one picture, yes.</p> <p>23 Q Are you sure? Were you present when he took the</p> <p>24 picture?</p> <p>25 A I saw the printed picture.</p>	<p style="text-align: right;">Page 120</p> <p>1 Is that the final opinion?</p> <p>2 A Yes.</p> <p>3 Q And you are aware that berms aren't always the same</p> <p>4 height on everybody's driveway.</p> <p>5 It can depend on where the snow piles up and other</p> <p>6 factors that effect plowing, correct?</p> <p>7 A Yes.</p> <p>8 Q So you have no way of knowing, do you, that the plow</p> <p>9 or the berm that was left in front of your residence was an</p> <p>10 intentional act against you to get back at you for some, for</p> <p>11 some motive?</p> <p>12 You don't know whether that was intentional or not, do</p> <p>13 you?</p> <p>14 A We knew it was intentional.</p> <p>15 Q Aha. And how do you know? Tell us.</p> <p>16 A Because the Spencers don't like us.</p> <p>17 Q So you believe that the Spencers don't like you.</p> <p>18 So an act that could have been purely normal, you</p> <p>19 assumed was an intentional act to get back at you, correct?</p> <p>20 A Yes.</p> <p>21 Q Okay. And, however, you had made no complaints or</p> <p>22 done any actions to the Spencers prior to that date that would</p> <p>23 give them a motive to get back at you, had you?</p> <p>24 A No.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 119</p> <p>1 Q All right. Do you know for sure he just took one</p> <p>2 picture?</p> <p>3 A No.</p> <p>4 Q Okay. So he may have taken many pictures?</p> <p>5 A Whatever.</p> <p>6 Q Okay. Do you recall back in 2010 if he provided that</p> <p>7 picture to KGID, police department, or any other agency?</p> <p>8 A He did not supply, supply to KGID or to the police.</p> <p>9 It just happened that the code enforcer saw it in my</p> <p>10 husband's folder when he showed him pictures of the 18-wheeler,</p> <p>11 which was our complaint.</p> <p>12 We did not complain about the 40, 50 motorcycles in,</p> <p>13 on Charles.</p> <p>14 Q How many motorcycles?</p> <p>15 A At least 40, 50.</p> <p>16 Q 40 or 50?</p> <p>17 A Yeah.</p> <p>18 Q So after those motorcycles were photographed, until</p> <p>19 the 18-wheeler, there was no other unpleasant occurrence between</p> <p>20 you and the Spencers other than the pre-December 12, 2012,</p> <p>21 berming incident?</p> <p>22 A No.</p> <p>23 Q And in regard to that berming incident, it's your</p> <p>24 testimony today that you believe the berm may have been bigger</p> <p>25 than berms in front of other people's residences on that date.</p>	<p style="text-align: right;">Page 121</p> <p>1 A We tried to avoid the Spencers.</p> <p>2 Q Okay. So there was no reason to get back at you on</p> <p>3 that day, was there?</p> <p>4 A Yes.</p> <p>5 Q What was the reason?</p> <p>6 A I told you, they don't like us.</p> <p>7 And Mrs. Spencer made a comment prior to neighbors</p> <p>8 that they will show -- that they would berm us in.</p> <p>9 Q I move to strike that as many levels of hearsay at</p> <p>10 this point.</p> <p>11 In any event, progressing up to the 18-wheeler</p> <p>12 incident, you also made complaints -- let me strike that.</p> <p>13 Your husband took numerous pictures of the 18-wheeler,</p> <p>14 did he not?</p> <p>15 A He made several ones.</p> <p>16 Q And you testified today that the 18-wheeler was parked</p> <p>17 out on the street for months?</p> <p>18 A Coming and going, I said.</p> <p>19 Q However, isn't it true, Mrs. Klementi, that the</p> <p>20 18-wheeler was only parked out on Charles Avenue for one -- for</p> <p>21 one day?</p> <p>22 A Absolutely not.</p> <p>23 Q And isn't it true that the Spencers pulled the</p> <p>24 18-wheeler up to the side of their house shortly after it was</p> <p>25 parked on Charles Avenue?</p>

<p style="text-align: right;">Page 122</p> <p>1 A Not shortly after. It was parked several days on the 2 street, and then he parked it against his house. 3 Q So earlier when you testified that the 18-wheeler was 4 there for a month or months? 5 A I didn't say months. 6 Q Okay. I'm sorry. What did you say? 7 A For some time. 8 Q Okay. The total amount of time in your memory that it 9 was actually parked on the street, on Charles Avenue, was a day 10 or two before it was moved to the side of their house? 11 A I didn't mention any day, amount of days. 12 Q I'm asking you now. 13 A I said several times. 14 Q Would you say the total amount of time that it was 15 parked on Charles Avenue, the 18-wheeler, was ten hours, 20 16 hours, two days? 17 Can you give us -- 18 A Several days. 19 Q And then it was moved to the side of their house, 20 correct? 21 A Correct. 22 Q And their house faces Charles -- faces your house, 23 right? 24 A Somehow. 25 Q And next to the driveway, they had an area where the</p>	<p style="text-align: right;">Page 124</p> <p>1 Q Okay. I understand. 2 A And the sheriff and the code enforcer both denied it, 3 and Mr. Spencer was told by both code enforcer and the sheriff 4 that he cannot park on the street. 5 Q How -- were you there during these conversations? How 6 do you know he was told that? 7 A Because after the -- 8 Q No. No. The question is, you said the Spencers were 9 told by the sheriff and the code enforcer that he could not park 10 the vehicle on the street. 11 Do you have personal knowledge of those conversations, 12 yes or no? 13 A Yes. 14 Q You were present when they told the Spencers that? 15 A The code -- no. The code -- 16 Q Were you present when they told the Spencers that? 17 A We were present when the deputy sheriff told us that 18 he just came from the Spencers and told him that he is not 19 allowed to park there. 20 Q Okay. And I assume shortly thereafter the truck was 21 moved to the side of the residence? 22 A Yes. 23 Q Okay. Now the truck incident was -- if -- I think you 24 have testified that the fence being built that has caused some 25 concerns was on Memorial Day, May 27th of 2012, that weekend,</p>
<p style="text-align: right;">Page 123</p> <p>1 truck would be parked, so the 18-wheeler would be parked totally 2 off the roadway, correct? 3 A Yes. 4 Q Okay. And you -- your husband took pictures of that 5 18-wheeler, and did he send the pictures to KGID or any 6 complaining agency, sheriff, police, code enforcer? 7 A I told you already, he only showed the picture to the 8 code enforcer. 9 Q Okay. And did your husband, before he did that -- 10 because at this point, there had been nothing between you and 11 the Spencers that would lead any of you to believe that there 12 was an ongoing problem, correct? 13 A Yes. 14 Q So did your husband or you knock on the Spencers' 15 doors as neighbors, and say, you know, I know that you need to 16 make a living, and there's a truck here. 17 Can you tell us how long it's going to be here? 18 Was that ever attempted? 19 A No. 20 Q Instead you went directly to a reporting agency, 21 correct? 22 A Yes. 23 Q Okay. 24 A We did not report. We asked if it's allowed to have 25 an 18-wheeler parked there on the residential street.</p>	<p style="text-align: right;">Page 125</p> <p>1 correct? 2 A Yes. 3 Q The truck incident occurred how long prior to that, do 4 you believe? 5 A I don't remember. 6 Q Okay. And you have built a fence on your property, 7 correct? 8 A Yes. 9 Q And originally the fence you built, wasn't it 10 destroyed by a snowplow? 11 A Yes. 12 Q And was it some other driver other than Mr. Spencer 13 that had destroyed the fence? 14 A Yes. 15 Q So snow can do damage. When you live at the lake, you 16 have to be very careful because the snow can accumulate, and you 17 have personal knowledge that it destroyed the fence you built, 18 correct? 19 A Yes. 20 Q And how tall is your fence right now? 21 A Six-foot. 22 Q Six-foot. I thought you can only have a three-foot 23 fence? 24 A No. You can -- you only can have -- you can have a 25 six-foot fence when it's not a solid wooden fence, if it's</p>

<p style="text-align: right;">Page 126</p> <p>1 spaces in between, then you are allowed to have that.</p> <p>2 Q Okay. So the Spencers began building the fence on</p> <p>3 Memorial Day weekend of 2012, correct?</p> <p>4 A Yes.</p> <p>5 Q And they had some young men working, boys, working on</p> <p>6 the property, as well as another man, correct?</p> <p>7 A I believe so.</p> <p>8 Q And prior to that, hadn't your husband Egon Klementi,</p> <p>9 would he ever take pictures of the Spencers' residence?</p> <p>10 Prior to that day, May 27th, did he have other, other</p> <p>11 than taking pictures of the 18-wheeler, do you know if he took</p> <p>12 other pictures of the Spencers' residence?</p> <p>13 A From the property next to the Spencers' property.</p> <p>14 Q Do you know --</p> <p>15 A A vacant lot.</p> <p>16 Q Do you know why he was doing that?</p> <p>17 A Because Mr. Spencer leveled ground. He thought it was</p> <p>18 illegal, and he tried to document this.</p> <p>19 Q Okay.</p> <p>20 A Before he parked the 18-wheeler there.</p> <p>21 Q So your husband felt that the Spencers had improperly</p> <p>22 raked some ground or leveled some ground?</p> <p>23 A Yes.</p> <p>24 Q And did he make a complaint about that, as well,</p> <p>25 Mr. Klementi, your husband?</p>	<p style="text-align: right;">Page 128</p> <p>1 the time they started building the fence?</p> <p>2 A You mean our fence or their fence?</p> <p>3 Q Their fence, on May 27th.</p> <p>4 A We know that you are not allowed to have a six-foot</p> <p>5 wooden fence there. Everyone in the neighborhood knows that.</p> <p>6 Q So on that weekend, Memorial weekend, when Mr. Spencer</p> <p>7 began putting up his fence with the help of some young men and</p> <p>8 another gentleman, you were aware of a code that says you cannot</p> <p>9 have a six-foot solid fence.</p> <p>10 Is that correct?</p> <p>11 A Yes.</p> <p>12 Q Are you sure that code didn't occur until after, after</p> <p>13 May 27th?</p> <p>14 What I'm asking you, you are certain that the code at</p> <p>15 the time Mr. Spencer was building the fence, was that you cannot</p> <p>16 build a fence that's six-foot --</p> <p>17 A Exactly.</p> <p>18 Q -- and solid?</p> <p>19 Okay. So at some point you saw the fences go up, and</p> <p>20 you believed it was over six feet or six feet, correct?</p> <p>21 A Yes.</p> <p>22 Q But prior to that, your husband Egon Klementi had gone</p> <p>23 out, according to your testimony, and come back home on the</p> <p>24 27th, and told you that Jeffrey Spencer had threatened to punch</p> <p>25 him in the face, correct?</p>
<p style="text-align: right;">Page 127</p> <p>1 A He asked TRPA.</p> <p>2 Q Okay. And do you know if there was any code</p> <p>3 enforcement found?</p> <p>4 A I don't recall.</p> <p>5 Q So moving ahead to May 27th, at this point,</p> <p>6 Mr. Spencer has been a perfectly good neighbor as far as he</p> <p>7 knows between the two of you, because there's been -- well, let</p> <p>8 me rephrase that.</p> <p>9 There apparently was a complaint about an 18-wheeler</p> <p>10 that was parked for a day or two, and then it was moved to the</p> <p>11 side of his house. Correct?</p> <p>12 So at that point, Mr. Spencer, you believe, was made</p> <p>13 aware of the complaint because a sheriff's officer then came and</p> <p>14 told you that he informed Mr. Spencer that it was a violation,</p> <p>15 correct?</p> <p>16 A Correct.</p> <p>17 Q So on May 27th, the Spencers begin, or on that</p> <p>18 weekend, putting up a fence, correct?</p> <p>19 A Yes.</p> <p>20 Q And at the time they begin putting up the fence, you</p> <p>21 have no idea that the fence is going to be legal or illegal, or</p> <p>22 a violation of a code or a nonviolation of a code; is that a</p> <p>23 fair comment?</p> <p>24 A No.</p> <p>25 Q Did you pull all the regulations regarding fences at</p>	<p style="text-align: right;">Page 129</p> <p>1 A Yes.</p> <p>2 Q That's a criminal act. It's an assault. Right?</p> <p>3 Right?</p> <p>4 MR. PALMER: Objection. You are speculating that she</p> <p>5 knows what a criminal act is.</p> <p>6 BY MR. ROUTSIS:</p> <p>7 Q Okay. He was threatened with physical force by a</p> <p>8 younger man, correct?</p> <p>9 Correct?</p> <p>10 A Yes.</p> <p>11 Q Now you've already testified that Egon was willing to</p> <p>12 make some calls or to make reports regarding motorcycles parked</p> <p>13 on the street?</p> <p>14 A It's not true, Mr. Routsis.</p> <p>15 Q An 18-wheeler parked on the street.</p> <p>16 So my question to you is, your husband comes home, and</p> <p>17 he is threatened with being assaulted.</p> <p>18 Why don't you call the police?</p> <p>19 A We didn't think about that.</p> <p>20 Q How could you not think about that?</p> <p>21 A Because we never had anything to do with the law.</p> <p>22 And my husband was so shocked, and so was I. So we</p> <p>23 just don't report things like that, like it's here in America.</p> <p>24 We don't make lawsuits all the time. I'm sorry to say that.</p> <p>25 Q However, the Spencers called the police on May 27th --</p>

<p style="text-align: right;">Page 130</p> <p>1 A Yes, we know.</p> <p>2 Q -- for -- and the police knocked on your door, right?</p> <p>3 A Yes.</p> <p>4 Q Shortly after your husband had told you that he was</p> <p>5 just assaulted or threatened to be assaulted by a younger man,</p> <p>6 correct?</p> <p>7 A It was not shortly after.</p> <p>8 Q I'll just ask you, how long after?</p> <p>9 A Several hours.</p> <p>10 Q Several hours.</p> <p>11 And the -- was it the sheriff's department or the</p> <p>12 police department?</p> <p>13 A I don't know the difference.</p> <p>14 Q Okay. They knocked on your door, correct?</p> <p>15 A Yes.</p> <p>16 Q The door was opened, and the officer was permitted to</p> <p>17 come into your residence?</p> <p>18 A We invited him.</p> <p>19 Q And once he was inside, he informed you, did he not</p> <p>20 that, the Spencers were quite upset about your husband</p> <p>21 continually taking pictures on his property, invading their</p> <p>22 property.</p> <p>23 And they made a complaint regarding your husband</p> <p>24 harassing their freedom, and it was a formal complaint that they</p> <p>25 came to inform you of, correct?</p>	<p style="text-align: right;">Page 132</p> <p>1 pictures of younger people on the property?</p> <p>2 A That's absurd, Mr. Routsis.</p> <p>3 Q Maybe. I'm just asking.</p> <p>4 A You know this from the trial.</p> <p>5 Q No. That was kept out of trial by the judge.</p> <p>6 A Yes.</p> <p>7 Q But the Spencers have --</p> <p>8 A You know, it's absurd, and it's insane that you are</p> <p>9 saying something.</p> <p>10 Q No. I understand you being upset about that.</p> <p>11 A Yeah.</p> <p>12 Q But I'm not --</p> <p>13 A It's an insult.</p> <p>14 Q I'm not asking you if it --</p> <p>15 A No. You are telling me.</p> <p>16 Q No, I'm asking you.</p> <p>17 Did the police officer bring it up?</p> <p>18 A No.</p> <p>19 Q Okay. You are sure?</p> <p>20 A No.</p> <p>21 Q Okay. Did they give you a warning, or Egon a warning,</p> <p>22 not to take pictures of people on the Spencers' property or</p> <p>23 their house as that will be considered harassment, and that was</p> <p>24 a warning?</p> <p>25 A No. He said he should not take any pictures from</p>
<p style="text-align: right;">Page 131</p> <p>1 A Yes.</p> <p>2 Q And at that point, of course, you have to tell them,</p> <p>3 well, wait a second, no. We were assaulted by -- Mr. Spencer</p> <p>4 assaulted my husband Egon today. That's what happened.</p> <p>5 Didn't you tell them that?</p> <p>6 A I think so. Not me.</p> <p>7 Q Well, the officer testified and said it was never</p> <p>8 mentioned to him that day.</p> <p>9 Do you know why it was never mentioned to the police?</p> <p>10 Wouldn't that be a perfect opportunity to tell them about an</p> <p>11 assault if it actually did happen?</p> <p>12 A Yes.</p> <p>13 Q But it was never mentioned. Right?</p> <p>14 A Because we didn't think like you are thinking.</p> <p>15 Q Okay. So the police officer then gave you a warning</p> <p>16 not to continue taking pictures on the Spencers' property,</p> <p>17 correct?</p> <p>18 A He didn't give me a warning.</p> <p>19 Q He gave your husband a warning, right?</p> <p>20 A Yes.</p> <p>21 Q And your husband, this incensed your husband, made him</p> <p>22 very angry, did it not?</p> <p>23 A No.</p> <p>24 Q Isn't it also true that the police officer informed</p> <p>25 you that the Spencers were upset that your husband was taking</p>	<p style="text-align: right;">Page 133</p> <p>1 Spencers' property or around their property.</p> <p>2 Q Okay. And did Egon say "I won't do that anymore"?</p> <p>3 A Yes.</p> <p>4 Q Now why -- I'm going to ask you one more time.</p> <p>5 Why at that point, if your husband was assaulted, and</p> <p>6 he told you he was assaulted, wouldn't you tell the police that?</p> <p>7 MR. PALMER: I'm going to object. It's been asked and</p> <p>8 answered already. Possibly even twice.</p> <p>9 BY MR. ROUTSIS:</p> <p>10 Q The police officer then leaves. Correct?</p> <p>11 A Yes.</p> <p>12 Q Your husband now and you are by yourselves, correct?</p> <p>13 A Yes.</p> <p>14 Q This is about May 27th.</p> <p>15 Correct?</p> <p>16 A Yes.</p> <p>17 Q Your husband was quite upset that the police came over</p> <p>18 and warned him about intruding on your neighbor's property,</p> <p>19 wasn't he?</p> <p>20 A He was not upset.</p> <p>21 Q Okay.</p> <p>22 A The police officer was playing with our dog, and we</p> <p>23 had a very nice time with him.</p> <p>24 Q Okay. But what I'm asking you is, after the officer</p> <p>25 left, was your husband upset?</p>

<p style="text-align: right;">Page 134</p> <p>1 MR. PALMER: I'm going to object again. You have 2 asked that. 3 MR. ROUTSIS: I don't think I have gotten an answer. 4 MR. PALMER: I believe you have. 5 BY MR. ROUTSIS: 6 Q Well, I'm going to ask it again. 7 Were your husband or you upset that the police officer 8 had accused Helmut -- or Egon, of taking photographs and 9 harassing the Spencers? 10 Was he upset that he had received a warning? 11 A We were amazed that people can do something like that. 12 We were not upset. We were amazed. 13 Q You were amazed that people could be upset that you 14 would constantly take pictures of them on their property? 15 A No. 16 Q Does that amaze you? 17 A No. 18 Q Okay. Anyway, I'll move ahead. 19 After May 27th, you had indicated that at some point 20 in time, you, the Shaws, Mary Ellen Kinion, had gone to Minden 21 to make some type of complaint on the code violation, correct, 22 regarding the fence that was being constructed on Memorial Day 23 weekend 2012? 24 A Yes. 25 Q Can you tell us approximately what, how many months</p>	<p style="text-align: right;">Page 136</p> <p>1 A Yes. 2 Q After that, now they built a fence, and your husband 3 is taking pictures of that fence, too, correct? 4 A I don't know. 5 Q You do know. You actually -- 6 A No. Yeah, I know, but he didn't take any pictures. 7 Q I'm asking you, did your husband take pictures of the 8 fence after May 27th? 9 A I'd say yes. 10 Q That's what I'm asking. 11 And prior to the December meeting, what did you or 12 your husband do to make complaints about the fence? 13 Who all did you contact? 14 A My husband did nothing. I made the complaint. 15 Q And who did you make the complaint to? 16 A At the meeting. 17 Q What meeting? 18 A The planning commission meeting in Minden. 19 Q Okay. That's in December. 20 A Right. 21 Q But I'm saying prior to that, didn't you go to KGID, 22 and try to get some -- 23 A Absolutely not. 24 Q Okay. So the first time that you complained about the 25 fence was -- to any agency, authority, bureau, county office --</p>
<p style="text-align: right;">Page 135</p> <p>1 after the construction of the fence that meeting occurred? 2 A What I remember, the first planning commission meeting 3 was in December, because the Spencers asked for a variance to 4 build their fence. 5 And, by the way, the Spencers started building their 6 fence without any permission. 7 Q How do you know that? 8 A We found this out when we were at the planning 9 commission hearing. 10 Q Do you have that in paperwork? 11 A No. You can find this at the planning commission. 12 Q So somebody told you that? 13 A We heard this at the meeting at the planning 14 commission. 15 Q The planning commission meeting was in December of 16 2012. 17 Correct? 18 A Yes. 19 Q Was it after December 18th? 20 A It was before. 21 Q How soon before, do you know? 22 A I don't know. 23 Q Okay. So after May of -- May 27th or Memorial Day 24 weekend 2012, this is the first time the Spencers have ever 25 called the police on you, right?</p>	<p style="text-align: right;">Page 137</p> <p>1 was in Minden in December? 2 A Correct. 3 Q Okay. But you had discussed it with your neighbors, 4 and -- about the fence, correct? 5 A Correct. 6 Q Okay. So after the police came out and gave you a 7 warning for intruding on the Spencers' privacy back in May of 8 2012, your husband's preparing to make a formal complaint by 9 taking pictures of the fence, correct? 10 You are both preparing to document the fence in order 11 to get the fence taken down, correct? 12 A What do you mean with "documenting"? 13 Q Well, you are taking photographs. 14 A My husband did not bring any photographs to the 15 planning commission. 16 Q Okay. Okay. But he had photographs taken of the 17 fence? 18 A For himself. 19 Q For himself? 20 Not as evidence to use in a complaint against the 21 Spencers? 22 A No. 23 Q What possible use could he personally have for 24 photographs of the Spencers' fence? 25 A Because he tries to take pictures.</p>

<p style="text-align: right;">Page 138</p> <p>1 Q So you are --</p> <p>2 A The planning commission did their own pictures. The</p> <p>3 planning commission came up and took pictures from the fences.</p> <p>4 Q So your husband took pictures of the Spencers' fence</p> <p>5 because it was artwork?</p> <p>6 A No.</p> <p>7 Q Okay. In any event, I'll move ahead.</p> <p>8 Now you've had snow -- you have lived up there, I</p> <p>9 believe you indicated, I think you said, from '95, 1995?</p> <p>10 A '92.</p> <p>11 Q You have had a fence destroyed by snowplowing that</p> <p>12 wasn't Mr. Spencer, correct?</p> <p>13 A Yes.</p> <p>14 Q Everybody gets a berm during storms, correct?</p> <p>15 A Yes.</p> <p>16 Q We're going to move ahead now to December 18.</p> <p>17 The police have come out, and the Spencers have called</p> <p>18 the police on you in May.</p> <p>19 And now in December, apparently you go to work, and</p> <p>20 it's your testimony that you receive a phone call from your</p> <p>21 husband Egon Klementi regarding something that occurred that day</p> <p>22 with the snowplow, correct?</p> <p>23 A Did you say December 18th?</p> <p>24 Q I did.</p> <p>25 A That's wrong.</p>	<p style="text-align: right;">Page 140</p> <p>1 Did you have a cellphone at that time?</p> <p>2 A No.</p> <p>3 Q Did your husband have a cellphone?</p> <p>4 A No.</p> <p>5 Q So maybe there will be phone records.</p> <p>6 But, in any event, you believe he called you from the</p> <p>7 home?</p> <p>8 A He did call me.</p> <p>9 Q And you were at the office?</p> <p>10 A At my working place.</p> <p>11 Q Does he have a direct line, or does he have to go</p> <p>12 through the operator that puts him through to you?</p> <p>13 A At this time, he had to go through the operator.</p> <p>14 Q Okay. And you picked up the phone, and Egon's on the</p> <p>15 phone, and what did he say?</p> <p>16 A You don't know what just happened to me.</p> <p>17 Q And what happened?</p> <p>18 A That Jeff Spencer came by with the snowplow and put</p> <p>19 debris, snow and ice, over his body when he was standing in our</p> <p>20 driveway.</p> <p>21 Q Did he tell you how long ago that had occurred?</p> <p>22 Had it just occurred?</p> <p>23 A He said just now.</p> <p>24 Q Did he tell you that he had called 911?</p> <p>25 A No.</p>
<p style="text-align: right;">Page 139</p> <p>1 Q Oh, I'm sorry. December 12th. My fault.</p> <p>2 A Good.</p> <p>3 Q Is that correct?</p> <p>4 A Yes.</p> <p>5 Q And I assume he -- does he call you on your cellphone,</p> <p>6 or do you have a business line he calls you --</p> <p>7 A Business line.</p> <p>8 Q And what are your hours? What hours were you working</p> <p>9 that day?</p> <p>10 A I have a variation of hours.</p> <p>11 Q Are you --</p> <p>12 A Usually swing shift. It depends on my schedule. It</p> <p>13 depends on the shows.</p> <p>14 Q So do you work a swing shift, or do you work whenever</p> <p>15 you need to work?</p> <p>16 It could be two hours one day, 5 hours the next, it</p> <p>17 depends on what's going on?</p> <p>18 A I usually make between 35 and 40 hours a week, except</p> <p>19 on Saturdays I have 10, 12 hours.</p> <p>20 Q On that particular day, do you recall how many hours</p> <p>21 you were working when you --</p> <p>22 A No.</p> <p>23 Q -- got a call on December 12th?</p> <p>24 A No.</p> <p>25 Q And this would have been 2012.</p>	<p style="text-align: right;">Page 141</p> <p>1 Q So he called you before he -- before he called law</p> <p>2 enforcement?</p> <p>3 A I don't know that.</p> <p>4 Q Okay. Did he tell you he was going to call 911?</p> <p>5 A No.</p> <p>6 Q Did he tell you he had called 911?</p> <p>7 A No.</p> <p>8 Q Nothing was mentioned of Miss Kinion on that telephone</p> <p>9 call, correct?</p> <p>10 A No.</p> <p>11 Q So he never told you, well, Miss Kinion, Mary Ellen</p> <p>12 Kinion, called me and guess what?</p> <p>13 She was a material eyewitness to an assault with the</p> <p>14 snowplow.</p> <p>15 He never said that, did he?</p> <p>16 A I don't remember.</p> <p>17 Q You would have remembered, had he?</p> <p>18 A Yes.</p> <p>19 Q So when you hung up the phone with him on</p> <p>20 December 12th, was it your understanding he was going to call</p> <p>21 911? Had called? You don't know?</p> <p>22 A I don't know.</p> <p>23 Q Okay. Now did you call your friends in the community,</p> <p>24 and did Egon call his friends and tell them about the horrible</p> <p>25 act that Jeff committed with the snowplow?</p>

<p style="text-align: right;">Page 142</p> <p>1 A No, Mr. Routsis.</p> <p>2 Q No?</p> <p>3 A No.</p> <p>4 Q Nobody was told?</p> <p>5 A No. We are not this kind of people talking around.</p> <p>6 Q Okay. So as far as your memory is, you never told the</p> <p>7 Shaws, Mary Ellen Kinion, Janet Wells, regarding the snowplow</p> <p>8 assault?</p> <p>9 A I know from Miss Mary Ellen because she saw it.</p> <p>10 Q Miss Mary Ellen Kinion?</p> <p>11 A Yes.</p> <p>12 Q How do you know she saw it?</p> <p>13 A Because she told me.</p> <p>14 Q Well, but you don't know if she saw it. You are just</p> <p>15 saying what she told you?</p> <p>16 A Yes.</p> <p>17 Q When did she tell you she saw it?</p> <p>18 A The same day probably.</p> <p>19 Q Do you recall the conversation?</p> <p>20 A No.</p> <p>21 Q Well, why do you say "the same day probably", then?</p> <p>22 A Because it happened on this day.</p> <p>23 Q Okay. In any event, as we, let's move -- let's</p> <p>24 progress up to December 18th.</p> <p>25 A Yeah.</p>	<p style="text-align: right;">Page 144</p> <p>1 Q Do you have any information that Egon took pictures?</p> <p>2 A No.</p> <p>3 Q Okay. So a meeting occurred on the evening of</p> <p>4 December 18, where Helmut, the Shaws, you, Mary Ellen Kinion go</p> <p>5 to a meeting about 6 o'clock.</p> <p>6 Right?</p> <p>7 A Yes.</p> <p>8 Q And complaints are made about Jeffrey Spencer leaving</p> <p>9 berms, big berms, intentionally? Correct?</p> <p>10 A Yes.</p> <p>11 Q Yet nobody knows if it's intentional, and nobody knows</p> <p>12 if it's Jeff Spencer, right?</p> <p>13 A Only certain people on Meadow Lane had bigger berms,</p> <p>14 and this is exactly the people you just mentioned --</p> <p>15 Q Right.</p> <p>16 A -- by name.</p> <p>17 Q Your husband and Helmut were photographers, right?</p> <p>18 A Amateur photographers.</p> <p>19 Q Your husband had taken pictures of the 18-wheeler, the</p> <p>20 motorcycles.</p> <p>21 Did anybody have any pictures to give to the people at</p> <p>22 KGID to say look at the berm, compared to somebody else's berm?</p> <p>23 A No.</p> <p>24 Q Had anybody prior to the 18th called Mr. Spencer's</p> <p>25 employer to say, my gosh. Jeff Spencer is leaving berms, make a</p>
<p style="text-align: right;">Page 143</p> <p>1 Q Okay? Now on December 18th during the day, it was a</p> <p>2 Tuesday, I believe. Correct?</p> <p>3 A I don't know.</p> <p>4 Q Were you aware whether your husband had gone down onto</p> <p>5 Charles Avenue and taken photographs of whatever berm there was?</p> <p>6 A No.</p> <p>7 Q You don't think he did, or you are not aware of?</p> <p>8 A I don't know.</p> <p>9 Q Through the course of any communications with either</p> <p>10 him or Helmut, or seeing any photographs, are you aware that</p> <p>11 hours before 7 o'clock at night, earlier on that day, that</p> <p>12 pictures were taken of whatever berm there was on Charles</p> <p>13 Avenue?</p> <p>14 A Did you say now December 12th?</p> <p>15 Q December 18th. Did I say 12?</p> <p>16 A I heard December 12.</p> <p>17 Q December 18.</p> <p>18 A I misunderstood.</p> <p>19 Q December 18th.</p> <p>20 A I understood 12th.</p> <p>21 Q December 18th.</p> <p>22 Are you aware if your husband Egon or you took</p> <p>23 pictures of the snow on Charles Avenue on the side of your house</p> <p>24 earlier in the day?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 145</p> <p>1 complaint?</p> <p>2 Yes or no? Do you know if you or Egon called</p> <p>3 Mr. Spencer's employer prior to the 18th?</p> <p>4 A Called KGID, not Mr. Manchester.</p> <p>5 Q Did he call them prior to the 18th?</p> <p>6 A I did not call.</p> <p>7 Q So all of you go arrange to go to a meeting, and</p> <p>8 wasn't it also brought up that your husband was assaulted by</p> <p>9 Spencer on May 27th and threatened to punch him?</p> <p>10 A Yes.</p> <p>11 Q You said that, too, right? That happened?</p> <p>12 A Yeah. In my letter I read.</p> <p>13 Q But you weren't there?</p> <p>14 A I was at the meeting.</p> <p>15 Q No.</p> <p>16 But you weren't on the street with your husband and</p> <p>17 Mr. Spencer on May 27th?</p> <p>18 A No.</p> <p>19 Q Correct?</p> <p>20 So at the meeting on May, January -- December 18,</p> <p>21 Helmut actually drove to your house prior to that meeting,</p> <p>22 didn't he, in his own vehicle?</p> <p>23 A I don't think so.</p> <p>24 Q Okay. And have you been in communication with the</p> <p>25 Shaws and Mary Ellen for all of you to go down there and arrange</p>

<p style="text-align: right;">Page 146</p> <p>1 to make these allegations against Mr. Spencer?</p> <p>2 Did you all coordinate so you would all be there for</p> <p>3 this same meeting?</p> <p>4 A Yeah. We were asked when the meeting is.</p> <p>5 Q All right. It snowed very lightly that day, didn't</p> <p>6 it, on the 18th?</p> <p>7 A I think so.</p> <p>8 Q And the meeting is had, you voice your complaints.</p> <p>9 And the meeting ends, right?</p> <p>10 And you were quite aware prior to December 18th that</p> <p>11 the Spencers were very sensitive about their privacy, and, in</p> <p>12 fact, so much so, that they had called the police on you to stop</p> <p>13 taking pictures and to leave them alone and a warning was given,</p> <p>14 right?</p> <p>15 A Yes.</p> <p>16 Q And isn't it also true, Miss Klementi, that when the</p> <p>17 Spencers would bring people to their home, whenever they would</p> <p>18 do something, your husband would open the door or you and stare</p> <p>19 at them and take photographs of them?</p> <p>20 A Absolutely not.</p> <p>21 Q When did you get your security equipment?</p> <p>22 Your video surveillance equipment?</p> <p>23 A After the trial.</p> <p>24 Q After the trial. So after Mr. Spencer was acquitted</p> <p>25 of all counts.</p>	<p style="text-align: right;">Page 148</p> <p>1 A There was no discussion.</p> <p>2 Q So dinner ended, right?</p> <p>3 A Yes.</p> <p>4 Q May have had some drinks or not. Right?</p> <p>5 A Yes.</p> <p>6 Q And Helmut indicated that he was going to be leaving</p> <p>7 at some point?</p> <p>8 A Yes.</p> <p>9 Q Was it then that your husband went into his studio?</p> <p>10 A After Helmut left, my husband went into his studio.</p> <p>11 Q Now how do you know your husband didn't go outside?</p> <p>12 A Because I saw him.</p> <p>13 Q Where were you?</p> <p>14 A In the kitchen.</p> <p>15 Q Well, if he went into his studio and opened the door</p> <p>16 that goes out to Charles Street, you wouldn't see him from the</p> <p>17 kitchen?</p> <p>18 A I would have heard it.</p> <p>19 Q Maybe, maybe not.</p> <p>20 In any event, is it possible that Egon went outside</p> <p>21 with his own camera on the evening of the 18th, and had</p> <p>22 orchestrated with Helmut to go and take photographs of his own</p> <p>23 on Charles Avenue at the same time?</p> <p>24 A No.</p> <p>25 Q Why would Helmut take photographs?</p>
<p style="text-align: right;">Page 147</p> <p>1 A 2014 I think or whenever it was.</p> <p>2 Q Okay.</p> <p>3 So when the meeting terminates on the 18th, Helmut,</p> <p>4 Egon's brother, comes back to your residence, right? Right?</p> <p>5 A He comes for dinner.</p> <p>6 Q And was there any conversation prior to the incident</p> <p>7 that occurred on the 18th regarding taking pictures out on</p> <p>8 Charles Avenue to get -- to continually to thwart and to upset</p> <p>9 Jeff Spencer?</p> <p>10 A I think we were upset about the snow berm, not</p> <p>11 Mr. Spencer.</p> <p>12 Q No. My question is, prior to Helmut leaving and going</p> <p>13 on Charles Avenue and taking photographs, did Helmut and Egon</p> <p>14 have a conversation discussing that Helmut would go take</p> <p>15 pictures with a flash, or Egon would take pictures, or both of</p> <p>16 them would go out there together, that evening?</p> <p>17 A You asked me now three questions: Helmut, Egon, and</p> <p>18 who took pictures.</p> <p>19 Q Right. Any of them?</p> <p>20 A One at a time, please.</p> <p>21 Q Fair enough. Thank you.</p> <p>22 A Yeah.</p> <p>23 Q Did you hear any conversation between Helmut and Egon</p> <p>24 after the meeting on December 18th, 2012, regarding going and</p> <p>25 taking pictures of the street on Charles, the property?</p>	<p style="text-align: right;">Page 149</p> <p>1 You have already indicated that that side of your</p> <p>2 house on Charles Avenue was not a driveway that was being used</p> <p>3 during the wintertime, correct?</p> <p>4 A Correct.</p> <p>5 Q There wasn't much snow, very light snow on that date?</p> <p>6 A But there was a --</p> <p>7 Q I'm not done.</p> <p>8 During that time --</p> <p>9 A Apologize.</p> <p>10 Q -- correct? Very light snow, correct?</p> <p>11 A Yes.</p> <p>12 Q What possible relevance would Helmut have in taking</p> <p>13 photographs at night having to walk in front of Jeffrey</p> <p>14 Spencer's, Marilyn Spencer's house of that area?</p> <p>15 What possible relevance does it have?</p> <p>16 A He took the advice of Dr. Norman to take pictures,</p> <p>17 instead of my husband. So he is doing it for him. He did my</p> <p>18 husband a favor.</p> <p>19 Q Well, let's talk about that.</p> <p>20 The advice that was given at that meeting, if it was</p> <p>21 given, was to take pictures of berms that effect your driveway.</p> <p>22 Not to take pictures of the side of your house. There</p> <p>23 was no relevance to that picture, was there?</p> <p>24 MR. MOORE: Objection. Argumentative.</p> <p>25 ///</p>

<p style="text-align: right;">Page 150</p> <p>1 BY MR. ROUTSIS:</p> <p>2 Q Can you think of any reason that he would take</p> <p>3 pictures of the side of your house?</p> <p>4 MS. CAPERS: And calls for speculation.</p> <p>5 BY MR. ROUTSIS:</p> <p>6 Q Did he express any reason that he would do that?</p> <p>7 Did he tell you, "I want to go take pictures of</p> <p>8 something that's not important"?</p> <p>9 MR. MOORE: Objection. Compound.</p> <p>10 BY MR. ROUTSIS:</p> <p>11 Q As you sit here today, do you believe that Egon went</p> <p>12 into his studio while Helmut went out on the street and took</p> <p>13 pictures, correct?</p> <p>14 A No. I said Helmut left, and my husband went into his</p> <p>15 studio, and I was in the kitchen.</p> <p>16 Q All right. Okay. And you have no personal knowledge</p> <p>17 of that, but you are saying that you believe that to be the case</p> <p>18 because of what your ear observations told you, correct?</p> <p>19 A No.</p> <p>20 MR. PALMER: Objection. That's vague.</p> <p>21 BY MR. ROUTSIS:</p> <p>22 Q At the time that Helmut was taking photographs, were</p> <p>23 you in the study to see whether Egon Klementi was in the study</p> <p>24 or outside of the study?</p> <p>25 A My husband was in the study.</p>	<p style="text-align: right;">Page 152</p> <p>1 The study that Egon Klementi has had its own set of</p> <p>2 doors, does it not?</p> <p>3 A Yes.</p> <p>4 Q It's a private entrance, correct?</p> <p>5 A Yes.</p> <p>6 Q If you were to go out from the kitchen, you would have</p> <p>7 to take a different entrance?</p> <p>8 A Yes.</p> <p>9 Q So you and -- are you testifying today that you and</p> <p>10 Egon went out the same doors from the study?</p> <p>11 A When my husband heard Helmut screaming, I said,</p> <p>12 Helmut, and he and I went out the same time in two different</p> <p>13 doors.</p> <p>14 Q Okay. So that would indicate that you had no idea if</p> <p>15 he was inside or outside, because you didn't go out the same</p> <p>16 doors as him.</p> <p>17 You went out two separate doors, correct?</p> <p>18 A I heard my husband --</p> <p>19 MR. MOORE: Objection. Argumentative.</p> <p>20 BY MR. ROUTSIS:</p> <p>21 Q You and your husband did not go out the same doors</p> <p>22 from the study.</p> <p>23 You went out two different sets of doors, correct?</p> <p>24 A I say we went out the same time.</p> <p>25 Q But from two different sets of doors, correct?</p>
<p style="text-align: right;">Page 151</p> <p>1 Q Were you there to personally observe where he was?</p> <p>2 A I was three or four meters away from his study.</p> <p>3 Q Did you personally observe him as to whether he was in</p> <p>4 the study or outside the study at the time the incident occurred</p> <p>5 with Helmut and Mr. Spencer?</p> <p>6 A I heard him working around with easels, pictures,</p> <p>7 making noise.</p> <p>8 Q Okay. So the answer --</p> <p>9 A I heard it.</p> <p>10 Q So the answer to that is you never saw where Egon</p> <p>11 Klementi was during the incident with Jeff Spencer and Helmut</p> <p>12 Klementi?</p> <p>13 MR. MOORE: Objection. That mischaracterizes the</p> <p>14 testimony.</p> <p>15 BY MR. ROUTSIS:</p> <p>16 Q It doesn't.</p> <p>17 You never saw him, did you?</p> <p>18 MR. MOORE: The record speaks for itself. The</p> <p>19 objection stands.</p> <p>20 BY MR. ROUTSIS:</p> <p>21 Q Did you ever see him when -- during the incident,</p> <p>22 where Egon Klementi was?</p> <p>23 A Egon, my husband, and I went out the doors at the same</p> <p>24 time when we heard my brother-in-law screaming for help.</p> <p>25 Q Okay. Well, let's talk about that.</p>	<p style="text-align: right;">Page 153</p> <p>1 A Yes. And I would hear my husband's door with the</p> <p>2 blinds on it. Whenever you open this door, it makes a noise.</p> <p>3 Q Okay. Now when you -- you said you heard some</p> <p>4 yelling, correct?</p> <p>5 A Yes.</p> <p>6 Q And you went out the side, and Egon -- you saw Egon</p> <p>7 also outside, correct?</p> <p>8 A Yes.</p> <p>9 Q So the first time you saw Egon Klementi after the</p> <p>10 incident with Helmut was outside, he was outside?</p> <p>11 A I saw my husband, when I was at our entrance door, I</p> <p>12 saw my husband running from his studio door, passing me, to the</p> <p>13 gate.</p> <p>14 Q Was anything handed -- did you hand anything to Helmut</p> <p>15 Klementi when he was laying down on the ground?</p> <p>16 A During the evening, the sheriff screamed that he needs</p> <p>17 something for his head.</p> <p>18 Q Prior to the sheriff getting there, did you give</p> <p>19 anything to Helmut Klementi when he was laying on the ground?</p> <p>20 A I did not give Helmut anything.</p> <p>21 Q Did Egon give Helmut anything when he was laying on</p> <p>22 the ground?</p> <p>23 A I don't -- I don't remember.</p> <p>24 Q Did you give anything to Egon to give to Helmut?</p> <p>25 A I think he, I think he called me to bring him a</p>

<p style="text-align: right;">Page 154</p> <p>1 flashlight.</p> <p>2 Q Who did?</p> <p>3 A My husband.</p> <p>4 Q Asked you to bring him a flashlight?</p> <p>5 A Yeah. So he can shine to Helmut's body on the street.</p> <p>6 Q Did you give your husband a camera?</p> <p>7 A No.</p> <p>8 Q Do you know if your husband and Egon or Helmut, if</p> <p>9 cameras were exchanged, or if a camera was given by Egon to</p> <p>10 Helmut, or Helmut gave -- were any cameras exchanged as far as</p> <p>11 you know between Egon and Helmut that evening?</p> <p>12 A I know for sure my husband did not run out with a</p> <p>13 camera. He had no camera on his body.</p> <p>14 Q Was a flashlight -- did you give a flashlight to Egon?</p> <p>15 A Yeah.</p> <p>16 Q Where did you get the flashlight?</p> <p>17 A From inside.</p> <p>18 Q And did Egon use the flashlight?</p> <p>19 A Yes.</p> <p>20 Q And Egon at some point went out to see Helmut,</p> <p>21 correct?</p> <p>22 A When he heard the scream, he was running right away to</p> <p>23 help him to see what happened.</p> <p>24 Q Did you hear them speaking?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 156</p> <p>1 Pence on numerous occasions; is that true?</p> <p>2 A You mean the assault?</p> <p>3 Q I mean the act of self-defense.</p> <p>4 A That's what you call it.</p> <p>5 Q That's what the jury called it.</p> <p>6 MR. MOORE: Objection.</p> <p>7 BY MR. ROUTSIS:</p> <p>8 Q Okay. Well, he was acquitted. You are aware of that.</p> <p>9 Correct?</p> <p>10 A Yes.</p> <p>11 Q Okay. So when you are acquitted, that means you are</p> <p>12 found not guilty of assault.</p> <p>13 MR. MOORE: Objection as to form.</p> <p>14 MR. ROUTSIS: Okay.</p> <p>15 MR. MOORE: Objection. Argumentative.</p> <p>16 And objection, Counsel, you are testifying instead of</p> <p>17 asking questions now.</p> <p>18 BY MR. ROUTSIS:</p> <p>19 Q You're aware of that, are you not, that the jury found</p> <p>20 him not guilty?</p> <p>21 A Yes.</p> <p>22 Q So when, after the 18th of December, did you meet</p> <p>23 Maria Pence, the prosecutor for Douglas County that prosecuted</p> <p>24 Jeff Spencer, did you have occasion to meet with her to prepare</p> <p>25 for the trial?</p>
<p style="text-align: right;">Page 155</p> <p>1 Q Since that time, have you had the opportunity to ask</p> <p>2 Helmut why he did not respond to Mr. Spencer who was asking him</p> <p>3 what he was doing near his house?</p> <p>4 MR. MOORE: Objection. Foundation.</p> <p>5 BY MR. ROUTSIS:</p> <p>6 Q Since December 18th, have you had the opportunity to</p> <p>7 talk with Helmut Klementi regarding why on the evening where he</p> <p>8 was knocked to the ground, he didn't respond to Mr. Spencer's</p> <p>9 questions as to what he was doing near the property?</p> <p>10 MR. MOORE: Object as to form.</p> <p>11 BY MR. ROUTSIS:</p> <p>12 Q You can answer if you know.</p> <p>13 A If Helmut discussed this with me?</p> <p>14 Q Yes. Yes.</p> <p>15 A Yes.</p> <p>16 Q Did he tell you why he -- why he never responded to</p> <p>17 Mr. Spencer?</p> <p>18 A No.</p> <p>19 Q He didn't address that?</p> <p>20 A He was busy putting -- he tried to have his video</p> <p>21 ready so he can put the voice from Mr. Spencer on the video.</p> <p>22 Q Is that what he told you?</p> <p>23 A That's what I think, yeah.</p> <p>24 Q Okay. Now after the 18th, you had the opportunity</p> <p>25 prior to trial to discuss this matter with the prosecutor Maria</p>	<p style="text-align: right;">Page 157</p> <p>1 A Yes.</p> <p>2 Q And during the course of the preparation between</p> <p>3 December 18th and trial, how many times do you believe you met</p> <p>4 with her or spoke to her?</p> <p>5 A I don't remember.</p> <p>6 Q Over ten times?</p> <p>7 A Oh, no.</p> <p>8 Q No?</p> <p>9 A No.</p> <p>10 Q Well, let's -- not met with her.</p> <p>11 How many times do you think you spoke with her, either</p> <p>12 by phone or in person, do you think you had contact with her, 30</p> <p>13 times?</p> <p>14 A No.</p> <p>15 Q What do you think?</p> <p>16 A Before the trial was the question?</p> <p>17 Q Yes.</p> <p>18 A I don't know.</p> <p>19 Q How many times do you think you met or spoke with her</p> <p>20 prior to the preliminary hearing?</p> <p>21 A I don't know.</p> <p>22 Q Let's -- let me ask you this.</p> <p>23 From December 18th until Jeff Spencer was acquitted of</p> <p>24 all charges, how many times do you believe approximately you</p> <p>25 communicated with her?</p>

<p style="text-align: right;">Page 158</p> <p>1 A I don't remember, sir.</p> <p>2 Q Would it be -- would you say more than ten?</p> <p>3 A Probably. I don't know. I can't answer this</p> <p>4 question.</p> <p>5 Q And during the course of that time period, do you</p> <p>6 recall some subpoenas that were given to you by my office?</p> <p>7 A Yes.</p> <p>8 Q Regarding cameras, correct?</p> <p>9 A Yeah.</p> <p>10 Q And we asked for all the memory sticks to the cameras,</p> <p>11 correct?</p> <p>12 A Yeah.</p> <p>13 Q And apparently they broke, or they weren't working,</p> <p>14 right?</p> <p>15 A I don't have any memory sticks.</p> <p>16 Q Well, we had asked for the memory sticks to all the</p> <p>17 pictures that were taken on both cameras, and do you recall that</p> <p>18 they weren't working properly?</p> <p>19 A I didn't take any cameras.</p> <p>20 MR. MOORE: Objection. Counsel, I don't know what</p> <p>21 cameras you are referring to in that question.</p> <p>22 Would you clarify?</p> <p>23 MR. ROUTSIS: Okay.</p> <p>24 MR. MOORE: Also, I don't mean to interrupt.</p> <p>25 But if you would just keep in mind, it's after 12:30.</p>	<p style="text-align: right;">Page 160</p> <p>1 I wanted to do something. I wanted to ask you -- oh,</p> <p>2 okay.</p> <p>3 So the letter that you wrote that was attached to the</p> <p>4 police report that was typewritten, you provided that to law</p> <p>5 enforcement as well after December 18th, correct?</p> <p>6 You wrote a handwritten statement, and then you gave</p> <p>7 them -- did you provide them with the typed statement we had</p> <p>8 marked earlier?</p> <p>9 A I don't --</p> <p>10 Q This one here?</p> <p>11 A I don't remember if I gave this when we had the</p> <p>12 restraining order against Mr. Spencer, or if I only used it for</p> <p>13 the KGID meeting.</p> <p>14 Q Well, you brought this to the attention, did you not,</p> <p>15 of Maria Pence, the prosecutor, and provided her with a copy of</p> <p>16 this?</p> <p>17 A No.</p> <p>18 Q Well, did you provide it to law enforcement after the</p> <p>19 incident on the 18th?</p> <p>20 A I don't remember exactly.</p> <p>21 Q Okay. You are aware that there's some video footage</p> <p>22 from both the Spencers and the Shaws regarding the events that</p> <p>23 evening of the 18th of December 2012?</p> <p>24 A Right.</p> <p>25 Q Do you still wish to stick with your testimony that</p>
<p style="text-align: right;">Page 159</p> <p>1 When do you think would be a good time to take a lunch break?</p> <p>2 MR. ROUTSIS: Whenever you guys would like. I'm here</p> <p>3 to make you happy.</p> <p>4 MR. MOORE: I don't believe that.</p> <p>5 MR. ROUTSIS: If you would like to take lunch, I'm</p> <p>6 more than happy to do that now.</p> <p>7 MR. MOORE: Let's have a consensus.</p> <p>8 THE WITNESS: I'm fine. I can deal with Mr. Routsis</p> <p>9 all evening.</p> <p>10 MR. ROUTSIS: That's awesome. Yes.</p> <p>11 THE WITNESS: We know each other.</p> <p>12 MR. ROUTSIS: Yes, we do.</p> <p>13 THE WITNESS: And we respect each other.</p> <p>14 MR. ROUTSIS: Yes, we do. I like you.</p> <p>15 THE WITNESS: Yes.</p> <p>16 MR. ROUTSIS: Okay. We just have different opinions</p> <p>17 about this.</p> <p>18 THE WITNESS: Absolutely, Mr. Routsis.</p> <p>19 MR. MOORE: Let's take a lunch break.</p> <p>20 (A lunch recess was taken)</p> <p>21 BY MR. ROUTSIS:</p> <p>22 Q Okay. We're going to begin.</p> <p>23 Okay. Mrs. Klementi?</p> <p>24 A Thank you. You learn.</p> <p>25 Q We left off -- strike that.</p>	<p style="text-align: right;">Page 161</p> <p>1 you never approached Helmut and gave him something when he was</p> <p>2 on the ground?</p> <p>3 A I'm under oath, and I said 1,000 percent I stick to</p> <p>4 whatever I told you in this room.</p> <p>5 Q Did you go out to the street and talk to him?</p> <p>6 A No.</p> <p>7 Q Okay. When you were -- at some point a subpoena was</p> <p>8 presented, or given to you and/or your husband from my law</p> <p>9 office regarding cameras.</p> <p>10 Do you recall that, prior to trial?</p> <p>11 A Yes.</p> <p>12 Q And it was addressing the camera that Egon may or may</p> <p>13 not have had that evening, and a camera that Helmut may or may</p> <p>14 not have had that evening.</p> <p>15 It was two cameras. Do you recall that?</p> <p>16 A Yes.</p> <p>17 Q And do you recall that we wanted to get any and all</p> <p>18 photographs that were taken on December 18th from either one of</p> <p>19 those cameras?</p> <p>20 A Right.</p> <p>21 Q And do you recall that there was some type of problem</p> <p>22 with the memory stick, and we were unable to get that</p> <p>23 information?</p> <p>24 A Right.</p> <p>25 Q I'm almost done.</p>

ELFRIEDE KLEMENTI - 04/14/2016

<p style="text-align: right;">Page 162</p> <p>1 Nothing further.</p> <p>2 A Thank you, Mr. Routsis.</p> <p>3 MR. ZANIEL: Nothing. I don't have any further</p> <p>4 questions.</p> <p>5 MS. CAPERS: Pass the witness.</p> <p>6 MR. MOORE: No questions.</p> <p>7 MR. PALMER: No questions.</p> <p>8 I think she can be excused.</p> <p>9 Dave, would you like to discuss with her the signing</p> <p>10 of her affidavit, her deposition testimony?</p> <p>11 MR. ZANIEL: Well, she is a party, so, I assume you</p> <p>12 guys -- are you going to get a copy and go over it?</p> <p>13 Do you want to put that on the record?</p> <p>14 MR. PALMER: No. We're all right.</p> <p>15 MR. ZANIEL: If you are not going to review it --</p> <p>16 MR. PALMER: You know, you are right. She is not a</p> <p>17 party. She is not a party.</p> <p>18 MR. ZANIEL: I thought she was part of the counter</p> <p>19 suit.</p> <p>20 Let's just put it on the record, and then we don't</p> <p>21 have to worry about it.</p> <p>22 MR. PALMER: I think you have it right there.</p> <p>23 MR. ZANIEL: Part of the, part of the amended thing</p> <p>24 going.</p> <p>25 MR. PALMER: Probably part of the amended.</p>	<p style="text-align: right;">Page 164</p> <p>1 STATE OF NEVADA)</p> <p>2) ss.</p> <p>3 COUNTY OF WASHOE)</p> <p>4 I, DEBORAH MIDDLETON GRECO, a Certified Court Reporter</p> <p>5 in and for the State of Nevada, do hereby certify:</p> <p>6 That on Thursday, April 14, 2016, at the hour of</p> <p>7 9:11 a.m. of said day, at 151 Country Estates Circle, Reno,</p> <p>8 Nevada, personally appeared ELFRIEDE KLEMENTI, who was duly</p> <p>9 sworn by me to testify the truth, the whole truth and nothing</p> <p>10 but the truth, and thereupon was deposed in the matter entitled</p> <p>11 herein;</p> <p>12 That I am not a relative, employee or independent</p> <p>13 contractor of counsel to any of the parties, or a relative,</p> <p>14 employee or independent contractor of the parties involved in</p> <p>15 the proceedings, or a person financially interested in the</p> <p>16 proceeding;</p> <p>17 That said deposition was taken in verbatim stenotype</p> <p>18 notes by me, a Certified Court Reporter, and thereafter</p> <p>19 transcribed into typewriting as herein appears;</p> <p>20 That the foregoing transcript, consisting of pages 1</p> <p>21 through 164, is a full, true and correct transcription of my</p> <p>22 stenotype notes of said deposition.</p> <p>23 DATED: At Reno, Nevada, this 21st day of April, 2016.</p> <p>24 <i>Deborah Middleton Greco</i></p> <p>25 DEBORAH MIDDLETON GRECO CCR #113, RDR, CRR</p>																																																				
<p style="text-align: right;">Page 163</p> <p>1 MR. ZANIEL: All right. So whether you are a party or</p> <p>2 whether you are not a party, you have the opportunity to review</p> <p>3 your testimony.</p> <p>4 The court reporter is going to make a booklet, and</p> <p>5 that booklet is going to have everything that is spoken here</p> <p>6 today.</p> <p>7 And you can say right now that I want to waive my</p> <p>8 signature. I don't need to review it.</p> <p>9 Or, if you would like, you can say I would like to</p> <p>10 review my testimony and make sure everything was correct,</p> <p>11 spellings, those types of things.</p> <p>12 So you will have to make that decision today, whether</p> <p>13 you want to review it or waive your signature.</p> <p>14 But like I said before, if you do review it, and you</p> <p>15 make any types of changes, those changes can be commented upon</p> <p>16 later on.</p> <p>17 So just to let you know that.</p> <p>18 Would you like to waive your signature, or would you</p> <p>19 like to review it?</p> <p>20 MR. PALMER: Review it.</p> <p>21 THE WITNESS: I would like to review it. Thank you.</p> <p>22 MR. ZANIEL: Very good. Now you are excused, ma'am.</p> <p>23 THE WITNESS: Thank you.</p> <p>24 (Proceedings concluded at 1:11 p.m.)</p> <p>25</p>	<p style="text-align: right;">Page 165</p> <p>2 ERRATA SHEET</p> <p>3</p> <p>4</p> <p>5 I declare under penalty of perjury that I have read the</p> <p>6 foregoing _____ pages of my testimony, taken</p> <p>7 on _____ (date) at</p> <p>8 _____ (city), _____ (state),</p> <p>9</p> <p>10 and that the same is a true record of the testimony given</p> <p>11 by me at the time and place herein</p> <p>12 above set forth, with the following exceptions:</p> <p>13</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Page</th> <th style="width: 10%;">Line</th> <th style="width: 40%;">Should read:</th> <th style="width: 40%;">Reason for Change:</th> </tr> </thead> <tbody> <tr><td>14</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>15</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>16</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>17</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>18</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>19</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>20</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>21</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>22</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>23</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>24</td><td>---</td><td>_____</td><td>_____</td></tr> <tr><td>25</td><td>---</td><td>_____</td><td>_____</td></tr> </tbody> </table>	Page	Line	Should read:	Reason for Change:	14	---	_____	_____	15	---	_____	_____	16	---	_____	_____	17	---	_____	_____	18	---	_____	_____	19	---	_____	_____	20	---	_____	_____	21	---	_____	_____	22	---	_____	_____	23	---	_____	_____	24	---	_____	_____	25	---	_____	_____
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EXHIBIT 6

EXHIBIT 6

**MINUTES OF THE REGULAR MEETING OF THE
KINGSBURY GENERAL IMPROVEMENT DISTRICT BOARD OF TRUSTEES
TUESDAY, DECEMBER 18, 2012**

CALL TO ORDER – The meeting was called to order at the Kingsbury General Improvement District office located at 160 Pineridge Dr., Stateline, Nevada at 6:00 p.m. by Chairperson Norman.

PLEDGE OF ALLEGIANCE – Norman led the pledge to the flag.

ROLL CALL – Present were Trustees Norman, Treanor, Yanish, Vogt and Nelson. Also present was Legal Counsel Scott Brooke, General Manager Cameron McKay, Michelle Runtzel, Business and Contracts Manager, Eric Johnson, Operations Supervisor and Matt Van Dyne of Farr West Engineering.

PUBLIC COMMENT – Pete Shaw talked about ongoing issues with snow removal in his neighborhood regarding a specific plow driver. He and his wife Rowena have had increased berms in front of their driveway. This issue has been experienced by other neighbors as well. Mr. Shaw made a proposal for a stop sign to be placed at the intersection of Charles Ave. and Juniper Drive. This is directly in front of his home. He understands that this request is on the agenda for the 2013 January meeting. There has been no need for a stop sign at this location for 30 years. He strongly opposes the placement of a stop sign at this intersection because of elevated emissions, increased and loss of street parking. He wanted it to be on record that he strongly opposes a stop sign at that intersection. Rowena Shaw wanted it to be on record that it was very difficult for her to get up to the meeting with all the stairs and no handicap parking. Norman said that will be addressed. Dr. Rowena Shaw said she emailed the Board and Mr. McKay about snow removal in her neighborhood (read from emails). Dr. Shaw talked about the fence that was built by the snow plow driver in question (read from emails). Dr. Shaw wanted to go on record as her husband did, that she strongly opposes a stop sign in front of her residence. Norman asked Dr. Shaw where the stop sign would be relative to the photo that she submitted. She believed that the stop sign was going to be right at the corner of Charles, right by the fence. Runtzel said it would be stopping the traffic on Juniper passing the Charles intersection. McKay said there would be two stop signs. McKay said it would be in front of the Wells house. The requests for the stop signs are from the snow plow driver in question, who is also the owner of that property. McKay said that Manchester told him that the snow plow driver would be removed from that particular route.

Mrs. Klementi spoke regarding snow plow removal (read from a letter). The neighborhood problems started in April of 2012 when the Spencer's parked an 18 wheeler on Charles. It took several weeks and several police reports for the vehicle to be removed. Mrs. Klementi talked about the fence that the Spencer's built which was in violation of county codes. The fence is 6 ft. and the code is 3 ft. Mrs. Klementi spoke about how her husband felt threatened by the Spencer's. Since then they have had horrible berms in front of their driveway. She and her husband want Mr. Spencer removed from his position. Mrs. Klementi asked that her letter be put on record.

Mr. Shaw talked about how Mr. Spencer keeps the snow plow equipment running the whole time he is inside the home on a lunch break or whatever. These vehicles are also left on during the summer months as well.

Vogt asked if there was a rule as to how far back a fence should be for snow removal. McKay said yes, but his property line is out to the edge of the road.

Mrs. Klementi talked about how aggressive Mr. Spencer is and that they know that they have a gun. She is afraid. Norman asked how Mr. Spencer threatened Mr. Klementi. Brooke said that this seemed to be a subject that should be put on another agenda for discussion. It appears to involve F&B and he felt that they should be part of the discussion.

Runtzel asked Klementi if he was bermed in by Jeff Spencer yesterday. Mr. Klementi said Spencer was speeding and put the blade down and splashed the snow over Mr. Klementi's face. Runtzel asked if they had reported it and the Klementi's said no because they knew they were going to be going to the Board meeting.

Mary Ellen Kinion from 176 Meadow Lane spoke. She had the large berm that was put in front of her driveway. She has known the Spencer's for about six years and had stopped talking to them last year because they were harassing the neighbors regarding the ridiculous fence that they built. She called McKay about the berm and he immediately sent somebody with a plow as she does not have a commercial plow and there was no way she could clear it out herself. Spencer came by later in the day and Mary Ellen said Spencer had a big grin on his face and turned the blade and that is when Klementi got splashed with the snow. She then called KGID about what had happened and was told that something would be done. Mary Ellen called Flipper and he said he would do something about it.

Mary Ellen said today there was a different snow plow driver. Mary Ellen said Mrs. Spencer wants her day in court. Mary Ellen said we are all here tonight because of this one person and her obsession. She has harassed these people and it has got to stop.

Norman asked Janet Wells if she had any comment to make about the fence. Mrs. Wells had a comment. She has a daycare home on 183 Juniper. She said it is very dangerous for the parents to get to her house the way the fence is. Mrs. Wells said the reason she hasn't had snow berms is because Mrs. Spencer talked to her all summer about what was going to happen. Mrs. Wells took it as gossip and felt that she was unstable. She said that Mrs. Spencer told her that she was going to go after these people and the Shaw's with the snow plow. Mrs. Wells said Mrs. Spencer is always talking about her gun. Mrs. Wells said Rebecca was with her when Mrs. Spencer spoke with her that day. Mrs. Wells read from her prepared speech.

McKay asked that everybody that made a statement tonight give him a copy of the same. McKay said the stop signs are on the Agenda for January and the hearing for the fence is on January 8th at the Douglas County Planning Commission.

Norman said they can't really deal with the feud in the neighborhood, but they can certainly deal with safety and snow plow issues.

Runtzel stated for the record that it is part of her responsibility and she was out last week when some of those issues happened. Managing the snow removal contract is a large part of her job. Runtzel asked the residents to please call her with concerns.

Norman would like Flipper or Charlena to be present and to make a statement as to what a reasonable berm would be.

Dr. Shaw said that prior to writing the letters to KGID; they surveyed the driveways in their area. Norman said to take pictures of her house and of her neighbor's houses. Runtzel offered to take pictures herself.

Runtzel asked McKay if the Planning Commission was an open meeting. McKay said yes. Runtzel told the group that KGID had little control of the stop sign issue; it was mostly in the control of the County.

Jason Hudak the shop steward spoke.

Hello, my name is Jason Hudak and I am an employee here and am also the shop steward. On behalf of me and my coworkers, I would like to thank Carolyn Treanor for her many years of outstanding service on the KGID board. I would like to congratulate the re-elected board members and welcome Bob back to the board. It is nice to have come to a meter rate before the years end and again, Carolyn thanks for your expertise and historical input to get it done, it was a challenging task that needed to get done. As we come to a closing of this year, I would like to reflect a little bit on 2012. I spoke in front of all of you on April 5 of this year. Some points that I made were related to the KGID mission statement how we employees, management, and board of directors are a team and how we work together. The board chose to hire a labor lawyer 2 years ago because you wanted an education, learn things, speed things up, and also we should have looked at that as a positive thing. From the employees perspective this was not positive. For the last 2 years, we have only rolled our existing contract over twice with no increases, while giving Charlie Cockerill a 12.5% increase in the process. To date, KGID has paid him a total of \$18,799.03, while at the same time were asking to reduce our health insurance. Fortunately, we kept our current health insurance because my coworker and best friend James Warswick had a heart attack in October 2012 and the other plan would have put him and his family in some serious financial jeopardy. The family deductible alone would have been \$9000.00 not including any additional expenses. This type of unfortunate circumstance could have happened to anyone of us and we are all thankful James is doing great and on a positive healthy path! Hopefully for the price paid to Charlie you did get the education you were looking for and can look to working with us as partners in the future. As employees, we want to be considered as part of the team, rather than a burdensome necessity. While wages and benefits are important, feeling that we as employees are valued and respected for our contributions are equally as important. In closing, I would like to wish all of you and your families a Merry Christmas and a Happy New year. We hope 2013 will be a bright and positive new year.

McKay thanked Carolyn Treanor for her service over the last 12 years. She was presented with an honorary gavel and a ships clock.

Treanor thanked everybody and gave a short speech.

EXHIBIT 7

EXHIBIT 7



Douglas County Sheriff Minden, Nevada

Deputy Report for Incident 12SO41608

Nature: Assault/Sexual
Location: LUK68

Address: 321 CHARLES AV; LRGK
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

08/10/15

D0297

Date	Type	Description	Relationship
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08/10/15

D0298

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 snowburm 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.

08/10/15

D0299

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 snowbunnies 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

08/10/15

D0300

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.

08/10/15

D0301

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

08/10/15

D0302

Deputy J. McKone 301

Responsible LEO:

Approved by:

Date

08/10/15

D0303

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.

08/10/15

D0304

Supplement

Douglas County Sheriff's Department
Supplemental Narrative
Case#12SO41608

ADDITIONAL INFORMATION:

On Wednesday, January 2 2013, I received a message from Deputy Almeida, that Dr. Shaw a neighbor of Jeffrey Spencer had additional information and evidence of this Battery/Abuse of the Elderly case.

I responded to Dr. Shaw's home at 185 Juniper Lane in Stateline. Dr. Shaw told me, she has security surveillance camera's on her property and the incident was recorded.

I reviewed the surveillance video and could see Jeffrey's driveway and truck were undisturbed, before, during and after this incident/Battery. The video is not very clear, however, it does show camera flashes coming from the area of Egon Klementi's residence/street. The video also shows a male subject, presumed to be Jeffrey Spencer, run from Jeffrey's home past his driveway and into the dark area of the street, then walk back to Jeffrey's home.

Dr. Shaw told me she is unable to provide me with a copy of the video, due to a programing, copy block in her security program in her computer. Dr. Shaw said she would retain the video on her laptop computer, in the event the Douglas County District Attorney was interested in viewing it on her system.

Dr. Shaw also told me she was recently in contact with Helmut Klementi. Dr. Shaw said Helmut was still in pain and had follow-up x-rays and it was discovered he had fractured rib(s).

01/03/13:

I made telephone contact with Hlemut Klementi. He told me, he is experiencing severe pain in his pelvis and has one fractured rib. Helmut also said he is now having medical complications in the area where he had hernia surgery.

DISPOSITION:

Attach to original report, forward to the Douglas County District Attorney's Office.

08/10/15

D0305

5 AA 1013



SHERIFF-CORONER'S
DEPARTMENT
Douglas County, Nevada

STATEMENT FORM

VICTIM _____
WITNESS _____
DRIVER _____
PASSENGER _____

Page 1 of 2

LAST NAME - FIRST - MIDDLE KLEMENTI, ELLIE		D.O.B. 8, 14, 41	RACE - SEX F	CASE # 125041608	AGE 71	HT.	WT.	HAIR	EYES
PHYSICAL ADDRESS 187 MEADOW LANE		MAILING ADDRESS P.O. BOX 3155		HOME PHONE # 775-588 8895					
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 8¹⁵PM 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 KIGD ABOUT BEAMS WHICH WE GOT BY MR. SPENCER.

ALL OVER SUDDEN I HEARD MY BROTHER IN LAW YELLING, ~~AND I SAW~~ 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 HELMUT IS ON THE FLOOR.

I STAYED IN THE HOUSE WHEN THE SHERIFF AND AMBUANCE CAME.

SIGNATURE OF PERSON MAKING STATEMENT:

Ellie Klementi

DATE/TIME:

12, 18, 2012

D0307

123041608 20F2
My name is Elsie 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 driver, 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.

D0308



SHERIFF-CORONER'S
DEPARTMENT
Douglas County, Nevada

STATEMENT FORM

VICTIM _____
WITNESS _____
DRIVER _____
PASSENGER _____

Page 1 of 2

CASE #		123041608								
LAST NAME - FIRST - MIDDLE		#13672		D.O.B.	RACE - SEX	AGE	HT.	WT.	HAIR	EYES
Spencer Jeff D				2-21-63	W M	49	5'10"	185	blk	blu
PHYSICAL ADDRESS		MAILING ADDRESS		HOME PHONE #						
321 Charles		PO Box 2326		775 588-0801						
IS #		EMPLOYMENT/LOCATION		WORK PHONE #						
		Stateline		530 318-1876						
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 were 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:

J. Spencer

DATE/TIME:

12-18-12 10:15pm

D0309



SHERIFF-CORONER'S
DEPARTMENT
Douglas County, Nevada

STATEMENT FORM

VICTIM _____
WITNESS _____
DRIVER _____
PASSENGER _____

Page 2 of 2

CASE # 125041608

LAST NAME - FIRST - MIDDLE SPENCER, JEFF #13672		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:

Egon or his brother. I asked him what he was doing in my driveway. He would not tell me and just yelled at us over to call the Police. I told him they had already been called. His 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 our vehicles. A neighbor's car was broke into over Thanksgiving. I don't understand why he never identified himself.

SIGNATURE OF PERSON MAKING STATEMENT:

DATE/TIME:

12-18-12

D0310

EXHIBIT 9

EXHIBIT 9

RECEIVED
DEC 26 2012
SHERIFF
CLERK

FILED

2012 DEC 26 PM 3:50

TAHOE TOWNSHIP
JUSTICE COURT
CLERK

CLERK

Date Issued: 12/26/12
Date Expired: 1/26/13

D1573

1 commit the offense(s) of stalking, aggravated stalking, or harassment and good
2 cause appearing therefore, **YOU ARE HEREBY ORDERED** as follows:

3 **YOU ARE PROHIBITED**, either directly or through an agent, from contacting,
4 intimidating, using, attempting to use, or threatening the use of physical force, or
5 otherwise interfering in any way with the Applicant and/or the following persons:
6

7 including, but not limited to, in person, by telephone, through the mail, through
8 electronic mail (e-mail), facsimile, or through another person;

9 1. ☒ **YOU ARE ORDERED** to stay away from:

10 Applicant: HELMUT KLEMENT
11
12

13
14
15 2. ☒ **YOU ARE FURTHER ORDERED: TO NOT OPERATE ANY**
16 **SNOW PLOWING EQUIPMENT ON MEADOW LANE OR CHARLES AVE. IN**
17 **STATELINE,NV.**
18

19 3. **THIS ORDER WILL REMAIN IN EFFECT UNTIL 11:59 P.M. ON THE**
20 **DATE SET FORTH ON PAGE 1 UNLESS THE JUDGE ORDERS OTHERWISE.**

21 If an application for an extended order is filed within the effective period of this
22 temporary order, this temporary order will remain in effect until the hearing on
23 an extended order is held.

24 4. **IT IS FURTHER ORDERED** that the Clerk of the Court shall transmit a
25 copy of this Order together with the application, to the Douglas County Sheriff's

1 Office and/or the Douglas County Constable and/or any other appropriate law
2 enforcement agency.

3 5. IT IS FURTHER ORDERED that said law enforcement agency will
4 promptly attempt to serve this Order upon the Adverse Party, without charge to the
5 Applicant, and upon service file a return of service with the Court by the end of the
6 next business day after service is made.

7
8 **NOTICE TO LAW ENFORCEMENT**

9 Any law enforcement officer, with or without a warrant, may arrest and
10 take into custody the Adverse Party, when the law enforcement officer has
11 reasonable cause to believe that (a) an order has been issued pursuant to NRS
12 200.591 against the Adverse Party; (b) the Adverse Party has received a copy
13 of the order; and (c) the Adverse Party is acting or has acted in violation of the
14 order. This arrest may occur regardless of whether the violation occurred in
15 the officer's presence.

16 Any law enforcement agency in this state may enforce a court order
17 issued pursuant to NRS 200.591, without regard to the county in which the
18 order is issued.

19 IT IS SO ORDERED this 26 day of Dec, 2012.

20
21 
22 JUSTICE OF THE PEACE
23
24
25

PROOF OF SERVICE UPON ADVERSE PARTY

I, the undersigned, personally served the Adverse Party above named with a copy of this Temporary Order Against Stalking, Aggravated Stalking or Harassment on the date set forth below.

Signature

Print Name

Date of Service

EXHIBIT 10

EXHIBIT 10

PC ATTACHMENT 7

APPROVED MARCH 12, 2013

The regular meeting of the Douglas County Planning Commission was held on Tuesday, January 8, 2013 in the Douglas County Commissioner Meeting Room of the Douglas County Administrative Building, 1616 8th Street, Minden, Nevada.

PLANNING COMMISSION MEMBERS PRESENT: Margaret Pross, Chair; Frank Godecke, Vice Chairman; Jo Etta Brown; James Madsen; Kevin Servatius; Don Miner and Jeremy Davidson.

STAFF PRESENT: Cynthia Gregory, Deputy District Attorney; Candace Stowell, Planning Manager; Lucille Rao, Junior Planner; Barbra Resnik, Civil Engineer II and Lorraine Diedrichsen, Clerk to the Board.

Call to Order and Determination of Quorum

Chair Pross called the meeting to order at 1:01 pm and determined a quorum was present.

Pledge of Allegiance

Member Servatius led the Pledge of Allegiance.

Approval of Agenda

Candace Stowell, Planning Manager, stated item 2 (For Possible Action. Discussion on Development Application (DA) 12-060, for Marilyn and Jeff Spencer, a request for a Major Variance to allow a six foot high fence to encroach into the setback on Juniper Drive and into the right-of-way on Charles Avenue and to allow a six-foot fence in the front yard area. The subject property is located at 321 Charles Avenue in the R-078 PAS (Residential, Planning Area Statement 078) in the Tahoe Regional Plan (APN 1318-23-810-085). The Planning Commission may approve, approve with modifications, or deny the request.) was being continued to April 9, 2013 at the request of the applicant.

Chair Pross indicated public comment for item 2 would be taken along with general public comment.

MOTION by Brown/Godecke to approve the agenda as amended; carried unanimously.

Disposition of the December 12, 2012 Meeting Minutes.

Vice Chairman Godecke noted the December 12, 2012 meeting was held on a Wednesday and requested that correction to the minutes.

MOTION by Godecke/Madsen to approve the minutes with the stated correction; carried with Miner and Servatius abstaining.

1159
D1132

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF JANUARY 8, 2013

Public Comment

Chair Pross opened public comment and stated this would be the time to make general public comment and public comment for item 2. The public comments made for item 2 would be incorporated into the item when it is heard on April 9, 2013. Public comment for item 2 will also be taken on April 9, 2013.

Janet Wells, 183 Juniper Drive, expressed safety concerns with the obstructed line of sight at this intersection since the building of the Spencer's fence. She has a daycare in her home and feels the children walking to and from the bus stop are at risk at that intersection.

Clarence Burr thanked the Planning Commission members for making the effort to attend their ag district meetings.

Pete Shaw, 185 Juniper Drive, talked about the construction of the fence at 321 Charles Avenue. He believes the fence is overbuilt by 4 ½' per county code and is obstructing the line of sight at the intersection of Charles and Juniper. This fence has created a public safety hazard and now the continuance of this item prolongs the safety hazard for another three months. He asked what the county plans to do to ensure public safety for the next three months.

Dr. Rowena Shaw, 185 Juniper Drive, talked about the safety hazard created by the fence constructed by the Spencers. She discussed efforts made by the District Attorney's office to have some of the fence boards removed but that has not happened. Also addressed was an altercation between two neighbors. She believes placing stop signs at that intersection would result in liability issues for the county. She urged denial of the variance request and would like to see the fence removed.

Diane Tedrick, 310 Charles Avenue, said the Spencer's fence is built on a slope so it sits up higher and results in a nonvisual area of 12'. This fence poses a big problem for her when backing up onto Charles and Juniper since she cannot see the oncoming cars. This is a dangerous situation. She requested the fence be removed and the variance request be denied.

Mary Ellen Kinion, a resident of Meadow Lane, said Ms. Spencer indicated to her that she did not want the neighbors complaining about the fence. She said the right side of the fence may be on a conservatory lot and believes the Spencers have removed part of the foliage on the adjoining lot. She stated the Spencers do not use the intersection in question.

Elfie Klementi does not believe the Planning Commission should grant variances to people who build illegal fences; the Planning Commission is responsible for protecting Douglas County residents. The Spencer's fence should not be allowed to stay while the neighbors suffer and are put in danger. The fence is a code violation, is too high, blocks

1160
D1133

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF JANUARY 8, 2013

the line of sight at the intersection, and devalues the neighboring properties. A stop sign is not appropriate for that intersection.

Citing an issue with snow removal related to the Spencers, Helmut Klementi stated he was taking pictures of the snow berm pushed against his brother's fence when he was confronted by Mr. Spencer. Currently Mr. Klementi has a restraining order against Mr. Spencer.

Jim Slade stated he is unfamiliar with this intersection however he believes variances should only be granted when there is a clear and compelling reason to do so. The Spencer's fence should be removed immediately as it is illegal and a public safety hazard.

Justin Bliyl, builder of the Spencer's fence, thinks this is more of an issue between the neighbors than it is a safety issue. He agrees the fence may go over the boundary line on the corner side and he is willing to correct that. The Spencers' constructed the fence to keep people off their property and he stated he has witnessed the Klementi family taking pictures of his underage shirtless nephews while they were building the fence.

Public comment closed.

Public Hearings

1. **For Possible Action. Discussion on Development Application (DA) 12-045, a Major Modification of a Special Use Permit (ref. File 620) for Mike Pegram, G PEG II, LLC, to allow an outdoor events center for the Carson Valley Inn. The subject property is located at 1625 Highway 395 N in the TC (Tourist Commercial), A-19 (Agricultural - 19 acre minimum parcel size), and GD (Gaming District Overlay) zoning districts in the Minden/Gardnerville Community Plan (APN 1320-29-401-018). The Planning Commission may approve, approve with modifications, or deny the request.**

Dirk Goering, Assistant Planner, presented the site plan of the project, aerial of the site, land use, zoning map, comments made at the Minden Town Board meeting, revisions to the conditions of approval with a focus on 16, 17, & 18, lack of public comment received, and staff's recommendation for approval based on the revisions to the conditions.

Mr. Goering provided the members with the input he received from Carson City regarding their Pony Express Pavilion.

Member Servatius asked if the seating was fixed or portable and Mr. Goering responded it is loose seating because it allows the applicant to accommodate different types of events. Member Servatius stated public safety concerns with portable seating in venues this large as the chairs can become a problem or a weapon if problems such as fights arise. He suggested the surveillance cameras and bubbles are included in the electronics when staging events. There a serious

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D1134

**DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF JANUARY 8, 2013**

responsibility for the safety of the public when you have an events this large. He believes there is not enough information included about the public safety of the patrons of these events. He supports this addition to the Carson Valley Inn but has some public safety concerns especially with the portable seating.

Being familiar with Harveys' temporary events center, Member Miner said Harveys' learning process led them to tie the chairs together to prevent them from being used as a weapon and to make them more stable. Harveys has held events for many years and they are very successful. There have been no major incidents either. He shares the safety concerns stated by Member Servatius but supports this events center. Carson Valley Inn is to be commended for promoting area tourism.

Member Brown asked about the entrance to the events center and the flow of traffic and Mr. Goering identified the two Carson Valley Inn access points as well as the Eighth Street access. The flow of traffic will be handled in conjunction with the Sheriff's office. Member Brown commended Carson Valley Inn for bringing this project forward.

Vice Chairman Godecke addressed possible conditions placed by the Water Conveyance Advisory Committee. He noted the project is in a floodway and a flood zone and asked how they will mitigate the flood prone areas for this development. Mr. Goering said the applicant is working with the Army Corp of Engineers and FEMA to make site improvements to move the floodway and floodplain out of the construction site.

Barbra Resnik, Civil Engineer II, cited the condition placed by Water Conveyance as it relates to the responsibility to clean up drainage water quality that goes into the wetland and to have a Douglas County approved filtration method. When the SUP is done for the events center, there will be some type of water quality improvement project put in and a maintenance plan will be required.

Member Madsen was glad to hear staff was so concerned about this. Why aren't you equally concerned about all the sand and oil separators this county has required of the developers and the like and then has no follow up and no service and absolutely no response and all of a sudden here we are and now you are all concerned about them?

Chair Pross commended Carson Valley Inn for being a major asset to Douglas County. She is glad the design blends in and reflects the agricultural heritage of Douglas County and she echoed the positive comments made by the other Members.

Member Madsen commended the Carson Valley Inn for bringing this forward. He too has concerns about the loose seating and hopes the security is a live feed so they can watch what is going on and provide security if something goes awry.

Member Servatius recommended the Carson Valley Inn seek input from Harrahs/Harveys regarding the staging of large events.

1162
D1135

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF JANUARY 8, 2013

Member Godecke discussed the proposed curfew for these events and stated he would like to see 11:00 p.m. be designated as the curfew no matter what size the event is.

Mark Rotter, Manhard Consulting, identified the location of the events center and the access points and presented the facility plan and elevations. He thanked the Planning Commission for their comments and addressed questions raised.

Carson Valley Inn has events inside now so they are used to dealing with large crowds already. This events center will only accommodate 800 people and not 6,000 or 7,000 like Harveys but they recognize the same types of things can occur.

Traffic - hopefully some of the people attending the events will stay at the Inn but they have worked with the Sheriff's office on traffic controls.

Security Cameras - Member Servatius' suggestion will be passed along.

Seating- loose seating will allow them to convert the area to different uses. This would make it a true events center that offers a variety of uses. Tying the seats together can be considered.

Floodplain - they have gone through the CLOMR process, have approval from FEMA, and are involved in the reduction of flows. Filtration and catch basins are also part of their plans.

Mr. Rotter indicated agreement with the modified conditions of approval.

The RV parking lot will be expanded in the future.

PUBLIC COMMENT

Denise Uber, E. Minden Village Loop resident, expressed noise concerns and asked how the SUP conditions noise. She asked how the noise will be monitored and how often events will occur.

Jim Slade is glad this project is having a public hearing. This project can be a benefit to the community and he supports it. His concerns lie with the floodway/floodplain issue, parking, and his largest concern is noise. Noise should be addressed to protect the citizens of the county and the neighbors of the project.

Les Hodgson, 1610 Eighth Street, is concerned about the noise levels. Who will be monitoring the noise and who will handle the complaints that may arise?

Bruce Scott, Town of Minden Engineer, said the Town supports the project and recognizes the concerns about the noise however they do not believe it will be a problem. He is confident the Carson Valley Inn will continue to work with the Town and community to work through the issues that may arise.

1/63
D1136

DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF JANUARY 8, 2013

Public comment closed.

Mr. Goering said there is no specific decibel level for this. Noise is difficult to measure and enforcement of a decibel level is problematic. A condition was added that allows noise monitoring and if problems arise, the Community Development Director would address them and if they persist, the Planning Commission would get involved. A similar condition was added relating to traffic and security.

He cited the Douglas County Code parking requirements and stated the project will be over parked.

Ms. Resnik explained what was required of the applicant in order to be able to work in the floodway. They must meet FEMA and county requirements.

Member Servatius said the reality is the noise is going to be loud. Noise will be controlled by the SUP and hours of operations. To be a good neighbor, he suggested the Carson Valley Inn limit their hours of operation at the beginning.

Member Brown asked if some type of soundproofing is being considered and Mr. Rotter responded they are working with a sound group to consider sound equipment and types of materials that can be used architecturally. He reminded them it is an open center so the hours will be the key.

MOTION by Miner/Brown to approve Development Application (DA) 12-045, a Major Modification to a Special Use Permit for G PEG II, LLC, based on the discussion and findings in the staff report as modified by today's modifications and subject to these recommendations and the recommended conditions; carried unanimously.

2. **For Possible Action. Discussion on Development Application (DA) 12-060, for Marilyn and Jeff Spencer, a request for a Major Variance to allow a six foot high fence to encroach into the setback on Juniper Drive and into the right-of-way on Charles Avenue and to allow a six-foot fence in the front yard area. The subject property is located at 321 Charles Avenue in the R-078 PAS (Residential, Planning Area Statement 078) in the Tahoe Regional Plan (APN 1318-23-810-085). The Planning Commission may approve, approve with modifications, or deny the request.**

At the request of the applicant, this item was continued to April 9, 2013.

3. **For Possible Action. Discussion on the 2012 Planning Commission Activities Report to be sent to the Board of Commissioners.**

Candace Stowell, Planning Manager, stated the report summarizes the actions taken and the presentations/highlights that occurred during the 2012 year. She touched on the significant actions of the year and requested Planning Commission input on the report.

1/16/13
D1137

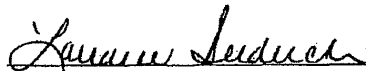
DOUGLAS COUNTY PLANNING COMMISSION
MEETING OF JANUARY 8, 2013

No public comment.

MOTION by Miner/Godecke to approve the 2012 Planning Commission Activities Report and forward the report to the Board of Commissioners as written; carried unanimously.

There being no further business to come before the Planning Commission, the meeting adjourned at 2:31 p.m.

Respectfully Submitted:


Lorraine Diedrichsen, Clerk to the Board

Approved:


Margaret Pross, Chair

1/65
D1138

EXHIBIT 11

EXHIBIT 11

MY NAME IS HELMUT KLEMENTI.
ON DEC. 18TH, I ATTENDED A KGID BOARD MEETING ABOUT SNOW REMOVAL PROBLEMS WE HAD
WITH MR.

SPENCER, SNOW PLOW DRIVER, IN THE MEADOW LANE AND CHARLES AVE. AREAS. WE WERE
ADVISED BY

BOARDMEMBERS TO TAKE PICTURES OF EXTREME BERMS ON OUR PROPERTY. SPENCER'S SIX FOOT
FENCE

WAS ALSO ON THE AGENDA.

AFTER THE MEETING, I HAD DINNER IN MY TWIN BROTHER AND SISTER IN LAW'S HOUSE ON 187
MEADOW

LANE.

I OFFERED TO TAKE A PICTURE OF THE BERM PUSHED AGAINST MY BROTHER'S FENCE ON
CHARLES AVE.

BEFORE I DROVE HOME.

WHILE I WAS TAKING THE PICTURE, ALL OF A SUDDEN, MR. SPENCER CAME DOWN FROM HIS
HOUSE

SCREAMING AND YELLING, TO THE PLACE I WAS STANDING. MR. SPENCER PUNCHED AND
ASSAULTED ME.

HE WENT BACK TO HIS HOUSE AND LEFT ME LAYING ON THE ICE, IN THE DARK. I WAS IN SO MUCH
PAIN

BECAUSE HE BROKE A RIB, I COULD NOT GET UP, THE POLICE, AMBULANCE AND FIRE ENGINE
CAME AND I

WAS BROUGHT TO BARTON MEMORIAL HOSPITAL.

MR. SPENCER WAS ARRESTED, PUT IN HANDCUFFS AND WAS BROUGHT TO JAIL FOUR HOURS
LATER, HE WAS

OUT ON BAIL

I HAVE A RESTRAINING ORDER AT THIS TIME AGAINST HIM. THE CASE IS IN THE HANDS OF A
LAWYER.

<http://enhanced.charter.net/viewmessage?r=%3Crequest%3E%3Cmail%20action%3D%22..> 1/8/2013

helmut klementi
EXHIBIT
public comment
For Identification Only
Filed 1/8/13
By Deputy D1124 151

EXHIBIT 13

EXHIBIT 13

1 Case No. CR-13-0069

FILED

13 CR 0036
RECEIVED
MAY 17 2013

2013 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
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CLERK
BY *Richard Glasson* DEPUTY

DOUGLAS COUNTY
DISTRICT COURT CLERK

-oOo-

THE STATE OF NEVADA,

Plaintiff,

-VS-

PRELIMINARY HEARING

JEFFREY DALE SPENCER,

Defendant.

Copy

TRANSCRIPT OF PROCEEDINGS

APRIL 24, 2013

STATELINE, NEVADA

APPEARANCES:

For the Plaintiff:

MARIA PENCE
District Attorney
Minden, Nevada

For the Defense:

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REPORTED BY:

SUZANNE KUES ROWE
Nevada CCR #127

1 THE COURT: Thank you, ma'am.
2 THE WITNESS: I skipped the wastebasket. Sorry.
3 THE COURT: I didn't even know we had one down there.
4 Why the heck would we have a wastebasket by the witness? They
5 can police their own tissue.
6 MS. PENCE: Your Honor, the state would call Helmut
7 Klementi.
8 THE COURT: Okay. Thank you. While we're waiting for
9 that, Ms. Pence, we have the Lister case May 23rd?
10 MS. PENCE: Yes, Your Honor. The state is going to be
11 asking for a continuance. And I believe there will be no
12 objection, because five of our six witnesses were unavailable for
13 that.
14 THE COURT: Sweet. Nice to know, because I hear the
15 Giants will be in town for a day game, and so will Abraham.
16 MS. PENCE: Oh. Nice.
17 THE COURT: And he needs to go to a game.
18 Mr. Klementi.
19
20 HELMUT KLEMENTI,
21 called as a witness in the matter herein,
22 having been first duly sworn
23 was examined and testified as follows:
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25 THE COURT: Mr. Klementi, please have a seat.

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THE WITNESS: Thank you.

THE COURT: Would you please state your name and spell your first and your last name for our record?

THE WITNESS: Helmut Klementi. First name H E L M U T, Klementi. K L E M E N T I.

THE COURT: Thank you, Mr. Klementi.

The attorneys have some questions they want to ask you, and we are going to start first with Ms. Pence.

EXAMINATION

BY MS. PENCE:

Q. Mr. Klementi, how old are you?

A. 79.

Q. And what is your date of birth?

A. April 11, 1934.

Q. And where do you live?

A. Pine Ridge Drive, 167.

Q. And where is Pine Ridge Drive?

A. It's --

Q. What city?

A. Stateline.

Q. And is that here in Nevada?

A. Yes, that's by the Kingsbury Grade Improvement District.

Q. And are you employed?

A. No.

1 Q. Were you previously employed?
2 A. Yes.
3 Q. What kind of work did you do?
4 A. I did 35 years show business. 14 years I drove the
5 limousine.
6 Q. And did you work here in this community in Tahoe?
7 A. Yes.
8 Q. And you have retired?
9 A. Yes.
10 Q. Because of the time I'm just going to ask you some very
11 directed questions.
12 Were you having dinner with your brother Egon and his
13 wife Elfie on the night of December 18th, 2012?
14 A. Yes.
15 Q. And where were you having dinner with them?
16 A. At their house.
17 Q. And what street is their house on?
18 A. 187 Meadow Lane.
19 Q. And do you know what county that's in?
20 A. Douglas County.
21 Q. And did something happen on that night that caused you
22 to have to come to court today?
23 A. Yes.
24 Q. And just very briefly, can you summarize what happened?
25 A. After dinner I told my brother, I'm taking pictures,

1 Like it was Dr. Norman said we should take pictures from the
2 berm.

3 So, I went out there around the house in front of
4 Charles, and I took three pictures.

5 Q. And what happened after you took the pictures?

6 A. I heard somebody screaming from the balcony, from
7 opposite from Egon's house, and he screamed and yelled.

8 Q. Did you recognize the voice you heard screaming and
9 yelling?

10 A. Yes.

11 Q. And whose voices did you hear?

12 A. Jeff Spencer.

13 Q. And do you know where Mr. Spencer lives?

14 A. Yes.

15 Q. Did the voice, where did you hear the voice?

16 A. The voice came from the balcony. South side of the
17 house.

18 Q. When you say, "of the house," whose house are you
19 talking about?

20 A. Pardon?

21 Q. Whose house did it come from?

22 A. Jeff Spencer.

23 Q. And how do you know Mr. Spencer?

24 A. I only met him very shortly when he came there, and
25 then I didn't meet him anymore.

1 Q. Okay. Could the witness be shown what's been marked as
2 State's Exhibit 1?

3 MR. ROUTSIS: We'll stipulate to Mr. Spencer being the
4 defendant, and that he knows him.

5 THE COURT: The stipulation is accepted.

6 MS. PENCE: Thank you.

7 THE COURT: Do you have a picture on the table there?

8 THE WITNESS: Yes.

9 THE COURT: Ms. Pence, did you have a question about
10 that picture?

11 BY MS. PENCE:

12 Q. Do you recognize the person in that photograph?

13 A. Yes.

14 Q. And who is it?

15 A. Jeff Spencer.

16 Q. And is that the person whose voice you recognized?

17 A. Yes.

18 Q. After you heard that voice yelling, what happened?

19 A. I tried to put the video from my camera on, and he, I
20 heard him running down the stairs yelling, screaming, and it was
21 so fast.

22 He punched me in the chest, and I flew down on my back
23 on the icy street, and he left.

24 Q. When he started yelling, you said you were putting the
25 cap on your camera?

1 A. No, I tried to put the video on the camera, just tried
2 to push a button. But, yeah. That's it.

3 Q. Okay. So, you were trying to push a video on. Why
4 were you trying to put a video on?

5 A. Because the screaming and everything, and I didn't take
6 any more pictures, so I tried to take the sound.

7 Q. Okay. You were trying to record. What were you trying
8 to record?

9 A. The screaming and just, you know, because it was so
10 scary, him running down the steps, but then it was so quick.

11 Q. Okay. I want to back you up just a little bit. You
12 said the screaming and yelling was scary. Why did it frighten
13 you?

14 A. Because I was down there, and I just knew it was, you
15 know -- I don't know why, I mean just because it was so scary.

16 Q. Do you know who he was yelling at?

17 A. Oh, yeah. At me.

18 Q. He was yelling at you?

19 A. Yeah.

20 Q. And how do you know that?

21 A. There was nobody there except me.

22 Q. And when he, when you heard him coming down the stairs
23 and up the street, were you facing him or facing away?

24 A. I was facing up the street.

25 Q. Towards him or away from him?

1 A. Towards him.
2 Q. Okay. So, you could see him?
3 A. No, because I had my camera and I tried to find this
4 button, so I didn't see him, but I knew it was him.
5 Q. And how did you know it was him?
6 A. Because the screaming, the voice.
7 Q. The voice?
8 A. I know his voice.
9 Q. And you knew his voice. Okay. You said he punched you
10 in your chest?
11 A. Yes.
12 Q. And then after he punched you, what happened next?
13 A. I fell on the deck, I hit the icy street with my head.
14 Q. And why did you fall?
15 A. Because he punched me so hard, I flew.
16 Q. When you fell down, were you hurting?
17 A. Yes.
18 Q. Can you please describe for the Court the injuries that
19 you received from being punched and falling to the icy street?
20 A. I have a hip replacement, and this hurt, and the chest
21 hurt me and I couldn't move. So, I screamed for help.
22 Q. And did you go to a doctor?
23 A. Yes.
24 Q. And did you learn whether or not you had sustained any
25 broken bones?

1 MR. ROUTSIS: Objection. That calls for a medical
2 opinion. Hearsay.

3 THE COURT: Overruled. He can testify as to his
4 physical condition.

5 THE WITNESS: They told me that --

6 THE COURT: Don't talk over the witness, sir. If you
7 have a different, objection state it. If it's the same
8 objection, it's overruled again.

9 MR. ROUTSIS: I'm going to object that it's a lack of
10 foundation, because he is discussing medical conclusions, such as
11 broken bones, to say how he felt. But, he can't give medical
12 conclusions.

13 THE COURT: Overruled.

14 BY MS. PENCE:

15 Q. Can you describe for the Court the injuries that you
16 received from the punch and falling to the ground?

17 A. I did not know what injuries I had. I just waited for
18 the ambulance to bring me to the hospital.

19 Q. And since the hospital -- well, okay. Let's start
20 there. So, you went to the hospital in an ambulance?

21 A. Yes.

22 Q. Okay. And did they treat you at the hospital?

23 A. Yes.

24 Q. And did they treat certain parts of your body?

25 A. They made different tests for the head. And body.

1 Q. Okay. What did they find was wrong with you?
2 MR. ROUTSIS: Objection. Lack of foundation. Calls
3 for a medical opinion.
4 THE COURT: Ms. Pence?
5 MR. ROUTSIS: Hearsay.
6 THE COURT: Wait a minute. Hearsay is late.
7 MS. PENCE: Your Honor, I believe that the witness can
8 testify as to what his physical injuries were afterwards, but I
9 do have copies of the medical records that were the result of the
10 subpoena duces tecum. I believe this Court has a copy.
11 They have all accompanying affidavits. And if you
12 prefer, at this time, I don't have any problem entering those and
13 summarizing the injuries contained therein. Or I would be
14 willing just to let the witness describe the injuries.
15 MR. ROUTSIS: We would object on both grounds, unless
16 the medical records were properly, unless they present proof that
17 the custodian of records has properly verified that this was done
18 in the proper channels.
19 THE COURT: Well, there's no exhibits marked yet.
20 Ms. Pence. Did you want to mark exhibits?
21 MS. PENCE: Your Honor, can I have a minute?
22 THE COURT: I think they have already been provided to
23 the Court under seal. So, those will be marked as exhibits next
24 in order. 4 and 5?
25 MS. PENCE: Thank you, Your Honor.

1 (Marked Exhibits 4 and 5.)
2 MS. PENCE: Your Honor, if I could have a moment with
3 defense counsel?
4 THE COURT: Okay.
5 (Discussion off the record.)
6 THE COURT: Do you have a knife? Thank you. I'll give
7 it back carefully.
8 MR. ROUTSIS: Well, these are, I think there's a
9 problem, because they are California records.
10 THE COURT: What are California records, Counsel?
11 MR. ROUTSIS: Medical records.
12 THE COURT: Which exhibits?
13 MR. ROUTSIS: The medical records. I don't know, she
14 hasn't marked them yet.
15 THE COURT: Well, yes she did.
16 MR. ROUTSIS: State of California, County of El Dorado.
17 THE COURT: Is this Exhibit 5 or Exhibit 4 to which you
18 are referring?
19 MS. PENCE: Your Honor, these would be the medical
20 records that were obtained pursuant to the subpoena for Barton
21 Memorial Hospital.
22 THE COURT: Let the record reflect the Court's opening
23 Exhibit 5, because it appears to most closely match the size of
24 the document in Counsel's hand.
25 The Court's also going to open the sealed Exhibit 4,

1 just in case we need to get around to that, so I can return this
2 awesome weapon of minor destruction to our deputy.

3 Okay. And, Counsel, your objection is to number five?

4 MR. ROUTSIS: I just don't know if an out-of -- if it
5 complies with the subpoena.

6 THE COURT: My question is, is it Exhibit 5 you are
7 objecting to?

8 MR. ROUTSIS: I don't know which one she marked.

9 THE COURT: The deputy is going to bring them over to
10 you, and you're going to look at them and familiarize yourself
11 with the size of these documents. Don't look inside.

12 MR. ROUTSIS: That would Exhibit Number 5?

13 THE COURT: Okay.

14 MR. ROUTSIS: And four?

15 THE COURT: All right.

16 MR. ROUTSIS: And I will give them back to the deputy.

17 THE COURT: Okay. Your objection, sir? Do you have an
18 objection to Exhibits 4 and 5?

19 MR. ROUTSIS: Yes. My objection, Your Honor, would be
20 it's an out-of-state hospital.

21 THE COURT: The out-of-state hospital records
22 objection. Overruled. You got another one in your arsenal
23 there?

24 MR. ROUTSIS: I believe the affidavit is sufficient, so
25 I'm not going to make an objection at this point.

1 THE COURT: Thank you. Ms. Pence, did you want me to
2 admit Exhibits 4 and 5?

3 MS. PENCE: Please, Your Honor.

4 THE COURT: Exhibits 4 and 5 are generally admitted.
5 (Admitted.)

6 MS. PENCE: And, Your Honor, unless defense counsel
7 objects, I can summarize the content.

8 THE COURT: They speak for themselves.

9 MS. PENCE: Thank you, Your Honor.

10 THE COURT: But, Mr. Klementi is still here. Perhaps
11 there's some questions that Counsel wants to ask him?

12 BY MS. PENCE:

13 Q. Mr. Klementi, as a result of Mr. Spencer's attacks, did
14 you sustain broken ribs?

15 A. Yes.

16 Q. And how do you know you had broken ribs? What
17 happened?

18 A. I had, after the hospital and then I took the X-rays,
19 and they said you have two broken ribs.

20 Q. Now when did that --

21 MR. ROUTSIS: Objection. Hearsay as to what the doctor
22 said to him.

23 THE COURT: Sustained.

24 BY MS. PENCE:

25 Q. When did you go to see Mr. Brooks or Dr. Brooks?

1 A. It was ordered after the hospital to take, to go to the
2 doctor to have x-rays taken and checked up.
3 Q. And how long after that was that?
4 A. About ten days.
5 Q. Why did you go to the doctors ten days after?
6 A. Because I could not get an appointment.
7 Q. You couldn't get an appointment before then?
8 A. Yeah.
9 Q. Okay. When you left the hospital, were you in pain?
10 A. Very much, yeah.
11 Q. On a scale of one to ten, the night you left the
12 hospital, how bad was your pain?
13 A. Ten.
14 Q. Were you given a prescription for pain?
15 A. Yes.
16 Q. Okay. And did you take that pain medication?
17 A. Yes.
18 Q. Did you take it between the time you left the hospital
19 until your appointment with Dr. Brooks?
20 A. Yes.
21 Q. And did you still have pain when you went to see Dr.
22 Brooks?
23 A. Yes.
24 Q. Okay. So, after you saw Dr. Brooks and he confirmed,
25 was he able to determine if something was causing the pain?

1 A. Yes.

2 Q. And what was it that was causing the pain?

3 MR. ROUTSIS: Objection. Same objection, Your Honor.
4 Speculation, hearsay.

5 THE COURT: Objection overruled, objection overruled.
6 What was causing the pain, sir?

7 THE WITNESS: The broken ribs.

8 THE COURT: Broken ribs.

9 MR. ROUTSIS: I'm going to object to the term, "broken
10 ribs." He could say ribs, but broken ribs would have to be
11 confirmed.

12 THE COURT: Well, your objection is overruled.

13 BY MS. PENCE:

14 Q. In addition to your broken ribs, you mentioned that you
15 had a hip replacement that was hurt. Can you describe how that
16 was hurt in the fall to the street?

17 A. I cannot sit more than 10, 15 minutes. Hurts and it
18 hurts. Still hurts now.

19 Q. Now?

20 A. Yeah. And I don't know.

21 Q. And today is April 25th, 2013?

22 A. Yes.

23 Q. And this is as a result of the injury you sustained on
24 the night of December 18th?

25 A. Yes.

1 Q. And you still have pain in your hip?
2 A. Yeah.
3 Q. Are you taking any kind of medication for pain?
4 A. Yes.
5 Q. Still?
6 A. Yeah.
7 Q. In addition to the ribs and the hip, did you have any
8 other injury as a result of being punched and falling to the
9 ground?
10 A. Yeah, a hernia.
11 Q. A hernia. Tell me about your hernia.
12 A. In 2011, I had a hernia, um, made, you know, and after
13 this punch. When I saw Dr. Brooks, he said, you have a hernia.
14 You have to get it repaired.
15 Q. And when he told you needed to have your hernia
16 repaired, he was talking about the same hernia you had previously
17 had repaired?
18 A. Right.
19 Q. And did you have to have that repaired again?
20 A. Oh, yeah.
21 Q. You stated that when you fell back on to the icy
22 street, you also hit your head. Did you hurt your head?
23 A. Yes.
24 Q. And what about your chest where he punched you, did you
25 have an injury there?

1 A. Yes.
2 Q. And did you have pain as a result of that injury?
3 A. Yes.
4 Q. Okay. Do your brother and your sister-in-law still
5 live on Charles or on Meadow?
6 A. Yes.
7 Q. And do you still try and visit them there?
8 A. I visit them every day.
9 Q. And going and coming from their house, in light of what
10 happened with Mr. Spencer, do you worry?
11 A. I am worried, yes. I'm worried. I just going the back
12 way, you know, and make sure.
13 Q. What do you worry about?
14 A. Well, about anything can happen. I don't know. It was
15 frightening. It was a shock for me.
16 Q. And when you say, "It was frightening, it was a shock,"
17 you are referring to when he attacked you?
18 A. When he attacked, when he came down.
19 Q. And is that what you worry about?
20 A. Yes, because I thought I had one shot, and --
21 Q. Do you worry that he might hurt you again?
22 A. Yes.
23 Q. Have you done anything other than what you've already
24 testified to, that you avoid him and you go around the back, have
25 you taken any legal steps to protect yourself from Mr. Spencer?

1 A. Yes.
2 Q. And what did you do?
3 A. Get Restraining Order, so I can't get hurt.
4 MS. PENCE: Your Honor, we'd ask that State's Exhibit 1
5 be admitted.
6 THE COURT: Any objection, sir?
7 MR. ROUTSIS: To the picture?
8 THE COURT: Right.
9 MR. ROUTSIS: No objection.
10 THE COURT: Exhibit 1 is admitted.
11 (Admitted.)
12 MS. PENCE: No further questions.
13 THE COURT: Mr. Routsis?
14 MR. ROUTSIS: Thank you.
15 EXAMINATION
16 BY MR. ROUTSIS:
17 Q. Mr. Klementi, the night of the 18th, when you and
18 Mr. Spencer had a confrontation, didn't you go to an improvement
19 district meeting with your brother and his wife?
20 A. Before, yes.
21 Q. So, you weren't at dinner before this happened, you
22 went to the improvement district meeting. After dinner did you?
23 A. No. Six o'clock we had the meeting.
24 Q. Okay. So --
25 A. Seven o'clock, about, we had dinner, eight o'clock, I

1 went outside to go home, and told my brother I will take the
2 pictures that Dr. Norman recommended.

3 Q. So, you did not --

4 THE COURT: I'm sorry. Six o'clock meeting, seven
5 o'clock dinner, eight o'clock you're outside?

6 THE WITNESS: Yeah.

7 THE COURT: Okay. Thank you.

8 BY MR. ROUTSIS:

9 Q. What time did you arrive at your brother's house?

10 A. We went together.

11 Q. What time did you arrive from your house?

12 A. No, I didn't -- yeah.

13 Q. You live on Pine Ridge?

14 A. Yes.

15 Q. And how far is that away from Egon's house? Egon
16 Klementi's house?

17 A. Depending. Three minutes. Two minutes.

18 Q. By car?

19 A. Yeah.

20 Q. Okay. And how did you get to your brother's house that
21 day?

22 A. I don't remember.

23 Q. And you got to your brother's house in order to go to
24 the improvement district meeting?

25 A. Yes. No. I went, I mean the improvement district is

1 just across from my house. And I went, we met there at the
2 improvement district. And after this, after the meeting, I went
3 with my brother and my sister-in-law to the house.

4 Q. Okay. So, you didn't go to their house before the
5 improvement district meeting?

6 A. No.

7 Q. You met them at the meeting?

8 A. Yes.

9 Q. Did you drive to the meeting?

10 A. No.

11 Q. Did you walk?

12 A. Yes. It's a few steps.

13 Q. How far from your home is it?

14 A. It's just, the same distance like Egon and Ef's house.

15 Q. Why did you go to the improvement district meeting?

16 A. Because of --

17 MS. PENCE: Objection, Your Honor. Relevance.

18 THE COURT: What's the relevance?

19 MR. ROUTSIS: Well, I think the defense is going to be
20 -- we'll move on.

21 THE COURT: Okay. Thank you.

22 BY MR. ROUTSIS:

23 Q. In any event, the improvement district meeting ended at
24 about seven o'clock?

25 A. The part of the public, yeah. I mean of the hearing

1 from the, about the snow plow and the fence.

2 Q. And at the meeting, you did you discuss or did your
3 brother discuss any snow berms regarding what Mr. Spencer may
4 have done?

5 MS. PENCE: Objection, Your Honor. Relevance.

6 THE COURT: Overruled.

7 BY MR. ROUTSIS:

8 Q. At the meeting, did your brother make any complaints
9 about Mr. Spencer?

10 A. Well, Elfie did.

11 Q. Elfie did? Okay. Did you make any complaints about
12 Mr. Spencer at the meeting?

13 A. No, I never talked.

14 Q. Why did you go to the meeting? I'll withdraw it.

15 A. To hear, to listen and to find out what's going on.

16 Q. Okay. And then you went to your brother's home,
17 correct?

18 A. With my brother and my sister-in-law.

19 Q. And did your brother go out and take pictures of any
20 snow berms on the 18th prior to your --

21 A. No. I don't know.

22 Q. Well, after you got back from the meeting at about
23 seven o'clock, you got to your brother's residence?

24 A. We went inside and had dinner.

25 Q. Okay. And then your brother never went out and took

1 pictures?

2 A. No.

3 Q. Okay. And at some point you went outside with a
4 camera?

5 A. Yes, I went outside to go home.

6 Q. You didn't take a camera with you?

7 A. I had the camera with me.

8 Q. So, at about eight o'clock you left to go home?

9 A. Yeah.

10 Q. And did you take any pictures before going home?

11 A. Yes.

12 Q. Why did you do that?

13 A. Because Dr. Norman said we should take pictures from
14 the berm.

15 Q. Who -- excuse me. The DA's nodding her head, yes, and
16 I think that's improper.

17 THE WITNESS: Okay. I just look at you.

18 MR. ROUTSIS: I think she's confirming an answer and
19 nodding her head yes, and I don't think that's proper. And I
20 object to that. And I'd look the Court to admonish her not to do
21 that.

22 THE COURT: Ms. Pence if you are nodding in response to
23 what a witness is saying, please don't do that.

24 MS. PENCE: I won't, Your Honor.

25 THE COURT: Thank you.

1 MR. ROUTSIS: I'm not saying you were. It appeared you
2 were. I'm just concerned.

3 BY MR. ROUTSIS:

4 Q. Mr. Klementi, when you left the residence at about
5 eight o'clock, you left to go home, is that correct?

6 A. I left and told my brother, "I'm taking pictures."

7 Q. Okay. And you told your brother you're going to take
8 pictures?

9 A. Yeah.

10 Q. Because that's what they instructed you to do at the
11 improvement district meeting, correct?

12 A. Yes.

13 Q. So, you went down Charles, Charles Avenue?

14 A. I went out on the side of the house.

15 MR. ROUTSIS: Your Honor, if we could draw?

16 THE WITNESS: And went around the house on Charles,
17 took pictures from the top, left, two pictures, all together
18 three pictures.

19 Q. Yes. I'd ask the witness to draw Charles Street and
20 where he went, how close to the Spencer's residence he went.

21 THE COURT: Ms. Pence?

22 MS. PENCE: I'd object as to relevance and the need for
23 that information at this particular hearing.

24 THE COURT: Sustained.

25 MR. ROUTSIS: Well, we intend to show that --

1 THE COURT: You don't have to show anything. It's a
2 prelim.

3 MR. ROUTSIS: Okay. We think it's relevant though to
4 show that this is, my client thought this was a trespass, and we
5 need to identify how close he got to the property.

6 THE COURT: We don't hear defenses at a prelim.

7 MR. ROUTSIS: Okay. Very good.

8 BY MR. ROUTSIS:

9 Q. In any event, Mr. Klementi, you left your brother's
10 house and you were going to walk home?

11 A. No.

12 Q. Were you going to come back to his house?

13 A. I was going to come back to my car, which was parked in
14 front of the garage.

15 Q. I thought you said you walked to the improvement
16 district from your home and that your brother drove you to his
17 house. Is that what happened? Did you walk to the improvement
18 district like you testified?

19 A. Yes.

20 Q. And did your brother drive you to his house?

21 A. No. No. I drove -- I went back to my garage, took the
22 car out, and drove to my brother's house.

23 Q. After the meeting?

24 A. Because after the -- yes. And I had to go back home,
25 didn't want him to have me drive me home.

1 Q. So, you had your car at your brother's house that
2 evening?
3 A. Yeah, after the meeting.
4 Q. What kind of car?
5 A. Montego.
6 Q. And it was parked there when you had dinner?
7 A. Yes.
8 Q. And then you went outside and took pictures?
9 A. Yes.
10 Q. Did your brother ask to you take pictures?
11 A. No.
12 Q. Excuse me?
13 A. No.
14 Q. You took them on your own?
15 A. Yeah, because --
16 Q. You took the pictures of the berm for your brother,
17 without your brother asking you to do so?
18 A. Yeah.
19 Q. Okay. And were you going to come back in, or were you
20 going to --
21 A. No.
22 Q. You were going to go home after that?
23 A. Yeah.
24 Q. Okay. And how many pictures did you take?
25 A. Three.

1 Q. Three? How close -- and you took pictures on -- you
2 were attacked on -- or, excuse me. You had a confrontation with
3 the defendant on Charles Avenue, correct?

4 A. After I took the pictures.

5 Q. You were on Charles Avenue, correct?

6 A. Yes.

7 Q. How close did you get to the defendant's driveway?

8 MS. PENCE: Objection. Relevance.

9 THE COURT: Yeah, what's the relevance, Mr. Routsis?

10 MR. ROUTSIS: It's res gestae. It's the facts of the
11 case. We need to get an understanding of where he's located?

12 THE WITNESS: About in the middle of the street.

13 THE COURT: Objection is overruled. In the middle of
14 the street.

15 BY MR. ROUTSIS:

16 Q. Okay. And when you say, "the middle of the street,"
17 you're saying the middle of Charles. How many feet away from the
18 defendant's driveway were you?

19 MS. PENCE: Objection. Relevance.

20 THE COURT: Sustained. It's in the middle of the
21 street, that can be established by measurement any time.

22 BY MR. ROUTSIS:

23 Q. So, you were quite a ways from the defendant's
24 driveway, correct?

25 A. Yes.

1 Q. Okay. And at some point you heard the defendant
2 yelling, correct?
3 A. Yes.
4 Q. And isn't it true that the defendant -- let me strike
5 that at this point, Your Honor. You live in this community,
6 correct?
7 A. Yes.
8 Q. That morning were you aware that there was an article
9 in the newspaper about vandalism, some young kids vandalizing
10 cars in the neighborhood?
11 A. No.
12 MS. PENCE: Objection, relevance.
13 MR. ROUTSIS: Okay.
14 MS. PENCE: And hearsay, if he's going to ask about --
15 THE COURT: Okay. The question has been withdrawn.
16 The answer stands, but there's no question to the answer, so it's
17 just kind of floating out there in outer space.
18 BY MR. ROUTSIS:
19 Q. Did you -- you testified that you heard Mr. Spencer
20 yelling, correct?
21 A. Yes.
22 Q. And he appeared to be yelling from his residence,
23 correct?
24 A. From where?
25 Q. From his house?

1 A. Yes.
2 Q. Was he outside, do you know?
3 A. On the balcony.
4 Q. Did you see him?
5 A. No.
6 Q. How do you know he was on the balcony?
7 A. Because I know the balcony, where it is.
8 Q. Okay.
9 A. And it's --
10 Q. Thank you. Now, you never responded to any of his
11 yells, correct?
12 A. No.
13 Q. And isn't it true that it was dark out?
14 A. Except the light from the house.
15 Q. It was nighttime?
16 A. Yes.
17 Q. It had been snowing that day? Do you recall that?
18 A. I don't recall.
19 Q. You don't remember. Okay.
20 THE COURT: I have a question that I would like one of
21 the counsels to answer. Are we talking about light and dark and
22 whatever and photographs. Are there any flashes involved?
23 MR. ROUTSIS: Yes.
24 THE COURT: Well, I don't know. I want to know from
25 the witness.

1 MR. ROUTSIS: It hasn't been established at this point.
2 THE COURT: It has not.
3 MR. ROUTSIS: Right.
4 BY MR. ROUTSIS:
5 Q. Do you have the pictures from your camera?
6 A. Yes.
7 Q. Where are they?
8 A. At home.
9 Q. Okay. What are the pictures of?
10 A. Of the berm.
11 Q. Of the berm?
12 A. Of the berm and the side of Egon, the fence.
13 Q. Okay. And you had a flash, correct?
14 A. It's automatic.
15 Q. Automatic. Okay. And --
16 THE COURT: And it was working?
17 THE WITNESS: Yes.
18 THE COURT: Okay. My question is taken care of. Thank
19 you.
20 BY MR. ROUTSIS:
21 Q. Now --
22 THE COURT: It's a vandal with a flash camera. Can we
23 move on to another area?
24 MR. ROUTSIS: Well, you don't know -- where did you
25 take your last picture, your last picture you took with the

1 flash, where were you physically located, relative to the
2 defendant's driveway?

3 MS. PENCE: Objection. Relevance, Your Honor.

4 THE COURT: Sustained.

5 MR. ROUTSIS: Judge, he made the point that it's
6 relevant that my client may have seen the flash. Now, if he's
7 down the street he may not have seen the flash. So I think it's
8 extremely relevant.

9 THE COURT: Not relevant to the proceedings here before
10 me today, which is a preliminary hearing.

11 MR. ROUTSIS: Okay.

12 THE COURT: The record will reflect that Mr. Routsis is
13 rolling his eyes and nodding at me. And that's not appropriate
14 either, and you are hereby admonished.

15 MR. ROUTSIS: Okay. You never responded to
16 Mr. Spencer's statements to you, correct?

17 THE COURT: That's been established.

18 BY MR. ROUTSIS:

19 Q. Okay. Isn't it true that Mr. Spencer was simply asking
20 you to identify yourself, and he asked you who are you, who are
21 you, identify yourself?

22 MS. PENCE: Objection. Hearsay.

23 THE COURT: Overruled.

24 MR. ROUTSIS: You can answer.

25 THE WITNESS: No, he didn't. He just screamed and

1 yelled.

2 "What are you doing to my truck? Are you stealing my
3 truck?"

4 He did not ask, I didn't hear anything asking who I am.

5 BY MR. ROUTSIS:

6 Q. So, Mr. Spencer asked you or yelled at you, what are
7 you doing with my truck, are you trying to steal my truck,
8 correct?

9 A. Correct. And I was not --

10 Q. And you didn't say, this is Helmut, this is Egon?

11 THE COURT: Mr. Routsis, you will give this witness --

12 MR. ROUTSIS: I thought he was done.

13 THE COURT: The witness the courtesy of responding to
14 your question before you ask him another?

15 MR. ROUTSIS: I apologize. I thought he was done.

16 THE COURT: No. No, Mr. Klementi. You don't need to
17 respond until the question is asked.

18 BY MR. ROUTSIS:

19 Q. Okay. After Mr. Spencer, eight o'clock at night, yells
20 out to you, what are you doing to my truck, or something to that
21 effect, why don't you respond and say, it's Helmut. I'm not a
22 thief? Why didn't you say that?

23 A. Because I was shocked about the screaming. And I was
24 frozen.

25 Q. Okay. After he yelled, what are you doing with my

1 truck, and what are the exact words that -- I don't want to put
2 words into your mouth. If you could tell me the exact words that
3 Mr. Spencer said to you?

4 THE WITNESS: The exact words I don't --

5 MS. PENCE: Objection, Your Honor. Hearsay.

6 THE COURT: It's not offered to prove that Mr. Spencer
7 was speaking the truth, so it will be allowed.

8 Do you recall the exact words?

9 THE WITNESS: No.

10 THE COURT: Okay.

11 THE WITNESS: Just a lot of words.

12 BY MR. ROUTSIS:

13 Q. He was concerned about vandalism and his truck,
14 correct? That's what you said?

15 THE COURT: No, he didn't say anything about vandalism.
16 You said something about vandalism.

17 You said it was something that you read in a newspaper.

18 This witness never said anything about vandalism.

19 Mr. Routsis, do you have any relevant questions to ask
20 on cross-examination that do not attempt to place words in this
21 witness's mouth that he didn't say?

22 BY MR. ROUTSIS:

23 Q. Mr. Klementi, did Mr. Spencer say to you -- what else
24 did he say to you, other than what are you doing around my truck?
25 What else did he say, was your recollection?

1 A. I don't have a recollection.
2 Q. He was concerned about the truck and what you were
3 doing to the truck, is that correct?
4 A. That's correct. But I was not close to the truck.
5 Q. And it's dark out, correct?
6 A. Yes.
7 Q. Didn't you think of saying I'm taking pictures for my
8 brother. I'm not doing anything to your truck? Did that ever
9 cross your mind?
10 A. No.
11 Q. Okay. Instead you started running, or walking away?
12 A. No.
13 Q. What did you do?
14 A. I stood there.
15 Q. You never started walking away?
16 A. No. I stood there, tried to get the video going. And
17 he was so fast, and punched me and I flew. That's all I
18 remember.
19 Q. Didn't you tell the police officer you began walking
20 back towards Charles after you heard the defendant yelling?
21 A. No.
22 Q. If that's in the report, it's inaccurate?
23 A. I was on Charles.
24 Q. Right. But, after you heard the defendant yelling,
25 didn't you tell the police officer you began walking towards

1 Charles Avenue and Meadow Lane?

2 THE WITNESS: No.

3 MS. PENCE: Objection, relevance, Your Honor. This all
4 goes to the defense's theory of the case. And there will be a
5 time for him to ask this witness those questions.

6 But, at the prelim, if there's a question as to whether
7 or not this goes to probable cause, I could see why it would be
8 relevant. But, at this point, I don't believe it's relevant to
9 this proceeding.

10 THE COURT: And you might be correct. But, if I'm
11 incorrect in ruling on your answer, then I've created error.

12 Whereas, this witness's response was, "no," which was
13 shorter than your objection or my explanation of why I was
14 overruling it.

15 BY MR. ROUTSIS:

16 Q. You don't remember telling the police officer that you
17 were walking towards --

18 THE COURT: Sir, he answered that question. Twice.

19 BY MR. ROUTSIS:

20 Q. After you heard Mr. Spencer yelling, what did you do?

21 THE COURT: Sir, sir you don't need to give a speech to
22 me or the witness. The witness has repeatedly responded that
23 after he heard yelling, he attempted to operate the video device
24 on his camera. That's what he did.

25 I know it, you know it, Ms. Pence knows it, and it's

1 irrelevant for you to ask it again and again and again.

2 MR. ROUTSIS: Okay.

3 THE COURT: If you are in a rut and want to take a
4 break to go over your notes and find a new area.

5 MR. ROUTSIS: I'm not in a rut. I'm going.

6 THE COURT: Okay.

7 BY MR. ROUTSIS:

8 Q. Mr. Klementi, now you've testified that my client
9 approached you at night, and you never said a word before
10 physical contact occurred between the two of you, is that
11 correct?

12 A. Yes.

13 Q. And when he approached you, did you ever see him? Or
14 did you have your back towards him?

15 A. I was flying before I saw him. It was, I was like
16 this, and he punched me so hard, and there I went.

17 Q. So, you never told the -- I'll move on, Your Honor.

18 THE COURT: Because now I'm curious about what happened
19 next, whether Mr. Spencer left, or this person left, or whether
20 they stuck around and helped with the investigation or helped
21 Mr. Klementi up off the ground or something?

22 MR. ROUTSIS: Absolutely.

23 BY MR. ROUTSIS:

24 Q. Now, did you get struck in the back or the chest?

25 A. Chest.

1 Q. You never told the police you were struck in the back?
2 A. No.
3 Q. Okay. And you said you were struck in the chest. How?
4 Can you give us an example of what you recall Mr. Spencer did to
5 you?
6 A. No. He was, it was so -- I don't -- he just --
7 Q. Is it possible that you were walking away and you
8 turned around?
9 A. No.
10 Q. And he just pushed you?
11 A. No.
12 Q. Is that possible, Mr. Klementi?
13 A. No.
14 Q. Okay. What part of the chest did you feel impact? So
15 it wasn't the chest, the ribs?
16 A. The ribs, yeah.
17 Q. Not the chest?
18 A. I'm sorry. The ribs of course. Below the chest.
19 Q. And you went to a Dr. Brooks ten days after this event?
20 Is that correct?
21 A. Yes.
22 Q. And it was Dr. Brooks who told you you had broken ribs?
23 A. He examined me, which was --
24 Q. Fine. Did the hospital the night you were taken in an
25 ambulance tell you you had broken ribs?

1 A. They didn't realize it.
2 Q. They didn't realize it?
3 A. They didn't know it.
4 Q. Did they take any x-rays of you?
5 A. No.
6 Q. Did they release you within minutes, or how long did
7 you stay at the hospital?
8 A. About three hours or so.
9 Q. Three hours? Okay.
10 A. But, I am not, I mean I am not sure.
11 Q. Okay. Now, your testimony is that they released you
12 from the hospital without any x-rays?
13 A. Yes.
14 Q. Did you tell them your ribs hurt?
15 A. Yes.
16 Q. Did you tell them you were punched in the ribs?
17 A. Yes.
18 Q. You said you were punched in the ribs?
19 A. Yes.
20 Q. Okay. And they didn't take x-rays? I'll move on.
21 Strike that.
22 Did you have any bleeding in your head?
23 A. Not that I know of.
24 Q. Okay. When you were, at some point -- can you explain
25 how Mr. Spencer got scratches on his arms? Did you grab for him

1 at all?

2 A. No way.

3 Q. No? Okay. And he never hit you again? He never hit
4 you in the face or hit you when you were down?

5 A. I was flat on the ground.

6 Q. No? Okay. What color clothes were you wearing that
7 night? Were they dark?

8 A. Yes.

9 Q. Okay. Now, your brother Egon, was he outside when this
10 was happening?

11 A. No.

12 Q. Where was he?

13 A. I don't know.

14 Q. Okay. But, you left him in the house, right?

15 A. Yes.

16 Q. And he was, was he at the dinner table or where was he?

17 A. I don't know.

18 Q. Okay. And when you left him, did you -- and you went
19 out on the street, and when you left him, he was in the house?

20 MS. PENCE: Objection, Your Honor. Relevance.

21 THE COURT: Yes, it's not relevant. The witness
22 already told us he left him in the house. What's the point of
23 asking him twice?

24 MR. ROUTSIS: Okay. I'll move on.

25 BY MR. ROUTSIS:

1 Q. When you're down on the ground, does Mr. Spencer ask
2 you, does he say to you?
3 Why didn't you identify yourself?
4 Did he yell at you?
5 Why didn't you say who you were?
6 A. Mr. Spencer?
7 Q. Yes.
8 A. Punched me and ran away, let me lie on the floor. And
9 I would be dead if I couldn't get any help.
10 Q. Okay. You're saying that as soon as he hit you, he ran
11 away?
12 A. Yes.
13 Q. He didn't say anything to you?
14 A. No.
15 Q. Didn't say a word?
16 A. No.
17 Q. And your brother, at some point Egon comes out,
18 correct?
19 A. Because I yelled help.
20 Q. Okay. Now, you don't have any memory that when you
21 were on the ground, Mr. Spencer was saying, why didn't you
22 identify yourself, and you tried to kick at him? You don't
23 recall that --
24 MS. PENCE: Objection, Your Honor.
25 THE COURT: Ms. Pence?

1 MS. PENCE: Objection, Your Honor. As to he didn't say
2 anything. And irrelevant as to whether he tried to kick him.

3 THE COURT: Well, it's relevant to the point that the
4 witness may now contradict himself. And change the story that he
5 earlier told about Mr. Spencer leaving. So, it would be to show
6 the credibility of this witness, so the objection is overruled.

7 MS. PENCE: And, in addition, Your Honor, I would just,
8 of note, that sufficiency of the evidence isn't one of the things
9 at a prelim that are normally of great concern.

10 And most of these points that might perhaps go to
11 motive or bias are not really before the Court.

12 THE COURT: Thank you.

13 MS. PENCE: At a prelim.

14 MR. ROUTSIS: Thank you.

15 BY MR. ROUTSIS:

16 Q. You don't recall that he tried to, he yelled at you to
17 say, why didn't you identify yourself and to see if you were
18 okay, and you tried to kick him.

19 THE COURT: Sustained. There's no reason to answer,
20 Mr. Klementi.

21 BY MR. ROUTSIS:

22 Q. At some point, your brother came out, Egon came out?

23 A. Yes.

24 Q. Is that correct?

25 A. Yes.

1 Q. And Mr. Spencer had left at that point?

2 A. Yes.

3 Q. And when Egon came out, did he try to help you up?

4 A. No, he just asked, they called the ambulance.

5 Q. No. My question is, when Egon came out, did he come up
6 to you and ask you, did he try to help you up?

7 MS. PENCE: Objection, Your Honor. Relevance.

8 THE COURT: Well, he's already answered that
9 Mr. Routsis. His brother didn't try to help him up. He called
10 the ambulance, which would certainly be appropriate. You don't
11 want to move somebody who might be injured.

12 MS. PENCE: I just don't know what the relevance --

13 THE COURT: I don't know what the relevance of it is
14 either.

15 MS. PENCE: That was my objection.

16 MR. ROUTSIS: The circumstances --

17 THE COURT: Mr. Routsis, of your next three questions,
18 two need to be relevant, or I'm going to close the preliminary
19 hearing.

20 BY MR. ROUTSIS:

21 Q. Isn't it true that your brother, Egon Klementi, came
22 out and took pictures of you instead of trying to see how your
23 physical condition was?

24 And that this was, this whole night was trying to get
25 Mr. Spencer to come out and fool him into some type of vandalism?

1 You never identified yourself, you never attempted to
2 get you up.

3 He took pictures of you while you were laying on the
4 ground.

5 When the ambulance came, he went into a great dialog.

6 You're planning a civil suit and you're involved in a
7 civil suit right now as will, aren't you?

8 THE COURT: Ms. Pence?

9 MS. PENCE: Objection, Your Honor. Defense Counsel is
10 testifying.

11 It's a compound question. It's complex.

12 It called for speculation on behalf of this witness as
13 to what his brother's plans were.

14 It's irrelevant.

15 And I'm sure it's some other things, but those are the
16 only things that come to mind.

17 THE COURT: Sustained. Is there any redirect?

18 MS. PENCE: No, Your Honor.

19 THE COURT: Sir, you are excused. Thank you.

20 MR. ROUTSIS: And I'm going to make an objection that
21 my right to cross-examine --

22 THE COURT: Sir, I gave you an opportunity.

23 MR. ROUTSIS: I'm making a record.

24 THE COURT: Thank you.

25 Ms. Pence, other evidence?

1 STATE OF NEVADA }
2 COUNTY OF DOUGLAS } Ss.

3 I, SUZANNE KUES ROWE, Certified Court Reporter,
4 licensed in the State of Nevada, License #127, and a Notary
5 Public in and for the State of Nevada, County of Douglas, do
6 hereby certify that the foregoing proceeding was reported by me
7 and was thereafter transcribed under my direction into
8 typewriting; that the foregoing is a full, complete and true
9 record of said proceedings.

10
11 I further certify that I am not of counsel or attorney
12 for either or any of the parties in the foregoing proceeding and
13 caption named, or in any way interested in the outcome of the
14 cause named in said caption.

15
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17
18
19 Date: May 16, 2013

20
21 
22 SUZANNE KUES ROWE, CCR #127
23
24
25

EXHIBIT 14

EXHIBIT 14

Dana Anderson, MFT
333 Flint Street
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CA36642

To whom it may concern:

I have seen Jeffrey Spencer twelve times since March 20, 2015. Several of these sessions include his wife, Marilyn Spencer.

Both Jeff and Marilyn suffer from symptoms of Chronic Post Traumatic Stress Disorder (CPTSD) due to Jeff's arrest, charges of assault and elder abuse, prosecution, trial, civil lawsuits and continued stalking and harassment from their neighbors.

Jeff especially experiences the following signs and symptoms:

Flashbacks—reliving the trauma over and over, including physical symptoms like a racing heart, dizziness or light headiness, nervousness and stomach pain, .

Bad dreams/night terrors

Frightening thoughts related to the arrest and charges of Elder Abuse

Staying away from places, events, or objects that are reminders of the traumatic experience

Avoiding thoughts or feelings related to the incidence

Being easily startled

Feeling tense or "on edge"

Having difficulty sleeping

Lack of concentration

Inability to deal with stressful situations involving work and relationships

Trouble remembering short term

Negative/Distorted thoughts about oneself or the world

Distorted feelings like guilt or blame

Loss of interest in enjoyable activities

Depression, Anxiety, lack of energy

Cognition and mood symptoms can begin or worsen after the traumatic event, these symptoms can make the person feel alienated or detached from friends or family members.

KINION 0350

A diagnosis of PTSD detrimentally impacts one's ability to cope with the stressors of everyday life, and can be a lifelong condition.

Regards,

Dana Anderson 05/21/17

KINION 0351