

IN THE SUPREME COURT FOR THE STATE OF NEVADA

* * * * *

JEFFREY D. SPENCER,

Appellant,

vs.

HELMUT KLEMENTI, EGON
KLEMENTI, ELFRIEDE
KLEMENTI, MARY ELLEN
KINION, ROWENA SHAW, and
PETER SHAW,

Respondents.

Case No. 77086

Consolidated with

Case No. 77711

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RESPONDENTS' JOINT APPENDIX
VOLUME 3 OF 3

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EXHIBIT 15

GLOGOVAC & PINTAR

SCOTT A. GLOGOVAC
MICHAEL A. PINTAR
ROBERT R. HOWEY
DONALD K. WHITE

ATTORNEYS AT LAW
427 WEST PLUMB LANE
RENO, NEVADA 89509-3766

AREA CODE 775
TELEPHONE 333-0400
FACSIMILE 333-0412
EMAIL: @gplawreno.net

September 1, 2016

Custodian of Records
Dr. Gao
Gastroenterology Consultants, Ltd.
1385 Vista Lane
Carson City, NV 89703

Re: Jeffrey D. Spencer
DOB: 02/21/1963
DOL: 12/12/2012
Case No. 14-CV-0260

Dear Records Custodian:

This firm represents the defendant in the above referenced matter. Attached is a Subpoena Duces Tecum for the production of any and all records, reports, and documents as described in Schedule A attached to the Subpoena Duces Tecum.

In lieu of appearing on the date and time set forth in the Subpoena Duces Tecum, you may produce the records by delivering a complete copy of the original files together with a signed Affirmation of Custodian of Records in the form attached hereto.

If you have any questions, please feel free to contact me. Your attention to this matter is appreciated.

Sincerely,



Michael A. Pintar, Esq.

MAP/av
Enclosures



KINION 129

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

ORIGINAL

4065
 MICHAEL A. PINTAR, ESQ.
 Nevada Bar No. 003789
 GLOGOVAC & PINTAR
 427 West Plumb Lane
 Reno, Nevada 89509
 Telephone: (775) 333-0400
 Facsimile: (775) 333-0412

Attorneys for Defendant
 Mary Ellen Kinion

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.: II

vs.

JEFFREY D. SPENCER; JOHN DOES 1-5,
 Defendants.

JEFFREY D. SPENCER & JOHN DOES 1-5,
 Counterclaimant,

Vs.

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

SUBPOENA DUCES TECUM

(Records May be Mailed in Lieu of Appearance)

THE STATE OF NEVADA SENDS GREETINGS TO:

Custodian of Records
 Dr. Gao
 Gastroenterology Consultants, Ltd.
 1385 Vista Lane

GLOGOVAC & PINTAR
 ATTORNEYS AT LAW
 427 West Plumb Lane
 RENO, NEVADA 89509
 (775) 333-0400

1 Carson City, NV 89703

2 YOU ARE HEREBY COMMANDED that all and singular, business and excuses
3 being set aside, you appear and attend before a Notary Public, or before some other
4 officer authorized by law to administer oaths, at the law offices of Glogovac & Pintar
5 located at 427 West Plumb Lane, Reno, Nevada 89509, at 9.00 a.m. on October 3,
6 2016, to testify at the taking of a deposition in the above-entitled case.

7 You are further commanded to bring with you at the above stated time and
8 place all copies of the documents and materials requested in Schedule A attached
9 hereto, or in lieu of your appearance, you are permitted to provide a copy of the
10 items set forth herein by mail, on or before October 3, 2016, to Michael A. Pintar,
11 Esq., of the law firm of Glogovac & Pintar, 427 West Plumb Lane, Reno, Nevada
12 89509.

13 Please see Schedule B attached hereto for information regarding the rights of
14 the person subject to this Subpoena.

15 For failure to comply you may be deemed guilty of contempt of Court and liable
16 to pay all losses and damages sustained thereby to the parties aggrieved and forfeit
17 One Hundred Dollars (\$100.00) in addition thereto.

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 6th day of September, 2016.

23 GLOGOVAC & PINTAR

24 By: 

25 MICHAEL A. PINTAR, ESQ.
26 Nevada Bar No. 003789
27 Attorneys for Defendant Mary Ellen
28 Kinion

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GLOGOVAC & PINTAR
ATTORNEYS AT LAW
427 West Plumb Lane
RENO, NEVADA 89509
(775) 333-0400

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

_____, being duly sworn says: That at all times herein affiant was over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received the Subpoena on the _____ day of _____, 2016, and served the same on the _____ day of _____, 2016 by delivering a copy to the witness at _____.

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

EXECUTED this _____ day of _____, 2016.

Signature of person making service

SUBSCRIBED and sworn to before me,
a notary public, this _____ day of _____, 2016.

NOTARY PUBLIC

1 SCHEDULE A

2 Copies of the following records pertaining to: Jeffrey D. Spencer, DOB:
3 02/21/1963.

4 All medical records and charts in your possession and control relating to Jeffrey
5 Spencer, including without limitation, all therapy, hospital, physician and nurses notes,
6 Reports, diagnostic reports, MRIs, CT scans, x-rays, assessments, history, physicals
7 and correspondence

1
2
3 **SCHEDULE B**

4 Nevada Rules of Civil Procedure

5 According to Nev. R. Civ. P. Rule 45 Subpoena:

6 **(c) Protection of Persons Subject to Subpoena.**

7 (1) A party or an attorney responsible for the issuance and service of
8 a subpoena shall take reasonable steps to avoid imposing undue burden or expense
9 on a person subject to that subpoena. The court on behalf of which the subpoena was
10 issued shall enforce this duty and impose upon the party or attorney in breach of this
duty an appropriate sanction, which may include, but no limited to, lost earnings and a
reasonable attorney's fee.

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

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

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

23 (i) fails to allow reasonable time for compliance;

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

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

(iv) subjects a person to undue burden.

(B) If a subpoena

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

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

(d) Duties in Responding to Subpoena.

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

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

(e) Contempt.

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed in contempt of the court from which the subpoena issued.

Printed on 9/20/2016 Jeffrey D. Spencer, 228108, 2/21/1963

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Gastroenterology Consultants

Gardnerville Clinic
1520 Virginia Ranch Rd
Gardnerville, NV 89410

phone: (775) 783-4818
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

Printed on 9/20/2016 Jeffrey D. Spencer, 228108, 2/21/1963

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Printed on 9/20/2016 Jeffrey D. Spencer, 228108, 2/21/1963

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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, will 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

Printed on 9/20/2016 Jeffrey D. Spencer, 228108, 2/21/1963

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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

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Printed on 9/20/2016 Jeffrey D. Spencer, 228108, 2/21/1963

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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 TSH [LAB2894027] (Order 131373332)

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

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
SPENCER, JEFFREY D	M	2/21/1963

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

Printed on 9/20/2016 Jeffrey D. Spencer, 228108, 2/21/1963

KINION 141

Printed on 9/20/2016 Jeffrey D. Spencer, 228108, 2/21/1963

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8/24/2016

Patient: Spencer, Jeffrey D (MR#4025713) Printed by NELSON, LORI [POS1LXN]

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

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/CommonVepic_main.asp?menu=chartreview&sub=snapshot

1/4

Sign Off Info:

Signed by Hong Gao On 8/25/2016 8:37 AM

Printed on 9/20/2016 Jeffrey D. Spencer, 228108, 2/21/1963

KINION 142

Printed on 9/20/2016 Jeffrey D. Spencer, 228108, 2/21/1963

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8/24/2016

Patient: Spencer, Jeffrey D (MR#4025713) Printed by NELSON, LORI [POS1LXN]

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 Information**Lab**

BARTON MEMORIAL HOSPITAL

Last Resulted Time
Fri Aug 12, 2016 1:59 PM

http://172.28.100.46/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

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8/24/2016

Patient: Spencer, Jeffrey D (MR#4025713) 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. on 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://172.28.100.46/EpicCareLink/common/epic_main.asp?menu=chartreview&sub=snapshot

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Sign Off Info:

Signed by Hong Gao On 8/25/2016 8:37 AM

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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

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

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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

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**Gastroenterology Consultants, Ltd**

Victor Chen M.D., Hong Gao M.D., John Gray M.D., Juan Gregory M.D., Timothy Hulterman M.D., Phillip Harper M.D., Clark Harrison M.D., Jan Kamler M.D.,
Loth Lieberstein M.D., Christi Matteoni M.D., John McAfee M.D., James Nachiondo M.D., Daniel Nason M.D., Eric Osgard M.D., Jonathan Pezanoski 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

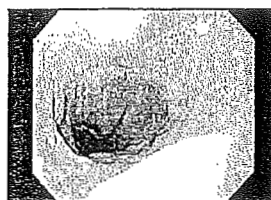
Carson Endoscopy Center

1385 Vista Lane Carson City, Nevada 89703
P: (775) 884-8818 F: (775) 884-4569

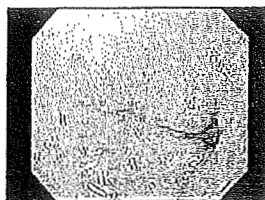
EGD-Colonoscopy Report

Date: 11/20/2015 12:45 PM
Patient Name: Jeffrey D. Spencer
Account #: 228108
Endoscopist(s): Hong Gao, MD

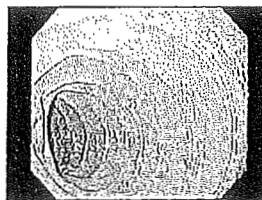
Gender: Male
DOB(age): 02/21/1963 (52)



Stricture in the
gastroesophageal junction



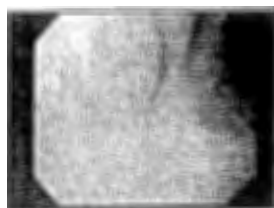
Congestion and ulceration,
thickened fold in the duodenal
bulb compatible with duodenitis



second part of the duodenum



Congestion and ulceration,
thickened fold in the duodenal
bulb compatible with duodenitis



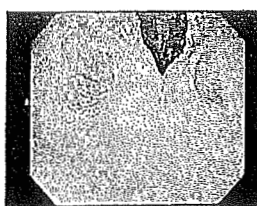
Congestion and ulceration,
thickened fold in the duodenal
bulb compatible with duodenitis



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):

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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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Jar # C :

Biopsy 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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**Gastroenterology Consultants, Ltd**

Victor Chen M.D., Hong Gao M.D., John Gray M.D., Juan Gregory M.D., Timothy Hartman M.D., Phillip Harper M.D., Clark Harrison M.D., Jan Kamler M.D.,
Loth Lieberstein M.D., Christa Matconi M.D., John McAfee M.D., James Nachiondo M.D., Daniel Nason M.D., Eric Osgard M.D., Jonathan Pezanoski 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) 884-4569

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.

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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:**

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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

Electronically signed on 9/23/2015 11:29:46 AM by Hong Gao, MD

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**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., Christi Matteoni M.D., John McAfee M.D., James Nachiando 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., Hoon 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: 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/ernesis. 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 esophagea lcancer.

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

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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 rales, 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.*

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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

Electronically signed on 5/6/2015 2:08:50 PM by Hong Gao, MD

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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 West Plumb Lane, Reno, NV 89509, and that on the ____ day of September, 2016, I served the foregoing document(s) described as follows:

SUBPOENA DUCES TECUM

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).

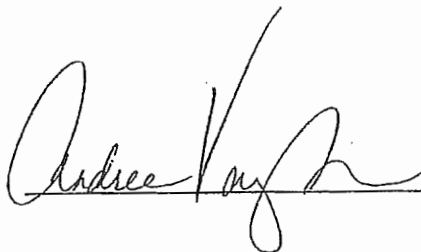
 Federal Express or other overnight delivery.

addressed as follows:

David Zaniel, Esq.
Ranalli and Zaniel, LLC
50 West Liberty St., Suite 1050
Reno, NV 89501

Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
Reno, NV 89519

Dated this 8 day of
September, 2016.



CASE NO.: 14-CV-0260

RECEIVED

FILED

DEPT. NO.: I

APR 24 2018

2018 APR 24 AM 11:50

Douglas County
District Court ClerkBOBBIE R. WILLIAMS
CLERKBY M. Traub 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,

Defendants.

**THIRD-PARTY DEFENDANT'S MOTION
FOR SANCTIONS BASED ON
SPOILIATION OF EVIDENCE**

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,

Counterdefendants & Third Party
Defendants.

Third-Party Defendants, Mary Ellen Kinion ("Kinion") and Elfriede Klementi ("Klementi"), by and through their attorneys of record, Glogovac & Pintar, hereby move this Court for an order dismissing all third-party claims brought by Third-party Plaintiff, Jeffrey Spencer ("Spencer") or, in the alternative, for evidentiary sanctions based on the spoliation of evidence.

1 This motion is based on the Memorandum of Points and Authorities and
2 exhibits attached hereto, and all other papers, pleadings and documents on file herein.

3 I.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **A. Case Summary.**

6 This is an action stemming from disputes between neighbors that live in the
7 Kingsbury Grade General Improvement District ("KGID") on the south shore of Lake
8 Tahoe. The dispute escalated to the point that in 2013, Spencer was criminally
9 prosecuted for assault on Helmut Klementi. Following trial in the criminal action,
10 Helmut Klementi filed a civil action against Spencer seeking recovery for personal
11 injuries arising from the assault. In response, Spencer asserted a counterclaim against
12 Mr. Klementi as well as third-party claims against Ms. Klementi, her husband Egon
13 (deceased), Mary Ellen Kinion and Peter and Rowena Shaw.¹ By way of his third-party
14 action, Spencer has brought claims for defamation, malicious prosecution, civil
15 conspiracy, punitive damages and intentional infliction of emotional distress.

16 **B. Factual Background.**

17 On July 28, 2016, the deposition of Jeff Spencer ("Spencer") was taken. A copy
18 of relevant pages of Spencer's deposition are attached hereto as Exhibit 1. At his
19 deposition, Spencer admitted that he had a security camera system installed at his
20 residence which documented his interaction with Helmut Klementi on the evening of
21 December 18, 2012. Specifically, Spencer testified as follows:

22 Q: Moving ahead to December of 2012, and we're going to get
23 into a lot more specifics, did you have the same system in place?

24 A: No.

25 Q: Okay. You had a new system?

26 A: Yes.

27 Q: When did you install the new system?

28 ¹ Egon Klementi has passed away. See, Suggestion of Death filed November 16, 2017.

1 A: I don't recollect.

2
3 Q: Do you have an approximation? Was it in the summer—
4 was it in the spring of 2012, the summer, the fall, or later?

5 A: Late summer maybe.

6 Q: Okay. And did you install that system yourself?

7 A: Yes.

8 Q: -- as well?

9 Tell me about the second system that you installed. How
10 did it operate? The old one operated off a VCR.

11 A: This is digital, so it has hard drives. And if you save
12 something on it, you record it onto the thumb drive.

13 And then it's -- so being digital, it also overwrites -- when
14 the hard drive fills up, it just starts overwriting.

15 Q: So how would you store -- you know, say, given a 24-hour
16 day -- I presume this is recording 24 hours?

17 ***

18 Q: Had you changed -- from the time you installed it, until
19 December 2012, had you had to change out for, you know, clear up any
20 space in your hard drive?

21 A: No. It records over it.

22 Q: What about the incidents that took place on, I believe,
23 December 18, 2012, how much of the day -- of that 24 hours after it,
24 did you save all of that footage?

25 A: No.

26 Q: Why not?

27 A: I saved -- I took the hard drive out, but it got corrupted
28 trying to save the footage on it. I put it into a different DVR, and it
corrupted it.

So we're trying to get the rest of the footage off of that.

1 Q: So you no longer have that hard drive?

2 A: No, I still possess it.

3 Q: Okay. How much footage from that day did you actually
4 save?

5 A: From which day?

6 Q: I believe it was the 18th of December.

7 A: I'm trying to think. I couldn't honestly tell you.

8
9 Deposition of Jeff Spencer, dated July 28, 2016, pp. 27:17 – 30:25. (Emphasis added).

10 In addition, Spencer testified that he kept notes about his interactions with the
11 various third-party defendants. Spencer also testified that he could not remember
12 what was specifically said about him by the third-party defendants but that those
13 statements were not true. In order to identify the claimed statements for purposes of
14 this lawsuit, Spencer testified he would need to look at his notes. In particular,
15 Spencer testified as follows:

16 Q: Was there also a Kingsbury Grad Improvement District
17 meeting earlier that day?

18 A: That night, yes.

19 Q: Okay. Were you there?

20 A: No.

21 Q: What do you understand – let me ask a better question.

22 Do you know if you were an issue of discussion at that
23 meeting?

24 MR. ROUSTIS: Objection. Vague and ambiguous.

25 At what time? When? It's not relevant unless you give us a
26 time. Was he aware he was discussed that night, a week later?

27 MR. BROWN: I've only asked about one meeting,
28 Counsel. I asked him –

1 MR. ROUSTIS: Excuse me. You asked him was he aware
2 of that meeting.

3 When? It's not relevant unless you give a time period.

4 MR. BROWN: It may not be relevant to you, but it's my
5 deposition. So let me just do my job.

6 MR. ROUSTIS: Vague and ambiguous.

7 If you don't understand it, don't answer it. I mean, you may
8 have been aware a week later.

9 BY MR. BROWN:

10 Q: So you were aware of that meeting on the 18th?

11 MR. ROUSTIS: If you don't understand it, don't answer it.

12 THE WITNESS: I don't think I was.

13 BY MR. BROWN:

14 Q: I thought you just said you were aware of it.

15 A: I'm aware of it now. But if you are talking about was I
16 aware of it that day when I was plowing snow, no.

17 Q: Okay.

18 A: I'm aware of it now because the transcripts are in evidence.

19 Q: When did you become aware of that meeting?

20 A: Within a couple days probably.

21 Q: Have you since become aware that you were an issue of
22 discussion at that meeting?

23 A: Yes.

24 Q: What was the issue concerning you at the meeting, to your
25 knowledge?

26 ***

27 Q: Okay. So just to be clear.
28

1 You can't testify at all whether my client, Helmut Klementi,
2 raised any issues about you at that meeting?

3 **A: Correct. We would have to look at the notes from the**
4 **meeting, and then we could see who talked at the meeting.**

5 **Q: And you haven't looked at those notes?**

6 **A: I might have read them back in 2013.**

7 **Q: Didn't you –**

8 **A: I probably did before the criminal trial.**

9 **Q: Okay. Did you read the lawsuit – or the complaint**
10 **that's been filed in this lawsuit?**

11 **A: Yes.**

12 **Q: Okay. And you are aware that you have alleged that**
13 **false statements were made at that meeting?**

14 **A: Yes.**

15 **Q: But you don't know what those false statements were?**

16 **A: I would have to look at the notes.**

17 **Q: Okay. You are the one bringing the claim.**

18 And you – as you sit here, you don't know what those
19 statements were?

20 **A: I'm not going to say something that I don't know is**
21 **accurate.**

22 **Q: Do you have an understanding of what was said based on**
23 **what you have read and looked at?**

24 **A: Not at this time. I'm a little nervous and I don't have. It.**

25 Deposition of Jeff Spencer, dated July 28, 2016, pp. 69:22 – 74:19. (Emphasis added).

26 In addition, Spencer testified at his deposition that he kept personal notes and
27 that the purpose of those notes was to "show the constant harassment" he was
28 experiencing. In this regard, Spencer testified as follows:

1 Q: So you have no recollection, as you sit here today, of any
2 statements that anybody has given you concerning what happened at
3 that meeting?

4 A: Like I said, it's all in my personal notes, notes for our
5 criminal trial, and from the minutes of the KGID meeting.

6 Q: What – you said personal notes.

7 What are you talking – are you talking about the time
8 log that we talked about earlier?

9 A: Yeah. I have a time log, we have notes on the whole
10 thing.

11 Q: Have you given those notes to your attorney?

12 A: We discussed them.

13 Q: That wasn't my question, Mr. Spencer.

14 My question was, have you given those notes to your
15 attorney?

16 A: Yes.

17 Q: And what are those notes of?

18 A: Of the case.

19 Q: What case? This case, the criminal case –

20 A: The criminal case.

21 Q: -- the TRO?

22 A: The criminal case.

23 Q: Okay. Is it a log? Tell me what – tell me about these
24 notes.

25 A: I believe it's client-attorney privilege, and I shouldn't have
26 to tell you anything about it.

27 Q: Well, we'll let your attorney make that objection.

28 What was the purpose for taking theses notes?

1 A: The purpose is to show the constant harassment.
2 Q: And when were they taken? They were just taken at the
3 trial?

4 A: No.

5 Q: when were they taken?

6 A: They were taken as it happens, as I find it. As I review the
7 video, and see what they are doing, you know.

8 Q: So you took notes on December 18th?

9 A: I did not on December 18th.

10 Q: Okay. Did you take notes –

11 A: I took notes of December 18th after reviewing the video in
12 the following days.

13 ***

14 Q: Did you take them on a – do you have daily log notes that
15 you take?

16 A: Yes.

17 Deposition of Jeff Spencer, dated July 28, 2016, pp. 79:12 – 83:18. (Emphasis added).

18 In order to obtain copies of the videos and personal notes, following Spencer's
19 deposition, Third-party Defendants sent follow-up Requests for Production of
20 Documents to Spencer. The relevant Requests for Production and Spencer's
21 Responses to the Requests are as follows:

22 **REQUEST NO. 6:** Please produce the video of Egon Klementi in your
23 driveway that you referred to on pages 62-63 of your video deposition on
24 July 28, 2016.

25 **RESPONSE TO REQUEST NO. 6:** JEFFREY D. SPENCER objects to
26 this Request as duplicative of production already made by him in this
27 matter. The video of EGON KLEMENTI in JEFFREY D. SPENCER's
28 driveway that he referred to on pages 62-63 of his video deposition on
July 28, 2016, was, upon information and belief, in the Second
Supplemental Early Case Conference production from David M. Zaniel,
Esq. Without waiving such objection, JEFFREY D. SPENCER is in the

1 process of copying for production several days of videos from his home
2 property protection video system relative to this matter.

3 **REQUEST NO. 7:** Please produce all notes from the KGID meeting you
4 referred to on page 77 of your video deposition on July 28, 2016.

5 **RESPONSE TO REQUEST NO. 7:** JEFFREY D. SPENCER objects to
6 this Request as burdensome and duplicative of prior production in
7 discovery. The notes from the KGID meetings are minutes, posted on
8 the KGID website as a public record, equally available to all parties.
9 Further, in the Eighth Supplemental Early Case Conference production
10 from David Zaniel, Esq., was a disc of KGID documents and records
11 which, upon information and belief, would include the relevant KGID
12 meeting minutes.

13 **REQUEST NO. 8:** Please produce all the notes you maintained, and you
14 referred to on page 80 of your video deposition on July 28, 2016.

15 **RESPONSE TO REQUEST NO. 8:** JEFFREY D. SPENCER objects to
16 this Request for Production as those notes are protected by
17 attorney/client privilege.

18 **REQUEST NO. 9:** Please produce the video of Egon Klementi that you
19 referred to on page 151 of your video deposition on July 28, 2016.

20 **RESPONSE TO REQUEST NO. 9:** JEFFREY D. SPENCER objects to
21 this Request as duplicative of production already made by him in this
22 matter. the video of EGON KLEMENTI that JEFFREY D. SPENCER
23 referred to on page 151 of his video deposition on July 28, 2016, was,
24 upon information and belief, in the Second Supplemental Early Case
25 Conference production from David M. Zaniel, Esq. Without waiving such
26 objection, JEFFREY D. SPENCER is in the process of copying for
27 production several days of videos from his home's property protection
28 video system relative to this matter.

29 To date, over 18 months have lapsed since Spencer filed his responses to the
30 Request for Production of Documents, and yet, the documents have not been
31 produced The personal notes and videos are critical pieces of evidence in this case.
32 The personal notes and videos will confirm that everything that has been said about
33 Spencer is true.

34 ///

35 ///

1 **B. Law and Discussion.**

2
3 1. **NRCP 37 (b)(2) Allows For Sanctions To Be Imposed For Spoliation**

4 NRCP 37(b)(2) provides for sanctions including the following:

5 (B) **An order refusing to allow the disobedient party to support**
6 **or oppose designated claims or defenses, or prohibiting him from**
7 **introducing matters into evidence;**

8 (C) **An order striking out pleadings or parts thereof, or staying**
9 **further proceedings until the order is obeyed, or dismissing the action**
10 **or proceeding or any part thereof, or rendering a judgment by**
11 **default against the disobedient party.** (Emphasis added)

12 In Young v. Johnny Ribeiro Building, Inc., 106 Nev. 88, 787 P.2d 777 (1990),
13 the Nevada Supreme Court explained that Nevada courts are authorized by NRCP
14 37(b)(2) to dismiss a complaint as a discovery sanction, and that the courts also have
15 inherent equitable powers to dismiss actions for abusive litigation practices.

16 In Nevada, a potential litigant is under an absolute duty to preserve evidence
17 including documents, tangible items, and information relevant to litigation. Bass-Davis
18 v. Davis, 122 Nev. 442, 134 P.2d 103, 106 (2006); Banks v. Sunrise Hospital, 120
19 Nev. 822, 830-31, 102 P.3d 52, 58 (2004). "When presented with a spoliation
20 allegation, the threshold question should be whether the alleged spoliator was under
21 any obligation to preserve the missing or destroyed evidence." Bass-Davis, 122 Nev.
22 at 449-50. This pre-litigation duty to preserve evidence is imposed "once a party is on
23 'notice' of a potential legal claim." Bass-Davis, 122 Nev. at 450.

24 The spoliation of evidence, for which a party can be sanctioned, is the
25 "destruction or significant alteration of evidence, or *the failure to preserve property for*
26 *another's use as evidence* in pending or reasonably foreseeable litigation," in violation
27 of a party's duty to preserve. See West v. Goodyear Tire & Rubber Co., 167 F.3d 776,
28

1 779 (2nd Cir. 1999)(emphasis added)(citing Black's Law Dictionary 1401 (6th ed.
2 1990)). According to that court, "[i]t has long been the rule that spoliators should not
3 benefit from their wrongdoing." Id. As such, "[e]ven without a discovery order, a
4 district court may impose sanctions for spoliation, exercising its inherent power to
5 control litigation." Id.; see also Bass-Davis, 122 Nev. at 442, 134 P.2d at 106.

6
7 In Stubli v. Big D International Trucks, Inc. and the Budd Company, 107 Nev.
8 309 (1991), the court articulated several factors a court should consider in deciding
9 whether dismissal is an appropriate sanction for spoliation of evidence. All of these
10 factors support this court dismissing the third-party action.

11 First, given that the video allegedly documents the interaction between Spencer
12 and the Klementi brothers and given that Spencer was subject to criminal charges
13 arising from these interactions, the spoliation of this video by Spencer was likely
14 intentional. The essence of Spencer's defense for assaulting Helmut Klementi was that
15 he saw someone on video in his driveway and that he thought this person was trying
16 to break in to his vehicle. The video would establish that defense to be a fraud.

17
18 Second, as a result of the spoliation, Third-party Defendants have suffered
19 irreversible and irreparable prejudice. Spencer has made claims in this case which he
20 cannot support, and in doing so, has unfairly subjected Third-party defendants to a
21 significant amount of attorney's fees and costs in defending themselves from
22 Spencer's frivolous claims. Indeed, this court itself has previously recognized that
23 Spencer's claims for malicious prosecution against Kinion were baseless, and yet,
24 Spencer has continued on with the pursuit of those baseless claims against Elfie
25 Klementi and other third-party defendants.
26
27
28

1 Third, the severity of the sanction of dismissal is in keeping with the severity of
2 the discovery abuse. Spencer's actions have resulted in the spoliation of a critical
3 piece of evidence in this case, i.e., video evidence showing him assaulting Helmut
4 Klementi, and in doing so crippled Third-party defendant's ability to defend themselves
5 from Spencer's claims. In addition to attorneys fees and costs to defend themselves
6 from Spencer's claims, Spencer's claims have resulted in a reservation of rights and
7 declaratory relief action being filed against Kinion by her homeowner's insurance
8 company, Allstate. Similarly, Spencer's claims have resulted first in a denial in
9 coverage, and then, in a reservation of rights letter being sent to Mr. Klementi by her
10 homeowner's insurance company, Hartford. Ms. Klementi has since been compelled to
11 file a lawsuit against the Hartford for breach of contract and for violation of the
12 covenant of good faith and fair dealing based on its actions. In other words, Spencer's
13 claims has resulted in additional litigation between third-party defendants and their
14 homeowners insurance companies over coverage of the claims.
15
16

17 Fourth, the dismissal sanction would not unfairly punish Spencer since his
18 claims are baseless. Indeed, dismissal is warranted to deter Spencer from engaging in
19 similar acts of in the future.
20

21 For all these reasons, Third-party defendants respectfully requests that this
22 Court dismiss Spencer's third-party claims for spoliation of critical evidence.

23 **C. In the Alternative, this Court Should Grant Other Evidentiary Sanctions.**

24 While Third-party defendants believe that dismissal of the third-party claims is
25 warranted, in the alternative, Third-party defendants request that this Court issue an
26 appropriate jury instruction on Spencer's spoliation of evidence.
27
28

1 This Court also has the authority to enforce other sanctions against a party for
2 the spoliation of evidence including instructing the jury regarding the lost or destroyed
3 evidence. See Bass-Davis, 122 Nev. 442 (2006). Even if the evidence was not
4 willfully destroyed, remedial sanctions must be imposed against the party that
5 negligently lost or destroyed relevant evidence. Id. In this regard, the Nevada
6 Supreme Court has stated that an adverse inference jury instruction *must* be given in
7 circumstances of negligently lost or destroyed evidence. Id. The Bass-Davis Court
8 stated that:

9
10 It makes little difference to the party victimized by the destruction of
11 evidence whether that act was done willfully or negligently. The adverse
12 inference provides the necessary mechanism for restoring the
13 evidentiary balance. The inference is *adverse* to the destroyer not
because of any finding of moral culpability, but because the risk that the
evidence would have been detrimental rather than favorable should fall
on the party responsible for its loss.

14 Id. at 449.

15 In Bass-Davis, the court emphasized that spoliation of evidence has a
16 devastating effect on the administration of justice, and a contrary result would have the
17 untoward effect of encouraging potential defendants to forward damaging evidence to
18 their insurers who could “lose” the evidence without any negative effect on the
19 potential defendants. Thus, it reaffirmed its earlier holding that a party on notice of a
20 potential claim has a duty to exercise reasonable care to preserve information relevant
21 to that claim. Id.

22
23 In sum, here now exists an evidentiary imbalance caused by Spencer’s actions.
24 For that reason, a sanction in the way of dismissal should be granted. In the
25 alternative, a jury instruction of spoliation should be given at trial.

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II.
CONCLUSION

Based on the foregoing, Third-party Defendant respectfully requests this Court dismiss all of the third-party claims.

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 Defendants

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 DEFENDANTS' MOTINO FOR SANCTIONS BASED ON
SPOILIATION OF EVIDENCE**

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.

X Personal delivery.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

addressed as follows:

Douglas R. Brown, Esq.
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***Attorneys for Counter-Claimant
Jeffrey Spencer***

Dated this 24th day of April, 2018.



Jennifer Heston

EXHIBIT 1

EXHIBIT 1

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

-o0o-

HELMUT KLEMENTI,
Plaintiff,

Case No. 14-CV-0260

Dept. No. I

vs.
JEFFREY D. SPENCER,
Defendant.
AND RELATED COUNTERCLAIM.

VIDEO DEPOSITION OF

JEFFREY SPENCER

July 28, 2016

Reno, Nevada

JOB NO. 314146

REPORTED BY: DEBORAH MIDDLETON GRECO, CCR #113, RDR, CRR

1 Q And how long, if you just -- if you turned your
2 security system on, how long would it record for before you had
3 to put a new tape in?

4 A It depended on the length of the tape. So about eight
5 hours is the max you could do.

6 Q And were you changing that in eight-hour increments,
7 to your knowledge?

8 A Yeah. Yes.

9 Q Did you keep the tapes, or did you -- what did you do
10 with them after -- once you had an eight-hour session that you
11 would record?

12 A Well, it got a little carried away because if you kept
13 the tapes, then you'd have a ton of tapes, and that's kind of
14 old school.

15 So I would record over a lot of stuff, glance through
16 it.

17 Q Moving ahead to December of 2012, and we're going to
18 get into a lot more specifics, did you have the same system in
19 place?

20 A No.

21 Q Okay. You had a new system?

22 A Yes.

23 Q When did you install the new system?

24 A I don't recollect.

25 Q Do you have an approximation? Was it in the summer --

1 was it in the spring of 2012, the summer, the fall, or later?

2 A Late summer maybe.

3 Q Okay. And did you install that system yourself --

4 A Yes.

5 Q -- as well?

6 Tell me about the second system that you installed.
7 How did it operate? The old one operated off a VCR.

8 A This is digital, so it has hard drives. And if you
9 save something on it, you record it onto the thumb drive.

10 And then it's -- so being digital, it also
11 overwrites -- when the hard drive fills up, it just starts
12 overwriting.

13 Q So how would you store -- you know, say, given a
14 24-hour day -- I presume this is recording 24 hours?

15 A Yes.

16 Q How would you store your video over a 24-hour period?

17 A I just -- it stores it onto the hard drive.

18 Q Okay. And you have a separate hard drive for that?

19 A No. The hard drive is built into the -- it looks like
20 a VCR. You know, the hard drive is built into it.

21 Q Do you know how much space is in that hard drive?

22 A Two terabytes.

23 Q What's the brand of that hard drive?

24 A I can't remember.

25 INFORMATION REQUESTED: _____

1
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5 ***
6 BY MR. BROWN:

7 Q If I ask the court reporter to leave a blank in your
8 deposition transcript, would you be able to provide that
9 information?

10 A Yes.

11 Q Okay. And I would ask the court reporter to do that.
12 So did you have a particular system, you know, for --
13 obviously, a hard drive is eventually going to fill up.

14 How did you maintain your security footage, or do you
15 maintain your security footage, for any given period of time?

16 A Thumb drives.

17 Q So you just --

18 A You would record off the hard drive onto a thumb
19 drive.

20 Q Did you do that every day?

21 A No.

22 Q How often did you do that?

23 A I couldn't honestly answer that.

24 Q Approximately how much time could you record before
25 your hard drive would fill up?

1 **A** It would depend on where you have the camera set at,
2 how many frames per second they are recording and so forth.

3 Up to three months.

4 **Q** Had you changed -- from the time you installed it,
5 until December 2012, had you had to change out or, you know,
6 clear up any space in your hard drive?

7 **A** No. It records over.

8 **Q** What about the incidents that took place on, I
9 believe, December 18, 2012, how much of the day -- of that 24
10 hours before that incident and 24 hours after it, did you save
11 all of that footage?

12 **A** No.

13 **Q** Why not?

14 **A** I saved -- I took the hard drive out, but it got
15 corrupted trying to save the footage on it. I put it into a
16 different DVR, and it corrupted it.

17 So we're trying to get the rest of the footage off of
18 that.

19 **Q** So you no longer have that hard drive?

20 **A** No, I still possess it.

21 **Q** Okay. How much footage from that day did you actually
22 save?

23 **A** From which day?

24 **Q** I believe it was the 18th of December.

25 **A** I'm trying to think. I couldn't honestly tell you.

1 A Yes.

2 Q Okay. And I also believe there was an allegation by
3 Mrs. Shaw, and maybe Mary Ellen Kinion, I'm not exact on who
4 made this, that you assaulted Egon with the snowplow by driving
5 by and spraying him with snow, directing your blade to him and
6 spraying him with snow; is that correct?

7 A Yes, there was an allegation of that.

8 Q And did that all happen before this incident?

9 A Yes.

10 Q Had it been brought up with your employer?

11 A Yes.

12 Q Who complained to your employer, to your knowledge?

13 A He told me that Mary Ellen called him and one of the
14 Klementis called.

15 Q Do you know which one?

16 A No.

17 Q Up to this point, had you had any issues with my
18 client, Helmut, up to --

19 A No.

20 Q -- that issue on the 18th?

21 A No.

22 Q Was there also a Kingsbury Grade Improvement District
23 meeting earlier that day?

24 A That night, yes.

25 Q Okay. Were you there?

1 A No.

2 Q What do you understand -- let me ask a better
3 question.

4 Do you know if you were an issue of discussion at that
5 meeting?

6 MR. ROUTSIS: Objection. Vague and ambiguous.

7 At what time? When? It's not relevant unless you
8 give us a time. Was he aware he was discussed that night, a
9 week later?

10 MR. BROWN: I've only asked about one meeting,
11 Counsel. I asked him --

12 MR. ROUTSIS: Excuse me. You asked him was he aware
13 of that meeting.

14 When? It's not relevant unless you give a time
15 period.

16 MR. BROWN: It may not be relevant to you, but it's my
17 deposition. So let me just do my job.

18 MR. ROUTSIS: Vague and ambiguous.

19 If you don't understand it, don't answer it. I mean,
20 you may have been aware a week later.

21 BY MR. BROWN:

22 Q So you were aware of that meeting on the 18th?

23 MR. ROUTSIS: If you don't understand it, don't answer
24 it.

25 THE WITNESS: I don't think I was.

1 BY MR. BROWN:

2 Q I thought you just said you were aware of it.

3 A I'm aware of it now. But if you are talking about was
4 I aware of it that day when I was plowing snow, no.

5 Q Okay.

6 A I'm aware of it now because the transcripts are in
7 evidence.

8 Q When did you become aware of that meeting?

9 A Within a couple days probably.

10 Q Have you since become aware that you were an issue of
11 discussion at that meeting?

12 A Yes.

13 Q What was the issue concerning you at the meeting, to
14 your knowledge?

15 A I would say the best evidence would be to look at the
16 notes.

17 Q I'm asking you your recollection. I can go look at
18 those notes any time. You can tell me what you know about it.

19 MR. ROUTSIS: I'm going to object. Again, vague and
20 ambiguous. Restate the question.

21 MR. BROWN: Can you read the question back, Court
22 Reporter?

23 **Record read by the reporter as follows:**

24 **"QUESTION: What was the issue concerning you at the**
25 **meeting, to your knowledge?"**

1 MR. ROUTSIS: Speculation, as well. Please reask the
2 question.

3 BY MR. BROWN:

4 Q Go ahead and answer that question.

5 MR. ROUTSIS: If you don't understand the question --
6 he is asking you to speculate. If you don't understand --

7 MR. BROWN: Counsel, he didn't say that he --

8 MR. ROUTSIS: Excuse me. I'm talking to my client.

9 MR. BROWN: You're testifying now.

10 MR. ROUTSIS: Excuse me. I'm not testifying.

11 MR. BROWN: You are telling --

12 MR. ROUTSIS: Excuse me. I'm talking to my client.

13 MR. BROWN: Counsel --

14 MR. ROUTSIS: If you don't understand the question,
15 you tell him you don't understand the question. Okay?

16 If he is asking you to speculate, let me him know that.

17 BY MR. BROWN:

18 Q I'm not asking you to speculate anything. In fact, I
19 told you not to speculate at the beginning of this deposition.

20 So I would ask you, to your knowledge, what was the
21 issue concerning you that was raised at that meeting?

22 A I would speculate if I said. I don't know.

23 Q You wouldn't speculate. You --

24 A I would have to read the notes.

25 MR. ROUTSIS: Objection. Argumentative.

1 BY MR. BROWN:

2 Q You had indicated --

3 MR. ROUTSIS: He's saying -- he has answered the
4 question. He doesn't want to speculate.

5 MR. BROWN: Counsel, you're impeding the process.

6 MR. ROUTSIS: I'm advising him not to answer the
7 question at this point.

8 Don't answer the question if you have to speculate as
9 to what you don't have personal knowledge of.

10 BY MR. BROWN:

11 Q Let's go back on the -- let's go back and just talk
12 about this for a minute.

13 So you indicated that you did -- you were aware of the
14 meeting, you were aware that you were discussed at the meeting.

15 But now you are telling me you don't understand my
16 question concerning what issues were raised at that meeting?

17 A I understand your question, but I don't know what
18 issues were raised. I wasn't at the meeting.

19 Q Okay. So just to be clear.

20 You can't testify at all whether my client, Helmut
21 Klementi, raised any issues about you at that meeting?

22 A Correct. We would have to look at the notes from the
23 meeting, and then we could see who talked at the meeting.

24 Q And you haven't looked at those notes?

25 A I might have read them back in 2013.

1 Q Didn't you --

2 A I probably did before the criminal trial.

3 Q Okay. Did you read the lawsuit -- or the complaint
4 that's been filed in this lawsuit?

5 A Yes.

6 Q Okay. And you are aware that you have alleged that
7 false statements were made at that meeting?

8 A Yes.

9 Q But you don't know what those false statements were?

10 A I would have to look at the notes.

11 Q Okay. You are the one bringing that claim.

12 And you -- as you sit here, you don't know what those
13 statements were?

14 A I'm not going to say something that I don't know is
15 accurate.

16 Q Do you have an understanding of what was said based on
17 what you have read and looked at?

18 A Not at this time. I'm a little nervous, and I don't
19 have it.

20 Q You are a little nervous?

21 A Of course.

22 MR. ROUTSIS: Objection. Argumentative. Asked and
23 answered.

24 You've asked the question. He gave you an answer.

25 MR. BROWN: No, Counsel.

1 Q Okay. If they are not identified, and you can't
2 remember who they were, how am I going to find out who you
3 talked to?

4 A Probably by buying the transcripts to the criminal
5 trial.

6 Q So they would have been witnesses at the criminal
7 trial?

8 A That's a good start.

9 Q Okay. Who were the witnesses on your behalf at the
10 criminal trial?

11 A I don't remember.

12 Q So you have no recollection, as you sit here today, of
13 any statements that anybody has given you concerning what
14 happened at that meeting?

15 A Like I said, it's all in my personal notes, notes for
16 our criminal trial, and from the minutes of the KGID meeting.

17 Q What -- you said personal notes.

18 What are you talking -- are you talking about the time
19 log that we talked about earlier?

20 A Yeah. I have a time log, we have notes on the whole
21 thing.

22 Q Have you given those notes to your attorney?

23 A We discussed them.

24 Q That wasn't my question, Mr. Spencer.

25 My question was, have you given those notes to your

1 attorney?

2 A Yes.

3 Q And what are those notes of?

4 A Of the case.

5 Q What case? This case, the criminal case --

6 A The criminal case.

7 Q -- the TRO?

8 A The criminal case.

9 Q Okay. Is it a log? Tell me what -- tell me about
10 these notes.

11 A I believe it's client-attorney privilege, and I
12 shouldn't have to tell you anything about it.

13 Q Well, we'll let your attorney make that objection.
14 What was the purpose for taking these notes?

15 A The purpose is to show the constant harassment.

16 Q And when were they taken? They were just taken at the
17 trial?

18 A No.

19 Q When were they taken?

20 A They were taken as it happens, as I find it. As I
21 review the video, and see what they are doing, you know.

22 Q So you took notes on December 18th?

23 A I did not on December 18th.

24 Q Okay. Did you take notes --

25 A I took notes of December 18th after reviewing the

1 video in the following days.

2 Q Had you retained counsel by December 19th?

3 A We had counsel retained from earlier than -- farther
4 than that.

5 Q That was Mr. Torvinen for the TRO, correct?

6 A Yes.

7 Q You hadn't yet retained counsel for the criminal
8 proceeding, correct?

9 A No. We had talked to Todd about this.

10 Q I'd ask you to produce those notes to your attorney
11 for production in this case.

12 MR. ROUTSIS: Well, first of all, if he provided me
13 with -- I don't know what he is referring to. That would be
14 work product for the criminal matter.

15 I'm unaware of what he is specifically talking about.
16 So --

17 THE WITNESS: Okay.

18 MR. ROUTSIS: -- we'll have to address this at another
19 time.

20 MR. BROWN: I guess it would be my position if he took
21 notes the day after, and you weren't retained --

22 MR. ROUTSIS: Yeah.

23 MR. BROWN: -- they couldn't be privileged, unless you
24 called up Todd Torvinen and Todd Torvinen said to take notes of
25 that.

1 THE WITNESS: He has been retained since we had the
2 issue with Mr. Taylor.

3 BY MR. BROWN:

4 Q Yeah. Which is a separate incident.

5 A But it's -- I don't think you are following me. We
6 took -- we -- he is retained currently. Okay? Maybe you don't
7 understand that.

8 We started taking notes because of the Taylor
9 incident. Okay? Those notes just kept going with these
10 incidents.

11 Q Okay. Did you review those notes in preparation for
12 today's deposition?

13 A No.

14 Q When was the last time you looked at those notes?

15 A I could not honestly tell you. I don't go back and
16 look at them.

17 Q Did you take them on a -- do you have daily log notes
18 that you take?

19 A Yes.

20 Q When was the last time you had a problem with
21 Mr. Taylor?

22 A I haven't had a problem with him since the TPO,
23 although he still drives by a lot.

24 Q Okay. So back to the meeting.

25 You are not aware of any statements, as you sit here

1 today, you personally, and have knowledge of, that were said
2 about you at that meeting?

3 A No, I'm aware of statements that were made. I just
4 can't recall them word-for-word right now.

5 Q Okay. What are the substance of the statements? In
6 other words, if you can't recall them word-for-word, what is
7 your understanding of what they were?

8 MR. ROUTSIS: I'm going to object. You have a log,
9 you have the findings, transcripts, of that hearing, don't you?
10 Why are you asking him when you have the best evidence?

11 You've asked him seven different times. He told you
12 he doesn't have a clear recollection. Why do you keep asking
13 him questions?

14 MR. BROWN: Because I'm entitled to his understanding
15 of what this lawsuit is about.

16 MR. ROUTSIS: He's given you an answer. It's been
17 asked and answered. He told you he has no clear recollection.

18 Let's move on.

19 MR. BROWN: He just told me he had an understanding,
20 but he didn't recall the specifics. That's why I want to know
21 what his understanding is. That's it.

22 We can spend all day on this issue, or we can just get
23 it over with.

24 MR. ROUTSIS: You can ask it again, you can keep
25 asking it, and you are going to get the same answer.

That on Thursday, July 28, 2016, at the hour of 10:01 a.m. of said day, at 151 Country Estates Circle, Reno, Nevada, personally appeared JEFFREY SPENCER, who was duly sworn by me to testify the truth, the whole truth and nothing but the truth, and thereupon was deposed in the matter entitled herein;

That said deposition was taken in verbatim stenotype notes by me, a Certified Court Reporter, and thereafter transcribed into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 225, is a full, true and correct transcription of my stenotype notes of said deposition.

DATED: At Reno, Nevada, this 1st day of August, 2016.

DEBORAH MIDDLETON GRECO
CCR #113, RDR, CRR

RECEIVED

MAY 18 2018

Douglas County
District Court Clerk

FILED

2018 MAY 18 PM 3:33

BOBBIE R. WILLIAMS
CLERK
M. BIAGGINI
BY _____ DEPUTY

Case No. 14-CV-0260

Dept. No. I

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.

JOINDER TO MOTION FOR SANCTIONS

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, hereby
joins *Third Party Defendant's Motion for Sanctions Based on Spoliation of Evidence* ("Motion
for Sanctions Based on Spoliation of Evidence") filed by Mary Ellen Kinion and served upon all
parties on April 24, 2018.

///

///

1 Helmut Klementi joins and incorporates into this pleading all of the arguments set
2 forth in the Motion for Sanctions Based on Spoliation of Evidence, and requests dismissal of all
3 third-party claims based on spoliation of evidence; or, in the alternative, a jury instruction of
4 spoliation.

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

7 Dated: May 17, 2018.

8 Lemons, Grundy & Eisenberg

9
10 BY: 

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

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on May 17, 2018, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **JOINDER TO MOTION FOR SANCTIONS**, addressed to the following:

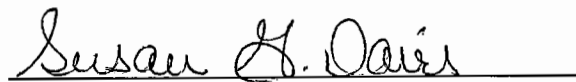
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Attorneys for Rowena Shaw and Peter Shaw


Susan G. Davis

CASE NO.: 14-CV-0260

DEPT. NO.: I

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MAY 25 2018

**Douglas County
District Court Clerk**

2018 MAY 25 AM 11:19

JESSIE R. WILLIAMS
CLERK

BY *mbra* 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,

Defendants.

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,

Counterdefendants & Third Party
Defendants.

**MOTION TO STRIKE PLAINTIFF'S
EXPERT WITNESS DESIGNATION**

Counter-defendant, Mary Ellen Kinion ("Kinion"), by and through her attorneys of record, Glogovac & Pinter, respectfully moves this Court for an order striking Defendant/Counterclaimant Jeffrey D. Spencer's ("Spencer") designated expert witness, Gilbert Coleman, who was disclosed as an expert witness on May 11, 2018.

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I.

MEMORANDUM OF POINTS AND AUTHORITIESA. Introduction

The Court is familiar with the facts of this case. Pursuant to this Court's Order dated September 19, 2017, the parties were directed to disclose the identities of any person to be used as an expert witness "no later than May 11, 2018." The disclosures were to be made pursuant to NRCp 16(1)(a)(2), and the Court specifically stated that the expert witness "must prepare and sign a written report that complies with the rule." (Order, p. 2:26-3:2).

B. Plaintiff's Expert Disclosure is Deficient

The proper method for disclosing an expert witness is outlined in NRCp 16.1(a)(2)(B). It reads:

Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, **be accompanied by a written report prepared and signed by the witness.** The court, upon good cause shown or by stipulation of the parties, may relieve a party of the duty to prepare a written report in an appropriate case. **The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions;** the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(Emphasis added). A copy of Spencer's expert disclosure is attached hereto as "Exhibit 1." As the Court can see, there is no report included with the witness' curriculum vitae. There are no opinions of the expert, nor is there any data attached supporting such opinions.

Spencer admits that "Mr. Coleman's report regarding Mr. Spencer's claimed income loss is not complete, so the disclosure will be supplemented promptly pursuant to the Rules." (Exhibit 1, p.1:20-21). While Kinion appreciates Spencer's willingness to supplement the disclosure, the failure to provide a complete report by the deadline specified by the Court's order warrants an order striking the expert witness because without knowing any of Mr.

1 Coleman's opinions, or the data upon which he bases them, it is impossible for Kinion to
2 evaluate. Also, Spencer has shown no cause no provided justification for why his late, deficient
3 expert disclosure should be excused. NRCP 16.1(a)(2) "serves to place all parties on an even
4 playing field and to prevent trial by ambush or unfair surprise." Sanders v. Sears-Page, 131
5 Nev. ___, ___, 354 P.3d 201, 212 (Ct. App. 2015). Further, Spencer's delay in producing a
6 report hinders Kinion's ability to retain a rebuttal expert within the deadline specified by the
7 Court. This Court specified that parties wishing to disclose a rebuttal expert witness within 30
8 days of the expert disclosure. (Order, p. 3:2-4); NRCP 16.1(a)(2)(C)(ii).

9 The Nevada Court of Appeals has determined that the failure to timely provide an
10 expert report was grounds to exclude the expert's testimony O'Neill v. Grigoriev No. 70493
11 (Ct. App. 2017). Further, the Nevada Supreme Court has upheld *motions in limine* to exclude
12 expert testimony when a party failed to timely produce an expert's report pursuant to NRCP
13 16.1, agreeing that the delay was prejudicial to the party formulating the rebuttal. See Freemon
14 v. Fischer, 281 P.3d 1173 (2009).

15 II.

16 Conclusion

17 Considering that this case has already been continued, the Spencer's delay in providing
18 critical information relating to his claimed damages is inexcusable. Accordingly, Kinion
19 respectfully requests that this Court enter an order striking his expert designation.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

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 25 day of May, 2018.

GLOGOVAC & PINTAR

By:


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

CERTIFICATE OF SERVICE

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

MOTION TO STRIKE PLAINTIFF'S EXPERT WITNESS DESIGNATION

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

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

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

Dated this 25th day of May, 2018.

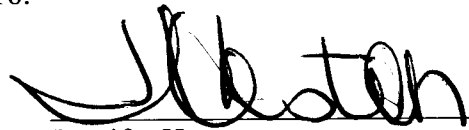

Jennifer Heston

EXHIBIT 1

EXHIBIT 1

1 CASE NO. 14-CV-0260

2 Dept. No. II

3

4

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

6 **IN AND FOR THE COUNTY OF DOUGLAS**

7

8

9 JEFFREY D. SPENCER,

10

Counterclaimant,

11

vs.

**JEFFREY SPENCER'S
DISCLOSURE OF EXPERT WITNESS**

12

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,

14

15

Counterdefendant &
Third Party Defendants.

16

17

Counterclaimant JEFFREY SPENCER, by and through his attorneys WILLIAM J. ROUTSIS

18

II, Esq. and LYNN G. PIERCE, Esq., hereby discloses the expert witness he intends to call at trial.

19

time of trial he has suffered in this matter. Attached please find the CV and fee schedule for Gilbert

20

R. Coleman. Mr. Coleman's report regarding Mr. SPENCER's claimed income loss is not

21

complete, so this disclosure will be supplemented promptly pursuant to the Rules.

22

The undersigned affirms pursuant to NRS §239B.030 that this pleading does not contain the

23

social security number of any person.

24

DATED this 11th day of May, 2018.

25

/s/ William J. Routsis, II, Esq.

26

WILLIAM J. ROUTSIS, II, Esq.

27

Nevada State Bar No. 5474

28

1070 Monroe Street

Reno, Nevada 89509

Phone 775-337-2609/Fax 775-737-9321

Attorneys for Counterclaimant/Third Party Plaintiff Jeffrey D. Spencer

/s/ Lynn G. Pierce, Esq.

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

CERTIFICATE OF SERVICE

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

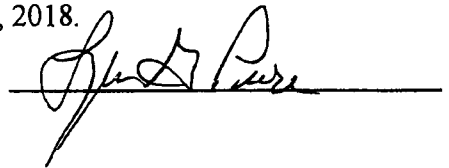
Douglas R. Brown, Esq.
Christian L. Moore, Esq.
6005 Plumas Street, Suite 300
Reno, NV 89519
Attorneys for Helmut Klementi

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

Michael A. Pinter, Esq.
427 W. Plumb Lane
Reno, Nevada 89509
*Attorney for Mary Ellen Kinion,
Elfride Klementi and Egon Klementi*

David M. Zaniel, Esq.
50 W. Liberty Street, Suite 1050
Reno, NV 89501

DATED this 1st day of May, 2018.



GILBERT R. COLEMAN

Address: 40 Pine View Court
 Reno, Nevada 89511
 E-mail: grcoleman@colemaneconomics.com

Telephone: 775-852-3259
 Fax: 775-852-3033

EDUCATION

University of Southern California; Bachelor of Arts; Economics and Mathematics; 6/77

Stanford University; Master of Science; Operations Research; 6/80

Stanford University; Doctor of Philosophy; Economics; 6/83

EXPERIENCE

Professional

Economic consultant; Self-employed; Consultant of litigation, legislative issues, economic impact; economic feasibility; regulation, statistical analysis, and general economic issues, 3/84 to present. I have worked as a consultant for the United States, the State of Nevada, the State of California, Washoe County, Newmont Mining, Equitorial Mining Limited, Sempra Generation, the Airport Authority of Washoe County, First Interstate Bank, Nevada Bell, Sierra Pacific Power, the AFL-CIO, the Retired Public Employees of Nevada, Circus Circus, Atlantic Richfield Company, Western Hyway Trucking Company, Design Concepts West, Richard D. Irwin, Inc., Lawyers Title Company of Northern Nevada, Harvey's Wagon Wheel, The law firms of Woodburn and Wedge; Yetter and Warden, Lionel, Sawyer, and Collins; Beckley, Singleton, De Lanloy, Jemison, and List; Tuttle and Taylor; Perry and Spann; and Hibbs, Roberts, Lemons, and Grundy; as well as several others. I have appeared on television stations KCRL, KOLO, and KTVN and radio station KRNO, on Nevada Newsmakers and have been interviewed by the Reno Gazette-Journal, Reno News and Review, and the Northern Nevada Business Weekly as an economic expert.

University of Nevada, Reno; Part-time faculty; beginning 1/87.

University of St. Francis, Part-time faculty, beginning 1/03 to 6/09.

University of Phoenix, Part-time faculty, beginning 7/03 to 12/04.

University of Nevada, Reno; Assistant Professor of Economics; 1/83 to 6/86.

Merrill Lynch IBAR; Economist; 8/81 to 1/83. I worked as a consultant for litigation. I was responsible for legal cases involving personal injury, wrongful death, antitrust, lost profit, other business cases, pension evaluations, business evaluations, testimony, depositions, and client services.

Rosse and Olszewski; Research Assistant; 8/80 to 8/81. I was responsible for basic research into vertical integration issues for the AT&T antitrust litigation and statistical research into pricing behavior for price-fixing litigation involving Gulf Oil and a uranium cartel.

United States Committee on Commerce, Science, and Transportation; Intern summer of 1978 and 1979. I was responsible for background research and preparation of testimony on trucking and railroad regulation, productivity, international trade, and the Panama Canal Treaties implementing legislation.

Research

Study on Washoe County housing market; 3/85.

Nevada Economic Diversification Study; 6/84 to 11/84. I wrote and/or edited sections on labor, regulation, and science and technology.

Pacific Gas and Electric; Operations Research consultant; 4/80 to 6/80. I was part of a team working on a feasibility study regarding the construction of a coal-fired power plant.

Ongoing research involving taxes in Nevada, employment trends in Nevada counties, railroad regulation, pricing under uncertainty, oligopolies, and research and development.

PAPERS AND PUBLICATIONS

"Welfare Tradeoffs Between Innovation and Market Structure: An Examination of the Functional Form of Cost Reducing Activities"; Delivered to the Western Social Science Association; April 1986.

"A Model of Railroad Regulation"; University Microfilms; 1983.

"Rate Bureaus and Optimal Prices"; Studies in Industrial Economics; Stanford University; 1980.

HONORS

Phi Beta Kappa

Omicron Delta Epsilon

Trustees' Award at the University of Southern California

Sloan Fellow at Stanford

Who's Who in Business and Industry, 1991 through 1997

Who's Who in Science and Engineering, 1993

Who's Who in the West, 1996-1997

Who's Who International, 1995

Our fee schedule is as follows:

- \$ 300 per hour for regular work plus costs
- \$ 400 per hour for deposition or in court testimony plus costs with a two hour minimum
- \$4,000 maximum per day for out-of-town work plus costs
- \$ 500 surcharge in addition to hours for any work that requires a less than one working day deadline.

Regular work is all work involved in the analysis of the case that is not either deposition or in-court testimony. This includes but is not limited to all meetings involved in the case with attorneys and/or clients and/or other experts and/or anyone else involved in the case including but not limited to accountants, medical doctors, or relatives whether these meetings are held in person or over the telephone. Regular work also includes but is not limited to reading of documents, mathematical, statistical, and economic analysis, writing reports, and reading depositions, including our own. It also includes travel time. Testimony time includes travel to and from the place of testimony and all time spent waiting as well as the actual time of the testimony. Out-of-town work includes any work that is out of the Reno-Carson City-Douglas County-Lake Tahoe area. This time is billed at a flat fee regardless of the work being done. This fee schedule is subject to change at any time but the fee schedule on any given case will not change.

CASE NO.: 14-CV-0260

RECEIVED

FILED

DEPT. NO.: II

MAY 25 2018

2018 MAY 25 AM 11:19

Douglas County
District Court ClerkBOBBIE R. WILLIAMS
CLERKBY *M. Maggioni* JURY

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.

**JOINDER TO THIRD-PARTY
DEFENDANT MARY ELLEN KINION'S
MOTION TO STRIKE PLAINTIFF'S
EXPERT WITNESS DESIGNATION**

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,Counterdefendants & Third Party
Defendants.

Third-Party Defendant Elfriede Klementi, by and through her attorneys of record, Glogovac & Pintar, hereby joins in Third-Party Defendant, Mary Ellen Kinion's Motion to Strike Plaintiff's Expert Witness Designation on May 25, 2018.

///

///

///


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 25 day of May, 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:

JOINDER TO THIRD-PARTY DEFENDANT MARY ELLEN KINION'S MOTION TO STRIKE PLAINTIFF'S EXPERT WITNESS DESIGNATION

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

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

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

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

Dated this 25th day of May, 2018.


Employee of Glogovac & Pintar

RECEIVED

3 R.App.568

JUN - 1 2018

Douglas County
District Court Clerk

FILED

2018 JUN -1 PM 3:45

ROBBIE R. WILLIAMS
CLERK

BY *[Signature]*

Case No. 14-CV-0260
Dept. No. I

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.

JOINDER TO MOTION TO STRIKE PLAINTIFF'S
EXPERT WITNESS DESIGNATION

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, hereby
joins *Counter-defendant's Motion to Strike Plaintiff's Expert Witness Designation*, served by
Mary Ellen Kinion on May 25, 2018.

///

///

///

1 Helmut Klementi joins and incorporates into this pleading all of the arguments set
2 forth in the Motion to Strike Plaintiff's Expert Witness Designation.

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

5 Dated: May 31, 2018.

6 Lemons, Grundy & Eisenberg

7
8 BY: 

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

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on May 31, 2018, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **JOINDER TO MOTION TO STRIKE PLAINTIFF'S EXPERT WITNESS DESIGNATION**, addressed to the following:


William J. Routsis II, Esq.
1070 Monroe Street
Reno, Nevada 89509
Attorney for Jeffrey Spencer

Lynn G. Pierce, Esq.
515 Court Street, Suite 2f
Reno, Nevada 89501
Attorney for Jeffrey Spencer

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



Susan G. Davis

CASE NO. 14-CV-0260

RECEIVED

FILED

Dept. No. H I

JUN - 5 2018

2018 JUN -5 AM 11:38

Douglas County
District Court ClerkBOBBIE R. WILLIAMS
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

Defendant.

**RESPONSES TO MOTION
FOR SANCTIONS BASED ON
SPOILATION OF EVIDENCE**

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 the Motion for Sanctions Based on
Spoilation of Evidence. 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.

///

///

POINTS & AUTHORITIES

This civil case has been in process for years, with several changes of counsel, and the related criminal proceeding began back in January 2013, following Mr. SPENCER's arrest on December 18, 2012. This Motion addresses video evidence and notes kept by Mr. SPENCER. This Motion is without basis and/or not ripe for decision.

Video evidence, which was of events prior to, around, on and/or after the night of December 18, 2012, were preserved, although not on the original hard drive. Exhibit 1, Declaration of Mr. SPENCER. The hard drive got corrupted, not through any fault of Mr. SPENCER, and although an attempt was made to have the files retrieved from that hard drive by professionals, it was not possible. Exhibit 2, Declaration of Bill Stephens, of Bill Stephens Productions, Inc. Several portions of the hard drive were preserved before the drive was corrupted. Substantial video was produced by David M. Zaniel, Esq., for Mr. SPENCER in the Second Supplemental Early Case Conference production, as quoted in the Motion, as his Response to Request No. 6 and Request No. 9. Motion pg 8, lns 24-27, and pg 9, lns 15-20.

As the Court and all other counsel are aware, current counsel came into this case by order of substitution in late 2016 due to the unresponsiveness of prior civil counsel. By that time, there were multiple pleadings, multiple bankers boxes of production, and multiple additional bankers boxes of other materials to be reviewed. As the Court and all other counsel are aware, current counsel is a sole practitioner, and the process of getting through those papers has been overwhelming. Until fairly recently, current counsel was unaware that the additional video recording from the relevant time period, beyond what had already been produced, was not produced. It was apparently produced to prior civil counsel with Mr. SPENCER's understanding that things turned over for production were produced. Current counsel has not yet had an opportunity to review this additional video, discovery is still not closed, and additional video can still be provided.

With respect to any notes Mr. SPENCER may have made, there is nothing not already produced which is subject to discovery. First, the issue of what was said at the December 18, 2018, KGID meeting is a matter of the KGID Board Minutes, which all counsel have been provided, and any testimony of any parties beyond that which all counsel have available in Preliminary Hearing

1 Transcripts, Trial Transcripts, TPO Transcripts, and Deposition Transcripts. Mr. SPENCER was
 2 not present at that meeting, so could not have taken any notes at that meeting to provide in
 3 discovery. That lack of any addition notes, beyond what was produced by David M. Zaniel, Esq.,
 4 for Mr. SPENCER in the Eighth Supplemental Early Case Conference production, as quoted in the
 5 Motion as Response to Request No. 7, means there is nothing more to be produced. Motion pg 9,
 6 lns 4-8. Second, any notes taken after the fact about that night when Mr. SPENCER was arrested,
 7 and any other notes related to the criminal proceedings or this case which Mr. SPENCER took for
 8 his counsel, would not be subject to production. This would include any notes he took during the
 9 criminal trial would have been in assistance of his counsel in that trial. That privilege was asserted
 10 by David M. Zaniel, Esq., as quoted in the Motion, as Response to Request No. 8. Motion pg 9, lns
 11 11-12.

12 There has been no spoliation nor destruction of evidence by Mr. SPENCER. Mr.
 13 SPENCER's claims are not frivolous, as documented in the contemporaneous Responses to multiple
 14 Motions for Summary Judgment. The issue of denial of coverage and/or reservation of rights by any
 15 party's insurance carrier was made, based upon information and belief from statements made to
 16 current counsel by opposing counsel, not because of any spoliation, but because the claims for relief
 17 asserted are all intentional torts and the only insurance coverage would be for negligence. Exhibit
 18 3, Declaration of Lynn G. Pierce, Esq.

19 There are no good legal grounds to grant this Motion and it should be denied in its entirety.

20 The undersigned affirms pursuant to NRS §239B.030 that this pleading does not contain the
 21 social security number of any person.

22 DATED this 1st day of June, 2018.

23
 24 WILLIAM J. ROUTSIS, II, Esq.

25 Nevada State Bar No. 5474
 1070 Monroe Street
 Reno, Nevada 89509
 26 Phone 775-337-2609/Fax 775-737-9321

27 *Attorneys for Counterclaimant/Third Party Plaintiff Jeffrey D. Spencer*

28

 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

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I certify that on this date I served a true and correct copy of the foregoing pleading vis email and depositing into the U.S. Postal Service, first class postage fully pre-paid, addressed to the following:

Douglas R. Brown, Esq.
Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
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

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

David M. Zaniel, Esq.
Ranalli & Zaniel, LLC
50 W. Liberty Street, Suite 1050
Reno, NV 89501
Attorney for Jeffrey D. Spencer

DATED this 1st day of June, 2018.



EXHIBIT LIST

- Exhibit 1 Declaration of Jeffrey D. Spencer
- Exhibit 2 Declaration of Bill Stephens, of Bill Stephens Productions, Inc.
- Exhibit 3 Declaration of Lynn G. Pierce, Esq.

Exhibit 1

Exhibit 1

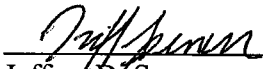
Declaration of Jeffrey D. Spencer

Pursuant to NRS §53.045(1), I, Jeffrey D. Spencer, declare under penalty of perjury, that:

1. I 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 Hays, Kansas.



Jeffrey D. Spencer

Exhibit 2

Exhibit 2



We **know** Recording!

Bill Stephens Productions, Inc.

320 Stewart Street, Reno, NV 89502

775.322.6292 BillsPro.com

producer4u@billspro.com

since 1969



Re: Jeff Spencer

May 31, 2018

Declaration of Bill Stephens

Pursuant to NRS 53.045(1)

I, Bill Stephens, declare under penalty of perjury, that:

1. I am a Certified Legal Videographer for Bill Stephens Productions Inc.
2. In 2013, Jeff Spencer brought to me a hard drive, which he said contained valuable information and asked me to retrieve several files in a usable form.

I used several computers to attempt to retrieve the information, but the hard drive was apparently corrupted or broken and/or the files were apparently corrupted.

I took the hard drive to an associate with vast knowledge of computers, and he, too, was unable to retrieve any files from the hard drive.

3. I returned the hard drive to Mr. Spencer.

The foregoing statements are true of my own knowledge, except for those matters stated therein

Upon Information and belief, and as to those matter, I believe them to be true,

I declare under penalty of perjury that the forgoing is true and correct.

Executed on the 31st day of May, 2018 in Reno Nevada

Bill Stephens CLV

Bill Stephens

Bill Stephens, Certified Legal Videographer

Bill Stephens Productions, Inc.

Exhibit 3

Exhibit 3

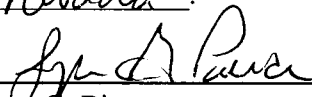
Declaration of Lynn G. Pierce

Pursuant to NRS §53.045(1), I, Lynn G. Pierce, declare under penalty of perjury, that:

1. I am licensed to practice in the State of Nevada and am representing Jeffrey Spencer in this matter.
2. I have prepared 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 Reno, Nevada.



Lynn G. Pierce

RECEIVED

CASE NO. 14-CV-0260

JUN - 5 2013

Dept. No. *HI*Douglas County
District Court Clerk

2013 JUN -5 AM 11:39

JUDITH 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

Defendant.

**VIDEO EXHIBIT IN SUPPORT
OF RESPONSES TO MOTIONS
FOR SUMMARY JUDGMENT &
TO MOTION FOR SANCTIONS
BASED ON SPOILATION OF
EVIDENCE**

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 submits an Exhibit of a video relevant to and
mentioned in the Responses to Motions for Summary Judgment and to Motion for Sanctions Based
on Spoilation of Evidence, which video was previously produced by his counsel David Zaniel, Esq.

///

///


///

DISC
NOT
SCANNED

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*

12 
13 LYNN G. PIERCE, Esq.
14 Nevada State Bar No. 3567
15 515 Court Street, Suite 2f
16 Reno, Nevada 89501
17 Phone 775-785-9100/Fax 775-785-9110

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I certify that on this date I served a true and correct copy of the foregoing pleading vis email and depositing into the U.S. Postal Service, first class postage fully pre-paid, addressed to the following:

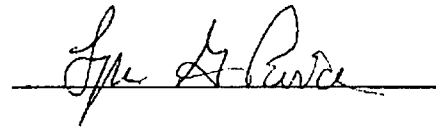
Douglas R. Brown, Esq.
Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno, NV 89519
Attorneys for Helmut Klementi

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

Michael A. Pintar, Esq.
Glogovac & Pintar
427 W. Plumb Lane
Reno, NV 89509
*Attorneys for Egon Klementi, Elfriede
Klementi & Mary Ellen Kinion*

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DATED this 1st day of June, 2018.



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JUN 11 2018

Douglas County
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 & DOES 1-5;

Defendant.

Case No. 14-CV-0260

Dept. II

**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 DESIGNATION**

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.

THE COURT OF APPEALS
IN AND FOR THE DISTRICT OF COLUMBIA

ON PETITION FOR WRIT OF HABEAS CORPUS
AND FOR WRIT OF HABEAS CORPUS
AND FOR WRIT OF HABEAS CORPUS
AND FOR WRIT OF HABEAS CORPUS

THE COURT OF APPEALS
IN AND FOR THE DISTRICT OF COLUMBIA

ON PETITION FOR WRIT OF HABEAS CORPUS
AND FOR WRIT OF HABEAS CORPUS
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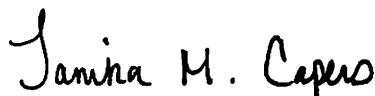
THE COURT OF APPEALS
IN AND FOR THE DISTRICT OF COLUMBIA

1
2 Defendant Rowena Shaw and Peter Shaw, by and through her attorney of record,
3 Tanika M. Capers, Esq., hereby joins, Third Party Defendant Mary Ellen Kinion's Motion to
4 Strike Plaintiff's Expert Witness Designation.

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

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

9
10 Dated this 2nd day of June, 2018.

11
12 

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18 *Attorney for Defendants Rowena Shaw and Peter Shaw*
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28

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of June, 2018, the foregoing **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 DESIGNATION** was served pursuant to NRCP 5(b) via the following method indicated below:

☐ ELECTRONIC Filing & Service System (Odyssey) to all the parties on the current service list;

☒ U.S. MAIL by placing an original or true copy thereof in a postage prepaid sealed envelope placed for collection and mailing in Las Vegas, Nevada, and addressed to the following:

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Legal Assistant to Tanika M. Capers

RECEIVED

CASE NO.: 14-CV-0260

JUN 13 2018

DEPT. NO.: I

Douglas County
District Court Clerk

2018 JUN 13 PM 3:02

JACQUEE R. WILLIAMS
CLERKBY ANITA 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,

Defendants.

**REPLY IN SUPPORT OF THIRD-PARTY
DEFENDANT'S MOTION FOR
SANCTIONS BASED ON SPOILIATION OF
EVIDENCE**

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,

Counterdefendants & Third-Party
Defendants.

Third-Party Defendants, Mary Ellen Kinion ("Kinion") and Elfriede Klementi ("Klementi"), by and through their attorneys of record, Glogovac & Pintar, hereby submit this Reply in Support of their Motion for Sanctions based upon the Spoliation of Evidence.

I.

MEMORANDUM OF POINTS AND AUTHORITIES**A. Spencer Has Spoiled Exculpatory Video Evidence**

Spoilation is "the destruction or significant alteration of evidence, or the failure to preserve property for another's use evidence in pending or reasonably foreseeable litigation. LaJocies v. City of North Las Vegas, WL 1630331 (D. Nev. 2011) citing U.S. v. Kitsap Physicians Serv., 314 F.3d 995, 1001 (9th Cir. 2002).

Throughout the course of this matter, Spencer has claimed that he has video evidence on his home video system which captured the events that took place on the evening of December 18, 2012. Specifically, Spencer testified that he has video evidence which shows: (a) Helmut Klementi to be trespassing on Spencer's driveway, and (b) that Spencer inadvertently collided with Mr. Klementi in the street while he was trying to affect a citizen's arrest on the unidentified trespasser, i.e. Mr. Klementi, Spencer claims he thought Mr. Klementi was trying to break into his truck. However, Spencer now claims that that hard drive storing all of video evidence showing the interaction between Spencer and Helmut Klementi has been corrupted and cannot be salvaged. (Response, 2:6-10).

In addition, on June 1, 2018, Spencer filed a document entitled Video Exhibit in Support of Responses to Motions for Summary Judgment & to Motion for Sanctions Based on Spoilation of Evidence. By way of this motion, Spencer now produces this video evidence that was taken from the hard drive before the hard drive was corrupted but not previously produced.

Other than a lame excuse that Spencer's current counsel was unaware of additional videos from the relevant period, there is no explanation provided as to why the video was not previously produced. The spoliation and failure to provide the hard drive and untimely production of the other video evidence is a clear indication of consciousness of wrongdoing and guilt. While this same tactic may have been successful at Spencer's criminal trial when he was a defendant being charged with a

1 felony, the tactic is insufficient now that Spencer is a plaintiff in a civil case who carries
2 the burden of proof.

3 Based on Spencer's failure to produce the hard drive storing all of the video
4 evidence from December 18, 2012, Spencer's third-party action should be dismissed.
5 The videotape is the most critical piece of evidence in this case. The videotapes would
6 show the interaction between Spencer and Helmut Klementi on the evening of
7 December 18, 2012. The videotapes would prove Spencer's testimony as to what
8 occurred on the evening of December 18, 2012, is not true.

9 Contrary to Spencer's testimony, Helmut Klementi testified that he was never in
10 Spencer's driveway that evening. According to the Sheriff's Report, Spencer informed
11 Deputy McKone that he attacked Helmut because he believed Helmut was breaking
12 into his truck. Spencer also told Deputy McKone he believed Helmut was a teenager in
13 a hoodie. Ultimately, Deputy McKone did not find Spencer's account to be credible.
14 Deputy McKone did not believe that Spencer could mistake his 82-year-old elderly
15 neighbor for a teenager and he found other inconsistencies with Spencer's account as
16 well. As a result, Deputy McKone arrested Spencer for battery and abuse of an elder.¹
17 The corrupted hard drive contains video tapes that would confirm that Deputy
18 McKone's decision to arrest Spencer was correct.

19 Spencer's failure to produce the hard drive containing all of the videotape of his
20 encounter with Helmut Klementi on December 18, 2012, is a classic game of "hide the
21 ball." The game consists of Spencer producing only evidence which he wants to offer
22 to support his case and then not producing the video which would support the third-
23 party defendants.

24 Nevada law is clear. When presented with a spoliation allegation, the threshold
25 question is whether the alleged spoliator was under any obligation to preserve the
26 missing or destroyed evidence. Bass-Davis v. Davis, 122 Nev. 442, 449, 134 P.2d

1 103, 106 (2006). The pre-litigation duty to preserve evidence is imposed “once a party
2 is on ‘notice’ of a potential legal claim.” Bass-Davis, 122 Nev. at 450. Here, by
3 reasons of his arrest on the evening of December 18, 2012, Spencer had an obligation
4 to preserve the video. Obviously, as a criminal defendant asserting constitutional
5 rights, Spencer’s obligation to turn the videos over to the prosecution in his criminal
6 trial may be different from his obligations in this case. Nevertheless, once the video on
7 the hard drive is produced, Spencer has an obligation to produce the entire hard drive,
8 and video, not selected parts.

9 In this case, neither Spencer, nor the Affidavit provided by his videographer
10 provide explanation as to how the hard drive was corrupted. Further, Spencer has not
11 made a good faith effort to recover the corrupted video evidence at issue. In the
12 Affidavit of Bill Stephens, the apparent owner of Bill Stephens Productions, Inc., Mr.
13 Stephens states that he attempted to retrieve the video information himself, before
14 taking the hard drive to “an associate with vast knowledge of computers, who was also
15 unable to retrieve the data.” Mr. Stephens is a certified legal videographer who
16 apparently assists litigants in producing videos and audio recordings in preparation for
17 trial. Mr. Stephens has no stated expertise in data recovery and there is no evidence
18 that either Mr. Stephens, or his associate, are qualified to recover corrupted videotape
19 evidence.

20 In sum, Spencer has not made a sufficient showing that that he has taken
21 appropriate steps to maintain and/or to recover the videotape evidence from the
22 corrupted hard drive. More importantly, after over 18 months of litigation, Spencer
23 only now claims the hard drive has been corrupted. This is a deliberate attempt to
24 prevent discovery of critical evidence and had detrimentally prejudiced the third-party
25
26

27 ¹ More recently, this game has evolved into Spencer ultimately producing medical records to support
28 his claim for intention infliction of emotional distress, after claiming for years that he could not remember
the names of his medical doctors, and thus, could not produce his medical records.

1 defendants. Accordingly, dismissal of the action is warranted.

2 1. Negligent Spoliation is Still Spoliation

3 While Spencer claims that the corruption of the video was “not through any
4 fault” of his own, even if true, negligent spoliation is still spoliation. In this regard, the
5 Bass-Davis opinion states:

6 It makes little difference to the party victimized by the destruction of
7 evidence whether that act was done willfully **or negligently**. The adverse
8 inference provides the necessary mechanism for restoring the
9 evidentiary balance. The inference is *adverse* to the destroyer not
because of any finding of moral culpability, but because the risk that the
evidence would have been detrimental rather than favorable should fall
on the party responsible for its loss.

10 Id. at 449. (Emphasis added).

11 **B. Spencer Has Withheld Personal Notes Which Are Discoverable and**
12 **Pertinent to the Litigation Without Justification**

13 During Spencer’s July 28, 2016 deposition, Spencer testified that he kept notes
14 about his interactions with the various Third-Party Defendants which document the
15 alleged harassment and which serves as the basis of Spencer’s claims. (Motion,
16 p.4:10-8:17). When asked about the statements contained in the notes, Spencer
17 testified that he would need to review the notes to refresh his memory. (Motion, p.
18 6:12-16). After the deposition, requests for production of the notes were made.
19 Spencer’s responses were as follows:

20 **REQUEST NO. 7:** Please produce all notes from the KGID meeting you
21 referred to on page 77 of your video deposition on July 28, 2016.

22 **RESPONSE TO REQUEST NO. 7:** JEFFREY D. SPENCER objects to
23 this Request as burdensome and duplicative of prior production in
24 discovery. The notes from the KGID meetings are minutes, posted on
the KGID website as a public record, equally available to all parties.
25 Further, in the Eighth Supplemental Early Case Conference production
from David Zaniel, Esq., was a disc of KGID documents and records
26 which, upon information and belief, would include the relevant KGID
meeting minutes.

27 **REQUEST NO. 8:** Please produce all the notes you maintained, and you
28 referred to on page 80 of your video deposition on July 28, 2016.

1 **RESPONSE TO REQUEST NO. 8:** JEFFREY D. SPENCER objects to
2 this Request for Production as those notes are protected by
3 attorney/client privilege.

4 Any personal notes taken by Spencer which document the events taking place
5 between Spencer and the third-party defendants are subject to disclosure and are not
6 protected by the attorney-client privilege. NRS 49.095 only protects communications
7 between clients and their lawyers when made in furtherance of legal services. Any
8 personal notes taken by Spencer which document his interactions with the third-party
9 defendants, are not a means of communicating with his attorney, or in furtherance of
10 legal services.

11 In addition, any record needed to refresh a witness' memory during a deposition
12 are discoverable. The Nevada Supreme Court has been clear on this issue.

13 "We conclude that reviewing a document for the purpose of refreshing
14 one's memory prior to or during testimony serves as a waiver to the
15 attorney-client privilege and the work-product doctrine under NRS
16 50.125, allowing the adverse party to demand production of the
17 document, inspect it, cross-examine the witness on the contents, and
admit the document into evidence for the purpose of impeachment. We
also conclude that NRS 50.125 applies to deposition testimony as well
as to in-court hearings."

18 Las Vegas Dev. Assocs., LLC v. Eighth Judicial Dist. Court of State, 325 P.3d 1259,
19 1265, 130 Nev. Adv. Op. 37 (2014).

20 Spencer testified at his deposition that he would need to review his notes to
21 identify the defamatory statements and "constant harassment" made by third-party
22 defendants. Spencer's withholding of his notes is improper. The notes are not
23 protected by attorney-client privilege, and even if they were, such privilege has been
24 waived. This abuse of the discovery process has significantly prejudiced the Third-
25 Party Defendant's ability to defend the claims against them and clearly warrants NRC
26 37(b)(2) sanctions.

27 ///

28 ///

II.
CONCLUSION

Spencer's discovery abuses have resulted in an evidentiary imbalance which has severely prejudiced the third-party defendants. For that reason, third-party defendants respectfully requests a sanction in the way of dismissal should be granted. In the alternative, a jury instruction of spoliation should be given at trial.

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
Attorney for Third-party Defendants

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 DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR
SANCTIONS BASED ON SPOILIATION OF EVIDENCE**

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:

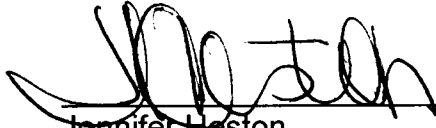
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Jeffrey Spencer***

Dated this 13th day of June, 2018.



Jennifer Heston