

*In the*  
**Supreme Court**  
*for the*  
**State of Nevada**

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WYNN LAS VEGAS, LLC d/b/a WYNN LAS VEGAS,  
*Appellant and Cross-Respondent,*

v.

YVONNE O'CONNELL,

*Respondent and Cross-Appellant.*

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*Appeal from Judgment on Jury Verdict,  
Eighth Judicial District Court, State of Nevada in and for the County of Clark  
District Court Case No. A-12-671221-C · Honorable Jennifer P. Togliatti*

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**APPELLANT'S APPENDIX**  
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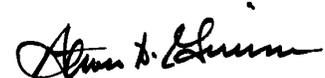
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d/b/a Wynn Las Vegas

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

YVONNE O'CONNELL, individually,  
  
Plaintiff,  
  
v.  
  
WYNN LAS VEGAS, LLC, a Nevada  
Limited Liability Company, doing business as  
WYNN LAS VEGAS; DOES I through X;  
and ROE CORPORATIONS I through X;  
inclusive;  
  
Defendants.

Case No. A-12-655992-C  
Dept. No. V

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order was entered by the Court on November 2, 2015, a true and complete copy of which is attached hereto.

DATED this 5th day of November, 2015.

LAWRENCE J. SEMENZA, III, P.C.

/s/ Christopher D. Kircher  
Lawrence J. Semenza, III, Esq., Bar No. 7174  
Christopher D. Kircher, Esq., Bar No. 11176  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145

Attorneys for Defendant Wynn Las Vegas, LLC  
d/b/a Wynn Las Vegas

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10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
Telephone: (702) 835-6803

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**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of Lawrence J. Semenza, III, P.C., and that on this 5th day of November, 2015 I caused to be sent through electronic transmission via Wiznet's online system, a true copy of the foregoing **NOTICE OF ENTRY OF ORDER** to the following registered e-mail addresses:

NETTLES LAW FIRM  
christianmorris@nettlslawfirm.com  
kim@nettlslawfirm.com

*Attorneys for Plaintiff*

/s/ Olivia A. Kelly  
An Employee of Lawrence J. Semenza, III, P.C.

CLERK OF THE COURT

**ORDER**

Lawrence J. Semenza, III, Esq., Bar No. 7174

Email: ljs@semenzalaw.com

Christopher D. Kircher, Esq., Bar No. 11176

Email: cdk@semenzalaw.com

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Telephone: (702) 835-6803

Facsimile: (702) 920-8669

Attorneys for Defendant Wynn Las Vegas, LLC

d/b/a Wynn Las Vegas

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

YVONNE O'CONNELL, individually,

Plaintiff,

v.

WYNN LAS VEGAS, LLC, a Nevada  
Limited Liability Company, d/b/a WYNN  
LAS VEGAS; DOES I through X; and ROE  
CORPORATIONS I through X; inclusive;

Defendants.

Case No. A-12-655992-C

Dept. No. V

**ORDER ON PLAINTIFF'S OMNIBUS  
MOTIONS IN LIMINE**

LAWRENCE J. SEMENZA, III, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
Telephone: (702) 835-6803

This matter having come before the Court on October 1, 2015, Christian Morris, Esq. of the Nettles Law Firm appearing on behalf of Plaintiff Yvonne O'Connell ("Plaintiff") and Lawrence J. Semenza, III, Esq. and Christopher D. Kircher, Esq. of Lawrence J. Semenza, III, P.C. appearing on behalf of Defendant Wynn Las Vegas, LLC d/b/a Wynn Las Vegas ("Defendant"), regarding Plaintiff's Omnibus Motions in Limine (the "Motion") in the above matter, with Defendant having filed an Opposition to the Motion and Plaintiff filed a Reply thereto.

The Court, having reviewed the records and pleadings on file as well as the oral argument of counsel, with good cause appearing, hereby orders as follows:

LAWRENCE J. SEMENZA, III, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
Telephone: (702) 835-6803

1           **IT IS HEREBY ORDERED** that Plaintiff's Motion in Limine No. 1 to Admit Pleadings  
2 and Discovery is hereby DENIED.

3           **IT IS HEREBY FURTHER ORDERED** that Plaintiff's Motion in Limine No. 2 to  
4 Exclude Evidence or Argument that Any Un-named Third Parties Were Allegedly Negligent is  
5 hereby DENIED without prejudice with the caveat that all arguments must be supported by  
6 properly admitted evidence.

7           **IT IS HEREBY FURTHER ORDERED** that Plaintiff's Motion in Limine No. 3 to  
8 Exclude any Improper Argument that Plaintiff's Injuries Are Not related to the Subject Incident is  
9 hereby DENIED without prejudice. The parties may make these arguments if supported by  
10 properly admitted evidence.

11           **IT IS HEREBY FURTHER ORDERED** that Plaintiff's Motion in Limine No. 4 to  
12 Exclude Any and All References to Prior Accidents or Injuries, Lawsuits and/or Insurance Claims  
13 is hereby GRANTED IN PART and DENIED IN PART. The motion is granted to the extent that  
14 prior accidents, lawsuits and insurance claims are not relevant to this lawsuit. The motion is  
15 denied to the extent that Plaintiff presented her prior or preexisting injuries or complaints to her  
16 treating physicians after the incident at issue and to the extent that her prior or preexisting injuries  
17 or complaints may be relevant, such as Plaintiff having a permanent disability.

18           **IT IS HEREBY FURTHER ORDERED** that Plaintiff's Motion in Limine No. 5 to  
19 Exclude any Reference to the Fact Plaintiff's Medical Bills are Paid by Insurance is hereby  
20 GRANTED.

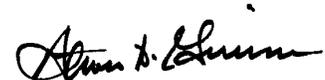
21           **IT IS HEREBY FURTHER ORDERED** that Plaintiff's Motion in Limine No. 6 to Limit  
22 Defense Expert to the Opinions Expressed in Their Report is hereby DENIED without prejudice.

23           **IT IS HEREBY FURTHER ORDERED** that Plaintiff's Motion in Limine No. 7 to  
24 Exclude Evidence as to Whether Plaintiff's Recovery Is or Is Not Subject to Income Tax  
25 Assessment Is Irrelevant is hereby GRANTED.

26           **IT IS HEREBY FURTHER ORDERED** that Plaintiff's Motion in Limine No. 8 to  
27 Admit Medical Records as Authentic is hereby DENIED.

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CLERK OF THE COURT

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**NEOJ**  
Lawrence J. Semenza, III, Esq., Bar No. 7174  
Email: ljs@semenzalaw.com  
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Telephone: (702) 835-6803  
Facsimile: (702) 920-8669

Attorneys for Defendant Wynn Las Vegas, LLC  
d/b/a Wynn Las Vegas

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

YVONNE O'CONNELL, individually,  
  
Plaintiff,  
  
v.  
  
WYNN LAS VEGAS, LLC, a Nevada  
Limited Liability Company, doing business as  
WYNN LAS VEGAS; DOES I through X;  
and ROE CORPORATIONS I through X;  
inclusive;  
  
Defendants.

Case No. A-12-655992-C  
Dept. No. V

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order was entered by the Court on November 2, 2015, a true and complete copy of which is attached hereto.

DATED this 5th day of November, 2015.

LAWRENCE J. SEMENZA, III, P.C.

/s/ Christopher D. Kircher  
Lawrence J. Semenza, III, Esq., Bar No. 7174  
Christopher D. Kircher, Esq., Bar No. 11176  
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Attorneys for Defendant Wynn Las Vegas, LLC  
d/b/a Wynn Las Vegas

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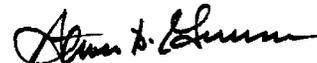
**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of Lawrence J. Semenza, III, P.C., and that on this 5th day of November, 2015 I caused to be sent through electronic transmission via Wiznet's online system, a true copy of the foregoing **NOTICE OF ENTRY OF ORDER** to the following registered e-mail addresses:

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christianmorris@nettleslawfirm.com  
kim@nettleslawfirm.com

*Attorneys for Plaintiff*

/s/ Olivia A. Kelly  
An Employee of Lawrence J. Semenza, III, P.C.



CLERK OF THE COURT

1 **ORDER**  
 2 Lawrence J. Semenza, III, Esq., Bar No. 7174  
 3 Email: ljs@semenzalaw.com  
 4 Christopher D. Kircher, Esq., Bar No. 11176  
 5 Email: cdk@semenzalaw.com  
 6 LAWRENCE J. SEMENZA, III, P.C.  
 7 10161 Park Run Drive, Suite 150  
 8 Las Vegas, Nevada 89145  
 9 Telephone: (702) 835-6803  
 10 Facsimile: (702) 920-8669  
 11  
 12 Attorneys for Defendant Wynn Las Vegas, LLC  
 13 d/b/a Wynn Las Vegas

14 **DISTRICT COURT**  
 15 **CLARK COUNTY, NEVADA**

16 YVONNE O'CONNELL, individually,  
 17  
 18 Plaintiff,

19 v.

20 WYNN LAS VEGAS, LLC, a Nevada  
 21 Limited Liability Company, d/b/a WYNN  
 22 LAS VEGAS; DOES I through X; and ROE  
 23 CORPORATIONS I through X; inclusive;  
 24  
 25 Defendants.

Case No. A-12-655992-C  
 Dept. No. V

**ORDER GRANTING DEFENDANT'S  
 MOTION IN LIMINE [#1] TO  
 EXCLUDE PURPORTED EXPERT  
 WITNESS GARY PRESSWOOD**

26 This matter having come before the Court on October 1, 2015, with Christian Morris, Esq.  
 27 of the Nettles Law Firm appearing on behalf of Plaintiff Yvonne O'Connell ("Plaintiff") and  
 28 Lawrence J. Semenza, III, Esq. and Christopher D. Kircher, Esq. of Lawrence J. Semenza, III,  
 P.C. appearing on behalf of Defendant Wynn Las Vegas, LLC d/b/a Wynn Las Vegas  
 ("Defendant"), regarding Defendant's Motion in Limine [#1] to Exclude Purported Expert Witness  
 Gary Presswood (the "Motion"), with Plaintiff having filed an Opposition to the Motion and  
 Defendant having filed a Reply thereto.

The Court, having reviewed the records and pleadings on file, as well as the oral argument  
 of counsel, with good cause appearing, hereby orders as follows:

LAWRENCE J. SEMENZA, III, P.C.  
 10161 Park Run Drive, Suite 150  
 Las Vegas, Nevada 89145  
 Telephone: (702) 835-6803

1 IT IS HEREBY ORDERED that Defendant's Motion in Limine [#1] to Exclude  
2 Purported Expert Witness Gary Presswood is hereby GRANTED. The Court finds that Gary  
3 Presswood's opinion would not assist the jury and he is precluded from testifying at the trial in  
4 this case because he did not test and render an opinion as to the floor  
5 where Plaintiff stated she slipped, and because his testimony was  
6 DATED this 29<sup>th</sup> day of October, 2015.

*E*

*of a dry floor and he admits there is no reliable and accepted  
7 standard for testing a wet floor (the Plaintiff alleges that  
8 she slipped and fell on a wet floor.)*

*[Signature]*  
DISTRICT COURT JUDGE

9  
10 Respectfully Submitted By:  
11 LAWRENCE J. SEMENZA, III, P.C.

*[Signature]*

12  
13 Lawrence J. Semenza, III, Esq., Bar No. 7174  
14 Christopher D. Kircher, Esq., Bar No. 11176  
15 10161 Park Run Drive, Suite 150  
16 Las Vegas, Nevada 89145

17 Attorneys for Defendant Wynn Las Vegas, LLC d/b/a  
18 Wynn Las Vegas

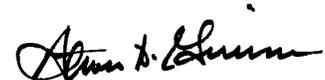
19 Approved as to Form And Content:  
20 NETTLES LAW FIRM

*[Signature]*

22 Brian D. Nettles, Esq., Bar No. 7462  
23 Christian M. Morris, Esq., Bar No. 11218  
24 1389 Galleria Drive, Suite 200  
25 Henderson, Nevada 89014

26 Attorneys for Plaintiff Yvonne O'Connell  
27  
28

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Las Vegas, Nevada 89145  
Telephone: (702) 835-0803

  
CLERK OF THE COURT

1 **NEOJ**  
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4 Email: cdk@semenzalaw.com  
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5 Las Vegas, Nevada 89145  
6 Telephone: (702) 835-6803  
Facsimile: (702) 920-8669

7 Attorneys for Defendant Wynn Las Vegas, LLC  
8 d/b/a Wynn Las Vegas

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

11 YVONNE O'CONNELL, individually,  
12 Plaintiff,  
13 v.

Case No. A-12-655992-C  
Dept. No. V

**NOTICE OF ENTRY OF ORDER**

14 WYNN LAS VEGAS, LLC, a Nevada  
15 Limited Liability Company, doing business as  
16 WYNN LAS VEGAS; DOES I through X;  
and ROE CORPORATIONS I through X;  
inclusive;

17 Defendants.  
18

19 PLEASE TAKE NOTICE that an Order was entered by the Court on November 2, 2015, a  
20 true and complete copy of which is attached hereto.

21 DATED this 5th day of November, 2015.

22 LAWRENCE J. SEMENZA, III, P.C.

23  
24 /s/ Christopher D. Kircher  
25 Lawrence J. Semenza, III, Esq., Bar No. 7174  
26 Christopher D. Kircher, Esq., Bar No. 11176  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145

27 Attorneys for Defendant Wynn Las Vegas, LLC  
28 d/b/a Wynn Las Vegas

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**CERTIFICATE OF SERVICE**

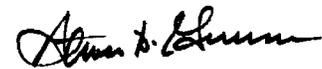
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Pursuant to Nev. R. Civ. P. 5(b) and NEFCR 9, I certify that I am an employee of Lawrence J. Semenza, III, P.C., and that on this 5th day of November, 2015 I caused to be sent through electronic transmission via Wiznet's online system, a true copy of the foregoing **NOTICE OF ENTRY OF ORDER** to the following registered e-mail addresses:

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*Attorneys for Plaintiff*

/s/ Olivia A. Kelly  
An Employee of Lawrence J. Semenza, III, P.C.



CLERK OF THE COURT

1 **ORDER**  
 2 Lawrence J. Semenza, III, Esq., Bar No. 7174  
 3 Email: ljs@semenzalaw.com  
 4 Christopher D. Kircher, Esq., Bar No. 11176  
 5 Email: cdk@semenzalaw.com  
 6 LAWRENCE J. SEMENZA, III, P.C.  
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 9 Telephone: (702) 835-6803  
 10 Facsimile: (702) 920-8669  
 11  
 12 Attorneys for Defendant Wynn Las Vegas, LLC  
 13 d/b/a Wynn Las Vegas

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

11 YVONNE O'CONNELL, individually,  
 12  
 13 Plaintiff,

14 v.

15 WYNN LAS VEGAS, LLC, a Nevada  
 16 Limited Liability Company, d/b/a WYNN  
 17 LAS VEGAS; DOES I through X; and ROE  
 18 CORPORATIONS I through X; inclusive;  
 19  
 20 Defendants.

Case No. A-12-655992-C  
 Dept. No. V

**ORDER DENYING WITHOUT  
 PREJUDICE DEFENDANT'S MOTION  
 IN LIMINE [#2] TO EXCLUDE  
 UNRELATED MEDICAL  
 CONDITIONS AND DAMAGES  
 CLAIMED BY PLAINTIFF**

LAWRENCE J. SEMENZA, III, P.C.  
 10161 Park Run Drive, Suite 150  
 Las Vegas, Nevada 89145  
 Telephone: (702) 835-6803

18 On October 1, 2015, the Court held a hearing on Defendant Wynn Las Vegas, LLC's d/b/a  
 19 Wynn Las Vegas ("Defendant") Motion in Limine [#2] to Exclude Unrelated Medical Conditions  
 20 and Damages Claimed by Plaintiff (the "Motion"). Plaintiff Yvonne O'Connell ("Plaintiff") filed  
 21 an Opposition to the Motion as well as a Motion for Sanctions for Violation of HIPAA Protected  
 22 Information. Defendant filed a Reply brief and an Opposition to Plaintiff's Motion for Sanctions,  
 23 seeking an award of its attorney's fees and costs relating to Plaintiff's Motion for Sanctions.  
 24 Christian Morris, Esq. of the Nettles Law Firm appeared on behalf of Plaintiff and Lawrence J.  
 25 Semenza, III, Esq. and Christopher D. Kircher, Esq. of Lawrence J. Semenza, III, P.C. appeared  
 26 on behalf of Defendant.  
 27  
 28

LAWRENCE J. SEMENZA, III, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
Telephone: (702) 835-6803

1 The Court, having reviewed the papers and pleadings on file and the oral argument of  
2 counsel at the hearing in the matter, finds as follows:

3 1. Plaintiff has identified that she intends to call at trial two of Plaintiff's treating  
4 physicians, Dr. Dunn and Dr. Tingey;

5 2. The Court has not reviewed the medical records from Dr. Dunn or Dr. Tingey  
6 related to the Plaintiff;

7 3. The parties dispute whether Dr. Tingey was properly disclosed;

8 4. Therefore, at this time the Court does not have sufficient information before it to  
9 make a ruling on Defendant's Motion.

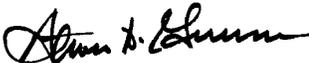
10 Based on the foregoing, with good cause appearing:

11 **IT IS HEREBY ORDERED** that Defendant's Motion in Limine [#3] to Exclude  
12 Unrelated Medical Conditions and Damages Claimed by Plaintiff is hereby DENIED without  
13 prejudice as it relates to Dr. Dunn. The Court will defer any decision on the issues raised in  
14 Defendant's Motion until after it hears Dr. Dunn's proposed testimony outside the presence of the  
15 jury at the trial in this matter.

16 **IT IS HEREBY FURTHER ORDERED** that the Court will continue the hearing as it  
17 relates to Dr. Tingey until October 29, 2015 at 9:00 a.m. The parties may file supplemental briefs  
18 related to Dr. Tingey by no later than October 27, 2015.

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CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

YVONNE O'CONNELL, . CASE NO. A-12-655992-C  
Plaintiff, . DEPT. V  
vs. .  
WYNN RESORTS LIMITED, et al., . **TRANSCRIPT OF**  
Defendants. . **PROCEEDINGS**  
. . . . .

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 2**

THURSDAY, NOVEMBER 5, 2015

APPEARANCES:

FOR THE PLAINTIFF: CHRISTIAN MORRIS, ESQ.  
EDWARD J. WYNDER, ESQ.  
FOR THE DEFENDANTS: LAWRENCE J. SEMENZA, III., ESQ.  
CHRISTOPHER D. KIRCHER, ESQ.

COURT RECORDER:

LARA CORCORAN  
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC  
Englewood, CO 80110  
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

1 LAS VEGAS, NEVADA, THURSDAY, NOVEMBER 5, 2015, 11:05 A.M.

2 (Outside the presence of the prospective jurors)

3 THE COURT: Okay. Case number A-12-655992, Yvonne  
4 O'Connell vs. Wynn Resorts Limited. The record will reflect  
5 the presence of the parties with their counsel. We -- all  
6 officers of the court are here. We're outside the venire's  
7 presence at this time, and I understand there's something  
8 outside the presence?

9 MS. MORRIS: Yes. Juror badge number 29, Cheryl  
10 Becnel, she's seated in seat 16 in the box.

11 THE COURT: Okay.

12 MS. MORRIS: She stated yesterday that she was a  
13 paralegal or a legal assistant at Marquis Auerbach, and she  
14 thought potentially the Wynn was her client. I searched  
15 through my e-mails this morning, and in fact, she is copied on  
16 e-mails to me from a Christian Balducci over at Marquis  
17 Auerbach regarding a slip and fall at the Wynn in sulfuric  
18 acid. I have an e-mail containing her name and her e-mail  
19 address as early as this week.

20 THE COURT: It's what -- which seat did you say it  
21 is?

22 MS. MORRIS: She's seat 16.

23 THE COURT: 16. And is it -- I have on my list  
24 Susan Kovach, but I don't know if we changed the -- because I  
25 didn't --

1 MS. MORRIS: Oh, sorry.

2 MR. SEMENZA: Seat 15.

3 MS. MORRIS: 15. Is it 15?

4 MR. SEMENZA: 15, um-hum.

5 MS. MORRIS: Okay, sorry about that.

6 THE COURT: Okay, what's -- who is there? What's  
7 her name again?

8 MS. MORRIS: Cheryl Becnel.

9 THE COURT: And what's her badge number?

10 MS. MORRIS: 0029.

11 THE COURT: Okay. All right. Okay, and --

12 MS. MORRIS: And I have copies of the e-mail here.

13 THE COURT: Okay. And did you want to say anything  
14 else in that regard?

15 MS. MORRIS: I think that based on the fact that she  
16 is a paralegal working on another case involved -- involving  
17 me against the defendant in this matter, that for purpose of  
18 cause, she should be removed from the panel.

19 MR. SEMENZA: I don't know that she is or isn't a  
20 paralegal at this point in time. I think I wrote down that  
21 she was a legal assistant. So, I think that distinction would  
22 be important in this particular matter as to this individual's  
23 involvement in a particular case. If it's a function of  
24 mailing a letter or being copied on a scheduling e-mail, I  
25 think that's substantially different than obviously conducting

1 research relating to a particular case, or something to that  
2 effect.

3           So, I think that at this point in time, I would  
4 oppose it, but I would give Ms. Morris obviously an  
5 opportunity to ask whatever additional follow up questions she  
6 would like relating to those specifics of Ms. Becnel's  
7 involvement in this -- in another case involving Ms. Morris.

8           THE COURT: Okay. That's --

9           MS. MORRIS: And the e-mail that she was copied on,  
10 it's a motion for summary judgment being denied, clarification  
11 on an order for hearings, and motions in limine. So, she's  
12 certainly not -- it's not a scheduling order; it's a deep  
13 involvement in the litigation in another department with this  
14 same defendant, regarding a similar incident. So, I don't  
15 think that any type of questioning could remove the -- the --

16           THE COURT: Well, why don't we -- when you get to  
17 her in the individual questioning, why don't we -- because  
18 that would be the time we'd replace her for cause. Why don't  
19 you ask her about that?

20           MR. SEMENZA: Your Honor --

21           THE COURT: And then we can --

22           MR. SEMENZA: And Mr. Kircher appropriately brought  
23 up another issue, is I do have some concerns about, I guess,  
24 Ms. Morris asking specific questions relating to the other  
25 case.

1 THE COURT: Well --

2 MR. SEMENZA: Because it does involve the Wynn,  
3 correct?

4 MS. MORRIS: Correct.

5 MR. SEMENZA: Okay. So, I think that I would be  
6 most comfortable, I guess, questioning her individually  
7 outside the presence of the other potential jurors to make  
8 that determination as to whether there's an issue, so as to  
9 preclude any issue of taint, or other matters coming into this  
10 particular proceeding.

11 THE COURT: That's fine. We can -- actually, maybe  
12 she's here and we can do it now, which would be fine, because,  
13 apparently, we're waiting on two other jurors to show up.

14 THE COURT RECORDER: Off the record?

15 THE COURT: Yeah, we'll go off the record.

16 (Off the record at 11:09 A.M. until 11:10 A.M.)

17 (Outside the presence of the prospective jurors)

18 (Within the presence of Prospective Juror No. 029)

19 THE MARSHAL: Where do you want her, Your Honor?

20 THE COURT: Oh, let's put her just up in the front  
21 row near a microphone.

22 THE COURT RECORDER: I have the --

23 THE COURT: Oh, we've got it. Okay, so she can just  
24 sit right there.

25 THE MARSHAL: Just have a seat right there.

1 THE COURT: Good morning. How are you?

2 PROSPECTIVE JUROR NO. 029: Good morning. Good,  
3 thank you.

4 THE COURT: Good. And this is Cheryl Becnel, badge  
5 number 029. Ms. Becnel, we brought you in outside the  
6 presence of the other venire panel to ask you some additional  
7 questions about your work at, I think you said, at Marquis  
8 Auerbach, and you thought that maybe Wynn was a client. And  
9 apparently, there have been some e-mails between you and  
10 plaintiff's counsel regarding some matters on another case.  
11 Does that --

12 PROSPECTIVE JUROR NO. 029: You know what, it's --  
13 probably. I go through so many cases, I -- I don't even know.  
14 You know, I don't know personally. I -- maybe. It's there's  
15 a chance. I deal with so many attorneys --

16 THE COURT: Okay.

17 PROSPECTIVE JUROR NO. 029: -- on so many other  
18 cases.

19 THE COURT: Okay. So, I guess, you know, our  
20 concern obviously is that you're working for a law firm who  
21 represents the defendant in, not this case, but other cases.  
22 You have repeat business from that client, and we're concerned  
23 that this could impact your ability to be fair and impartial,  
24 which would not be surprising, of course. But, you know,  
25 because you know from your work things about -- do -- well,

1 let me ask you that. Do you know things from these other --  
2 from other cases involving the Wynn, do you know some things  
3 about the Wynn, and how they operate, and not -- from reading  
4 these documents?

5 PROSPECTIVE JUROR NO. 029: You know, I'll be really  
6 honest. I don't even -- I'm not the type that really reads  
7 through everything. Like, I just kind of complete the task at  
8 hand. You know, I may read stuff if I'm drafting a Complaint,  
9 or if I have to do some discovery, but I kind of just, you  
10 know, do what they ask me to do. I don't really get involved  
11 in, you know, the cases, because I deal with so much --

12 THE COURT: Okay.

13 PROSPECTIVE JUROR NO. 029: -- of the secretary --

14 THE COURT: But you do -- you are a paralegal then?  
15 You're doing paralegal duties?

16 PROSPECTIVE JUROR NO. 029: No, I do secretarial  
17 duties.

18 THE COURT: Okay, but you said you're drafting --

19 PROSPECTIVE JUROR NO. 029: I do some --

20 THE COURT: -- a complaint. That's not secretarial.

21 PROSPECTIVE JUROR NO. 029: Yeah, I'll do like --  
22 you know, I'll draft shells for interrogatories, I'll, you  
23 know, do some dictations, things like that.

24 THE COURT: Okay, but are you actually reviewing the  
25 case and drafting questions for interrogatories?

1 PROSPECTIVE JUROR NO. 029: No, I do not draft  
2 questions.

3 THE COURT: Oh, okay. You're just typing them up?

4 PROSPECTIVE JUROR NO. 029: I just -- I just type,  
5 and format, finalize, that kind of stuff.

6 THE COURT: Okay. All right. Would the plaintiff  
7 like to inquire further?

8 MS. MORRIS: Yeah, I just have a few questions for  
9 you.

10 PROSPECTIVE JUROR NO. 029: Sure.

11 MS. MORRIS: Do you work with a Christian Balducci  
12 there?

13 PROSPECTIVE JUROR NO. 029: Yes, I do.

14 MS. MORRIS: Are you familiar with the Michael Nappa  
15 case?

16 PROSPECTIVE JUROR NO. 029: Yes, I am.

17 MS. MORRIS: And where he slipped and fell in  
18 sulfuric acid at the Wynn?

19 PROSPECTIVE JUROR NO. 029: See, I didn't even know  
20 that, but I know the name, I know the case, and I didn't  
21 really know the full extent of his story, but I do recognize  
22 the name of the case.

23 MS. MORRIS: Do you know what kind of work you've  
24 done on the Michael Nappa case?

25 PROSPECTIVE JUROR NO. 029: I've probably drafted

1 shells, written or drafted, you know, letters, things like  
2 that.

3 MS. MORRIS: Have you seen any kind of information  
4 about policies and procedures at the Wynn?

5 PROSPECTIVE JUROR NO. 029: Maybe in obtaining it  
6 through mail possibly, and scanning it in. I think mostly the  
7 paralegals deal with that stuff.

8 MS. MORRIS: Do you know if you've worked on more  
9 than just that one case with the Wynn?

10 PROSPECTIVE JUROR NO. 029: Yes, I believe I have.

11 MS. MORRIS: So, when you think of the Wynn Casino,  
12 do you think of it as a client of your employer?

13 PROSPECTIVE JUROR NO. 029: Yes, I do.

14 MS. MORRIS: Do you think that you would have any  
15 difficulty coming to a verdict against a company that  
16 essentially pays money to your employer?

17 PROSPECTIVE JUROR NO. 029: I wouldn't be biased  
18 against it.

19 MS. MORRIS: Do you have any kind of opinion as to  
20 the case of Michael Nappa; as to the quality of that case?

21 PROSPECTIVE JUROR NO. 029: No, I don't really know  
22 the case very well. Like I said, I do just pretty much  
23 secretarial work on it. I don't know the -- the nature of the  
24 case.

25 MS. MORRIS: How long have you been working with

1 Kristen Balducci -- Christian Balducci? I should get it  
2 right. It's my name.

3 PROSPECTIVE JUROR NO. 029: It's been I think maybe  
4 like a couple years now or so.

5 MS. MORRIS: Do --

6 PROSPECTIVE JUROR NO. 029: Yes.

7 MS. MORRIS: How long have you been familiar with  
8 the Michael Nappa case?

9 PROSPECTIVE JUROR NO. 029: Maybe like -- maybe like  
10 a year, I think.

11 MS. MORRIS: Now, you got called for jury duty  
12 yesterday, essentially; is that right?

13 PROSPECTIVE JUROR NO. 029: Yes.

14 MS. MORRIS: And you -- so, you haven't been back  
15 into work; is that correct?

16 PROSPECTIVE JUROR NO. 029: Actually, I did go this  
17 morning. I had to check my e-mails, and then I -- from there,  
18 I came here.

19 MS. MORRIS: Did you see the e-mail that was sent  
20 yesterday to me from Christian, and copied you on it?

21 PROSPECTIVE JUROR NO. 029: No, I did not.

22 MS. MORRIS: It was sent yesterday.

23 PROSPECTIVE JUROR NO. 029: Oh, and I was copied on  
24 it?

25 MS. MORRIS: You were.

1 PROSPECTIVE JUROR NO. 029: I did not. I swear.

2 MS. MORRIS: No, that's -- I know, I'm just --

3 PROSPECTIVE JUROR NO. 029: Can I know what it was  
4 about?

5 MS. MORRIS: It was about the Michael Nappa case.

6 PROSPECTIVE JUROR NO. 029: Oh.

7 MS. MORRIS: Motions that were --

8 PROSPECTIVE JUROR NO. 029: Okay.

9 MS. MORRIS: -- that were decided by the judge in  
10 that case.

11 PROSPECTIVE JUROR NO. 029: I honestly -- I didn't  
12 even get through most of my e-mails because I was going to be  
13 late here. But I -- I'm sorry, I didn't.

14 MS. MORRIS: No, that's okay. So, the Wynn cases  
15 that you work on, is it your -- is it your job basically to  
16 kind of schedule, and write, and format what your --  
17 essentially, your assignments are?

18 PROSPECTIVE JUROR NO. 029: Yes. If -- if -- let's  
19 say a letter needs to be dictated or, you know, he dictates a  
20 letter, then I would just put it in, you know, letter form.  
21 Anything that needs to go out, finalized, filed, things like  
22 that.

23 MS. MORRIS: Do you -- did you have any involvement  
24 in a motion for reconsideration that took place lately on the  
25 Michael Nappa case?

1 PROSPECTIVE JUROR NO. 029: You know what, I know he  
2 was drafting one. That's all I know. I probably created the  
3 shell for it. I have, you know --

4 THE COURT: When you say shell, do you mean the  
5 caption?

6 PROSPECTIVE JUROR NO. 029: Just, yeah, pretty much  
7 the caption and like, you know, the outline. And they -- he  
8 usually goes in and fills it in when he's done. It will come  
9 to me, I'll make sure, you know, everything is formatted  
10 correctly, spell check, things like that, and he signs it, and  
11 I e-file it.

12 MS. MORRIS: When someone slips and falls, do you  
13 know what the law is required to show in order for there to be  
14 a valid case about that?

15 PROSPECTIVE JUROR NO. 029: I actually do not.

16 MS. MORRIS: Have you ever seen it written out in  
17 any of those pleadings that you formatted?

18 PROSPECTIVE JUROR NO. 029: Can you rephrase your  
19 question, or just like --

20 MS. MORRIS: Yeah. The pleadings that you format,  
21 have you ever read through them to see what the law is  
22 regarding slip and falls, and the standard that is applied to  
23 them?

24 PROSPECTIVE JUROR NO. 029: Not -- not really. I'm  
25 sorry. Does this make me a bad secretary?

1 MS. MORRIS: No.

2 PROSPECTIVE JUROR NO. 029: Okay.

3 MS. MORRIS: And then, you didn't recognize my name  
4 or anything else yesterday?

5 PROSPECTIVE JUROR NO. 029: No. Like I said, I went  
6 in early this morning, and I, you know, reviewed some of the  
7 e-mails. I didn't really, you know, catch it if it did come  
8 from you, or I didn't catch it. You know --

9 MS. MORRIS: It was actually from Christian, and you  
10 were just copied --

11 PROSPECTIVE JUROR NO. 029: Oh, from Christian?

12 MS. MORRIS: -- to this Christian.

13 PROSPECTIVE JUROR NO. 029: Oh. Oh, okay. I didn't  
14 -- I -- honestly, I didn't notice it, but, you know, I am  
15 aware that he is drafting the motion for reconsideration.

16 MS. MORRIS: And do you know if there's a trial date  
17 in that case?

18 PROSPECTIVE JUROR NO. 029: Not that I remember.  
19 I'm usually like more of a, you know, give me like one month  
20 at a time type, because I know you guys get so busy, and  
21 there's so many cases, and, you know, just so much comes  
22 through, we just take it one day at a time, and, you know,  
23 focus as it goes.

24 MS. MORRIS: So, next Wednesday, we have the day off  
25 because it's a court holiday.

1 PROSPECTIVE JUROR NO. 029: Um-hum.

2 MS. MORRIS: Is your office open?

3 PROSPECTIVE JUROR NO. 029: No, it is not, but I do  
4 believe that some attorneys will be working.

5 MS. MORRIS: Next Wednesday, do you plan on going to  
6 work if you have the day off?

7 PROSPECTIVE JUROR NO. 029: No.

8 MS. MORRIS: Are you familiar with the Nettles Law  
9 Firm at all?

10 PROSPECTIVE JUROR NO. 029: I think I've heard of  
11 it, yes.

12 MS. MORRIS: Do you know how many cases the Nettles  
13 Law Firm has with Marquis Auerbach?

14 PROSPECTIVE JUROR NO. 029: No.

15 MS. MORRIS: Do you know Micah Echols there?

16 PROSPECTIVE JUROR NO. 029: Yes.

17 MS. MORRIS: Do you know if Michael Echols works  
18 with the Nettles Law Firm on any cases?

19 PROSPECTIVE JUROR NO. 029: Probably.

20 THE COURT: Do you know, is the question.

21 PROSPECTIVE JUROR NO. 029: Do I know for a fact? I  
22 don't know his cases. No, I don't know for a fact.

23 MS. MORRIS: What other attorneys do you work with  
24 besides Christian?

25 PROSPECTIVE JUROR NO. 029: I used to work with

1 James Ruggeroli, but he currently left our firm, and now we  
2 just got -- I got assigned to Patrick McDonnell.

3 MS. MORRIS: And you've been working with Christian  
4 consistently?

5 PROSPECTIVE JUROR NO. 029: Yes, since he -- I think  
6 the majority of his time at the firm.

7 MS. MORRIS: Do you want to allow more questioning,  
8 and then we'll --

9 THE COURT: Did you want to ask any questions?

10 MR. SEMENZA: Just a couple follow-ups. Good  
11 morning.

12 PROSPECTIVE JUROR NO. 029: Morning.

13 MR. SEMENZA: Are you able to be impartial in this  
14 particular case?

15 PROSPECTIVE JUROR NO. 029: Yes.

16 MR. SEMENZA: Okay, thank you.

17 PROSPECTIVE JUROR NO. 029: Sorry.

18 MR. SEMENZA: And are you able to put aside any of  
19 your history or understanding of your work in order to  
20 evaluate the case on the facts and on the evidence?

21 PROSPECTIVE JUROR NO. 029: Yes.

22 MR. SEMENZA: And in your legal work that you've  
23 been doing, it's been purely secretarial?

24 PROSPECTIVE JUROR NO. 029: Mainly, yes.

25 MR. SEMENZA: Okay. And when you're drafting

1 documents, you're not looking to -- for substantive things in  
2 those documents, are you?

3 PROSPECTIVE JUROR NO. 029: No.

4 MR. SEMENZA: It's formatting?

5 PROSPECTIVE JUROR NO. 029: Formatting, finalizing,  
6 e-filing, just transcribing.

7 MR. SEMENZA: Calendaring?

8 PROSPECTIVE JUROR NO. 029: Calendaring.

9 MR. SEMENZA: Answering phone calls, directing them  
10 to your attorney?

11 PROSPECTIVE JUROR NO. 029: Yes, exactly.

12 MR. SEMENZA: Okay. And are you comfortable in not  
13 discussing any portion of this case with any of the attorneys  
14 that you work with at Marquis Auerbach?

15 PROSPECTIVE JUROR NO. 029: I'm comfortable.

16 MR. SEMENZA: And are you comfortable in following  
17 Her Honor's rules and admonitions to you in this particular  
18 case?

19 PROSPECTIVE JUROR NO. 029: Yes.

20 MR. SEMENZA: And do you believe that you have any  
21 biases at this point in time against the plaintiff here in  
22 this particular matter?

23 PROSPECTIVE JUROR NO. 029: I do not.

24 MR. SEMENZA: Okay. Do you have any biases against  
25 Ms. Morris or any of the other attorneys working with her?

1 PROSPECTIVE JUROR NO. 029: No, I do not.

2 MR. SEMENZA: I don't have anything further?

3 MS. MORRIS: Can I have a couple of follow up?

4 THE COURT: I want to ask her a couple questions.

5 Do you have any biases towards or good feelings of -- towards  
6 the Wynn? In other words, as -- when I -- you're always  
7 representing -- your firm, I should say, is representing the  
8 Wynn on the defense side of these cases that come into the  
9 firm; is that right?

10 PROSPECTIVE JUROR NO. 029: Yes.

11 THE COURT: And so, as a result of that, have you  
12 formed any opinions about whether these cases have had any  
13 merit, or -- that are filed against the Wynn?

14 PROSPECTIVE JUROR NO. 029: I do not. I don't  
15 really read half of them, or most of them. I really don't  
16 know the content of a lot of the cases. I just pretty much  
17 recognize the case names, numbers, and, you know, rare details  
18 or big details.

19 THE COURT: Okay. All right. You said you had a  
20 follow up question?

21 MS. MORRIS: Yeah, just a couple. Have you ever  
22 heard attorneys at your firm complain about plaintiff's  
23 attorneys, as to, they're asking for too much, or they want  
24 more than they deserve?

25 PROSPECTIVE JUROR NO. 029: Probably.

1 MS. MORRIS: Have you ever heard attorneys in your  
2 firm talk about discovery disputes where the other side isn't  
3 giving them what they want, information?

4 PROSPECTIVE JUROR NO. 029: I think so. Sometimes,  
5 um-hum.

6 MS. MORRIS: Those comments that you've heard from  
7 the attorneys in your office where they talk about plaintiff's  
8 attorneys, what's your opinion of plaintiff's attorneys?

9 PROSPECTIVE JUROR NO. 029: We also represent  
10 plaintiffs, too, and I really have no opinion on plaintiffs or  
11 defendants. I kind of just do my job.

12 MS. MORRIS: How do you think the Wynn would react  
13 if they learned that you were on a jury and a verdict came  
14 against them?

15 MR. SEMENZA: I'd object to that question, Your  
16 Honor.

17 THE COURT: Well, I don't know that it's proper to  
18 object to it. I guess maybe better would be, do you have any  
19 concern that if you, after -- if you felt that the plaintiff  
20 had proved the case, would you have any concern that you  
21 would be somehow penalized by your firm via the Wynn for  
22 having come up with a verdict that would be in favor of the  
23 plaintiff?

24 PROSPECTIVE JUROR NO. 029: I don't know. I don't  
25 know. I don't know how to answer that question. I mean, I

1 definitely don't want to be in trouble, you know, if -- you  
2 know, if I -- if whatever happens happens, and I'm somehow  
3 penalized just for being on the jury.

4 THE COURT: Okay. So, until we brought it up, you  
5 weren't worried about it, but now that we've brought it up --

6 PROSPECTIVE JUROR NO. 029: Yeah.

7 THE COURT: -- you're like, oh, this could  
8 potentially be --

9 PROSPECTIVE JUROR NO. 029: Yes. I would like to  
10 know what you advise in this matter.

11 THE COURT: Well, I'm not --

12 PROSPECTIVE JUROR NO. 029: I don't --

13 THE COURT: It wasn't advice. It's just that I was  
14 asking you if you had any concern about that. Is this  
15 something that's going to be weighing on your mind, in other  
16 words? Well, gosh, I -- you know, I know the plaintiff has  
17 proved their case, but I can't really still vote for a verdict  
18 for the plaintiff, even though I do believe they proved their  
19 case, because then how do I explain that at the office, and  
20 what if I get in trouble? So, I mean, that's the question.  
21 We need to know, is that going to be something that's on your  
22 mind and potentially a problem?

23 PROSPECTIVE JUROR NO. 029: Well, I just planned on  
24 not discussing it at all at the office, because I'm not  
25 supposed to. So, I didn't think that, you know, I guess it

1 would play a role in the office place where I'm not supposed  
2 to be biased in the courtroom.

3 THE COURT: Right, well, and it shouldn't, but  
4 sometimes people can recognize that, well, I know I'm supposed  
5 to be fair and impartial, but I also know because I'm -- it's  
6 me, and I know what I'm thinking, that I am. Even though I  
7 would prefer to not be, I can be fair and impartial in most  
8 things, but in this thing, I don't think I can.

9 So, we don't know because we can't look into your  
10 brain and see what you're thinking, so that's why we have to  
11 ask these questions. So, we're just really trying to make  
12 sure that there isn't something that would be outside what the  
13 normal juror is going to hear and decide a case on that you'll  
14 be having other things impacting your ability to be fair and  
15 impartial.

16 PROSPECTIVE JUROR NO. 029: I would be fair and  
17 impartial.

18 THE COURT: Okay.

19 MS. MORRIS: I don't have any other questions, but.

20 THE COURT: All right. If you'd rejoin your fellow  
21 jurors. The marshal will pick up the microphone from you on  
22 your way out. Thank you.

23 (Outside the presence of Prospective Juror No. 029)

24 THE COURT: Okay, the juror has departed the  
25 courtroom.

1 MS. MORRIS: Yes. I would like to have her removed  
2 for cause. I think that there is going to be pressure on her.  
3 To put her in a situation where she has to make a decision on  
4 a verdict that might have an impact on her at work is going to  
5 pressure her ability to make a decision. And she has a  
6 conflict, because she's also working on other cases in which  
7 the defendant is basically working with -- on a similar issue  
8 with my firm in which she's involved in, in the litigation as  
9 well.

10 So, I think that she needs to be removed for cause.  
11 I don't think that she can be an unbiased, impartial juror. I  
12 appreciate that she says that, but I think it became very  
13 clear in questioning her that she is unsure whether she will  
14 get in trouble if she comes to a verdict against the Wynn.  
15 And while she might not talk to them at work, it will be  
16 something that's weighing on her mind while she's making that  
17 decision, and then the verdict will come out either way. If  
18 it comes against the Wynn, she'll probably have difficulty  
19 dealing with that at work.

20 THE COURT: Okay.

21 MR. SEMENZA: I think that presupposes a lot of  
22 things. She's indicated and identified that she would not be  
23 biased, that she would be impartial in this matter, that she  
24 would consider the evidence. She obviously works with -- or  
25 on cases that don't involve the Wynn on both the plaintiff and

1 the defense side. She doesn't substantively draft legal  
2 documents, she's not arguing cases, she's not taking  
3 depositions, she's not doing research, or any of those sorts  
4 of things.

5 I don't believe that there is a for cause basis at  
6 this point in time to remove her. Obviously, Ms. Morris, if  
7 she does have concerns, does have challenges that she can make  
8 if she does not want this particular individual on the jury,  
9 but I do believe that there is no basis to remove her for  
10 cause at this point in time.

11 THE COURT: All right. Well, the Court of Appeals  
12 recently decided a case, and I would be -- I'd love to be able  
13 to give you the cite to it, but I can't think of the name of  
14 it off the top of my head, but it was very recent.

15 And the criticism of the District Court was that,  
16 despite a juror saying that they could be fair and impartial,  
17 they said, well, you've got to look at more. Just because  
18 they keep saying that they can be fair and impartial and these  
19 things don't matter, and it was a situation -- I'm trying to  
20 remember the exact facts, but it was a situation that's  
21 somewhat similar, where there -- the person that was sought to  
22 be removed for cause had some connection with one of the  
23 parties or a witness. And I wish I could be more specific,  
24 because I --

25 MS. MORRIS: I know the case you're talking about.

1 It was with Nevada Spine Clinic, and I think they had -- I  
2 read the decision, too, and the name is escaping me. But the  
3 juror had actually gone to the clinic, and had not recognized  
4 Nevada Spine Clinic, but I understand it was Dr. Grover and --

5 THE COURT: Until later.

6 MS. MORRIS: -- had involvement in it, and had -- I  
7 think had surgery there as well, and they kept the juror, and  
8 that was the issue.

9 THE COURT: Right. And I think that -- in that  
10 case, it was discovered during the trial; it came to light.  
11 And so, the question was, should the juror be removed and  
12 replaced with an alternate? And the district court decided  
13 not to do that, and then the Court of Appeals said, no, that  
14 even though he maintained that he could be fair and impartial,  
15 it wouldn't make any difference, and hadn't made any  
16 difference; that you shouldn't believe them, basically, if  
17 you've got something like that where there's a more clear  
18 connection.

19 And so, I just don't think that frankly it's worth  
20 risking for the defense in this case to keep that juror here  
21 and basically set you up for appeal, because they don't have  
22 to exercise a peremptory challenge of that person. And if  
23 she's on, and especially where she's now expressed -- maybe  
24 because we planted the seed, but -- but she has expressed, oh,  
25 gosh, I don't want to get in trouble. Well, now that could be

1 weighing on her. So --

2 MR. SEMENZA: I understand.

3 THE COURT: -- I think it's just safer to excuse her  
4 for cause and not invite an appellate issue, and what --

5 MR. SEMENZA: That's fine, Your Honor. I  
6 understand.

7 THE COURT: Okay. So, we're going to --

8 MR. SEMENZA: Go ahead.

9 THE COURT: -- excuse her for cause. So, we can --

10 THE MARSHAL: Do you want me to tell her now, or do  
11 you want to bring her in for the rest of --

12 MR. SEMENZA: There are a couple others that I'd  
13 like to address real quick.

14 THE COURT: All right. You -- yeah, you can let her  
15 know quietly to report down, and then we'll fill the next in  
16 order. At least the clerk can tell us who's going to go into  
17 that slot.

18 MR. SEMENZA: Did you have anything else?

19 MS. MORRIS: I did.

20 MR. SEMENZA: Okay, go ahead.

21 THE COURT: Who is it?

22 THE CLERK: Badge number 32, Kenneth Mapoy.

23 THE COURT: Kenneth McCoy?

24 THE CLERK: M-a-p-o-y.

25 THE COURT: Oh. Oh, Mapoy, Mapoy. Okay. All

1 right, and what did you have --

2 MS. MORRIS: And the other issue, I --

3 THE COURT: Mr. --

4 MS. MORRIS: Oh, I'm sorry, but --

5 THE COURT: I'm sorry.

6 MS. MORRIS: -- I wanted to address was the same  
7 issue that we just had with this lady, James Hebert, who's the  
8 employee at the Wynn. Based on the ruling that just was  
9 decided with the Juror 29, James Hebert is an employee at the  
10 Wynn. And I think that if we don't excuse him for cause right  
11 now, then we should have him in and do questioning separate  
12 from the other people as well, because the impact -- the  
13 inverse impact that he could have if he sits on a jury of his  
14 employer, the defendant in the matter.

15 The -- his inability to be impartial despite what he  
16 says is clear. I mean, he has a direct connection. He is  
17 employed by the defendant. And for him to be able to sit on  
18 the jury and not have any type of bias or impartiality,  
19 despite what he might say, it's -- it's not realistic. And I  
20 think that if we don't remove him for cause at this point  
21 right now, we should question him as well to see what his  
22 thoughts are.

23 THE COURT: Do you object to the cause? I mean,  
24 he's employed by the defendant. I think that is a problem.

25 MR. SEMENZA: I don't know that we necessarily need

1 to bring him in and question him.

2 THE COURT: Yeah, I don't --

3 MR. SEMENZA: My issue, I guess, is this, that he's  
4 an employee, it is my understanding, of the golf course, and I  
5 don't believe that his capacity is in a management position.  
6 He basically does -- I'm not sure exactly what it might be,  
7 but I would assume groundwork, or maintenance, or something to  
8 that effect.

9 So, I would like to note for the record that I think  
10 the connection between him and the issues in this particular  
11 case are separate enough where it does not create an issue.  
12 However, I will go ahead and defer to Your Honor's judgment as  
13 to whether you would like to go ahead and have him removed for  
14 cause.

15 THE COURT: Well, I agree, that I don't think that  
16 what he does for the golf course has any bearing, and so he  
17 won't have any inside information, but the issue isn't really  
18 that. It's can he truly be fair to a plaintiff who is suing  
19 his employer from whom he derives his life -- you know, his  
20 living, and making a living from his employer. And I suspect  
21 that, again, if -- if we planted the seed with him, well,  
22 would you be worried that your employer might retaliate, then  
23 he might start thinking about it, and that would even make it  
24 worse.

25 //

1           But it just seems, when you've got an employee, he  
2 actually works for the defendant, it's a corporate defendant,  
3 it's probably best to -- in light of this recent ruling, to  
4 let him go, rather than risk. And if we want to get this jury  
5 picked today, we need to move on, so I'm going to allow him to  
6 be excused as well for cause. So, who's next in order that  
7 will fill seat 13?

8           THE MARSHAL: What was that gentleman's name again?

9           THE COURT: James Hebert.

10          THE CLERK: Hebert. That's seat 13.

11          MR. KIRCHER: 014.

12          THE CLERK: Yes, badge 14. The next one is badge  
13 34, Cindy Huang, H-u-a-n-g.

14          MR. SEMENZA: Did you have anything else, Christian?

15          MS. MORRIS: No, nothing else. Thanks.

16          MR. SEMENZA: So --

17          THE COURT: Yes, Mr. Semenza.

18          MR. SEMENZA: And again, I would like to get started  
19 as well, but I do have an issue as far as language is  
20 concerned. I know that Ms. Huang speaks Chinese fluently. I  
21 detected some issues as far as understanding what we were  
22 discussing here today. I also have that same issue as far  
23 as --

24          THE COURT: Right, and I said we're going to --  
25 we're going to see how they do as we --

1 MR. SEMENZA: Exactly. And so -- and let me just  
2 note it. Mr. Torres in seat number 1, I thought had some  
3 language barriers. And then, in seat number --

4 MR. KIRCHER: 7.

5 MR. SEMENZA: -- 7, Rosa De-Madrigal also had some  
6 language issues. And my opinion, I guess, is that if we  
7 address those issues immediately after we bring the jurors in,  
8 that we may want to pair those individuals off if in fact they  
9 do have issues on a for cause basis.

10 So, I guess my suggestion is, obviously, if Your  
11 Honor's inclined, is to address the language with those three  
12 individuals immediately --

13 THE COURT: Mr. Torres didn't express any language  
14 issues, and he speaks -- I recall him, and being very  
15 impressed with his language skills. He has an accent, but  
16 we're not dismissing people, you know, because they have an  
17 accent.

18 MR. SEMENZA: No, no, no, Your Honor. And Mr.  
19 Torres was the one the first on the right --

20 THE COURT: Right.

21 MR. SEMENZA: -- who identified --

22 THE COURT: Yeah.

23 MR. SEMENZA: When the question was posed, do you  
24 have any medical training, he said diabetes and something  
25 else.

1 THE COURT: Oh, right, right, right. Okay.

2 MR. SEMENZA: So, I think -- I think you were  
3 referring to the person next to him.

4 THE COURT: Yes.

5 MR. SEMENZA: The other issue with Mr. Torres is  
6 that he's commuting 90 miles every day back and forth to be  
7 here. He had mentioned that he was residing in Mesquite, and  
8 was coming to and from. And so --

9 THE COURT: Right, but he doesn't get excused for  
10 that. There's not -- you know, unless he's 65, and he's -- he  
11 didn't say that. So, I don't want to address these language  
12 issues until we start talking to them a little more on the one  
13 on one.

14 MR. SEMENZA: Okay.

15 THE COURT: And then, if it becomes evident they're  
16 not understanding, then I always excuse them if truly they're  
17 not understanding. But I'd rather just push forward, because  
18 when we get to them, and it appears that they're not  
19 understanding, we're going to find that out when we're asking  
20 the individual questions. And especially the ones where I've  
21 already -- they've brought it up, and I said, okay, let's wait  
22 and see what you think going forward, how you're doing, okay?  
23 And so, that's how I want to handle it. So --

24 MR. SEMENZA: That's fine, Your Honor.

25 THE COURT: -- I'm not saying we're not going to

1 excuse them if they can't -- if they can't understand what's  
2 going on, but I don't want to do it at this juncture, since  
3 we've only got a little time now before we're going to have to  
4 recess for lunch. So, okay. All right, here we go.

5 THE MARSHAL: Just to be clear, Your Honor, Hebert,  
6 James is excused as well, correct?

7 THE COURT: Correct.

8 THE MARSHAL: Okay.

9 THE COURT: And otherwise, we need to bring them in.

10 THE MARSHAL: Yes.

11 THE COURT: Okay, good.

12 MR. SEMENZA: And Your Honor, I just have a few  
13 questions for the general panel, so I should be very, very  
14 quick.

15 THE COURT: Okay.

16 THE MARSHAL: All rise for the jury, please.

17 (Within the presence of the prospective jurors)

18 (Pause in the proceedings)

19 THE COURT: All right, they need to be in order,  
20 because the lawyers need to know who's coming up next. So,  
21 you need to be in your badge order. Kind of like when you fly  
22 Southwest.

23 (Pause in the proceedings)

24 THE MARSHAL: All present, Your Honor.

25 THE COURT: Thank you. Please be seated. And the

1 record will reflect that we have now been rejoined by the  
2 venire panel, and all parties are present with their counsel,  
3 all officers of the court are present as well. And good  
4 morning, ladies and gentlemen. We've been working since  
5 11:00, so sorry to keep you waiting, but we needed to attend  
6 to those matters, and we're ready to proceed. And Mr.  
7 Semenza, do you have some general questions for the panel?

8 MR. SEMENZA: I do, Your Honor. Thank you. At this  
9 point in time, I'll just be very brief. I just have a couple  
10 follow up questions for the general panel. Is there anyone  
11 present here that is currently retired?

12 THE MARSHAL: Full name, last three, please.

13 PROSPECTIVE JUROR NO. 005: Ben Godfrey, 005.

14 MR. SEMENZA: Mr. Godfrey, when did you retire?

15 PROSPECTIVE JUROR NO. 005: Ten years ago.

16 MR. SEMENZA: Thank you. And then, if you could  
17 pass that.

18 THE MARSHAL: Anybody else in the box?

19 PROSPECTIVE JUROR NO. 044: Mark Ting, 044.

20 MR. SEMENZA: And when did you retire?

21 PROSPECTIVE JUROR NO. 004: About two years ago.

22 MR. SEMENZA: Two years ago? Okay.

23 PROSPECTIVE JUROR NO. 048: 0048, Charlene Baker.

24 MR. SEMENZA: And how long ago did you retire?

25 PROSPECTIVE JUROR NO. 048: 1996.

1 THE MARSHAL: Anybody else?

2 PROSPECTIVE JUROR NO. 062: Linda Brinkman, 062.  
3 I've been retired two years.

4 MR. SEMENZA: Thank you. And I apologize if this  
5 question was already asked. Is there anyone here that is  
6 presently in the military? Is there anyone here that is  
7 retired military?

8 THE COURT: And the record will reflect negative  
9 responses to those last two questions.

10 MR. SEMENZA: Thank you, Your Honor. Outside of any  
11 of the individuals that identified that they are retired, is  
12 anyone present currently unemployed, but seeking employment?

13 PROSPECTIVE JUROR NO. 021: Bridget Hamilton, 021.  
14 Unemployed, but not seeking employment.

15 MR. SEMENZA: Okay. And how long have you been  
16 unemployed?

17 PROSPECTIVE JUROR NO. 021: November 10, '09.

18 MR. SEMENZA: Thank you.

19 PROSPECTIVE JUROR NO. 021: Um-hum.

20 MR. SEMENZA: And again, this is directed at the  
21 entire panel. Have you or any family members ever been  
22 injured as a result of a slip and fall?

23 PROSPECTIVE JUROR NO. 004: Jacklyn Schumacher, 004.

24 MR. SEMENZA: Could you briefly tell me about that  
25 fall and when it was?

1 PROSPECTIVE JUROR NO. 004: It was my mom at work.  
2 We have a special cleaner to clean the floors. It's called  
3 Mineral Spirits, and it makes the floor very, very slippery if  
4 you use too much, and she slipped at work.

5 MR. SEMENZA: And this was your mother?

6 PROSPECTIVE JUROR NO. 004: Um-hum.

7 MR. SEMENZA: How long ago was that?

8 PROSPECTIVE JUROR NO. 004: This was probably two  
9 years ago.

10 MR. SEMENZA: Thank you. Pass that down, please.

11 PROSPECTIVE JUROR NO. 008: Brandon Snyder, number  
12 8. Both my grandfather and father have had slip and falls;  
13 not at work though.

14 MR. SEMENZA: You said your grandfather and  
15 grandmother?

16 PROSPECTIVE JUROR NO. 008: My father.

17 MR. SEMENZA: And your father?

18 PROSPECTIVE JUROR NO. 008: Yes.

19 MR. SEMENZA: And they were both injured?

20 PROSPECTIVE JUROR NO. 008: Yes.

21 MR. SEMENZA: Briefly, could you just tell me how  
22 they were injured?

23 PROSPECTIVE JUROR NO. 008: My grandfather fell  
24 leaving the hospital, and hit his head quite badly. My father  
25 has fallen several times in the last couple years and hit his

1 head less seriously, but similar accident.

2 MR. SEMENZA: And how long ago was -- did your  
3 grandfather fall?

4 PROSPECTIVE JUROR NO. 008: About five years ago.

5 MR. SEMENZA: And how about your father?

6 PROSPECTIVE JUROR NO. 008: Earlier this year and  
7 last year.

8 MR. SEMENZA: Okay.

9 PROSPECTIVE JUROR NO. 010: Laurie Prince, number  
10 10. I slipped and fell coming out of the shopping mall on one  
11 of those cracks in the concrete, and sprained my right leg,  
12 and broke my thumb and right wrist.

13 MR. SEMENZA: You broke your right wrist?

14 PROSPECTIVE JUROR NO. 010: Um-hum.

15 MR. SEMENZA: And your thumb, you said?

16 PROSPECTIVE JUROR NO. 010: Um-hum.

17 MR. SEMENZA: When was this?

18 PROSPECTIVE JUROR NO. 010: 2010.

19 MR. SEMENZA: And did you file any lawsuit relating  
20 to your injuries?

21 PROSPECTIVE JUROR NO. 010: No.

22 MR. SEMENZA: Did you recover?

23 PROSPECTIVE JUROR NO. 010: Yes.

24 MR. SEMENZA: Anyone else? Pass it down.

25 PROSPECTIVE JUROR NO. 011: Kelly Harms, badge

1 number 011. My grandfather about three months ago was at the  
2 skating rink, and he slipped and fell over a pair of skates  
3 that someone was changing the shoelaces out of. So, he did  
4 end up suing the skate park and the person that had all the  
5 skates laid out on the floor that he had tripped on.

6 THE COURT: Okay. So, you don't care whether  
7 they're answering this as a slip and fall or trip and fall?  
8 Because most of these are --

9 MR. SEMENZA: Correct.

10 THE COURT: -- trips, but --

11 MR. SEMENZA: Yes.

12 THE COURT: -- it's fine? Okay.

13 MR. SEMENZA: Thank you. Okay, and is that case  
14 ongoing? I'm sorry.

15 PROSPECTIVE JUROR NO. 011: Yes, it is. Actually,  
16 he still has a lawyer in the process of suing the person.

17 MR. SEMENZA: And what were your grandfather's  
18 injuries?

19 PROSPECTIVE JUROR NO. 011: He broke his left wrist  
20 and got a compound fracture on his left knee.

21 MR. SEMENZA: Okay, thank you.

22 PROSPECTIVE JUROR NO. 026: Amy Mejia, 026. Slipped  
23 and fell down my stairs on my way to work, tore the meniscus  
24 in my knee, and that was back in '09.

25 THE COURT: And you were at home at the time?

1 PROSPECTIVE JUROR NO. 026: Yes.

2 MR. SEMENZA: Thank you. Anyone else?

3 PROSPECTIVE JUROR NO. 013: Brenda Nigro, 013. I  
4 slipped down the stairs at home and sprained my ankle.

5 MR. SEMENZA: And how long ago was that?

6 PROSPECTIVE JUROR NO. 013: February of this year.

7 MR. SEMENZA: Thank you.

8 THE MARSHAL: Anybody else?

9 PROSPECTIVE JUROR NO. 034: Cindy Huang, 0034. I  
10 was -- fell down on the ski -- what they call? The ski on --  
11 last year at Summerlin, the skiing place.

12 MR. SEMENZA: Is that with snow?

13 PROSPECTIVE JUROR NO. 034: It's man make.

14 THE COURT: Manmade snow?

15 MR. SEMENZA: Manmade snow?

16 PROSPECTIVE JUROR NO. 034: Yeah.

17 MR. SEMENZA: Was that the Summerlin Snow Day?

18 PROSPECTIVE JUROR NO. 034: Yes, I think around the  
19 Christmas. Before the Christmastime.

20 MR. SEMENZA: Were you injured?

21 PROSPECTIVE JUROR NO. 034: I broke my ankle.

22 MR. SEMENZA: You broke it?

23 PROSPECTIVE JUROR NO. 034: Yes.

24 MR. SEMENZA: And have you filed any lawsuits  
25 relating to it?

1 PROSPECTIVE JUROR NO. 034: No.

2 MR. SEMENZA: Do you plan on filing a lawsuit  
3 relating to it?

4 PROSPECTIVE JUROR NO. 034: No.

5 MR. SEMENZA: Anyone else? Did we get everyone?

6 THE MARSHAL: We have one over here.

7 PROSPECTIVE JUROR NO. 049: Okay. Daniel Miranda,  
8 badge number 049. And earlier this year in February, I  
9 slipped and re-tore my ACL graft, and had surgery to fix that.

10 MR. SEMENZA: Where were you when that happened?

11 PROSPECTIVE JUROR NO. 049: I was at home.

12 MR. SEMENZA: And when did that take place?

13 PROSPECTIVE JUROR NO. 049: February.

14 MR. SEMENZA: Okay, thank you. Just a moment, Your  
15 Honor. That's all I have.

16 THE COURT: Thank you. All right. Ladies and  
17 gentlemen, we're going to start what I always like to think of  
18 as my favorite part, because I'm going to take you one at a  
19 time and ask you to tell me about yourself.

20 In this question, these are the things I want you to  
21 answer when I ask you, tell me about yourself. I want you to  
22 tell me how long you've lived in Clark County. I want to --  
23 you to tell me whether you're married, single, divorced,  
24 whether you have a significant other, partner, et cetera, et  
25 cetera. I want you to tell me what you do for a living, what

1 you were doing. And if you're retired, I want you to tell me  
2 what you did for a living before you retired. I want -- if  
3 you have a wife, husband, partner, or significant other, I  
4 want to know what that person also does for a living.

5 I want to know if you have any children, their ages,  
6 and then I want to know, if they're adult children, what they  
7 do for a living. Don't worry if you think, oh, I'm never  
8 going to remember all that, because you will. Every jury  
9 always does. After the first person does it, they all  
10 remember it just like clockwork. It's amazing. But I would  
11 prompt you if you forget anything, so don't be concerned about  
12 that. So, we're going to start with seat 1, Mr. Juan Torres.

13 PROSPECTIVE JUROR NO. 001: 001, Juan Torres.

14 THE COURT: Tell us about yourself.

15 PROSPECTIVE JUROR NO. 001: I'm married, have a  
16 wife, have three children. I'm a sous-chef with Eureka Hotel  
17 and Casino in Mesquite, Nevada. I live in Clark County for  
18 almost 14 years. I have a little boy, seven-years-old, a  
19 little girl, 13, and a 18-years-old boy, and he's in college  
20 in Reno, Nevada.

21 THE COURT: Good. And have you always been a chef?  
22 Have you always been a cook?

23 PROSPECTIVE JUROR NO. 001: Yes, ma'am.

24 THE COURT: Okay. And what does your wife do? Does  
25 she work?

1 PROSPECTIVE JUROR NO. 001: She's a bus person in  
2 one of the other casinos in Mesquite, Nevada, too.

3 THE COURT: All right. Have you had any language  
4 difficulties understanding what we've been talking about today  
5 or yesterday? Any difficulties?

6 PROSPECTIVE JUROR NO. 001: My way to speak English,  
7 that's my problem. I understand most of the language, but to  
8 speak is my -- my (indecipherable) be a problem.

9 THE COURT: Oh, I understand. Sometimes you can  
10 understand everything that's being said, but you have more  
11 difficulty then expressing?

12 PROSPECTIVE JUROR NO. 001: (Indecipherable), yes.

13 THE COURT: But you are able to communicate?

14 PROSPECTIVE JUROR NO. 001: Yes, ma'am.

15 THE COURT: And so, you don't -- do you feel that  
16 you have not understood what we've been talking about?

17 PROSPECTIVE JUROR NO. 001: No.

18 THE COURT: Okay. All right, thank you. Would the  
19 plaintiff like to inquire further?

20 MS. MORRIS: No, thank you.

21 THE COURT: Thank you. Defense?

22 MR. SEMENZA: Just briefly. I just want to make  
23 sure that I'm clear. I think your -- you had mentioned that  
24 you understood most of what was presented here. Have you  
25 understood everything that has been presented here, or just

1 most?

2 PROSPECTIVE JUROR NO. 001: Most.

3 MR. SEMENZA: Okay, okay. Thank you.

4 THE COURT: Oh, wait a minute. Okay. When you say  
5 -- is there anything that you haven't understood where you're  
6 thinking, oh, I need to -- I didn't really get any of that?  
7 Can you recall anything like that?

8 PROSPECTIVE JUROR NO. 001: My biggest problem is  
9 I'm not remember a lot of things.

10 THE COURT: Oh, wait a minute. I can't see him.

11 THE COURT RECORDER: Sorry.

12 THE COURT: Okay. So, your biggest problem is what  
13 did you say?

14 PROSPECTIVE JUROR NO. 001: I cannot remember a lot  
15 of things.

16 THE COURT: Oh, you can't remember?

17 PROSPECTIVE JUROR NO. 001: A lot of things.

18 THE COURT: Okay. Is -- is that a mental -- or, you  
19 know, a condition, a medical condition of some kind, or?

20 PROSPECTIVE JUROR NO. 001: Yes.

21 THE COURT: All right. So, is it your short-term  
22 memory, so, in other words, you can't remember what happened  
23 yesterday?

24 PROSPECTIVE JUROR NO. 001: Pretty much.

25 THE COURT: Okay. So, do you think that's going to

1 cause you some difficulties? You're -- this trial is going to  
2 take over several days, and we're going to have a day  
3 interrupting where we're not even going to have court. Are  
4 you going to have trouble at the end of the trial remembering  
5 what happened at the beginning?

6 PROSPECTIVE JUROR NO. 001: Yes.

7 THE COURT: Okay. Do you think that's going to  
8 affect your ability to be a fair and impartial juror because  
9 you won't remember what happened about the evidence?

10 PROSPECTIVE JUROR NO. 001: I'm assuming that's  
11 going to happen.

12 THE COURT: All right. Anybody --

13 MR. SEMENZA: May we approach?

14 THE COURT: Yeah.

15 (Off-record bench conference)

16 THE COURT: Mr. Torres, Ms. Morris is going to ask  
17 you some additional questions regarding your memory.

18 MS. MORRIS: Just have a couple of questions for  
19 you. Do you remember coming here yesterday? Do you --

20 PROSPECTIVE JUROR NO. 001: Yes.

21 MS. MORRIS: Did you remember where to go when you  
22 came here today?

23 PROSPECTIVE JUROR NO. 001: Yes.

24 MS. MORRIS: What did you have for dinner last  
25 night?

1 PROSPECTIVE JUROR NO. 001: I think it was a pasta.

2 MS. MORRIS: Was it good?

3 PROSPECTIVE JUROR NO. 001: When my wife cook, yeah.

4 MS. MORRIS: What do you have trouble remembering?

5 PROSPECTIVE JUROR NO. 001: Names. I remember just  
6 part of the cases, but not a lot of things.

7 MS. MORRIS: Do you ever take notes to help you  
8 remember things?

9 PROSPECTIVE JUROR NO. 001: Sometimes, yeah.

10 MS. MORRIS: Does taking notes help you remember  
11 things?

12 PROSPECTIVE JUROR NO. 001: Yeah.

13 MS. MORRIS: Have you gone to a doctor, and have  
14 they diagnosed you with something that causes memory failure  
15 or memory loss?

16 PROSPECTIVE JUROR NO. 001: Yeah.

17 MS. MORRIS: What have they diagnosed you with?

18 PROSPECTIVE JUROR NO. 001: I mean, it's the  
19 diabetes and the high blood pressure (indecipherable).

20 MS. MORRIS: Have the doctors told you that that  
21 causes memory loss?

22 PROSPECTIVE JUROR NO. 001: It's part of that. I  
23 mean, that's all the question I asked him, and all what they  
24 say is you got to take care of your health. That's it.

25 MS. MORRIS: If you were able to sit through this

1 trial and take notes, do you think that those notes would be  
2 adequate enough to help you remember what happened in court?

3 PROSPECTIVE JUROR NO. 001: See, my only problem is  
4 that I cannot write really good English, you know? I can  
5 write all Spanish. I can understand you, can understand  
6 anyone, but my thing is, to write English, I'm not really  
7 good.

8 MS. MORRIS: Do you think that you wouldn't be able  
9 to sit and listen to the evidence, and takes notes, and be  
10 able to deliberate and come to a decision in this court?

11 PROSPECTIVE JUROR NO. 001: I'm assuming, yes.

12 MS. MORRIS: Do you think you'd be able to do that?

13 PROSPECTIVE JUROR NO. 001: I'll do my best. I  
14 mean, honest, I mean, I'm not -- I'm not 100 percent able to  
15 do things, especially because my memory is not really good  
16 anymore.

17 MS. MORRIS: All right, thank you.

18 THE COURT: All right. Mr. Torres, Ms. Morris asked  
19 you if you could take notes, would that help you, and you  
20 said, well, I don't write very well in English. But these are  
21 your notes. You can make notes in Spanish. I mean, just if  
22 you hear something, would you be able to do that, or is that a  
23 problem?

24 PROSPECTIVE JUROR NO. 001: No, that's not a  
25 problem.

1 THE COURT: Okay. So, you could make your notes in  
2 Spanish, because you can read Spanish; is that right?

3 PROSPECTIVE JUROR NO. 001: Yes, yes.

4 THE COURT: Okay. So, and I want to kind of go back  
5 to the issue of you said you understood most of what was going  
6 on. And when I asked you about that further, then you said --  
7 you said it was a memory issue, so those are two different  
8 things, okay?

9 So, now, sometimes when lawyers use words that lay  
10 people aren't familiar with because they're not lawyers, they  
11 don't understand that. That doesn't mean you have a language  
12 barrier; it's just it's not something you're familiar with.  
13 It's just like, I don't know, if -- I suppose there might be  
14 some terms that you use in the kitchen that I might not be  
15 familiar with, okay? So, there's a difference between those  
16 two things.

17 So, have you during these past couple days heard  
18 anything that was in English where it was -- the reason you  
19 didn't understand it was because you just missed the whole  
20 concept, or whether -- was it just a word or two, but you  
21 understood the gist of what was going on?

22 PROSPECTIVE JUROR NO. 001: I cannot -- I cannot  
23 answer that, because I'm not remember a lot of things. And  
24 for me to give you the right answer to you is try to remember  
25 what happened yesterday.

1 THE COURT: So, you can't remember what happened  
2 yesterday as far as -- so, when you said, well, I got most of  
3 it, I guess then what do you base that on if you can't  
4 remember yesterday?

5 PROSPECTIVE JUROR NO. 001: Like I said, the names,  
6 the trial. I only know it's the Wynn. I mean, but I don't  
7 remember when the gentleman answered to you, or what Hernandez  
8 said to you yesterday. I only remember some of the names, but  
9 not all of it.

10 THE COURT: Okay, so -- well, you don't need to --  
11 but the names aren't necessarily important today, right?

12 PROSPECTIVE JUROR NO. 001: No.

13 THE COURT: So, lots of times, we don't remember  
14 names because we don't pay attention, because it's not  
15 important that we know the name. But was there anything that  
16 -- well, let me ask you this.

17 When you know something's important that you need to  
18 be able to remember it, are you able to remember when you're  
19 trying to -- you're concentrating and you know -- you know you  
20 have to pay attention because you're going to be asked about  
21 it later or it's an important thing, are you able to remember  
22 then?

23 PROSPECTIVE JUROR NO. 001: That's when I got to  
24 take a note.

25 THE COURT: I'm sorry?

1 PROSPECTIVE JUROR NO. 001: That's when I got to  
2 take notes.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 001: That's the only way I  
5 kind of remember things.

6 THE COURT: Okay, so --

7 PROSPECTIVE JUROR NO. 001: Take notes.

8 THE COURT: You would have to take notes?

9 PROSPECTIVE JUROR NO. 001: I have to take notes.

10 THE COURT: Okay. All right. And so, you'll be  
11 able to take notes in this case. How extensive do your notes  
12 have to be? Do you have to write down everything a person  
13 says in order to remember it, or can you just jot down a few  
14 things and that will jog your memory?

15 PROSPECTIVE JUROR NO. 001: Most of the times, it's  
16 just a little bit.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR NO. 001: And that bring my memory  
19 back.

20 THE COURT: Okay. All right. So, final question on  
21 this subject is do you think that you could be a juror in this  
22 case and listen, take notes, and deliberate with your fellow  
23 jurors about what is happening? Because you're the only one  
24 that really knows the answer to that question.

25 PROSPECTIVE JUROR NO. 001: I do my best, and I --

1 THE COURT: Okay, but --

2 PROSPECTIVE JUROR NO. 001: Okay.

3 THE COURT: I need to know whether you believe that  
4 you can do it.

5 PROSPECTIVE JUROR NO. 001: Yes, I believe.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR NO. 001: Yes.

8 THE COURT: I mean, there's no right or wrong answer  
9 to that, it's just -- because I can't -- I don't know, because  
10 I don't --

11 PROSPECTIVE JUROR NO. 001: Yeah.

12 THE COURT: -- can't get in your head. So, if you  
13 think you can --

14 PROSPECTIVE JUROR NO. 001: Yes.

15 THE COURT: -- that's fine. If you think you can't,  
16 that's also fine, I just need to know one way or the other.

17 PROSPECTIVE JUROR NO. 001: No.

18 THE COURT: You don't think you can?

19 PROSPECTIVE JUROR NO. 001: No, I think I cannot.

20 THE COURT: All right, you're excused. Call the  
21 next in order.

22 THE CLERK: Badge number 37, Vuong Nguyen.

23 THE COURT: Is that like Yvonne?

24 THE CLERK: Well, it's V-u-o-n-g.

25 THE COURT: Okay. Oh.

1 THE CLERK: N-g-u-y-e-n.

2 THE COURT: Vuong Nguyen, okay. All right. So, Mr.  
3 Nguyen, will you tell us about yourself?

4 PROSPECTIVE JUROR NO. 037: I recently moved back to  
5 Vegas last April. I teach tennis for a living. I'm  
6 originally from New Jersey. My girlfriend's a nurse. I don't  
7 have kids, but I have two dogs which are pretty much my kids,  
8 so it's like I have to watch them all the time, and --

9 THE COURT: Okay. You said you came back to Las  
10 Vegas?

11 PROSPECTIVE JUROR NO. 037: Yes.

12 THE COURT: Had you lived here previously?

13 PROSPECTIVE JUROR NO. 037: Yes.

14 THE COURT: When was that?

15 PROSPECTIVE JUROR NO. 037: From 2006 to 2010.

16 THE COURT: And where were you in that interim then?

17 PROSPECTIVE JUROR NO. 037: Where I lived here, or  
18 back in Jersey?

19 THE COURT: Well, you were here from 2006 to --

20 PROSPECTIVE JUROR NO. 037: Yeah, I moved back to  
21 Jersey because I helped take care of my mom. She was fighting  
22 a little cancer, so I was living with my family, because I  
23 actually help her 24/7, so -- but then after -- she's better  
24 now, so that's why I moved back.

25 THE COURT: Oh, that's good.

1 PROSPECTIVE JUROR NO. 037: Yeah.

2 THE COURT: And you said you do have a girlfriend?

3 I'm sorry, did you say --

4 PROSPECTIVE JUROR NO. 037: Yes.

5 THE COURT: Okay, and what does she do?

6 PROSPECTIVE JUROR NO. 037: She's a nurse at UMC.

7 THE COURT: At UMC? What kind of nurse is she?

8 PROSPECTIVE JUROR NO. 037: In delivery.

9 THE COURT: Okay, in the OB/GYN floor?

10 PROSPECTIVE JUROR NO. 037: Yes.

11 THE COURT: She's actually in the operating room, or  
12 the room when the baby's delivered?

13 PROSPECTIVE JUROR NO. 037: Both. All that --

14 THE COURT: Both? Okay.

15 PROSPECTIVE JUROR NO. 037: All that good stuff, I  
16 guess. I don't know.

17 THE COURT: Okay. All right. Okay, no kids. And  
18 have you always been a tennis teacher?

19 PROSPECTIVE JUROR NO. 037: Yes, 15 years.

20 THE COURT: All right, thank you. Would the  
21 plaintiff like to inquire further?

22 MS. MORRIS: No.

23 THE COURT: Thank you. Defense?

24 MR. SEMENZA: No, Your Honor.

25 THE COURT: Thank you. If you'll pass the

1 microphone over. And this is badge number -- is it 02 -- 002,  
2 Oscar Alfaro?

3 PROSPECTIVE JUROR NO. 002: Oscar Alfaro, yes.

4 THE COURT: Tell us about yourself.

5 PROSPECTIVE JUROR NO. 002: Well, I've been living  
6 in Vegas -- in Clark County, actually, 15 years. I moved here  
7 from Chicago. I'm married. Three kids. 21-year-old, my  
8 baby's graduate school in Reno. And then seven and nine, two  
9 boys, at home. My wife is a housewife.

10 I'm the provider for the family. So, being here,  
11 even though I love to do part of my civic duty as a citizen,  
12 my mind definitely is somewhere else. I mean, as I stated  
13 yesterday, I'm part-time at a restaurant. I've been waiting  
14 tables for the last 29 years, and a financial hardship to the  
15 restaurants that I work for our fine dining, if you will, so  
16 clientele is not the same throughout the year here in Vegas.

17 Mostly, conventions. Generally, March is a good  
18 season for us, but then, the rest of the year, business goes  
19 down, and then have to -- last month, I was holding two jobs  
20 for the last three years. This opportunity at Aria arises  
21 with union and benefits, so I have to give up two jobs to keep  
22 one in order to be -- and keep being a provider.

23 So, when I stated yesterday that I'm working two  
24 days, you know, yesterday, they called me, but by the time I  
25 left this place, I could not make it to make the shift. So,

1 it's hard for me to actually be here and concentrate here when  
2 my house -- just about to lose my house. And I'm in the  
3 process of getting help from Nevada Hardest Hit Fund. So,  
4 it's a lot of stuff in my personal life that's going --

5 THE COURT: You're in the process of getting help  
6 from who?

7 PROSPECTIVE JUROR NO. 002: Nevada Hardest Hit Fund.  
8 Basically, they help with the struggling people that, you  
9 know, kind of refinance and trying to -- so I can stay in my  
10 house. So, I'm going in the process of doing that. Just in  
11 the middle of the process to -- to do that, so it's kind of  
12 hard.

13 THE COURT: Okay. And so, you're -- I remember you  
14 saying that you work two days a week on the weekends, right?

15 PROSPECTIVE JUROR NO. 002: Exactly.

16 THE COURT: And then you're on-call, so of course  
17 you'll be able to work on the weekend, and then you'll be able  
18 to work if they call you on Wednesday.

19 PROSPECTIVE JUROR NO. 002: Well, they -- because  
20 it's basically based on seniority when you're in the union, as  
21 well as how many reservations they get. So, and other than  
22 that, you know, obviously, I've been looking, because I cannot  
23 provide for my family just two days a week working. So, you  
24 know, just sent out a bunch of resumes trying to get  
25 interviews. I just got one that was supposed to go then

1 today, but I have to call and, you know, tell them that if  
2 they can, you know, postpone that hopefully by tomorrow,  
3 because I need to -- I need to have at least -- you know, I  
4 need to work three to four days in order to make ends meet.

5           So, like I said, right now, you know, I'm struggling  
6 to make my mortgage payment for this month. I have until the  
7 15th to send it. So, every day that I'm not working, you  
8 know, it just -- it's compensate, you know, with expenses for  
9 my kid in college, you know, and then to support my family  
10 here --

11           THE COURT: Okay.

12           PROSPECTIVE JUROR NO. 002: -- in Vegas.

13           THE COURT: But you'll receive pay for your jury  
14 duty every day, which right now would be more than you make  
15 when you're not working at all, right?

16           PROSPECTIVE JUROR NO. 002: I understand that, yeah.

17           THE COURT: Okay. All right.

18           PROSPECTIVE JUROR NO. 002: Yeah.

19           THE COURT: Okay, would the plaintiff like to  
20 inquire further?

21           MS. MORRIS: I have no questions.

22           THE COURT: Defense?

23           MR. SEMENZA: No questions, Your Honor.

24           THE COURT: Okay. We have badge number 003, Amanda  
25 Wallace.

1 PROSPECTIVE JUROR NO. 003: Yes.

2 THE COURT: Is that right?

3 PROSPECTIVE JUROR NO. 003: I have lived in Clark  
4 County almost my entire life, for almost 36 years now. I'm  
5 married; been married for nine-and-a-half years. We have no  
6 children. And I work at Best Buy. I'm a full-time inventory  
7 control specialist for the Best Buy in Henderson. And my  
8 husband works full-time for Tellis as a MasterCard  
9 representative.

10 THE COURT: What does -- what does that entail?

11 PROSPECTIVE JUROR NO. 003: For which -- for the  
12 Tellis?

13 THE COURT: Yeah.

14 PROSPECTIVE JUROR NO. 003: It's over the phone. He  
15 works with customers over the phone taking complaints,  
16 compliments, et cetera.

17 THE COURT: I see. Okay. All right, and do you  
18 feel you could be a fair and impartial juror in this case?

19 PROSPECTIVE JUROR NO. 003: I could, yes.

20 THE COURT: Okay, thank you. Would the plaintiff  
21 like to inquire further?

22 MS. MORRIS: I'm all set. No questions.

23 THE COURT: Defense?

24 MR. SEMENZA: Just a few follow ups for you. Is it  
25 okay if I stand here?

1 THE COURT RECORDER: [Inaudible].

2 MR. SEMENZA: Okay.

3 THE COURT RECORDER: -- [inaudible].

4 MR. SEMENZA: That's fine. Thank you. As I recall,  
5 you were -- or are a student at ITT?

6 PROSPECTIVE JUROR NO. 003: That is correct. I am a  
7 full-time student.

8 MR. SEMENZA: And what are you studying?

9 PROSPECTIVE JUROR NO. 003: I'm studying business  
10 management.

11 MR. SEMENZA: And is there something that you hope  
12 to do with your degree once you're done?

13 PROSPECTIVE JUROR NO. 003: There is. I want to  
14 stay working with Best Buy, and I want to move up into the  
15 inventory control analyst position, but I still have a couple  
16 degrees to go after before that's possible.

17 MR. SEMENZA: Have you worked at any of the other  
18 Best Buys here in the Valley?

19 PROSPECTIVE JUROR NO. 003: I've helped out at  
20 several of them, but I've never actually been stationed out of  
21 any of them.

22 MR. SEMENZA: Okay. And how long has your husband  
23 been working for Tellis?

24 PROSPECTIVE JUROR NO. 003: For about six months.

25 MR. SEMENZA: And did you meet here in Las Vegas?

1 PROSPECTIVE JUROR NO. 003: Yes, we did.

2 MR. SEMENZA: As I recall, you have a personal  
3 injury lawsuit currently pending?

4 PROSPECTIVE JUROR NO. 003: No, it's not currently  
5 pending. It was 11 years ago.

6 MR. SEMENZA: Okay, thank you.

7 PROSPECTIVE JUROR NO. 003: It's done and over with.

8 MR. SEMENZA: But there was a lawsuit?

9 PROSPECTIVE JUROR NO. 003: There was a lawsuit,  
10 yes. It was settled outside of court.

11 MR. SEMENZA: And could you briefly describe what  
12 your injuries were?

13 PROSPECTIVE JUROR NO. 003: It -- yeah, it was from  
14 a car accident. We got T-boned on the passenger side. I  
15 ended up with a torn rotator cuff, as well as just some other  
16 -- I had a herniated disc, I had a couple crushed vertebrae in  
17 my lower back, and I ended up having to have surgery to fix  
18 the rotator cuff, and they had to shave some of the collarbone  
19 due to bursitis.

20 MR. SEMENZA: And it was the other driver's fault?

21 PROSPECTIVE JUROR NO. 003: Correct, he ran a red  
22 light.

23 MR. SEMENZA: And were you pleased with the  
24 resolution of the case?

25 PROSPECTIVE JUROR NO. 003: I was pleased with the

1 resolution, yes.

2 MR. SEMENZA: Did you have any criticisms of either  
3 your attorney or the other side's attorney?

4 PROSPECTIVE JUROR NO. 003: I never even met the  
5 other side's attorney. My attorney seemed to take care of  
6 everything just fine.

7 MR. SEMENZA: Okay. Thank you.

8 THE COURT: All right. If you'd pass the microphone  
9 over, and -- all right. Badge 04, Jacklyn Schumacher?

10 PROSPECTIVE JUROR NO. 004: Um-hum.

11 THE COURT: Okay, go ahead.

12 PROSPECTIVE JUROR NO. 004: I've lived in Clark  
13 County for eight years. I'm a wax specialist. I am single,  
14 no kids. So.

15 THE COURT: Do you live at home, or are you on your  
16 own --

17 PROSPECTIVE JUROR NO. 004: I'm on my own.

18 THE COURT: Okay, because I know you talked about  
19 your mom, and working at the same place, and --

20 PROSPECTIVE JUROR NO. 004: Well, she works at a  
21 different location than me, because she lives in Summerlin, I  
22 live in Henderson.

23 THE COURT: Oh, okay. All right. And what about  
24 your dad? What does he do?

25 PROSPECTIVE JUROR NO. 004: He's a stockbroker, and

1 he also helps with -- my step-mom, before they met, owned a  
2 hotel in Illinois, which is where I'm from. And he helps with  
3 -- when people call and try to get in, he handles all the  
4 phone calls.

5 THE COURT: All right. And do you think you could  
6 be a fair and impartial juror in this case?

7 PROSPECTIVE JUROR NO. 004: Yes.

8 THE COURT: All right, thank you. Would the  
9 plaintiff like to inquire further?

10 MS. MORRIS: I have no questions.

11 THE COURT: Defense?

12 MR. SEMENZA: Just a couple quick ones. Is your  
13 father here in Las Vegas?

14 PROSPECTIVE JUROR NO. 004: Yes.

15 MR. SEMENZA: Okay. Is essentially your entire  
16 family here in Las Vegas?

17 PROSPECTIVE JUROR NO. 004: Most of them.

18 MR. SEMENZA: Okay. And how long has he been a  
19 stockbroker for?

20 PROSPECTIVE JUROR NO. 004: 15 years.

21 MR. SEMENZA: Okay. And you had said before that,  
22 you had a -- or your father had a hotel in Illinois?

23 PROSPECTIVE JUROR NO. 004: Yeah, it was my  
24 step-mom's hotel before they got married.

25 MR. SEMENZA: Okay. And is that still part of what

1 your father does?

2 PROSPECTIVE JUROR NO. 004: Yeah, he still handles  
3 all the phone calls and stuff. They -- she owns it, but he  
4 handles all the side stuff.

5 MR. SEMENZA: Okay. So, he's part-time stockbroker;  
6 part-time working for the hotel?

7 PROSPECTIVE JUROR NO. 004: Yes.

8 MR. SEMENZA: Okay, thank you.

9 THE COURT: Thank you. If you'd pass the microphone  
10 over. Okay. And badge 05, Benjamin Godfrey, tell us about  
11 yourself.

12 PROSPECTIVE JUROR NO. 005: Yes. Been living in  
13 Clark County since 1961. Married 40 years. My wife -- I'm  
14 retired. My wife works part-time, helping out my son doing  
15 book work. I have two sons. One's 37, the other one's 35.  
16 The older one owns two -- owns a tavern and a bar, and the  
17 other one's a bar. He's married, that would be to my -- you  
18 know, the daughter-in-law, and I have two grandkids by them.  
19 My second son works for -- is a restaurant manager at a  
20 Station Casino at the Texas, I think.

21 And I have -- I'm retired now. Before that, I owned  
22 a 7-Eleven store for 18 years, and we did have a slip and fall  
23 out on the parking lot one time. Before that, I worked in the  
24 casinos, and I -- and I've never worked for Wynn. I have  
25 worked at the Golden Nugget, but it was even before he got

1 into the gaming.

2 THE COURT: Okay. And so, what did you do when you  
3 worked for casinos?

4 PROSPECTIVE JUROR NO. 005: I was in the -- I was a  
5 foreman boxman.

6 THE COURT: Okay, so on the gaming --

7 PROSPECTIVE JUROR NO. 005: Gaming.

8 THE COURT: -- on live games? Okay. All right.

9 Any reason that you think you could not be a fair and  
10 impartial juror in this case?

11 PROSPECTIVE JUROR NO. 005: No.

12 THE COURT: Thank you. Plaintiff?

13 MS. MORRIS: I don't have any questions.

14 THE COURT: Defense?

15 MR. SEMENZA: Just one quick question. What was the  
16 -- what is the tavern or bar that your son owns? Is it here  
17 in Las Vegas?

18 PROSPECTIVE JUROR NO. 005: Yes, they're both here  
19 in Las Vegas.

20 MR. SEMENZA: Okay, what are -- what are their  
21 names?

22 PROSPECTIVE JUROR NO. 005: Sagos on Fort Apache,  
23 and Kilroy's on Spring Mountain.

24 MR. SEMENZA: Thank you.

25 THE COURT: Okay, pass the microphone over. And we

1 have badge 06, Heather Cooper. Tell us --

2 PROSPECTIVE JUROR NO. 006: Good morning.

3 THE COURT: -- about yourself.

4 PROSPECTIVE JUROR NO. 006: I've been in Vegas off  
5 and on since '96. I'm divorced. I've been in nursing for 23  
6 years, mostly critical care. The last 15, ER slash -- then  
7 for a year-and-a-half, I was doing flight and ER. Before  
8 that, I did five-and-a-half years of ICU.

9 THE COURT: Okay, so always in the medical field as  
10 your career?

11 PROSPECTIVE JUROR NO. 006: Yeah, I don't know  
12 anything else.

13 THE COURT: Okay. You said you're divorced?

14 PROSPECTIVE JUROR NO. 006: Yes.

15 THE COURT: How long have you been divorced?

16 PROSPECTIVE JUROR NO. 006: 15 years.

17 THE COURT: Okay. All right, and no -- no kids, did  
18 you say?

19 PROSPECTIVE JUROR NO. 006: Oh, some of us should  
20 not reproduce, and I'm one of those women.

21 THE COURT: Okay. Oh, I'm not sure what to make of  
22 that. All right, any reason you think that you could not be a  
23 fair and impartial juror in this case?

24 PROSPECTIVE JUROR NO. 006: No, I can be fair.

25 THE COURT: Okay. Plaintiff?

1 MS. MORRIS: I don't have any questions.

2 THE COURT: Defense?

3 MR. SEMENZA: Where are you currently working at?

4 PROSPECTIVE JUROR NO. 006: St. Rose Sienna.

5 MR. SEMENZA: Okay.

6 PROSPECTIVE JUROR NO. 006: Dignity Healthcare.

7 MR. SEMENZA: Thank you.

8 THE COURT: All right, thank you. If you'd pass the  
9 microphone over. And badge -- is it 07, Rosa De-Madrigal?

10 PROSPECTIVE JUROR NO. 007: Yes.

11 THE COURT: Tell us about yourself.

12 PROSPECTIVE JUROR NO. 007: Good morning.

13 THE COURT: Good morning.

14 PROSPECTIVE JUROR NO. 007: I live here like 25  
15 years or so, and I have four children. The older is twins,  
16 37 years, and the baby is 29. And do you want my husband  
17 only?

18 THE COURT: Okay. And what do your grown children  
19 do for a living?

20 PROSPECTIVE JUROR NO. 007: Oh, I -- my son working,  
21 and I take care every day --

22 THE COURT: Okay.

23 PROSPECTIVE JUROR NO. 007: -- in my house.

24 THE COURT: Your son that works, what does he do?

25 PROSPECTIVE JUROR NO. 007: And the -- and the wife.

1 THE COURT: What does your son do?

2 PROSPECTIVE JUROR NO. 007: He work on my -- in my  
3 company -- in my husband company.

4 THE COURT: Okay, and tell me again what the company  
5 does.

6 PROSPECTIVE JUROR NO. 007: It's for clean up,  
7 construction clean up --

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 007: -- and demolition.

10 THE COURT: Oh, right. Yes, I -- thank you.

11 PROSPECTIVE JUROR NO. 007: Yeah.

12 THE COURT: So, I know you indicated that --  
13 yesterday that you were having some language difficulty.

14 PROSPECTIVE JUROR NO. 007: Yeah, that's my problem.

15 THE COURT: So, are you having difficulty  
16 understanding what we're saying, or is your -- is your  
17 difficulty speaking? Sometimes, we can understand everything  
18 that's said --

19 PROSPECTIVE JUROR NO. 007: Yeah, sometimes I  
20 understand; sometimes no.

21 THE COURT: So, which is it for you?

22 PROSPECTIVE JUROR NO. 007: It's no understand too  
23 much.

24 THE COURT: All right. So, you're having difficulty  
25 understanding --

1 PROSPECTIVE JUROR NO. 007: Yeah.

2 THE COURT: -- what's being said?

3 PROSPECTIVE JUROR NO. 007: Yeah.

4 THE COURT: All right.

5 MR. SEMENZA: May we approach?

6 THE COURT: Yes.

7 (Off-record bench conference)

8 THE COURT: Ms. De-Madrigal, I think that your  
9 language is a problem. You're not understanding, and you need  
10 to be able to understand well enough. You need to be  
11 understanding what's going on, and that doesn't seem to be  
12 happening. So, you're excused, and we'll call the next in  
13 order.

14 PROSPECTIVE JUROR NO. 007: Thank you.

15 THE COURT: Go down to the third floor.

16 PROSPECTIVE JUROR NO. 007: Um-hum.

17 THE CLERK: Badge number 38, Alejandro Hernandez.

18 PROSPECTIVE JUROR NO. 038: Yes.

19 THE COURT: All right. Mr. Hernandez, tell us about  
20 yourself.

21 PROSPECTIVE JUROR NO. 038: My name is Alex -- well,  
22 Alejandro Hernandez. I've been here, what, 11 years.  
23 Currently married. I have two children, a boy and a girl. I  
24 got a boy. He's a full-time busy boy. He's -- currently,  
25 he's playing football, and he's also -- this week -- actually,

1 I'm going to enroll him into wrestling here pretty soon. So,  
2 I'm married; I don't know if I mentioned that. I've got a  
3 beautiful wife. I run a construction company in town. I'm  
4 the division manager for the company. I've -- I mean, I don't  
5 know.

6 THE COURT: Okay. How old -- you have one son?

7 PROSPECTIVE JUROR NO. 038: I have a boy and a girl.

8 THE COURT: Okay. What are their ages?

9 PROSPECTIVE JUROR NO. 038: My boy's ten, and my  
10 daughter's seven.

11 THE COURT: And does your wife work?

12 PROSPECTIVE JUROR NO. 038: No.

13 THE COURT: Okay. Well, she does at home, I'm sure,  
14 with two little kids like that?

15 PROSPECTIVE JUROR NO. 038: Yes.

16 THE COURT: Okay. Any reason you think you could  
17 not be a fair and impartial juror in this case?

18 PROSPECTIVE JUROR NO. 038: Yes.

19 THE COURT: Why?

20 PROSPECTIVE JUROR NO. 038: As I mentioned, I run a  
21 construction company. I constantly run into individuals that  
22 claim fraudulent claims, you know, and have been proven  
23 guilty. I currently have a case now that I'm managing where  
24 an employee basically smacked his face, you know, into, you  
25 know, a piece of scaffolding, which -- by his own cause.

1           And we've been dragging it out, you know, we've gone  
2 to numerous hearings. And you know, we have not made any  
3 progress whatsoever. It's gotten, you know, to the point  
4 where I've taken pictures of the individual, you know, and  
5 just kind of, you know, dragging around at home. The  
6 individual claims that he's had hearing loss, back, you know,  
7 issues now. And yeah, I feel that I would totally be biased  
8 against that.

9           THE COURT: Okay. So, you've already made up your  
10 mind, basically, even though you haven't heard any evidence in  
11 this case?

12           PROSPECTIVE JUROR NO. 038: Yes.

13           THE COURT: All right.

14           PROSPECTIVE JUROR NO. 038: I just -- I've had --  
15 like I said, I've dealt with, you know, cases, you know,  
16 similar to this.

17           THE COURT: Okay.

18           PROSPECTIVE JUROR NO. 038: And --

19           THE COURT: All right, you're excused. If you've  
20 made up your mind, you can't be a fair and impartial juror.  
21 All right. Call the next in order.

22           THE CLERK: Badge number 40, Alvin  
23 E-n-c-a-r-n-a-c-i-o-n.

24           THE COURT: All right. Mr. Encarnacion, tell us  
25 about yourself.

1 PROSPECTIVE JUROR NO. 040: Hello. Yes. I've lived  
2 in Clark County for 13 years now. I'm not married; however, I  
3 do have a girlfriend. We share a baby girl together; she's  
4 four-months-old. I do have a four-year-old son from a past  
5 relationship, and she also has a four-year-old daughter from a  
6 past relationship. So, I have three kids total. And like I  
7 said yesterday, I work in the surveillance department. I work  
8 at the Bellagio, and --

9 THE COURT: And does your girlfriend work?

10 PROSPECTIVE JUROR NO. 040: No. Currently, she's  
11 unemployed.

12 THE COURT: Okay. All right. Do you think that you  
13 could be a fair and impartial juror in this case?

14 PROSPECTIVE JUROR NO. 040: I don't think I could.

15 THE COURT: And why is that?

16 PROSPECTIVE JUROR NO. 040: Well, like I said  
17 yesterday, I deal with slip and falls mostly like every day,  
18 and I see a lot of fraudulent claims as well.

19 THE COURT: Okay. You haven't heard any evidence  
20 though in this case, right?

21 PROSPECTIVE JUROR NO. 040: No, I haven't, but I've  
22 seen a lot of cases where -- well, claims -- customer claims  
23 in my casino -- in our casino that are not true, and I feel as  
24 though, like, the majority of them aren't, so I don't know.

25 THE COURT: Have you --

1 PROSPECTIVE JUROR NO. 040: I just have that --

2 THE COURT: Have you had cases in your casino though  
3 where someone legitimately --

4 PROSPECTIVE JUROR NO. 040: Of course.

5 THE COURT: -- had an accident --

6 PROSPECTIVE JUROR NO. 040: Of course.

7 THE COURT: -- and was hurt?

8 PROSPECTIVE JUROR NO. 040: There are like  
9 legitimate slip and falls.

10 THE COURT: Okay, so you've seen that?

11 PROSPECTIVE JUROR NO. 040: I've seen that, but for  
12 the majority -- for -- through my experience, most of them  
13 were false.

14 THE COURT: All right, but --

15 PROSPECTIVE JUROR NO. 040: So, I --

16 THE COURT: -- would you not be able to wait and see  
17 what the evidence is in the case before you make that  
18 decision? I mean, you've -- you know that there have been  
19 cases in your own casino that you know are legitimate --

20 PROSPECTIVE JUROR NO. 040: Um-hum.

21 THE COURT: -- and then you feel that there are some  
22 that were not. So, the only way to make that determination as  
23 to something you don't know anything about would be to hear  
24 the evidence. Are you saying you --

25 PROSPECTIVE JUROR NO. 040: True, yeah.

1 THE COURT: -- you could not hear the evidence in  
2 the case?

3 PROSPECTIVE JUROR NO. 040: I just feel like I'm  
4 already one side -- feel like I'm leaning towards another side  
5 as far as like -- I don't know. That's just the way I think.  
6 I don't know, I just can't --

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 040: Don't know the reasoning  
9 for it; just I guess it's through my work experience. Yeah.

10 THE COURT: Okay, so you don't feel that you could  
11 be fair then to the plaintiff?

12 PROSPECTIVE JUROR NO. 040: I don't feel that I  
13 could.

14 THE COURT: All right, you're excused. Call the  
15 next in order.

16 THE CLERK: Badge number 42, Thomas Hong.

17 THE COURT: Mr. Hong, tell us about yourself.

18 PROSPECTIVE JUROR NO. 042: Hi there. My name's  
19 Thomas Hong, badge 42. 36-years-old. Married. A  
20 three-year-old son; his name's Dane (phonetic). Lived in  
21 Clark County since November of 2004. I own a chain of  
22 insurance brokerages, primarily auto insurance. Been doing  
23 that for -- since I've been here. Um-hum.

24 THE COURT: I'm sorry, did you say you -- have you  
25 -- are you married; a significant other?

1 PROSPECTIVE JUROR NO. 042: Married.

2 THE COURT: Married.

3 PROSPECTIVE JUROR NO. 042: Married for  
4 five-and-a-half years with a three-year-old son.

5 THE COURT: Okay, and does your wife work?

6 PROSPECTIVE JUROR NO. 042: No, ma'am. She's a  
7 housewife.

8 THE COURT: So, you've been in this insurance  
9 brokerage business then for a while. Have you ever done  
10 anything else besides that?

11 PROSPECTIVE JUROR NO. 042: Not at all, no.

12 THE COURT: And so, as part of this, you don't  
13 adjust claims, you just sell insurance; is that right?

14 PROSPECTIVE JUROR NO. 042: Well, I own a chain of  
15 insurance, so basically, I employ insurance agents.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR NO. 042: So -- and I own and  
18 operate these, and make sure everything runs smoothly.

19 THE COURT: And these agents sell insurance?

20 PROSPECTIVE JUROR NO. 042: That's correct.

21 THE COURT: Right? So, if a claim is made, they --  
22 a client might contact you because you're their agent, and  
23 then you would put them in touch with --

24 PROSPECTIVE JUROR NO. 042: Progressive or whichever  
25 insurance -- AIG, whoever it is, yeah.

1 THE COURT: Okay. You wouldn't investigate the  
2 claim --

3 PROSPECTIVE JUROR NO. 042: Not at all.

4 THE COURT: -- or anything of that nature? Okay.  
5 All right. Do you have any reason to think that you could not  
6 be fair and impartial in this case?

7 PROSPECTIVE JUROR NO. 042: No. I think I can be  
8 fair.

9 THE COURT: All right. Plaintiff, would you like to  
10 inquire further?

11 MS. MORRIS: All right. Thomas, I was taking notes  
12 earlier, and I thought you said you were a paralegal --

13 PROSPECTIVE JUROR NO. 042: Yes, I used to be --

14 MS. MORRIS: -- at Andrews and Kurth. Did I --

15 PROSPECTIVE JUROR NO. 042: Okay. Prior to doing  
16 this industry, I was -- graduated from college, and I was  
17 working at a law firm, Andrews and Kurth in New York. And  
18 yeah, so I was being a paralegal. And then I had -- this  
19 opportunity arose and so I took this opportunity and moved to  
20 Las Vegas.

21 MS. MORRIS: Thanks.

22 PROSPECTIVE JUROR NO. 042: Yeah.

23 MS. MORRIS: When you were asked whether you could  
24 be fair and impartial, you kind of hesitated a little bit, and  
25 then answered, yes. Do you have hesitations about serving on

1 a jury, and, you know, deciding on side or another?

2 PROSPECTIVE JUROR NO. 042: Yeah, I mean, I think --  
3 I've never served on a jury before, so I guess until you  
4 actually do it, you know? But to be fair -- to be quite  
5 honest with you, being -- working in auto insurance, it's  
6 probably the most highly sued industry among -- you know, and  
7 you know, a lot of this -- in this particular town, I hate to  
8 say it, but lots of fraudulent claims; lots of bologna. So,  
9 you know -- you know.

10 MS. MORRIS: You heard what Alvin --

11 THE COURT: This is not an automobile case. You  
12 remember that, right?

13 PROSPECTIVE JUROR NO. 042: I understand that.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR NO. 042: I understand that, yeah.

16 THE COURT: Go ahead. I'm sorry.

17 PROSPECTIVE JUROR NO. 042: I'm just saying --

18 MS. MORRIS: It kind of sounds like -- we just heard  
19 from Alvin and his thoughts on lots of fraudulent claims that  
20 he sees.

21 PROSPECTIVE JUROR NO. 042: Correct.

22 MS. MORRIS: And he stated, you know, that he sees a  
23 lot of them. And do you see a lot of claims in the work that  
24 you do?

25 PROSPECTIVE JUROR NO. 042: Absolutely.

1 MS. MORRIS: What do you think about those claims?

2 PROSPECTIVE JUROR NO. 042: I think that people just  
3 want a quick dollar and want -- they don't want to earn money  
4 the honest way, quite simply. That's why injury lawyers are  
5 on TV every 20, 30 minutes. They're not talking about we can  
6 help. It's more like, hey, we can get you -- I won \$100,000,  
7 like they won the lottery or something, you know? So, that's  
8 -- yeah.

9 MS. MORRIS: Do you think that what you feel --  
10 what's felt in the community would prevent you from listening  
11 to the evidence in this case and making a decision based on  
12 what you hear here?

13 PROSPECTIVE JUROR NO. 042: I'm sorry, could you  
14 rephrase that again?

15 MS. MORRIS: Yeah. I'm the queen of bad questions.

16 PROSPECTIVE JUROR NO. 042: Okay, go ahead.

17 MS. MORRIS: Do you think that the thoughts that you  
18 have about claims that are made, and kind of what Alvin just  
19 said, lots of fraudulent claims out there, do you think that  
20 those feelings that you have would prevent you from sitting in  
21 this courtroom and listening to the evidence that happened  
22 with Yvonne at the Wynn, and be unable to come to a decision  
23 in a manner that you feel like you're a clean slate and you're  
24 looking at the evidence that's here?

25 PROSPECTIVE JUROR NO. 042: To answer the question

1 sincerely, no, I don't think so. I think I would have a  
2 little bit -- quite a bit of bias, because I've seen lots of  
3 fraudulent claims, and yeah.

4 THE COURT: So, you're saying that you -- you can't  
5 just listen to the evidence? You already made up your mind?

6 PROSPECTIVE JUROR NO. 042: No, I can listen to the  
7 evidence, but I think, you know, I would be biased.

8 THE COURT: No, no, no. Okay. So, you're going in,  
9 not having heard any evidence --

10 PROSPECTIVE JUROR NO. 042: Yeah.

11 THE COURT: -- and you're already leaning towards a  
12 side in this case?

13 PROSPECTIVE JUROR NO. 042: I would say so. Yes,  
14 ma'am.

15 THE COURT: All right, and you cannot overcome that  
16 then and listen to the evidence?

17 PROSPECTIVE JUROR NO. 042: Not really, no.

18 THE COURT: You've never had --

19 PROSPECTIVE JUROR NO. 042: I don't think so.

20 THE COURT: -- any claims submitted by -- in your  
21 business where they were legitimate?

22 PROSPECTIVE JUROR NO. 042: No, of course they have  
23 -- there have been, but there have been a lot more that have  
24 not.

25 THE COURT: Okay. And so, you can't listen to

1 evidence, and then decide whether you think it's legitimate or  
2 not?

3 PROSPECTIVE JUROR NO. 042: I'm capable of it, but I  
4 think I would be biased --

5 THE COURT: All right, then you're excused.

6 PROSPECTIVE JUROR NO. 042: -- of these types of  
7 cases in general.

8 THE COURT: All right, we're taking a lunch break.  
9 So, you're excused. You need to report to the third floor.  
10 We're going to call the name of the next person that's going  
11 to sit in that seat, and that is --

12 THE CLERK: Badge 44, Mark Ting.

13 THE COURT: All right. Ladies and gentlemen, we're  
14 going to be in recess for an hour. It's 20 minutes to 1:00,  
15 so we'll be -- we're going to be in recess until 20 minutes  
16 until 2:00. We're doing our best to try and get a jury  
17 picked. At the rate we're going, I'm not sure that's going to  
18 happen today, but we're trying.

19 During this recess, it is your duty not to converse  
20 among yourselves or with anyone else on any subject connected  
21 with the trial, or to read, watch, or listen to any report of  
22 or commentary on the trial by any person connected with the  
23 trial, or by any medium of information, including, without  
24 limitation, newspaper, television, radio, or internet. You  
25 are not to form or express an opinion on any subject connected

1 with this case until it's finally submitted to you. We'll be  
2 in lunch recess for an hour.

3 THE MARSHAL: All rise for the jury, please.

4 (Outside the presence of the prospective jurors)

5 THE COURT: All right, the record will reflect the  
6 venire has departed the courtroom. So, we'll be in recess for  
7 an hour. I'm losing all hope here. I don't know.

8 MR. SEMENZA: We're doing our best. I know.

9 THE COURT: I think it's -- now they've figured out  
10 that, well, if they say they can't be fair, they're going to  
11 get excused, and we're -- our hands are tied by the Supreme  
12 Court's ruling. And you know, if they don't -- can't say  
13 unequivocally that they could be fair, they have to be  
14 excused. So, all right. I've got --

15 MR. SEMENZA: Thank you, Your Honor.

16 THE COURT: I got 25 more jurors coming in at 2:00.

17 (Court recessed at 12:41 P.M. until 1:44 P.M.)

18 (Outside the presence of the prospective jurors)

19 THE MARSHAL: All rise for the jury, please.

20 (Within the presence of the prospective jurors)

21 THE MARSHAL: Remain standing. Go ahead and slide  
22 all the way down.

23 UNKNOWN SPEAKER: Okay.

24 THE MARSHAL: All present, Your Honor.

25 THE COURT: Thank you. Please be seated. All

1 right. And the record will reflect we're back in the presence  
2 of the venire; the parties are present with their counsel; all  
3 officers of the court are present.

4 (Pause in the proceedings)

5 THE COURT: All right. We left off, and with Mr.  
6 Ting now seated there in seat 7. You're badge number 44.  
7 Tell us about yourself. Oh, we'll get the microphone to you.

8 PROSPECTIVE JUROR NO. 044: Thank you. My name's  
9 Mark Ting. I've been to Nevada, Las Vegas area about 30  
10 years. And since then, I'm retired about two years. My wife  
11 is a housewife. And before that, I work in Cannery as a cook,  
12 and before that, I -- a couple friends own a couple fast food  
13 Chinese restaurant, and that's about it.

14 THE COURT: Okay. Any kids?

15 PROSPECTIVE JUROR NO. 044: No kids.

16 THE COURT: No kids? All right, would the plaintiff  
17 like to inquire further?

18 MS. MORRIS: No, Your Honor.

19 THE COURT: Defense?

20 MR. SEMENZA: Just briefly. I wanted to make sure I  
21 understood what he was saying. Thank you. And you said that  
22 you had owned a couple of restaurants previously?

23 PROSPECTIVE JUROR NO. 044: Fast food Chinese  
24 restaurants, yes.

25 THE COURT: Okay, and how long ago was that?

1 PROSPECTIVE JUROR NO. 044: About seven to ten --  
2 ten years ago.

3 THE COURT: Okay. And what do you do to occupy your  
4 time these days?

5 PROSPECTIVE JUROR NO. 044: These days? Internet.

6 THE COURT: And do you believe that you could be  
7 fair and impartial in this particular matter?

8 PROSPECTIVE JUROR NO. 044: I believe I can -- I  
9 could. However, I have to say -- state something. I might  
10 have a little bit resentment towards Mr. Wynn, because he made  
11 a lot of money from Chinese; particularly, his establishment  
12 in Macau. However, I do admire him for his forward thinking,  
13 leading Las Vegas to the modern age, for building up Mirage,  
14 Bellagio, and Wynn. So, with all that said, I think I could  
15 be very even such on -- on all the accounts.

16 MR. SEMENZA: And you had said that you might have a  
17 little bias against Mr. Wynn?

18 PROSPECTIVE JUROR NO. 044: I could have a little  
19 resentment.

20 MR. SEMENZA: A little resentment?

21 PROSPECTIVE JUROR NO. 044: Because I do admire him,  
22 too.

23 MR. SEMENZA: Okay. And that resentment comes from?

24 PROSPECTIVE JUROR NO. 044: Well, because he make  
25 most of his fortune from the Chinese gamblers.

1 MR. SEMENZA: Okay. And is that something that you  
2 have an issue with?

3 PROSPECTIVE JUROR NO. 044: Could be, or could --  
4 maybe not.

5 MR. SEMENZA: Okay, okay.

6 PROSPECTIVE JUROR NO. 044: Because a lot of those  
7 Chinese gamblers deserve to lose if they -- you know, they  
8 make most of their money from the Chinese people, too.

9 MR. SEMENZA: Okay, okay, thank you.

10 PROSPECTIVE JUROR NO. 044: Okay.

11 THE COURT: All right, thank you. And that brings  
12 us to badge number 08, Brandon Snyder; is that right?

13 PROSPECTIVE JUROR NO. 008: Yes. Hi.

14 THE COURT: Tell us about yourself, Mr. Snyder.

15 PROSPECTIVE JUROR NO. 008: I lived in Las Vegas  
16 since November of 2004. Before that, I lived in Idaho, grew  
17 up in Seattle, and I was born in San Diego. 35, single, no  
18 kids. I have a nephew out in San Diego. I own and manage  
19 rental properties. Before that, I was a chief operating  
20 officer of a food distribution company. I did that for about  
21 11 years. And yeah, that's about it.

22 THE COURT: What brought you to Las Vegas then?

23 PROSPECTIVE JUROR NO. 008: The company I was with  
24 was developing real estate at the time and of course, back in  
25 '04, things were pretty hot, so I originally came here as a --

1 kind of a project manager doing -- developing condos, and then  
2 that led into other -- other things.

3 THE COURT: Okay. And so now, you have your own  
4 properties that you manage -- rent out and manage?

5 PROSPECTIVE JUROR NO. 008: Correct.

6 THE COURT: Okay, and are you involved in buying  
7 properties and --

8 PROSPECTIVE JUROR NO. 008: Correct, rehabing.

9 THE COURT: Currently?

10 PROSPECTIVE JUROR NO. 008: Yeah. Buying, fixing  
11 them up, renting them out.

12 THE COURT: Okay. Do you ever try to sell them as  
13 well, or just fix them up and --

14 PROSPECTIVE JUROR NO. 008: Not yet, just -- they're  
15 just income properties.

16 THE COURT: Okay. All right. Any reason you think  
17 you could not be fair and impartial in this case?

18 PROSPECTIVE JUROR NO. 008: No.

19 THE COURT: All right, thank you. Plaintiff?

20 MS. MORRIS: I have no questions.

21 THE COURT: Defense?

22 MR. SEMENZA: Just a couple quick ones. Mr. Snyder,  
23 as part of your rental property business, have you had anyone  
24 file lawsuits relating to injuries they might have suffered at  
25 your locations or at your properties?

1 PROSPECTIVE JUROR NO. 008: No. In my prior  
2 employment, we had a cold storage warehouse, and I was  
3 involved in lawsuits, workers' comp, slip and fall, wrongful  
4 termination, things like that, but not as a property manager,  
5 no.

6 MR. SEMENZA: Okay. Have there been any lawsuits at  
7 all relating to any of your rental properties?

8 PROSPECTIVE JUROR NO. 008: No.

9 MR. SEMENZA: Okay. Have there been any  
10 landlord-tenant issues, and evicting people, or anything like  
11 that?

12 PROSPECTIVE JUROR NO. 008: Sure.

13 MR. SEMENZA: Okay, and how familiar are you with  
14 that process? Have you had to do it a number of times; once  
15 or twice?

16 PROSPECTIVE JUROR NO. 008: I'm fairly familiar. I  
17 -- yeah, many -- actually, many times. Several times  
18 personally, and then in managing other people's properties  
19 other times, the eviction process and --

20 MR. SEMENZA: Okay.

21 PROSPECTIVE JUROR NO. 008: -- claims and things.

22 MR. SEMENZA: Okay, thank you.

23 PROSPECTIVE JUROR NO. 008: Yep.

24 THE COURT: Thank you. If you'd pass the microphone  
25 all the way down to the second row. All right. Badge number

1 10, Laurie Prince, tell us about yourself.

2 PROSPECTIVE JUROR NO. 010: Hi. I've lived here for  
3 19 years, then prior to that was in California for ten. I was  
4 born and raised in New England. I am a mother of two  
5 daughters, 18 and 20, and I am married. My husband is in  
6 construction, superintendent. I have been a real estate  
7 broker for about 25 years, took a few years' break, and now  
8 I'm an executive admin assistant.

9 THE COURT: For --

10 PROSPECTIVE JUROR NO. 010: A trade show company  
11 here in town.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR NO. 010: Show management.

14 THE COURT: All right. Do your kids -- your two  
15 kids work at all?

16 PROSPECTIVE JUROR NO. 010: My youngest one is in  
17 college, and the other one is a brand new mother.

18 THE COURT: All right. Okay. Any reason you think  
19 you could not be a fair and impartial juror in this case?

20 PROSPECTIVE JUROR NO. 010: No.

21 THE COURT: All right, thank you. Plaintiff?

22 MS. MORRIS: I don't have any questions.

23 THE COURT: Defense?

24 MR. SEMENZA: No questions.

25 THE COURT: Thank you. If you could pass the

1 microphone. And is it Kelly Harms?

2 PROSPECTIVE JUROR NO. 011: Yes.

3 THE COURT: All right, badge number 11. Tell us  
4 about yourself.

5 PROSPECTIVE JUROR NO. 011: I'm born and raised here  
6 in Las Vegas. I don't have any kids. I have a boyfriend of  
7 four years now who is a county porter employee here at this  
8 building. He's been here about two years, I believe. He is  
9 just in -- he has to like clean the windows, and mop up any  
10 spills, and re-stock, stuff like that.

11 Most of my family lives in South Carolina. I don't  
12 really speak to them much. I am a security guard for the  
13 Clark County Government Center for about a year-and-a-half  
14 now. And before that, I was a retail sales leader, so, for  
15 about two and-a-half years.

16 THE COURT: Okay. So, does that encompass all your  
17 employment, or have you had other jobs as well?

18 PROSPECTIVE JUROR NO. 011: No, that was pretty much  
19 it; retail and security now.

20 THE COURT: Okay. All right. Any reason you think  
21 you could not be a fair and impartial juror in this case?

22 PROSPECTIVE JUROR NO. 011: No.

23 THE COURT: All right. Plaintiff?

24 MS. MORRIS: I don't have any questions.

25 THE COURT: Defense?

1 MR. SEMENZA: Just a couple of quick ones. As part  
2 of your position of being a security guard, have you had  
3 occasion to write incident reports?

4 PROSPECTIVE JUROR NO. 011: Yes, I have, actually.  
5 Many.

6 MR. SEMENZA: And is that something that's sort of  
7 your day to day job?

8 PROSPECTIVE JUROR NO. 011: It is part of my day to  
9 day job, because I work in a high risk building where people  
10 come in, pay their taxes, and a lot of people get mad, you  
11 know, if the building closes, you know, five minutes early,  
12 and they cause a really big disruption. And we've had cases  
13 where people have made claims in the past that something  
14 happened to them like on the stairs or in the elevator, but  
15 there's no cameras, no proof, so, I mean, everything was  
16 thrown out. It was just hearsaid (sic).

17 MR. SEMENZA: Okay. And as part of your job as a  
18 security officer, at times, do you review video surveillance  
19 footage as well?

20 PROSPECTIVE JUROR NO. 011: Yes. 24-hour, actually.

21 MR. SEMENZA: Okay. Are you armed as a security  
22 officer?

23 PROSPECTIVE JUROR NO. 011: No, I'm not.

24 MR. SEMENZA: Okay, thank you.

25 PROSPECTIVE JUROR NO. 011: Um-hum.

1 THE COURT: Thank you. If you'd pass the microphone  
2 over. Is this 026, Amy Mejia?

3 PROSPECTIVE JUROR NO. 026: Yes.

4 THE COURT: All right, tell us about yourself.

5 PROSPECTIVE JUROR NO. 026: I was born and raised in  
6 San Diego, California. I've been living here for almost ten  
7 years in this coming January. I currently work at Mandalay  
8 Bay as a hotel front desk agent for about two-and-a-half  
9 years. I am divorced. I am single now. I am also a single  
10 mother of a one-year-old little boy named Jonathan.

11 THE COURT: How long have you been divorced?

12 PROSPECTIVE JUROR NO. 026: About three years.

13 THE COURT: Okay. What did your ex-husband do or  
14 does he do?

15 PROSPECTIVE JUROR NO. 026: A musician, and used to  
16 work at the time at Wranglers for the Wranglers team.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR NO. 026: Sales.

19 THE COURT: All right. Any reason you think you  
20 could not be a fair and impartial juror in this case?

21 PROSPECTIVE JUROR NO. 026: No.

22 THE COURT: All right, thank you. Plaintiff?

23 MS. MORRIS: I don't have any questions.

24 THE COURT: Defense?

25 MR. SEMENZA: Sure. I understand you had a meniscus

1 injury --

2 PROSPECTIVE JUROR NO. 026: Yes.

3 MR. SEMENZA: -- previously? And that was a result  
4 of a car accident?

5 PROSPECTIVE JUROR NO. 026: No, that was from a slip  
6 and fall down the stairs at my complex.

7 MR. SEMENZA: And did that require surgery?

8 PROSPECTIVE JUROR NO. 026: Yes.

9 MR. SEMENZA: Okay. How soon after the injury did  
10 you have that surgery?

11 PROSPECTIVE JUROR NO. 026: Probably within a couple  
12 weeks.

13 MR. SEMENZA: Was it painful?

14 PROSPECTIVE JUROR NO. 026: It was. More painful  
15 after the surgery though.

16 MR. SEMENZA: And how long was the recovery period?

17 PROSPECTIVE JUROR NO. 026: About three months.

18 MR. SEMENZA: And -- and I'm just refreshing my  
19 notes, but you did file a lawsuit relating to that?

20 PROSPECTIVE JUROR NO. 026: No, that's current from  
21 a car accident which just caused my knee to flare up and be  
22 swollen, and causing it to lock again.

23 MR. SEMENZA: Okay. So, there was never a lawsuit  
24 relating to the slip and fall, but you were recently in a car  
25 accident, which exasperated your previous condition?

1 PROSPECTIVE JUROR NO. 026: Yes, exactly.

2 MR. SEMENZA: Okay. And that lawsuit's currently  
3 pending?

4 PROSPECTIVE JUROR NO. 026: Yes.

5 MR. SEMENZA: Okay. And is your knee obviously  
6 still giving you trouble today?

7 PROSPECTIVE JUROR NO. 026: It is.

8 MR. SEMENZA: Which knee is it, right or left?

9 PROSPECTIVE JUROR NO. 026: Right.

10 MR. SEMENZA: Okay. Any other injuries as a result  
11 of the car accident?

12 PROSPECTIVE JUROR NO. 026: Just there was shoulder  
13 pain, which has gone away, and then -- and then I still have  
14 intermittent headaches, and the lower back.

15 MR. SEMENZA: Okay, thank you.

16 THE COURT: All right, thank you. If you'd pass the  
17 microphone over, and it's badge number 13, Brenda Nigro.  
18 Please tell us about yourself.

19 PROSPECTIVE JUROR NO. 013: Hi. I'm a casino  
20 controller at the Mirage. I came home 12 years ago. My  
21 family originally moved here I think in like 1963. I'm  
22 divorced. I have one child, a son, and he's 20, unemployed.

23 THE COURT: Okay. Do you think you could be a fair  
24 and impartial juror in this case?

25 PROSPECTIVE JUROR NO. 013: I do, I just think I

1 should say that I probably do know people that work at the  
2 Wynn. When the Wynn opened, I think that there were a lot of  
3 people that transferred over from the Mirage, and I didn't  
4 look into that because I thought that was part of, you know,  
5 don't investigate directions that we got yesterday.

6 Also, not knowing where this is going, the  
7 construction company that my brother works for built the Wynn,  
8 and he was one of the people that was supposed to get it done  
9 on time. And also, in the late 70s, I believe that Steve Wynn  
10 bought my ex-husband's family home.

11 THE COURT: Okay, that was a long time ago. Like,  
12 in the Scotch Eighties?

13 PROSPECTIVE JUROR NO. 013: It was, on Benny's Lane.

14 THE COURT: Okay. That was a long -- yeah, that was  
15 a long time ago. And so, you know, you heard the list of  
16 witnesses. You didn't recognize any of those names?

17 PROSPECTIVE JUROR NO. 013: No, I did not.

18 THE COURT: And of course, when the -- when the  
19 merger between MGM and Mirage Resorts happened, and Mr. Wynn,  
20 you know, left the company, was --

21 PROSPECTIVE JUROR NO. 013: Yes.

22 THE COURT: -- no longer there, of course, the Wynn  
23 wasn't built for quite some time because they had to -- the  
24 Desert Inn was there, et cetera, it was closed a long time,  
25 and it was under construction for at least two years, maybe

1 three. So, the people you're talking about would have to be  
2 in what kind of positions? Because they weren't operating a  
3 hotel for a long time.

4 PROSPECTIVE JUROR NO. 013: I believe that the lady  
5 that hired me at the Mirage may be the controller over at the  
6 Wynn.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 013: I didn't confirm that,  
9 and I haven't spoken to her in a number of years, so that's a  
10 possibility.

11 THE COURT: Okay. So, would that make any  
12 difference, even if --

13 PROSPECTIVE JUROR NO. 013: No.

14 THE COURT: -- she was there? Okay. Anybody else  
15 that you think you might know?

16 PROSPECTIVE JUROR NO. 013: No.

17 THE COURT: Okay. All right, just the controller,  
18 but you're not even sure if it's the same person, and even if  
19 it was, it wouldn't make any difference?

20 PROSPECTIVE JUROR NO. 013: Exactly. I just felt I  
21 should be up front about this.

22 THE COURT: All right, thank you very much. I  
23 appreciate that.

24 PROSPECTIVE JUROR NO. 013: You're welcome.

25 THE COURT: Would the plaintiff like to inquire

1 further?

2 MS. MORRIS: No questions.

3 THE COURT: Defense?

4 MR. SEMENZA: No questions.

5 THE COURT: Thank you, and you can hand the  
6 microphone over. And it's badge number 34, Cindy Huang?

7 PROSPECTIVE JUROR NO. 034: Yes.

8 THE COURT: Okay, tell us --

9 PROSPECTIVE JUROR NO. 034: Hi.

10 THE COURT: -- about yourself.

11 PROSPECTIVE JUROR NO. 034: I -- immigration to U.S.  
12 since 1994, and then I live in the Clark County from 1999.  
13 And married. I has a nine-years-old daughter. My working on  
14 the daytime, my husband working at the swing shift, so we both  
15 just cover to take care of my daughter, because she -- I take  
16 her to the school at morning, and then I has to take her to  
17 the tennis training four days at 4:00 o'clock to 6:00 o'clock.  
18 I working at Sysco.

19 THE COURT: Okay, and where does your husband work?  
20 Also at --

21 PROSPECTIVE JUROR NO. 034: It's Golden Gaming.

22 THE COURT: Golden Gaming? Okay, what does he do  
23 for them?

24 PROSPECTIVE JUROR NO. 034: Slot technician.

25 THE COURT: Okay. All right, thank you. Is there

1 any reason you think that you could not be a fair and  
2 impartial juror in this case?

3 PROSPECTIVE JUROR NO. 034: I'm not really  
4 understand for you asking. I mean --

5 THE COURT: Can you be fair?

6 PROSPECTIVE JUROR NO. 034: It's -- fair to the --  
7 both?

8 THE COURT: Both sides.

9 PROSPECTIVE JUROR NO. 034: Oh, I think I can.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR NO. 034. Yes, but I just has a  
12 difficult time to understand the technical words and --

13 THE COURT: Technical words?

14 PROSPECTIVE JUROR NO. 034: Yeah. And I don't know  
15 -- you know, like when you're saying, I'm not understand  
16 what's going on for all the --

17 THE COURT: When have you not understood what was  
18 going on?

19 PROSPECTIVE JUROR NO. 034: On the beginning, you  
20 introduced the case. I still not figure out --

21 THE COURT: Okay, when I introduced the case, I said  
22 it was a slip and fall at the Wynn.

23 PROSPECTIVE JUROR NO. 034: Yeah. Well, I just --

24 THE COURT: You got that?

25 PROSPECTIVE JUROR NO. 034: I could not catch, and

1 especially when you say -- asked all the people have any  
2 injuries or something like that, I don't -- I don't know most  
3 -- you know, what is it? Medical --

4 THE COURT: Medical terms? I asked --

5 PROSPECTIVE JUROR NO. 034: Medical terms.

6 THE COURT: -- had you ever heard of these medical  
7 terms.

8 PROSPECTIVE JUROR NO. 034: Yeah.

9 THE COURT: There were a lot of people -- I think  
10 there were some where every single person said they'd never  
11 heard of that. Nobody raised their hands as knowing what it  
12 was.

13 PROSPECTIVE JUROR NO. 034: Yeah, because --

14 THE COURT: So, you weren't alone.

15 PROSPECTIVE JUROR NO. 034: I hope I'm not alone,  
16 but --

17 THE COURT: Right.

18 PROSPECTIVE JUROR NO. 034: -- yeah, I just --

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 034: -- am not understanding.

21 THE COURT: Well, so, the thing is that everybody  
22 understands; the lawyers understand that we don't have doctors  
23 on our jury. They'd probably be excluded if they were on the  
24 jury. But so what that means is we have to ask the questions  
25 -- they have to ask the questions of the witnesses in a way

1 that's understandable to everyone, because just -- just  
2 because English is not your first language doesn't mean that  
3 you're not in the same boat as everybody else. I mean, there  
4 are certain medical terms that lay people --

5 PROSPECTIVE JUROR NO. 034: I know, that's --

6 THE COURT: -- a normal person doesn't understand.

7 PROSPECTIVE JUROR NO. 034: Yeah.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 034: Well, I think, since  
10 living here, that's most (indecipherable). The language is my  
11 (indecipherable) for my life, because sometime, I cannot join  
12 the people conversation, I cannot explain what I feel and what  
13 I think. So, because a lot of people, when I talk to them,  
14 obviously, they say they don't understand what I'm talking,  
15 so.

16 THE COURT: Well, I'm understanding you without any  
17 difficulty.

18 PROSPECTIVE JUROR NO. 034: Well --

19 THE COURT: So --

20 PROSPECTIVE JUROR NO. 034: -- I appreciate you  
21 saying that.

22 THE COURT: Okay, here's my concern. I want to make  
23 sure that you will feel comfortable if you're selected on the  
24 jury with speaking to your fellow jurors, because it's  
25 important when you go --

1 PROSPECTIVE JUROR NO. 034: That's --

2 THE COURT: -- when you go back that you -- that you  
3 tell them what you think, and that you're not going to sit  
4 there and not talk because you're afraid that they will be  
5 mean to you or something. That's what I'm worried about.

6 PROSPECTIVE JUROR NO. 034: Actually, my big concern  
7 is I'm not understand for the most conversations. So, if I'm  
8 not understand, I just -- I cannot speak out.

9 THE COURT: If you don't understand what somebody's  
10 saying, you don't feel that you can say, I'm sorry, I didn't  
11 understand that, could you rephrase it?

12 PROSPECTIVE JUROR NO. 034: Most time, I did not  
13 speak out because I'm not understand, I -- you know, for most  
14 conversations. So, I'm not afraid to speak out if I know the  
15 answers.

16 THE COURT: Okay, but if you wanted to -- if someone  
17 was speaking in the jury room, explaining what they thought,  
18 and there was some part of that that you didn't understand,  
19 would you be able --

20 PROSPECTIVE JUROR NO. 034: Right.

21 THE COURT: -- to say, I'm sorry, could you say that  
22 again, because I didn't understand? Could you do that?

23 PROSPECTIVE JUROR NO. 034: Yeah, I can do that.  
24 Yeah, I can asking if -- but, you know, most time, everybody  
25 know I'm very quiet, because I just -- well, because I'm not

1 sure I understand or not most time. So, like, sometime you  
2 guys talking, I think I probably just get about 50, 60  
3 percent, I know what's going on. But for the certain things,  
4 I'm still not understand.

5 THE COURT: Can you give me an example of something  
6 you haven't understood? Because as I talk to you, you seem to  
7 understand everything I say, and so I don't --

8 PROSPECTIVE JUROR NO. 034: Yes.

9 THE COURT: -- know.

10 PROSPECTIVE JUROR NO. 034: For the regular  
11 conversation, I understand, but relating to the case, or some  
12 people, you know, most injuries, for example, I don't even  
13 know what it's to mean for injuries, so I just go back to --

14 THE COURT: Well, we haven't talked about that.

15 PROSPECTIVE JUROR NO. 034: Well --

16 THE COURT: You haven't been told anything about the  
17 case, other than the plaintiff --

18 PROSPECTIVE JUROR NO. 034: Yeah, I just go back to  
19 check the dictionary so I know what that mean right now. So,  
20 most basic thing is I just cannot explain -- the problem is I  
21 just not understand fully English, and then that's my problem  
22 for -- to do the service.

23 THE COURT: Okay.

24 MR. SEMENZA: Could we approach?

25 THE COURT: Yes.

1 (Off-record bench conference)

2 THE COURT: Ms. Huang, we'll excuse you because of  
3 the language issue, since you seem to --

4 PROSPECTIVE JUROR NO. 034: Thank you.

5 THE COURT: -- indicate that you can't understand.  
6 All right, call the next in order.

7 THE CLERK: Badge 45, Cameron -- or Daniel Cameron  
8 Jones.

9 THE COURT: Hello, Mr. Jones.

10 PROSPECTIVE JUROR NO. 045: Hello.

11 THE COURT: Tell us about yourself.

12 PROSPECTIVE JUROR NO. 045: I'm 36-years-old. I've  
13 lived in Clark County for just over four years now. I'm the  
14 assistant head of lighting at KA at MGM Grand. I am married  
15 and have been married four years. My wife immigrated from  
16 Finland the same time I moved here. We met while we were  
17 working on Disney on Ice -- I'm sorry, Disney on Ice together,  
18 and I was there for about five years before this. We have no  
19 children. She works at PetSmart now as the assistant manager  
20 at the pets hotel in Henderson.

21 THE COURT: So, has your career always been then in  
22 the lighting?

23 PROSPECTIVE JUROR NO. 045: Mostly. I took a couple  
24 odd jobs here and there before that, but really, since I was  
25 19-years-old until now, I've worked in the entertainment

1 industry.

2 THE COURT: All right. Okay. Any reason you think  
3 you could not be a fair and impartial juror in this case?

4 PROSPECTIVE JUROR NO. 045: I can be fair and  
5 impartial.

6 THE COURT: All right. Plaintiff?

7 MS. MORRIS: I don't have any questions.

8 THE COURT: Defense?

9 MR. SEMENZA: Just a couple. Mr. Jones?

10 PROSPECTIVE JUROR NO. 045: Yes.

11 MR. SEMENZA: I believe previously there was some  
12 discussion about you having witnessed a tragic event?

13 PROSPECTIVE JUROR NO. 045: Yes.

14 MR. SEMENZA: Okay. And you actually saw what  
15 happened --

16 PROSPECTIVE JUROR NO. 045: Yes.

17 MR. SEMENZA: -- at the KA show?

18 PROSPECTIVE JUROR NO. 045: I was promoted as  
19 assistant head of lighting in March, and the accident was two  
20 years ago, and at the time, I was the deck electrician, so I  
21 was six feet away from where she landed.

22 MR. SEMENZA: And that has had a profound impact on  
23 you?

24 PROSPECTIVE JUROR NO. 045: I would say so. I mean,  
25 I watched a person that I was reasonably close to die, and

1 that's going to affect anybody, I would think.

2 MR. SEMENZA: Absolutely. And was this -- was this  
3 person a friend of yours --

4 PROSPECTIVE JUROR NO. 045: An acquaintance. Not  
5 necessarily a friend, but I knew her outside of work, as well  
6 as at work.

7 MR. SEMENZA: And have you had a tough time dealing  
8 with that loss?

9 PROSPECTIVE JUROR NO. 045: Yes. I mean, you know,  
10 that's the reason I'm taking Zoloft now. It's a measure that  
11 happened afterward. We were all required for -- to see a  
12 psychiatrist for help and make sure we went through  
13 postmortems of what happened. And from that, the person at  
14 LifeWorks, which is connected with MGM Grand, felt that I had  
15 a level of PTSD from witnessing that, and from the care that  
16 we tried to give her to save her life, which ended up being in  
17 vain.

18 MR. SEMENZA: And did you take some time off from  
19 work relating --

20 PROSPECTIVE JUROR NO. 045: We all had to take full  
21 week off while the OSHA investigation happened. And then the  
22 following week we had no shows, but I stayed out for the  
23 majority of that time, and then I was back at work. So, about  
24 a week-and-a-half completely away from the show.

25 MR. SEMENZA: Do you feel like you're, over time,

1 getting better?

2 PROSPECTIVE JUROR NO. 045: Yes.

3 MR. SEMENZA: Okay. Do you think the medication  
4 that you're taking would in any way affect your ability to  
5 understand and hear --

6 PROSPECTIVE JUROR NO. 045: No, sir.

7 MR. SEMENZA: Okay. Did other people, coworkers of  
8 yours, have similar reactions?

9 PROSPECTIVE JUROR NO. 045: Oh, absolutely.

10 MR. SEMENZA: Okay.

11 PROSPECTIVE JUROR NO. 045: Some handled it better  
12 than others, but everybody had a reaction of some sort.

13 MR. SEMENZA: Of course. Thank you.

14 THE COURT: Thank you. All right. Is it Regina  
15 Young?

16 PROSPECTIVE JUROR NO. 015: Yes.

17 THE COURT: All right, badge number 15. Tell us  
18 about yourself.

19 PROSPECTIVE JUROR NO. 015: I was born in Fort Hood,  
20 Texas; raised in Hawaii. I moved out here in 1995. My  
21 parents moved out here in '89, so I moved here to kind of  
22 follow them and be with them through their later years.  
23 They're both gone. And I have two children. I'm divorced.  
24 My -- well, three children. My oldest is 30, I have a  
25 20-year-old, those are girls, and my son is 16 and he goes to

1 Green Valley High. Straight A student. I am divorced. My  
2 ex-husband does live with me. We've been living together for  
3 quite a few years.

4 THE COURT: So, the divorce is not working out?

5 PROSPECTIVE JUROR NO. 015: Well, we've been  
6 divorced twice, actually. I divorced him in '92, remarried  
7 him in '93 on our anniversary, and then divorced in '06. But  
8 yeah, when the economy went bad, the house that he was living  
9 in was foreclosed on, so then he came to live with me and  
10 we've been together ever since.

11 THE COURT: What does he do?

12 PROSPECTIVE JUROR NO. 015: He was working for  
13 Direct TV, but he's currently not working. He's -- he was a  
14 carpenter with the union before that. He's installed  
15 cabinets, so he's very -- with his hands, but as you get  
16 older, you can't do that, so he really can't climb on roofs  
17 anymore. So, that's what he was doing, so now he's looking  
18 for something a little more easier. He's, I don't know, he  
19 said installing stairs. So, I don't know, that's his next  
20 thing he's looking into, and that's about it.

21 THE COURT: How about the older two children? Do  
22 they work?

23 PROSPECTIVE JUROR NO. 015: Yes. My 20-year-old is  
24 a full-time student in college, and she also works at Kohl's  
25 and RC Willey's. And my 30-year-old just had my first

1 grandbaby in May, and she got married last October, and she  
2 lives with me also. She's -- we all live in one house, so  
3 she's looking to get a house.

4 THE COURT: Okay. So, does she work, or is she  
5 home?

6 PROSPECTIVE JUROR NO. 015: No. She was working at  
7 RC Willey's, and then she stopped right when she had the baby  
8 -- right before she had the baby.

9 THE COURT: Is there any reason you think you could  
10 not be a fair and impartial juror in this case?

11 PROSPECTIVE JUROR NO. 015: No.

12 THE COURT: Thank you. Plaintiff?

13 MS. MORRIS: No questions, thank you.

14 THE COURT: Defense?

15 MR. SEMENZA: Thank you. Again, I have some notes  
16 that I'm sure are incomplete, so I just want to walk you  
17 through a couple quick questions. Am I correct that you had a  
18 car accident?

19 PROSPECTIVE JUROR NO. 015: Yes, I did.

20 MR. SEMENZA: Okay, and there was a lawsuit that was  
21 filed relating to that?

22 PROSPECTIVE JUROR NO. 015: Yes.

23 MR. SEMENZA: Has that resolved?

24 PROSPECTIVE JUROR NO. 015: Yes. What it was, was  
25 the person who hit me, they were never able to find them

1 again.

2 MR. SEMENZA: Okay. Thank you for clarifying that.  
3 Is that case still pending or was that dismissed?

4 PROSPECTIVE JUROR NO. 015: No, it -- I had gotten  
5 an attorney on that, and I think it went against my insurance  
6 company because we were unable to track him down.

7 MR. SEMENZA: Okay. And another note I have is that  
8 you -- you work at a bar; is that correct?

9 PROSPECTIVE JUROR NO. 015: Yeah.

10 MR. SEMENZA: Which --

11 PROSPECTIVE JUROR NO. 015: I work at a casino. I  
12 work for Stations Casino at Barleys, and I'm a bar host. And  
13 I've been there 17 years this month, actually.

14 MR. SEMENZA: And then, do you have any lingering  
15 effects from the car accident?

16 PROSPECTIVE JUROR NO. 015: No, but I just have  
17 other issues. I have like a herniated disc in my back, I have  
18 knee problems, I have arthritis -- I have a long list.

19 MR. SEMENZA: Were any of those complaints or  
20 conditions relate -- related to an accident or have those just  
21 manifested themselves?

22 PROSPECTIVE JUROR NO. 015: The back was; the disc.

23 MR. SEMENZA: And was that related to the car  
24 accident?

25 PROSPECTIVE JUROR NO. 015: Yes, that was.

1 MR. SEMENZA: And is that progressively getting  
2 better?

3 PROSPECTIVE JUROR NO. 015: No.

4 MR. SEMENZA: About the same?

5 PROSPECTIVE JUROR NO. 015: I've learned to actually  
6 build up a tolerance to the pain.

7 MR. SEMENZA: And when was that accident? What  
8 year, if you can recall?

9 PROSPECTIVE JUROR NO. 015: I believe it was 2006 or  
10 '07.

11 MR. SEMENZA: Thank you.

12 PROSPECTIVE JUROR NO. 015: Um-hum.

13 THE COURT: Thank you. All right, now we have  
14 Kenneth -- how do you say your last name?

15 PROSPECTIVE JUROR NO. 032: It's Mapoy.

16 THE COURT: Mapoy. Tell us about yourself.

17 PROSPECTIVE JUROR NO. 032: I am a software  
18 engineer. I've been in Las Vegas since 2002. I am married  
19 with child -- one child, 16-years-old. My wife is a  
20 homemaker.

21 THE COURT: Have you always been in the software --

22 PROSPECTIVE JUROR NO. 032: Yes.

23 THE COURT: -- engineering area?

24 PROSPECTIVE JUROR NO. 032: As long as I can  
25 remember.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 032: Um-hum.

3 THE COURT: All right. Any reason you think you  
4 could not be a fair and impartial juror in this case?

5 PROSPECTIVE JUROR NO. 032: No.

6 THE COURT: Thank you. Plaintiff?

7 MS. MORRIS: I don't have any questions. Thank you.

8 THE COURT: Defense?

9 MR. SEMENZA: Thank you. What kind of -- as a  
10 software engineer, what kind of work do you specifically do?

11 PROSPECTIVE JUROR NO. 032: All kinds of software.  
12 Mostly technology integration, so middlewear; bringing two  
13 different technologies together and translating that stuff  
14 together. I've touched on every part of software that I can  
15 think of, and probably most people in this room can think of,  
16 so.

17 MR. SEMENZA: Do you work for a large company; small  
18 company?

19 PROSPECTIVE JUROR NO. 032: A large company.

20 MR. SEMENZA: Which company is it?

21 PROSPECTIVE JUROR NO. 032: It's called Morse Group.  
22 They're a conglomerate of seven different technology, and  
23 integration companies, and electrical companies.

24 MR. SEMENZA: Is that something you always wanted to  
25 do was software engineering?

1 PROSPECTIVE JUROR NO. 032: Yep.

2 MR. SEMENZA: Thank you.

3 PROSPECTIVE JUROR NO. 032: Thank you.

4 THE COURT: All right, thank you. And next is badge  
5 number 19, Susan Kovach.

6 PROSPECTIVE JUROR NO. 019: Yes.

7 THE COURT: Tell us about yourself.

8 PROSPECTIVE JUROR NO. 019: Okay. My husband and I  
9 moved here from Washington D.C. a year and a week ago. And  
10 I'm a writer, editor, journalist, and researcher, and I've  
11 been working for myself since about 1987 or '88. My husband's  
12 retired. He was a corporate security executive, and before  
13 that he was a police officer. And he's a published author, so  
14 he kind of plays around with that now, too.

15 THE COURT: Okay, and he has his own editor?

16 PROSPECTIVE JUROR NO. 019: He does. Somehow, we  
17 stay married through it. We actually wrote a book together,  
18 and that was a test. One son, he's a family nurse  
19 practitioner and works as a hospitalist in Tallahassee,  
20 Florida.

21 THE COURT: Now, you said that you do research,  
22 writing, editing. On what type of work?

23 PROSPECTIVE JUROR NO. 019: In all my years, I've  
24 probably worked on just about every type of thing you could  
25 think of. I spent a number of years doing health and medical

1 writing. I was an investigative journalist. I did undercover  
2 work. I also have done financial. I've done research for  
3 international companies that do market entry studies, like for  
4 say an Australian company wanting to enter the U.S. market.  
5 So I would do research on partnerships they could form,  
6 distributors they could find. A lot of report writing, a lot  
7 of editing. Currently, I do a lot of editorial work for the  
8 World Bank in Washington D.C.

9 THE COURT: So when you were doing the medical, was  
10 that medical journals, or how was it --

11 PROSPECTIVE JUROR NO. 019: A lot of it was popular  
12 writing to a general audience. I have edited postgraduate  
13 theses work for students in the medical field. I've done some  
14 things that are more to a highly educated audience. Still a  
15 lay audience, but highly educated in health and their own  
16 health, taking care of their own health.

17 THE COURT: Now, you also said that your husband was  
18 in corporate security. Was that here in Las Vegas?

19 PROSPECTIVE JUROR NO. 019: No, it was -- it was in  
20 Florida.

21 THE COURT: Okay. Was it for a company -- a large  
22 company, or?

23 PROSPECTIVE JUROR NO. 019: Yes.

24 THE COURT: Okay, what company was that?

25 PROSPECTIVE JUROR NO. 019: American Media,

1 publisher of the National Enquirer.

2 THE COURT: All right, thank you. Any reason that  
3 you think you could not be a fair and impartial juror in this  
4 case?

5 PROSPECTIVE JUROR NO. 019: No, I could be.

6 THE COURT: You could be. Okay, great, that's what  
7 we need to know. Plaintiff?

8 MS. MORRIS: A couple quick questions.

9 THE COURT: Okay.

10 MS. MORRIS: Have you done any editing for any kind  
11 of legal documents, legal books?

12 PROSPECTIVE JUROR NO. 019: Not editing, but back in  
13 Florida in the mid-80s, I did just some typing for a couple of  
14 law firms.

15 MS. MORRIS: Have you ever heard of the book  
16 Remedies in a Nutshell by John O'Connell?

17 PROSPECTIVE JUROR NO. 019: I think I have heard of  
18 it, but I have not read it or seen it.

19 MS. MORRIS: The work that you did for the medical  
20 journals, was there a certain area of medicine that you did  
21 the editing for, or was it just a variety of issues?

22 PROSPECTIVE JUROR NO. 019: Oh, it was a variety.

23 MS. MORRIS: The terms that we've been talking about  
24 today, are you familiar with when we talk about, you know,  
25 surgeries of the spine, and the meniscus tears, and terms such

1 as malingering; have you heard terms like that before?

2 PROSPECTIVE JUROR NO. 019: Well, I know about  
3 things like meniscus tears, things like that, because I'm  
4 pretty active athletically myself, and I'm a baseball fan, and  
5 they're always tearing those things. But some of the things  
6 you talked about, no, I haven't heard of.

7 MS. MORRIS: All right, thank you very much.

8 PROSPECTIVE JUROR NO. 019: Um-hum.

9 THE COURT: Defense?

10 MR. SEMENZA: Thank you. Do you enjoy living in Las  
11 Vegas?

12 PROSPECTIVE JUROR NO. 019: I do, I do. My mother  
13 lived here for a long time, so I've been coming here since the  
14 80s back and forth and finally said, I'm just not going to  
15 leave again.

16 MR. SEMENZA: And so, when you came out here this  
17 most recent time, was it by choice, or because of a job, or  
18 what was it?

19 PROSPECTIVE JUROR NO. 019: It was by choice,  
20 because I work for myself, and we just wanted to get out of  
21 D.C.

22 MR. SEMENZA: Fair enough.

23 PROSPECTIVE JUROR NO. 019: And said, let's go  
24 there.

25 MR. SEMENZA: Is there any particular passion, or

1 subject, or type of writing that you like beyond any of the  
2 others, I guess?

3 PROSPECTIVE JUROR NO. 019: No, not -- not right  
4 now. I think I really -- I think my passion really is the  
5 work I do for World Bank. International development,  
6 eradicating poverty.

7 MR. SEMENZA: Okay, thank you.

8 PROSPECTIVE JUROR NO. 019: Um-hum.

9 THE COURT: All right, thank you. If you'd hand the  
10 microphone down here to Susan Berg, badge number 20. Tell us  
11 about yourself.

12 PROSPECTIVE JUROR NO. 020: I am 66-years-old, been  
13 here in Vegas since '93. Married to my second husband for 35  
14 years. I was an office manager for a family practice doctor  
15 for 25 years in California. I've been an office manager here  
16 for 22 years for Boulder City Mental Health Clinic in Boulder  
17 City. My husband's retired for 15 years. He retired from the  
18 sheet metal union, and now he plays around buying houses and  
19 fixing them up, and fishing in bass tournaments, of which he's  
20 won none.

21 THE COURT: That's not what it's about. It's about  
22 the fishing, right?

23 PROSPECTIVE JUROR NO. 020: I have two daughters.  
24 The 42-year-old is a pediatric nurse in the NICU at  
25 Cedars-Sinai. My 42-year-old is a pediatric nurse at

1 Children's Hospital in L.A.

2 THE COURT: Okay, very impressive. All right.

3 PROSPECTIVE JUROR NO. 020: Never have to worry  
4 about them losing their jobs.

5 THE COURT: So, any reason you feel that you could  
6 not be a fair and impartial juror in this case?

7 PROSPECTIVE JUROR NO. 020: Nope.

8 THE COURT: Thank you. Plaintiff?

9 MS. MORRIS: I have no questions.

10 THE COURT: Defense?

11 MR. SEMENZA: No questions.

12 THE COURT: Thank you. Hand the microphone over.

13 And this is badge number 21, Bridget Hamilton?

14 PROSPECTIVE JUROR NO. 021: Um-hum.

15 THE COURT: Tell us about yourself.

16 PROSPECTIVE JUROR NO. 021: I'm 51. I'm married.

17 My husband and I are both from Gary, Indiana. I have two  
18 children. My son and his wife have five kids. He's a  
19 stay-at-home dad. My daughter graduated UNLV and she works at  
20 the Westin. My husband's retired Army, and now he's the  
21 director of security at Sunrise Hospital.

22 THE COURT: Okay. And did you tell us what you do?

23 PROSPECTIVE JUROR NO. 021: Oh, no, I used to work  
24 in daycare.

25 THE COURT: Okay. And that was -- that was your

1 occupation for --

2 PROSPECTIVE JUROR NO. 021: Um-hum.

3 THE COURT: -- until you quit working?

4 PROSPECTIVE JUROR NO. 021: Yes.

5 THE COURT: Okay. All right. Any reason that you  
6 think you could not be a fair and impartial juror in this  
7 case?

8 PROSPECTIVE JUROR NO. 021: No.

9 THE COURT: Thank you. Plaintiff?

10 MS. MORRIS: I don't have any questions.

11 THE COURT: Defense?

12 MR. SEMENZA: As I recall, you had a family member  
13 that was ill?

14 PROSPECTIVE JUROR NO. 021: Yes.

15 MR. SEMENZA: Was that your father?

16 PROSPECTIVE JUROR NO. 021: My father-in-law, yes.

17 MR. SEMENZA: Father-in-law? Okay.

18 PROSPECTIVE JUROR NO. 021: Um-hum.

19 MR. SEMENZA: And how is he doing? Is there any  
20 updates?

21 PROSPECTIVE JUROR NO. 021: They tried to wake him  
22 up and take him off the ventilator to see if he can breathe by  
23 himself, but still can't.

24 MR. SEMENZA: About the same condition as we talked  
25 about yesterday?

1 PROSPECTIVE JUROR NO. 021: Um-hum.

2 MR. SEMENZA: Okay, thank you.

3 THE COURT: All right. And if you'd pass the  
4 microphone over. Mr. Martin -- John Martin, badge number 23,  
5 tell us about yourself.

6 PROSPECTIVE JUROR NO. 023: I've been in Clark  
7 County for a little under ten years, born and raised in  
8 Pensacola, Florida. I've been with Caesars Entertainment,  
9 currently at Caesars Palace in the poker room as a shift  
10 manager. I started in Biloxi, Mississippi as a poker dealer.  
11 After Hurricane Katrina came through there, I transferred out  
12 here, worked with Harrah's until I just transferred to Caesars  
13 Palace. A single father of a four-year-old, not employed, but  
14 that's it.

15 THE COURT: Any reason you think you could not be  
16 fair and impartial in this case?

17 PROSPECTIVE JUROR NO. 023: No.

18 THE COURT: All right. Plaintiff?

19 MS. MORRIS: No questions. Thank you.

20 THE COURT: Defense?

21 MR. SEMENZA: No questions.

22 THE COURT: Thank you. And uh-oh, I don't have your  
23 name down here. What's your name and badge number?

24 PROSPECTIVE JUROR NO. 030: Fernando Velasquez.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR NO. 030: 030.

2 THE COURT: Go ahead. Tell us about yourself.

3 PROSPECTIVE JUROR NO. 030: Okay. I moved to Las  
4 Vegas 11 years ago. I'm -- I'm fully employed. I'm married.  
5 My wife is a homemaker. I have two kid -- two sons. One is  
6 15; one 19.

7 THE COURT: All right. You said you are unemployed  
8 right now?

9 PROSPECTIVE JUROR NO. 030: Full employed.

10 THE COURT: I'm --

11 UNKNOWN SPEAKER: Fully.

12 PROSPECTIVE JUROR NO. 030: Full-time employee.

13 THE COURT: Fully? You're fully employed?

14 PROSPECTIVE JUROR NO. 030: Yeah.

15 THE COURT: Yes, that's good --

16 PROSPECTIVE JUROR NO. 030: Full-time employee.

17 THE COURT: -- but what do you do?

18 PROSPECTIVE JUROR NO. 030: I'm a cook at Caesars  
19 Palace.

20 THE COURT: Okay, a cook. All right. At a  
21 particular restaurant in there, or?

22 PROSPECTIVE JUROR NO. 030: Right now, I'm in the --  
23 I'm working at the buffet, but we move all around.

24 THE COURT: So, yeah, that's what --

25 PROSPECTIVE JUROR NO. 030: I've been in different

1 kitchen, yes.

2 THE COURT: Okay. So, you're -- you can move to  
3 wherever they need you --

4 PROSPECTIVE JUROR NO. 030: Yes, um-hum.

5 THE COURT: -- in the kitchen? All right.

6 PROSPECTIVE JUROR NO. 030: Yeah.

7 THE COURT: And how long have you worked there?

8 PROSPECTIVE JUROR NO. 030: 11 years.

9 THE COURT: 11? Okay. All right. Any reason you  
10 think you could not be fair and impartial?

11 PROSPECTIVE JUROR NO. 030: Not really, but just to  
12 let you know, my older son is disabled.

13 THE COURT: Yes.

14 PROSPECTIVE JUROR NO. 030: He's disabled. He's got  
15 some issue for life. He's -- he's -- he do seizure --  
16 epileptic seizures.

17 THE COURT: Yes.

18 PROSPECTIVE JUROR NO. 030: And emergencies can  
19 happen anytime at home.

20 THE COURT: Okay, but that's something that happen  
21 -- I mean, that condition is always there and --

22 PROSPECTIVE JUROR NO. 030: Yes.

23 THE COURT: -- but you're able to work full-time?

24 PROSPECTIVE JUROR NO. 030: Yes, yes.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR NO. 030: Yes.

2 THE COURT: So, all right. So, how often does he  
3 have these seizures?

4 PROSPECTIVE JUROR NO. 030: Mostly every day. It's  
5 very hard to control the seizure.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR NO. 030: They haven't found the  
8 cure yet.

9 THE COURT: Okay. So, if he has this -- you're not  
10 obviously going home every day that he has a seizure?

11 PROSPECTIVE JUROR NO. 030: No, my wife -- that's  
12 why my wife never work, because she's --

13 THE COURT: Ah.

14 PROSPECTIVE JUROR NO. 030: She's --

15 THE COURT: She's watching him?

16 PROSPECTIVE JUROR NO. 030: -- watching my son, yes.

17 THE COURT: Oh, I see.

18 PROSPECTIVE JUROR NO. 030: All the time.

19 THE COURT: Okay, I understand.

20 PROSPECTIVE JUROR NO. 030: Okay.

21 THE COURT: All right.

22 PROSPECTIVE JUROR NO. 030: Also want to let you  
23 know that English is my second language. I speak Spanish, but  
24 my English is my second language. I understand most of the  
25 things, but sometimes I have a little hard time expressing.

1 THE COURT: Okay. Will you be able to --

2 PROSPECTIVE JUROR NO. 030: But I understand, but --

3 THE COURT: If you're on the jury, and you're called  
4 to deliberate with your other jurors, will you be willing to  
5 ask them -- if you don't -- if they say something and you  
6 don't quite understand it, will you --

7 PROSPECTIVE JUROR NO. 030: Yeah, I'll --

8 THE COURT: -- be willing to say, oh, I didn't  
9 understand that, you need to --

10 PROSPECTIVE JUROR NO. 030: Yes, yes.

11 THE COURT: -- say it again?

12 PROSPECTIVE JUROR NO. 030: Yeah.

13 THE COURT: Okay. All right, and -- and the jury  
14 will be able to ask questions of the witnesses. They have to  
15 be in writing --

16 PROSPECTIVE JUROR NO. 030: Um-hum.

17 THE COURT: -- because they have to come to the  
18 Court, and I look at the questions the jury poses, and the  
19 lawyers do, and we then together decide which ones will be  
20 asked and whatnot. So, will you be able to participate in  
21 that as well? If you wanted to. I mean, sometimes the jury  
22 doesn't want to ask any questions, but --

23 PROSPECTIVE JUROR NO. 030: Yes, I think I can do  
24 that.

25 THE COURT: Okay. All right. Thank you.

1 PROSPECTIVE JUROR NO. 030: You're welcome.

2 THE COURT: Would plaintiff like to inquire further?

3 MS. MORRIS: I have no questions. Thank you.

4 THE COURT: Defense?

5 MR. SEMENZA: No questions.

6 THE COURT: Thank you. All right. Ladies and  
7 gentlemen, the next thing we're going to do is what's called  
8 peremptory challenges. Each side has four peremptory  
9 challenges to the jury, and they'll exercise those. And then,  
10 after they're done with that, then they have one a piece for  
11 the alternate jurors, and so that's done in writing, and so  
12 we'll do that at this time. Let me just check. We have a  
13 substitute clerk.

14 (Pause in the proceedings)

15 THE COURT: Counsel approach.

16 (Off-record bench conference)

17 THE COURT: So, ladies and gentlemen, we'll be at  
18 ease, and we're going to go off the record because the lawyers  
19 are going to be handing back this -- back and forth a piece of  
20 paper.

21 And ladies and gentlemen who are out in our  
22 audience, you have escaped today. And so, before there is a  
23 general exuberance and dancing in the hall, you need to check  
24 out on the third floor with the jury commissioner. I want to  
25 thank you very much for your patience, and if you weren't

1 patient, thank you for keeping it to yourself. You're  
2 excused.

3 THE MARSHAL: Please grab all your items.  
4 (Off the record at 2:37 P.M. until 2:59 P.M.)  
5 (Outside the presence of the prospective jurors)  
6 (Off the record at 3:00 P.M. until 3:01 P.M.)  
7 (Within the presence of the prospective jurors)

8 THE MARSHAL: All present, Your Honor.

9 THE COURT: Thank you. Please be seated. All  
10 right. Ladies and gentlemen, I'm about to read the people  
11 that have been excused, and the people that are excused will  
12 report down to the third floor to check out with the jury  
13 commissioner's office.

14 I want to thank you though for your patience over  
15 the last two days, or, as I said, if you weren't patient, for  
16 keeping it to yourself, because it's not an easy process, and  
17 sometimes it can seem tedious, but the reason we have -- it  
18 takes a long time is we have to make sure that we have a fair  
19 and impartial jury. And so, I appreciate your willingness to  
20 participate and be so patient.

21 So, as I say, the names that I'm going to call are  
22 the people who are being excused. I'll call your badge number  
23 and your name. So, 013, Brenda Nigro. Badge number 026, Amy  
24 Mejia. Badge number 006, Heather Cooper. Badge number 045,  
25 Daniel Jones. Badge number 002, Oscar Alfaro. Badge number

1 015, Regina Young. Badge number 037, Vuong Nguyen. And badge  
2 number 044, Mark Ting.

3 So, the rest of you who are up in these top two rows  
4 are our jury. And the following jurors have been excused from  
5 the alternate jurors, and that is 023, John Martin, and 030,  
6 Fernando Velasquez. So, thank you. And so --

7 PROSPECTIVE JUROR NO. 030: We are excused, Your  
8 Honor?

9 THE COURT: Pardon me?

10 PROSPECTIVE JUROR NO. 030: We are excused?

11 THE COURT: Yes. You need to check out --

12 THE MARSHAL: You're excused. You're going to the  
13 third floor, sir.

14 THE COURT: The third floor.

15 PROSPECTIVE JUROR NO. 030: Thank you.

16 THE COURT: All right. Okay. So, ladies and  
17 gentlemen, we will be commencing the trial on Monday at 1:30,  
18 and we'll begin with some preliminary instructions that are --  
19 that I'll let you know about. And the first thing that will  
20 happen on Monday is you'll be sworn in as jurors at that time,  
21 and then we'll -- I'll give you some preliminary instructions  
22 about what to expect in the trial, and then the parties will  
23 make opening statements and we'll progress with the evidence.

24 So, you are free until Monday at 1:30. And the -- I  
25 know the marshal wants to get from you all tonight phone

1 numbers that you can be contacted at, because if anyone is  
2 late, you know, isn't here on time, we start making phone  
3 calls, all right? So, it's really important that you give a  
4 good contact number. Your cell phone or -- is probably the  
5 best if you carry one, and if not, whatever phone is the best  
6 way to contact you.

7 All right. And I'm going to now admonish you as I  
8 have in the -- over the last couple days, and every time you  
9 take a break or a recess, I have to read this to you. So,  
10 ladies and gentlemen, we are going to take a recess until  
11 Monday afternoon.

12 During this recess, it is your duty not to converse  
13 among yourselves or with anyone else on any subject connected  
14 with the trial, or to read, watch, or listen to any report of  
15 or commentary on the trial by any person connected with the  
16 trial, or by any medium of information, including, without  
17 limitation, newspaper, television, radio, or internet. You  
18 are not to form or express an opinion on any subject connected  
19 with this case until it's finally submitted to you.

20 And additionally, please don't go and do any kind of  
21 investigation. Don't try and visit the Wynn. Everybody stay  
22 out of the Wynn until the case is over, okay? Because it's  
23 not good to go and visit a scene unless -- if we go as a jury,  
24 that's a sanctioned visit, it's very controlled and whatnot,  
25 but if individuals decide they're going to go and look at

1 something, they're going to form opinions from that that they  
2 shouldn't be.

3           So, please do not go over to the Wynn, and don't do  
4 any kind of investigation about the case, about anything  
5 you've heard thus far, about the lawyers, about court staff.  
6 Just everything you'll need to hear to make your decision in  
7 this trial, you'll hear in this courtroom, all right? Thank  
8 you, and have a great weekend.

9           THE MARSHAL: All rise for the jury. Come on out.  
10 I'll get your phone numbers right outside. Don't forget to  
11 bring -- take all your items.

12                           (Outside the presence of the jurors)

13           THE COURT: All right, and the record will reflect  
14 that the jury has departed the courtroom. I wanted to let you  
15 know, the reason I did not swear them in today is just over  
16 the precaution, so that in case we lost some people over the  
17 weekend, we could actually get the jury commissioner to send  
18 us some potential other jurors. Otherwise, we could be dead  
19 in water if people didn't show up. And when we have an  
20 intervening time period like this, it makes me a little  
21 nervous. So --

22           MR. SEMENZA: That's fine, Your Honor.

23           THE COURT: Anything else outside the presence?

24           MR. SEMENZA: No.

25           MS. MORRIS: No.

1 THE COURT: Okay. So, I'll see you -- are you  
2 anticipating that you'll have anything outside the presence  
3 before we start on Monday? In other words --

4 MR. SEMENZA: Before we start? No.

5 THE COURT: Yeah, before 1:30.

6 MR. SEMENZA: No.

7 THE COURT: Okay.

8 MR. SEMENZA: Unless you do.

9 THE COURT: Because if --

10 MS. MORRIS: No.

11 THE COURT: -- there's something that you need to  
12 do, the jury will be here at 1:30, so if you needed something,  
13 we'd start a little earlier for you. Okay, we're good then.  
14 1:30.

15 MR. SEMENZA: We're good. Thank you.

16 THE COURT: All right. I'll see you --

17 MR. KIRCHER: Thank you.

18 THE COURT: -- on Monday.

19 MR. KIRCHER: Have a good weekend.

20 THE COURT: You, too.

21 (Court recessed at 3:08 p.m. until Monday,  
22 November 9, 2015, at 1:33 p.m.)

23 \* \* \* \* \*

24

25

**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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\_\_\_\_\_  
JULIE LORD, TRANSCRIBER

NOV - 9 2015

BY: *Denise Trujillo*  
DENISE TRUJILLO, DEPUTY

1 JURL

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4

DISTRICT COURT

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CLARK COUNTY, NEVADA

6

7 YVONNE O'CONNELL,

8

Plaintiff

CASE NO. A655992

9

vs

DEPT. NO. V

10

WYNN RESORTS LIMITED,

11

Defendant

12

13

14

JURY

15

1. AMANDA WALLACE

6. KELLY HARMS

16

2. JACLYN SCHUMACHER

7. KENNETH MAPOY

17

3. BENJAMIN GODFREY

8. SUSAN JEAN KOVACH

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19

4. BRANDON SNYDER

20

5. LAURIE PRINCE

21

22

ALTERNATES

23

1. SUSAN BERG

24

2. BRIDGET HAMILTON

25

26

A-12-055992-C  
JURL  
Jury List  
4501461

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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

YVONNE O'CONNELL, an individual,  
  
Plaintiff,

vs.

WYNN LAS VEGAS, LLC, a Nevada  
Limited Liability Company, doing business as  
WYNN LAS VEGAS; DOES I through X;  
and ROE CORPORATIONS I through X,  
inclusive,  
  
Defendants.

Case No. A-12-655992-C  
Dept. No. V

**DEFENDANT'S BENCH BRIEF  
REGARDING FUTURE PAIN AND  
SUFFERING**

Defendant Wynn Las Vegas, LLC d/b/a Wynn Las Vegas ("Wynn"), by and through its attorneys of record, Lawrence J. Semenza, III, Esq. and Christopher D. Kircher, Esq., of Lawrence J. Semenza, III, P.C., hereby submits the following Bench Brief regarding future damages for pain and suffering.

It is axiomatic that the plaintiff bears the burden of proving both the fact and the amount of damage. *See Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 955 P.2d 661, 671 (1998). Furthermore, "[d]amages for future pain and suffering must be established with reasonable certainty." *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988); *Scognamillo v. Herrick*, 106 Cal.App.4th 1139, 1151, 131 Cal. Rptr. 2d 393 (2003) ("do not award a party

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speculative damages, which means compensation for future loss or harm which, although possible, is conjectural or not reasonably certain") (citation omitted).

The Nevada Supreme Court "has held that when an injury or disability is subjective and not demonstrable to others (such as headaches), expert medical testimony is necessary before a jury may award future damages." *Krause Inc. v. Little*, 117 Nev. 929, 938, 34 P.3d 566 (2001) (citing *Gutierrez v. Sutton Vending Serv.*, 80 Nev. 562, 565-66, 397 P.2d 3, 4-5 (1964)); *Lerner Shops v. Marin*, 83 Nev. 75, 79-80, 423 P.2d 398, 400 (1967) (in cases involving "subjective physical injury, . . . the claim must be substantially supported by expert testimony to the effect that future pain and suffering is a probable consequence rather than a mere possibility"). Injuries that do not require expert medical testimony for future pain and suffering are broken bones or a shoulder injuries causing demonstrably limited range of arm motion because they are "readily observable and understandable by the jury without an expert's assistance." *Id.* at 938-39 (citing *Paul v. Imperial Palace, Inc.*, 111 Nev. 1544, 1548, 908 P.2d 226, 229 (1995)). Put differently, these are "objective" injuries which do not require expert medical testimony. *Id.* Injuries that are not demonstrable to others, and require expert testimony, include reinjuring a back, low-back pain, mental worry, distress and grief. *Sierra Pac. Power Co. v. Anderson*, 77 Nev. 68, 75, 358 P.2d 892, 896 (1961).

In this case, Plaintiff Yvonne O'Connell ("Plaintiff") must provide expert medical testimony if she intends to seek damages for future pain and suffering for claimed injuries that are subjective. Her injuries are completely subjective. Without expert medical testimony, the jury would be forced to speculate as to her alleged future damages for pain and suffering.

Furthermore, the Court should exclude any argument or testimony regarding damages for future pain and suffering related to any purported future surgeries. Plaintiff did not disclose any future medical expenses in her Rule 16.1 disclosures related to any alleged future surgeries.

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To claim pain and suffering damages related to these alleged surgeries, without a basis for or seeking such future medical expenses, would confuse the jury and be unduly prejudicial to Wynn. The jury would be purely speculating as to the amount of damages for future pain and suffering without any evidence related to the expenses for such alleged surgeries.

DATED this 9th day of November, 2015.

LAWRENCE J. SEMENZA, III, P.C.  
  
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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

YVONNE O'CONNELL, an individual,  
  
Plaintiff,

vs.

WYNN LAS VEGAS, LLC, a Nevada  
Limited Liability Company, doing business as  
WYNN LAS VEGAS; DOES I through X;  
and ROE CORPORATIONS I through X,  
inclusive,  
  
Defendants.

Case No. A-12-655992-C  
Dept. No. V

**DEFENDANT'S BENCH BRIEF  
REGARDING EXCLUSION OF  
PLAINTIFF'S TREATING PHYSICIAN  
TESTIMONY SOLELY BASED ON  
PLAINTIFF'S SELF-REPORTING**

Defendant Wynn Las Vegas, LLC d/b/a Wynn Las Vegas ("Wynn"), by and through its attorneys of record, Lawrence J. Semenza, III, Esq. and Christopher D. Kircher, Esq., of Lawrence J. Semenza, III, P.C., hereby submits the following Bench Brief regarding the exclusion of any unreliable expert medical testimony from Plaintiff Yvonne O'Connell's ("Plaintiff") treating physicians, Dr. Thomas Dunn and Dr. Craig Tingey.

To testify as an expert witness under NRS 50.275, the witness' specialized knowledge must assist the trier of fact to understand the evidence or to determine a fact in issue. *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008). "An expert's testimony will assist the trier of fact only when it is relevant and the product of reliable methodology." *Id.* at 651.

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1 "Where the sole basis for a physician's testimony regarding causation is the patient's self-  
2 reporting that testimony is unreliable and should be excluded." *Hare v. Opryland Hospitality,*  
3 *LLC*, 2010 U.S. Dist. LEXIS 97777, \*14 (D. Md. Sept. 17, 2010) (excluding treating physician's  
4 testimony as to causation because he failed to conduct a "differential diagnosis" that considered  
5 alternative causes for the injury) (citing *Perkins v. United States*, 626 F. Supp. 2d 587, n. 7  
6 (E.D.Va. 2009); *see also Goomar v. Centennial Life Ins. Co.*, 855 F. Supp. 319, 326 (S.D. Cal.  
7 1994) (holding that proffered expert testimony concerning a patient's medical condition, based  
8 only upon the patient's self-report to the experts, was "unsupported speculation").

9 In *Perkins*, the court excluded expert testimony regarding causation where doctor simply  
10 took the patient's explanation and adopted it as his opinion.<sup>1</sup> *Perkins*, 626 F.Supp.2d at 592. The  
11 treating physician "did not adequately investigate [the plaintiff's] relevant medical history" in  
12 determining the cause of her injuries, such as prior accidents and preexisting conditions. *Id.* at  
13 593-94. The treating physician's opinion was unreliable because the treating physician  
14 "categorically dismissed or ignored evidence of other preexisting conditions when such evidence  
15 was available to him at the time of treatment." *Id.* at 594. Specifically, the treating physician did  
16 not explain how osteoarthritis in the same areas of her body as her alleged injuries was not the  
17 cause, or partial cause, of the plaintiff's current symptoms. *Id.* The treating physician's "failure to  
18 adequately account for the obvious alternative explanation creates a fatal analytical gap in his  
19 testimony." *Id.* (citation omitted). The Court found that "[b]y selectively ignoring the facts that  
20 would hinder the patient's status as a litigant, [the treating physician] reveals himself as the  
21 infamous 'hired gun' expert." *Id.* at 595.

22 In this case, it is anticipated that Dr. Dunn and Dr. Tingey's testimony will be unreliable  
23 because they will solely base their conclusions on Plaintiff's self-reporting in determining the  
24 cause of her alleged injuries and conditions. Tellingly, their medical records omit any reference  
25 to reviewing Plaintiff's prior medical history, such as her preexisting conditions and other  
26 incidents that may have caused or contributed to her alleged injuries and/or medical conditions.

27 \_\_\_\_\_  
28 <sup>1</sup> Attached as Exhibit "1" hereto is *Perkins v. United States*, 626 F. Supp. 2d 587 (E.D.Va. 2009).

1 Because they did not review or consider anything other than the information Plaintiff  
2 verbally told them, Dr. Dunn and Dr. Tingey's testimony will be unreliable and will not assist the  
3 jury in understanding the evidence or determine a fact in issue. Therefore, the Court should  
4 exclude any testimony if it fails to meet the assistance requirement under NRS 50.275.

5 DATED this 9th day of November, 2015.

6 LAWRENCE J. SEMENZA, III, P.C.

7 /s/ Lawrence J. Semenza, III

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# **EXHIBIT 1**

# **EXHIBIT 1**

**Perkins v. United States**

United States District Court for the Eastern District of Virginia, Norfolk Division

June 4, 2009, Decided

Action No. 4:08cv50

**Reporter**

626 F. Supp. 2d 587; 2009 U.S. Dist. LEXIS 51041

LAILA ROSE PERKINS, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.

**Subsequent History:** Objection overruled by, Accepted by, Adopted by *Perkins v. United States*, 626 F. Supp. 2d 587, 2009 U.S. Dist. LEXIS 50597 (E.D. Va., June 16, 2009)

**Core Terms**

injuries, causation, reliability, motor vehicle accident, treating physician, expert testimony, written report, deposition, pain, expert opinion, patient's, prognosis, neck, district court, argues, causes, fails, knee

**Counsel:** **[\*\*1]** For Laila Rose Perkins, Plaintiff: James Patrick St. Clair, LEAD ATTORNEY, Norris & St. Clair PC, Virginia Beach, VA.

For United States of America, Defendant: Kent Pendleton Porter, LEAD ATTORNEY, United States Attorney Office, Norfolk, VA.

**Judges:** Tommy E. Miller, UNITED STATES MAGISTRATE JUDGE.

**Opinion by:** Tommy E. Miller

**Opinion**

**[\*589] OPINION & ORDER**

After a review of the memoranda submitted by the parties and the applicable statutory and case law, and for the reasons set forth below, the Court

GRANTS Defendant's Motion in Limine to Exclude or Limit Testimony of Dr. Harold Cloud [Doc. 9], and GRANTS Defendant's Second Motion in Limine to Exclude Plaintiff's Expert Dr. Wardell Under *Daubert v. Merrell Dow Pharmaceuticals* [Doc. 16].

**I. Factual and Procedural History**

This case arises from a motor vehicle accident on I-64, in Hampton, Virginia. On June 8, 2005, the vehicle of Plaintiff Laila Rose Perkins ("Perkins") collided with a vehicle driven by an employee of the Federal Bureau of Investigations ("FBI"). (Compl. [Doc. 1],

5-7.) On June 14, 2005, Perkins signed a retainer agreement with an attorney, Tim Hankins,<sup>1</sup> to represent her in any lawsuit related to the accident. (Def.'s First Br., Ex. 2.)<sup>2</sup> The next day, Perkins **[\*\*2]** began treatment with Dr. Harold Cloud ("Dr. Cloud") to address any injuries arising from the accident. (Def.'s First Br., Ex. 5.) In addition to Dr. Cloud and several other physicians, Perkins also received treatment from Dr. Arthur Wardell ("Dr. Wardell"), an orthopaedic specialist, beginning on September 9, 2005. (Def.'s Second Br., Ex. 2.)<sup>3</sup>

On April 22, 2008, Perkins filed a Complaint

<sup>1</sup> Perkins Complaint was filed by James P. St. Clair, Esq., as Tim Hankins was discharged prior to filing suit.

<sup>2</sup> All citations to Defendant's *First* Brief refer to Defendant's Memorandum in Support of Motion in Limine to Exclude or Limit Testimony of Dr. Harold Cloud [Doc. 10].

<sup>3</sup> All citations to Defendant's *Second* Brief refer to Defendant's Memorandum in Support of its Second Motion in Limine to Exclude Plaintiff's Expert Dr. Arthur Wardell [Doc. 17].

LAWRENCE SEMENZA

against the United States in this Court, alleging that the FBI employee had negligently and recklessly changed lanes on I-64, struck Perkins' vehicle, and proximately caused Perkins "to sustain serious and permanent injuries." (Compl.

7-8.) The United States timely filed an Answer on June 27, 2008. [Doc. 5.] On January 16, 2009, the United States filed a **[\*\*3]** Motion in Limine to Exclude or Limit Testimony of Dr. Harold Cloud. ("Def.'s First Br." [Doc. 9.]) On January 27, 2009, Perkins responded to the motion ("Pl.'s First Br." [Doc. 11]), and January 30, 2009, the United States filed its reply [Doc. 13]. Thus, the first Motion in Limine is fully briefed and ripe for adjudication.

**[\*590]** On April 8, 2009, the United States filed the Second Motion in Limine to Exclude Plaintiff's Expert Dr. Wardell Under *Daubert v. Merrell Dow Pharmaceuticals*. ("Def.'s Second Br." [Doc. 16.]) On April 20, 2009, Perkins responded to the motion ("Pl.'s Second Br." [Doc. 18]), and on April 24, 2009, the United States filed its reply [Doc. 19]. Accordingly, the second Motion in Limine is also fully briefed and ripe for adjudication.

Finally, on June 4, 2009, the Court heard oral argument on both motions. James P. St. Clair, Esq., represented the Plaintiff, and Kent P. Porter, Esq. represented the Defendant. Paul McManus was the Official Court Reporter.

## **II. Analysis**

### **A. Defendant's Motion to Exclude Testimony of Dr. Cloud**

Dr. Harold Cloud ("Dr. Cloud") began treating Perkins on June 15, 2005, one week after Perkins' motor vehicle accident. Dr. Cloud expects to testify at trial **[\*\*4]** that the physical injuries observed during his treatment of Perkins were caused by the accident. (Def.'s First Br., Ex. 2 at 52-53.) During discovery, Perkins disclosed Dr. Cloud as an expert pursuant to Federal Rule of Civil Procedure ("Rule") 26(a)(2)(A), but did not provide an expert report from Dr. Cloud under Rule 26(a)(2)(B). Defendant contends that Dr. Cloud is subject to the

written report requirement of Rule 26(a)(2)(B), and further argues that Dr. Cloud's testimony should be excluded entirely, or in the alternative, limited to exclude any opinion regarding the causation of Plaintiff's injuries.

The federal rules require that the disclosure of an expert witness "must be accompanied by a written report--prepared and signed by the witness--if the witness is one *retained or specially employed* to provide expert testimony in the case. . . ." Fed.R.Civ.P. 26(a)(2)(B)(emphasis added). Perkins argues that Dr. Cloud, the treating physician, "was in no way specially retained to provide expert opinion" in this case. (Pl.'s First Br. at 1.) Thus, the central issue is "when does a treating physician become a specially retained expert as defined in [Rule] 26(a)(2)(B) so that an expert written **[\*\*5]** report must be prepared." [\*Hall v. Sykes, 164 F.R.D. 46, 48 \(E.D. Va. 1995\)\*](#).

In general, a treating physician is not a specially retained expert. This Court has recognized, for example, that an expert written report is not necessarily required when a treating physician receives compensation for their time in attending a deposition, writing a letter summarizing treatment, or testifying at trial. Id. Furthermore, if a treating physician forms an opinion of the causation of an injury during the *ordinary* treatment of the patient, then the physician may express this opinion without disclosing a written report. Id. When an attorney refers a client to a physician, however, "[s]uch a reference . . . raises the appearance that the physician was specially retained to provide expert opinion." [\*Id. at 49\*](#). In [\*Hall v. Sykes\*](#), counsel provided his client, the plaintiff, with a list of chiropractors, and the plaintiff went to one of these chiropractors for treatment. This Court held that the chiropractor must produce an expert written report, "because . . . when an attorney selects the physician for treatment as well as testimony, it is presumed that the physician was selected for expert testimony." Id.

Although **[\*\*6]** Perkins denies that her attorney

referred her to Dr. Cloud, <sup>4</sup> the [\*591] evidence overwhelmingly indicates that Dr. Cloud was specially retained for litigation. First, the timing raises suspicion. The accident took place on June 8, 2005, but Perkins did not begin treatment with Dr. Cloud until June 15, 2005, the day after she signed a retainer agreement with her attorney. <sup>5</sup> Second, Perkins executed a written agreement with Dr. Cloud, which established that (a) Dr. Cloud was not Perkins' primary care physician, (b) Dr. Cloud was only treating Perkins for the injuries sustained in the motor vehicle accident, and (c) litigation was pending. (Def.'s First Br., Ex. 5.) Furthermore, Dr. Cloud did not bill Perkins or a medical insurance provider, but rather, billed Perkins' attorney directly. <sup>6</sup> (Def. First Br., Ex. 4 at 129-30.) These facts, therefore, clearly "raise[] the appearance that [Dr. Cloud] was specially retained to provide expert opinion." *Sykes, 164 F.R.D. at 49*. Accordingly, the failure of Dr. Cloud to provide an expert report constitutes a violation of Rule 26(a)(2)(B).

Finally, Perkins cites the wrong legal standard to determine whether the exclusion of Dr. Cloud is appropriate. Perkins argues that Anderson v. Foundation for Advancement, Education, and Employment of American Indians mandates a four-part factor analysis, including consideration of the absence or presence of bad faith, but the Anderson case did not involve the failure to provide an expert report under Rule 26(a)(2)(B). *155 F.3d 500 (4th Cir. 1998)*. Instead, the Federal Rules of Civil Procedure, [\*8] in relevant part, provide:

---

<sup>4</sup>In her deposition, Perkins claims that she picked Dr. Cloud out of the Yellow Pages. (Def.'s First Br., Ex. 3 at [\*7] 118-20.)

<sup>5</sup>Perkins cites no authority to support the claim that the substitution of counsel, Mr. St. Cloud for Mr. Hankins, somehow cleanses Dr. Cloud of his status as a specially retained expert. As the Defendant points out, not only does this argument contradict the plain language of Rule 26(a)(2)(B)(report required "if the witness is one retained or specially employed to provide expert testimony *in the case*")(emphasis added), but Perkins' proposed rule would also create an intolerable loophole for curing discovery violations.

<sup>6</sup>In fact, during the period 2003 - 2008, Dr. Cloud had billed and received \$ 269,779.11 from Tim Hankins, in connection with multiple patients. (Def.'s First Br., Ex. 6.)

If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was *substantially justified or is harmless*.

Fed.R.Civ.P. 37(c)(1)(emphasis added). In order to determine if the failure to satisfy Rule 26(a) was "substantially justified" or "harmless," a district court should consider the following five factors: "(1) the surprise to the party against whom the evidence would be offered; (2) the ability of that party to cure the surprise; (3) the extent to which allowing the evidence would disrupt the trial; (4) the importance of the evidence; and (5) the nondisclosing party's explanation for its failure to disclose the evidence." *S. States Rack And Fixture, Inc. v. Sherwin-Williams Co., 318 F.3d 592, 597 (4th Cir. 2003)*. Consideration of bad faith, specifically, is not a factor in the analysis. *Id. at 597-98*.

The burden is on the plaintiff to prove either substantial justification or harmlessness, *Id. at 596*, and Perkins fails to meet this burden. Although Perkins argues that Dr. Cloud's deposition [\*\*9] cured any surprise or prejudice, Dr. Cloud equivocated on facts that should have been presented in an expert written report (Def.'s First Br., Ex. 4), and belabored the deposition to the tune of \$ 1,250 (Def.'s First Br., Ex. 7). Perkins does not address the third and fourth factors, and most importantly, does not provide a justifiable explanation [\*592] for the omission of the expert written report. As the Fourth Circuit has stated:

Rule 26 disclosures are often the centerpiece of discovery in litigation that uses expert witnesses. A party that fails to provide these disclosures unfairly inhibits its opponent's ability to properly prepare, unnecessarily prolongs litigation, and undermines the district court's management of the case. For this reason, we give particularly wide latitude to the

district court's discretion to issue sanctions under Rule 37(c)(1).

Carr v. Deeds, 453 F.3d 593, 604 (4th Cir. 2006)(internal quotations and citations omitted). We find that Perkins' violation of Rule 26(a)(2)(B) hindered Defendant's ability to prepare for the deposition and, without valid justification, undermined the integrity of the discovery process. Accordingly, the Court ORDERS that Dr. Cloud's testimony, [\*\*10] in its entirety, shall be excluded for all purposes.

### **B. Defendant's Motion to Exclude Testimony of Dr. Wardell**

Dr. Arthur Wardell ("Dr. Wardell"), an orthopedic surgeon, began treating Perkins on September 9, 2005. Although Dr. Wardell did not produce a formal written report pursuant to Rule 26(a)(2)(B), he sent a letter to Perkins' attorney, Tim Hankins, on November 8, 2007, outlining Perkins' injuries, the causation of these injuries, and the estimated cost of these injuries going forward. (Def.'s Second Br., Ex. 2.) At his deposition on December 10, 2008, Dr. Wardell testified in accord with his letter to Mr. Hankins. (Def.'s Second Br., Ex. 3.) Defendant moves to exclude Dr. Wardell's testimony as unreliable under Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993) and its progeny.

Under Federal Rule of Evidence 702, as interpreted by the U.S. Supreme Court in Daubert, a district court assumes a "gatekeeping role" to "ensure that any and all <sup>7</sup> scientific testimony or evidence

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<sup>7</sup>Despite argument by Perkins to insulate treating physicians from a traditional examination of reliability under Daubert (Pl.'s Second Br. at 8-9), the plain language of the Daubert decision extends the threshold requirement of reliability to "any and all" medical testimony, including that of treating physicians. Daubert, 509 U.S. at 589. See also Turner v. Iowa Fire Equip. Co., 229 F.3d 1202, 1207 (8th Cir.2000)("A treating physician's expert opinion on causation is subject to the same standards of scientific reliability that govern the expert opinions of physicians hired solely for purposes of [\*\*12] litigation.")(citing Kumho Tire Co. v. Carmichael, 526 U.S. 137, 151, 119 S. Ct. 1167, 143 L. Ed. 2d 238 (1999)).

admitted is not only relevant, but reliable." Id. at 589, 597. When a party seeks to enter expert testimony into evidence, the trial judge must conduct a "preliminary assessment of whether the reasoning [\*\*11] or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue." Id. at 592-93. Furthermore, the burden of establishing the reliability of the expert testimony is on the proponent, Perkins. Cooper v. Smith & Nephew, Inc., 259 F.3d 194, 199 (4th Cir. 2001)(citing Daubert, 509 U.S. at 592 n.10). With respect to the causation of Perkins' injuries and the prognosis of future medical costs, Perkins has failed to establish that Dr. Wardell's testimony is reliable. The reasons for this failure are manifold.

First, Dr. Wardell's opinion on the causation of Perkins' injuries is based solely on Perkins' self-report that the injuries were caused by the motor vehicle accident. (Def.'s Second Br., Ex. 3.) In Bowers v. Norfolk Southern Corp., a federal district [\*\*593] court found that "Dr. Wardell simply took Plaintiff's word for what happened and adopted that explanation as his own opinion on causation." 537 F. Supp. 2d 1343, 1357 (M.D. Ga. 2007). In supporting its decision to exclude Dr. Wardell's testimony, the Bowers court held that merely adopting a patient's theory of causation fails the fourth of the factors laid out by the notes of the Advisory Committee to the 2000 Amendments to Rule 702 of the Federal Rules of Evidence: "Whether the expert is being as careful as he would be in his regular professional work outside his paid litigation consulting." <sup>8</sup> Id. at 1351, 1358 (internal quotations omitted). Likewise, in the present case, Dr. Wardell's exclusive reliance on a patient's self-report fails to employ "the same level of intellectual rigor that characterizes the practice of an expert in

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<sup>8</sup>Although [\*\*13] Perkins presents Dr. Wardell as a treating physician, Dr. Wardell knew from the outset of treatment that he would be involved in litigation to render an expert opinion. (Def.'s Second Br., Ex. 3 at 80.) Dr. Wardell further admitted that an opinion on causation is a legal conclusion, more "driven by the legal aspects of the case than by the medicine." Id. at 67.

the relevant field." Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137, 152, 119 S. Ct. 1167, 143 L. Ed. 2d 238 (1999).

Second, Dr. Wardell did not adequately investigate Perkins' relevant medical history. According to the Fourth Circuit, "[a] reliable differential diagnosis typically . . . is performed after physical examinations, the taking of medical histories, and the review of clinical tests, including laboratory tests." Cooper, 259 F.3d at 200. By taking Perkins' self-report at face value, and not developing an accurate medical history for his patient, Dr. Wardell neither knew nor considered Perkins' history of prior trauma and injury. For example, at the time of forming his medical opinion of Perkins, Dr. Wardell was not aware of the following incidents involving Perkins:

- (a) two prior motor vehicle accidents, in 1980 and around 1995, which resulted in injuries and emergency room treatment;
- (b) knee and back injury, resulting from falling [\*\*14] off a ramp in 1997, which resulted in ongoing neck and back pain;
- (c) another fall at work, in 2000, injuring head and back, resulting in continued neck and back pain;
- (d) injury to right arm and trapezius muscle, resulting from picking up a heavy bag in 2004; and
- (e) on May 4, 2005, one month prior to the motor vehicle accident alleged in the present case, Perkins visited the emergency room complaining of left knee pain and swelling.

(Def.'s Second Br., Ex. 1 at 2, \_6 and 20-21.) Even if the medical profession does not fault Dr. Wardell for his reliance on Perkins' self-report, and in turn, his ignorance of Perkins's prior trauma and treatment, the law still demands that his expert testimony be reliable. When asked during his deposition if these injuries would be "important to

know and potentially alter what conclusions you had [on the causation of Perkins' current complaints]," Dr. Wardell answered, "Yes." (Def.'s Second Br., Ex. 3 at 34.) Thus, by Dr. Wardell's own admission, the quality of his conclusions is undermined by the existence of unknown prior trauma. Furthermore, Dr. Wardell did not know Perkins' prior history of medication and did not review the hospital records of June [\*\*15] 2005, which included the emergency physicians' findings, diagnoses, and recommendations for treatment. Id. at 67-68. Again, Dr. Wardell admitted that knowledge of whether Perkins complied with the hospital physicians' recommendations for treatment "would never be not important," Id. at 28-29, or in demystified terms, would always be important. [\*\*594] Therefore, Dr. Wardell failed to consider a wealth of "important" information in making conclusions on the causation of Perkins' latest injuries, and as a result, the reliability of these conclusions is substantially weakened.

Third, and perhaps most importantly, Dr. Wardell failed to consider alternative explanations for Perkins' injuries. Although the alternative causes raised by a defendant typically do not preclude the admissibility of a plaintiff's expert's testimony:

[A] differential diagnosis that fails to take serious account of other potential causes may be so lacking that it cannot provide a reliable basis for an opinion on causation. . . . Thus, if an expert utterly fails to consider alternative causes or fails to offer an explanation for why the proffered alternative cause was not the sole cause, a district court is justified in excluding [\*\*16] the expert's testimony.

Cooper, 259 F.3d at 202 (citations omitted). In Cooper, the defendant offered alternative explanations for plaintiff's nonunion of vertebrae following spinal surgery, including the plaintiff's long history of smoking. The plaintiff's expert physician denied that smoking was a cause of the injury. The Fourth Circuit affirmed the exclusion of plaintiff's expert physician, because the physician

"did not identify specifically how he ruled out smoking and other potential causes of the nonunion." *Id. at 203*. Moreover, "[i]n the face of the medical literature and Cooper's own records, [the physician] categorically dismissed any suggestion that Cooper's smoking was the cause of the nonunion." *Id. at 202*.

Under *Cooper*, Dr. Wardell's causation opinion is further unreliable, because Dr. Wardell either "categorically dismissed" or ignored evidence of other preexisting conditions when such evidence was available to him at the time of treatment. In particular, Dr. Wardell does not explain how he ruled out osteoarthritis as a cause, or a partial cause, of Perkins' current symptoms. Osteoarthritis, a degenerative joint disease that causes pain, is present in Perkins' "neck, lower **[\*\*17]** back, left knee and right foot, all areas purportedly injured in the accident." (Def.'s Second Br., Ex. 1 at 2-3, 7.) During his deposition, Dr. Wardell testified that the degenerative joint disease is a preexisting condition unrelated to the motor vehicle accident, and that this disease can cause pain and swelling. (Def.'s Second Br., Ex. 3 at 69-76.) Despite the presence of this pain-inducing disease in Perkins' neck, back, and joints, however, Dr. Wardell reiterates his conclusion "that her left knee, her neck, her upper and lower back, her left hip, her right foot and her left leg complaints [of pain] were due to the [motor vehicle] accident." *Id.* at 66. Furthermore, discussion of a preexisting degenerative joint disease is conspicuously absent from Dr. Wardell's letter opinion to Perkins' attorney. (Def.'s Second Br., Ex. 2.) Thus, as was the case in *Bowers*, "Dr. Wardell's failure to adequately account for this obvious alternative explanation creates a fatal analytical gap in his testimony." *537 F. Supp. 2d at 1356*.

This "fatal analytical gap" is compounded by Dr. Wardell's failure to address the issue of obesity. Defendant frames the issue as follows:

Insofar as Dr. Wardell acknowledges **[\*\*18]** plaintiff is obese, [(Ex. 3 at 59)], and "[o]bese people have significantly more

problems with back and neck pain, as well as knee and foot problems," [(Ex. 1 at 3, 8)], it would reasonably follow that plaintiff's obesity might amplify the likelihood of pain from plaintiff's extensive osteoarthritis in her weight bearing joints. Again, any reference to plaintiff's obesity is notably absent from Dr. Wardell's report of his physical examination, or anywhere else in his expert opinion letter. [(Ex. 2.)]

**[\*595]** (Def.'s Second Br. at 14)(footnote omitted). Dr. Wardell's diagnosis of Perkins is driven by willful blindness to plausible, perhaps even probable, alternative explanations for his patient's symptoms and injuries. By selectively ignoring the facts that would hinder the patient's status as a litigant, Dr. Wardell reveals himself as the infamous "hired gun" expert.

Thus, even without Dr. Robert S. Neff's detailed description of how Dr. Wardell "failed to employ the clinical decision making process that is standard practice in the medical profession," (Def.'s Second Br., Ex. 1 at 2, 5), the record clearly indicates that Dr. Wardell's opinion on the causation of Perkins' injuries lacks **[\*\*19]** sufficient reliability, and therefore, is inadmissible.

Similarly, for the reasons state above, the Court also excludes Dr. Wardell's prognosis of future medical costs for Perkins. According to the evidence before the Court, the prognosis is nothing beyond a guess. Dr. Wardell does not provide any methodological basis for the prognosis. Perkins argues that such a deficiency would go to the weight, not admissibility, of the evidence, but "nothing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert." *Cooper, 259 F.3d at 203* (quoting *Kumho Tire, 526 U.S. at 157*).

In sum, the Court ORDERS that Dr. Wardell's testimony is not admissible regarding (1) the causation of Perkins' injuries and (2) the prognosis

of future medical costs. Dr. Wardell may testify at trial, but only to his treatment of Perkins.

regarding (1) the causation of Perkins' injuries and (2) the prognosis of future medical costs.

**III. Order**

The Court GRANTS Defendant's Motion in Limine to Exclude or Limit Testimony of Dr. Harold Cloud [Doc. 9], and ORDERS that Dr. Cloud's testimony, in its entirety, shall be excluded for all purposes. The Court also GRANTS Defendant's Second Motion in Limine to Exclude [\*\*20] Plaintiff's Expert Dr. Wardell Under *Daubert v. Merrell Dow Pharmaceuticals* [Doc. 16], and ORDERS that Dr. Wardell may testify at trial only to his treatment of Perkins, and that Dr. Wardell shall not testify

The Clerk shall mail a copy of this Order to all counsel of record.

/s/

Tommy E. Miller

UNITED STATES MAGISTRATE JUDGE

Norfolk, Virginia

June 4, 2009

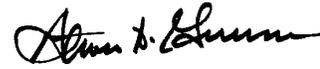
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CLERK OF THE COURT

9  
10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 YVONNE O'CONNELL, an individual,  
13  
14 Plaintiff,

CASE NO. A-12-655992-C

DEPARTMENT NO. V

15 vs.

**PLAINTIFF'S BRIEF AS TO**  
**TESTIMONY REGARDING FUTURE**  
**PAIN AND SUFFERING**

16 WYNN LAS VEGAS, LLC, a Nevada  
17 Limited Liability Company, doing business  
18 as WYNN LAS VEGAS; DOES I through  
X; and ROE CORPORATIONS I through X,  
19 inclusive,

20 Defendants.

21  
22 Plaintiff, Yvonne O'Connell, by and through her counsel, Brian D. Nettles, Esq. and  
23 Christian M. Morris, Esq., of the Nettles Law Firm, submits *Plaintiff's Brief as to Testimony*  
24 *Regarding Future Pain and Suffering.*

25 .....

26 .....

27 .....

28 .....

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1 This is made and based upon the attached memorandum of points and authorities, all  
2 papers and pleadings on file herein and such oral argument as the court may allow at hearing on  
3 this matter.

4 DATED this 9<sup>th</sup> day of November, 2015.

5  
6 NETTLES LAW FIRM

7  #13991 

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15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I.**

17 **INTRODUCTION**

18 The present case arises out of an incident on or about February 8, 2010, where Plaintiff  
19 Yvonne O'Connell was a guest at Wynn Las Vegas. When Plaintiff was passing through the  
20 Atrium Walkway, an area with a high amount of foot traffic, she slipped and fell in a pool of  
21 liquid present on the multi-colored tile floor. As a result of the fall the Plaintiff sustained  
22 injuries.

23 The pool of liquid which caused the fall was approximately seven (7) feet long and had  
24 been on the floor long enough that it had begun to dry. The portion that was dry was sticky and  
25 had visible footprints in it. The substance was observed by Plaintiff and multiple employees of  
26 Wynn. Following Plaintiff's fall, Defendant Wynn's employee(s) observed the liquid, but  
27 cleaned the area without first taking photographs.

28

1 Plaintiff's expert treating physicians have opined that Plaintiff must undergo a 3 level  
2 cervical fusion as well as surgery to her knee. Her treating physicians attribute causation to the  
3 incident at Wynn when Plaintiff fell. Prior to trial, Defendant seeks to exclude testimony  
4 regarding the cost of Plaintiff's future medical treatment arising from her injuries. However, the  
5 fact Plaintiff is in need of surgery is highly relevant to the jury's determination of whether the  
6 Plaintiff will continue to suffer from pain in the future; therefore, all evidence regarding future  
7 treatment is relevant and admissible.

8 **II.**

9 **ARGUMENT**

10 To decide on whether to award future pain and suffering, the trier of fact must determine  
11 what physical and mental pain, suffering, anguish, disability, and loss of enjoyment, the Plaintiff  
12 is reasonably certain to experience in the future. Banks v. Sunrise Hosp., 120 Nev. 822, 835-839,  
13 102 P.3d 52, 61-65 (2004). A recommendation of future medical care, such as surgery, relates  
14 directly to the future pain and suffering Plaintiff is reasonably certain to endure in the future.

15 **A. The cost of a procedure is relevant, though not needed, to support an award**  
16 **for future pain and suffering**

17 Though informative, the cost of a recommended surgery is not needed to support an  
18 award of future pain and suffering. The mere need for surgery, in fact, necessitates an award for  
19 future pain and suffering. See, e.g., Shere v. Davis, 95 Nev. 491 (1979) (reversing and  
20 remanding a jury decision awarding medical expenses but not pain and suffering). The cost of  
21 future medical care is relevant, though, and could be helpful to determine future pain and  
22 suffering. This Court certainly could find it reasonable to conclude that the cost of a surgery is  
23 relevant to a Plaintiff's future pain and suffering. First, a higher cost implies a complex and more  
24 risky procedure. A more risky procedure, in turn, supports a higher award of future pain and  
25 suffering. Second, the cost of the surgery speaks to Plaintiff's current and prospective pain and  
26 suffering without the surgery. In other words, because the decision to recommend (and to  
27 undergo) a surgical procedure involves a cost-benefit and/or risk-reward calculation, the  
28 implication is that the Plaintiff's reasonably certain future pain and suffering without the surgery

1 makes the cost and risk “worth it” in light of the potential benefit.

2           **B. Doctors Dunn and Tingey should be allowed to testify about their**  
3           **recommendations for future surgery because it relates to Plaintiff’s future**  
4           **pain and suffering**

5           Testimony from Drs. Dunn and Tingey will be useful because they will explain how  
6 Plaintiff’s knee and cervical pathology affects her life, that is, what pain, suffering, and disability  
7 they impose on her. Testimony from the doctors will also be useful to explain what future  
8 medical care Plaintiff requires, based on these diagnosed pathologies, and how this care is likely  
9 to affect Plaintiff. Thus a description of the surgery, its complexity, the likely recovery time, and  
10 prognosis are relevant to informing the trier of fact’s decision on Plaintiff’s future pain and  
11 suffering.

12           Here, Dr. Dunn recommended “anterior cervical decompression and fusion at C4-C5, C5-  
13 C6, and C6-C7 with allograft. *See Record of 10/13/14 visit to Dr. Dunn, attached her as Exhibit*  
14 *1.* Testimony regarding the need for this surgery and how it will impact Plaintiff, is relevant to  
15 the trier of fact in determining what pain and suffering Plaintiff is “reasonably certain” to endure  
16 when she undergoes this surgery. Dr. Tingey provided Plaintiff with surgical and non-surgical  
17 treatment plans. *See Record of 5/11/15 visit to Dr. Tingey, attached here as Exhibit 2.* Similar  
18 to Dr. Dunn, Dr. Tingey’s testimony regarding the need for these treatment plans and how they  
19 would impact Plaintiff are relevant to Plaintiff’s reasonably certain future pain and suffering.

20           Moreover, physician recommendations for future medical care also speaks to the pain and  
21 suffering that Plaintiff currently endures and is reasonably certain to endure in the future. The  
22 jury can reasonably infer that a recommendation from surgery, with its inherent certainty of pain  
23 and suffering, along with risks of negative outcomes, is recommended because it provides the  
24 possibility of a better outcome than not receiving the surgery. Stated another way, when a  
25 physician recommends a treatment, it is reasonable to infer that Plaintiff’s future pain and  
26 suffering is “bad enough” to justify the pain, suffering, and risks inherent in the procedure.

27 . . . .

28 . . . .

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**C. Plaintiff's disclosures state that Doctors Dunn and Tingey will testify regarding future medical treatment**

In her 16.1 disclosures and pre-trial disclosure, Plaintiff listed Drs. Dunn and Tingey as witnesses and stated the subject matter of their testimonies:

This individual is expected to testify as a treating physician . . . regarding the injuries sustained, past, present, and future medical treatment and impairment, prognosis, disability, pain and suffering.

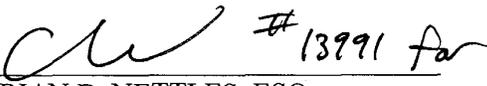
*See Plaintiff's fifth supplement to 16.1 Disclosures, attached as Exhibit 3.* This disclosure makes clear that Plaintiff intended Drs. Dunn and Tingey to testify about her future medical needs.

**III.**  
**CONCLUSION**

Based on the foregoing law, facts, and analysis, Plaintiff respectfully requests this Court *not* prohibit Drs. Dunn and Tingey from discussing future medical procedures and costs as such testimony is relevant to future pain and suffering.

DATED this 9<sup>th</sup> day of November, 2015.

NETTLES LAW FIRM

  
BRIAN D. NETTLES, ESQ.  
Nevada Bar No. 7462  
CHRISTIAN M. MORRIS, ESQ.  
Nevada Bar No. 11218  
1389 Galleria Drive, Suite 110  
Henderson, Nevada 89014  
Attorneys for Plaintiffs

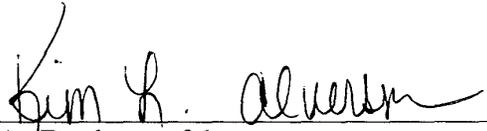
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**CERTIFICATE OF SERVICE**

Pursuant to NEFCR 9, NRCR 5(b) and EDCR 7.26, I certify that on this 9<sup>th</sup> day of November, 2015, I served the foregoing ***Plaintiff's Brief as to Testimony Regarding Future Pain and Suffering*** to the following party by electronic transmission through the Wiznet system:

Lawrence J. Semenza, III, Esq.  
Christopher D. Kircher, Esq.  
Lawrence J. Semenza, III, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
(702) 835-6803  
Fax: (702) 920-8669  
*Attorneys for Defendant*  
*Wynn Las Vegas, LLC dba*  
*Wynn Las Vegas*

  
An Employee of the  
NETTLES LAW FIRM

# EXHIBIT 1

**Desert Orthopaedic Center**

2800 East Desert Inn Road Suite 100 Las Vegas, NV 89121-3609  
(702)731-1616 Fax: (702)734-4900

Page 1  
Office Visit

**Yvonne Louise O'Connell**

Female DOB: 08/18/1951

Home: (702)228-4424

Patient ID: 198556-2854001

**10/13/2014 - Office Visit: 1st Room, Complete**

**Provider: Thomas Dunn MD**

**Location of Care: Desert Orthopaedic Center**

**Clinical List(s) Reviewed**

- The allergy list was reviewed and updated as appropriate.
- The problem list was reviewed and updated as appropriate.
- The medication list was reviewed and updated as appropriate.

**History of Present Illness**

Ms. O'Connell returns today for lumbar back pain and states that the pain has become worse and states that she still has radiating pain down both legs along with numbness and tingling. My patient indicates that since her last visit her symptoms have worsened. Her current pain level, on a scale from 0-10, is 10. She notes that the medication prescribed has unchanged her symptoms.

The patient is also returns for cervical spine pain which predominates with numbness, tingling, and pain radiating down both arm.

**Allergies**

ANTIBIOTICS (Moderate)

**Medications**

LOVAZA 1 GM CAPS (OMEGA-3-ACID ETHYL ESTERS) Take 2 tablets twice a day  
Last Refill: #120 x 5, 07/14/2014, Thomas Dunn MD

**Past Medical History**

Past medical history noted by patient includes depression  
She states she had a mini-stroke 2 days after the slip and fall.

**Problems recorded as Dx. codes:**

TEAR MEDIAL CARTILAGE OR MENISCUS KNEE CURRENT (ICD-836.0)  
PAIN IN JOINT, LOWER LEG (ICD-719.46)  
DIABETES (ICD-250.00)  
SCIATICA (ICD-724.3)  
DEGEN LUMBAR/LUMBOSACRAL INTERVERTEBRAL DISC (ICD-722.52)  
BRACHIAL NEURITIS OR RADICULITIS NOS (ICD-723.4)  
DEGENERATION OF CERVICAL INTERVERTEBRAL DISC (ICD-722.4)

Information obtained by patient via web portal: I was very healthy and athletic until I slipped and fell, I had immediate injuries and pain, which I still have. My arms and hands hurt, it hurt to sit, my right foot hurt and I was dazed.

**Past Surgical History**

Patient denies any problems related to previous surgery

**Desert Orthopaedic Center**

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Page 2  
Office Visit

**Yvonne Louise O'Connell**

Female DOB: 08/18/1951

Home: (702)228-4424

Patient ID: 198556-2854001

Information obtained by patient via web portal: Tonsillectomy, 1955?

**Family Medical History**

There is a reported family history of cancer

**Social History**

**Tobacco use:** never smoker

**Alcohol Use:** (never)

**Does patient live alone:** yes

**Drug Use:** (no)

**Marital Status:** widowed

**Number of children:** none

**Physical Exam**

**Vital Signs**

**Height:** 64 in **Weight:** 155 lb **Body Mass Index:** 26.70

**Constitutional:**

General appearance: moderate distress

**Cardiovascular:**

Pedal pulses: pulses 2+, symmetric

Periph. circulation: no cyanosis, clubbing or edema

**Neurologic:**

Cranial nerves: II-XII grossly intact

Reflexes grossly intact, symmetric

Sensation: intact to touch

**Psychiatric:**

Orientation: oriented to person, place and time

Mood and affect: no depression, anxiety

**Cervical**

No acute changes. Neuro intact.

**Impression**

degenerative disc disease of the cervical spine, and cervical radiculopathy, and lumbar disc disease, and

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Page 3  
Office Visit

**Yvonne Louise O'Connell**

Female DOB: 08/18/1951

Home: (702)228-4424

Patient ID: 198556-2854001

sciatica  
Bilateral carpal tunnel syndrome per history

**Plan**

I reviewed the patient's MRI. Explanation and reassurance were provided to the patient. I discussed a treatment plan in detail with patient. All of the patient's questions were answered. I discussed all treatment options including non-surgical and surgical interventions.

**After discussion with the patient, I have recommended anterior cervical decompression and fusion at C4-C5, C5-C6 and C6-C7 with allograft. I have offered non-operative options consisting of physical therapy, pain management and epidural steroid injections.**

**Follow up**

The patient was advised to return if symptoms worsen. She has no history of diabetes.

**Lumbar**

No acute changes.

**Electronically Signed by Thomas Dunn MD on 10/13/2014 at 1:36 PM**

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# EXHIBIT 2

**Desert Orthopaedic Center**

2800 East Desert Inn Road Suite 100 Las Vegas, NV 89121-3609  
(702)731-1616 Fax: (702)734-4900

Page 1  
Office Visit

**Yvonne Louise O'Connell**

Female DOB: 08/18/1951

Home: (702)228-4424

Patient ID: 198556-2854001

**05/11/2015 - Office Visit: 15th Room, Complete**  
**Provider: Craig T Tingey MD**  
**Location of Care: Desert Orthopaedic Center**

**Clinical List(s) Reviewed**

- The allergy list was reviewed and updated as appropriate.
- The problem list was reviewed and updated as appropriate.
- The medication list was reviewed and updated as appropriate.

**Chief Complaint** Bilateral knee pain.

**History of Present Illness**

**Referred by:** Thomas Dunn

**Previous Studies:** X-rays, MRI

Yvonne Louise O'Connell is a 63 year old female who comes in for a new problem today. The patient is retired. She presents for evaluation of bilateral knee pain after a slip/fall injury. Her symptoms have been present for 5 years. Her injury occurred on 2/08/2010, when walking she slipped on a liquid and fell backwards. She states she twisted to the right with parts of her body striking a raised divider. This happened on the Las Vegas Strip. Her pain was immediate. She describes the pain as being specifically located in the anterior and medial region of her knees. She has pain when twisting, going from sitting to standing, or climbing stairs. She experiences locking and swelling in the knees. She has undergone physical therapy without improvement. Patient denies any past problems to her knees before the slip and fall in 2010. Other physicians the patient has seen for this problem include another Dr. Andrew Martin. Previous studies performed to evaluate this condition include X-rays and MRI's done at Las Vegas radiology.

She describes her pain as sore, sharp, throbbing, stabbing and severe. Her pain is worse with activities, and since acknowledging the onset, her pain level has worsened. On a scale of 0-10, with 0 being no pain and 10 being the worst pain imaginable, her pain level today is a 10. She is also experiencing clicking, instability, locking, catching, snapping/popping, swelling, pain with sports/activities, radiating pain, and daytime pain with rest. Her symptoms are worse when driving, squatting, kneeling, bending lying supine, lifting, standing from sitting, when twisting the knees, and walking up and down steps.

Treatments tried previously to relieve symptoms include rest, elevation, physical therapy, assistive device, immobilization, and home exercise.

**Allergies**

ANTIBIOTICS (Moderate)

**Medications**

CVS OMEGA-3 CAPS (FLAX OIL-FISH OIL-BORAGE OIL)  
A THRU Z ADVANCED TABS (MULTIPLE VITAMINS-MINERALS)  
VITAMIN C

**Desert Orthopaedic Center**

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Page 2  
Office Visit

**Yvonne Louise O'Connell**

Female DOB: 08/18/1951

Home: (702)228-4424

Patient ID: 198556-2854001

**Past Medical History**

Past medical history noted by patient includes depression  
She states she had a mini-stroke 2 days after the slip and fall.

**Problems recorded as Dx. codes:**

TEAR MEDIAL CARTILAGE OR MENISCUS KNEE CURRENT (ICD-836.0)  
PAIN IN JOINT, LOWER LEG (ICD-719.46) (ICD10-M79.606)  
SCIATICA (ICD-724.3) (ICD10-M54.30)  
DEGEN LUMBAR/LUMBOSACRAL INTERVERTEBRAL DISC (ICD-722.52)  
BRACHIAL NEURITIS OR RADICULITIS NOS (ICD-723.4) (ICD10-M54.13)  
DEGENERATION OF CERVICAL INTERVERTEBRAL DISC (ICD-722.4) (ICD10-M50.30)

Information obtained by patient via web portal: depression, neuropathy, stroke, Mini-stroke after accident, not stroke. Other immediate injuries and pain, head and neck, back to foot, right buttocks, hip, down leg still hurt, arms and hands.

**Past Surgical History**

Patient denies any problems related to previous surgery  
Information obtained by patient via web portal: removal of wisdom teeth, removal of tonsils, Breast biopsy.  
Okay.

**Family Medical History**

There is a reported family history of cancer  
Mother (biol.): Deceased  
Father (biol.): Cancer; Deceased  
Information obtained by patient via web portal: diabetes, cancer

**Social History**

**Tobacco use:** never smoker  
**Alcohol Use:** (occasional (weekly 1-6 drinks))  
**Does patient live alone:** yes  
**Drug Use:** (no)

**Marital Status:** widowed  
**Number of children:** none  
**Occupation:** retired  
**Work Status:** retired

**Review of Systems**

**General:** none  
**Cardiovascular:** murmur  
**Respiratory:** cough  
**Ears/Nose/Throat:** dizziness  
**Gastrointestinal:** nausea, abdominal pain  
**Skin:** none  
**Neurologic:** weakness, numbness, headache  
**Genitourinary:** night time urination  
**Endocrine:** cold intolerance

**Desert Orthopaedic Center**

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Page 3  
Office Visit

**Yvonne Louise O'Connell**

Female DOB: 08/18/1951

Home: (702)228-4424  
Patient ID: 198556-2854001

**Heme/Lymphatic:** denies abnormal bruising, bleeding, enlarged lymph nodes

**Allergic/immunologic:** none

**Psychiatric:** anxiety, depression, difficulty sleeping

**Musculoskeletal:** stiffness, joint pain or swelling, back pain, weakness, muscle cramping, arthritis

**Possibly Pregnant:** no

**Pregnant:** no

**Infectious Diseases** None

**Physical Exam**

**Vital Signs**

**Height:** 64 in **Weight:** 155 lb **Pulse rate:** 65 **Rhythm:** regular

**BP:** 137/83 **Possibly Pregnant:** no

**Pregnant:** no

**Body Mass Index:** 26.70

**Right Knee Exam**

**Inspection**

Effusion: none

**Pain/Tenderness:**

medial joint line

**Active Range of Motion**

Flexion: 120°

Extension: 0

**Stability**

Lachman test: normal

Anterior drawer sign: normal

Medial/MCL: normal

Lateral/LCL: normal

Posterior drawer: normal

Ext Rotation Dial Test:

Left knee exam is symmetric

**Magnetic Resonance Imaging \* RIGHT KNEE\*** was performed on 08/29/2014

Tear of the posterior horn of the medial meniscus.

**Magnetic Resonance Imaging \* LEFT KNEE\*** was performed on 09/22/2014

Truncated appearance of the body and posterior horn of the medial and lateral menisci consistent with tears.

**Right Knee X-ray**

Radiographs of the right knee reviewed today reveal minimal joint-space narrowing.

**Desert Orthopaedic Center**

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Page 4  
Office Visit

**Yvonne Louise O'Connell**

Female DOB: 08/18/1951

Home: (702)228-4424  
Patient ID: 198556-2854001

**Impression**

Bilateral knee meniscus tears

**Plan**

Explanation and reassurance were provided to the patient. I discussed a treatment plan in detail with patient. All of the patient's questions were answered. I discussed all treatment options including non-surgical and surgical interventions.

After discussion with the patient, I have recommended bilateral knee arthroscopy with partial medial meniscectomy of the right knee and partial medial and lateral meniscectomy of the left knee. She understands that surgery is not a guarantee for cure of her symptoms, and specifically arthroscopic surgery cannot cure arthritis. The patient would like to review their options and will contact us if they wish to move forward with the procedure.

**Follow up**

Patient will follow up for pre-operative visit.

Electronically Signed by Craig T Tingey MD on 05/11/2015 at 6:53 PM

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# EXHIBIT 3

NETTLES LAW FIRM  
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1 BRIAN D. NETTLES, ESQ.  
Nevada Bar No. 7462  
2 CHRISTIAN M. MORRIS, ESQ.  
Nevada Bar No. 11218  
3 NETTLES LAW FIRM  
4 1389 Galleria Drive, Suite 200  
Henderson, Nevada 89014  
5 Telephone: (702) 434-8282  
Facsimile: (702) 434-1488  
6 [brian@nettleslawfirm.com](mailto:brian@nettleslawfirm.com)  
7 [christian@nettleslawfirm.com](mailto:christian@nettleslawfirm.com)  
Attorneys for Plaintiff

9  
10 DISTRICT COURT  
CLARK COUNTY, NEVADA

11 YVONNE O'CONNELL, an individual,  
12  
13 Plaintiff,

CASE NO. A-12-655992-C

14 vs.

DEPARTMENT NO. V

15 WYNN LAS VEGAS, LLC, a Nevada Limited  
16 Liability Company, doing business as WYNN  
LAS VEGAS; DOES I through X; and ROE  
17 CORPORATIONS I through X, inclusive,

PLAINTIFF'S FIFTH SUPPLEMENT  
TO INITIAL 16.1 DISCLOSURES

18 Defendants.

19  
20  
21 Plaintiff, YVONNE O'CONNELL, by and through her attorneys of record BRIAN D.  
22 NETTLES, ESQ. and CHRISTIAN M. MORRIS, ESQ. of the NETTLES LAW FIRM, hereby  
23 submits her Fifth Supplement to Early Case Conference Disclosures pursuant to NRCP 16. 1, as  
24 follows (**supplemented documents are in bold**):

25 I. WITNESSES

26 Pursuant to NRCP 161 (a) (1) (A), the name and, if known, the address and telephone  
27 number of each individual likely to have information discoverable under Rule 26(b), including  
28 for impeachment or rebuttal, identifying the subjects of the information;

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- 1 1. Yvonne O'Connell  
2 c/o Nettles Law Firm  
3 1389 Galleria Drive, Suite 200  
4 Henderson, NV 89014

5 This witness, Plaintiff, is expected to testify regarding the facts and circumstances  
6 contained in the Complaint on file herein.

- 7 2. Person Most Knowledgeable  
8 Wynn Las Vegas, LLC  
9 c/o Lawrence J. Semenza, III, Esq.  
10 LAWRENCE J. SEMENZA, III, P.C.  
11 10161 Park Run Drive, Suite 150  
12 Las Vegas, Nevada 89145  
13 Telephone: (702) 835-6803

14 This witness is expected to testify regarding the facts and circumstances contained in the  
15 Complaint on file herein.

- 16 3. Jon Screlle, M.D. and/or  
17 Person Most Knowledgeable/Custodian of Records  
18 The Minimally Invasive Hand Institute  
19 8960 W. Tropicana Ave.  
20 Las Vegas, NV 89147  
21 Phone:(702) 739-4263

22 This individual is expected to testify as a treating physician and as an expert regarding  
23 the injuries sustained, past present and future medical treatment and impairment, prognosis,  
24 disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of  
25 all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records  
26 and bills. Pursuant to Nev.R.Civ.P. 16.1 (2)(b), the said witness, being an expert witness who is  
27 also a treating physician and thereby not retained or specially employed to provide expert  
28 testimony will not be submitting a C.V., Fee Schedule, Report or Trial History. If you disagree,  
let us know immediately or your failure to object will be deemed a stipulation that said  
documents are not required under the rule. Further, this expert is expected to testify consistent  
with the medical records related to the treatment of the Plaintiff for the subject incident, and  
other incidents having relevance to this action. The facts and opinions to which the expert is  
expected to testify include any and all facts and opinions in the said medical records, and that the  
medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident  
set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by  
any party in this action that contradict the same.

- 29 4. Person Most Knowledgeable/Custodian of Records  
30 Steinberg Diagnostics  
31 2950 S. Maryland Pkwy.  
32 Las Vegas, NV  
33 Phone: (702) 732-6000

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This individual is expected to testify as a treating physician and as an expert regarding the injuries sustained, past present and future medical treatment and impairment, prognosis, disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records and bills. Pursuant to Nev.R.Civ.P. 16.1 (2)(b), the said witness, being an expert witness who is also a treating physician and thereby not retained or specially employed to provide expert testimony will not be submitting a C.V., Fee Schedule, Report or Trial History. If you disagree, let us know immediately or your failure to object will be deemed a stipulation that said documents are not required under the rule. Further, this expert is expected to testify consistent with the medical records related to the treatment of the Plaintiff for the subject incident, and other incidents having relevance to this action. The facts and opinions to which the expert is expected to testify include any and all facts and opinions in the said medical records, and that the medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by any party in this action that contradict the same.

- 5. Person Most Knowledgeable/Custodian of Records  
UMC Quickeare  
1800 West Charleston Blvd.  
Las Vegas, NV 89102  
Phone: (702) 383-2000

This individual is expected to testify as a treating physician and as an expert regarding the injuries sustained, past present and future medical treatment and impairment, prognosis, disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records and bills. Pursuant to Nev.R.Civ.P. 16.1 (2)(b), the said witness, being an expert witness who is also a treating physician and thereby not retained or specially employed to provide expert testimony will not be submitting a C.V., Fee Schedule, Report or Trial History. If you disagree, let us know immediately or your failure to object will be deemed a stipulation that said documents are not required under the rule. Further, this expert is expected to testify consistent with the medical records related to the treatment of the Plaintiff for the subject incident, and other incidents having relevance to this action. The facts and opinions to which the expert is expected to testify include any and all facts and opinions in the said medical records, and that the medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by any party in this action that contradict the same.

- 6. Person Most Knowledgeable/Custodian of Records  
Matt Smith Physical Therapy  
9499 W. Charleston Blvd., Suite 220  
Las Vegas, NV 89117  
Phone: (702) 933-9394

This individual is expected to testify as a treating physician and as an expert regarding the injuries sustained, past present and future medical treatment and impairment, prognosis,

1 disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of  
2 all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records  
3 and bills. Pursuant to Nev.R.Civ.P. 16.1 (2)(b), the said witness, being an expert witness who is  
4 also a treating physician and thereby not retained or specially employed to provide expert  
5 testimony will not be submitting a C.V., Fee Schedule, Report or Trial History. If you disagree,  
6 let us know immediately or your failure to object will be deemed a stipulation that said  
7 documents are not required under the rule. Further, this expert is expected to testify consistent  
8 with the medical records related to the treatment of the Plaintiff for the subject incident, and  
9 other incidents having relevance to this action. The facts and opinions to which the expert is  
10 expected to testify include any and all facts and opinions in the said medical records, and that the  
11 medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident  
12 set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by  
13 any party in this action that contradict the same.

14 7. Timothy Trainor, M.D. and/or  
15 Person Most Knowledgeable/Custodian of Records  
16 Advanced Orthopedic & Sports Medicine  
17 8420 W. Warm Springs Rd.  
18 Las Vegas, NV  
19 Phone: (702) 740-5327

20 This individual is expected to testify as a treating physician and as an expert regarding  
21 the injuries sustained, past present and future medical treatment and impairment, prognosis,  
22 disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of  
23 all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records  
24 and bills. Pursuant to Nev.R.Civ.P. 16.1 (2)(b), the said witness, being an expert witness who is  
25 also a treating physician and thereby not retained or specially employed to provide expert  
26 testimony will not be submitting a C.V., Fee Schedule, Report or Trial History. If you disagree,  
27 let us know immediately or your failure to object will be deemed a stipulation that said  
28 documents are not required under the rule. Further, this expert is expected to testify consistent  
with the medical records related to the treatment of the Plaintiff for the subject incident, and  
other incidents having relevance to this action. The facts and opinions to which the expert is  
expected to testify include any and all facts and opinions in the said medical records, and that the  
medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident  
set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by  
any party in this action that contradict the same.

29 8. John A. Thompson, M.D. and/or  
30 Person Most Knowledgeable/Custodian of Records  
31 Desert Oasis Clinic  
32 6316 S. Rainbow Blvd., Suite 100  
33 Las Vegas, NV 89118  
34 Phone: (702) 310-9350

35 This individual is expected to testify as a treating physician and as an expert regarding  
36 the injuries sustained, past present and future medical treatment and impairment, prognosis,  
37 disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of

**NETTLES LAW FIRM**

1389 Galleria Drive Suite 200  
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1 all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records  
2 and bills. Pursuant to Nev.R.Civ.P. 16.1 (2)(b), the said witness, being an expert witness who is  
3 also a treating physician and thereby not retained or specially employed to provide expert  
4 testimony will not be submitting a C.V., Fee Schedule, Report or Trial History. If you disagree,  
5 let us know immediately or your failure to object will be deemed a stipulation that said  
6 documents are not required under the rule. Further, this expert is expected to testify consistent  
7 with the medical records related to the treatment of the Plaintiff for the subject incident, and  
8 other incidents having relevance to this action. The facts and opinions to which the expert is  
9 expected to testify include any and all facts and opinions in the said medical records, and that the  
10 medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident  
11 set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by  
12 any party in this action that contradict the same.

9. Christopher Milford, M.D., P.C. and/or  
Person Most Knowledgeable/Custodian of Records  
Silver State Neurology  
9811 W. Charleston Blvd., Ste. 2-357  
Las Vegas, NV 89117  
Phone: (702) 256-3637

13 This individual is expected to testify as a treating physician and as an expert regarding  
14 the injuries sustained, past present and future medical treatment and impairment, prognosis,  
15 disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of  
16 all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records  
17 and bills. Pursuant to Nev.R.Civ.P. 16.1 (2)(b), the said witness, being an expert witness who is  
18 also a treating physician and thereby not retained or specially employed to provide expert  
19 testimony will not be submitting a C.V., Fee Schedule, Report or Trial History. If you disagree,  
20 let us know immediately or your failure to object will be deemed a stipulation that said  
21 documents are not required under the rule. Further, this expert is expected to testify consistent  
22 with the medical records related to the treatment of the Plaintiff for the subject incident, and  
23 other incidents having relevance to this action. The facts and opinions to which the expert is  
24 expected to testify include any and all facts and opinions in the said medical records, and that the  
25 medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident  
26 set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by  
27 any party in this action that contradict the same.

10. Person Most Knowledgeable/Custodian of Records  
Edwin Suarez Physical Therapy  
4955 S. Durango Dr. #100  
Las Vegas, NV 89113  
Phone: (702) 489-9785

27 This individual is expected to testify as a treating physician and as an expert regarding  
28 the injuries sustained, past present and future medical treatment and impairment, prognosis,  
disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of  
all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records

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8 medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident  
9 set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by  
10 any party in this action that contradict the same.

11  
12 13. Andrew Cash, M.D. and/or  
13 Person Most Knowledgeable/Custodian of Records  
14 Nevada Institute of Spine Care  
15 9339 W. Sunset Road, Ste. 100  
16 Las Vegas, NV 89148  
17 Phone: (702) 630-3472

18 This individual is expected to testify as a treating physician and as an expert regarding  
19 the injuries sustained, past present and future medical treatment and impairment, prognosis,  
20 disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of  
21 all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records  
22 and bills. Pursuant to Nev.R.Civ.P. 16.1 (2)(b), the said witness, being an expert witness who is  
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28 other incidents having relevance to this action. The facts and opinions to which the expert is  
29 expected to testify include any and all facts and opinions in the said medical records, and that the  
30 medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident  
31 set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by  
32 any party in this action that contradict the same.

33  
34 14. Lee Wittenberg, DPM and/or  
35 Person Most Knowledgeable/Custodian of Records  
36 Apache Foot & Ankle Specialist LLC  
37 9710W. Tropicana Ave., Ste. 115  
38 Las Vegas, NV 89147  
39 Phone: (702) 362-2622

40 This individual is expected to testify as a treating physician and as an expert regarding  
41 the injuries sustained, past present and future medical treatment and impairment, prognosis,  
42 disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of  
43 all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records  
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45 also a treating physician and thereby not retained or specially employed to provide expert

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Henderson, NV 89014  
(702) 434-8282 / (702) 434-1488 (fax)

1 testimony will not be submitting a C.V., Fee Schedule, Report or Trial History. If you disagree,  
2 let us know immediately or your failure to object will be deemed a stipulation that said  
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7 medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident  
8 set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by  
9 any party in this action that contradict the same.

10  
11 15. Suresh Prabhu, M.D. and/or  
12 Person Most Knowledgeable/Custodian of Records  
13 Ascent Primary Care  
14 653 N. Town Center Dr., Ste. 217  
15 Las Vegas, NV 89144  
16 Phone: (702) 545-0751

17 This individual is expected to testify as a treating physician and as an expert regarding  
18 the injuries sustained, past present and future medical treatment and impairment, prognosis,  
19 disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of  
20 all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records  
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medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident  
set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by  
any party in this action that contradict the same.

21 16. Person Most Knowledgeable/Custodian of Records  
22 University Medical Center  
23 1800 West Charleston Blvd.  
24 Las Vegas, NV 89102  
25 Phone: (702) 383-2000

26 This individual is expected to testify as a treating physician and as an expert regarding  
27 the injuries sustained, past present and future medical treatment and impairment, prognosis,  
28 disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of  
all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records  
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1 documents are not required under the rule. Further, this expert is expected to testify consistent  
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5 medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident  
6 set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by  
7 any party in this action that contradict the same.

- 8  
9  
10  
11 17. Thomas Dunn, M.D.  
12 Craig T. Tingey, M.D.  
13 Andrew S. Martin, M.D. and/or  
14 Person Most Knowledgeable/Custodian of Records  
15 Desert Orthopaedic Center  
16 2800 East Desert Inn Road, Suite 100  
17 Las Vegas, NV 89121-3609  
18 Phone: (702) 731-1616

19 This individual is expected to testify as a treating physician and as an expert regarding  
20 the injuries sustained, past present and future medical treatment and impairment, prognosis,  
21 disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of  
22 all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records  
23 and bills. Pursuant to Nev.R.Civ.P. 16.1 (2)(b), the said witness, being an expert witness who is  
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medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident  
set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by  
any party in this action that contradict the same.

- 21 18. Yakov Shaposhnikov, M.D. and/or  
22 Person Most Knowledgeable/Custodian of Records  
23 Gastrointestinal and Liver Diseases  
24 2020 Goldring Avenue  
25 Las Vegas, NV 89106

26 This individual is expected to testify as a treating physician and as an expert regarding  
27 the injuries sustained, past present and future medical treatment and impairment, prognosis,  
28 disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of  
all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records  
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let us know immediately or your failure to object will be deemed a stipulation that said

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Henderson, NV 89014  
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1 documents are not required under the rule. Further, this expert is expected to testify consistent  
2 with the medical records related to the treatment of the Plaintiff for the subject incident, and  
3 other incidents having relevance to this action. The facts and opinions to which the expert is  
4 expected to testify include any and all facts and opinions in the said medical records, and that the  
5 medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident  
6 set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by  
7 any party in this action that contradict the same.

- 8
- 17. Enrique Lacayo, M.D. and/or  
Person Most Knowledgeable/Custodian of Records  
2020 Goldring Avenue  
Las Vegas, NV 89106

9 This individual is expected to testify as a treating physician and as an expert regarding  
10 the injuries sustained, past present and future medical treatment and impairment, prognosis,  
11 disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of  
12 all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records  
13 and bills. Pursuant to Nev.R.Civ.P. 16.1 (2)(b), the said witness, being an expert witness who is  
14 also a treating physician and thereby not retained or specially employed to provide expert  
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17 documents are not required under the rule. Further, this expert is expected to testify consistent  
18 with the medical records related to the treatment of the Plaintiff for the subject incident, and  
19 other incidents having relevance to this action. The facts and opinions to which the expert is  
20 expected to testify include any and all facts and opinions in the said medical records, and that the  
21 medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident  
22 set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by  
23 any party in this action that contradict the same.

- 18. Nanjunda Subramanyam, M.D. and/or  
Person Most Knowledgeable/Custodian of Records  
Nevada Heart and Vascular Center  
1820 Desert Inn Rd., Suite A  
Las Vegas, NV 89169

22 This individual is expected to testify as a treating physician and as an expert regarding  
23 the injuries sustained, past present and future medical treatment and impairment, prognosis,  
24 disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of  
25 all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records  
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expected to testify include any and all facts and opinions in the said medical records, and that the

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1 medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident  
2 set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by  
any party in this action that contradict the same.

3 19. Scott Manthei, M.D. and/or  
4 Person Most Knowledgeable/Custodian of Records  
5 Nevada Eye and Ear  
6 2598 Windmill Pkwy.  
Henderson, NV 89074

7 This individual is expected to testify as a treating physician and as an expert regarding  
8 the injuries sustained, past present and future medical treatment and impairment, prognosis,  
9 disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of  
10 all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records  
11 and bills. Pursuant to Nev.R.Civ.P. 16.1 (2)(b), the said witness, being an expert witness who is  
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17 other incidents having relevance to this action. The facts and opinions to which the expert is  
18 expected to testify include any and all facts and opinions in the said medical records, and that the  
19 medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident  
20 set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by  
any party in this action that contradict the same.

21 20. Tyree Carr, M.D. and/or  
22 Person Most Knowledgeable/Custodian of Records  
23 Nevada Institute of Ophthalmology  
24 2800 N. Tenaya Way, #102  
25 Las Vegas, NV 89128

26 This individual is expected to testify as a treating physician and as an expert regarding  
27 the injuries sustained, past present and future medical treatment and impairment, prognosis,  
28 disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of  
all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records  
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21. Troy Valdez – brother  
4 Starling Lane  
Aliso Viejo, CA 92656  
(949) 254-4550  
(949) 228-0959

This witness is expected to testify concerning his knowledge of Plaintiff's health and circumstances prior to and after the incident surrounding Plaintiff's allegations contained in the Complaint on file herein.

22. Holly Valdez – sister in law  
4 Starling Lane  
Aliso Viejo, CA 92656  
(949) 254-4550  
(949) 228-0959

This witness is expected to testify concerning her knowledge of Plaintiff's health and circumstances prior to and after the incident surrounding Plaintiff's allegations contained in the Complaint on file herein.

23. Dave Brobeck – Holly Valdez' father  
217 Monarch Bay Drive  
Dana Point, CA 92629  
(949) 499-9811

This witness is expected to testify concerning his knowledge of Plaintiff's health and circumstances prior to the incident surrounding Plaintiff's allegations contained in the Complaint on file herein.

24. Gaye Brobeck – Holly Valdez' mother  
217 Monarch Bay Drive  
Dana Point, CA 92629  
(949) 499-9811

This witness is expected to testify concerning her knowledge of Plaintiff's health and circumstances prior to and after the incident surrounding Plaintiff's allegations contained in the Complaint on file herein.

25. David Brobeck – Holly Valdez' brother  
20 Blue Heron Lane  
Aliso Viejo, CA 92656  
(949) 859-3793

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1 This witness is expected to testify concerning his knowledge of Plaintiff's health and  
2 circumstances prior to the incident surrounding Plaintiff's allegations contained in the Complaint  
on file herein.

3 26. Mele Brobeck – Holly Valdez' sister in law  
4 20 Blue Heron Lane  
5 Aliso Viejo, CA 92656  
(949) 859-3793

6 This witness is expected to testify concerning her knowledge of Plaintiff's health and  
7 circumstances prior to and after the incident surrounding Plaintiff's allegations contained in the  
Complaint on file herein.

8 27. Larry Muro – Troy Valdez' friend  
9 4739 Mascagni St.  
10 Ventura, CA 93003  
(805) 616-0274

11 This witness is expected to testify concerning his knowledge of Plaintiff's health and  
12 circumstances prior to the incident surrounding Plaintiff's allegations contained in the Complaint  
on file herein.

13 28. Janine Muro – Troy Valdez' friend  
14 4739 Mascagni St.  
15 Ventura, CA 93003  
16 (805) 616-0274

17 This witness is expected to testify concerning her knowledge of Plaintiff's health and  
18 circumstances prior to the incident surrounding Plaintiff's allegations contained in the Complaint  
on file herein.

19 29. Jim Holloway – Troy Valdez' friend  
20 2834 Serang Place  
21 Costa Mesa, CA 92626  
22 (714) 241-7777

23 This witness is expected to testify concerning his knowledge of Plaintiff's health and  
24 circumstances prior to the incident surrounding Plaintiff's allegations contained in the Complaint  
on file herein.

25 30. Rence Holloway – Troy Valdez' friend  
26 2834 Serang Place  
27 Costa Mesa, CA 92626  
28 (714) 241-7777

1 This witness is expected to testify concerning her knowledge of Plaintiff's health and  
2 circumstances prior to the incident surrounding Plaintiff's allegations contained in the Complaint  
on file herein.

3 31. Allen Stroub -- Plaintiff's Cousin  
4 7009 Bandolero Way  
5 Bakersfield, CA  
(805) 838-7187

6 This witness is expected to testify concerning his knowledge of Plaintiff's health and  
7 circumstances prior to the incident surrounding Plaintiff's allegations contained in the Complaint  
on file herein.

8  
9 32. Helen Stroub -- Plaintiff's Cousin  
7009 Bandolero Way  
10 Bakersfield, CA  
(805) 838-7187

11 This witness is expected to testify concerning her knowledge of Plaintiff's health and  
12 circumstances prior to the incident surrounding Plaintiff's allegations contained in the Complaint  
on file herein.

13  
14 33. Person Most Knowledgeable/Custodian of Records  
15 Las Vegas Radiology  
7500 Smoke Ranch Road, Suite 100  
16 Las Vegas, Nevada 89128  
(702) 254-5004

17  
18 This individual is expected to testify as a treating physician and as an expert regarding  
19 the injuries sustained, past present and future medical treatment and impairment, prognosis,  
20 disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of  
all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records  
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25 medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident  
set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by  
26 any party in this action that contradict the same.

27  
28 34. Person Most Knowledgeable/Custodian of Records  
Open Sided MRI of Las Vegas  
630 South Rancho, Suite G

1 Las Vegas, Nevada 89106  
2 (702) 932-2740

3 This individual is expected to testify as a treating physician and as an expert regarding  
4 the injuries sustained, past present and future medical treatment and impairment, prognosis,  
5 disability, pain and suffering, disfigurement, causation, and the reasonableness and necessity of  
6 all care and billing as it relates to the Plaintiff, and to authenticate and verify the medical records  
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14 expected to testify include any and all facts and opinions in the said medical records, and that the  
15 medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident  
16 set forth in the Complaint, and would rebut any opinions rendered by any witness disclosed by  
17 any party in this action that contradict the same.

18 Plaintiff reserves the right to call any witness designated by any other party to this  
19 proceeding.

20 Discovery is continuing and Plaintiff reserves the right to supplement this list as  
21 additional information becomes available.

22 **II. DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS**

23 *Pursuant to NRCP 161 (a)(1)(B), a copy of or a description by category and location of*  
24 *all documents, data compilations, and tangible things that are in the possession, custody, or*  
25 *control of the party and which are discoverable under Rule 26(b):*

- 26 1. Medical Records and Billing Statement  
27 Jon Sorelle, M.D.  
28 The Minimally Invasive Hand Institute  
8960 W. Tropicana Ave.  
Las Vegas, NV 89147  
Bate numbered PLTF000001 through PLTF000018 and attached hereto.
2. Diagnostic Records and Billing Statement  
Steinberg Diagnostics  
2950 S. Maryland Pkwy.  
Las Vegas, NV  
Bate numbered PLTF000019 through PLTF000033 and attached hereto.

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- 1 3. Medical Records and Billing Statement  
2 UMC Quickcare  
3 1800 West Charleston Blvd.  
4 Las Vegas, NV 89102  
5 Date numbered PLTF000034 through PLTF000289 and attached hereto.
- 6 4. Physical Therapy Records and Billing Statement  
7 Matt Smith Physical Therapy  
8 9499 W. Charleston Blvd., Suite 220  
9 Las Vegas, NV 89117  
10 Date numbered PLTF000290 through PLTF000374 and attached hereto.
- 11 5. Medical Records and Billing Statement  
12 Timothy Trainor, M.D.  
13 Advanced Orthopedic & Sports Medicine  
14 8420 W. Warm Springs Rd.  
15 Las Vegas, NV  
16 Date numbered PLTF000375 through PLTF000396 and attached hereto.
- 17 6. Medical Records and Billing Statement  
18 John A. Thompson, M.D.  
19 Desert Oasis Clinic  
20 6316 S. Rainbow Blvd., Suite 100  
21 Las Vegas, NV 89118  
22 Date numbered PLTF000397 through PLTF000407 and attached hereto.
- 23 7. Medical Records and Billing Statement  
24 Christopher Milford, M.D., P.C.  
25 Silver State Neurology  
26 9811 W. Charleston Blvd., Ste. 2-357  
27 Las Vegas, NV 89117  
28 Date numbered PLTF000408 through PLTF000431 and attached hereto.
8. Physical Therapy and Billing Statement  
Edwin Suarez Physical Therapy  
4955 S. Durango Dr. #100  
Las Vegas, NV 89113  
Date numbered PLTF000432 through PLTF000443 and attached hereto.
9. Medical Records and Billing Statement  
Edson Erkulvrawatr, M.D.  
Southern Nevada Pain Center  
6950 W. Desert Inn Rd., Ste. 110  
Las Vegas, NV 89117  
Phone: (702) 259-5550  
Date numbered PLTF000444 through PLTF000526 and attached hereto.

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- 1 10. Medical Records and Billing Statement  
2 Leo Germin, M.D.  
3 Clinical Neurology Specialists  
4 1691 W. Horizon Ridge Pkwy., Ste. 100  
5 Henderson, NV 89012  
6 Bate numbered PLTF000527 through PLTF000535 and attached hereto.
- 7 11. Medical Records and Billing Statement  
8 Andrew Cash, M.D.  
9 Nevada Institute of Spine Care  
10 9339 W. Sunset Road, Ste. 100  
11 Las Vegas, NV 89148  
12 Bate numbered PLTF000536 through PLTF000584 and attached hereto.
- 13 12. Medical Records and Billing Statement  
14 Lee Wittenberg, DPM  
15 Apache Foot & Ankle Specialist LLC  
16 9710W. Tropicana Ave., Ste. 115  
17 Las Vegas, NV 89147  
18 Bate numbered PLTF000585 through PLTF000598 and attached hereto.
- 19 13. Medical Records and Billing Statement  
20 Suresh Prahbu, M.D.  
21 Ascent Primary Care  
22 653 N. Town Center Dr., Ste. 217  
23 Las Vegas, NV 89144  
24 Bate numbered PLTF000594 through PLTF000598 and attached hereto.
- 25 14. Medical Records  
26 Thomas Dunn, M.D. and/or  
27 Desert Othopaedic Center  
28 2800 East Desert Inn Road, Suite 100  
Las Vegas, NV 89121-3609  
Bate numbered PLTF000599 through PLTF000627 and attached hereto.
15. Medical Records and Billing Statement  
Yakov Shaposhnikov, M.D. and/or  
Gastrointestinal and Liver Diseases  
2020 Goldring Avenue  
Las Vegas, NV 89106  
Bate numbered PLTF000628 through PLTF000649 and attached hereto.
16. Medical Records and Billing Statement  
Enrique Lacayo, M.D.  
2020 Goldring Avenue  
Las Vegas, NV 89106  
Bate numbered PLTF000650 through PLTF000677 and attached hereto.

**NETTLES LAW FIRM**

1389 Galleria Drive, Suite 200  
Henderson, NV 89014  
(702) 434-8282 / (702) 434-1488 (fax)

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- 17. Medical Records and Billing Statement  
Nanjunda Subramanyam, M.D.  
Nevada Heart and Vascular Center  
1820 Desert Inn Rd., Suite A  
Las Vegas, NV 89169  
Bate numbered PLTF000678 through PLTF000683 and attached hereto.
  
- 19. Medical Records and Billing Statement  
Scott Manthei, M.D.  
Nevada Eye and Ear  
2598 Windmill Pkwy.  
Henderson, NV 89074  
Bate numbered PLTF000684 through PLTF000699 and attached hereto.
  
- 20. Medical Records and Billing Statement  
Tyree Carr, M.D.  
Nevada Institute of Ophthalmology  
2800 N. Tenny Way, #102  
Las Vegas, NV 89128  
Bate numbered PLTF000700 through PLTF000716 and attached hereto.
  
- 21. Photograph of Plaintiff and friend dancing pre-accident  
Bate numbered PLTF000717 and attached hereto.
  
- 22. Photographs of Plaintiff and her brother, Troy Valdez, her sister-in-law, Holly Valdez and her niece pre-accident  
Bate numbered PLTF000718 and attached hereto.
  
- 23. Photograph of Plaintiff and her cousins, Allen and Helen Stroub pre-accident  
Bate numbered PLTF000719 and attached hereto.
  
- 24. Photographs of Plaintiff's injury area and bruising  
Bate numbered PLTF 000720 and PLTF 721
  
- 25. Authorization for the Release of Protected Health Information executed by Plaintiff for benefit of Defendant
  
- 26. Medical Records and Billing Statement  
Las Vegas Radiology  
8530 W. Sunset Road  
Las Vegas, Nevada 89113  
(702) 254-5004  
Bate numbered PLTF000722 through PLTF000728 are attached hereto.
  
- 27. Medical Billing Statement  
Thomas Dunn, M.D.

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Desert Orthopedic Center  
2930 W. Horizon Ridge Pkwy, #100  
Henderson, Nevada 89052  
(702) 731-1616  
Bate numbered PLTF000729 through PLTF000748 are attached hereto.

28. Medical Records and Billing Statement  
Open Sided MRI  
630 South Rancho, Suite G  
Las Vegas, Nevada 89106  
(702) 932-2740  
Bate numbered PLTF000749 through PLTF000752 are attached hereto.

29. **C.V., Fee Schedule and Trial History of  
Thomas Dunn, M.D. -- Desert Orthopedic Center**  
Bate numbered PLTF000753 through PLTF000756

Plaintiff reserves the right to offer any document(s) produced during this litigation including, but not limited to, documents produced by other parties and document attached as exhibits to pleadings and depositions.

Discovery is continuing and Plaintiff reserves the right to supplement this list as additional information becomes available.

**III. COMPUTATION OF DAMAGES**

*Pursuant to NRCP 16 1(a)(1)(C), a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary matter, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered:*

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1 A. MEDICAL DAMAGES:  
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PROVIDER	AMOUNT
Jon Sorelle, M.D. The Minimally Invasive Hand Institute	\$ 2,625.00
Steinberg Diagnostics	\$ 2,605.00
UMC -- Quick Care	\$ 7,783.56
Matt Smith Physical Therapy	\$ 3,235.00
Timothy J. Trainer, M.D. Advanced Orthopedic & Sports Medicine	\$ 181.00
John A. Thompson, M.D. Desert Oasis Clinic	\$ 250.00
Christopher Milford, M.D., P.C. Silver State Neurology	\$ 1,580.00
Edwin Suarez Physical Therapy	\$ 670.00
Southern Nevada Pain Center	\$ 680.00
Leo Germin, M.D. Clinical Neurology Specialists	\$ 2,510.00
Andrew Cash, M.D. Desert Institute of Spine Care	\$ 3,034.42
Lee Wittenberg, DPM Apache Foot & Ankle	\$ 310.00
Suresh Prahbu, M.D. Ascent Primary Care	\$ 270.00
Thomas Dunn, M.D. Desert Orthopaedic Center	\$ 1,640.00
Yakov Shaposhnikov, M.D. Gastrointestinal and Liver Diseases	\$ 828.00
Enrique Lacayo, M.D.	\$ 175.00

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Nanjunda Subramanyam, M.D. Nevada Heart and Vascular Center	\$ 1,440.00
Scott Manthei, M.D. Nevada Eye and Ear	\$ 750.00
Tyree Carr, M.D. Nevada Institute of Ophthalmology	\$ 790.00
Las Vegas Radiology	\$ 3,300.00
Open Sided MRI of Las Vegas	\$ 3,290.00
<b>TOTAL</b>	<b>\$ 37,946.98</b>

**B. ADDITIONAL DAMAGES:**

Plaintiff has also suffered loss of enjoyment of life due to ongoing pain, in an amount to be proved at trial.

**IV. INSURANCE POLICY**

*Pursuant to NRC P 161(a) (1) (D), for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment and any disclaimer or limitation of coverage or reservation of rights under any such insurance agreement:*

Plaintiff is unaware of any insurance agreement(s).

DATED this 18th day of September, 2015.

NETTLES LAW FIRM

/s/ Christian M. Morris  
BRIAN D. NETTLES, ESQ.  
Nevada Bar No. 7462  
CHRISTIAN M. MORRIS, ESQ.  
Nevada Bar No. 11218  
1389 Galleria Drive, Suite 200  
Henderson, Nevada 89014  
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCF 5(b) and EDCR 7.26, I certify that on this 18<sup>th</sup> day of September, 2015, I served the foregoing *Plaintiff's Fifth Supplement To Initial Disclosures* to the following parties by electronic transmission through the Wiznet system:

Lawrence J. Semenza, III, Esq.  
Christopher D. Kircher, Esq.  
Lawrence J. Semenza, III, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
(702) 835-6803  
Fax: (702) 920-8669  
*Attorneys for Defendant*  
*Wynn Las Vegas, LLC dba*  
*Wynn Las Vegas*

  
An Employee of Nettles Law Firm

CURRICULUM VITAE

THOMAS DUNN, M.D.  
ORTHOPAEDIC SURGERY

SPECIALIZING IN SPINE SURGERY  
AND DISORDERS OF THE NECK AND BACK

**BUSINESS ADDRESS:** DESERT ORTHOPAEDIC CENTER  
2800 E. Desert Inn Road, Suite 100  
Las Vegas, Nevada 89121  
(702) 731-1616

**BOARD CERTIFICATION:** Fellow, American Academy of Orthopaedic Surgeons  
February 22, 1996

Diplomate, American Board of Orthopaedic Surgeons  
July, 1994; Recertification - January 1, 2005

**PRACTICE HISTORY:** DESERT ORTHOPAEDIC CENTER  
1995 - Present

Private Practice - Thomas Dunn, M.D.  
San Diego, California 1992-1995

**POST DOCTORAL TRAINING:**

**Fellowship:** Rancho Los Amigos Hospital  
Downey, California  
Spine Surgery  
August, 1991 to July, 1992

**Residency:** University of California, Irvine Medical Center  
General Surgery  
June, 1986 to June, 1987

University of California, Irvine Medical Center  
Orthopaedic Surgery  
July, 1987 to June, 1991

**Internship:** University of California, Irvine Medical Center  
General Surgery  
June, 1985 to June, 1986

**EDUCATION:**

**Medical School:** University of California, Irvine College of Medicine  
Irvine, California  
Degree: Doctor of Medicine  
June, 1985

PLTF000753

Curriculum Vitae Thomas Dunn, MD.

Undergraduate School: University of California, San Diego  
La Jolla, California  
Degree: Bachelor of Arts - Biology  
June, 1981

**CERTIFICATIONS:**

Diplomate, American Board of Spine Surgery  
Recertification: December 31, 2003

National Board of Medical Examiners #303711  
July, 1986

Fluoroscopy X-Ray Supervisor and Operator  
August, 1987

**LICENSURE:**

Nevada	6714	1993
California	G59910	1987
Hawaii	8708	1994 (Inactive)
Arizona	23385	1995

**HOSPITAL  
AFFILIATIONS:**

St. Rose Dominican Hospital, Las Vegas, Nevada  
Spring Valley, Las Vegas, Nevada  
Valley Hospital, Las Vegas, Nevada  
Desert Springs Hospital, Las Vegas, Nevada  
St. Rose San Martin, Las Vegas, Nevada  
MountainView Hospital, Las Vegas, Nevada

**PROFESSIONAL  
ORGANIZATIONS:**

Diplomate, American Board of Orthopaedic Surgery  
Diplomate American Board of Spine Surgery  
Fellow - American Academy of Orthopaedic Surgeons  
North American Spine Society (NASS)  
Clark County Medical Society  
Nevada Medical Association  
American Medical Association  
California Orthopaedic Association  
Former Chairman - Ad Hoc Spine Committee  
Sunrise Hospital

THOMAS DUNN, M.D.  
DESERT ORTHOPAEDIC CENTER  
MEDICAL / LEGAL FEE SCHEDULE  
2015

Prepayment or deposit required for all services

<b>Base Fee for IME</b>	\$1500.00
<b>Fees Relating to Record Reviews/IMEs:</b>	
Sort/organize records (including excessive records)	\$800 per hour
Review of records/creation of abstract	\$800 per hour
Surgery Cost Letters	\$600 minimum
Dictation/prolonged dictation (excessive records and/or complex case)	\$800 per hour
Extensive interview/examination (prolonged examination/complex case)	\$600 per hour

**STAT FEE:**

Additional \$1,000 if final report required within 1-7 calendar days of record receipt date  
Additional \$ 500 if final report required within 8-14 calendar days of record receipt date

Phone Conference (0.25/hr increments)	\$1000 per hour
Arbitration	\$2000 per hour
Deposition (One hour minimum)	\$1750 per hour
Video Depositions (One hour minimum)	\$2500 per hour
Pre Deposition	\$1000 per hour
Meeting with Attorney (One hour minimum with Dr. pre-approval)	\$1000 per hour

**Refund Policy for above services:**

Full refund only if canceled 7 calendar days prior  
1/3 refund if canceled more than 48 hours prior  
No refund if canceled less than 48 hours prior

**Court Appearance:**

1/2 day \$5,000  
Whole day \$10,000

Retainer fee of \$5,000 for court appearance due 7 calendar days in advance of appearance date.

No refunds given for cancellation within 7 calendar days of appearance date.

revised 04/22/2015

PLTF000755





CLERK OF THE COURT

1 BRIAN D. NETTLES, ESQ.  
Nevada Bar No. 7462  
2 CHRISTIAN M. MORRIS, ESQ.  
Nevada Bar No. 11218  
3 NETTLES LAW FIRM  
4 1389 Galleria Drive, Suite 200  
Henderson, Nevada 89014  
5 Telephone: (702) 434-8282  
6 Facsimile: (702) 434-1488  
7 [brian@nettlslawfirm.com](mailto:brian@nettlslawfirm.com)  
[christian@nettlslawfirm.com](mailto:christian@nettlslawfirm.com)  
8 Attorneys for Plaintiff

9  
10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 YVONNE O'CONNELL, an individual,  
13  
14 Plaintiff,

15 vs.

16 WYNN LAS VEGAS, LLC, a Nevada  
17 Limited Liability Company, doing business  
18 as WYNN LAS VEGAS; DOES I through  
19 X; and ROE CORPORATIONS I through X,  
inclusive,

20 Defendants.

CASE NO. A-12-655992-C

DEPARTMENT NO. V

**PLAINTIFF'S BRIEF REGARDING  
CAUSATION TESTIMONY BY DRS.  
DUNN AND TINGEY**

21  
22 Plaintiff, Yvonne O'Connell, by and through her counsel, Brian D. Nettles, Esq. and  
23 Christian M. Morris, Esq., of the Nettles Law Firm, submits *Plaintiff's Brief Regarding*  
24 **Causation Testimony by Drs. Dunn and Tingey.**

25 .....

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This is made and based upon the attached memorandum of points and authorities, all papers and pleadings on file herein and such oral argument as the court may allow at hearing on this matter.

DATED this 9<sup>th</sup> day of November, 2015.

NETTLES LAW FIRM

/s/ Christian M. Morris  
BRIAN D. NETTLES, ESQ.  
Nevada Bar No. 7462  
CHRISTIAN M. MORRIS, ESQ.  
Nevada Bar No. 11218  
1389 Galleria Drive, Suite 200  
Henderson, Nevada 89014  
Attorneys for Plaintiffs

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

The present case arises out of an incident on or about February 8, 2010, where Plaintiff Yvonne O’Connell was a guest at Wynn Las Vegas. When Plaintiff was passing through the Atrium Walkway, an area with a high amount of foot traffic, she slipped and fell in a pool of liquid present on the multi-colored tile floor. As a result of the fall the Plaintiff sustained injuries.

The pool of liquid which caused the fall was approximately seven (7) feet long and had been on the floor long enough that it had begun to dry. The portion that was dry was sticky and had visible footprints in it. The substance was observed by Plaintiff and multiple employees of Wynn. Following Plaintiff’s fall, Defendant Wynn’s employee(s) observed the liquid, but cleaned the area without first taking photographs.

1 Plaintiff’s expert treating physicians have opined that Plaintiff must undergo a 3 level  
2 cervical fusion as well as surgery to her knee. Her treating physicians attribute causation to the  
3 incident at Wynn when Plaintiff fell. Prior to trial, Defendant seeks to exclude testimony  
4 regarding the cost of Plaintiff’s future medical treatment arising from her injuries. However, the  
5 fact Plaintiff is in need of surgery is highly relevant to the jury’s determination of whether the  
6 Plaintiff will continue to suffer from pain in the future; therefore, all evidence regarding future  
7 treatment is relevant and admissible.

8 **II.**

9 **ARGUMENT**

10 Testimony by a treating physician can reach causation and need not be limited to  
11 diagnosis and prognosis. A treating physician can opine on any topic for which she is qualified,  
12 provided either (1) the opinion was reached “during the scope of treatment,” or (2) a retained  
13 expert disclosure is provided. FCH1, LLC v. Rodriguez, 130 Nev. \_\_\_, \_\_\_, 335 P.3d 183, 189  
14 (2014) (quoting Goodman v. Staples the Office Superstore, LLC, 644 F.3d 817, 826 (9th. Cir.  
15 2011)). Thus, when a treating physician develops “opinions as to the cause of an injury, based on  
16 [her] examination of the patient,” that testimony is proper and does not require prior disclosure  
17 of 16.1(a)(2)(b) report. Ghiorzi v. Whitewater Pools & Spas, Inc., 2011 U.S. Dist. LEXIS  
18 125329 at \*18–\*21, 2011 WL 5190804 (D. Nev. Oct. 28, 2011) (cited approvingly in FCH 1,  
19 LLC, 130 Nev. at \_\_\_, 335 P.3d at 189) (citation omitted).

20 i. *Defendant’s cited cases are inapposite to the instant case*

21 Defendant’s cited cases address issues involving unreliable testimony not present in the  
22 instant case. For example, in Perkins v. United States, the district court held a physician’s  
23 testimony about causation was not reliable because the doctor either categorically dismissed or  
24 ignored evidence of pre-existing conditions. 626 F. Supp. 2d 587, 594 (2009). There the doctor  
25 did not consider, or summarily rejected, alternative theories of causation choosing instead the  
26 cause proffered by the plaintiff, a recent motor vehicle accident. Id. However, the court observed  
27 that the doctor was not informed of several previous injury-causing events including prior motor  
28 vehicle accidents, a fall from a ramp resulting in a knee and back injury, a fall at work injuring

1 head and back, injury from picking up a heavy bag, a trip to the emergency room one month  
2 prior to the accident at issue in the case. Id. at 593.

3 The situation here is dramatically different. Both Drs. Dunn and Tingey knew of  
4 Plaintiff's conditions including Marfan's Syndrome and Fibromyalgia. Considering these  
5 conditions and other aspects of her reported medical history, the doctors arrived at conclusions  
6 about causation of Plaintiff's injuries. There is no evidence to suggest that Drs. Dunn and Tingey  
7 were unaware of, or did not consider, relevant parts of Plaintiff's medical history in coming to  
8 their opinions as to causation.

9 Hare v. Opryland Hospitality is also inapplicable here. 2010 U.S. Dist. LEXIS 97777,  
10 2010 WL 3719915 (D. Md. Sept. 17, 2010). In Hare, the plaintiff alleged his face was cut by a  
11 broken alcohol bottle during a melee with nightclub staff. Id. The plaintiff in Hare was  
12 attempting to use his treating physician's testimony to prove that it was a bottle that cut him, an  
13 issue at great dispute, as opposed to a fall to the ground or some other mechanism of injury. Id.  
14 The issue was not whether the plaintiff was cut, rather it was what cut the plaintiff. The judge  
15 found the doctor's testimony as to causation unreliable because the doctor relied on the  
16 plaintiff's telling of the story and had no evidence to show that the cut came from glass, rather  
17 than some other sharp object.

18 Again, the situation here is dramatically different. Plaintiff's calling of her treating  
19 physicians is to show that the slip and fall caused her injuries, not what substance caused the slip  
20 and fall. Here, the fact that she fell is not in real dispute, it is whether the fall caused the injuries  
21 Drs. Dunn and Tingey diagnosed.

22 Finally, Goomar v. Centennial Life Ins. Co., is also inapplicable. 855 F. Supp. 319 (S.D.  
23 Cal. March 8, 1994). In Goomar, the plaintiff had molested four female patients in his medical  
24 practice. Id. He claimed total disability caused the molestations and that the resulting harm to his  
25 practice ought to be covered by certain insurance policies he maintained. Id. The court held that  
26 two physician's diagnoses of a psychotic episode were unreliable because they were arrived at  
27 some 14 years later based on the patient's self-report and no other medical or psychiatric  
28 information.

1           Once again, this case is not applicable to the present situation. Plaintiff’s treatment by  
2 Drs. Dunn and Tingey (Dr. Tingey replaced Dr. Martin) are much closer in time and rely on  
3 Plaintiff’s self-reported history, physical examination, and diagnostic tests. Moreover, Plaintiff’s  
4 injuries are readily observable in diagnostic tests, unlike in Goomar where the “psychotic  
5 episode” was subjective.

6           ii.     FCH 1 stands for the proposition that a treating physician may opine as to  
7           causation when her opinion was reached during the course of treatment

8           In FCH 1, LLC v. Palms, the Nevada Supreme Court did not expressly discuss when a  
9 treating physician could testify as to causation without submitting a report. This question was not  
10 at issue. Nevertheless, the Court seemed to make clear, by its selection of federal case law, that  
11 opinion testimony as to injury causation is proper from a treating physician when the opinion  
12 was reached during the course of treatment. As discussed above, the Court cited two federal  
13 cases, Goodman v. Staples and Ghiorzi v. Whitewater. Goodman v. Staples the Office  
14 Superstore, LLC, 644 F.3d 817, 826 (9th. Cir. 2011); Ghiorzi v. Whitewater Pools & Spas, Inc.,  
15 2011 U.S. Dist. LEXIS 125329 at \*18–\*21, 2011 WL 5190804 (D. Nev. Oct. 28, 2011). Both of  
16 these cases make clear that treating physicians may testify as to causation (without submitting an  
17 expert report) when the opinion was reached during treatment.

18           For example, in Goodman, the Ninth Circuit wrote approvingly of a Sixth Circuit case  
19 that allowed causation testimony from a treating physician because the physician “had formed  
20 his opinion as to causation during the course of treatment.” 644 F.3d at 825 (citation omitted).  
21 The court went on to “join” its sister circuits in holding that a treating physician may testify to  
22 opinions formed during the course of treatment without an expert report. Id. at 826.

23           Next the Nevada Supreme Court cited Ghiorzi (an unpublished federal district court  
24 decision) which contained even clearer language. The Ghiorzi court quoted a decision in which  
25 the court rejected a defendant’s argument that testimony as to causation by a treating physician  
26 required an expert report:

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It is common place for a treating physician during, and as part of, the course of treatment of a patient to consider things such as the cause of the medical condition, the diagnosis [and] the prognosis.

2011 U.S. Dist. LEXIS 125329 at \*19, 2011 WL 5190804 (citation omitted). The district court also cited a second decision for the same proposition:

[T]reating physicians can appropriately have opinions as to the cause of an injury, based on their examination of the patient.

2011 U.S. Dist. LEXIS 125329 at \*20, 2011 WL 5190804 (citation omitted). By selecting these cases the Nevada Supreme Court seemingly made clear that testimony as to causation by a treating physician is appropriate without an expert report when the opinion was formed during the course of treatment.

In this case, Plaintiff is only presenting Dr. Tingey to opine as to the diagnosis, care, and treatment of Plaintiff and opinions he came to during the course of treatment.

**III.**  
**CONCLUSION**

Based on the foregoing law, facts, and analysis, Plaintiff respectfully requests this Court **not** prohibit Drs. Dunn and Tingey from discussing opinions as to causation developed during the course of their treatment of Plaintiff.

DATED this 9<sup>th</sup> day of November, 2015.

NETTLES LAW FIRM  
  
\_\_\_\_\_  
/s/ Christian M. Morris  
BRIAN D. NETTLES, ESQ.  
Nevada Bar No. 7462  
CHRISTIAN M. MORRIS, ESQ.  
Nevada Bar No. 11218  
1389 Galleria Drive, Suite 110  
Henderson, Nevada 89014  
Attorneys for Plaintiffs

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**CERTIFICATE OF SERVICE**

Pursuant to NEFCR 9, NRCF 5(b) and EDCR 7.26, I certify that on this 9<sup>th</sup> day of November, 2015, I served the foregoing ***Plaintiff's Brief Regarding Causation Testimony by Drs. Dunn and Tingey*** to the following party by electronic transmission through the Wiznet system:

Lawrence J. Semenza, III, Esq.  
Christopher D. Kircher, Esq.  
Lawrence J. Semenza, III, P.C.  
10161 Park Run Drive, Suite 150  
Las Vegas, Nevada 89145  
(702) 835-6803  
Fax: (702) 920-8669  
Attorneys for Defendant  
Wynn Las Vegas, LLC dba  
Wynn Las Vegas

/s/ Kim L. Alverson  
An Employee of the  
NETTLES LAW FIRM