Case No. 14-CV-00260-DC
Dept. II

NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI, an individual;

Plaintiff,

vs.

JEFFREY D. SPENCER, an individual & DOES 1-5;

Defendants.

_____/

JEFFREY D. SPENCER, an individual,

Counterclaimant,

vs.

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

Counterdefendants.

_____/

NOTICE OF APPEAL

Doyle Law Office
Kerry S. Doyle, Esq.
8755 Technology Way
Suite J
Reno, Nevada 89521
(775) 525-0889
kerry@rdoylelaw.com

Counterclaimant, Jeffrey Spencer, by and through his counsel, DOYLE LAW OFFICE, PLLC, hereby files this appeal from the Order dated November 5, 2018, granting three motions for attorneys' fees and costs. Written notice of entry of the order was served

on November 16, 2018. *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000).

DATED this 12th day of December, 2018.

DOYLE LAW OFFICE, PLLC

By: _____

KERRY S. DOYLE, ESQ.
NEVADA BAR NO. 10866
4600 KIETZKE LANE, SUITE I-207
RENO, NEVADA 89502
(775) 525-0889
ATTORNEYS FOR SPENCER

Doyle Law Office

Kerry S. Doyle, Esq.
8755 Technology Way
Suite 1
Reno, Nevada 89521
(775) 525-0889

kerry@rdoylelaw.com

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the DOYLE LAW OFFICE, PLLC, and that on the date shown below, I caused service to be completed of a true and correct copy of the foregoing NOTICE OF APPEAL by:

_____ personally delivering;

_____ delivery via Reno/Carson Messenger Service;

_____ sending via Federal Express (or other overnight delivery service);

__X__ depositing for mailing in the U.S. mail, with sufficient postage affixed thereto; or,

_____ delivery via electronic means (fax, eflex, NEF, etc.) to:

Douglas R. Brown
Sarah Molleck
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno NV 89519

Michael A Pintar
Glogovac & Pintar
427 W. Plumb Lane
Reno NV 89509

Tanika M. Capers
American Family Mutual Insurance Company
6750 Via Austi Parkway, Ste. 310
Las Vegas NV 89119

DATED this 12 December 2018.

By _____

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Counterdefendants.

_____/

CASE APPEAL STATEMENT – APPEAL FROM ATTORNEYS' FEES ORDERS

Doyle Law Office
Kerry S. Doyle, Esq.
4600 Kietzke Lane
Suite 1-207
Reno, Nevada 89502
(775) 525-0889
kerry@rdoylelaw.com

Counterclaimant, Jeffrey Spencer, by and through his counsel of record, DOYLE LAW OFFICE, PLLC, files this Case Appeal Statement pursuant to Nevada Rule of Appellate Procedure 3(f).

1. **Name of appellant filing this case appeal statement:** Jeffrey D. Spencer.

2. **Identify the judge issuing the decision, judgment, or order appealed from:** Senior Judge Steven Kosach.

3. **Identify each appellant and the name and address of counsel for each appellant:** Jeffrey Spencer is represented on appeal by Kerry S. Doyle of the Doyle Law Office, PLLC at 4600 Kietzke Lane, Ste. I-207, Reno, Nevada 89502.

4. **Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):**

Listed below are the respondents and their counsel in the trial court proceedings:

Helmut Klementi
Represented by:
Douglas R. Brown
Christian L. Moore
Sarah Molleck
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno NV 89519

Elfriede Klementi, Mary Ellen Kinion, and the Estate of Egon Klementi,
Represented by
Michael A Pintar
Glogovac & Pintar
427 W. Plumb Lane
Reno NV 89509

Rowena Shaw and Peter Shaw
Represented by:
Tanika M. Capers
American Family Mutual Insurance Company
6750 Via Austi Parkway, Ste. 310
Las Vegas NV 89119

5. **Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):** All of the listed attorneys listed are licensed in Nevada.

Doyle Law Office
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4600 Kietzke Lane
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6. Indicate whether appellant was represented by appointed or retained counsel in the district court: Jeffrey Spencer was represented by retained counsel in the district court.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal: Jeffrey Spencer is represented by retained counsel on appeal.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave: Jeffrey Spencer has not been granted leave to proceed in forma pauperis.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed): The proceedings were initiated on December 17, 2014.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

When Egon and Elfriede Klementi were upset by a fence the Spencer's built, they began a campaign of falsehoods against Spencer. They enlisted Egon's twin brother Helmut, and their neighbors Peter and Rowena Shaw and Mary Ellen Kinion. Although the dispute started over a fence, it became much more sinister when Helmut Klementi falsely accused Spencer of punching him, Egon falsely accused Spencer of assaulting him, and the others repeated these falsehoods, presenting them to public officials, medical care providers, Spencer's employer, and law enforcement, as though they personally witnessed the alleged crimes.

Respondents pushed for criminal prosecution based on the false claims and admitted that they had been trying to get him fired by his employer and his race team. Respondents succeeded in getting criminal charges filed, they succeeded in getting Spencer fired, and they succeeded in ruining Spencer's reputation. They did not succeed in obtaining a conviction;

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Spencer was acquitted of all charges against him after the witnesses' deceptions and lack of personal knowledge were revealed. Not only did Spencer suffer financial damage from defending these claims, these actions understandably caused Spencer severe emotional distress.

Helmut Klementi initially filed this action, suing Spencer civilly after Spencer was acquitted of all criminal charges. Spencer counterclaimed against Helmut Klementi and the other respondents, asserting defamation, intentional infliction of emotional distress, malicious prosecution, and civil conspiracy. Despite evidence creating genuine issues of material fact as to the claims, the trial court granted summary judgment in favor of each respondent. Spencer appealed the orders granting summary judgment, and that appeal is docketed in the Nevada Supreme Court as case number 77086.

At the hearing on summary judgment, the trial court announced that it would award attorneys' fees and costs to the prevailing parties, before any such motions had been filed. The parties filed motions as a formality and the court entered orders awarding over $100,000 in attorneys' fees and costs. This appeal is from that separate post-judgment order entered on November 5, 2018.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding: The orders granting summary judgment have been appealed from this action and those are docketed in the Nevada Supreme Court as case number 77086.

12. Indicate whether this appeal involves child custody or visitation: This action does not involve child custody or visitation.

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Doyle Law Office

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Suite 1-207
Reno, Nevada 89502
(775) 525-0889

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13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: The parties have previously discussed settlement and Spencer is willing to continue those discussions; however, the settlement judge assigned in the underlying substantive action excused the parties from the settlement program as he deemed further discussions futile.

DATED this 12th day of December, 2018.

DOYLE LAW OFFICE, PLLC

By: _____

KERRY S. DOYLE, ESQ.
NEVADA BAR NO. 10866
4600 KIETZKE LANE, SUITE I-207
RENO, NEVADA 89502
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ATTORNEYS FOR APPELLANT

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Glogovac & Pintar
427 W. Plumb Lane
Reno NV 89509

Tanika M. Capers
American Family Mutual Insurance Company
6750 Via Austi Parkway, Ste. 310
Las Vegas NV 89119

DATED this 12 December 2018.

By _____

Doyle Law Office
Kerry S. Doyle, Esq.
4600 Kietzke Lane
Suite I-207
Reno, Nevada 89502
(775) 525-0889
kerry@rdoylelaw.com

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

12/18/18

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

Klementi V Spencer

C A S E H I S T O R Y

INVOLVED PARTIES

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

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

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

CALENDAR EVENTS

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

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

JUDGE HISTORY

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

DOCUMENT TRACKING

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

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
014000	Notice of Appearance	03/13/15		DRG 000				N/A MB
015000	Application to Proceed in Informa Pauperis	03/19/15		DRG OTH001		Ruled	05/09/16	N/A MB
016000	Answer to Counterclaim	03/23/15		DRG 000				N/A MB
017000	Order to Proceed in Forma Pauperis	03/23/15		DRG OTH001				N/A MB
018000	Certificate of Service	03/30/15		DRG PLT001				N/A MB
019000	Notice of Association of Counsel	04/13/15		DRG PLT001				N/A MB
020000	Order	04/14/15		DRG 000				N/A MB
021000	Notice of 16.1 Early Case Conference	05/14/15		TWG PLT001				DG DG
022000	Demand for Jury Trial	06/03/15		TWG PLT001				HC HC
023000	Notice of Motion and Motion for Leave to Amend Complaint	06/15/15		TWG PLT001				HC HC
024000	Order Transferring Case to Dept. I	07/01/15		TWG 000				DG DG
025000	Notice of Peremptory Challenge of Judge	07/16/15		NTY DEF001				DG DG
026000	Request For Assignment of Judge	07/20/15		NTY 000				DG DG
027000	Memorandum of Temporary Assignment	07/24/15		NTY 000				MB MB
028000	Joint Case Conference Report Filed by DEF001-Spencer, Jeffrey D., OTH001-Kinion, Mary Ellen, PLT001-Klementi, Helmut	08/12/15		TWG DEF001				DG DG
029000	Order	09/09/15		NTY 000				MB MB
030000	Scheduling Order	10/12/15		NTY 000				MB MB
031000	Order Setting Trial	10/12/15		NTY 000				MB MB
032000	Notice of Appearance	11/25/15		TWG OTH001				KW KW
033000	Motion For Substitution of Counsel	01/08/16		NTY DEF001		Ruled	06/01/16	N/A KW
034000	Answer to Counterclaim	02/09/16		TWG OTH001				MB MB
035000	Notice of Association of Counsel	04/04/16		TWG PLT001				MB MB
036000	Motion for Leave to Amend Complaint	04/12/16		TWG PLT001				MB MB
037000		04/13/16		TBA 000				MB MB

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
038000	Third-Party Defendant Mary Kinion's Motion for Summary Judgment	04/22/16		TWG OTH001				MB MB
039000		04/25/16		TBA 000				MB MB
040000	Demand for Prior Pleadings and Discovery	04/25/16		TWG OTH001				HC HC
041000		04/26/16		TBA 000				HC HC
042000	Notice of Withdrawal of Counsel Laub & Laub	05/09/16		NTY PLT001				HC HC
043000	Order	05/09/16		TWG 000				MB MB
044000	Joinder to Third-Party Defendant Mary Kinion's Motion for Summary Judgment	05/09/16		TWG OTH001				MB MB
045000	Substitution of Attorney	05/09/16		TWG PLT001				MB MB
046000	Notice of Non-Opposition to Helmut Klementi's Motion for Leave to File Amended Complaint	05/13/16		NTY PLT001				HC HC
047000	Notice of Appearance	05/18/16		TWG DEF001				HC HC
048000	Opposition to Motion for Summary Judgment	05/18/16		TWG DEF001				HC HC
049000	Request for Submission of Motion for Substitution of Counsel	05/20/16		TWG DEF001				MB MB
050000	Reply in Support of Third-Party Defendant Mary Kinion's Motion for Summary Judgment	05/23/16		TWG OTH001				DG DG
051000	Order	06/01/16		TWG 000				MB MB
052000	Defendant's Motion to Compel Response to Subpoena Duces Tecum	07/05/16		TWG DEF001				MB MB
053000		07/06/16		TBA 000				MB MB
054000	Defendant's Designation of Expert Witnesses	07/13/16		TWG DEF001				KW KW
055000	Douglas County's Opposition to Defendant Motion to Compel Response to Subpoena Duces Tecum and Cross Motion to Quash Subpoena	07/21/16		TWG 000				N/A KW
056000	Defendant's Reply to Motion to Compel Response to Subpoena Duces Tecum	08/01/16		TWG DEF001				KW KW

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

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

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

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

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

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

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

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

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

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
220000	Notice of Appeal	12/17/18		SRK DEF001				AN AN
221000	Case Appeal Statement - Appeal From Attorneys' Fees Orders	12/17/18		SRK DEF001				AN AN
222000	Transcript of Proceedings (1/30/17)	12/17/18		SRK 000				AN AN

TICKLE

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

Case No. 14-CV-0260

Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendant. /

JEFFREY D. SPENCER,

Counterclaimant,

vs.

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

Counterdefendants & Third Party Defendants. /

ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

/ / /

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

IT IS SO ORDERED.

Dated this 2 day of November, 2018.

STEVEN R. KOSACH
Senior District Judge

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

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Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
Reno, NV 89519

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50 W. Liberty St., Ste. 1050
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Reno, NV 89502

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

Judicial Executive Assistant

Case No. 14-CV-0260

Dept. No. I

RECEIVED
NOV 19 2018
Douglas County
District Court Clerk

FILED
2018 NOV 19 AM 10: 30
BOBBIE R. WILLIAMS
CLERK
BY [illegible] DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER,

Defendant

JEFFREY D. SPENCER,

Counterclaimant,

vs.

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

Counterdefendants.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an *Order* was entered November 5, 2018, that granted the following: Counter-defendant HELMUT KLEMENTI's *Motion for Attorney's Fees* and *Verified Memorandum of Costs*, Third-Party Defendant ELFRIEDE KLEMENTI's *Motion for Attorneys' Fees and Costs*, and Third-Party Defendant MARY ELLEN KINION's *Motion for Attorneys' Fees and Costs*.

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

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

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

Dated: November 16th, 2018.

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

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

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on November 16, 2018, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **NOTICE OF ENTRY OF ORDER**, addressed to the following:

Jeffrey D. Spencer
P. O. Box 2326
Stateline, Nevada 89449
In Pro Per

Kerry S. Doyle, Esq.
4600 Kietzke Lane, Suite I-207
Reno, Nevada 89502
Attorney for Jeffrey Spencer

David M. Zaniel, Esq.
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50 West Liberty Street, Suite 1050
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Attorney for Jeffrey Spencer

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

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

Susan G. Davis

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

EXHIBIT 1

EXHIBIT 1

Case No. 14-CV-0260

Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendant. /

JEFFREY D. SPENCER,

Counterclaimant,

vs.

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

Counterdefendants & Third Party Defendants. /

ORDER

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

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

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

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

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

/ / /

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

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

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

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

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

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

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

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

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

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

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

/ / /

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

IT IS SO ORDERED.

Dated this 2 day of November, 2018.

STEVEN R. KOSACH
Senior District Judge

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

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Lemons, Grundy & Eisenberg
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Reno, NV 89502

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

Judicial Executive Assistant

CASE NO.	14-CV-0260	
DEPT NO.	I	
HELMUT KLEMENTI,	Plaintiff,	PLAINTIFF'S COUNSEL: Douglas R. Brown, ESQ.
v.		
JEFFREY D. SPENCER,	Defendant,	DEFENDANT'S COUNSEL: William Routsis, II, ESQ.
DATE:	12-15-2016	Lynn G. Pierce, ESQ. David Zaniel, ESQ.
JUDGE:	STEVEN R. KOSACH	
CLERK:	Delores Goelz	
COURT REPORTER:	Lesley Clarkson	
LAW CLERK:	John Seddon	
BAILIFFS:	David Nishikida	
OTHERS:	Scott Glogavac, ESQ. - counsel for Egon & Elfriede Klementi and Mary Ellen Kinion Tanika M. Capers, ESQ. - counsel for Rowena & Peter Shaw	

The above-entitled matter was before the Court this being the time set by the Court for a hearing on PRE-TRIAL PENDING MOTIONS. The plaintiffs were present in Court and represented by counsel. The defendant was present in Court and represented by counsel.

EXHIBITS MARKED:
1

Mr. Zaniel informed the Court that Defendant's Motion to Compel Response to Subpoena Duces Tecum will be withdrawn with prejudice. Prior to the hearing, Mr. Zaniel met with Deputy District Attorney, Zach Wadle and an agreement was reached where the District Attorney's Office will produce all documents requested.

Mr. Zaniel requested that the hard drive containing footage from Mr. Spencer's camera be produced.

Counsel agrees to give the hard drive to Mr. Brown today.

The Court will view the hard drive in camera for relevance.

The Court signed an Order Granting Helmut Klementi's Motion for Leave to Amend Complaint.

The Court directed the parties to refrain from filing any answers until the Court has ruled on other pending motions.

The Court withhold a ruling on the Motion for Summary Judgment and the Motion to Amend Counterclaim & Third Party Complaint.

The Court set a Review for Monday, January 30th, 2017 at 1:30 p.m.

CASE NO.	14-CV-0260	
DEPT NO.	I	
HELMUT KLEMENTI,	Plaintiff,	PLAINTIFF'S COUNSEL: Douglas R. Brown, Esq.
v.		
JEFFREY D. SPENCER,	Defendant,	DEFENDANT'S COUNSEL: William Routsis, II, Esq.
DATE:	1-30-17	Lynn G. Pierce, Esq. David Zaniel, Esq.
JUDGE:	STEVEN R. KOSACH	
CLERK:	Delores Goelz	
COURT REPORTER:	Not Reported	
LAW CLERK:	John Seddon	
BAILIFFS:	Eric Lindsay	
OTHERS:	Michaael Pintar, Esq. - counsel for Egon & Elfriede Klementi and Mary Ellen Kinion Tanika M. Capers, Esq. - counsel for Rowena & Peter Shaw	

The above-entitled matter was before the Court this being the time set by the Court for a hearing on CONTINUED PRE-TRIAL PENDING MOTIONS. The plaintiffs were present in Court and represented by counsel. The defendant was present in Court and represented by counsel.

EXHIBITS MARKED:
1, 2, 3, 4, 5

EXHIBITS MARKED AND ADMITTED:
1, 3, 4, 5

WITNESSES SWORN AND TESTIFIED:
MARIA PENCE

The Court had withheld ruling on pending motions and set the matter for a hearing today, so that the Court and counsel could hear from, Maria Pence, the District Attorney who prosecuted the criminal case against Jeffrey Spencer.

Ms. Caper presented argument.

Ms. Pierce presented argument.

Mr. Moore presented argument.

Mr. Routsis presented argument.

Mr. Pintar presented argument.

The Court granted Ms. Kinion's Motion for Summary Judgment as to Spencer's Claim for Malicious Prosecution.

The Court previously granted Mr. Klementi's Motion to Amend Complaint.

The Court granted Mr. Spencer's Motion to Amend Counterclaim & Third Party Complaint.

The Court instructed counsel to file answers within 30 days.

The parties discussed possible trial dates and were unable to find a date to accommodate all parties. The Court instructed counsel to confer with each other and contact the Court to set a trial date.

Mr. Pintar will prepare the order.

CASE NO.	14-CV-0260	
DEPT NO.	I	
HELMUT KLEMENTI,		
	Plaintiff,	PLAINTIFF'S COUNSEL: Douglas R. Brown Sarah Molleck
v.		
JEFFREY D. SPENCER,		
	Defendant,	DEFENDANT'S COUNSEL: William Routsis, II
DATE:	07/12/2018	Lynn G. Pierce
JUDGE:	STEVEN R. KOSACH	
CLERK:	Delores Goelz	
COURT REPORTER:	Lesley Clarkson	
LAW CLERK:	John Seddon	
BAILIFFS:	Les Vido	
OTHERS:	Michaael Pintar - counsel for Egon & Elfriede Klementi and Mary Ellen Kinion Tanika M. Capers - counsel for Rowena & Peter Shaw	

The above-entitled matter was before the Court this being the time set by the Court for a hearing on ORDER TO SHOW CAUSE AND ALL PENDING MOTIONS. The plaintiffs were present in Court and represented by counsel. The defendants were present in Court and represented by counsel.

Motion for Summary Judgment as to Rowena and Peter Shaw:

Ms. Capers presented argument.

Ms. Pierce presented argument.

The Court GRANTED.

Motion for Summary Judgment as to Helmut Klementi:

Mr. Brown presented argument.

Ms. Pierce presented argument.

The Court GRANTED.

Motion for Summary Judgment as to Elfriede Klementi:

Mr. Pintar presented argument.

Ms. Pierce presented argument.

The Court GRANTED.

Motion for Summary Judgment as to Mary Ellen Kinion:

Mr. Pintar presented argument.

Ms. Pierce presented argument.

The Court GRANTED.

Motion for Sanctions Based on Spoilage of Evidence:

Mr. Pintar presented argument.

Ms. Pierce presented argument.

The Court DENIED.

Motion to Strike Plaintiff's Expert Witness Designation:

The Court GRANTED.

Motion to Dismiss as to Egon Klementi:

The Court GRANTED.

Mr. Routsis orally motioned the Court to reconsider it's previous ruling on Mary Ellen Kinion's Motion for Summary Judgment as to the claim for malicious prosecution.

The Court DENIED.

The Court instructed counsel to prepare the order granting summary judgment as to their perspective clients along with attorney's fees and cost.

The Court ordered the trial dates be vacated.

EXHIBIT LIST

CASE NAME: KLEMENTI V SPENCER

CASE NUMBER: 14-CV-0260

DATE OF HEARING: 12/15/2016

JUDGE: STEVEN R. KOSACH

DEPT NO: I

ATTORNEYS: DOUGLAS BROWN/WILLIAM ROUTSIS/LYNN PIERCE/DAVID ZANIEL/SCOTT GLOGAVAC/TANIKA M. CAPERS

PURPOSE OF HEARING: **CONTINUED HEARING ON PENDING MOTIONS**

Exhibit #	Description	Marked for ID	Admitted
1	PACKET OF DOCUMENT RELATED TO CRIMINAL CASE 13-CR-0036	X	

EXHIBIT LIST

CASE NAME: KLEMENTI V SPENCER

CASE NUMBER: 14-CV-0260

DATE OF HEARING: 01-31-17

JUDGE: NATHAN TOD YOUNG

DEPT NO: I

ATTORNEYS: DOUGLAS BROWN/WILLIAM ROUTSIS/LYNN PIERCE/DAVID ZANIEL/MICHAEL PINTAR/TANIKA CAPERS

PURPOSE OF HEARING: **CONTINUED HEARING ON PENDING MOTIONS**

Exhibit #	Description	Marked for ID	Admitted
1	LETTER FROM MARY ELLEN KINION	X	X
2	FIRST PAGE OF CRIMINAL COMPLAINT IN CASE 13-CR-0068	X	
3	AMENDED INFORMATION IN CASE 13-CR-0036	X	X
4	PAGE 266 OF TRANSCRIPT	X	X
5	DCSO INCIDENT REPORT 12SO17219	X	X

STATE OF NEVADA)
) ss
COUNTY OF DOUGLAS)

I, BOBBIE WILLIAMS, Clerk of the Ninth Judicial District Court, State of Nevada, in and for the County of Douglas; said Court being a Court of Record, having common law jurisdiction, and a Clerk and a Seal, do hereby certify that the foregoing are true copies of the following originals in Case No. 14-CV-0260 (KLEMENTI VS. SPENCER); Notice of Appeal, Case Appeal Statement, Case History, Order(s) appealed from, Notice of Entry of Order(s) appealed from and District Court Minutes and Exhibit list(s).

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Minden, in said County and State this 18th day of December, 2018

CLERK OF THE COURT

By: Mary Brazzini
Deputy Court Clerk

Douglas County

BOBBIE R. WILLIAMS
CLERK OF COURT
COURT ADMINISTRATOR
JURY COMMISSIONER

District Court Clerk's Office
(775) 782-9820
Tahoe Justice Court
(775) 586-7200
East Fork Justice Court
(775) 782-9955

Transmittal to the Supreme Court

To: Nevada Supreme Court
210 South Carson Street
Carson City, Nevada 89710

Date: December 18, 2018

Re: District Court Case #: 14-CV-0260

District Court Case Name: KLEMENTI VS. SPENCER

The following documents are transmitted to the Supreme Court pursuant to the July 22, 1996 revisions to the Nevada Rules of Appellate Procedure. Checked items are **NOT** included in this appeal:

- ☐ Notice of Appeal
- ☐ Case Appeal Statement
- ☑ Second Notice of Posting of Appeal Bond
- ☐ District Court Docket entries
- ☑ Request for Transcript
- ☐ Judgment(s) or order(s) appealed from
- ☑ Order (NRAP FORM 4)
- ☐ Notice of entry of the judgment(s) or order(s) appealed from
- ☑ Certification order directing entry of judgment pursuant to NRCP 54(b)
- ☐ District Court Minutes
- ☐ Exhibit List
- ☐ Supreme Court filing fee ($250.00) under separate cover.

Respectfully,
BOBBIE WILLIAMS
CLERK OF THE COURT

By: Mary Brazier
Deputy Court Clerk