

Exhibit 2

Exhibit 2

Case No. 14-CV-0260

Dept. No. 1

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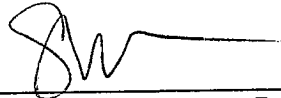
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A copy of said Order is attached hereto as **Exhibit 1**.

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

Dated: 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.
Ranalli & Zaniel, LLC
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Attorney for Jeffrey Spencer

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

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



Susan G. Davis

Exhibit 1

Exhibit 1

RECEIVED

FILED

NOV 05 2018

Douglas County
District Court Clerk

2018 NOV -5 PM 3:29

BOBBIE R. WILLIAMS

A. NEWTON

BY _____ DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendant.

JEFFREY D. SPENCER,

Counterclaimant,

vs.

ORDER

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.

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:"

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

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

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

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

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

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

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

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

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

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

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

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

28 / / /

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

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

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

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

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

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

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

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

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

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

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

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

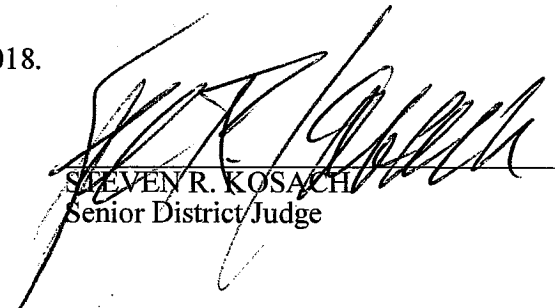
25 Conclusion

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

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

2 IT IS SO ORDERED.

3 Dated this 2 day of November, 2018.

4
5 
6 STEVEN R. KOSACH
7 Senior District Judge

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

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

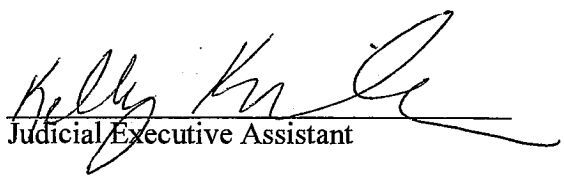
13 David Zaniel, Esq.
14 Ranalli & Zaniel, LLC
15 50 W. Liberty St., Ste. 1050
16 Reno, NV 89509

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

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

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

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

29 
30 Judicial Executive Assistant

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Nevada Bar No. 10866
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Electronically Filed
Jan 09 2019 03:57 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Attorneys for Appellant

IN THE SUPREME COURT FOR THE STATE OF NEVADA

JEFFREY D. SPENCER,

Case No. 77711

Appellant,

v.

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

Respondents.

DOCKETING STATEMENT

1. **Judicial District:** Ninth Judicial District
Department: n/a
County: Douglas
Judge: Steven Kosach (Judges Young and Gregory were disqualified)
District Court Case Number: 14-CV-00260-DC
2. **Attorney filing this docketing statement:**
Kerry S. Doyle
(775) 525-0889
Doyle Law Office, PLLC
4600 Kietzke Lane, Ste. I-207, Reno, NV 89502
on behalf of Jeffrey Spencer

3. **Attorneys representing respondents:**

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

Helmut Klementi
Represented by:
Douglas R. Brown
Sarah M. Molleck
Christian L. Moore
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

4. **Nature of Disposition below:** Order Awarding Attorney's Fees

5. **Does this Appeal raise issues concerning child custody, venue, or termination of parental rights?** No.

6. **Pending and prior proceedings in the appellate courts.** An appeal from the substantive order granting summary judgment in this action is pending in this court as case number 77086. This appeal is appropriate for consolidation with the appeal from the judgment on the merits.

7. **Pending and prior proceedings in other courts.** There are no pending or prior proceedings in other courts.

8. **Nature of the action.**

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; 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.

After ruling on summary judgment from the bench, the trial court invited motions for attorney's fees. Helmut Klementi, Elfriede Klementi and Mary Ellen Kinion each filed Motions for Attorney's Fees. The trial court granted each Motion and entered an order awarding attorneys' fees to Helmut Klementi, Elfriede Klementi, and Mary Ellen Kinion on November 5, 2018. Spencer appeals from that order as a special order made after final judgment, pursuant to Nevada Rule of Appellate Procedure 3A(b)(2).

9. **Issues on appeal.**

Did the district court err as a matter of law by granting attorneys' fees finding a claim to have been frivolous when the claim was not dismissed but pursued to summary judgment and evidence was presented in support of the claim?

10. **Pending appellate proceedings raising the same or similar issues.**

Appellant is not aware of any such cases.

11. **Constitutional issues.** This appeal does not challenge the constitutionality of a statute.

12. **Other issues.**

This appeal does not present any other issues.

13. **Assignment to the Court of Appeals or retention in the Supreme Court.**

As an appeal from a postjudgment order in a civil case, this appeal would presumptively be assigned to the Court of Appeals. NRAP 17(b)(8). However, Spencer requests that this case be consolidated with the appeal from the order on the merits (Case No. 77086) and assigned accordingly. If this case is not consolidated with the appeal from the order on the merits, Spencer asks that it be grouped with that case and assigned to the same court and panel.

14. **Trial.** This action did not proceed to trial.

15. **Judicial Disqualification.** Appellant suggests that if this case is assigned to the Court of Appeals, Judge Michael Gibbons consider recusal because of his involvement in the proceedings in the district court. Gibbons was the original district court judge to whom this case was assigned, however, it does not appear that he had any substantive involvement since the complaint was filed on the day he was appointed to the Court of Appeals. Gibbons was also the trial judge in the criminal case against Spencer, the allegations of which gave rise to the civil complaint and aspects of the counterclaim.

16. **Date of entry of written order appealed from:** November 5, 2018

17. **Date written notice of entry of order served:**

Served by mail on November 16, 2018

18. **Post-judgment motions.** No tolling motions were filed.

19. **Date notice of appeal filed:** December 17, 2018

20. **Statute or rule governing the time limit for filing the notice of appeal:**

Nevada Rule of Appellate Procedure 4(a).

21. **Statute granting jurisdiction over the substance of the appeal:**

Nevada Rule of Appellate Procedure 3A(b)(2) allows appeal from this special order after judgment in a civil action.

22. **Parties involved in the district court action.**

Helmut Klementi, plaintiff and counter defendant

Jeff Spencer, defendant, counterclaimant, and third-party plaintiff

Egon Klementi, third-party defendant

Elfriede Klementi, third-party defendant

Mary Ellen Kinion, third-party defendant

Peter Shaw, third-party defendant

Rowena Shaw, third-party defendant

Parties to the appeal:

Peter and Rowena Shaw, although parties to the appeal from the order on the merits of the case, are not parties to the appeal from the award of attorneys' fees as they neither sought nor were awarded fees or costs.

Additionally, Egon Klementi, who died prior to the entry of summary judgment and was dismissed after counsel for Spencer failed to move to substitute his estate as the party after a suggestion of death was filed, is not a party to this appeal.

23. Parties' claims and the date of formal disposition.

Helmut Klementi filed the initial complaint on December 17, 2014, alleging assault and battery, abuse under NRS 41.1395, intentional infliction of emotional distress, and punitive damages against Jeff Spencer. This complaint was superseded by an amended complaint filed August 12, 2016. The amended complaint added a claim for negligence and realleged the other claims against Spencer.

Spencer responded to the original complaint by filing an answer, counterclaim and third-party complaint on February 3, 2015. In that counterclaim, Spencer asserted claims for malicious prosecution and conspiracy to commit malicious prosecution against Helmut Klementi, Egon Klementi, and Mary Ellen Kinion. Kinion filed a motion for summary judgment on the claim against her, which was granted in a hearing in January 2017, although the written order was not entered until April 2017. Spencer responded to the amended complaint by filing an Answer, Amended Counterclaim, and Third Party Complaint, on March 3, 2017. In the Amended Counterclaim, Spencer made claims for defamation, conspiracy to defame, punitive damages, and intentional infliction of emotional distress against Helmut Klementi, Egon Klementi, Elfriede Klementi, Mary Ellen Kinion, Rowena Shaw, and Peter Shaw. He additionally made claims for malicious prosecution and conspiracy to commit malicious prosecution against Helmut Klementi, Egon Klementi, Elfriede Klementi, Rowena Shaw, and Peter Shaw. In a hearing in July 2018, the district court announced that it would grant summary judgment and attorneys' fees to the

counterdefendants and third party defendants, and the court entered its written orders granting summary judgment on several days in the end of August 2018. The Court entered its order granting attorneys' fees to Helmut Klementi, Elfriede Klementi, and Mary Ellen Kinion on November 5, 2018.

24. **Adjudication of all claims between parties.** The summary judgment order entered on August 29, 2018, granting summary judgment to Egon & Elfriede Klementi resolved the final remaining claims against the remaining parties.

25. **Claims remaining below.** No claims remain below.

26. **Exhibits.**

Exhibit No.	Document Title	Document Date
1	Order on Attorneys' Fees	November 5, 2018
2	Notice of Entry of Order	November 16, 2018

As the operative pleading and the orders resolving the claims were attached to the docketing statement filed in the appeal from the order on the merits (Case No. 77086), they are not included again here.

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

DATED this 9th day of January, 2019.

DOYLE LAW OFFICE, PLLC

By: /s/ Kerry S. Doyle
Kerry S. Doyle, Esq.
Nevada Bar No. 10866
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Doyle Law Office, PLLC and that on the 9th day of January, 2019, a true and correct copy of the above DOCKETING STATEMENT was e-filed and e-served on all registered parties to the Nevada Supreme Court's electronic filing system as listed below:

Douglas R. Brown
Sarah M. Molleck
Christian L. Moore
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 9th day of January, 2019.

/s Kerry S. Doyle

Kerry S. Doyle