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IN THE SUPREME COURT OF THE STATE OF NEVADA

REPUBLIC SILVER STATE DISPOSAL, INC., A  
NEVADA CORPORATION,

Appellant,

vs.

LAS VEGAS RADIOLOGY, LLC, A NEVADA  
LIMITED LIABILITY COMPANY,

Respondents.

Supreme Court No. 77867

District Court Case No. A-738123

Electronically Filed

Feb 19 2019 02:56 p.m.

Elizabeth A. Brown  
Clerk of Supreme Court  
DOCKETING STATEMENT  
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This Court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attachments.

1. Judicial District: Eighth Department: 30

County: Clark Judge: The Honorable Jerry A. Wiese II

District Ct. Case No.: A-16-738123-C

2. Attorney filing this docketing statement:

Attorney: David Barron, Esq. Telephone: (702) 870-3940

Firm: Barron & Pruitt, LLP

BARRON & PRUITT, LLP  
ATTORNEYS AT LAW  
3890 WEST ANN ROAD  
NORTH LAS VEGAS, NEVADA 89031  
TELEPHONE (702) 870-3940  
FACSIMILE (702) 870-3950

Address: 3890 West Ann Road, North Las Vegas, Nevada 89031

Client(s): Republic Silver State Disposal, Inc.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel on an additional sheet accompanied by a certificate that they concur in the filing of this statement.

3. Attorney(s) representing respondent(s):

Attorney: Kim Irene Mandelbaum, Esq. Telephone: (702) 367-1234

Firm: Mandelbaum, Ellerton & Associates

Address: 2012 Hamilton Lane, Las Vegas, Nevada 89106

Client(s) Las Vegas Radiology, LLC

4. Nature of disposition below (check all that apply):

- |                                     |                             |                          |   |
|-------------------------------------|-----------------------------|--------------------------|---|
| <input type="checkbox"/>            | Judgment after bench trial  | <input type="checkbox"/> | Grant/Denial of NRCP 60(b) relief                                       |
| <input type="checkbox"/>            | Judgment after jury verdict | <input type="checkbox"/> | Grant/Denial of injunction  |
| <input checked="" type="checkbox"/> | Summary Judgment            | <input type="checkbox"/> | Grant/Denial of declaratory relief                                      |
| <input type="checkbox"/>            | Default Judgment            | <input type="checkbox"/> | Review of agency determination  |
| <input type="checkbox"/>            | Dismissal                   | <input type="checkbox"/> | Divorce Decree:   |
| <input type="checkbox"/>            | Lack of jurisdiction        | <input type="checkbox"/> | <input type="checkbox"/> original <input type="checkbox"/> modification |
| <input type="checkbox"/>            | Failure to state a claim    | <input type="checkbox"/> | Other disposition (specify):  |
| <input type="checkbox"/>            | Failure to prosecute        |                          |   |
| <input type="checkbox"/>            | Other (specify)             |                          |   |

5. Does this appeal raise issues concerning any of the following:

- ☐ Child custody ☐ Termination of parental rights
- ☐ Venue

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Supreme Court Case # 72123; James D. Balodimas MD vs. The Eighth Judicial District Court of the State of Nevada and Republic Silver State Disposal, Inc.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g. bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

This action was originally filed in the Eighth Judicial District Court, Clark County, Nevada on June 8, 2016. The action is styled Republic Silver State Disposal, Inc. vs. Andrew M. Cash, MD, Case No, A-16-738123-C. On December 7, 2018, the District Court entered an Order granting Defendant Las Vegas Radiology, LLC's Motion for Summary Judgment. The action remains pending before the District Court.

8. Nature of action. Briefly describe the nature of the action and the result below:

Contribution based on medical negligence.

9. Issues on Appeal. State concisely the principal issue(s) in this appeal:

1. Did the District Court err in granting Defendant Las Vegas Radiology, LLC's Motion for Summary Judgment?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

None

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of the court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ NA ☐ Yes ☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))  
☐ An issue arising under the United States and/or Nevada Constitutions  
☐ A substantial issue of first-impression  
☐ An issue of public policy  
☐ An issue where en banc consideration is necessary to maintain uniformity of the court's decisions  
☐ A ballot question

If so, explain: n/a

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This action is for recovery under the contribution statutes, see NRS 17.225 et seq., for the equitable share(s) of a personal injury settlement of \$2,000,000.00; The case is therefore in excess of NRAP 17(b)(5).

14. Trial. If this action proceeded to trial, how many days did the trial last?

N/A

Was it a bench or jury trial?

N/A

15. Judicial disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice?

No.

**TIMELINESS OF NOTICE OF APPEAL**

16. Date of entry of written judgment or order appealed from:

Order Granting Defendant Las Vegas Radiology's Motion for Summary Judgment- December 7, 2018; See **Exhibit A**.

If no, written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

17. Date written notice of entry of judgment or order was served:

Notice of Entry of Order Granting Defendant Las Vegas Radiology's Motion for Summary Judgment- December 10, 2018; See **Exhibit B**.

Was service by: ☐ Delivery ☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59):

(a) Specify the type of motion, and the date and method of service of the motion:

N/A

**Note:** Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal.

(b) Date of entry of written order resolving tolling motion:

N/A

(c) Date written notice of entry of order resolving tolling motion served:

N/A

Was service by: ☐ Delivery ☐ Mail/electronic/fax

19. Date notice of appeal filed:

January 4, 2019

If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other:

NRAP 4(a)

**SUBSTANTIVE APPEALABILITY**

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)  
☐ NRAP 3A(b)(2)  
☐ NRAP 3A(b)(3)  
☐ Other (specify)

☐ NRS 155.190  
☐ NRS 38.205  
☐ NRS 703.376

(b) Explain how each authority provides a basis for appeal from the judgment or order:

Summary Judgment & NRCP 54(b).

22. List all parties involved in the action in the district court:

(a) Parties:

Republic Silver State Disposal, Inc. (Plaintiff).

Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC; Desert institute of Spine Care, LLC; James D. Balodimas, MD; James D. Balodimas, MD, PC; Las Vegas Radiology, LLC; Bruce A. Katuna, MD; Rocky Mountain Neurodiagnostics, LLC; Danielle Miller aka Danielle Shopshire; Neuromonitoring Associates, Inc. (Defendants).

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

This appeal is in regards to the Order Granting Defendant Las Vegas Radiology, LLC's Motion for Summary Judgment and therefore does not involve the other Defendants.

23. Give brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of the formal disposition of each claim.

Plaintiffs:

(a) Contribution. The claims are still pending.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action pr consolidated actions below:

☐ Yes ☒ No

25.If you answered "No" to question 24, complete the following:

(a) Specify the claims which remain pending below:

Plaintiffs' claims of Contribution in regards to all Defendant except Las Vegas Radiology, LLC remain pending.

(b) Specify the parties remaining below:

Republic Silver State Disposal, Inc. (Plaintiff).

Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC; Desert institute of Spine Care, LLC; James D. Balodimas, MD; James D. Balodimas, MD, PC; Bruce A. Katuna, MD; Rocky Mountain Neurodiagnostics, LLC; Danielle Miller aka Danielle Shopshire; Neuromonitoring Associates, Inc. (Defendants)..

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

☒ Yes ☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

☒ Yes ☐ No

26.If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3(A)(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims and third-party claims; See Exhibit C.
- Any tolling motion(s) and order(s) resolving tolling motion(s);
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in

the action or consolidated action below, even if not at issue on appeal;

- Any other order challenged on appeal See Exhibit A; and
- Notice of entry for each attached order – See Exhibit B.

### 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.

Republic Silver State Disposal, Inc.

David Barron, Esq.

Name of Appellant

Name of counsel of record

2/19/19



Date

Signature of counsel of record

Nevada, Clark County

State and county where signed

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the \_\_\_\_ day of February, 2019, I served a copy of this completed **DOCKETING STATEMENT** upon all counsel of record:

☒ US MAIL: by mailing it by first class mail with sufficient postage prepaid to the following address(es):

☐ BY FAX: by transmitting the document(s) listed above via facsimile transmission to the fax number(s) set forth below.

☐ BY HAND-DELIVERY: by hand-delivering the document(s) listed above to the address(es) set forth below.

☐ BY EMAIL: by emailing the document(s) listed above to the email address(es) set forth below.

☐ BY ELECTRONIC SERVICE: by electronically serving the document(s) listed above with the Eighth Judicial District Court's WizNet system upon the following:

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Las Vegas, Nevada 89106  
*Attorney for Respondents*

Ara H. Sherinian  
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Las Vegas, Nevada 89135  
(702) 496-4985  
*Settlement Judge*

An Employee of BARRON & PRUITT, LLP

**EXHIBIT A**

**EXHIBIT A**

**EXHIBIT A**



1 OGSJ

Kim Irene Mandelbaum, Esq.

2 Nevada Bar No. 318

Marie Ellerton, Esq.

3 Nevada Bar No. 4581

Sherman B. Mayor, Esq.

4 Nevada Bar No. 1491

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*Attorneys for Defendant*

8 *Las Vegas Radiology, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

11  
12 REPUBLIC SILVER STATE DISPOSAL, INC., a  
Nevada Corporation

13 Plaintiff,

14 vs.

15 ANDREW M. CASH, M.D.; ANDREW M. CASH,  
M.D., P.C. aka ANDREW MILLER CASH, M.D.,  
16 P.C.; DESERT INSTITUTE OF SPINE CARE, LLC,  
a Nevada Limited Liability Company; JAMES D.  
17 BALODIMAS, M.D.; JAMES D. BALODIMAS,  
M.D., P.C.; LAS VEGAS RADIOLOGY, LLC, a  
18 Nevada Limited Liability Company; BRUCE A.  
KATUNA, M.D.; ROCKYMOUNTAIN  
19 NEURODIAGNOSTICS, LLC; a Colorado Limited  
Liability Company; DANIELLE MILLER aka  
20 DANIELLE SHOPSHIRE; NEURO-MONITORING  
ASSOCIATES, INC., a Nevada Corporation; DOES 1 -  
21 10, inclusive; and ROE CORPORATIONS 1 - 10  
22 inclusive,

23 Defendants.  
24

CASE NO.: A-16-738123-C  
DEPT. NO.: XXX

**ORDER GRANTING DEFENDANT  
LAS VEGAS RADIOLOGY'S  
MOTION FOR SUMMARY  
JUDGMENT**

Date of Hearing: 11/14/18  
Time of Hearing: 9:00 a.m.

25  
26 Defendant LAS VEGAS RADIOLOGY, LLC'S Motion for Summary Judgment having come on  
27 for hearing on the 14<sup>th</sup> day of November, 2018, and David Barron, Esq. of Barron & Pruitt, LLC,  
28 appearing on behalf of Plaintiff Republic Silver State Disposal, Inc.; Sherman B. Mayor, Esq. of

1  
2 Mandelbaum Ellerton & Associates on behalf of Defendant/Movant Las Vegas Radiology; Heather Hall,  
3 Esq. of Carroll, Kelly, Trotter, Franzen, McBride & Peabody appearing on behalf of Defendants Andrew  
4 M. Cash, M.D.; Andrew M. Cash, M.D., P.D.; Desert Institute of Spine Care, LLC; Michael Navratil,  
5 Esq. of John H. Cotton & Associates appearing on behalf of James D. Balodimas, M.D. and James D.  
6 Balodimas, M.D., P.C.; Stephanie M. Zinna, Esq. of Olson Cannon Gormley, appearing on behalf of  
7 Defendants Bruce A. Katuna, M.D. and Rocky Mountain Neurodiagnostics, LLC; James E. Murphy, Esq.  
8 of Lewis Brisbois Bisgaard & Smith, appearing on behalf of Defendant Neuromonitoring Associates,  
9 Inc.; and Anthony Lauria, Esq. of Lauria Tokunaga Gates & Linn, LLP appearing on behalf of Defendant  
10 Danielle Miller aka Danielle Shopshire; and

11 The Court having reviewed the papers and pleadings on file herein and having heard argument  
12 of counsel and being otherwise duly advised in the premises, hereby makes the following Findings of  
13 Fact, Conclusions of Law and Orders:

14 **FINDINGS OF FACT**

15 1. On January 14, 2012, a garbage truck owned and operated by Republic Silver State  
16 Disposal (Republic) struck a vehicle being operated by Marie Gonzales. Marie Gonzales claimed  
17 personal injuries from the accident and filed suit against Republic and its driver, Deval Hatcher, on  
18 September 4, 2013. As a result of the accident, Marie Gonzales was treated by a number of healthcare  
19 providers for her claimed injuries.

20 2. In the course of her care, Ms. Gonzales received certain medical care and/or services  
21 from Andrew M. Cash, M.D. (orthopedic surgeon); Desert Institute of Spine Care, LLC; James D.  
22 Balodimas, M.D. (radiologist); Las Vegas Radiology, LLC; Bruce A. Katuna, M.D. (neurologist);  
23 Rocky Mountain Neurodiagnostics, LLC; Neuromonitoring Associates; and Danielle Miller aka  
24 Danielle Shopshire (Neuro-Monitoring Associates).

25 ///

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1  
2 3. On July 6, 2015, Republic settled Marie Gonzales' claims for the  
3 total sum of \$2,000,000. In that settlement, Republic prepared a Release which included the  
4 following language:

5 "... this SETTLEMENT AGREEMENT RELEASE and COVENANT NOT TO SUE,  
6 *shall discharge and extinguish any and all claims or liabilities*, including those for  
7 "economic" and "noneconomic" damages as set forth in NRS Ch. 41A, RELEASOR  
may possess *against any of her medical treatment providers* for injuries she alleges to  
have sustained in the described incident of January 14, 2012." [Emphasis added.]

8 4. Then, on June 8, 2016, Republic filed a lawsuit against a number of Marie Gonzales'  
9 subsequent treating healthcare providers seeking "contribution". Two of the named defendants in  
10 Republic's contribution action are James D. Balodimas, M.D. (Radiologist) and Las Vegas  
11 Radiology, LLC. Plaintiff alleges in Paragraphs 43 and 57 of its Amended Complaint that Dr.  
12 Balodimas' assessment of Plaintiff's February 12, 2013 CT Scan was below the standard of care  
13 causing Plaintiff injury.

14 5. Plaintiff further contends in Paragraphs 68 of its Amended Complaint that Dr.  
15 Balodimas was acting in the course of scope of his employment with Las Vegas Radiology, LLC  
16 when interpreting Marie Gonzales' February 12, 2013 CT Scan. Plaintiff further asserts in Paragraph  
17 69 of the Amended Complaint that Defendant Las Vegas Radiology, LLC is vicariously liable for the  
18 injury and damages caused by Defendant James Balodimas, M.D. pursuant to NRS 41.130. There is  
19 no independent claim of negligence alleged by Plaintiff in its Amended Complaint as to Las Vegas  
20 Radiology, LLC.

21 6. On September 14, 2018, Defendant Las Vegas Radiology, LLC filed a Motion for  
22 Summary Judgment seeking its dismissal from this action. At the heart of the motion is Las Vegas  
23 Radiology's contention that Dr. Balodimas was not its "employee". Instead, Las Vegas Radiology  
24 asserts that Dr. Balodimas, while physically working on the Las Vegas Radiology premises, was  
25 doing so as a locum-tenens physician employed by a different employer. Las Vegas Radiology  
26 contends that absent an employer/employee relationship, there can be no finding of vicarious liability  
27 pursuant to NRS 41.130.

28 ///

1  
2 7. Las Vegas Radiology, in furtherance of its Summary Judgment Motion, provided  
3 the Court with a number of exhibits. Those exhibits include excerpts from the deposition of Dr.  
4 Balodimas and an affidavit from Dr. Kittusamy (owner and CEO of Las Vegas Radiology). Dr.  
5 Balodimas and Dr. Kittusamy both attest that Dr. Balodimas did not receive a W2 from Las Vegas  
6 Radiology for work performed on February 12, 2013 (date of CT Scan); Dr. Balodimas did not  
7 receive a 1099 from Las Vegas Radiology; Dr. Balodimas was not covered through Las Vegas  
8 Radiology's professional liability insurance policy. Therefore, Dr. Balodimas was not "an employee"  
9 of Las Vegas Radiology.

10 8. In opposing the summary judgment motion, Plaintiff, in part, provided a health  
11 insurance claim form for the amount of \$1,100 (for the service date of February 12, 2013 when  
12 Plaintiff underwent CT Scan). That insurance claim form contained the names of James Balodimas,  
13 M.D. and Las Vegas Radiology. The Plaintiff argues that this billing presents circumstantial evidence  
14 of employment and agency that should be sufficient, alone, to "... defeat LVR's Rule 56 Motion".

15 9. In response, Las Vegas Radiology provided a monthly billing summary for the month  
16 of February 2013. The summary indicates that there were a number of radiologists (including Dr.  
17 Balodimas) who were not employed by Las Vegas Radiology but interpreted imaging at Las Vegas  
18 Radiology's imaging center. A number of locum-tenens radiologists were employed by another group,  
19 namely, Radiology 24/7.

20 10. The billing summary provided by Movant demonstrates that Las Vegas Radiology  
21 would globally bill for both the CT Scan it generated and the interpretation of the scan by the locum-  
22 tenens radiologists. Then, on a monthly basis, Las Vegas Radiology would provide a sum of money to  
23 pay Radiology 24/7 for the imaging interpretation services of its locum-tenens radiologists. The  
24 billing summary with attached check stub (dated 2/28/2013) demonstrates that \$119,126.42 was paid  
25 to Radiology 24/7, by Las Vegas Radiology, including \$34,963.42 for the radiology services of  
26  
27  
28

James Balodimas, M.D.<sup>1</sup>

11. Following oral argument, the Court finds that Dr. Balodimas was not an employee of Las Vegas Radiology. As such, the Court finds that there is no just reason for delay and enters judgment in favor of Las Vegas Radiology, LLC. The Court certifies this judgment pursuant to NRCPC Rule 54(b).

### CONCLUSIONS OF LAW

12. Paragraphs 68 and 69 of the Amended Complaint allege Defendant James Balodimas, M.D. was acting in the course and scope of his "employment" with Las Vegas Radiology, LLC when "conducting" and interpreting Marie Gonzales' February 12, 2013 CT study of the lumbar spine. Plaintiff further alleges that since Dr. Balodimas was negligent in causing injury to Marie Gonzales, Las Vegas Radiology is vicariously liable, pursuant to NRS 41.130, for such damages.

13. NRS 41.130 requires that the person causing injury be "employed" by the corporation and provides as follows:

"NRS 41.130 Liability for personal injury. Except as otherwise provided in NRS 41.745, whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury is liable to the person injured for damages; **and where the person causing the injury is employed by another person or corporation responsible for the conduct of the person causing the injury, that other person or corporation so responsible is liable to the person injured for damages.**" (Emphasis added.)

14. Defendant Las Vegas Radiology acknowledges that Dr. Balodimas may have been at a Las Vegas Radiology center on February 12, 2013 when he interpreted Marie Gonzales' CT Scan. However, the location where Dr. Balodimas interpreted the CT Scan does not define who employed him. An employer can be vicariously responsible only for the acts of his employees and not someone else. *See Kennel v. Carson City School District* 738 F. Supp. 376 (D.Nev.1990).

15. The undisputed evidence is that Dr. Balodimas was on Las Vegas Radiology center premises in the capacity of a locum-tenens physician, but, was employed by Radiology 24/7 and not

---

<sup>1</sup> And there is no contention that Las Vegas Radiology controlled the details or method by which Dr. Balodimas, a board certified radiologist, interpreted CT Scans. Nor was any evidence produced with regard to same. Moreover, there is no contention that Marie Gonzales ever saw, met or spoke with Dr. Balodimas.

1  
2 Las Vegas Radiology. This is supported by the deposition of Dr. Balodimas, the affidavit of Dr.  
3 Kittusamy (CEO and owner of Las Vegas Radiology) and the billing summary indicating that  
4 payment received for Dr. Balodimas' imaging interpretations when at the premises of Las Vegas  
5 Radiology were repaid to Radiology 24/7 on a monthly basis.

6 16. In opposing Summary Judgment, the non-moving party (Republic) must by affidavit or  
7 otherwise, provide specific facts demonstrating the existence of a genuine issue for trial. Plaintiff is  
8 not entitled to "... build a case on the gossamer threads of whimsy, speculation and conjecture." *See*  
9 *Wood v. Safeway, Inc.* 121 Nev. 724, 121 P.2d 1026 (Nev. 2005). Here, the Court finds there is no  
10 genuine issue of material fact remaining, and that Dr. Balodimas was not "... an employee" or agent  
11 of Las Vegas Radiology when interpreting Marie Gonzales' CT Scan on February 12, 2013.

12 17. Where "undisputed evidence" exists concerning the employees status at the time of the  
13 tortious act (in this case February 12, 2013), the issue may be resolved "... as a matter of law ..." *See*  
14 *Evans v. Southwest Gas*, 108 Nev. 1002, 1006, 842 P.2d 719, 722 (1992). Further, "... a question  
15 of law exists as to whether sufficient competent evidence is present to require that the agency  
16 question be forwarded to a jury." *Schlotfeldt v. Charter Hosp. Of Las Vegas*, 112 Nev. 42, 910 P.2d  
17 271 (1996). The Court finds that there is not such sufficient competent evidence.

18 ///

19 ///

20 ///

ORDERS

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. Defendant Las Vegas Radiology's Motion for Summary Judgment is GRANTED thereby dismissing Las Vegas Radiology from this action with prejudice; and
2. There being no just reason for delay, judgment shall be entered in favor of Las Vegas Radiology, LLC. The Court certifies this judgment pursuant to NRCP Rule 54(b).

DATED this 6 day of Dec, 2018.

  
DISTRICT COURT JUDGE 

Respectfully Submitted by:

DATED this 29<sup>th</sup> day of November, 2018.

MANDELBAUM, ELLERTON & ASSOCIATES

  
KIM IRENE MANDELBAUM, ESQ.

Nevada Bar No. 318

MARIE ELLERTON, ESQ.

Nevada Bar No. 4581

SHERMAN B. MAYOR, ESQ.

Nevada Bar No. 1491

2012 Hamilton Lane

Las Vegas, Nevada 89106

*Attorneys for Defendant*

*Las Vegas Radiology, LLC*

Approved as to form and content:

DATED this 29<sup>th</sup> day of Nov., 2018.

BARRON & PRUITT, LLP



DAVID BARRON, ESQ.  
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*Attorneys for Plaintiff*

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

LEWIS BRISBOIS BISGAARD & SMITH

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*Attorneys for Defendant*  
*Neuromonitoring Associates, Inc.*

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

CARROLL, KELLY TROTTER  
FRANZEN, McKENNA & PEABODY

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Las Vegas, Nevada 89113  
*Attorneys for Defendants*  
*Andrew M. Cash, M.D.;*  
*Andrew M. Cash, M.D., P.C. aka*  
*Andrew Miller Cash, M.D., P.C.; and*  
*Desert Institute of Spine Care, LLC*

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

JOHN H. COTTON & ASSOCIATES

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*Attorneys for Defendants*  
*James D. Balodimas, M.D. and*  
*James D. Balodimas, M.D., P.C.*

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

OLSON CANNON GORMLEY ANGULO &  
STOBERSKI

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*Attorneys for Defendants*  
*Bruce Katuna, M.D. and*  
*Rocky Mountain Neurodiagnostics, LLC*

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

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*a/k/a Danielle Shopshire*

Approved as to form and content:

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

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*James D. Balodimas, M.D., P.C.*

DATED this 20<sup>th</sup> day of Nov, 2018.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

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DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

CARROLL, KELLY TROTTER  
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DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

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DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

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DATED this 27<sup>th</sup> day of November, 2018.

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DATED this \_\_\_\_ day of \_\_\_\_, 2018.

CARROLL, KELLY TROTTER  
FRANZEN, McKENNA & PEABODY

DATED this \_\_\_\_ day of \_\_\_\_, 2018.

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1  
2 Approved as to form and content:

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

3 DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

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9  
10 DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

11 LEWIS BRISBOIS BISGAARD & SMITH

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

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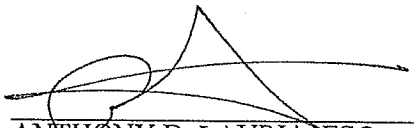
17 DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

18 CARROLL, KELLY TROTTER  
19 FRANZEN, McKENNA & PEABODY

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

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**EXHIBIT B**

**EXHIBIT B**

**EXHIBIT B**

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8 *Las Vegas Radiology, LLC*

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11  
12 **REPUBLIC SILVER STATE DISPOSAL, INC., a**  
13 **Nevada Corporation**

14 **Plaintiff,**

15 **vs.**

16 **ANDREW M. CASH, M.D.; ANDREW M. CASH,**  
17 **M.D., P.C. aka ANDREW MILLER CASH, M.D.,**  
18 **P.C.; DESERT INSTITUTE OF SPINE CARE, LLC,**  
19 **a Nevada Limited Liability Company; JAMES D.**  
20 **BALODIMAS, M.D.; JAMES D. BALODIMAS,**  
21 **M.D., P.C.; LAS VEGAS RADIOLOGY, LLC, a**  
22 **Nevada Limited Liability Company; BRUCE A.**  
23 **KATUNA, M.D.; ROCKYMOUNTAIN**  
24 **NEURODIAGNOSTICS, LLC, a Colorado Limited**  
25 **Liability Company; DANIELLE MILLER aka**  
26 **DANIELLE SHOPSHIRE; NEURO-MONITORING**  
27 **ASSOCIATES, INC., a Nevada Corporation; DOES 1 -**  
28 **10, inclusive; and ROE CORPORATIONS 1 - 10**  
**inclusive,**

**Defendants.**

CASE NO.: A-16-738123-C  
DEPT. NO.: XXX

**NOTICE OF ENTRY OF ORDER  
GRANTING DEFENDANT LAS  
VEGAS RADIOLOGY'S MOTION  
FOR SUMMARY JUDGMENT**

26 TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

27 ///

28 ///

1 PLEASE TAKE NOTICE that an Order Granting Defendant Las Vegas Radiology's Motion for  
2 Summary Judgment has been entered in the above-entitled matter on the 7<sup>th</sup> day of December, 2018, a  
3 copy of which is attached hereto.

4 Dated this 10<sup>th</sup> day of December, 2018.

5 MANDELBAUM, ELLERTON & ASSOCIATES

6 

7 KIM IRENE MANDELBAUM, ESQ.

8 Nevada Bar No. 318

9 MARIE ELLERTON, ESQ.

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15 *Attorneys for Defendant*

16 *Las Vegas Radiology, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10 day of December, 2018, I forwarded a copy of the above and foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT LAS VEGAS RADIOLOGY'S MOTION FOR SUMMARY JUDGMENT** as follows:

- X   served on all parties electronically pursuant to mandatory NEFCR 4(b);
- by depositing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada,
- enclosed in a sealed envelope; or
- by facsimile transmission as indicated below; or
- both U.S. Mail and facsimile TO:

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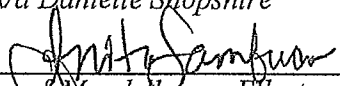
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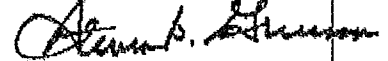
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An employee of Mandelbaum, Ellerton & Associates



1 OGSJ  
2 Kim Irene Mandelbaum, Esq.  
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15 *Las Vegas Radiology, LLC*

9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

11  
12 REPUBLIC SILVER STATE DISPOSAL, INC., a  
13 Nevada Corporation

14 Plaintiff,

15 vs.

16 ANDREW M. CASH, M.D.; ANDREW M. CASH,  
17 M.D., P.C. aka ANDREW MILLER CASH, M.D.,  
18 P.C.; DESERT INSTITUTE OF SPINE CARE, LLC,  
19 a Nevada Limited Liability Company; JAMES D.  
20 BALODIMAS, M.D.; JAMES D. BALODIMAS,  
21 M.D., P.C.; LAS VEGAS RADIOLOGY, LLC, a  
22 Nevada Limited Liability Company; BRUCE A.  
23 KATUNA, M.D.; ROCKYMOUNTAIN  
24 NEURODIAGNOSTICS, LLC; a Colorado Limited  
25 Liability Company; DANIELLE MILLER aka  
26 DANIELLE SHOPSHIRE; NEURO-MONITORING  
27 ASSOCIATES, INC., a Nevada Corporation; DOES 1 -  
28 10, inclusive; and ROE CORPORATIONS 1 - 10  
inclusive,

Defendants.

CASE NO.: A-16-738123-C  
DEPT. NO.: XXX

**ORDER GRANTING DEFENDANT  
LAS VEGAS RADIOLOGY'S  
MOTION FOR SUMMARY  
JUDGMENT**

Date of Hearing: 11/14/18  
Time of Hearing: 9:00 a.m.

26 Defendant LAS VEGAS RADIOLOGY, LLC'S Motion for Summary Judgment having come on  
27 for hearing on the 14<sup>th</sup> day of November, 2018, and David Barron, Esq. of Barron & Pruitt, LLC,  
28 appearing on behalf of Plaintiff Republic Silver State Disposal, Inc.; Sherman B. Mayor, Esq. of

Mandelbaum Ellerton & Associates on behalf of Defendant/Movant Las Vegas Radiology; Heather Hall, Esq. of Carroll, Kelly, Trotter, Franzen, McBride & Peabody appearing on behalf of Defendants Andrew M. Cash, M.D.; Andrew M. Cash, M.D., P.D.; Desert Institute of Spine Care, LLC; Michael Navratil, Esq. of John H. Cotton & Associates appearing on behalf of James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.; Stephanie M. Zinna, Esq. of Olson Cannon Gormley, appearing on behalf of Defendants Bruce A. Katuna, M.D. and Rocky Mountain Neurodiagnostics, LLC; James E. Murphy, Esq. of Lewis Brisbois Bisgaard & Smith, appearing on behalf of Defendant Neuromonitoring Associates, Inc.; and Anthony Lauria, Esq. of Lauria Tokunaga Gates & Linn, LLP appearing on behalf of Defendant Danielle Miller aka Danielle Shopshire; and

The Court having reviewed the papers and pleadings on file herein and having heard argument of counsel and being otherwise duly advised in the premises, hereby makes the following Findings of Fact, Conclusions of Law and Orders:

#### FINDINGS OF FACT

1. On January 14, 2012, a garbage truck owned and operated by Republic Silver State Disposal (Republic) struck a vehicle being operated by Marie Gonzales. Marie Gonzales claimed personal injuries from the accident and filed suit against Republic and its driver, Deval Hatcher, on September 4, 2013. As a result of the accident, Marie Gonzales was treated by a number of healthcare providers for her claimed injuries.

2. In the course of her care, Ms. Gonzales received certain medical care and/or services from Andrew M. Cash, M.D. (orthopedic surgeon); Desert Institute of Spine Care, LLC; James D. Balodimas, M.D. (radiologist); Las Vegas Radiology, LLC; Bruce A. Katuna, M.D. (neurologist); Rocky Mountain Neurodiagnostics, LLC; Neuromonitoring Associates; and Danielle Miller aka Danielle Shopshire (Neuro-Monitoring Associates).

///

///

///

1  
2 3. On July 6, 2015, Republic settled Marie Gonzales' claims for the  
3 total sum of \$2,000,000. In that settlement, Republic prepared a Release which included the  
4 following language:

5 "... this SETTLEMENT AGREEMENT RELEASE and COVENANT NOT TO SUE,  
6 *shall discharge and extinguish any and all claims or liabilities*, including those for  
7 "economic" and "noneconomic" damages as set forth in NRS Ch. 41A, RELEASOR  
may possess *against any of her medical treatment providers* for injuries she alleges to  
have sustained in the described incident of January 14, 2012." [Emphasis added.]

8 4. Then, on June 8, 2016, Republic filed a lawsuit against a number of Marie Gonzales'  
9 subsequent treating healthcare providers seeking "contribution". Two of the named defendants in  
10 Republic's contribution action are James D. Balodimas, M.D. (Radiologist) and Las Vegas  
11 Radiology, LLC. Plaintiff alleges in Paragraphs 43 and 57 of its Amended Complaint that Dr.  
12 Balodimas' assessment of Plaintiff's February 12, 2013 CT Scan was below the standard of care  
13 causing Plaintiff injury.

14 5. Plaintiff further contends in Paragraphs 68 of its Amended Complaint that Dr.  
15 Balodimas was acting in the course of scope of his employment with Las Vegas Radiology, LLC  
16 when interpreting Marie Gonzales' February 12, 2013 CT Scan. Plaintiff further asserts in Paragraph  
17 69 of the Amended Complaint that Defendant Las Vegas Radiology, LLC is vicariously liable for the  
18 injury and damages caused by Defendant James Balodimas, M.D. pursuant to NRS 41.130. There is  
19 no independent claim of negligence alleged by Plaintiff in its Amended Complaint as to Las Vegas  
20 Radiology, LLC.

21 6. On September 14, 2018, Defendant Las Vegas Radiology, LLC filed a Motion for  
22 Summary Judgment seeking its dismissal from this action. At the heart of the motion is Las Vegas  
23 Radiology's contention that Dr. Balodimas was not its "employee". Instead, Las Vegas Radiology  
24 asserts that Dr. Balodimas, while physically working on the Las Vegas Radiology premises, was  
25 doing so as a locum-tenens physician employed by a different employer. Las Vegas Radiology  
26 contends that absent an employer/employee relationship, there can be no finding of vicarious liability  
27 pursuant to NRS 41.130.

28 ///

1  
2           7.     Las Vegas Radiology, in furtherance of its Summary Judgment Motion, provided  
3 the Court with a number of exhibits. Those exhibits include excerpts from the deposition of Dr.  
4 Balodimas and an affidavit from Dr. Kittusamy (owner and CEO of Las Vegas Radiology). Dr.  
5 Balodimas and Dr. Kittusamy both attest that Dr. Balodimas did not receive a W2 from Las Vegas  
6 Radiology for work performed on February 12, 2013 (date of CT Scan); Dr. Balodimas did not  
7 receive a 1099 from Las Vegas Radiology; Dr. Balodimas was not covered through Las Vegas  
8 Radiology's professional liability insurance policy. Therefore, Dr. Balodimas was not "an employee"  
9 of Las Vegas Radiology.

10           8.     In opposing the summary judgment motion, Plaintiff, in part, provided a health  
11 insurance claim form for the amount of \$1,100 (for the service date of February 12, 2013 when  
12 Plaintiff underwent CT Scan). That insurance claim form contained the names of James Balodimas,  
13 M.D. and Las Vegas Radiology. The Plaintiff argues that this billing presents circumstantial evidence  
14 of employment and agency that should be sufficient, alone, to "... defeat LVR's Rule 56 Motion".

15           9.     In response, Las Vegas Radiology provided a monthly billing summary for the month  
16 of February 2013. The summary indicates that there were a number of radiologists (including Dr.  
17 Balodimas) who were not employed by Las Vegas Radiology but interpreted imaging at Las Vegas  
18 Radiology's imaging center. A number of locum-tenens radiologists were employed by another group,  
19 namely, Radiology 24/7.

20           10.    The billing summary provided by Movant demonstrates that Las Vegas Radiology  
21 would globally bill for both the CT Scan it generated and the interpretation of the scan by the locum-  
22 tenens radiologists. Then, on a monthly basis, Las Vegas Radiology would provide a sum of money to  
23 pay Radiology 24/7 for the imaging interpretation services of its locum-tenens radiologists. The  
24 billing summary with attached check stub (dated 2/28/2013) demonstrates that \$119,126.42 was paid  
25 to Radiology 24/7, by Las Vegas Radiology, including \$34, 963.42 for the radiology services of  
26  
27  
28

James Balodimas, M.D.<sup>1</sup>

11. Following oral argument, the Court finds that Dr. Balodimas was not an employee of Las Vegas Radiology. As such, the Court finds that there is no just reason for delay and enters judgment in favor of Las Vegas Radiology, LLC. The Court certifies this judgment pursuant to NRCPL Rule 54(b).

### CONCLUSIONS OF LAW

12. Paragraphs 68 and 69 of the Amended Complaint allege Defendant James Balodimas, M.D. was acting in the course and scope of his "employment" with Las Vegas Radiology, LLC when "conducting" and interpreting Marie Gonzales' February 12, 2013 CT study of the lumbar spine. Plaintiff further alleges that since Dr. Balodimas was negligent in causing injury to Marie Gonzales, Las Vegas Radiology is vicariously liable, pursuant to NRS 41.130, for such damages.

13. NRS 41.130 requires that the person causing injury be "employed" by the corporation and provides as follows:

"NRS 41.130 Liability for personal injury. Except as otherwise provided in NRS 41.745, whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury is liable to the person injured for damages; and where the person causing the injury is employed by another person or corporation responsible for the conduct of the person causing the injury, that other person or corporation so responsible is liable to the person injured for damages." (Emphasis added.)

14. Defendant Las Vegas Radiology acknowledges that Dr. Balodimas may have been at a Las Vegas Radiology center on February 12, 2013 when he interpreted Marie Gonzales' CT Scan. However, the location where Dr. Balodimas interpreted the CT Scan does not define who employed him. An employer can be vicariously responsible only for the acts of his employees and not someone else. See *Kennel v. Carson City School District* 738 F. Supp. 376 (D.Nev.1990).

15. The undisputed evidence is that Dr. Balodimas was on Las Vegas Radiology center premises in the capacity of a locum-tenens physician, but, was employed by Radiology 24/7 and not

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<sup>1</sup> And there is no contention that Las Vegas Radiology controlled the details or method by which Dr. Balodimas, a board certified radiologist, interpreted CT Scans. Nor was any evidence produced with regard to same. Moreover, there is no contention that Marie Gonzales ever saw, met or spoke with Dr. Balodimas.

1  
2 Las Vegas Radiology. This is supported by the deposition of Dr. Balodimas, the affidavit of Dr.  
3 Kittusamy (CEO and owner of Las Vegas Radiology) and the billing summary indicating that  
4 payment received for Dr. Balodimas' imaging interpretations when at the premises of Las Vegas  
5 Radiology were repaid to Radiology 24/7 on a monthly basis.

6 16. In opposing Summary Judgment, the non-moving party (Republic) must by affidavit or  
7 otherwise, provide specific facts demonstrating the existence of a genuine issue for trial. Plaintiff is  
8 not entitled to "... build a case on the gossamer threads of whimsy, speculation and conjecture." *See*  
9 *Wood v. Safeway, Inc.* 121 Nev. 724, 121 P.2d 1026 (Nev. 2005). Here, the Court finds there is no  
10 genuine issue of material fact remaining, and that Dr. Balodimas was not "... an employee" or agent  
11 of Las Vegas Radiology when interpreting Marie Gonzales' CT Scan on February 12, 2013.

12 17. Where "undisputed evidence" exists concerning the employees status at the time of the  
13 tortious act (in this case February 12, 2013), the issue may be resolved "... as a matter of law ..." *See*  
14 *Evans v. Southwest Gas*, 108 Nev. 1002, 1006, 842 P.2d 719, 722 (1992). Further, "... a question  
15 of law exists as to whether sufficient competent evidence is present to require that the agency  
16 question be forwarded to a jury." *Schlotfeldt v. Charter Hosp. Of Las Vegas*, 112 Nev. 42, 910 P.2d  
17 271 (1996). The Court finds that there is not such sufficient competent evidence.

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ORDERS

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. Defendant Las Vegas Radiology's Motion for Summary Judgment is GRANTED thereby dismissing Las Vegas Radiology from this action with prejudice; and
2. There being no just reason for delay, judgment shall be entered in favor of Las Vegas Radiology, LLC. The Court certifies this judgment pursuant to NRCP Rule 54(b).

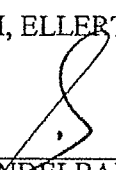
DATED this 6 day of Dec, 2018.

  
DISTRICT COURT JUDGE 

Respectfully Submitted by:

DATED this 29<sup>th</sup> day of November, 2018.

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MARIE ELLEERTON, ESQ.

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DATED this \_\_\_\_ day of \_\_\_\_, 2018.

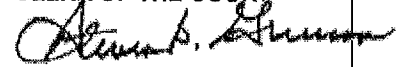
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**EXHIBIT C**

**EXHIBIT C**

**EXHIBIT C**



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13 Attorneys for Plaintiff  
14 Republic Silver State Disposal, Inc.

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*\*

REPUBLIC SILVER STATE DISPOSAL, INC., Case No.: A-16-738123-C  
a Nevada Corporation,

Dept No.: XXX

Plaintiff

vs.

SECOND AMENDED COMPLAINT &  
JURY DEMAND

ANDREW M. CASH, M.D.; DESERT  
INSTITUTE OF SPINE CARE, LLC, a Nevada  
Limited Liability Company; JAMES D.  
BALODIMAS, M.D.; LAS VEGAS  
RADIOLOGY, LLC, a Nevada Limited Liability  
Company; BRUCE A. KATUNA, M.D.; ROCKY  
MOUNTAIN NEURODIAGNOSTICS, LLC, a  
Foreign Limited Liability Company; DANIELLE  
MILLER aka DANIELLE SHOPSHIRE;  
NEUROMONITORING ASSOCIATES; DOES  
1-10 inclusive; and ROE CORPORATIONS 1-10  
inclusive

Defendants.

Plaintiff REPUBLIC SILVER STATE DISPOSAL, INC., by and through its attorneys,  
BARRON & PRUITT, LLP, complains and alleges against Defendants as follows:

PARTIES

1. Plaintiff, REPUBLIC SILVER STATE DISPOSAL, INC. is and was at all relevant  
times a Nevada corporation doing business in Clark County, Nevada.

2. Defendant ANDREW M. CASH, M.D. (CASH) is and was at all times relevant a  
resident of the state of Nevada; a physician licensed to practice medicine in Nevada as defined by  
NRS 630.014 and NRS 630.020; and doing business as a practicing physician in Clark County,

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1 Nevada, holding himself out as board certified and specializing in the field of orthopedic and spinal  
2 surgery.

3 3. Defendant ANDREW M. CASH, M.D., P.C. (CASH P.C.), is a Nevada professional  
4 corporation doing business as ANDREW M. CASH, M.D. On information and belief, Defendant  
5 CASH P.C. may also be or have been known as "ANDREW MILLER CASH, M.D., P.C." in filings  
6 with Nevada Secretary of State.

7 4. Defendant DESERT INSTITUTE OF SPINE CARE, LLC, is a Nevada limited  
8 liability company providing surgical and health care services in Clark County, Nevada.

9 5. Defendants ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. or  
10 ANDREW MILLER CASH, M.D., P.C.; or all of them is a member of Defendant DESERT  
11 INSTITUTE OF SPINE CARE, LLC. Moreover Defendants CASH; CASH P.C.; and DESERT  
12 INSTITUTE OF SPINE CARE is the agent, partner, joint venturer, employee and alter-ego of the  
13 other.

14 6. Defendants CASH and/or CASH P.C. were at all times relevant employees and/or  
15 agents of Defendant DESERT INSTITUTE OF SPINE CARE, LLC and in all acts or omissions  
16 complained of in this Amended Complaint, were acting within such employment and/or agency.

17 7. Defendant JAMES D. BALODIMAS, M.D. (BALODIMAS) was at all times relevant  
18 a resident of the state of Nevada; a physician licensed to practice medicine in Nevada as defined by  
19 NRS 630.014 and NRS 630.020; and doing business as a practicing physician in Clark County,  
20 Nevada, holding himself out as board certified and specializing in the field of radiology.

21 8. Defendant LAS VEGAS RADIOLOGY, LLC, is a Nevada limited liability company  
22 providing radiological services in Clark County, Nevada.

23 9. Defendant JAMES D. BALODIMAS, M.D., PC (BALADIMAS P.C.) is a Nevada  
24 professional corporation doing business as JAMES D. BALODIMAS, M.D.

25 11. Defendants BALODIMAS and/or BALADIMAS P.C. were at times relevant  
26 employees and/or agents of Defendant LAS VEGAS RADIOLOGY, LLC, and in all acts or  
27 omissions complained of in this Amended Complaint, were acting within such employment and/or  
28 agency.

12. Defendant BRUCE A. KATUNA, M.D. (KATUNA) is and was at times relevant a

1 resident of the state of Colorado. It is further alleged that Defendant KATUNA is and was at times  
2 relevant a physician licensed to practice medicine in Nevada as defined by NRS 630.014 and NRS  
3 630.020 and that all acts, errors and omissions complained of against Defendant KATUNA occurred  
4 in or were directed into the state of Nevada. It is further alleged on information and belief that  
5 Defendant KATUNA holds himself out as board certified and a specialist in the field of neurology,  
6 and intra-operative neuro-monitoring.

7 13. On information and belief, Defendant KATUNA is the sole member of Defendant  
8 ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC is a Colorado limited liability company. In  
9 all acts or omissions complained of in this Amended Complaint, Defendant ROCKY MOUNTAIN  
10 NEURODIAGNOSTICS' conduct occurred in, or was directed into the state of Nevada.

11 14. On information and belief, Defendant KATUNA was at times relevant an employee  
12 and/or agent of Defendant ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC and in all acts or  
13 omissions complained of in this Amended Complaint was acting within such employment and/or  
14 agency.

15 15. Defendant DANIELLE MILLER aka Danielle Shopshire (MILLER) at times relevant  
16 was a neuromonitoring technician practicing in Clark County, Nevada.

17 16. Defendant NEUROMONITORING ASSOICATES, INC. is a Nevada corporation  
18 providing neuromonitoring personnel and services in Clark County, Nevada.

19 17. On information and belief Defendant MILLER, in all acts or omissions complained  
20 of in this Amended Complaint, was acting as an employee and/or agent of Defendant  
21 NEUROMONITORING ASSOICATES.

22 18. The true names and capacities, whether individual, corporate, association or  
23 otherwise of Defendants DOES 1-10, inclusive, and ROE CORPORATIONS 1-10 inclusive, are  
24 unknown to Plaintiff, who therefore sues those Defendants by fictitious names.

25 19. REPUBLIC is informed, believes, and thereupon alleges that each of the Defendants  
26 designated as DOE 1-5 and ROE CORPORATION 1-5, and each of them, is an individual or  
27 business entity who is a "health care provider" as defined in NRS 41A.017. Each such fictitiously  
28 named Defendant caused the events and damages complained of; and each is negligently, vicariously  
or otherwise responsible for the breach of a legal duty which proximately caused the injuries and

1 damages alleged. Alternatively, DOES 1-5 and ROE CORPORATIONS 1-5 are the owners,  
2 operators, employers, employees, joint venturers, alter egos, principals, servants, and/or agents of  
3 any or all of the Defendants named herein.

4 20. DOE 6-10 and ROE CORPORATION 6-10, and each of them, is an individual or  
5 business entity who is not a "health care provider" as defined in NRS 41A.017. Each such  
6 fictitiously named Defendant caused the events and damages complained of; and each is negligently,  
7 vicariously, or otherwise responsible for the breach of a legal duty which proximately caused the  
8 injuries and damages alleged. Alternatively, DOES 6-10 and ROE CORPORATIONS 6-10 are the  
9 owners, operators, employers, employees, joint venturers, alter egos, principals, servants, and/or  
10 agents of any or all of the Defendants named herein.

11 21. REPUBLIC will seek leave of this court to amend this Complaint to insert the true  
12 names and capacities of DOES 1-10 and/or ROE CORPORATIONS 1-10, inclusive, when the same  
13 have been ascertained, together with the appropriate charging allegations, and to join such  
14 Defendants in this action.

15 22. Defendants CASH; CASH P.C.; BALODIMAS; BALODIMAS P.C.; LAS VEGAS  
16 RADIOLOGY; KATUNA; ROCKY MOUNTAIN NEURODIAGNOSTICS; MILLER; and  
17 NEUROMONITORING ASSOCIATES; and DOES 1-10 and ROE CORPORATIONS 1-10, each  
18 of them, were physicians, health care institutions, or other medical treatment providers who treated  
19 or performed services on behalf of Marie Gonzalez on or about January 29, 2013 and at times  
20 relevant thereafter for injuries she claimed to have resulted from a traffic accident with a commercial  
21 garbage truck owned and operated by REPUBLIC and driven by its then-employee, Deval Hatcher,  
22 occurring on or about January 14, 2012 in Clark County, Nevada. Gonzalez filed a legal action for  
23 injuries allegedly sustained in the aforementioned motor vehicle accident against REPUBLIC and  
24 Hatcher, entitled *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* (Eighth Judicial District  
Court Case No. A687931).

25 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

26 23. All the facts, circumstances, errors and omissions giving rise to the instant lawsuit  
27 occurred in Clark County, Nevada.

28 24. On or about April 4, 2012, Gonzalez, began treating with Defendant CASH for

1 injuries to her low back allegedly sustained in the motor vehicle accident of January 14, 2012.

2 25. On or about December 19, 2012, Defendant CASH recommended that Gonzales  
3 undergo reconstructive spinal surgery at L4-5, L5-S1.

4 26. On or about January 29, 2013, Gonzalez underwent spinal surgery performed by  
5 Defendant CASH known as an "oblique lateral lumbar interbody fusion" (referred to below as  
6 "OLIF" or "OLIF procedure").

7 27. Defendant CASH's OLIF procedure on Gonzales was performed at the L4-5 and L5-  
8 S1 levels on the left.

9 28. The described OLIF procedure at L4-5, L5-S1 involved placement by Defendant  
10 CASH of so-called "pedicle screws."

11 29. Prior to the OLIF procedure Defendant CASH requested DOE 1 and/or ROE  
12 CORPORATION 1 to hire, retain or otherwise obtain intraoperative neurophysiological monitoring  
13 services for the Gonzales OLIF.

14 30. The neurophysiological monitoring services referenced in the preceding paragraph  
15 were provided by Defendants KATUNA and ROCKY MOUNTAIN NEURODIAGNOSTICS, and  
16 Defendants MILLER and NEUROMONITORING ASSOICATES.

17 31. On information and belief, Defendant KATUNA remotely conducted the  
18 neurophysiological monitoring of the Gonzales OLIF from the state of Colorado. In so doing his  
19 actions were purposefully directed to the state of Nevada.

20 32. A true and correct copy of a March 6, 2013 "Intraoperative Neurophysiological  
21 Monitoring Report" from Defendant ROCKY MOUNTAIN NEURODIAGNOSTICS, signed by  
22 Defendant KATUNA, is attached as **EXHIBIT 1**. The neuromonitoring report (**EXHIBIT 1**) states  
23 that it is for intraoperative neuromonitoring of Gonzales' central and peripheral nervous systems,  
24 and that "Monitored responses showed no significant changes throughout the procedure, and the  
25 surgeon was so informed. Pedicle screw testing demonstrated thresholds suggesting low likelihood  
26 of pedicle breach."

27 33. Defendant MILLER was retained to perform, or alternatively assigned to perform as  
28 the agent Defendant NEUROMONITORING ASSOICATES; DOES 1 and 6, or either of them ;  
and/or ROE CORPORATIONS 1 and 6, or either of them, neurophysiological monitoring services

1 in connection with the OLIF procedure described in the preceding paragraphs.

2 34. Defendant MILLER was at all times relevant present in the operating room at Spring  
3 Valley Hospital in Clark County, Nevada, providing neurophysiological monitoring services during  
4 the described OLIF procedure as it was being performed by Defendant CASH at Spring Valley  
5 Hospital on January 29, 2013. Defendant Miller was negligently overseen and supervised in the  
6 performance of the described neuromonitoring services by Defendants CASH and KATUNA, or  
7 either of them.

8 35. On information and belief, Defendant MILLER prepared, or had prepared at her  
9 direction, a document entitled "Neuromonitoring Report," dated January 29, 2013 concerning the  
10 neurophysiological monitoring of Gonzales during the described OLIF procedure. A true and correct  
11 copy of the described "Neuromonitoring Report," as currently available to REPUBLIC after good  
12 faith efforts to obtain the same, is attached as **EXHIBIT 2**.

13 36. The "Neuromonitoring Report," **EXHIBIT 2**, states in part:

14 [Pedicule Screw Testing (PTS)] was requested by [Defendant Cash] to verify  
15 accuracy of screw position and confirm that the respective nerve root is not at risk  
16 from the screw placement. PST can detect subtle breaches in the pedicle wall that  
17 cannot be visualized with x-rays thereby providing a higher standard of safety and  
18 avoiding iatrogenic injury. Pedicle screws that do not elicit [Compound Muscle  
19 Action Potential (CMAP)] to stimulation less than 4 [milliamps (mA)] are  
20 deemed safe. The surgeon was handed a ball tip probe which is connected to our  
21 stimulator. Stimulation was started at 0 mA and slowly went up to 4 mA in 1 mA  
22 increments. If a screw was positioned close to a nerve root, we would see a  
23 response on our EMG window in the muscle that correlates to the level we are  
24 testing. 6 nerve prox were tested (L4, L5, and S1 screws on the right and left  
25 side). Pedicles screw testing (PST) yielded no CMAPs to stimulation below 4  
26 mA. The surgeon was satisfied with the PST responses and felt no need to  
27 reposition any of the placed screws. After PST was completed, rods were placed  
28 and the surgeon began to close, Final x-rays further confirmed safe screw  
placement.

1 Emphasis is in the original.

2 37. In fact, the intraoperative neurophysiological monitoring performed and assessed by  
3 Defendants KATUNA and ROCKY MOUNTAIN NEURDIAGNOSTICS, and Defendants  
4 MILLER was in error and below the standard of care, and failed to detect and accurately report  
5 pedicle screw breaches at L4-5, L5-S1, or either of them.

6 38. Attached as **EXHIBIT 3** is a true and correct copy of the operative report authored  
7 by Defendant CASH regarding the Gonzales OLIF procedure. **EXHIBIT 3** states in part that "All  
8 [pedicle] screws were carefully placed into the center of the pedicle and no bony breach of any  
9 pedicle was felt to occur." In fact, the operative report and opinion of Defendant CASH was in error  
10 and pedicle screw breaches had occurred at L4-5, L5-S1, or either of them.

11 39. Immediately after the OLIF surgery, Gonzalez reported severe back and left leg pain,  
12 and remained at Spring Valley Hospital as an in-patient for pain control until discharged on  
13 February 2, 2013. Prior to discharge from Spring Valley Hospital, Gonzales did not undergo  
14 electrodiagnostic, or CT or MRI imaging studies to assess whether the pain was caused by, or related  
15 to surgical complications, including breach of the pedicle screws.

16 40. Gonzales continued to experience pain after discharge from Spring Valley Hospital  
17 into her left hip and leg and returned to Defendant CASH for postsurgical follow-up on or about  
18 February 6, 2013. Defendant CASH then ordered a CT study of Gonzales' lumbar spine.

19 41. On February 12, 2013, a CT study of Gonzales' lumbar spine was performed at the  
20 facilities of Defendant LAS VEGAS RADIOLOGY.

21 42. A true and correct copy of Defendant LAS VEGAS RADIOLOGY's February 12,  
22 2013 report for the CT study of Gonzales' lumbar spine is attached as **EXHIBIT 4**. **EXHIBIT 4**  
23 was signed by Defendant BALODIMAS who diagnosed "no evidence of significant mass effect  
24 upon the neural foramina by the pedicle screws," and that the "[c]ase was discussed with [Defendant  
25 CASH] at time of dictation."

26 43. On December 3, 2014, Defendant CASH testified under oath during his deposition as  
27 a treating physician in the *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* matter that, on  
28 or about February 12, 2013, he had reviewed the CT scan and Defendants LAS VEGAS  
RADIOLOGY and BALODIMAS's report (**EXHIBIT 4**), and that:

1 It said there might be some scar tissue versus disk material encroaching on the left  
2 foramina at L4-5, L5-S1. When I evaluated the patient on 12/12/13 (sic), I  
3 actually saw the CT scan, reviewed the report, [and] spoke with the radiologist  
4 [Dr. Balodimas]. He confirmed that on his report of the study and found that  
5 there was no neural impingement, meaning no compression on the nerve to be  
6 decompressed surgically and no complication or malfunction in the hardware to  
7 be addressed surgically.

8 Deposition of Andrew Cash, M.D., December 4, 2014, pg. 62, ln.2-11. A copy of the excerpted  
9 testimony is attached as **EXHIBIT 5**.

10 44. In fact, Defendants CASH and BALODIMAS were in error, and their assessments of  
11 the February 12, 2013 CT lumbar study were below their respective standard of care as the CT study  
12 demonstrated breach of the pedicle screws at L4-5, L5-S1, or either of them, where they displaced  
13 the nerve root(s).

14 45. After February 12, 2013, Gonzales' post-surgical pain continued notwithstanding  
15 additional treatment that included follow-up visits with Defendant CASH, and other health care  
16 providers, including those providing physio-therapy; spinal injections; and implantation of a trial  
17 spinal cord stimulator. At no time after the OLIF procedure did Defendant CASH recommend  
18 additional surgery to determine the cause of, or to rectify Gonzales' post-operative pain.

19 46. On or about June 7, and July 12, 2013, Gonzales consulted with Drs. Jason Garber  
20 and Stuart Kaplan of Western Regional Center for Brain & Spine Surgery for continued debilitating  
21 post-surgical pain. It was the opinion of Drs. Garber and Kaplan that the pain was in the L5 and S1  
22 nerve distributions and that the pedicle screws on the left at L4-5, L5-S1 had breached the pedicles.  
23 To alleviate Gonzales' post-operative pain in her back and left leg it was recommended that she  
24 undergo an anterior fusion at L4-5, L5-S1, and that the existing hardware and pedicle screws on the  
25 left be replaced on the right at the same levels. The recommended surgery was performed by Dr.  
26 Kaplan at Spring Valley Hospital on July 15, 2013.

27 47. Notwithstanding the surgery of July 15, 2013, Gonzales suffered lasting injury to the  
28 L5 and S1 nerve roots, and developed chronic pain syndrome directly because of the failure of  
Defendants, and each of them, to have properly detected or diagnosed the pedicle screw breach,

1 and/or to have rendered medical treatment to address the surgical complication in a timely fashion so  
2 as to avoid permanent pain, disability and impairment.

3 48. On or about February 10, 2015, Dr. Kaplan implanted a spinal cord stimulator for  
4 Gonzales' chronic back and leg pain, and on information and belief Gonzales will require battery  
5 replacements and further expense into the future in connection with the spinal cord stimulator.

6 49. On or about September 3, 2013, Gonzalez filed her Complaint in *Gonzalez v.*  
7 *Hatcher, Republic Silver State Disposal, Inc.*, (Case No. A687931) against REPUBLIC and Deval  
8 Hatcher.

9 50. Gonzales' computation of damages pursuant to NRCP 16.1 (a) (1) (C) in the  
10 *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* matter, as supported by expert opinion,  
11 through June 15, 2015 included the following economic damages:

- 12 a. Past medical expenses (inclusive of all billings before and after January 29,  
13 2013)—\$ 1,108,510.16
- 14 b. Future medical expenses—\$2,980,907.34 to \$3,502,858.34
- 15 c. Loss of future earning capacity—\$297,040.00 to \$549,512.00
- 16 d. Loss of household services—\$431,656.00

17 51. All or substantial portions Gonzales' claimed damages, including past and future  
18 pain, suffering and disability, and past and future costs of medical treatment and care and other  
19 "economic" damages as defined by NRS 41A.007, were due to the professional negligence of the  
20 Defendants, and each of them, in their failure to have properly diagnosed the pedicle screw breach  
21 and/or to have rendered timely medical treatment to Gonzales to remove the pedicle screws and  
22 avoid permanent neurological damage.

23 52. Attached as **EXHIBIT 6** in support of REPUBLIC's allegations is the true and  
24 correct declaration under penalty perjury pursuant to NRS 41A.071 of Howard Tung, M.D., in  
25 which Dr. Tung states that in his professional opinion Defendant CASH's treatment of Marie  
26 Gonzales was below the standard of care for a spinal surgeon, and gives the reasons therefor. Dr.  
27 Tung also opines that the neuromonitoring services of Defendant KATUNA were below the  
28 standard of care, and gives the reasons therefor. The Tung declaration is incorporated by reference  
as if fully set forth herein.

1  
2 53. Attached as **EXHIBIT 7** in support of REPUBLIC's allegations is the true and  
3 correct declaration under penalty perjury pursuant to NRS 41A.071 of David Seidenwurm, M.D., in  
4 which Dr. Seidenwurm states that in his professional opinion Defendant BALODIMAS' treatment  
5 of Marie Gonzales was below the standard of care for a radiologist, and gives the reasons therefor.  
6 The Seidenwurm declaration is incorporated by reference as if fully set forth herein.

7 54. Attached as **EXHIBIT 8** in support of REPUBLIC's allegations is the true and  
8 correct declaration under penalty perjury pursuant to NRS 41A.071 of Gerald Saline, Ph.D., in  
9 which Dr. Saline states that in his professional opinion professional and technical neuromonitoring  
10 services rendered by Defendants KATUNA and MILLER in the treatment of Marie Gonzales were  
11 below the standard of care, and gives the reasons therefor. The Saline declaration is incorporated by  
12 reference as if fully set forth herein.

13 55. On July 6, 2015, REPUBLIC settled *Gonzalez v. Hatcher, Republic Silver State*  
14 *Disposal, Inc.*, resolving all claims against itself, Deval Hatcher, and all Gonzales' health care  
15 providers, including but not limited to the Defendants herein, for \$2,000,000.00.

16 56. As a direct and proximate result of Defendants' negligence, gross negligence,  
17 recklessness, and failure to use due care, Gonzalez suffered new and different injuries from those  
18 allegedly suffered in the motor vehicle accident of January 14, 2012.

19 57. REPUBLIC is entitled, as a matter of law, to seek contribution from the Defendants,  
20 and each of them, pursuant to the provisions of the *Uniform Contribution Among Tortfeasors Act*,  
21 NRS 17.225, et seq., and receive all sums in excess of REPUBLIC's equitable share of the common  
22 liability from the Defendants, and each of them.

23 58. REPUBLIC should also receive from the Defendants, and each of them, in amounts  
24 proportionate to the Defendants' shares of the common liability, reimbursement of REPUBLIC's  
25 fees and costs incurred in addressing and defending claims asserted in *Gonzalez v. Hatcher*,  
26 *Republic Silver State Disposal, Inc.* arising from the Defendants' medical malpractice or medical  
27 negligence.

28 ///

**FIRST CAUSE OF ACTION**  
**(Contribution Against All Defendants)**

59. Plaintiff incorporates each and every allegation stated above as though fully set forth herein.

60. Because REPUBLIC made payment to Marie Gonzales in settlement for injuries that were due to the fault, negligence and carelessness of Defendants, and each of them, REPUBLIC should be required to pay no more than its equitable share of the common liability to Gonzales, as provided by NRS 17.225, et. seq., and thus receive contribution from the Defendants, and each of them in accordance with their equitable shares of that common liability.

61. Because the Defendants have not paid their equitable share of the common liability, REPUBLIC is damaged in an amount in excess of \$15,000.00.

62. It was necessary for REPUBLIC to retain the services of an attorney to defend against Gonzales' claims, including defense against damages caused exclusively by the negligence, gross negligence and recklessness of the Defendants, and each of them. REPUBLIC should also receive from the Defendants, and each of them, in amounts proportionate to the Defendants' shares of the common liability, reimbursement of REPUBLIC's fees and costs incurred in addressing and defending claims asserted in *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* arising from the Defendants' medical malpractice or medical negligence.

63. It was also necessary for REPUBLIC to bring this action for contribution, and REPUBLIC is therefore entitled to recover attorney's fees and costs incurred.

**SECOND CAUSE OF ACTION**  
**(Misrepresentation of Medical Service and False Billing for Services not Rendered)**

64. Plaintiff incorporates each and every allegation stated above as though fully set forth herein.

65. Defendants MILLER and KATUNA claimed to have rendered, in connection with the operative procedure described more fully above, services known as "pedicle screw testing."

66. The purpose of such testing is to identify and detect mal-positioning of surgical instrumentation used in spinal surgery known as known as "pedicle screws," and to avoid injury to nerve roots which can occur should misplaced pedicle screws enter the neuroforamina.

67. Defendants MILLER and KATUNA each authored reports stating that pedicle screw

1 testing had in fact occurred during the operative procedure described above, and that pedicle screws  
2 implanted during the subject procedure were properly positioned. See **EXHIBITS 1 & 2**.

3 68. REPUBLIC alleges on its best information that such pedicle screw testing services  
4 had in fact not been rendered as represented by Defendants MILLER and KATUNA.

5 69. Although such pedicle screw testing had not been performed, Defendants MILLER  
6 and KATUNA submitted bills for such services by and through the offices of MILLER's employer,  
7 NEUROMONITORING ASSOCIATES, INC. Such bills were based on misrepresentations of fact,  
8 and were charges for services not rendered.

9 70. Because of the described misrepresentations iatrogenic injuries were suffered by  
10 Marie Gonzales, REPUBLIC made payment to Marie Gonzales in settlement for injuries that were  
11 due to the fault, negligence and carelessness of the Defendants, and each of them, and REPUBLIC  
12 should be required to pay no more than its equitable share of the common liability to Gonzales, as  
13 provided by NRS 17.225, et. seq., and thus receive contribution from the Defendants, and each of  
14 them in accordance with their equitable shares of that common liability.

15 71. Because the Defendants have not paid their equitable share of the common liability,  
16 REPUBLIC is damaged in an amount in excess of this Court's jurisdictional minimum.

17 72. It has become necessary for REPUBLIC to bring this action for contribution, and  
18 REPUBLIC is therefore entitled to recover attorney's fees and costs incurred.

#### 19 JURY DEMAND

20 REPUBLIC SILVER STATE DISPOSAL, INC. demands a jury as preserved by the U.S.  
21 and Nevada Constitutions, and NRCP 38.

22 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them, as follows:

- 23 1. For general damages in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00);
- 24 2. For special damages in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00);
- 25 3. For pre-judgment and post-judgment interest;
- 26 4. For reasonable attorney fees;
- 27 5. For costs of suit; and

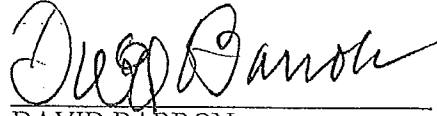
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1 6. For such other and further relief as this Court may deem just and proper.

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3 

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