

Martin A. Little (#7067)
 Ryan T. O'Malley (#12461)
HOWARD & HOWARD ATTORNEYS PLLC
 3800 Howard Hughes Parkway, Suite 1000
 Las Vegas, NV 89169
 Telephone: (702) 257-1483
 Facsimile: (702) 567-1568
 E-Mail: mal@h2law.com; rto@h2law.com
Attorneys for Appellants

Electronically Filed
 Oct 28 2019 03:23 p.m.
 Elizabeth A. Brown
 Clerk of Supreme Court

IN THE SUPREME COURT OF NEVADA

FIELDEN HANSON ISAACS MIYADA
 ROBINSON YEH, LTD.

Case No. 78358

Appellants,

District Court No. A-18-783054-C

vs.

DEVIN CHERN TANG, M.D., SUN
 ANESTHESIA SOLUTIONS

Respondents.

JOINT MOTION TO CONSOLIDATE CASE NOS. 78358, 79460, AND 79663

Parties Devin Chern Tang, M.D. ("Dr. Tang"); Sun Anesthesia Solutions ("Sun"); and Fielden Hanson Isaacs Miyada Robinson Yeh, Ltd. ("Fielden Hansen") jointly move the Court to consolidate this matter ("Tang I") with *Duong v. Fielden Hanson Isaacs Miyada Robinson Yeh, Ltd.*, Case No. 79460 (the "Duong Case") and *Fielden Hanson Isaacs Miyada Robinson Yeh, Ltd. v. Tang*, Case No. 79663¹ ("Tang II").

¹The Court issued an Order to Show Cause on October 24, 2019 requiring Fielden Hanson to demonstrate why the Court has subject matter jurisdiction over Tang II. If the Court determines that subject matter jurisdiction exists for Tang II, the parties believe consolidating it with Tang I and the Duong Case would be appropriate. If the Court determines it lacks subject matter jurisdiction over Tang II, then Tang II will be dismissed while the consolidated cases of Tang I and the Duong Case will move forward in one action.

1 All three appeals present nearly identical facts and legal issues:

- 2 • All three appeals involve Fielden Hanson suing a former employee to enforce
- 3 a covenant not to compete.
- 4 • Fielden Hanson and Defendants in each case are represented by the same
- 5 counsel on each side of the “v.” — Dickinson Wright PLLC represents
- 6 Fielden Hanson in all appeals, and Howard & Howard Attorneys PLLC
- 7 represents the Defendants in all appeals.
- 8 • All three appeals involve identical employment agreements with identical
- 9 covenants not to compete.
- 10 • All three appeals relate to district court rulings on Fielden Hanson’s motions
- 11 for a preliminary injunction enforcing the covenant not to compete.
- 12 • All three appeals involve arguments that NRS 613.195(5) should be applied
- 13 to modify a noncompetition agreement which was executed before the
- 14 statute’s enactment.
- 15 • The procedural posture differs only slightly between the cases:
- 16 ○ In Case Nos. 78358 and 79663, the district court held that the
- 17 noncompetition agreement was unenforceable as drafted and that NRS
- 18 613.195(5) could not be applied to modify it.
- 19 ○ In Case No. 79460, the district court held that the noncompetition
- 20 agreement was unenforceable as drafted, but applied NRS 613.195(5)
- 21 to modify the terms of the noncompetition agreement to render it
- 22 enforceable.

23 In short, all three appeals turn on the enforceability of identical
 24 noncompetition agreements and whether NRS 613.195(5) applies to the subject
 25 employment agreements. These are identical, purely legal issues and the Court
 26 should consolidate the cases in the interest of judicial economy.

27 The parties stipulate that Fielden Hanson will be the appellant and shall file
 28 the opening brief in accordance with the deadline set forth in the Court’s September

20, 2019 Order Reinstating Briefing in Case No. 78358. NRAP 28.1(f)(1) shall governing the remaining deadlines for briefing as follows:

- Defendants’ combined answering brief on appeal and opening brief on cross-appeal shall be filed within thirty days after Fielden Hanson’s opening brief is served
- Fielden Hanson’s combined reply brief on appeal and answer brief on cross-appeal shall be filed within thirty days after Defendants’ combined answering brief on appeal and opening brief on cross-appeal is served
- Defendants’ reply brief on cross-appeal shall be filed within fourteen days after the appellant’s combined reply brief on appeal and answering brief on cross-appeal is served.

DATED this 28th day of October, 2019.

HOWARD & HOWARD ATTORNEYS

DICKINSON WRIGHT PLLC

By: /s/Ryan T. O’Malley
 Martin A. Little (#7067)
 Ryan T. O’Malley (#12461)
 3800 Howard Hughes Pkwy, #1000
 Las Vegas, Nevada 89169
Attorneys for Appellants

By: /s/Gabriel Blumberg
 Michael N. Feder (#7332)
 Gabriel A. Blumberg (#12332)
 8363 West Sunset Road, Suite 200
 Las Vegas, Nevada 89113
Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Howard & Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada, 89169.

I served the foregoing **JOINT MOTION TO CONSOLIDATE CASE NOS. 78358, 79460, AND 79663** in this action or proceeding electronically with the Clerk of the Court via the E-Flex system, which will cause this document to be served upon the following counsel of record:

Michael N. Feder (#7332)
Gabriel A. Blumberg (#12332)
DICKINSON WRIGHT PLLC
8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113
Attorneys for Respondents

I certify under penalty of perjury that the foregoing is true and correct, and that this Certificate of Service was executed by me on October 28, 2019 at Las Vegas, Nevada.

/s/ Anya Ruiz

An Employee of HOWARD & HOWARD ATTORNEYS PLLC