

1  
2  
3 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

6 Appellant,

7 vs.

8 ANDREW M. CASH, M.D.; ANDREW M. CASH,  
9 M.D., P.C., A/K/A ANDREW MILLER CASH,  
10 M.D., P.C.; AND DESERT INSTITUTE OF  
11 SPINE CARE, LLC, A NEVADA LIMITED  
12 LIABILITY COMPANY,

13 Respondents.

Supreme Court No. 78572

District Court Case No. A738123

Electronically Filed

May 20 2019 09:29 a.m.

**DOCKETING STATEMENT**  
**COURT OF APPEALS**

14  
15 **GENERAL INFORMATION**

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

22 **WARNING**

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

28 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:**

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

**Attorney:** David Barron

**Telephone:** (702) 870-3940

**Firm:** Barron & Pruitt, LLP

**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:** Robert C. McBride, Esq. **Telephone:** (702) 792-5855

Heather S. Hall, Esq.

**Firm:** Carroll, Kelly Trotter, Franzen, McBride & Peabody

**Address:** 8329 West Sunset Road, Suite 260, Las Vegas, NV 89113

**Client(s)** Andrew M. Cash, MD; Andrew M. Case, MD, PC; Andrew Miller  
Cash, MD, PC; and Desert Institute of Spine Care, LLC

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

<input type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>
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Judgment after bench trial  
Judgment after jury verdict  
Summary Judgment  
Default Judgment  
Dismissal  
Lack of jurisdiction  
Failure to state a claim  
Failure to prosecute  
Other (specify)

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Grant/Denial of NRCP 60(b) relief  
Grant/Denial of injunction  
Grant/Denial of declaratory relief  
Review of agency determination  
Divorce Decree:  
☐ original ☐ modification  
Other disposition (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, et al. vs. Eighth  
Judicial District Court (Republic Silver State Disposal, Inc., real party in  
interest)

Supreme Court Case #77867; Republic Silver State Disposal, Inc. vs. Las  
Vegas Radiology, LLC.

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:

N/A

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

Contribution action under Uniform Contribution Among Tortfeasors Act, NRS 17.225, et seq., 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 Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC, aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's ("Cash et al.") Motion for Summary Judgment?
2. Did the District Court err, or abuse its discretion, in denying Plaintiff, Republic Silver State Disposal, Inc.'s Motion for Reconsideration of the Order Granting Cash et al.'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: Whether the Uniform Contribution Among Tortfeasors Act, NRS 17.225, et seq., applies to "successive tortfeasors"?

If so, explain: Whether the Uniform Contribution Among Tortfeasors Act, NRS 17.225, et seq., applies to "successive tortfeasors"?

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 where claims against the contribution defendant, brought by an "original" tortfeasor, are based on medical negligence. The appeal therefore presents a significant substantive issue of Nevada law. The amount of the settlement for which contribution is sought is \$2,000,000, and the case is therefore in excess of the amount set forth in NRAP 17(b)(5) for presumptive assignment to the Court of Appeals.

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 Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC, aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Motion for Summary Judgment – March 15, 2019; See Exhibit A.

Order Denying Plaintiff's Motion for Reconsideration of the Court's Order Granting Summary Judgment for Defendants – April 25, 2019; See Exhibit B.

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, and Order Granting Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC, aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Motion for Summary Judgment – March 15, 2019; See **Exhibit A**.

Notice of Entry of Order, and Order Denying Plaintiff's Motion for Reconsideration of the Court's Order Granting Summary Judgment for Defendants – April 29, 2019; 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:**

Notice of Appeal: April 10, 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:

Notice of Cross Appeal: April 24, 2019

**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)

☐ NRS 155.190  
☐ NRS 38.205  
☐ NRS 703.376

☐ Other (specify)

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

Appeal from Orders Granting Summary Judgment, and Denying Motion for Reconsideration

**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 Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC, aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Motion for Summary Judgment and therefore does not involve the other Defendants, all of whom have been dismissed.

**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:**

Contribution based on professional medical negligence

**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 or consolidated actions below:**

☒ Yes ☐ No

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

- (a) Specify the claims which remain pending below:

- (b) Specify the parties remaining below:

- (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 Exhibits A and B; and
- Notice of entry for each attached order – See Exhibits A and 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

Name of Appellant

Name of counsel of record

5/20/19



Date

Signature of counsel of record

Clark County, Nevada

State and county where signed

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20<sup>th</sup> day of May, 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:

Robert C. McBride, Esq.

Heather S. Hall, Esq.

CARROLL, KELLY, TROTTER, FRANZEN, McBRIDE & PEABODY

8329 West Sunset Road, Suite 260

Las Vegas, Nevada 89113

*Attorney for Respondents*

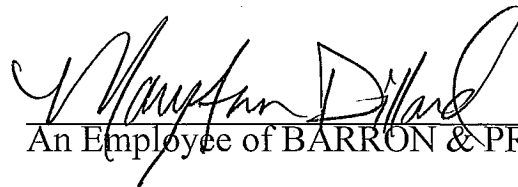
Ara H. Sherinian

10651 Capesthorne Way

Las Vegas, Nevada 89135

(702) 496-4985

*Settlement Judge*



An Employee of BARRON & PRUITT, LLP



**EXHIBIT A**

**EXHIBIT A**

**EXHIBIT A**

DISTRICT COURT  
CLARK COUNTY, NEVADA  
-oOo-

*Steven D. Grierson*

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

Plaintiff

Case No.: A-16-738123-C

Dept No.: XXX

vs.

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

Defendants.

**NOTICE OF ENTRY OF ORDER:  
ORDER RE: DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

You are hereby notified that this Court entered **Order re: Defendant's Motion for  
Summary Judgment**, a copy of which is attached hereto.

DATED this 15<sup>th</sup> day of March 2019.

*[Signature]*

JERRY A WIESE

DISTRICT COURT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that on the date filed, a copy of this Order was electronically served

1 CERTIFICATE OF SERVICE

2 I hereby certify that on or about the date e-filed, I served a copy of the foregoing  
3 document

4 ☐ by causing the original of the same to be deposited in the United States Mail, postage  
5 prepaid, addressed as follows:

6 ☐ by placing a copy in the attorney's folder located in the Regional Justice Center to:

7 Charles Cangelosi  
8 3109 Southampton DR  
9 Jamestown, NC 27282  
chcangelosi@yahoo.com

10 Elizabeth R. Mikesell  
11 Law Offices of Elizabeth R. Mikesell  
12 Attn: Elizabeth Mikesell, Esq  
7251 W. Lake Mead Blvd. Suite 250  
Las Vegas, NV 89128

13 Joedda McDonald  
14 1981 Linda AVE  
Marysville, CA 95901

15 Steven L. Venit  
16 2912 W. Catalpa  
17 Chicago, IL 60630-0000



18  
19 Tatyana Ristic  
20 Judicial Executive Assistant  
21 Department 30  
22  
23  
24  
25  
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28

DISTRICT COURT  
CLARK COUNTY, NEVADA  
-oOo-

*Steven D. Grierson*

REPUBLIC SILVER STATE DISPOSAL, )  
INC., a Nevada Corporation, )

Plaintiff, )

vs. )

ANDREW M. CASH, M.D.; ANDREW )  
M. CASH, M.D., P.C., aka ANDREW )  
MILLER CASH, M.D., P.C., DESERT )  
INSTITUTE OF SPINE CARE, LLC., )  
A Nevada Limited Liability Company, )

Defendants. )

CASE NO.: A-16-738123-C  
DEPT. NO.: 30

ORDER RE: DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT

Defendant's Motion for Summary Judgment came on for hearing on Monday, March 11, 2019, at 2:00 p.m. The parties were represented by counsel, who submitted briefs, and argued orally on behalf of their clients. The Court took the matter under advisement, and now issues this Order.

Summary Judgment is appropriate only if "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." NRCP 56. The pleadings and evidence must be construed in the light most favorable to the non-moving party, but the non-moving party must still set forth specific facts demonstrating the existence of a genuine issue of material fact, in order to defeat Summary Judgment. *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 294, 662 P.2d 610, 618-619 (1983). The non-moving party must establish a genuine issue of material fact with more than "gossamer threads of whimsy." *Wood v. Safeway*, 121 Nev. 724, 730-31, 121 P.3d 1026 (2005).

Plaintiff's only remaining claim in this action is for contribution against Dr. Cash and the related Defendants, pursuant to NRS 17.225. Defendants argue that Summary Judgment is appropriate because no cause of action for contribution can exist when Republic and Dr. Cash are not "joint tortfeasors," and did not contribute to the same single injury. In support of their argument, Defendants cite to the Plaintiff's

1 Complaint, in which Plaintiff alleges that, "As a direct and proximate result of  
2 Defendants' negligence, . . . Gonzalez suffered new and different injuries from those  
3 allegedly suffered in the motor vehicle accident of January 14, 2012." (See Complaint  
4 at Paragraph 56).

5 NRS 17.225 reads in pertinent part as follows:

6 NRS 17.225 Right to contribution.

7 1. Except as otherwise provided in this section and NRS 17.235 to 17.305,  
8 inclusive, where two or more persons become jointly or severally liable in tort  
9 **for the same injury** to person or property or for the same wrongful death,  
there is a right of contribution among them even though judgment has not been  
recovered against all or any of them.

10 . . . .

11 NRS 17.225 (emphasis added).

12 Defendant suggests that accepting the Plaintiff's allegations as true, Dr. Cash  
13 and Republic are not joint tortfeasors, and no right to contribution exists under NRS  
14 17.225.

15 In his Motion for Summary Judgment, Cash cites to the case of *District of*  
16 *Columbia v. Washington Hospital Center*, 722 A.2d 332 (1998), but Plaintiff responds  
17 that such case is inapplicable because the District of Columbia doesn't even have a  
18 contribution statute. Such a distinction is important and consequently, this Court  
19 cannot rely on that case for its decision in this case.

20 Nevada's contribution cause of action was created by statute. Defendant cites to  
21 the unpublished Nevada Supreme Court Case of *Disc. Tire Co. of Nev. V. Fisher Sand &*  
22 *Gravel Co.*, 400 P.3d 244 (2017 WL 1397333 (Nev. 2017 Unpub), which states the  
following:

23 "Contribution is a creature of statute . . ." *Doctors Co. v. Vincent*, 120 Nev. 644,  
24 560, 98 P.3d 681, 686 (204). "Under the Nevada statutory formulation, the  
25 remedy of contribution allows one tortfeasor to extinguish joint liabilities  
26 through payment to the injured party, and then seek partial reimbursement  
27 from a joint tortfeasor for sums paid in excess of the settling or discharging  
tortfeasor's equitable share of the common liability." *Id.*, at 651, 98 P.3d at 686.  
...

28 The Nevada Supreme Court discussed the difference between joint tortfeasors  
and successive tortfeasors, as follows:

1  
2 . . . we hold that Discount Tire and Fisher are joint tortfeasors, and not  
3 successive tortfeasors. Compare *Joint Tortfeasors*, *Black's Law Dictionary* (10<sup>th</sup>  
4 ed. 2014)(defining joint tortfeasors as "[t]wo or more tortfeasors who  
5 contributed to the claimant's injury and who may be joined as defendants in the  
6 same lawsuit"), and 74 *Am.Jur.2d Torts* §64 (2012) (providing that "joint  
7 tortfeasors act negligently – either in voluntary, intentional concert, or  
8 separately and independently – to produce a **single indivisible injury**"  
9 (emphasis added)), with *Hansen v. Collett*, 79 Nev. 159, 167, 380 P.2d 301, 305  
10 (1963)( providing that successive tortfeasors must produce acts "differing in  
11 time and place of commission as well as in nature, [causing] **two separate**  
12 **injuries** [that] gave rise to two distinct causes of action" (emphasis added)),  
13 and *Successive Tortfeasors*, *Black's Law Dictionary* (10<sup>th</sup> ed. 2014)(defining  
14 successive tortfeasors as "[t]wo or more tortfeasors whose negligence occurs at  
15 different times and causes different injuries to the same third party" (emphasis  
16 added)). . . .

17 *Disc. Tire Co. of Nev. V. Fisher Sand & Gravel Co.*, 400 P.3d 244, 2017 WL 1397333  
18 (2017 Nev. Unpub)(emphasis added by the Supreme Court).

19 Based on this distinction, this Court needs to determine whether Republic and  
20 Cash are "joint tortfeasors" or "successive tortfeasors." Viewing the evidence in the  
21 light most favorable to the non-moving party, Republic, the Court must conclude that  
22 the Plaintiff will be able to establish its allegation that as a result of Dr. Cash's actions,  
23 "Gonzalez suffered new and different injuries from those allegedly suffered in the  
24 motor vehicle accident of January 14, 2012." (See Complaint at Paragraph 56).  
25 Although the Plaintiff would now have the Court conclude that a contribution claim is  
26 valid since there is a single "common liability," as discussed in NRS 17.225(2),  
27 subsection (1) of the same statute indicates that there is a right of contribution when  
28 "two or more persons become jointly or severally liable . . . for the **same injury**."  
Although the Court assumes that Dr. Cash would testify that his treatment was part of  
the overall care of the patient's injuries resulting from the subject motor vehicle  
accident, and that he did not cause any "separate" or "additional" injury, for purposes  
of a Motion for Summary Judgment, the Court must assume that the Plaintiff will be  
able to prove its allegation that there was a "new and different injury" caused by Dr.  
Cash. If there is a "new and different injury," then the parties cannot be "joint  
tortfeasors," but instead they would be successive tortfeasors. There was not an  
"indivisible injury," but the acts (motor vehicle accident and separate alleged  
negligence of Dr. Cash) occurred at different times and places, and allegedly caused

1 "two separate injuries," which gave rise to two distinct causes of action.<sup>1</sup> Consequently,  
2 this Court has no choice but to conclude that Dr. Cash and Republic are "successive"  
3 and not "joint tortfeasors." Because they are "successive" and not "joint tortfeasors,"  
4 NRS 17.225 cannot apply, and there can be no claim for contribution, as a matter of  
5 law.

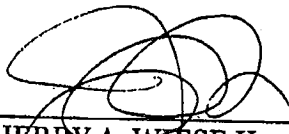
6 Based upon the foregoing, and good cause appearing, the Defendant's Motion  
7 for Summary Judgment is hereby **GRANTED**.<sup>2</sup>

8 As a result of this decision, the Jury Trial set for 3/18/2019 is hereby  
9 **VACATED**.

10 The Defendants' Motion for Stay Pending Decision on Emergency Petition for  
11 Writ of Mandamus was not actually calendared, but is now **VACATED AS MOOT**.

12 The Motion to Intervene on behalf of Physicians Casualty Risk Retention Group  
13 is **VACATED AS MOOT**.

14 Dated this 14<sup>th</sup> day of March, 2019.

15  
16   
17 JERRY A. WIESE II  
18 DISTRICT COURT JUDGE  
19 EIGHTH JUDICIAL DISTRICT COURT  
20 DEPARTMENT XXX  
21  
22

23 <sup>1</sup> Unfortunately for the Plaintiff, the Court's ruling will eliminate the Plaintiff's cause of action for  
24 contribution, and consequently, one may ask "what are the two distinct causes of action?" This Court struggles  
25 with this question, but concludes that the original Plaintiff, Gonzalez, would have two distinct causes of action if  
26 she had chosen to bring them. She would have one negligence claim against Republic, and a separate claim for  
27 alleged professional negligence, against Dr. Cash. Although Restatement 2d Torts §457 and Nev. Med Mal Jury  
28 Inst. 9MM.8 would allow Gonzalez to have recovered all damages from Republic, it doesn't mean that she would  
not have had a distinct cause of action against Dr. Cash if she had wanted to assert it.

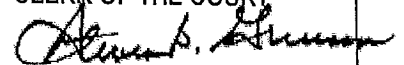
<sup>2</sup> The Court notes that although Dr. Cash's counsel was preparing a Writ with regard to the Court's prior  
decisions, this decision will obviously eliminate the need for that Writ. If Plaintiff's counsel instead files an  
Appeal, this Court suggests and/or requests that the parties brief and request that the Supreme Court also address  
and give guidance with regard to the applicability of NRS 41A.035, NRS 42.021, and other related professional  
negligence statutes to the facts and circumstances of this case, and how such statutes could be applied to a claim for  
contribution, when the Plaintiff is not the injured party.

**EXHIBIT B**

**EXHIBIT B**

**EXHIBIT B**





1 DAVID BARRON, ESQ.  
Nevada Bar No. 142  
2 JOHN D. BARRON, ESQ.  
Nevada Bar No. 14029  
3 BARRON & PRUITT, LLP  
3890 West Ann Road  
4 North Las Vegas, Nevada 89031  
Telephone: (702) 870-3940  
5 Facsimile: (702) 870-3950  
Email: [dbarron@lvnvlaw.com](mailto:dbarron@lvnvlaw.com)  
6 *Attorneys for Plaintiff*  
*Republic Silver State Disposal, Inc.*

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 \*\*\*\*\*

10 REPUBLIC SILVER STATE DISPOSAL, INC.,  
a Nevada Corporation,

11 Plaintiff

Case No.: A-16-738123-C

12 vs.

Dept No.: XXX

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

21 Defendants.

NOTICE OF ENTRY OF ORDER  
DENYING PLAINTIFF'S MOTION FOR  
RECONSIDERATION OF THE COURT'S  
ORDER GRANTING SUMMARY  
JUDGMENT FOR DEFENDANTS

22 TO: All Interested Parties Herein  
23  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///

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

1           YOU WILL PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion for  
2 Reconsideration of the Court's Order Granting Summary Judgment for Defendants was entered in the  
3 above-entitled matter on the 25<sup>th</sup> day of April, 2019, a copy of which is attached hereto.

4  
5           BARRON & PRUITT, LLP

6           

7           DAVID BARRON, ESQ.  
8           Nevada Bar No. 142  
9           3890 West Ann Road  
10           North Las Vegas, Nevada 89031  
11           Attorneys for Plaintiff  
12           Republic Silver State Disposal, Inc.

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BARRON & PRUITT, LLP  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29<sup>th</sup> day of April, 2019, I served the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING SUMMARY JUDGMENT FOR DEFENDANTS** as follows:

☐ US MAIL: by placing the document(s) listed above in a sealed envelope, postage prepaid, in the United States Mail at Las Vegas, Nevada, addressed to the following:

☐ 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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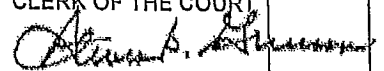
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3890 WEST ANN ROAD  
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<p>Robert C. McBride, Esq. Heather S. Hall, Esq. CARROLL, KELLY, TROTTER, FRANZEN, MC KENNA &amp; PEABODY 8329 West Sunset Road, Suite 260 Las Vegas, NV 89113 Facsimile: (702) 796-5855 Email: <a href="mailto:rcmcbride@cktfmlaw.com">rcmcbride@cktfmlaw.com</a> Email: <a href="mailto:hshall@cktfmlaw.com">hshall@cktfmlaw.com</a> <i>Attorneys for Defendants</i> Andrew M. Cash, M.D. Andrew M. Cash, M.D., P.C. a/k/a Andrew Miller Cash, M.D., P.C.; and Desert Institute of Spine Care</p>	<p>James R. Olson, Esq. Max E. Corrick, II, Esq. Stephanie M. Zinna, Esq. OLSON, CANNON, GORMLEY, ANGULO &amp; STOBERSKI 9950 West Cheyenne Avenue Las Vegas, NV 89129 Facsimile: (702) 383-0701 Email: <a href="mailto:jolson@ocgas.com">jolson@ocgas.com</a> Email: <a href="mailto:mcorrick@ocgas.com">mcorrick@ocgas.com</a> Email: <a href="mailto:szinna@ocgas.com">szinna@ocgas.com</a> <i>Attorneys for Defendants</i> Bruce Katuna, M.D. and Rocky Mountain Neurodiagnostics, LLC</p>
<p>John H. Cotton, Esq. Michael D. Navratil, Esq. JOHN H. COTTON &amp; ASSOCIATES, LTD. 7900 West Sahara Avenue, Suite 200 Las Vegas, NV 89117 Facsimile: (702) 832-5910 Email: <a href="mailto:jhcotton@jhcottonlaw.com">jhcotton@jhcottonlaw.com</a> Email: <a href="mailto:mdnavratil@jhcottonlaw.com">mdnavratil@jhcottonlaw.com</a> <i>Attorneys for Defendants</i> James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.</p>	<p>James Murphy, Esq. Daniel C. Tetreault, Esq. LAXALT &amp; NOMURA, LTD. 6720 Via Austi Parkway, Suite 430 Las Vegas, NV 89119 Facsimile: (702) 388-1559 Email: <a href="mailto:jmurphy@laxalt-nomura.com">jmurphy@laxalt-nomura.com</a> Email: <a href="mailto:dtetreault@laxalt-nomura.com">dtetreault@laxalt-nomura.com</a> <i>Attorneys for Defendant Neuromonitoring Associates, Inc.</i></p>
<p>Kim Irene Mandelbaum, Esq. Marie Ellerton, Esq. MANDELBAUM, ELLERTON &amp; ASSOCIATES 2012 Hamilton Lane Las Vegas, NV 89106 Facsimile: (702) 367-1978 Email: <a href="mailto:filing@meklaw.net">filing@meklaw.net</a> <i>Attorneys for Defendant</i> Las Vegas Radiology, LLC</p>	<p>Anthony D. Lauria, Esq. LAURIA TOKUNAGA GATES &amp; LINN, LLP 1755 Creekside Oaks Drive, Ste. 240 Sacramento, CA 95833 601 South Seventh Street Las Vegas, NV 89101 Facsimile: (702) 387-8635 Email: <a href="mailto:alauria@lgtlaw.net">alauria@lgtlaw.net</a> <i>Attorneys for Defendant Danielle Miller a/k/a Danielle Shopshire</i></p>

/s/ Luz T. Macias  
An Employee of BARRON & PRUITT, LLP



1 ORDER  
2 ROBERT C. McBRIDE, ESQ.  
3 Nevada Bar No.: 7082  
4 HEATHER S. HALL, ESQ.  
5 Nevada Bar No.: 10608  
6 CARROLL, KELLY, TROTTER,  
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12 E-mail: [rmcbride@cktfmlaw.com](mailto:rmcbride@cktfmlaw.com)  
13 E-mail: [hshall@cktfmlaw.com](mailto:hshall@cktfmlaw.com)  
14 Attorneys for Defendants,  
15 Andrew M. Cash, M.D.; Andrew M. Cash,  
16 M.D., P.C.; Andrew Miller Cash, M.D.,  
17 P.C.; & Desert Institute of Spine Care, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

13 REPUBLIC SILVER STATE DISPOSAL,  
14 INC., a Nevada Corporation,

15 Plaintiff,

16 vs.

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

Defendants.

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

ORDER DENYING PLAINTIFF'S  
MOTION FOR RECONSIDERATION OF  
THE COURT'S ORDER GRANTING  
SUMMARY JUDGMENT FOR  
DEFENDANTS

HEARING DATE: 4/3/19

HEARING TIME: 9:00 AM

1 Plaintiff's Motion for Reconsideration of the Court's Order Granting Summary Judgment  
2 for Defendants came on for hearing on April 3, 2019 at 9:00 a.m. Plaintiff Republic Silver State  
3 Disposal, Inc. was represented by David Barron, Esq. of the law firm Barron & Pruitt, LLP, and  
4 Defendants Andrew M. Cash, M.D.; Andrew M. Cash, M.D., P.C.; Andrew Miller Cash, M.D.,  
5 P.C.; & Desert Institute of Spine Care, LLC were represented by Heather Hall, Esq. of the law  
6 firm Carroll Kelly Trotter Franzen McBride & Peabody. The Court, having reviewed the papers  
7 and pleadings on file herein and having heard argument of counsel, hereby finds as follows:

8 The Court, having reviewed the papers and pleadings on file herein and having heard  
9 argument of counsel, hereby finds as follows:

10 1. Plaintiff's prior pleadings allege that the injuries caused by Plaintiff and  
11 Defendants are separate and distinct and, therefore, the parties are successive tortfeasors.

12 2. Nevada case law and NRS 17.225 state that there is no contribution claim where  
13 the parties are not joint tortfeasors. *See Disc. Tire Co. of Nev. v. Fisher Sand & Gravel Co.*,  
14 2017 Nev. Unpub. LEXIS 235, at \*3-4.

15 3. Plaintiff's Motion for Reconsideration of the Court's Order Granting Summary  
16 Judgment for Defendants is hereby DENIED.

17 IT IS SO ORDERED.

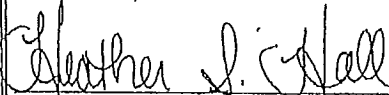
18 Date: 4/25/19

  
DISTRICT COURT JUDGE

19 DATED this 18th day of April, 2019.

20 Respectfully Submitted By:

21 CARROLL, KELLY, TROTTER,  
22 FRANZEN, McBRIDE & PEABODY

23   
24 HEATHER S. HALL, ESQ.

25 Nevada Bar No.: 010608  
26 8329 West Sunset Road, Suite 260  
27 Las Vegas, NV 89113

28 Attorneys for Defendants

*Andrew M. Cash, M.D.; Andrew M. Cash, M.D.,  
P.C., aka Andrew Miller Cash, M.D., P.C.; &  
Desert Institute of Spine Care, LLC*

Approved as to Form and Content by:

BARRON & PRUITT 4/10/19

By:   
DAVID BARRON, ESQ.

Nevada Bar No.: 142  
3890 West Ann Road  
North Las Vegas, Nevada 89031  
Attorneys for Plaintiff


*Resigned*  
4/17/19

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that on the 22<sup>nd</sup> day of April, 2019, I served a true and correct copy  
3 of the foregoing ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION  
4 OF THE COURT'S ORDER GRANTING SUMMARY JUDGMENT FOR  
5 DEFENDANTS addressed to the following counsel of record at the following address(es):  
6

- 7 ☒ VIA ELECTRONIC SERVICE: By mandatory electronic service (e-service), proof of  
e-service attached to any copy filed with the Court; or  
8  
9 ☐ VIA U.S. MAIL: By placing a true copy thereof enclosed in a sealed envelope with  
postage thereon fully prepaid, addressed as indicated on the service list below in the  
United States mail at Las Vegas, Nevada  
10  
11 ☐ VIA FACSIMILE: By causing a true copy thereof to be telecopied to the number  
indicated on the service list below.

12 David Barron, Esq.  
13 John D. Barron, Esq.  
14 BARRON & PRUITT, LLP  
15 3890 West Ann Road  
North Las Vegas, NV 89031  
Attorneys for Plaintiff

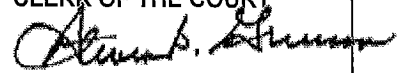
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20 An Employee of CARROLL, KELLY, TROTTER,  
FRANZEN, McBRIDE & PEABODY  
21  
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**EXHIBIT C**

**EXHIBIT C**

**EXHIBIT C**





COMJD  
DAVID BARRON  
Nevada Bar No. 142  
JOHN D. BARRON  
Nevada Bar No. 14029  
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[jbarron@lvnvlaw.com](mailto:jbarron@lvnvlaw.com)  
*Attorneys for Plaintiff*  
*Republic Silver State Disposal, Inc.*

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*\*

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

Case No.: A-16-738123-C

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.

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

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

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

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

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

58. 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.

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**FISRT 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 "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

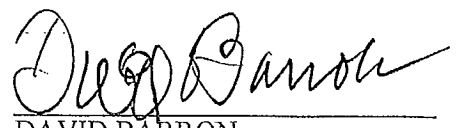
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6. For such other and further relief as this Court may deem just and proper.

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