IN THE SUPREME COURT OF

THE STATE OF NEVADA

REPUBLIC SILVER STATE DISPOSAL, INC., A NEVADA CORPORATION, Appellant, vs. 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, LLC, A NEVADA LIMITED LIABILITY COMPANY, Respondents.	Supreme Court No. 78572 District Court Case No. A738125

JOINT APPENDIX

VOLUME III

On Appeal from Judgment of the Eighth Judicial District Court, Clark County, Nevada

The Honorable Jerry A. Wiese II

DAVID BARRON, ESQ.
Nevada Bar No. 142
JOHN D. BARRON, ESQ.
Nevada Bar No. 14029
BARRON & PRUITT, LLP
3890 West Ann Road
North Las Vegas, Nevada 89031

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
LEWIS ROCA
ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Attorneys for Appellant
Republic Silver State Disposal, Inc.

ROBERT C. McBRIDE, ESQ.
Nevada Bar No. 7082
HEATHER S. HALL, ESQ.
Nevada Bar No. 10608
CARROLL, KELLY, TROTTER, FRANZEN, McBRIDE & PEABODY
8329 West Sunset Road, Suite 260
Las Vegas, Nevada 89113
Attorneys for Respondents Andrew M. Cash, MD; Andrew M. Cash, MD, PC; Andrew Miller Cash, MD, PC; and Desert Institute of Spine Care, LLC

INDEX TO JOINT APPENDIX
ALPHABETICAL

DESCRIPTION	DATE	VOL	PAGES
Affidavit of Service of Desert Institute of Spine Care, LLC	06/29/2016	I	84-87
Affidavit of Service re: Desert Institute of Spine Care, LLC	07/13/2016	I	127-174
Amended Complaint	06/27/2016	I	42-83
Appendix to Real Party in Interest/Respondent Republic Silver State Disposal, Inc.	04/07/2017	V	891-1008
Bruce A. Katuna, MD and Rocky Mountain Neurodiagnostics, LLC's Appendix to Joinder to Reply to Republic Silver State's Disposal's Answer to Petition for Writ of Mandamus	05/03/2017	V	1053-1064
Bruce A. Katuna, MD and Rocky Mountain Neurodiagnostics, LLC's Joinder to Petitioner Balodimas' Reply to Republic Silver State's Disposal's Answer to Petition for Writ of Mandamus	05/03/2017	V	1033-1052
Bruce A. Katuna, MD and Rocky Mountain Neurodiagnostics, LLC's Motion for Leave to Join James D. Balodimas, MD and James D. Balodimas, MD, PC's Petition for Writ of Mandamus	01/27/2017	V	835-841
Certificate of Service of Second Amended Complaint & Jury Demand	01/31/2019	VI	1187-1202
Commissioner's Decision on Request for Exemption	09/13/2016	II	391-401
Complaint	06/08/2016	I	1-41
Defendant Balodimas' and Balodimas, MD, PC's Joinder to Defendant Danielle Miller's Supplemental Briefing on Motion to Dismiss Plaintiff's Complaint	11/03/2016	II	473-475

DESCRIPTION	DATE	VOL	PAGES
Defendant Balodimas' and Balodimas, MD, PC's Notice of Motion and Motion for Judgment on the Pleadings	07/21/2016	II	232-289
Defendant Balodimas' and Balodimas, MD, PC's Response to Republic's Brief re: Evidentiary Hearing	11/08/2016	III	549-555
Defendant Danielle Miller's Joinder to 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 to Dismiss Plaintiff's Complaint	08/05/2016	II	357-360
Defendant Danielle Miller's Joinder to Defendants James D. Balodimas, MD and James D. Balodimas, MD, PC's Notice of Motion and Motion for Judgment on the Pleadings	08/05/2016	II	353-356
Defendant Danielle Miller's Notice of Motion and Motion to Dismiss Plaintiff's Complaint. Memorandum and Points and Authorities in Support Thereof	08/05/2016	II	342-352
Defendant Danielle Miller's Reply to Plaintiff's Opposition to Motion to Dismiss Plaintiff's Complaint	09/27/2016	II	445-452
Defendant Danielle Miller's Supplemental Briefing on Motion to Dismiss Plaintiff's Complaint	11/02/2016	II	466-472
Defendant James D. Balodimas, MD; James D. Balodimas, MD, PC; Las Vegas Radiology, LLC's Substantive Joinder to 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 to Dismiss Plaintiff's Complaint	07/12/2016	I	118-126
Defendant Las Vegas Radiology, LLC's Errata to Defendant James D. Balodimas, MD; James D. Balodimas, MD, PC; Las Vegas Radiology, LLC's Substantive Joinder to Defendants Andrew	07/13/2016	I	175-182

DESCRIPTION	DATE	VOL	PAGES
M. Cash, MD, Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Motion to Dismiss Plaintiff's Complaint			
Defendant Las Vegas Radiology, LLC's Joinder to Defendant Balodimas' and Balodimas, MD, PC's Notice of Motion and Motion for Judgment on the Pleadings	07/22/2016	II	290-292
Defendant Las Vegas Radiology, LLC's Joinder to Defendant Balodimas' and Balodimas, MD, PC's Reply to Plaintiff's Opposition to Motion for Judgment on the Pleadings	09/28/2016	II	453-455
Defendant Las Vegas Radiology, LLC's Joinder to Defendant Danielle Miller's Notice of Motion and Motion to Dismiss Plaintiff's Complaint. Memorandum and Points and Authorities in Support Thereof	08/08/2016	II	361-363
Defendant Las Vegas Radiology, LLC's Joinder to Defendant Danielle Miller's Reply to Plaintiff's Opposition to Motion to Dismiss Plaintiff's Complaint	09/29/2016	II	459-461
Defendant Las Vegas Radiology, LLC's Joinder to Defendant Danielle Miller's Supplemental Briefing on Motion to Dismiss Plaintiff's Complaint	11/08/2016	III	556-558
Defendant Las Vegas Radiology, LLC's Joinder to Defendants Andrew M. Cash, MD, Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Reply to Plaintiff's Opposition to Motion to Dismiss Plaintiff's Complaint	09/29/2016	II	456-458
Defendant Neuromonitoring Associates, LLC's Joinder to Defendant Balodimas' and Balodimas, MD, PC's Notice of Motion and Motion for Judgment on the Pleadings	07/25/2016	II	297-300

DESCRIPTION	DATE	VOL	PAGES
Defendant Neuromonitoring Associates, LLC's Joinder to Defendant Danielle Miller's Motion to Dismiss Plaintiff's Complaint	08/11/2016	II	367-370
Defendant Neuromonitoring Associates, LLC's Joinder to Defendant Danielle Miller's Supplemental Briefing on Motion to Dismiss Plaintiff's Complaint	11/03/2016	II	476-479
Defendant Neuromonitoring Associates, LLC's Joinder to 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 to Dismiss Plaintiff's Complaint	07/22/2016	II	293-296
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 to Dismiss Plaintiff's Complaint	07/08/2016	I	88-117
Defendants Andrew M. Cash, MD, Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Joinder to Defendants James D. Balodimas, MD and James D. Balodimas, MD, PC's Motion for Judgment on the Pleadings	07/28/2016	II	335-337
Defendants Andrew M. Cash, MD, Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Joinder to Defendant Danielle Miller's Notice of Motion and Motion to Dismiss Plaintiff's Complaint. Memorandum and Points and Authorities in Support Thereof	08/10/2016	II	364-366
Defendants Andrew M. Cash, MD, Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Reply in Support of Motion to Dismiss Plaintiff's Complaint	09/27/2016	II	409-444
Defendants Andrew M. Cash, MD, Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC	11/04/2016	II	480-482

DESCRIPTION	DATE	VOL	PAGES
and Desert Institute of Spine Care, LLC's Joinder to Defendant Danielle Miller's Supplemental Briefing on Motion to Dismiss Plaintiff's Complaint			
Defendants Andrew M. Cash, MD, Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Answer to Plaintiff's Complaint	01/04/2017	III	584-600
Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Joinder to Las Vegas Radiology's Motion to "Cap" Non-Economic Damages per NRS 41A.035	03/14/2018	VI	1093-1095
Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Joinder to Las Vegas Radiology's Motion in Limine to Permit Collateral Source Payment Evidence per NRS 42.021	03/20/2018	VI	1096-1098
Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Opposition to Plaintiff's Counter-Motion in Limine to Limit or Exclude Evidence of Medical Liens	02/13/2019	VI	1216-1256
Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Answer to Plaintiff's Second Amended Complaint	02/20/2019	VI	1268-1284
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 on an Order Shortening Time	03/05/2019	VII	1285-1325
Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC	03/08/2019	VII	1334-1347

DESCRIPTION	DATE	VOL	PAGES
and Desert Institute of Spine Care, LLC's Reply in Support of Motion for Summary Judgment on an Order Shortening Time			
Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Opposition to Plaintiff's Motion for Reconsideration on Order Shortening Time	03/27/2019	VII	1424-1439
Defendants Bruce A. Katuna, MD and Rocky Mountain Neurodiagnostics, LLC's Substantive Joinder to 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 to Dismiss Plaintiff's Complaint	07/15/2016	I	183-231
Defendants Bruce A. Katuna, MD and Rocky Mountain Neurodiagnostics, LLC's Joinder to Defendant Danielle Miller's Supplemental Briefing on Motion to Dismiss Plaintiff's Complaint	11/04/2016	II	483-485
Defendants James D. Balodimas, MD and James D. Balodimas, MD, PC's Reply to Plaintiff's Opposition to Motion for Judgment on the Pleadings	09/27/2016	II	402-408
Errata to Plaintiff's Opposition to Defendants James D. Balodimas, MD and James D. Balodimas, MD, PC's Notice of Motion and Motion for Judgment on the Pleadings	07/27/2016	II	314-317
Las Vegas Radiology's Motion in Limine to Permit Collateral Source Payment Evidence per NRS 42.021	03/13/2018	VI	1083-1092
Las Vegas Radiology's Motion to "Cap" Non-Economic Damages per NRS 41A.035	03/02/2018	VI	1075-1082
Minute Order	10/04/2016	II	462-463
Minute Order	10/13/2016	II	464-465
Notice of Appeal	04/10/2019	VII	1471-1480

DESCRIPTION	DATE	VOL	PAGES
Notice of Cross Appeal	04/24/2019	VII	1481-1494
Notice of Entry of Order	05/15/2018	VI	1165-1173
Notice of Entry of Order Denying Plaintiff's Motion for Reconsideration of the Court's Order Granting Summary Judgment for Defendants	04/29/2019	VII	1498-1504
Notice of Entry of Order on Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Motions to Compel and Non-Party Deponents Marie Gonzales' Motion for Protective Order on Order Shortening Time	03/13/2019	VII	1386-1395
Notice of Entry of Order Re: Defendants' Motion for Summary Judgment	03/15/2019	VII	1400-1405
Notice of Entry of Order re: The Cash Defendants' Motion to Dismiss, the Balodimas Defendants' Motion for Judgment on the Pleadings and Danielle Miller's Motion to Dismiss and all Joinders	12/13/2016	III	570-583
Notice of Oral Argument Setting	09/05/2017	V	1070-1071
Opposition to 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	03/07/2019	VII	1326-1333
Order Denying Petition and Dissolving Stay	12/22/2017	V	1072-1074
Order Denying Plaintiff's Motion for Reconsideration of the Court's Order Granting Summary Judgment for Defendants	04/25/2019	VII	1495-1497
Order Granting Defendant Las Vegas Radiology's Motion to "Cap" Non-Economic Damages per NRS 41A.035 and Joinders to Same	05/14/2018	VI	1159-1164
Order Granting Motion	03/09/2017	V	853-854
Order Granting Motions	02/01/2017	V	842-843
Order on Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller	03/13/2019	VII	1378-1385

DESCRIPTION	DATE	VOL	PAGES
Cash, MD, PC and Desert Institute of Spine Care, LLC's Motions to Compel and Non-Party Deponents Marie Gonzales' Motion for Protective Order on Order Shortening Time			
Order Re: Defendants' Motion for Summary Judgment	03/15/2019	VII	1396-1399
Order re: The Cash Defendants' Motion to Dismiss, the Balodimas Defendants' Motion for Judgment on the Pleadings and Danielle Miller's Motion to Dismiss and all Joinders	12/13/2016	III	559-569
Petition for Exemption from Arbitration	08/26/2016	II	384-390
Petition for Writ of Mandamus	01/13/2017	III	601-621
Petitioner Las Vegas Radiology, LLC, A Nevada Limited Liability Company's Motion for Leave to Join James D. Balodimas, MD and James D. Balodimas, MD, PC's Petition for Writ of Mandamus	01/19/2017	V	827-834
Petitioner Las Vegas Radiology, LLC's Joinder to Bruce A. Katuna, MD and Rocky Mountain Neurodiagnostics, LLC's Joinder to James D. Balodimas, MD and James D. Balodimas, MD, PC's Reply to Republic Silver State Disposal's Answer to Petition for Writ of Mandamus and to Appendix Thereto	05/03/2017	V	1065-1069
Petitioner's Response to Answer to Petition for Writ of Mandamus and Writ of Prohibition	04/24/2017	V	1013-1025
Petitioners, 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 Leave to Join James D. Balodimas, MD, PC's Petition for Writ of Mandamus	02/02/2017	V	844-852
Petitioners, Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Joinder to Petitioner Balodimas' Response to Answer to	04/28/2017	V	1026-1032

DESCRIPTION	DATE	VOL	PAGES
Petition for Writ of Mandamus and Writ of Prohibition			
Petitioners' Appendix	01/13/2017	IV	622-826
Plaintiff Republic Silver State Disposal, Inc.'s Counter-Motion in Limine to Limit or Exclude Evidence of Medical Liens	02/01/2019	VI	1203-1215
Plaintiff Republic Silver State Disposal, Inc.'s Opposition to Defendant Las Vegas Radiology's Motion in Limine to Permit Collateral Source Payment Evidence per NRS 42.021	04/02/2018	VI	1145-1152
Plaintiff's Opposition to Defendant Danielle Miller's Notice of Motion and Motion to Dismiss Plaintiff's Complaint	08/23/2016	II	371-383
Plaintiff's Opposition to Defendants James D. Balodimas, MD and James D. Balodimas, MD, PC's Notice of Motion and Motion for Judgment on the Pleadings	07/27/2016	II	301-313
Plaintiff's Opposition to Defendants' Motion to Dismiss	07/27/2016	II	318-334
Plaintiff's Opposition to Las Vegas Radiology's Motion to "Cap" Non-Economic Damages per NRS 41A.035 and Joinders	03/21/2018	VI	1099-1134
Plaintiff's Second Errata to Plaintiff's Opposition to Defendants James D. Balodimas, MD and James D. Balodimas, MD, PC's Notice of Motion and Motion for Judgment on the Pleadings	07/28/2016	II	338-341
Reply in Support of Countermotion in Limine	02/19/2019	VI	1257-1267
Reply in Support of Defendant Las Vegas Radiology's Motion in Limine to Permit Collateral Source Payment Evidence per NRS 42.021	04/10/2018	VI	1153-1158
Reply in Support of Defendant Las Vegas Radiology's Motion to "Cap" Non-Economic Damages per NRS 41A.035	03/28/2018	VI	1135-1144

DESCRIPTION	DATE	VOL	PAGES
Reporter's Transcript of Proceedings Defendant's Motion for Summary Judgment and Motions in Limine	03/11/2019	VII	1348-1377
Reporter's Transcript of Proceedings Republic Silver State Disposal, Inc.'s Motion for Reconsideration on Order Shortening Time	04/03/2019	VII	1450-1470
Republic Silver State Disposal, Inc.'s Motion for Reconsideration on Order Shortening Time	03/25/2019	VII	1406-1423
Republic Silver State Disposal, Inc.'s Reply in Support of Motion for Reconsideration on Order Shortening Time	03/29/2019	VII	1440-1449
Republic Silver State Disposal's Answer to Petition for Writ of Mandamus, and Joinders thereto	04/07/2017	V	855-890
Republic Silver State Disposal's Erratum to Answer to Petition for Writ of Mandamus, and Joinders Thereto	04/11/2017	V	1009-1012
Republic's Brief Re Evidentiary Hearing	11/08/2016	III	486-548
Second Amended Complaint & Jury Demand	01/30/2019	VI	1174-1186

INDEX TO JOINT APPENDIX
CHRONOLOGICAL

DESCRIPTION	DATE	VOL	PAGES
Complaint	06/08/2016	I	1-41
Amended Complaint	06/27/2016	I	42-83
Affidavit of Service of Desert Institute of Spine Care, LLC	06/29/2016	I	84-87
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 to Dismiss Plaintiff's Complaint	07/08/2016	I	88-117
Defendant James D. Balodimas, MD; James D. Balodimas, MD, PC; Las Vegas Radiology, LLC's Substantive Joinder to 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 to Dismiss Plaintiff's Complaint	07/12/2016	I	118-126
Affidavit of Service re: Desert Institute of Spine Care, LLC	07/13/2016	I	127-174
Defendant Las Vegas Radiology, LLC's Errata to Defendant James D. Balodimas, MD; James D. Balodimas, MD, PC; Las Vegas Radiology, LLC's Substantive Joinder to 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 to Dismiss Plaintiff's Complaint	07/13/2016	I	175-182
Defendants Bruce A. Katuna, MD and Rocky Mountain Neurodiagnostics, LLC's Substantive Joinder to 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 to Dismiss Plaintiff's Complaint	07/15/2016	I	183-231

DESCRIPTION	DATE	VOL	PAGES
Defendant Balodimas' and Balodimas, MD, PC's Notice of Motion and Motion for Judgment on the Pleadings	07/21/2016	II	232-289
Defendant Las Vegas Radiology, LLC's Joinder to Defendant Balodimas' and Balodimas, MD, PC's Notice of Motion and Motion for Judgment on the Pleadings	07/22/2016	II	290-292
Defendant Neuromonitoring Associates, LLC's Joinder to 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 to Dismiss Plaintiff's Complaint	07/22/2016	II	293-296
Defendant Neuromonitoring Associates, LLC's Joinder to Defendant Balodimas' and Balodimas, MD, PC's Notice of Motion and Motion for Judgment on the Pleadings	07/25/2016	II	297-300
Plaintiff's Opposition to Defendants James D. Balodimas, MD and James D. Balodimas, MD, PC's Notice of Motion and Motion for Judgment on the Pleadings	07/27/2016	II	301-313
Errata to Plaintiff's Opposition to Defendants James D. Balodimas, MD and James D. Balodimas, MD, PC's Notice of Motion and Motion for Judgment on the Pleadings	07/27/2016	II	314-317
Plaintiff's Opposition to Defendants' Motion to Dismiss	07/27/2016	II	318-334
Defendants Andrew M. Cash, MD, Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Joinder to Defendants James D. Balodimas, MD and James D. Balodimas, MD, PC's Motion for Judgment on the Pleadings	07/28/2016	II	335-337
Plaintiff's Second Errata to Plaintiff's Opposition to Defendants James D. Balodimas, MD and	07/28/2016	II	338-341

DESCRIPTION	DATE	VOL	PAGES
James D. Balodimas, MD, PC's Notice of Motion and Motion for Judgment on the Pleadings			
Defendant Danielle Miller's Notice of Motion and Motion to Dismiss Plaintiff's Complaint. Memorandum and Points and Authorities in Support Thereof	08/05/2016	II	342-352
Defendant Danielle Miller's Joinder to Defendants James D. Balodimas, MD and James D. Balodimas, MD, PC's Notice of Motion and Motion for Judgment on the Pleadings	08/05/2016	II	353-356
Defendant Danielle Miller's Joinder to 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 to Dismiss Plaintiff's Complaint	08/05/2016	II	357-360
Defendant Las Vegas Radiology, LLC's Joinder to Defendant Danielle Miller's Notice of Motion and Motion to Dismiss Plaintiff's Complaint. Memorandum and Points and Authorities in Support Thereof	08/08/2016	II	361-363
Defendants Andrew M. Cash, MD, Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Joinder to Defendant Danielle Miller's Notice of Motion and Motion to Dismiss Plaintiff's Complaint. Memorandum and Points and Authorities in Support Thereof	08/10/2016	II	364-366
Defendant Neuromonitoring Associates, LLC's Joinder to Defendant Danielle Miller's Motion to Dismiss Plaintiff's Complaint	08/11/2016	II	367-370
Plaintiff's Opposition to Defendant Danielle Miller's Notice of Motion and Motion to Dismiss Plaintiff's Complaint	08/23/2016	II	371-383
Petition for Exemption from Arbitration	08/26/2016	II	384-390

DESCRIPTION	DATE	VOL	PAGES
Commissioner's Decision on Request for Exemption	09/13/2016	II	391-401
Defendants James D. Balodimas, MD and James D. Balodimas, MD, PC's Reply to Plaintiff's Opposition to Motion for Judgment on the Pleadings	09/27/2016	II	402-408
Defendants Andrew M. Cash, MD, Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Reply in Support of Motion to Dismiss Plaintiff's Complaint	09/27/2016	II	409-444
Defendant Danielle Miller's Reply to Plaintiff's Opposition to Motion to Dismiss Plaintiff's Complaint	09/27/2016	II	445-452
Defendant Las Vegas Radiology, LLC's Joinder to Defendant Balodimas' and Balodimas, MD, PC's Reply to Plaintiff's Opposition to Motion for Judgment on the Pleadings	09/28/2016	II	453-455
Defendant Las Vegas Radiology, LLC's Joinder to Defendants Andrew M. Cash, MD, Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Reply to Plaintiff's Opposition to Motion to Dismiss Plaintiff's Complaint	09/29/2016	II	456-458
Defendant Las Vegas Radiology, LLC's Joinder to Defendant Danielle Miller's Reply to Plaintiff's Opposition to Motion to Dismiss Plaintiff's Complaint	09/29/2016	II	459-461
Minute Order	10/04/2016	II	462-463
Minute Order	10/13/2016	II	464-465
Defendant Danielle Miller's Supplemental Briefing on Motion to Dismiss Plaintiff's Complaint	11/02/2016	II	466-472
Defendant Balodimas' and Balodimas, MD, PC's Joinder to Defendant Danielle Miller's	11/03/2016	II	473-475

DESCRIPTION	DATE	VOL	PAGES
Supplemental Briefing on Motion to Dismiss Plaintiff's Complaint			
Defendant Neuromonitoring Associates, LLC's Joinder to Defendant Danielle Miller's Supplemental Briefing on Motion to Dismiss Plaintiff's Complaint	11/03/2016	II	476-479
Defendants Andrew M. Cash, MD, Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Joinder to Defendant Danielle Miller's Supplemental Briefing on Motion to Dismiss Plaintiff's Complaint	11/04/2016	II	480-482
Defendants Bruce A. Katuna, MD and Rocky Mountain Neurodiagnostics, LLC's Joinder to Defendant Danielle Miller's Supplemental Briefing on Motion to Dismiss Plaintiff's Complaint	11/04/2016	II	483-485
Republic's Brief Re Evidentiary Hearing	11/08/2016	III	486-548
Defendant Balodimas' and Balodimas, MD, PC's Response to Republic's Brief re: Evidentiary Hearing	11/08/2016	III	549-555
Defendant Las Vegas Radiology, LLC's Joinder to Defendant Danielle Miller's Supplemental Briefing on Motion to Dismiss Plaintiff's Complaint	11/08/2016	III	556-558
Order re: The Cash Defendants' Motion to Dismiss, the Balodimas Defendants' Motion for Judgment on the Pleadings and Danielle Miller's Motion to Dismiss and all Joinders	12/13/2016	III	559-569
Notice of Entry of Order re: The Cash Defendants' Motion to Dismiss, the Balodimas Defendants' Motion for Judgment on the Pleadings and Danielle Miller's Motion to Dismiss and all Joinders	12/13/2016	III	570-583

DESCRIPTION	DATE	VOL	PAGES
Defendants Andrew M. Cash, MD, Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Answer to Plaintiff's Complaint	01/04/2017	III	584-600
Petition for Writ of Mandamus	01/13/2017	III	601-621
Petitioners' Appendix	01/13/2017	IV	622-826
Petitioner Las Vegas Radiology, LLC, A Nevada Limited Liability Company's Motion for Leave to Join James D. Balodimas, MD and James D. Balodimas, MD, PC's Petition for Writ of Mandamus	01/19/2017	V	827-834
Bruce A. Katuna, MD and Rocky Mountain Neurodiagnostics, LLC's Motion for Leave to Join James D. Balodimas, MD and James D. Balodimas, MD, PC's Petition for Writ of Mandamus	01/27/2017	V	835-841
Order Granting Motions	02/01/2017	V	842-843
Petitioners, 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 Leave to Join James D. Balodimas, MD, PC's Petition for Writ of Mandamus	02/02/2017	V	844-852
Order Granting Motion	03/09/2017	V	853-854
Republic Silver State Disposal's Answer to Petition for Writ of Mandamus, and Joinders thereto	04/07/2017	V	855-890
Appendix to Real Party in Interest/Respondent Republic Silver State Disposal, Inc.	04/07/2017	V	891-1008
Republic Silver State Disposal's Erratum to Answer to Petition for Writ of Mandamus, and Joinders Thereto	04/11/2017	V	1009-1012
Petitioner's Response to Answer to Petition for Writ of Mandamus and Writ of Prohibition	04/24/2017	V	1013-1025

DESCRIPTION	DATE	VOL	PAGES
Petitioners, Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Joinder to Petitioner Balodimas' Response to Answer to Petition for Writ of Mandamus and Writ of Prohibition	04/28/2017	V	1026-1032
Bruce A. Katuna, MD and Rocky Mountain Neurodiagnostics, LLC's Joinder to Petitioner Balodimas' Reply to Republic Silver State's Disposal's Answer to Petition for Writ of Mandamus	05/03/2017	V	1033-1052
Bruce A. Katuna, MD and Rocky Mountain Neurodiagnostics, LLC's Appendix to Joinder to Reply to Republic Silver State's Disposal's Answer to Petition for Writ of Mandamus	05/03/2017	V	1053-1064
Petitioner Las Vegas Radiology, LLC's Joinder to Bruce A. Katuna, MD and Rocky Mountain Neurodiagnostics, LLC's Joinder to James D. Balodimas, MD and James D. Balodimas, MD, PC's Reply to Republic Silver State Disposal's Answer to Petition for Writ of Mandamus and to Appendix Thereto	05/03/2017	V	1065-1069
Notice of Oral Argument Setting	09/05/2017	V	1070-1071
Order Denying Petition and Dissolving Stay	12/22/2017	V	1072-1074
Las Vegas Radiology's Motion to "Cap" Non-Economic Damages per NRS 41A.035	03/02/2018	VI	1075-1082
Las Vegas Radiology's Motion in Limine to Permit Collateral Source Payment Evidence per NRS 42.021	03/13/2018	VI	1083-1092
Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Joinder to Las Vegas Radiology's Motion to "Cap" Non-Economic Damages per NRS 41A.035	03/14/2018	VI	1093-1095

DESCRIPTION	DATE	VOL	PAGES
Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Joinder to Las Vegas Radiology's Motion in Limine to Permit Collateral Source Payment Evidence per NRS 42.021	03/20/2018	VI	1096-1098
Plaintiff's Opposition to Las Vegas Radiology's Motion to "Cap" Non-Economic Damages per NRS 41A.035 and Joinders	03/21/2018	VI	1099-1134
Reply in Support of Defendant Las Vegas Radiology's Motion to "Cap" Non-Economic Damages per NRS 41A.035	03/28/2018	VI	1135-1144
Plaintiff Republic Silver State Disposal, Inc.'s Opposition to Defendant Las Vegas Radiology's Motion in Limine to Permit Collateral Source Payment Evidence per NRS 42.021	04/02/2018	VI	1145-1152
Reply in Support of Defendant Las Vegas Radiology's Motion in Limine to Permit Collateral Source Payment Evidence per NRS 42.021	04/10/2018	VI	1153-1158
Order Granting Defendant Las Vegas Radiology's Motion to "Cap" Non-Economic Damages per NRS 41A.035 and Joinders to Same	05/14/2018	VI	1159-1164
Notice of Entry of Order	05/15/2018	VI	1165-1173
Second Amended Complaint & Jury Demand	01/30/2019	VI	1174-1186
Certificate of Service of Second Amended Complaint & Jury Demand	01/31/2019	VI	1187-1202
Plaintiff Republic Silver State Disposal, Inc.'s Counter-Motion in Limine to Limit or Exclude Evidence of Medical Liens	02/01/2019	VI	1203-1215
Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Opposition to Plaintiff's Counter-Motion in	02/13/2019	VI	1216-1256

DESCRIPTION	DATE	VOL	PAGES
Limine to Limit or Exclude Evidence of Medical Liens			
Reply in Support of Countermotion in Limine	02/19/2019	VI	1257-1267
Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Answer to Plaintiff's Second Amended Complaint	02/20/2019	VI	1268-1284
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 on an Order Shortening Time	03/05/2019	VII	1285-1325
Opposition to 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	03/07/2019	VII	1326-1333
Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Reply in Support of Motion for Summary Judgment on an Order Shortening Time	03/08/2019	VII	1334-1347
Reporter's Transcript of Proceedings Defendant's Motion for Summary Judgment and Motions in Limine	03/11/2019	VII	1348-1377
Order on Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Motions to Compel and Non-Party Deponents Marie Gonzales' Motion for Protective Order on Order Shortening Time	03/13/2019	VII	1378-1385
Notice of Entry of Order on Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Motions to Compel and Non-Party Deponents Marie Gonzales' Motion for Protective Order on Order Shortening Time	03/13/2019	VII	1386-1395

DESCRIPTION	DATE	VOL	PAGES
Order Re: Defendants' Motion for Summary Judgment	03/15/2019	VII	1396-1399
Notice of Entry of Order Re: Defendants' Motion for Summary Judgment	03/15/2019	VII	1400-1405
Republic Silver State Disposal, Inc.'s Motion for Reconsideration on Order Shortening Time	03/25/2019	VII	1406-1423
Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Opposition to Plaintiff's Motion for Reconsideration on Order Shortening Time	03/27/2019	VII	1424-1439
Republic Silver State Disposal, Inc.'s Reply in Support of Motion for Reconsideration on Order Shortening Time	03/29/2019	VII	1440-1449
Reporter's Transcript of Proceedings Republic Silver State Disposal, Inc.'s Motion for Reconsideration on Order Shortening Time	04/03/2019	VII	1450-1470
Notice of Appeal	04/10/2019	VII	1471-1480
Notice of Cross Appeal	04/24/2019	VII	1481-1494
Order Denying Plaintiff's Motion for Reconsideration of the Court's Order Granting Summary Judgment for Defendants	04/25/2019	VII	1495-1497
Notice of Entry of Order Denying Plaintiff's Motion for Reconsideration of the Court's Order Granting Summary Judgment for Defendants	04/29/2019	VII	1498-1504

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

Electronically Filed
11/08/2016 11:12:56 AM

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

*****

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; 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.

Case No.: A-16-738123-C

Dept No.: XXX

REPUBLIC'S BRIEF RE EVIDENTIARY HEARING

Hearing Date:11/9/16
Hearing Time: 9:00AM

Plaintiff REPUBLIC SILVER STATE DISPOSAL, INC., by and through its counsel BARRON & PRUITT, LLP, hereby submits the following Brief and General Objection to the Court's Minute Order of Oct. 13, 2016.

///

///

///

///

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

MEMORANDUM OF POINTS AND AUTHORITIES

Because of the extensive briefing the Court has already received and reviewed, it will hopefully suffice that this is a case seeking the statutory remedy of contribution. See *Uniform Contribution Among Tortfeasors* Act, NRS 17.225 et seq. Contribution is sought for amounts Republic Silver State Disposal paid in excess of its "equitable share" of a common liability when it settled a lawsuit brought by Marie Gonzales against Republic and its former employee, Deval Hatcher. Ms. Gonzales filed her suit against Republic and Mr. Hatcher on September 3, 2013 for injuries she claimed from a January 14, 2012 traffic accident in Clark County.

That lawsuit was settled, and a release was executed on July 6, 2015. Contribution is appropriately sought because the release affirmatively discharged—in addition to Republic and Mr. Hatcher—Ms. Gonzales' claims against all health care professionals who treated her for injuries she allegedly sustained in the January 2012 accident. Republic has alleged, and will be prepared to prove to the finder of fact, that those health care professionals named as defendants in this lawsuit were negligent in their treatment of injuries suffered by Ms. Gonzales, which her principal physician, Dr. Andrew Cash, opined were the directly caused by the January 14, 2012 accident. See medical record of Andrew Cash, dated February 20, 2013, attached as **EXHIBIT 1.**

In its Minute Order of October 13, 2016, this Court has set a November 9, 2016 evidentiary hearing to consider two issues prior to disposition of three Rule 12 motions:

1) Do the terms of the settlement agreement between Gonzales and Republic extinguish the liability of the Defendants named in the present litigation?
2) If the statute of limitations set forth in NRS 41A.097 applies, is there sufficient evidence to determine, for purposes of the pending Motions, when the statute of limitations expired as it relates to each Defendant?

With all deference, Republic objects to an evidentiary hearing for two reasons discussed below.

1. ***Rule 12 motions attacking the sufficiency of a pleading should, as a matter of law, be based on the face of the pleading, and without consideration of matter outside the pleading.***

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

The first objection is that the motions currently before the Court are brought either under NRCP 12(b)(5) for failure to state a claim, or subsection (c) of the same rule for judgment on the pleadings. Both forms of a Rule 12 motion address a complaint's legal sufficiency.[1] Using the "beyond a doubt" standard, see *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228 n. 6, 181 P.3d 670, 672 n. 6 (2008), a Rule 12(b)(5) motion asks this question: from the face of the pleading, is the plaintiff is entitled to no relief under any set of facts that could be proven in support of the claim? *Id.*, 124 Nev. at 228, 181 P.3d at 672. In answering this question, the court must accept the pleading's allegations as true, and extend to the non-moving party all reasonable inferences that can be drawn from the pleading. *Id.*

Although the October 13 Minute Order is couched as a "request," Republic reads the directive as an order, to which Republic will comply in good faith, though under the protest of this objection. By coupling its decisions on the Rule 12 motions to evidentiary matters outside of the assailed complaint, the Court has effectively converted the Rule 12 motions into motions for summary judgment under Rule 56, where, as succinctly put by the Nevada Civil Practice Manual, "the pleadings play a limited role." *Id.*, Ch. 17 ("Summary Judgment") §17.12 [1]. Simply put, whether bought by a "claimant" or "defending party," a motion for summary judgment under NRCP 56 presupposes the existence of a "claim." *Id.*, (a) and (b). And whether Republic's amended complaint states a "claim" is the very point of the pending motions.

The second objection is to the production at this juncture of the Gonzales-Republic release, and its consideration in deciding the pending motions. Republic's amended complaint at ¶51 alleges in full:

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

---

[1] As stated in prior briefing the Rule 12(c) motion is facially defective since the pleadings are not yet "closed" since the movant, Defendant Balodimas, has not filed an answer. See Motions for judgment are also typically plaintiffs' motions, relying on the admissions of the responding party; for this reason a Rule 12(c) motion can be defeated by the denials and affirmative defenses since a court may not go beyond the face of a pleading. See *Bernard v. Rockhill Development Co.*, 10 Nev.132, 135, 734 P.2d 1238, 1241 (1987). Nor will a defendant "succeed on a motion under Rule 12(c) if there are allegations in the plaintiff's pleadings that, if proved, would permit recovery." *Id.*

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

While Republic's allegations at ¶51 of the amended complaint should, as a matter of law, be taken as true, *Conway v. Circus Circus Casinos, Inc.,* 116 Nev. 870, 873, 8 P.3d 837, 839 (2000); see also *Buzz Stew*, supra, 124 Nev. at 228, 181 P.3d at 672[2], Republic is attaching the Release as relevant predicate to a right of contribution under NRS 17.225(3) and 17.245(1)(a). It should not go unnoticed, however, that by demanding access to the release all the defendants have taken the same inconsistent position: On the one hand they contend the Republic claim is barred by a limitations exclusively applicable to claims of medical malpractice and negligence under NRS Ch. 41A. On the other hand they acknowledge Republic is asserting a contribution claim—subject to its own 1-year limitation period under NRS 17.285(4)(b); otherwise, what difference does the release make?

Though the release is not the subject of any pending motion, the scope and effect of the Gonzales-Republic release begins with a discussion of Nevada's controlling authority regarding whether a release may be read to include third parties to the settlement agreement.

2. The Gonzales-Republic release for injuries allegedly resulting from the January 14, 2012 accident was intended and drafted to extinguish Gonzales's claims against all her health care providers.

At common law, the rule was "release of one, release of all." This led to harsh results—by signing a "general" release, a claimant could unwittingly extinguish claims against third-parties also potentially liable for his or her damages. Nevada has broken from the common law rule, and the intent of the parties to the release controls who is released from liability.

In *Russ v. General Motors Corp.,* 111 Nev. 1431, 906 P.2d 718 (1995), Laura Russ, was severely injured in a traffic accident when the van she was driving collapsed, and its engine entered the passenger compartment. Russ signed a release foregoing her claim against the adverse driver, Scott Haight, in exchange for Haight's auto liability policy limits.[3] The verbiage of the release also had boilerplate purporting to release "all other persons, firms or corporations" for claims arising from the same accident. The injured driver and her husband then sued the manufacturer of her vehicle, GM, and the dealership that sold it to her, Fairway Chevrolet. *Id.*, 111 Nev. at 1432-1433; 906 P.2d at 719.

---

[2] The same applies to a Rule 12(c) motion. See *Bernard v. Rockhill Development Co.,* discussed at n.1, above.

[3] The undersigned can speak with some authority on this point since he represented the adverse driver and the auto insurer, Hawkeye Security.

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

The manufacturer and dealership moved for summary judgment contending the release extinguished claims against them as well. In opposition the plaintiff submitted the declaration of her attorney's assistant, Guy Potter, who negotiated with the adverse driver's insurer, Hawkeye Security. The upshot of Potter's declaration was that it was not the intention of the Russ or Hawkeye to release GM or Fairway, and that at the time the release was signed, no lawsuit against GM and Fairway was pending, or even contemplated. *Id.*, 111 Nev. at 1434; 906 P.2d at 720. The Potter declaration was largely disregarded by the district court as beyond Potter's personal knowledge or hearsay, and was "insufficient to raise a genuine issue of fact as to the liability of [GM] or Fairway." Instead, the district court granted summary judgment, holding the release "clear and unambiguous" and that "the class of released entities defined in the release included not only [GM] and Fairway but all other firms and corporations." *Id.* An appeal was taken.

The *Russ* decision reviewed in considerable detail Nevada's law of release. In substance the *Russ* court found the harshness of the common rule was legislatively overturned by both the *Uniform Joint Obligor's Act*, NRS Ch. 101, and *Uniform Contribution Among Tortfeasors Act*, NRS 17.225, et seq.:

> The Nevada Legislature adopted the Uniform Contribution Among Tortfeasors Act ("UCATA") in 1973. The UCATA was drafted to specifically address the inequities that resulted from adherence to the traditional common law rule. *Neves* [*v. Potter,* 769 P.2d 1047 (Colo. 1989)] at 1050. In pertinent part, the UCATA states:
>
> > When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury ...:
> >
> > 1. It does not discharge any of the other tortfeasors from liability for the injury ... *unless its terms so provide....*

111 Nev. at 1436; 906 P.2d at 721.

Our Supreme Court then surveyed the three schools of thought regarding the law of release. First, "[s]ome jurisdictions hold that all possible tortfeasors are released by a general, boilerplate release." *Id.* Second, "[o]ther jurisdictions narrowly construe the 'unless its terms so provide' requirement [as found in, e.g., NRS 17.245] only to discharge a tortfeasor who is named in the release

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

or identifiable from the face of the release." *Id.* Finally, "[a] third view probes the intentions of the parties by holding that a boilerplate release can only discharge an unnamed tortfeasor if the parties to the release *intended* such a result." *Id.* (emphasis original).

The *Russ* Court definitively held that "[o]ur cases that address the issue at bar adhere to the latter view because it is the more reasoned approach" and frowned upon the "absolute bar view" because it "frustrate[s] the intent of the UCATA to abrogate the common law" rule that a release of one tortfeasor automatically released all others. *Id.*, 111 Nev. at 1436-7; 906 P.2d at 721.

The court also found unpersuasive "[t]he view that a release only discharges tortfeasors who are named in the release, or identifiable from the release." *Id.* 111 Nev. at 1438; 906 P.2d at 721-2. The thrust of *Russ*, therefore, is that "a release does not, in and of itself, release a party unless it was the intention of the injured person to release that party"; that "determining an injured party's intentions depends upon proof and is not susceptible to resolution as a matter of law"; and that "[s]uch a determination is appropriately a jury question." *Id.* 111 Nev. at 1438; 906 P.2d at 722.

Perhaps important for the Court's evidentiary hearing, as an evidentiary matter *Russ* also held that the district court "was required to accept the Potter declaration, and any inferences drawn from it, as true during the summary judgment proceeding," and that:

> a court should provisionally receive all credible evidence concerning a party's intentions to determine whether the language of a release is reasonably susceptible to the interpretation urged by the party. (Citation.) If the court decides that the extrinsic evidence makes the language in the release reasonably susceptible to the interpretation urged, the extrinsic evidence should be admitted to aid the court's interpretation of the contract.

111 Nev. at 1438-1439; 906 P.2d at 723.

As is now discussed, the Gonzales-Republic release was fashioned to exonerate from any potential liability of "any [of Mrs. Gonzales'] medical treatment providers."

a. The intent of the parties to the Gonzales-Republic release was clearly established during the negotiation process and in the Release's language.

During discovery in *Gonzales*, it was reasonably certain Dr. Cash's operation on January 29, 2013 had led directly to Dr. Kaplan's complete revision of Cash's "work" on July 15, 2013. Whether

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

Cash had committed malpractice was unclear, however—certainly the term had not crossed Dr. Kaplan's lips when he was deposed in late 2014, and Dr. Cash's testimony downplayed the need for the revision altogether. In fact, when deposed, Dr. Cash effectively placed the blame for not identifying the pedicle screws entering Mrs. Gonzales' neuroforamina on the radiologist, Dr. Balodimas. When asked about the Balodimas CT study performed on February 12—just two weeks after his operation—Dr. Cash testified:

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

See Amended Complaint ¶35.

The larger point, however, is that when settlement negotiations were occurring in June 2015, there were irregularities in Mrs. Gonzales' treatment by Drs. Cash and Balodimas, but whether they rose to actionable professional negligence was uncertain. That is why, as condition of settlement, Republic wanted to preserve its rights to seek contribution—a condition to which Mrs. Gonzales' counsel agreed.

Attached as **EXHIBIT 2** is a copy of email correspondence between counsel making it plain-as-day their intent to have Mrs. Gonzales' release cover Dr. Cash, and her other health care professionals in who provided her treatment for the January 14, 2012 accident:

> Because we wish to preserve all rights of contribution and equitable indemnification, our form of release will be inclusive of all medical providers, including Dr. Cash and any other potentially responsible health care providers or third- parties. So long as that is fully understood, I think we can move forward to finalize the settlement.
>
> /S/ David Barron

Mrs. Gonzales' counsel's response was brief but unquestionable:

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

> We agree to those conditions…
>
> /S/ Ryan Anderson

Because of that understanding the Release, attached as **EXHIBIT 3**, has the following language, in which Mrs. Gonzales clearly agreed that:

> As a part of their settlement and their mutual consideration stated above, this SETTLEMENT AGREMEENT; RELEASE and COVENANT NOT TO SUE shall discharge and extinguish any and all claims or liabilities, including those for "economic" and "noneconomic" damages as set forth in NRS ch. 41A, RELEASOR [Ms. Gonzalez] may possess against any of her medical treatment providers for injuries she alleges to have sustained in the described incident of January 14, 2012.

The foregoing is found at page 2 of the Release. Reiterating the intent to preserve contribution rights, it was

> acknowledge[d] this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE represents a good faith settlement of the RELEASORS' claims, and preserves RELEASEES' rights under The Uniform Contribution Among Tortfeasor's Act, NRS 17.225, et seq.

Release at p. 9.

Simply put, the Gonzales-Republic release passes muster under *Russ* since its intention to release Mrs. Gonzales' medical treatment providers, and preserve Republic's rights of contribution are plainly stated. The court, however, has asked how the Gonzales-Republic release compares to the unreported Nevada Supreme Court's decision in *McNulty v. District Court*, 127 Nev. 1159, 373 P.3d 942 (2011). *McNulty* actually supports that the Gonzales-Republic release extinguished the liability of Mrs. Gonzales' treatment providers.

b. Distinguishing McNulty v. District Court

Is simplest terms, *McNulty* involved a settlement agreement that did not release a plaintiff's treatment providers from liability, and as such, the *McNulty* court issued a writ of mandamus that the

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

settling defendant could not proceed against the plaintiff's supposedly negligent physicians for contribution.

The settlement agreement was between a passenger and a cab company for accident-related injuries. Several physicians (and their practice) were sued for contribution after the cab company and its insurer paid over $1 million to the passenger-plaintiff. Basis for the cab company's post-settlement contribution claim—and a parallel medical malpractice action also brought by the passenger-plaintiff after settlement—was that the physicians had "performed post-accident back surgery on [the plaintiff]. The surgery allegedly aggravated the injuries [the plaintiff] suffered in the accident and left [the plaintiff] partially paralyzed." *Id.* *1.

While the settlement agreement extinguished the cab company's liability, it scrupulously craved out an exception for a claim of medical malpractice based on a mutual understanding of the settling parties that the accident was not the cause of the back surgery. It did this by stating that the payment in exchange for the release

> is not, nor is it intended to be construed as, an admission of cause of the need for surgery of any kind. The parties to this Release expressly agree that the subject motor vehicle accident did not cause the need for surgery of any kind. Accordingly, the parties stipulate that neither the lumbar surgery nor complications related thereto are proximately or casually related to the subject motor vehicle accident.

Id.

The plaintiff's post-settlement claim against his doctors was his own for medical malpractice; the cab company's claim was for contribution and equitable indemnity. The physician-defendants in the cab company's lawsuit moved for summary judgment. The motion was denied. The physicians petitioned for a writ of mandamus compelling the district court to grant summary judgment. While the Supreme Court found the indemnity claim required factual determinations, it agreed that a writ of mandamus was appropriate for the contribution claim:

> Here, we conclude that McNulty is entitled to a writ of mandamus compelling the district court to dismiss [the cab company's] contribution claim because clear statutory authority requires dismissal. By its terms, the release did not extinguish McNulty's liability to [the passenger-plaintiff]. Under NRS 17.225(3):

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

> A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement....
>
> The statute's wording is plain and its application clear: [the cab company] has no contribution claim against McNulty. Accordingly, we grant the petition for a writ of mandamus requiring the district court to dismiss [the cab company's] contribution claim.

Id. *2.

Contrasting the *McNulty* and Gonzales-Republic releases, the plaintiff in *McNulty* wanted to preserve his right to pursue his malpractice action against his physicians; Mrs. Gonzales did not and agreed to extinguish her medical treatment providers' liability as part of the $2 million settlement consideration, knowing that Republic was preserving rights to seek contribution from them.

It is also worth a brief mention that *McNulty* dealt with a post-settlement contribution action. And contrary to previous argument in the Rule 12 motions, nowhere in the Supreme Court's decision is there a suggestion that a contribution action based on medical malpractice must be brought as a third-party action under Rule 19 while the plaintiff's lawsuit is still pending.

c. In determining the appropriate limitations period, the gravamen of the complaint controls.

If the medical malpractice statute of limitation were to apply here—which would be directly contrary to the Nevada Supreme Court' rulings in *Saylor v. Arcotta,* 126 Nev. ___, 225 P.3d 1276 (2012) and *Pack v. LaTourette*, 128 Nev. ___, 277 P.3d 1246 (2012)—the Court has asked for evidence "as to when the statute of limitations expired as it relates to *each* Defendant." Minute Oder, 10/13/16, emphasis added.

Defendants in this matter are fixed on the idea that this is a medical malpractice action for Marie Gonzalez' injures. As was briefed extensively in Plaintiffs' Oppositions to Defendants' Rule 12 Motions, a contribution claim is a stand-alone cause of action. But since the contribution claim is based on allegations of medical errors and omissions, Republic must prove medical malpractice as an element of its claim. *Pack* at 1250 ("to establish a right of contribution, Sun Cab would have to establish that LaTourette committed medical malpractice"). Republic must also comply (and has) with

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

the medical expert declaration requirement found in NRS 41A.071. *Id.* But neither statutory predicate to a contribution action based on medical malpractice converts the contribution claim *into* a medical malpractice claim, making it subject to NRS Ch. 41A's limitations provisions. Cf. *Aetna Casualty & Surety v. Aztec Plumbing,* 106 Nev. 474, 796 P.2d 227(1990) ("[a] cause of action for indemnity or contribution accrues when payment has been made"). Whether the medical malpractice statute or contribution statute of limitations applies is answered by determining the nature of the action.

State Farm Mutual Automobile Insurance Company v. Wharton, 88 Nev. 183, 495 P.2d 359 (1972) establishes that "one must look to the real purpose of the complaint" in determining which of two or more conflicting limitations periods ought to be applied. *Id.* at 186, 361. There, the Nevada Supreme Court considered competing statutes of limitations—a shorter tort statute and a longer contract statute—to determine if a plaintiff/subrogee insurance company's claim was time-barred. The Court held that "[i]n determining whether an action is on the contract or in tort, we deem it correct to say that it is the nature of the grievance rather than the form of the pleadings that determines the character of the action." *Id.* (citations omitted). In *State Farm* the insurer was subrogating on an underlying bodily injury, and the court found the 2-year statute was therefore applicable. The rule upon which it relied is that "it is the object of the action, rather than the theory upon which recovery is sought (,) that is controlling." *Id.*, quoting *Automobile Ins. Co. v. Union Oil Co.,* 193 P.2d 48, 50-51 (Cal. App. 1948).

Looking at the Amended Complaint, the object of the action is clear: it is for contribution to ensure that Republic paid no more than its equitable share of a common liability. The Amended Complaint does this by raising claims for professional negligence/medical malpractice, respondeat superior/vicarious liability, and negligent hiring/retention as torts underlying Republic's contribution claim. (For good measure, the Amended Complaint includes the phrase "It was also necessary for REPULIC to bring this action for contribution" as part of each cause of action.) Not only is the term "contribution," and the *Uniform Contribution Among Tortfeasors Act* mentioned far more often in the Amended Complaint than medical malpractice, Marie Gonzalez' damages are not discussed, alleged or being sought. The only damages claimed are Republic's, and its entitlement to its damages is by proceeding under NRS 17.225 et seq. to assure it has paid not more than its equitable share of the

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

common liability. Accordingly the 1-year limitation from the date of the settlement payment for contribution actions is clearly the applicable law. NRS 17.285(4)(b).

As noted, the Nevada Supreme court has held that NRS 41A.097 does not govern contribution actions. The question to be addressed at this Court's request, however, is if the supposedly expired medical malpractice statute of limitations in NRS 41A.097 applies, how would it effect each defendant?

3. Even if NRS 41A.097 did apply when the statute was triggered presents questions of fact.

Defendant Danielle Miller has recently field a supplemental brief that NRS 41A.097(2) would bar Republic's claim (even though it would not have even arisen by then under *Aztec Plumbing*) no later when Dr. Kaplan performed his revision on the Cash operation on July 15, 2013. The practical consequence is that Republic needed to have brought is claim by July 15, 2014 at the latest. Naturally Republic disagrees.

NRS 41A.097(2) is the limitation for injuries or death after October 1, 2002 arising from medical malpractice. It reads in pertinent part:

> Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first[.]

NRS 41A.097(3) is a tolling provision providing "[t]his time limitation is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action is based and which is known or through the use of reasonable diligence should have been known to the provider of health care."

Subsections 2 and 3 of NRS 41A.097 raise three pertinent questions: First, what is the "date of injury" triggering the 3-year limitations period? Second, using the "knew or should have known" standard, when should Mrs. Gonzales have reasonably discovered the injury triggering the statute's 1-year limitation period? And third, was there concealment by any health care provider who either knew, or through reasonable diligence should have known of the injury? All these inquiries are fact-intensive.

///

///

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

1) Date of injury

Beginning with the "date of injury," the common presumption has been that the injury was incurred on January 29, 2013; that was when the pedicle screws were improperly placed; *ergo*, January 29, 2013 is the earliest time point for a date of injury. This, however, ignores the progressive nature of the harm.

When Dr. Kaplan was deposed in *Gonzales* he declined to criticize Dr. Cash's misplacement of the pedicle screws on January 29, 2013. Indeed, Dr. Kaplan testified that he himself has overshot the mark and put pedicle screws through a patient's neuroforamen. But to avoid lasting nerve injury, such as that suffered by Mrs. Gonzales, Dr. Kaplan also testified it is imperative that the surgical complication be addressed promptly. So to be perfectly clear, the pedicle screws penetrating Ms. Gonzalez' neuroforamina, while a surgical complication, was "fixable" had it been surgically addressed in time.

Defendant Cash's professional negligence was not just improper placement of the screws. It was that he failed to order a work up when Ms. Gonzalez awoke in the recovery room in excruciating pain, and his ongoing inability—or refusal—to recognize the need for a surgical revision thereafter. We know he waited 2 weeks to order a CT scan. And then he and Dr. Balodimas conferred about what the CT scan showed. Although the CT study demonstrated an obvious breach of the pedicle screws, both Drs. Cash and Balodimas agreed that it showed nothing of requiring immediate intervention—apparently a joint conclusion, memorialized in Defendant Balodimas' radiology report (which did little other than reinforce Defendant Cash's erroneous conclusion that Ms. Gonzalez was experiencing nothing but postoperative pain).

Instead of accurately assessing Mrs. Gonzales' progressively deteriorating condition caused directly by the pedicle screws' irritation of her affected nerve roots, Dr. Cash perpetuated his poor professional judgment by referring Mrs. Gonzales to a "pain management" specialist, Dr. Alain Coppel. Between February 11 and June 1, 2013, Mrs. Gonzales underwent three rounds of epidural steroid injections, and a "trial" spinal cord stimulator, with no significant improvement. By then Mrs. Gonzales had reached her limit and effectively "fired" Dr. Cash and sought help from Dr. Stuart Kaplan.

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

Dr. Kaplan's complete revision of the Cash operation was on July 15, 2013. But by then the permanent damage had been done: she was now suffering from chronic radiculopathy that eventually necessitated Dr. Kaplan's implantation of a permanent spinal cord stimulator in early 2015.

2) "Inquiry" notice

Using July 15, 2013 as the rational date of injury—after all, that was the date when the surgical option was proven to have been exercised too late—what "inquiry" notice was there that Dr. Cash, or any other named defendant for that matter, had committed malpractice? Again, this a fact-based inquiry.

The only physician Mrs. Gonzales could have relied upon to tell her that her post-operative suffering was the result of malpractice, and not just an unfortunate (though not uncommon) surgical complication, was Dr. Kaplan. Yet as late as his deposition in December 2014, Dr. Kaplan declined to typify Dr. Cash's performance as malpractice. And it's also worth noting that when Mrs. Gonzales presented to Dr. Kaplan in mid-2013 it was not that that she suspected malpractice had been committed—after all, she saw Kaplan to treat her, not assess Dr. Cash's work. And even after Dr. Kaplan completely revised the Cash surgery, there is no indication that Mrs. Gonzales was aware that her surgical complication rose to the level of professional negligence. Certainly Dr. Kaplan never told her so. Inquiry notice under these facts regarding Dr. Cash simply is not present as a forgone conclusion. And there's no indication Mrs. Gonzales was even aware of the three neuromonitoring defendants, or whether her injury could have been attributable—as Dr. Cash was quick to contend—to Dr. Balodimas' misreading the post-operative CT scan.

The next question is whether these defendants were forthcoming in their respective roles in Mrs. Gonzales' treatment, or whether there was concealment of errors in Gonzales' treatment "which [were] known or through the use of reasonable diligence should have been known to the provider[s] of health care." NRS 41A.097(3).

3) Tolling due to concealment

We don't know what Dr. Balodimas and Dr. Cash said to one another as they discussed the post-operative CT. But Dr. Cash's testimony that Dr. Balodimas was the one actively at fault raises suspicion about whether the intent of the Balodimas CT report all along was to provide plausible cover for concealing the surgical complication. If Dr. Balodimas is deposed, will he take the blame for failing

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

to properly read the CT study, and concede that Dr. Cash was reasonably relying on his mistake as a radiologist? Or did Dr. Balodimas shade his CT report at Dr. Cash's behest? Whether the pedicle breach was concealed—and if so, why—are fact questions implicating the tolling aspects of NRS 41A.097(3) as to both Drs. Cash and Balodimas.

Nor were the neuromonitoring defendants candid in disclosing their records and intraoperative data. Republic conducted extensive discovery in the course of the underlying case and obtained a HIPPA compliant release from Mrs. Gonzalez to acquire her medical records. Republic played by the rules, and that authorization and the court's process were used in gathering the Gonzales treatment records. It was not until after the Gonzales-Republic settlement it became clear that the records received from the neuromonitoring defendants were woefully incomplete.

a) The Katuna/Rocky Mountain Neuromonitoring records

A records request to Defendant Katuna/Rocky Mountain Neurodiagnostics yielded a single page "report" signed by Defendant Katuna, dated March 6, 2013. This report stated that "[m]onitored responses showed no significant changes throughout the procedure and the surgeon was so informed. Pedicle screw testing demonstrated thresholds suggesting low likelihood of pedicle breach." A copy of the Records Request and Intraoperative Neurophysiologic Monitoring Report is attached as **Exhibit 4**.

Defendant Katuna produced no intraoperative neuromonitoring data, which is required to be retained under Nevada's medical record keeping statute. Importantly, these records are the only objective means by which his report could be verified. Notably, Dr. Katuna himself signed the Affidavit of Authenticity of Records dated May 18, 2015, but gave no explanation for the absence of the intraoperative data, or even a hint of their existence. Also, Dr. Katuna's report does not appear in Defendant Cash's records, nor are any documents from Dr. Katuna in any other provider's records produced during *Gonzales*.

Republic first became aware of the existence of the Katuna report as an exhibit to a settlement demand dated December 13, 2013, about 3 months after suit was filed. It is, of course, the only document ever produced by Dr. Katuna and Rocky Mountain Neurodiagnostics. It is plainly insufficient to have placed Mrs. Gonzales on notice that the intraoperative neuromonitoring in her case

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

was below the standard of care, and prompts the question of whether these records were innocently or deliberately withheld.

b) The Neuromonitoring Associates/Danielle Miller records

A pair of requests dated February 14, 2014 and May 14, 2014 to Defendant Neuromonitoring Associates yielded *no* records for the January 29, 2013 procedure; the only records produced pertained to the July 15, 2013 revision surgery performed by Dr. Kaplan. The requests and records received from Neuromonitoring Associates are attached as **EXHIBIT 5**.

Like Defendant Katuna's conclusory report, Republic first became aware of Neuromonitoring Associates' and Danielle Miller's involvements in Ms. Gonzalez' treatment from the December 2013 settlement demand. Included was a single page "Neuromonitoring Report," which lacked the signature page. Interestingly, the "Neuromonitoring Report" listed Defendant Miller as an "anesthesia technician"; no intraoperative neuromonitoring technician is even identified.

The Neuromonitoring Report is attached as **EXHIBIT 5**, and raises questions of fact and law. What, for example, was the precise scope of Defendant Miller's role in the January 29, 2013 surgery? From the face of this document, can Mrs. Gonzales have been on reasonable notice of Defendant Miller even had a role in the intraoperative neuromonitoring? Or even read to have placed Mrs. Gonzales on "inquiry" notice that the low amperage passing through the pedicles screws during the Cash surgery in fact indicated a pedicle screw breach? Moreover, that is no indication Defendant Miller was properly credentialed as Certified in Neurophysiological Intraoperative Monitoring (CNIM).

Clearly, Defendant Katuna did not produce the full extent of the records he ought to have retained, and Defendants Miller and Neuromonitoring Associates failed to disclose *any* records pertaining to the January 29, 2013 procedure. This gives rise to at least a question of fact as to whether the failure to produce pertinent records was an innocent oversight or volitional concealment. If that were found to be the case, the statute of limitations would in fact be tolled under NRS 41A.097(3) as to each of these neuromonitoring defendants. But unquestionably, the failure to produce pertinent records kept Mrs. Gonzales from learning that the intraoperative neuromonitoring was improperly performed.

///

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

CONCLUSION

The consequence of the preceding discussion is that *even if this were Ms. Gonzalez' medical malpractice claim*—which it is most certainly not—there is a trove of disputed facts about the viability of such a suit. Accordingly, dismissal of this action as time-barred by NRS 41A.097 would be doubly inappropriate, first because it is not Ms. Gonzalez' medical malpractice claim; and second, even if it were, the facts show that all Defendants were amenable to suit under NRS Ch. 41A.097(2) for at least three years after the "date of injury," or no later than July 15, 2016. See *Libby v. District Court*, 130 Nev. ___, 325 P.3d 1276, 1277 (2014) ("NRS 41A.097(2)'s three-year limitation period begins to run when a plaintiff suffers appreciable harm, regardless of whether the plaintiff is aware of the injury's cause"). Of course, Republic's complaint was filed several weeks before the three-year anniversary of Dr. Kaplan's operation. And it was only then that Mrs. Gonzales' "appreciable harm"—in the form chronic radiculopathy resulting from leaving the pedicle screws in her neuroforamina for several months—was learned.

Based on the foregoing, and previous briefing, all Rule 12 motions should be denied.

BARRON & PRUITT, LLP

DAVID BARRON, ESQ.
Nevada Bar No. 142
JOHN D. BARRON, ESQ.
Nevada Bar No. 14029
3890 West Ann Road
North Las Vegas, Nevada 89031
Attorneys for Plaintiff
Republic Silver State Disposal, Inc.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of November, 2016, I served the foregoing 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:

///

///

///

///

///

///

///

///

///

///

///

///

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

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

/s/ MaryAnn Dillard
An Employee of 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

Exhibit 1

SUBP
DAVID BARRON
Nevada Bar No. 142
BARRON & PRUITT, LLP
3890 West Ann Road
North Las Vegas, Nevada 89031-4416
Telephone: 702-870-3940
Facsimile: 702-870-3950
E-Mail: dbarron@lvnvlaw.com
Attorneys for Defendants Hatcher & Republic Silver State Disposal

DISTRICT COURT

CLARK COUNTY, NEVADA

***

MARIE GONZALEZ,

Plaintiff,

vs.

DEVAL M. HATCHER, an individual; REPUBLIC SILVER STATE DISPOSAL, INC., a Nevada Corporation; DOE OWNERS I through V, inclusive, DOE DRIVER, ROE EMPLOYER and ROE COMPANIES,

Defendants.

AND ALL RELATED ACTIONS

Case No: A-13-687931-C
Dept.: XX

COORDINATED FOR DISCOVERY ONLY

Case No.: A-13-692547-C
Dept.: XVII

SUBPOENA

☒ Regular Duces Tecum

DATE: DECEMBER 3, 2014

TIME: 4:00 P.M.

THE STATE OF NEVADA SENDS GREETINGS TO:

ANDREW CASH, MD
Desert Institute of Spine Care
9339 W. Sunset Road
Las Vegas, Nevada 89148

YOU ARE HEREBY COMMANDED, that all and singular, business and excuses being set aside, you appear and attend on **December 3, 2014, at the hour of 4:00 p.m., at the offices of Desert Institute of Spine Care, 9339 W. Sunset Road, Las Vegas, Nevada 89148,**

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

for the purpose of taking your deposition. If you fail to attend you will be deemed guilty of contempt of Court and liable to pay all losses and damages caused by your failure to appear and in addition forfeit One Hundred Dollars [$100.00].

You are required to provide testimony regarding your care and treatment of Marie Gonzalez. Please bring with you to the deposition your complete file regarding Marie Gonzalez, including all medical records, diagnostic films, correspondence and any and all other records in your possession regarding Marie Gonzalez.

Please see "Exhibit A" attached hereto for information regarding the rights of the person subject to this Subpoena.

DATED this 12th day of November, 2014.

BARRON & PRUITT, LLP

David Barron
Nevada Bar No. 142
3890 West Ann Road
North Las Vegas, NV 89031
Attorneys for Defendants Hatcher & Republic Silver State Disposal

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

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

EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

[As amended; effective January 1, 2005.]

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

[As amended; effective January 1, 2005.]

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of November, 2014, I served the foregoing **SUBPOENA TO ANDREW CASH, M.D.** 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 filing and serving the document(s) listed above with the Eighth Judicial District Court's WizNet system.

Ryan M. Anderson, Esq.
Kimball Jones, Esq.
MORRIS ANDERSON LAW
2001 S. Maryland Pkwy.
Las Vegas, NV 89104
Facsimile: (702) 507-0092
Email: info@MorrisAndersonLaw.com
Attorneys for Plaintiff Gonzalez

Courtesy copy:

George M. Ranalli, Esq.
RANALLI & ZANIEL, LLC
2400 W. Horizon Ridge Parkway
Henderson, Nevada 89052
Facsimile: (702) 477-7778
Email: GMRanalli@RanalliLawyers.com
Attorneys for Defendants Ace Cab Inc./Frias Transportation

An Employee of BARRON & PRUITT, LLP

Desert Institute of Spine Care
9339 W. Sunset Rd #100
Las Vegas, NV 89148
Phone: (702) 630-3472 Facsimile: (702) 946-5115

GONZALES, MARIE

[redacted]
Cash, Andrew M.
02/20/2013
Follow up

CHIEF COMPLAINT: Back pain 9/10 with intermittent numbness and tingling down the posterior thigh and lateral leg. The patient feels better when lying down, but after she has been immobile for two hours she feels worse. She has been undergoing physical therapy and feels like she is not feeling better and is actually causing worse pain in her leg. The patient is on Lyrica and Percocet.

Past medical history, family history and social history are unchanged since last visit. Tobacco: None. Review of systems is unremarkable. The patient underwent an injection by Dr. Coppel and had some significant temporary relief.

On physical examination, the patient has no chest pain or shortness of breath. The patient has decreased sensation in the left lower extremity with bilateral lumbar spasms and tenderness.

CT scan shows no hardware complication. The patient has a disc protrusion and/or scar tissue at the left foramen at L4-5 and L5-S1.

IMPRESSION:

1. Post lumbar fusion.
2. Lumbar radiculopathy.

RECOMMENDATIONS:

1. The patient is a candidate for repeat transforaminal epidural injections left L4-5 and L5-S1.
2. The patient will hold off on physical therapy at this time.

DISABILITY:

Temporarily, totally disabled.

PROGNOSIS:

Guarded.

CAUSATION:

It is my opinion to a reasonable degree of medical probability that all treatment provided has been and will be reasonable, necessary and directly related to the 1/14/2012 motor vehicle collision unless I have stated otherwise above. The charges are usual, customary and also related. I welcome the opportunity to review any and all medical records regarding past or present treatment of the patient which could possibly reinforce or otherwise affect the above opinions.

Andrew M. Cash, MD/lam

DR: 02/21/13-1233
DT: 02/21/13
#CASH5828

The risks of opioid medications were explained to the patient. The patient understands and agrees to use these medications only as prescribed. The patient agrees to obtain pain medications from this practice only. We have fully discussed the potential side effects of the medication with the patient. These include, but are not limited to, constipation, drowsiness, addiction, nausea, vomiting, impaired judgment and the risk of fatal overdose if not taken as prescribed. We have warned the patient that sharing medications is a felony. We have warned the patient against driving while taking sedating medications.

Electronically signed on 02/22/2013 by A.M.C.,M.D.

Exhibit 2

From: Ryan Anderson
To: David Barron
Subject: Re: Marie Gonzales Settlement
Date: Friday, June 12, 2015 11:49:12 AM
Attachments: image001.png

David,

We agree to those conditions. I am nearly certain there are not any Medicare liens, but I'll confirm that.

Again, nice to work with you and I'll look forward to receiving the release and closing documents.

Ryan.

On Fri, Jun 12, 2015 at 11:42 AM, David Barron <DBarron@lvnvlaw.com> wrote:

> Thank you, Ryan. I have advised my principal and sent her your email below. Because we wish to preserve all rights of contribution and equitable indemnification, our form of release will be inclusive of all medical providers, including Dr. Cash and any other potentially responsible health care providers or third parties. So long as that is fully understood I think we can move forward to finalize the settlement. And of course, I'm sure you will be advising CMS to obtain a letter from Medicare/Medicaid that they are asserting no liens on the recovery.
>
> Your call yesterday was appreciated. Please call or write if there are questions.
>
> Regards, Dave
>
> **David Barron**
> barronpruitt.com | dbarron@lvnvlaw.com
> **p** 702.870.3940 | **f** 702.870.3950
>
> 3890 West Ann Road
>
> North Las Vegas NV 89031
> Barron & Pruitt, LLP
> LAWYERS
>
> ---
>
> **From:** Ryan Anderson [mailto:ryan@morrisandersonlaw.com]
> **Sent:** Thursday, June 11, 2015 9:50 PM
> **To:** David Barron
> **Cc:** Jacqueline Bretell; Marie Gonzales 1/14/12; Ashley Atton
> **Subject:** Marie Gonzales Settlement

Exhibit 3

SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE

This SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE is made between MARIE GONZALES ("RELEASOR") and DEVAL HATCHER, REPUBLIC SILVER STATE DISPOSAL, INC., REPUBLIC SERVICES, INC., and their insurers, agents, employees heirs, and assigns ("RELEASEES").

This Agreement is made with reference to the following:

WHEREAS, the RELEASOR has asserted certain claims against RELEASEES, as set forth in that certain action pending in District Court, Clark County, Nevada, entitled *Gonzales v. Hatcher, Republic Silver State Disposal et al.*, (Case # A687931; consolidated for discovery with Case #A692547), based upon and arising out of that certain accident, casualty, incident or event that occurred on or about the 14th day of January, 2012, in the County of Clark, State of Nevada, occurring at or near the intersection of Hacienda Boulevard and in North Las Vegas, Nevada;

WHEREAS, RELASEES have denied, defended and disputed the allegations and claims asserted by RELEASOR ("claims");

WHEREAS, the parties desire to avoid further litigation, and to settle and resolve all claims arising from the described event and which have been or could be asserted by the RELEASOR against the RELEASEES in the described litigation or otherwise; and

THEREFORE, for and in consideration of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, covenants and undertakings hereinafter set forth, and for other good and valuable consideration, the RELEASEES AND RELEASOR agree as follows:

1. **Release and Discharge.** In consideration of a total payment in the sum of TWO MILLION DOLLARS ($2,000,000.00), RELEASOR does hereby fully release and forever discharge the RELEASEES, and each of them, their heirs, assigns, affiliates, subsidiaries, franchisees, parent corporations and their respective agents, related entities, present and former directors, officers, executives, employees, predecessors and/or successors in interest, attorneys, and insurers, of all claims known and unknown, actions, causes of action and suits for damages,

at law and in equity, filed or otherwise, including any claim or claims for bodily injury; loss of compensation, profits; interest or use of any property; for services, society, consortium, contribution and support, which they have has or may hereafter acquire; and for damages against RELEASEES for any damage arising from the incident described above. As a part of their settlement and their mutual consideration stated above, this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE shall discharge and extinguish any and all claims or liabilities, including those for "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.

2. **Taxes.** The RELEASOR under this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE will be responsible for all taxes, if any, that they are legally responsible to pay as a result of such settlement.
3. **Liens.** RELEASOR agrees that if any lien, reimbursement right or interest is asserted by any hospital; ambulance service; pharmacy; physician; hospital, or other medical treatment or service provider; Medicare; Medicaid; any insurance company; health maintenance organization; attorney; lien holder; or any other third-party to this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE against the proceeds of this settlement, and/or against the RELEASEES, or other persons, firms, or corporations making payment on behalf of the RELEASEES, RELEASOR agrees to pay and satisfy such lien, reimbursement right or interest; and to indemnify and hold harmless RELEASEES, their insurers, heirs and assigns from any costs, expenses, attorney fees, claims, actions, judgments, or settlements resulting from the assertion or enforcement of any such lien, reimbursement right or interest by any entity having such lien or reimbursement right.
4. **Medicare.** In further consideration for this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, RELEASEES, their attorneys and insurers rely on the following representations and warranties made by RELEASOR and her counsel:

a. RELEASOR and her counsel and RELEASEES agree that all representations and warranties made herein shall survive settlement.

b. Pursuant to 42 U.S.C. 1395y et seq. and 42 C.F.R. §411.10 et seq, the parties acknowledge their duty to adequately consider Medicare's future interest in settlements by not unreasonably shifting the health care burden of claims to Medicare, and that the parties hereto have taken reasonable steps from the beginning of this action to comply with the requirements of 42 U.S.C. § 1395y (b) and the rules and regulations promulgated thereunder (hereinafter collectively "MSP").

c. RELEASOR, MARIE GONZALES, represents and warrants that, as of the date of execution of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, she has not received Medicare or Medicaid benefits for injuries she claims to have suffered in the incident of January 14, 2012, described above, nor is she eligible to receive Medicare benefits under the law, and has not reached the age of 65; she is not a disabled person entitled to receive Social Security Disability, or other benefits from the Social Security system for injuries or damages arising from the described incident; she is not entitled to receive railroad retirement benefits; nor does she have end-stage renal disease.

d. While it is impossible to accurately predict the need for future treatment, this settlement was based upon a good faith determination of the parties in order to resolve a questionable claim or claims. During the course of the litigation In the event Medicare requires reimbursement related to any past or future medical treatment or cost, this will be the sole responsibility of RELEASOR.

e. In addition to and without limiting any other language in this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, RELEASOR agrees to indemnify and hold harmless RELEASEES, their attorneys and insurers

from any and all Medicare Claims that have been or may in the future be related to, arise from, or are in connection with the incident described herein.

f. RELEASOR represents and warrants that she, or her counsel, have notified Medicare and/or its Coordination of Benefits Contractor of the accident, injury, or illness giving rise to this settlement; acknowledges and agrees that it is her responsibility, and not the responsibility of RELEASEES, their attorneys or insurer(s), to reimburse Medicare for conditional payments, if any, made by Medicare. RELEASOR also agrees to provide RELEASEES' counsel with a copy of any correspondence from CMS stating Medicaid/Medicare has no lien or interest in RELEASOR'S recovery.

g. Reliance on Representations and Warranties:

   i. In agreeing to this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, RELEASEES, their attorneys and insurers are relying on the representations and warranties of the RELEASOR regarding RELEASOR'S Medicare status, and the actions RELEASOR and her Counsel have represented they have taken and/or will take to satisfy any and all Medicare Claims, liens and interests pertaining to the matters forming the basis of RELEASOR'S claims.

   ii. In addition, RELEASOR shall indemnify RELEASEES, their attorneys and/or insurers for any damages, legal fees and costs or expenses for their failure to adhere to the representations and warranties contained herein.

5. **Costs and Fees.** Each party hereto shall bear his, her or its own attorneys' fees and costs incurred arising from or in connection with the described incident of January 12, 2012.

6. **Mutual Non-Admission**. It is also understood and agreed and made a part hereto that: The issuance of such settlement proceeds is not, nor is it intended to be construed as an admission of liability on the part of RELEASEES, or any of them, but is in compromise, settlement,

accord and satisfaction and discharge of loss, damage, claims, actions, causes of action, suits and liability which are each an all uncertain, doubtful and disputed. It is also understood and agreed that nothing herein shall be construed as an admission by RELEASOR or RELEASEES of any wrongdoing, liability or violation of any applicable law, and that nothing in this Release shall be so construed by any other person.

7. **Warranty of Capacity to Execute Release.** RELEASOR represents and warrants that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, except as otherwise set forth herein, and that the RELEASOR has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to herein.

8. **Consultation with Attorney.** The RELEASOR acknowledges that she has a right to consult an attorney and that she has specifically consulted with her attorneys with respect to the terms and conditions of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, and acknowledges that she fully understands its terms and the effect of signing and executing it.

9. **Choice of Law.** This SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE shall be deemed to have been executed and delivered within the State of Nevada, and the rights and obligations of the Settling Parties hereto shall be construed and enforced in accordance with and governed by the laws of the State of Nevada.

10. **Modification.** This SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE is the entire agreement between the RELEASOR and RELEASEES with respect to any and all claims RELEASOR has or may have against RELEASEES, and supersedes all prior and contemporaneous oral and written agreements and discussions. The terms of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE may not be modified, amended, supplemented, or waived except through a writing signed by the RELEASOR and RELEASEES. RELEASOR and RELEASEES acknowledge and agree that

they will make no claim that this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE has been orally altered or modified in any respect; nor will they claim that this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE has been altered, modified, or otherwise changed by oral communication of any kind or character. It is expressly acknowledged and recognized by the RELEASOR and RELEASEES that there are no oral or written collateral agreements between them in connection with the subject matter of this Agreement.

11. **Severability.** If any term or provision of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE is determined to be illegal, invalid, or otherwise unenforceable through arbitration or through a court of competent jurisdiction, then to the extent necessary to make such provision or this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE legal, valid, or otherwise enforceable, such term or provision will be limited, construed, or severed and deleted, and the remaining portions, if any, shall survive, remain in full force and effect, continue to be binding, and will be interpreted to give effect to the intention of the RELEASOR and RELEASEES hereto insofar as possible.

12. **Waiver**: RELEASOR and RELEASEES hereby waive any and all rights that they may have under the provisions of any rule of law that may be adopted by the State of Nevada that provides that a release does not extend to claims that are unknown or unsuspected at the time of executing the SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, which if known would have materially affected its provisions. RELEASOR and RELEASEES acknowledge and agree that this waiver is an essential and material term and without such waiver the Settlement payments and releases that constitute the consideration for the SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE would not have been made. The delay or failure of any party to exercise any of his or her rights herein shall not be deemed by any other party to constitute a waiver of such rights, unless the party possessing such rights has clearly and expressly given notice in writing to the contrary

to all other parties hereto. The waiver by any party of any breach of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE by another party shall not operate as a waiver of any subsequent breach.

13. **Confidentiality**: Subject to RELEASEES' right to pursue rights of reimbursement and/or contribution against RELEASOR'S medical treatment providers, as set out in ¶ 1, in which case this "Confidentiality" provision may be considered to have been waived by RELEASEES, RELEASOR and RELEASEES agree that they, their attorneys, agents and representatives, will maintain in strict confidence regarding any and all information obtained or disclosed in the course of settlement negotiations; settlement consideration and payments; and any and all information contained in this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE. Furthermore, they will take every reasonable precaution to prevent disclosure of such information to third parties except as necessary to tax preparers, lien holders, accountants, financial advisors and otherwise required by law or court order. In the event that the law requires disclosure of any information, they and/or their attorneys shall notify the other parties to this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE, and/or their attorneys, of the necessity to make such a disclosure. They and/or their attorneys will refrain from making, causing to be made, or participating in the making of any public announcement, press release, written or oral statement to any trial or settlement reporter, legal journal, trial lawyers journal, or the like regarding the subject matter of this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE. This confidentiality provision contemplates both the amount of settlement and the existence of settlement and is an integral part of this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE and cannot be waived, breached or otherwise circumvented without the express prior written permission of all Parties. In the event of any breach of the confidentiality provision of this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE, a damaged party shall be entitled to recover all costs and reasonable attorneys fees from a breaching party or attorney

that are incurred to address any breach of, or to enforce, this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE and this confidentiality provision. No monetary consideration was paid for confidentiality; rather the parties hereby agree to reciprocal confidentiality as the sole and entire consideration.

14. **Miscellaneous Provisions:**

a. Except and unless otherwise provided in this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, nothing herein expressed or implied is intended, nor shall be construed, to confer upon or give any person, other than the RELEASOR and RELEASEES, any rights or remedies, under or by reason of, any term, provision, condition, undertaking, warranty, representation, or agreement herein contained. All rights not expressly resolved herein are reserved to the RELEASOR and RELEASEES.

b. Neither the RELEASOR and RELEASEES, or officer, agent, partner, employee, representative, trustee or attorney of or for any party has made any statement or representation to any other party regarding any fact relied upon in entering into this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE; and each party does not rely upon any statement, representation or promise of any other party or any officer, agent, partner, employee, representative, trustee or attorney for any other party in executing this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, or in making the settlement provided for herein, except as expressly stated herein.

c. In entering into this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, and the settlement provided for herein, both the RELEASOR and RELEASEES assume the risk of any misrepresentation or mistake. This SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE is intended to be, and is final and binding between the parties hereto, regardless of any

claims of misrepresentation, promises made without intent to perform, concealment of fact, mistake of fact or law, or of any other circumstance whatsoever.

d. RELEASOR and RELEASEES warrant and represent that (i) this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE in its reduction to final written form is a result of extensive good faith negotiations between the parties through their respective counsel; (ii) said counsel have carefully reviewed and examined this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE for execution by said parties, or any of them; and (iii) any statute or rule of construction which provides that ambiguities are to be resolved against the drafting party shall not be employed in its interpretation.

e. RELEASOR and RELEASEES acknowledge this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE represents a good faith settlement of the RELEASORS' claims, and preserves RELEASEES' rights under The Uniform Contribution Among Tortfeasor's Act, NRS 17.225, et seq.

f. In the event that it becomes necessary for either RELEASOR and RELEASEES, or either's authorized representative, successor, or assign, to institute suit to compel performance of any of the obligations stated herein or to preclude a purported violation of the terms of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, the prevailing party in such action shall be entitled to reimbursement from the losing party/parties for reasonable costs, expenses, and attorneys fees incurred by it in preparation for and in connection with such action.

The headings contained in this Agreement are solely for convenience and shall not be used to define or construe any of the terms or provisions hereof.

BY SIGNING THIS SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE RELEASE RELEASOR HEREBY ACKNOWLEDGES AND WARRANTS:

This SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE was first carefully read in its entirety by RELEASOR and was and is understood and known to be a

full and final compromise, settlement, release, accord and satisfaction and discharge of all claims, actions, and causes of action and suits, as above stated; was signed and executed voluntarily and without reliance upon any statement or representation of or by any RELEASEES, or any representative, agent or representative of same, concerning the nature, degree and extent of said damages, loss or injuries, or legal liability therefore; and that it contains the entire agreement of and between all of the parties mentioned herein, and all of its terms and provisions are contractual and not a mere recital; moreover RELEASOR is of legal age and capacity and competent to sign and execute this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE and each accepts full responsibility therefor.

READ and SIGNED this 6th day of July

Marie Gonzales
MARIE GONZALES

VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On the 6 day of July, 2015, before me, a Notary Public in and for said County and State, personally appeared Marie Gonzales, known to me (or proved on the basis of satisfactory evidence) to be the person who executed the above and foregoing instrument, and who acknowledged to me that she did so freely and voluntarily and for the purposes therein mentioned.

ALLAN ATTON
Notary Public-State of Nevada
APPT. NO. 14-15801-1
My App. Expires May 15, 2018

NOTARY PUBLIC

Exhibit 4

ELECTRONICALLY SERVED
05/18/2015 12:23:53 PM

SUBP
DAVID BARRON
Nevada Bar No. 142
BARRON & PRUITT, LLP
3890 West Ann Road
North Las Vegas, Nevada 89031
Telephone: 702-870-3940
Facsimile: 702-870-3950
E-Mail: dbarron@lvnvlaw.com
Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

***

MARIE GONZALEZ, Plaintiff, vs. DEVAL M. HATCHER, an individual; REPUBLIC SILVER STATE DISPOSAL, INC., a Nevada Corporation; DOE OWNERS I through V, inclusive, DOE DRIVER, ROE EMPLOYER and ROE COMPANIES, Defendants.	Case No: A-13-687931-C Dept.: XX COORDINATED FOR DISCOVERY ONLY Case No.: A-13-692547-C Dept.: XVII **SUBPOENA – CIVIL** **☐REGULAR ☒ DUCES TECUM** Date: June 8, 2015 Time: 9:00 a.m.
AND ALL RELATED ACTIONS	

THE STATE OF NEVADA SENDS GREETINGS TO:

Custodian of Records or Other Qualified Person for
Rocky Mountain Neurodiagnostics
2217 Harvard Court
Longmont, CO 80503
303-776-5298

YOU ARE HEREBY COMMANDED, pursuant to Rule 45 of the Nevada Rules of Civil Procedure, to produce and permit inspection and copying of the medical records, documents, or tangible things set forth in the attached Exhibit "A" that are in your possession, custody, or control, by delivering a true, legible, and durable copy of the records to the requesting attorney, by United States mail, or similar delivery service or electronic transmission, no later than **9:00 a.m.** on **June 8, 2015** at the law office of **Barron & Pruitt, LLP, 3890 West Ann Road, North Las Vegas, Nevada 89031, (702) 870-3940**. All documents shall be produced as they are kept in the usual course of

business or shall be organized and labeled to correspond with the categories listed. N.R.C.P. 45(d)(1). When feasible, please produce documents on an electronic medium such as flash drive or CD and in Portable Document Format (PDF).

This Subpoena Duces Tecum complies with 45 C.F.R. 164.512(e)(1) which permits disclosure of Protected Health Information pursuant to subpoena or court order under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). In accordance with 45 C.F.R. 164.512(e)(1)(ii)(A) and 164.512(e)(1)(iii), Barron & Pruitt, LLP has served a copy of this Subpoena Duces Tecum upon the attorney of record for **Marie Gonzalez** as evidenced by the Certificate of Service attached hereto. Ms. Gonzalez must serve any objection to this Subpoena Duces Tecum not later than fourteen (14) days after receiving notice of the same. See N.R.C.P. 45(d)(2)(B). Therefore, if no objection has been served by May 28, 2015, you are required to produce all medical records, documents or tangible things described in Exhibit "A" by the date specified herein. See Humana Inc. v. Eighth Jud. Dist. Ct., 110 Nev 121, 123, 867 P2d 1147, 1148-49 (1994).

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court. N.R.C.P. 45(e). If you fail to obey, you may be liable to pay $100.00, plus all damages caused by your disobedience. Nev. Rev. Stat. § 50.195. Please see the attached Exhibit "B" for information regarding your rights and responsibilities related to this Subpoena Duces Tecum.

YOU ARE FURTHER ORDERED to authenticate the records produced pursuant to Nev. Rev. Stat. § 52.260, and to provide with your production a complete Certificate of Custodian of Records in substantially the form attached as Exhibit "C."

DATED this 18th of May, 2015.

BARRON & PRUITT, LLP

DAVID BARRON
Nevada Bar No. 142
3890 West Ann Road
North Las Vegas, Nevada 89031-4416
Attorneys for Defendants

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

EXHIBIT A

ITEMS TO BE PRODUCED

All records, written, electronic or otherwise, for **MARIE GONZALEZ** (DOB: [redacted] SSN: [redacted]) from 01/01/2005 to the Present, including, but not limited to

1. All medical records;
2. All charts;
3. All notes including those made by or at the direction of a doctor/physician, physician assistant, nurse, orderly, lab technician, or specialist;
4. All test requests and results;
5. All diagnostic films/videos/images/reels and reports;
6. All pharmacy and prescription records;
7. All communication records including email and written correspondence;
8. All billing and payment records;
9. All insurance, Medicaid or Medicare records;
10. All records related to information submitted to insurance, Medicaid or Medicare

Pursuant to Nev. Rev. Stat. § 629.061(4), Barron & Pruitt, LLP will pay the reasonable costs associated with producing the requested records, not to exceed $0.60 per page. No administrative or service fees are permitted. When feasible, please produce documents on an electronic medium such as flash drive or CD and in Portable Document Format (PDF).

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

EXHIBIT B

NEVADA RULES OF CIVIL PROCEDURE – RULE 45

(c) **Protection of Persons Subject to Subpoena.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) **Duties in Responding to Subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

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

EXHIBIT C

AFFIDAVIT OF AUTHENTICITY OF RECORDS

STATE OF _____)
) ss.
COUNTY OF _____)

NOW COMES _____, who after first being duly sworn states:

1. That the Affiant is employed as a _____ with **Rocky Mountain Neurodiagnositcs** and in that capacity is a custodian of the records of **Rocky Mountain Neurodiagnositcs.**

2. That on the _____ day of _____, 2015, the Affiant was served with a subpoena in connection with the above entitled cause, calling for production of all records, written, electronic or otherwise, for **MARIE GONZALEZ** (DOB: [redacted] SSN: [redacted] from 01/01/2005 to the Present, including, but not limited to

11. All medical records;
12. All charts;
13. All notes including those made by or at the direction of a doctor/physician, physician assistant, nurse, orderly, lab technician, or specialist;
14. All test requests and results;
15. All diagnostic films/videos/images/reels and reports;
16. All pharmacy and prescription records;
17. All communication records including email and written correspondence;
18. All billing and payment records;
19. All insurance, Medicaid or Medicare records;
20. All records related to information submitted to insurance, Medicaid or Medicare

3. That Affiant:

☐ (a) has made a diligent search of the records of **Rocky Mountain Neurodiagnositcs** and found no records responsive to the Subpoena Duces Tecum.

OR

☐ (b) has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

///

///

///

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

4. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the Affiant or **Rocky Mountain Neurodiagnositcs.**

_____
Signature

_____
Print

Subscribed and sworn before me, a Notary Public,
on this _____ day of_____2015.

_____
NOTARY PUBLIC
My commission expires:_____

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ~~13~~ 14th day of May, 2015, I served the foregoing **SUBPOENA DUCES TECUM TO ROCKY MOUNTAIN NEURODIAGNOSTICS** 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 filing and serving the document(s) listed above with the Eighth Judicial District Court's WizNet system.

Ryan M. Anderson, Esq.
Kimball Jones, Esq.
MORRIS ANDERSON LAW
2001 S. Maryland Pkwy.
Las Vegas, NV 89104
Facsimile: (702) 507-0092
E-Mail: info@MorrisAndersonLaw.com
Attorneys for Plaintiff Gonzalez

/s/ MaryAnn Dillard
An Employee of 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

RETURN OF SERVICE

STATE OF COLORADO
COUNTY OF BOULDER

I declare under oath that I served this: Subpoena To Produce on Rocky Mountain Neurodiagnostics

in Boulder county on May 21st, 2015, at 08:14 am/pm, at the following location: 1511 Onyx Ct. Longmont, Co.

by the following manner of service: Handed to Brian Katlynn M.D. in Person By Hand Personally.

X I am over the age of 18 years and am not interested in nor a party to this case.

Date: 5-21-2015
Sign:
Print: Rick Torrez

Signed under oath before me on 5.21.15.

Notary Public:
My commission expires on: 2/18/2019

KATELYNN HOBBS
NOTARY PUBLIC | STATE OF COLORADO
Notary Identification #20184006802
My Commission Expires 2/18/2019

EXHIBIT C

AFFIDAVIT OF AUTHENTICITY OF RECORDS

STATE OF Colorado)
) ss.
COUNTY OF Boulder)

NOW COMES Bruce Katura, who after first being duly sworn states:

1. That the Affiant is employed as a physician with **Rocky Mountain Neurodiagnosites** and in that capacity is a custodian of the records of **Rocky Mountain Neurodiagnosites.**

2. That on the 18th day of May, 2015, the Affiant was served with a subpoena in connection with the above entitled cause, calling for production of all records, written, electronic or otherwise, for **MARIE GONZALEZ** (DOB: [redacted] SSN: [redacted] from 01/01/2005 to the Present, including, but not limited to

11. All medical records;
12. All charts;
13. All notes including those made by or at the direction of a doctor/physician, physician assistant, nurse, orderly, lab technician, or specialist;
14. All test requests and results;
15. All diagnostic films/videos/images/reels and reports;
16. All pharmacy and prescription records;
17. All communication records including email and written correspondence;
18. All billing and payment records;
19. All insurance, Medicaid or Medicare records;
20. All records related to information submitted to insurance, Medicaid or Medicare.

3. That Affiant:

☐ (a) has made a diligent search of the records of **Rocky Mountain Neurodiagnosites** and found no records responsive to the Subpoena Duces Tecum.

OR

☑ (b) has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

///

///

///

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

4. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the Affiant or **Rocky Mountain Neurodiagnosites.**

Signature

Bruce A. Kadrmas

Print

Subscribed and sworn before me, a Notary Public, on this 21 day of May 2015.

NOTARY PUBLIC

My commission expires: 1.14.18

MICHELLE L. BERNARDONI
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20114001866
MY COMMISSION EXPIRES JANUARY 14, 2019

BARRON & PRUITT, LLP
ATTORNEYS AT LAW
3890 WEST ANN ROAD
NORTH LAS VEGAS, NEVADA 89031
TELEPHONE (702) 870-3940
FACSIMILE (702) 870-2950

Rocky Mountain Neurodiagnostics

Bruce Katuna, M.D. 2217 Harvard Ct. Longmont, CO 80503 (303) 776-5298

INTRAOPERATIVE NEUROPHYSIOLOGIC MONITORING REPORT

Patient Name:	Maria Gonzales
Medical Record #:	904944162-35294896
Surgeon:	Dr. Cash
Technician:	Danielle Miller
Date of Monitoring:	January 29, 2013
Beginning Time:	0758
Ending Time:	0956
Date of Report:	March 6, 2013

On January 29, 2013 intraoperative monitoring of the central and peripheral nervous system of Maria Gonzales was performed during an OLIF of L4-S1.

Real-time neurophysiologist oversight was provided. Tested modalities included upper and lower extremity somatosensory evoked potentials (SSEPs), and free-running electromyography (FR-EMG).

Baseline responses were interpreted and were within normal limits.

Monitored responses showed no significant changes throughout the procedure, and the surgeon was so informed. Pedicle screw testing demonstrated thresholds suggesting low likelihood of pedicle breach.

Impression: Normal intraoperative neurophysiologic monitoring study.

Bruce A. Katuna, M.D.
Board Certified in Neurology (American Board of Psychiatry and Neurology, 1993)
Board Certified in Clinical Neurophysiology (American Board of Psychiatry and Neurology, 1996, 2010)

Exhibit 5

Barron & Pruitt, LLP
LAWYERS

DAVID BARRON*
WILLIAM H. PRUITT†
PETER MAZZEO‡
CHELSEA P. PYASETSKYY◇
JOSHUA A. SLIKER†

Also admitted to the State Bar of
*California
‡New York
◇Oregon
†Utah

February 14, 2014

Neuromonitoring Associates
9811 W. Charleston Blvd, #2-641
Las Vegas, NV 89117

Re: Republic Services adv. Gonzales, Marie
Patient: Marie Gonzales
Date of Birth: [redacted]
SSN:
Our File No.: 638.06

Dear Custodian of Records:

Pursuant to NRS 629.061 and the enclosed medical consent form executed by the above-named patient, we are requesting copies of any and all medical records, including:

1. **The patient's complete chart,**
2. **Billing history,**
3. **Diagnostic reports, and**
4. **List of Films and/or X-rays.**

This request is for records currently available and no additional report is solicited at this time. If you will enclose your bill for the cost of the reproduction of the documents when you forward us these records, along with the Affidavit of Authenticity of Records, we will promptly remit payment to you. If the cost of the records exceeds $100, please send us a pre-bill indicating the number and cost of the records and we will determine the necessity of the records. Thank you for your cooperation and assistance in this matter.

Very truly yours,

Tarah Easley
Paralegal
Barron & Pruitt, LLP

:te
Enclosure

MORRIS ANDERSON
2001 S. Maryland Pkwy., Las Vegas, NV 89104 ph: (702) 333-1111 fax: (702) 507-0092

AUTHORIZATION FOR USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION (PHI)*

This document authorizes Neuromonitoring Associates to release to Barron & Pruitt, LLP, or its representatives at their request, for the purpose of investigating a claim I have made, all medical records and Protected Health Information ("PHI") from 01/14/12 to present, including but not limited to, medical history & physicals, consultation reports, operative reports, lab reports, imaging/radiology reports and films, cardiac studies, face sheets, nursing notes, medication records, progress notes, physician orders, and/or the like. I acknowledge, and hereby consent to such, that the released information may contain alcohol, drug abuse, psychiatric, HIV testing, HIV results and/or AIDS information and genetic testing records. Uses and disclosures of PHI will be consistent with Nevada and Federal law concerning the privacy of PHI. Failure to provide all information requested will delay action on this Authorization.

This authorization does NOT authorize the bearer to discuss my care with you, and is expressly given for the release of written records only. I have fully read and understand what information will be disclosed and affirm that Barron & Pruitt, LLP is NOT authorized by me to use or disclose my PHI for a purpose other than treatment, payment or health care operations.

I understand that I can revoke this authorization by writing a letter to the above-named healthcare provider or by completing and submitting a Revoke Authorization Form to the Privacy Services Department of the above named facility. The letter must state that I want to revoke my authorization to disclose the patient's healthcare information. The letter must include the name or other specific identification of the person(s) that I no longer want to receive information. I (or my authorized representative for healthcare) must sign and date the letter or form. The information used or disclosed pursuant to the authorization may be subject to redisclosure by the recipient and no longer protected. Fees/charges will comply with all laws and regulations applicable to release of information. (i.e. 60 cents per page except for continuing care requests). A photocopy of this authorization will have the same force and effect as the original.

I understand that I may refuse to sign this Authorization. I understand that my refusal will not affect my ability to obtain treatment, payment, or eligibility for benefits. I understand that I have the right to receive a copy of this authorization. I may inspect or obtain a copy of the health information that I am being asked to use or disclose.

This authorization is given on the condition that Barron & Pruitt, LLP, or its representatives, must forward: (1) a copy of any request for medical records or PHI using this authorization at the time of the request; and (2) a copy of any medical records or PHI received using this authorization within 1 week of receipt; to MORRIS ANDERSON at 2001 S. Maryland Parkway., Las Vegas, NV 89104.

This authorization shall expire upon this expiration date or event: 12/01/14

DATED 02/12/2014

Marie Gonzales
Client Signature

Date of Loss: 01/14/12

Marie Gonzales
Name Printed

[redacted]
SSN DOB

(B) *This authorization is made in compliance with the Health Insurance Portability and Accountability Act (HIPAA).

AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF AZ)
) ss.
COUNTY OF _____)

Affiant, being first duly sworn, deposes and says:

1. That affiant is the Custodian of Records, and in such capacity, is the Custodian of Records of Neuromonitoring Associates,

2. That on the 27 day of Feb, 2014, the affiant was served with a request for records pertaining to MARIE GONZALES

3. That affiant has examined the original of those records and has made true and exact copies of them and that the reproduction of them attached hereto is true and complete.

4. That the original of those records was made at or near the time of the acts, events, condition or opinions recited therein by or from information transmitted by a person with knowledge in the course of a regularly conducted activity of affiant or the office or institution in which affiant is engaged.

5. _____ No records found on this patient. _____ Initials

Further Affiant sayeth not.

Susan D Carter
(AFFIANT)

SUBSCRIBED and SWORN to before me this

_____ day of _____, 2014.

Notary not available

_____
NOTARY PUBLIC in and for the
County and State

PT NO 905248704 | PATIENT NAME GONZALES, MARIE G | PT STS IP

ADDRESS 5181 MORRIS STREET | COUNTY 001

CITY LAS VEGAS | STATE NV | ZIP 891227042 | PHONE (702)292-1288 | EXT | PATIENT LANGUAGE ENGLISH

AGE 55 Y | DO 1 | SEX F | RACE 3 | MS M | PREVIOUS NAME | BLD/ESS | RELIGION CAT | N/S SUR | RM/BED

ADM DATE 07/15/2013 | TIME 0500 | SRC RA | PT TYPE E | FIN R | ACCIDENT INFO H 06/26/2013 1300 | VOLUNTARY ADM | ORGAN DNR | ISOL | INFANT AGE

PT EMPLOYER DISABLED | TELEPHONE | EXT | OCCUPATION DISABLED

EMPLOYER ADDRESS

CITY | STATE | ZIP | RETIREMENT DATE / /

NEAREST RELATIVE NAME ABRUZZO, KANDY

RLTN O | ADDRESS 5181 MORRIS STREET

CITY LAS VEGAS | STATE NV | ZIP 891227042 | PHONE (702)481-8523 | EXT

EMERGENCY CONTACT NAME RAMIREZ, RODOLFO

RLTN U | ADDRESS 5181 MORRIS STREET

CITY LAS VEGAS | STATE NV | ZIP 891227042 | PHONE (702)785-2000 | EXT

GUARANTOR NAME GONZALES, MARIE G | RLTN S

ADDRESS 5181 MORRIS STREET | PHONE (702)292-1288

CITY LAS VEGAS | STATE NV | ZIP 891227042 | OCCUPATION DISABLED | EXT

GUARANTOR EMPLOYER DISABLED | PHONE | EXT

ADDRESS

CITY | STATE | ZIP | FC L

INSURANCE NAME 1 DCP SERVICES | PLAN 947 | PHONE (702)491-7516 | | GROUP# | AUTH# APPROVAL LETTER

MAILING ADDRESS 10300 W CHARLESTON SUITE 13 348 | CITY LAS VEGAS | STATE NV | ZIP 89135

SUBSCRIBER NAME GONZALES, MARIE G | MAIL TO NAME DCP SERVICES, | INS SEX F | | D.O.B. 19571226 | GNM

INSURANCE NAME 2 | PLAN | PHONE | POLICY# | GROUP# | AUTH#

MAILING ADDRESS | CITY | STATE | ZIP

SUBSCRIBER NAME | MAIL TO NAME | INS SEX | | DOB | GNM

INSURANCE NAME 3 | PLAN | PHONE | POLICY# | GROUP# | AUTH#

MAILING ADDRESS | CITY | STATE | ZIP

SUBSCRIBER NAME | MAIL TO NAME | INS SEX | | DOB | GNM

ATTENDING PHYSICIAN KAPLAN STUART | ATTENDING # 107581 | REF SRC | ADM BY FLOREA | PREV ADM DATE | PREVIOUS FACILITY

ADM DIAGNOSIS LUMBAR PAIN 724.2, 724.4 | MED SVC SUR | CODE | ALLERGIES | SURGERY DATE 07/15/2013

ADMITTING PHYSICIAN KAPLAN STUART | ADMITTING # 107581 | AUTHORIZED BY SCANNED INTO DOC IMAGING

PROCEDURE ANTERIOR POSTERIOR L4 S1 FUSIO | CLINICAL COMMENT | MODE OF ARRIVAL / ACCOMPANIED BY

REL OF INFO Y | ADV DIR | LIVING WILL | LOCATION OF WILL / DIRECTIVE | FAMILY DOCTOR NO PCP | FAMILY DOCTOR # 999987 | DIV

VERIFIED BY: DATE:	VERIFIED BY: DATE:
NAME OF INS CO #1:	NAME OF INS CO #:
GROUP-INDIVIDUAL:	GROUP-INDIVIDUAL:
TELEPHONE NO:	TELEPHONE NO:
NAME OF PERSON GIVING INFO:	NAME OF PERSON GIVING INFO:
PREAUTHORIZED REQ? AUTHORIZATION#:	PREAUTHORIZED REQ? AUTHORIZATION#:
EFF DATE OF INS POLICY: ELIGIBILITY:	EFF DATE OF INS POLICY: ELIGIBILITY:
WAITING PERIOD:	WAITING PERIOD:
PRE-EXIST: RN:	PRE-EXIST: RN:
BASIC BENEFITS:	BASIC BENEFITS:
SEMI @ ______ ANCILLARY @ ______	SEMI @ ______ ANCILLARY @ ______
MAJOR MEDICAL:	MAJOR MEDICAL:
DEDUCTIBLE: ______ BALANCE PAID @ ______	DEDUCTIBLE: ______ BALANCE PAID @ ______

Spring Valley Hospital
5400 S Rainbow Bvd
Las Vegas, NV 89118

INSURANCE COPY

Patient Identification

905248704-35294396

GONZALES, MARIE G
DOB: / SX: F SUR
MRN: 35294396 ADM/REG DT: 07/15/2013
Spring Valley Hospital

BL0145

UHS-8002
Rev. 12/09

DEF000556

Neuromonitoring Associates

Reader: Morton Hyson, M.D.
Medical Rec. #: 35294396

Insurance Superbill

PID: 84773

Print Time Stamp: 17-07-2013 04:11 PM

Patient Information

MARIE GONZALES
5161 MORRIS ST
LAS VEGAS, NV 89122

Date Of Sugery	Hospital	Surgeon	IONM Technologist
15-Jul-13	Spring Valley Hospital	STUART S KAPLAN,	Malina Lewis, CNIM

Date Of Birth	Age	Sex	Home	Work Phone	Cell
	55	Female	(702) 292-1288		

Procedure: PLIF L4 - S1.

Diagnose: 724.2 724.4

ICD-9	ICD-9	ICD-9	ICD-9
724.2		724.4	

Hookup Time	Patient In OR	Patient Out OR	Post Baseline	Final Trace	Professional Time	Total Tech
07:39	07:39	11:20	10:05	11:00	00:55	03:41

95940 - Intraoperative Neurophysiology Monitoring, Units:14

95938 - Upper and Lower Extremities SSEP, Units:1

95927 - Upper and Lower Extremities SSEP, Units:1

95885 - Lower EMG, Units:1

95909 - Pedicle Stimulation, Units:1

95937 - Neuromuscular Junction Test (TO4), Units:1

A4290 - Probe, Units:1

A4556 - DISK ELECTRODES, Units:8

A4557 - NEEDLE ELECTRODES, Units:22

Supplies Used	Quantity	CPT Code
A4557 NEEDLES	22	A4557
A4556 Stickies	8	A4556
A4290 Probe	1	A4290

DEF000557
Date Of Surgery: 7/15/13 8:

1500

HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE 08/05

DCP SERVICES

10300 W. CHARLESTON BLVD.
LAS VEGAS, NV, 89135
Payer ID:

PICA ☐ ☐

1. MEDICARE ☐ (Medicare #) MEDICAID ☐ (Medicaid #) TRICARE CHAMPUS ☐ (Sponsor's SSN) CHAMPVA ☐ (Member ID#) GROUP HEALTH PLAN ☐ (SSN or ID) FECA BLK LUNG ☐ (SSN) OTHER ☒ (ID)	1a. INSURED'S I.D. NUMBER (For Program in Item 1): 550647722
2. PATIENT'S NAME (Last Name, First Name, Middle Initial): GONZALES, MARIE	3. PATIENT'S BIRTH DATE: MM DD YY; SEX: M ☐ F ☒	4. INSURED'S NAME (Last Name, First Name, Middle Initial): GONZALES, MARIE
5. PATIENT'S ADDRESS (No., Street): 5181 MORRIS ST	6. PATIENT RELATIONSHIP TO INSURED: Self ☒ Spouse ☐ Child ☐ Other ☐	7. INSURED'S ADDRESS (No., Street): 5181 MORRIS ST
CITY: LAS VEGAS; STATE: NV	8. PATIENT STATUS: Single ☐ Married ☒ Other ☐	CITY: LAS VEGAS; STATE: NV
ZIP CODE: 89122; TELEPHONE (Include Area Code): (702) 292-1288	Employed ☐ Full-Time Student ☐ Part-Time Student ☐	ZIP CODE: 89122; TELEPHONE (Include Area Code): (702) 292-1288
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)	10. IS PATIENT'S CONDITION RELATED TO:	11. INSURED'S POLICY GROUP OR FECA NUMBER
a. OTHER INSURED'S POLICY OR GROUP NUMBER	a. EMPLOYMENT? (Current or Previous) YES ☐ NO ☒	a. INSURED'S DATE OF BIRTH MM DD YY; SEX M ☐ F ☒
b. OTHER INSURED'S DATE OF BIRTH MM DD YY; SEX M ☐ F ☐	b. AUTO ACCIDENT? YES ☐ NO ☒ PLACE (State)	b. EMPLOYER'S NAME OR SCHOOL NAME
c. EMPLOYER'S NAME OR SCHOOL NAME	c. OTHER ACCIDENT? YES ☐ NO ☒	c. INSURANCE PLAN NAME OR PROGRAM NAME
d. INSURANCE PLAN NAME OR PROGRAM NAME	10d. RESERVED FOR LOCAL USE	d. IS THERE ANOTHER HEALTH BENEFIT PLAN? YES ☐ NO ☒ If yes, return to and complete item 9 a-d.

READ BACK OF FORM BEFORE COMPLETING & SIGNING THIS FORM.

12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE: I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below.
SIGNED: SOF DATE: 07/15/13

13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE: I authorize payment of medical benefits to the undersigned physician or supplier for services described below.
SIGNED: SOF

14. DATE OF CURRENT: MM DD YY; ILLNESS (First symptom) OR INJURY (Accident) OR PREGNANCY(LMP)	15. IF PATIENT HAS HAD SAME OR SIMILAR ILLNESS, GIVE FIRST DATE MM DD YY
16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION MM DD YY FROM TO	
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE: STUART S KAPLAN, M.D.	17a. ; 17b. NPI 1508823824
18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES MM DD YY FROM 07 15 2013 TO 07 15 2013	
19. RESERVED FOR LOCAL USE: PLIF L4 - S1.	20. OUTSIDE LAB? YES ☐ NO ☒; $ CHARGES: $ 0.00
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY (Relate Items 1, 2, 3 or 4 to Item 24E by Line): 1. L 724 . 2 ; 2. 724 4 ; 3. ; 4.	22. MEDICAID RESUBMISSION CODE: ; ORIGINAL REF. NO.: ; 23. PRIOR AUTHORIZATION NUMBER:

24. A. DATE(S) OF SERVICE From MM DD YY To MM DD YY	B. PLACE OF SERVICE	C. EMG	D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS	MODIFIER	E. DIAGNOSIS POINTER	F. $ CHARGES	G. DAYS OR UNITS	H. EPSDT Family Plan	I. ID. QUAL.	J. RENDERING PROVIDER ID. #
1 07 15 13 07 15 13	21		95941		12	$ 950.00	1		NPI	1710915368
2 07 15 13 07 15 13	21		95938	26 59	12	$ 1,200.00	1		NPI	1710915368
3 07 15 13 07 15 13	21		95927	26	12	$ 650.00	1		NPI	1710915368
4 07 15 13 07 15 13	21		95885	26 59	12	$ 225.00	1		NPI	1710915368
5 07 15 13 07 15 13	21		95909	26	12	$ 268.00	1		NPI	1710915368
6 07 15 13 07 15 13	21		95937	26	12	$ 296.00	1		NPI	1710915368

25. FEDERAL TAX I.D. NUMBER: 27-1622508 SSN ☐ EIN ☒	26. PATIENT'S ACCOUNT NO.: 84773	27. ACCEPT ASSIGNMENT? (For govt. claims, see back) YES ☒ NO ☐	28. TOTAL CHARGE: $ 3,578.00	29. AMOUNT PAID: $ 1,252.30	30. BALANCE DUE: $ 2,325.70

31. SIGNATURES OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.)
Morton Hyson, M.D. 07/16/2013
SIGNED DATE

32. SERVICE FACILITY LOCATION INFORMATION
Spring Valley Hospital
5400 S. Rainbow Blvd.
Las Vegas, Nv, 89118-1899
a. 1346230323 b.

33. BILLING PROVIDER INFO & PH # (480) 656-3883
Monitoring Associates
101 N. 36th Street #5
Mesa, AZ, 85205
a. 1407187701 b.

PATIENT AND INSURED INFORMATION — PHYSICIAN OR SUPPLIER INFORMATION — CARRIER

NUCC Instruction Manual available at: www.nucc.org PLEASE PRINT OR TYPE APPROVED OMB-093-0999 FORM CMS-1500 (08/05)

DEF000558

JA 0543

INTRAOPERATIVE NEUROPHYSIOLOGY

Print Time Stamp: 07-17-2013 04:11 PM

Surgery Date: 07-15-13 Medical Rec. #: 35294396

Patient: MARIE GONZALES **DOB:** [redacted] **Age:** 55 **Sex:** Female

Surgeon: STUART S KAPLAN, M.D. Post-Baseline Time: 10:05

Final Trace Time: 11:00

Anesthesiologist: Total Professional Time: 00:55

IONM Technologist: Malina Lewis, CNIM

Hospital: Spring Valley Hospital

Diagnosis: 724.2 724.4

Procedure: PLIF L4 - S1.

Conditions of the Recording:

Conditions of the Recording: All studies were performed on the aforementioned patient under real-time physician direct supervision via internet communication allowing continuous or immediate contact between the interpreting neurologist and surgeon. Please see tech notes for details of stimulation and recording.

Description of the Recording:

Somatosensory Evoked Potentials (SSEPs) were performed to monitor the sensory system by stimulating nerves in the upper and lower extremities. Baseline responses were recorded prior to the start of the procedure and subsequent responses were compared to baseline.

Upper SSEP Stim Site(s): Ulnar Nerve.
Lower SSEP Stim Site(s): Posterior Tibial.

Lower extremity Free running Electromyography (EMG) was performed to monitor the integrity of the motor system and for nerve/root irritability. Recording electrodes were placed in muscles appropriate to the site of the procedure.

Lower Muscles: Ext. Hallucis Longus L4-S1, Flexor Hallicus Brevis, Gastroc S1, Tib. Ant. L5, Tibialis Anterior, Vast. Medl L2-L4, Vastus Lateralis L2-L4, Vastus Lateralis/medialis (L3-L4), Vastus Lateralus.

Electrical Stimulation of the pedicle screws were evaluated by using triggered EMG performed by stimulating each screw and recording a compound muscle action potential response in the appropriate muscles. A response to stimulus intensities of 10.0 mA or less in lumbar levels or 6.0 mA or less in thoracic levels raises concern for improper screw placement and potential breach in the pedicle wall. Corresponding thresholds were noted and communicated to the surgeon.

Train-of-Four Neuromuscular Junction (T04) testing was performed to verify the validity of monitoring procedures dependent upon active motor neuronal firing, such as EMG and MEP monitoring and/or Pedicle stimulation. A response of 2 out of 4 or better is advisable.

Summary:

Description of the Recording: Under direct physician supervision, SSEP latencies were measured during the procedure. The latencies were compared to baseline values. No significant variations were noted by the technician. Free-running EMG was performed during the procedure and is unremarkable. Train-of-Four Neuromuscular Junction testing produced 4 out of 4 stimulus responses. EEG is unremarkable throughout the case.

Impression:

Impression: This intraoperative monitoring study was unremarkable, as described above.

_____

Morton Hyson, M.D.

NOTE: This report was signed via Electronic Signature by Morton Hyson, M.D. on 07/16/2013 09:47 AM

1500

HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE 08/05

DCP SERVICES

10300 W. CHARLESTON BLVD.
LAS VEGAS, NV, 89135
Payer ID:

PICA ☐ ☐

1. MEDICARE ☐ (Medicare #)	MEDICAID ☐ (Medicaid #)	TRICARE CHAMPUS ☐ (Sponsor's SSN)	CHAMPVA ☐ (Member ID#)	GROUP HEALTH PLAN ☐ (SSN or ID)	FECA BLK LUNG ☐ (SSN)	OTHER ☒ (ID)	1a. INSURED'S I.D. NUMBER (For Program in Item 1)		
2. PATIENT'S NAME (Last Name, First Name, Middle Initial) GONZALES, MARIE			3. PATIENT'S BIRTH DATE	SEX M ☐ F ☒	4. INSURED'S NAME (Last Name, First Name, Middle Initial) GONZALES, MARIE				
5. PATIENT'S ADDRESS (No., Street) 5181 MORRIS ST			6. PATIENT RELATIONSHIP TO INSURED Self ☒ Spouse ☐ Child ☐ Other ☐		7. INSURED'S ADDRESS (No., Street) 5181 MORRIS ST				
CITY LAS VEGAS		STATE NV	8. PATIENT STATUS Single ☐ Married ☒ Other ☐		CITY LAS VEGAS		STATE NV		
ZIP CODE 89122	TELEPHONE (Include Area Code) (702) 292-1288		Employed ☐ Full-Time Student ☐ Part-Time Student ☐		ZIP CODE 89122	TELEPHONE (Include Area Code) (702) 292-1288			
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)			10. IS PATIENT'S CONDITION RELATED TO:		11. INSURED'S POLICY GROUP OR FECA NUMBER				
a. OTHER INSURED'S POLICY OR GROUP NUMBER			a. EMPLOYMENT? (Current or Previous) YES ☐ NO ☒		a. INSURED'S DATE OF BIRTH MM DD YY [redacted] SEX M ☐ F ☒				
b. OTHER INSURED'S DATE OF BIRTH MM DD YY SEX M ☐ F ☐			b. AUTO ACCIDENT? YES ☐ NO ☒ PLACE (State)		b. EMPLOYER'S NAME OR SCHOOL NAME				
c. EMPLOYER'S NAME OR SCHOOL NAME			c. OTHER ACCIDENT? YES ☐ NO ☒		c. INSURANCE PLAN NAME OR PROGRAM NAME				
d. INSURANCE PLAN NAME OR PROGRAM NAME			10d. RESERVED FOR LOCAL USE		d. IS THERE ANOTHER HEALTH BENEFIT PLAN? YES ☐ NO ☒ If yes, return to and complete item 9 a-d.				

READ BACK OF FORM BEFORE COMPLETING & SIGNING THIS FORM.

12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below.

SIGNED SOF DATE 07/15/13

13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below.

SIGNED SOF

14. DATE OF CURRENT: ILLNESS (First symptom) OR INJURY (Accident) OR PREGNANCY(LMP) MM DD YY	15. IF PATIENT HAS HAD SAME OR SIMILAR ILLNESS, GIVE FIRST DATE MM DD YY	16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION MM DD YY FROM TO MM DD YY	
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE STUART S KAPLAN, M.D.	17a. [redacted] 17b. NPI 1508823824	18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES MM DD YY FROM 07 15 2013 TO 07 15 2013	
19. RESERVED FOR LOCAL USE PLIF L4 - S1.		20. OUTSIDE LAB? YES ☐ NO ☒	$ CHARGES $ 0.00
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY (Relate Items 1, 2, 3 or 4 to Item 24E by Line) 1. 724.2 2. 724.4 3. 4.		22. MEDICAID RESUBMISSION CODE ORIGINAL REF. NO.	
		23. PRIOR AUTHORIZATION NUMBER	

24. A. DATE(S) OF SERVICE From MM DD YY	To MM DD YY	B. PLACE OF SERVICE	C. EMG	D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS	MODIFIER	E. DIAGNOSIS POINTER	F. $ CHARGES	G. DAYS OR UNITS	H. EPSDT Family Plan	I. ID. QUAL.	J. RENDERING PROVIDER ID. #
1 07 15 13	07 15 13	15		95940		12	$ 3,332.00	14		NPI	1023291754
2 07 15 13	07 15 13	15		95938	TC 59	12	$ 1,200.00	1		NPI	1023291754
3 07 15 13	07 15 13	15		95927	TC	12	$ 650.00	1		NPI	1023291754
4 07 15 13	07 15 13	15		95885	TC 59	12	$ 225.00	1		NPI	1023291754
5 07 15 13	07 15 13	15		96909	TC	12	$ 268.00	1		NPI	1023291754
6 07 15 13	07 15 13	15		95937	TC	12	$ 296.00	1		NPI	1023291754

25. FEDERAL TAX I.D. NUMBER	SSN EIN	26. PATIENT'S ACCOUNT NO.	27. ACCEPT ASSIGNMENT? (For govt. claims, see back)	28. TOTAL CHARGE	29. AMOUNT PAID	30. BALANCE DUE
51-0654972	☐ ☒	84773	☒ YES ☐ NO	$ 6,491.20	$ 2,271.92	$ 4,219.28

31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.)

Rebecca Gilllan, CNIM 07/15/2013
SIGNED DATE

32. SERVICE FACILITY LOCATION INFORMATION
Spring Valley Hospital
6400 S. Rainbow Blvd.
Las Vegas, Nv, 89118-1899
a. 1346230323 b.

33. BILLING PROVIDER INFO & PH # (480) 656-3883
Neuromonitoring Associates
101 N. 38th Street #B
Mesa, AZ, 85205
a. 1912171760 b.

NUCC Instruction Manual available at: www.nucc.org PLEASE PRINT OR TYPE APPROVED OMB-093-0999 FORM CMS-1500 (08/05)

CARRIER

PATIENT AND INSURED INFORMATION

PHYSICIAN OR SUPPLIER INFORMATION

DEF000561

JA 0546

Neuromonitoring Associates

Technical Report

Medical Rec. #: 36294396

Print Time Stamp: 07/17/13 04:11 PM

PID: 84773

Patient Information	Date Of Surgery	Hospital	Surgeon	INOM Technologist
MARIE GONZALES 5181 MORRIS ST LAS VEGAS, NV 89122	15-Jul-13	Spring Valley Hospital	STUART S KAPLAN, M.D.	Malina Lewis, CNIM

Date Of Birth	Age	Sex	Home Phone	Work Phone	Cell
	55	Female	(702) 292-1288		

Procedure: PLIF L4 - S1.

Diagnosis: 724.2 724.4

Reader	Anesthesiologist	IONM System
Morton Hyson, M.D.		

Hookup Time	Patient In OR	Patient Out OR	Post Baseline	Final Trace	Professional Time	Total Time
07:39	07:39	11:20	10:05	11:00	00:55	03:41

Introduction

MULTI-MODALITY INTRAOPERATIVE NEUROPHYSIOLOGICAL MONITORING WAS CONTINUOUSLY CARRIED OUT IN AN EFFORT TO SAFEGUARD THE PATIENT, UTILIZING THE MODALITIES LISTED BELOW. AFTER THE PATIENT WAS INTUBATED SUB DERMAL NEEDLE AND STICKY PAD ELECTRODES WERE PLACED. POST INDUCTION, SUBDERMAL NEEDLE ELECTRODES WERE PLACED IN THE SCALP AT FPZ CPZ CP3 CP4 AND C83 FOR SSEP RECORDING. ALL STIMULATION ELECTRODES WERE CONNECTED TO THE STIMULATION BOX, ALL RECORDING ELECTRODES WERE CONNECTED TO THE PRE-AMPLIFIER. IMPEDANCES WERE CHECKED AND FOUND TO BE ACCEPTABLE. MONITORING BEGAN AND BASELINES WERE TAKEN PRIOR TO EXPOSURE.

Upper Somatosensory

95938 Stim Sites: Ulnar Nerve.
Results: BILATERAL ULNAR NERVE SSEP BASELINES WERE REPRODUCIBLE AND RELIABLE. CORTICAL AND SUB-CORTICAL WAVEFORMS WERE RECORDED FORM THE SENSORY AND SUB-THALAMIC GENERATORS.THERE WERE NO SIGNIFICANT CHANGES IN EITHER THE LATENCY (>10%) OR AMPLITUDE (>50%) FROM BASELINES THROUGHOUT THE CASE. DR. WAS INFORMED AND HE ACKNOWLEDGED.

Lower Somatosensory

95938 Stim Sites: Posterior Tibial.
Results: BILATERAL POSTERIOR TIBIAL NERVE SSEP BASELINES WERE REPRODUCIBLE AND RELIABLE. CORTICAL AND SUB-CORTICAL WAVEFORMS WERE RECORDED FORM THE SENSORY AND SUB-THALAMIC GENERATORS. THERE WERE NO SIGNIFICANT CHANGES IN EITHER THE LATENCY (>10%) OR AMPLITUDE (>50%) FROM BASELINES THROUGHOUT THE CASE. DR. WAS INFORMED AND HE ACKNOWLEDGED.

Lower EMG

95885 - Recording Sites: Ext. Hallucis Longus L4-S1, Flexor Hallicus Brevis, Gastroc S1, Tib. Ant. L5, Tibialis Anterior, Vast. Medi L2-L4, Vastus Lateralis L2-L4, Vastus Lateralis/medialis (L3-L4), Vastus Lateralus.
Results: FREE RUNNING LOWER EMG WAS QUIET THROUGHOUT THE PROCEDURE.

Train-of-Four (TO4)

95937 - Neuromuscular Junction Test - Train-of-Four (TO4)
Results: AFTER THE INITIAL SHORT-ACTING INTUBATION MUSCLE RELAXANTS WORE OFF, TRAIN OF FOUR (TO4) NEURO-MUSCULAR JUNCTION TESTING CONSISTENTLY PRODUCED AT LEAST 2 OUT OF 4 RESPONSES WHICH HELPS TO VALIDATE THE SENSITIVITY OF ALL OTHER EMG AND/OR MOTOR FUNCTION MONITORING.

TO4 Response	TO4 TIME	TO4 Reliability
4	10:07	Good

Pedicle Testing Data

ALL SCREW STIMULATION VALUES WERE WNL, SASA. NORMAL STIMULATION THRESHOLDS SUGGEST INTACT PEDICLE WALLS.

Pedicle Level	Left Stim Level	Right Stim Level
L4	20	17
L5	19	16
S1	17	19

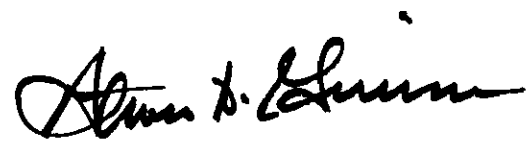
Summary

SSEPS WERE REPEATABLE AND REPRODUCIBLE. EMGS WERE QUIET THROUGHOUT THE CASE. TRAIN OF FOUR RESULTS SHOWED 4 OUT OF 4 TWITCHES. ANY CHANGES THAT OCCURRED THROUGHOUT WERE RELAYED TO THE SURGEON AND ACKNOWLEDGED.

DEF000562

NOTE: This report was signed via Electronic Signature by Malina Lewis, CNIM on 07/15/2013 02:03 PM

Electronically Filed
11/08/2016 03:15:13 PM



CLERK OF THE COURT

RPLY
JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
E-mail: JhCotton@jhcottonlaw.com
MICHAEL D. NAVRATIL, ESQ.
Nevada Bar No. 007460
E-mail: mdnavratil@jhcottonlaw.com
JOHN H. COTTON & ASSOCIATES, LTD.
7900 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Telephone: 702/832-5909
Facsimile: 702/832-5910
Attorneys for Defendant Balodimas, M.D.
And Balodimas, M.D., PC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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 Liabilty 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.

Case No.: A-16-738123
Dept. No.: 30

DEFENDANT BALODIMAS, M.D. AND BALODIMAS, M.D. PC'S RESPONSE TO REPUBLIC'S BRIEF RE: EVIDENTIARY HEARING

Date of Hearing: 11/9/16
Time of Hearing: 9:00 a.m.

Defendants JAMES D. BALODIMAS, M.D.; and JAMES D. BALODIMAS, M.D., P.C.; by and through their attorneys of record, Michael D. Navratil, Esq., and John H. Cotton, Esq., of the law firm of John H. Cotton & Associates, Ltd., hereby RESPONDS to Plaintiff's Brief re: Evidentiary Hearing.

This Response is supported by the following Memorandum of Points and Authorities, the attached exhibits thereto, and all pleadings and papers on file herein.

Dated this 8th day of November 2016.

JOHN H. COTTON & ASSOCIATES, LTD.

/s/ Michael D. Navratil

JOHN H. COTTON, ESQ.
Nevada Bar No. 005268
MICHAEL D. NAVRATIL, ESQ.
Nevada Bar No. 007460
7900 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorneys for Defendants Balodimas, M.D., and Balodimas, M.D., P.C.

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Republic Services' Brief does nothing to affect the outcome of the hearing set for November 9, 2016. In fact, the production of the release actually supports dismissal by the Court because it only releases claims in which the patient "may possess." As she did "possess" any claims (they had been extinguished by the statute of limitations over a year earlier), the release could not extinguish liability as to the medical defendants. Furthermore the face of Plaintiff's complaint establishes that the statute of limitations had run on the underlying medical malpractice case, and therefore, there was nothing to extinguish at the time of the release. Defendants do agree that the Court need not look any further than the face of Plaintiffs' Complaint for the evidence supporting dismissal because the complaint does not state a claim for which relief can be granted.

A. The Release and its language fail to perfect a contribution claim in this case.

The evidence and arguments set forth by Plaintiff Republic Services in its Brief regarding the Evidentiary Hearing in this case actually support the dismissal of this case. First, it is now evident why Plaintiff did not produce the release in its opposition papers to the motions prior to the first hearing in this case. The release clearly only establishes that Republic extinguished claims for malpractice that Ms. Gonzales "**may** possess against any of her medical treatment providers…" See Exhibit 3 attached (Emphasis added.). At the time she entered into the release, she did not have any claims against the medical defendants because the statute of limitations had long since expired[1]. Therefore, the release could not "extinguish" any claims because they did not exist and had already been extinguished.

---

[1] Defendants will reserve claims and arguments as to whether the language itself properly operates to "extinguish" the liability of the claims with the general "any of her medical treatment providers" language. It is not pertinent to the issue because Defendants position is that the claims did not exist at the time of the release. However, Defendants will reserve its arguments for a later date as to whether this language, which did not identify any specific defendant by name, properly perfects a claim of contribution.

Plaintiff did not set forth any case law or authority to support the proposition that two parties can create a new claim and statute of limitations against an unrelated third party who had no knowledge of any of the discussions or negotiations of the two parties. Plaintiff's reliance on the Russ case is yet another red herring to distract the Court from the issues in the case. Ms. Gonzales had nothing to give up by the time she signed the release. Whether she intended to release the medical defendants is irrelevant because the Court would have precluded her from filing any action by that time had she sought to bring any such claims.

The care at issue in this case was provided in 2013. Within six months of the alleged negligent surgery, Ms. Gonzales had knowledge that screws from the surgery were causing her pain and had to be replaced with another surgery. Then almost exactly two years later, she entered into a contract/release with Plaintiff purportedly "releasing" claims against the doctors that had expired over a year earlier. Even more fatal to the Plaintiff's argument is that the District Court Complaint brought by Ms. Gonzales against Republic Services was filed on September 3, 2013—two months after the alleged replacement surgery. In other words, Ms. Gonzales had counsel and representation who could investigate her prior treatment immediately after the alleged malpractice. And Republic Services had from September 3, 2013 to investigation potential malpractice with respect to the alleged damages which had taken place before the filing of the District Court Complaint.

B. The Statute of Limitations Question:

Plaintiff also completely glosses over its own amended complaint in attempting to argue that the statute of limitations did not run on Ms. Gonzales's claims against the medical defendants. Paragraph 45 of Plaintiff's Complaint states as follows:

"On or about June 7, and July 12, 2013, Gonzales consulted with Drs. Jason Garber and Stuart Kaplan of Western Regional Center for Brain and Spine Surgery for continued debilitating

post-surgical pain**. It was the opinion of Drs. Garber and Kaplan that the pain was in the L5 and S1 nerve distributions and that the pedicle screws on the left at L4-L5, L5-S1 had breached the pedicles.** To alleviate Gonzales's post-operative pain in her back and left leg it was recommended that she undergo an anterior fusion at L4-L5, L5-S1, and **that the existing hardware and pedicle screws on the left be replaced on the right at the same levels**. The recommended surgery was performed by Dr. Kaplan at Spring Valley Hospital on July 15, 2013." *See Exhibit A to Defendant's Motion for Judgment on the Pleadings*. (Emphasis added).

On the face of their own complaint, as of July 15, 2013, Ms. Gonzales was on notice that the previous hardware had to be taken out and replaced and that the pain was due to the placement of the pedicle screws. NRS 41A.097 provides that, "An action for injury or death may not be commenced more than three years after the date of injury or **one year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first**." NRS 41A.097 (2) (Emphasis added.) In this case, clearly the Plaintiff had been aware that she needed surgery to replace the misplaced screws by July 15, 2013. If a patient is told (by a **different** doctor) they need to have a replacement fusion and that their symptoms and need for surgery are the result of the misplaced screw—what more could put a Plaintiff on inquiry notice of a potential cause of action[2]? Moreover, as noted above, Ms. Gonzales also had counsel at the latest by the time she filed her complaint on September 3, 2013, and could have investigated such a claim at that time as well.

C. Conclusion:

All that is needed for the Court to dismiss this case is contained on the face of Plaintiff's

[2] Plaintiff's claim that the subsequent treating doctors did not make specific claims of malpractice in their depositions and therefore, the statute was somehow extended is also irrelevant. It just speaks to the lack of merit to Republic's allegations in general, but is not relevant to the statute of limitations analysis. The relevant inquiry on the statute of limitations is Plaintiff's knowledge of a potential claim, not the merits of an actual claim. Furthermore, the depositions were taken after the Plaintiff was already on inquiry notice of a potential claim.

complaint. The language in the release, which has finally been provided to the court, clearly shows that the release only purported to "extinguish" claims which Ms. Gonzales "may possess." As she did not possess any claims on the date she signed the release, there was nothing to be extinguished by the release.

Respectfully submitted this 8th day of November 2016.

JOHN H. COTTON & ASSOCIATES, LTD.

/s/ Michael D. Navratil
JOHN H. COTTON, ESQ.
MICHAEL D. NAVRATIL, ESQ.
7900 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117

Attorneys for Defendant Balodimas, M.D., and Balodimas, M.D., P.C.

CERTIFICATE OF E-SERVICE

I HEREBY CERTIFY that, on the 8th day of November 2016 and pursuant to NRCP 5(b), I served a true and correct copy of the foregoing **DEFENDANT BALODIMAS, M.D., AND BALODIMAS, M.D., P.C.'S RESPONSE TO REPUBLIC'S BRIEF RE: EVIDENTIARY HEARING** by electronic means was submitted electronically for filing and/or service with the Eighth Judicial District Court, made in accordance with the E-Service List, to the following individuals a true and correct copy of the foregoing, postage prepaid and addressed to:

David Barron, Esq.
Barron & Pruitt
3890 West Ann Road
North Las Vegas, Nevada 89031
Attorneys for Plaintiff

Robert McBride, Esq.
Heather Hall, Esq.
Carroll, Kelly, et al.
8329 West Sunset Road, #260
Las Vegas, Nevada 89113
Attorneys for the Cash Defendants

Kim Mandelbaum, Esq.
Marie Ellerton, Esq.
Mandelbaum, Ellerton, & Associates
2012 Hamilton Lane
Las Veags, Nevada 89106
Attorneys for Las Vegas Radiology

James R. Olson
Max Corrick
Olson, Cannon, et al.
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
Attorneys for Defendants Katuna, M.D.
And Rocky Mountain Neurodiagnostics

James Murphy, Esq.
Laxalt & Nomura, Ltd.
6720 Via Austi Parkway, Suite 430
Las Vegas, Nevada 89119
Attorneys for Defendant
Neuromonitoring Associates, Inc.

/s/ Terri Bryson
An employee of Cotton & Associates, Ltd.

JOIN
Kim Irene Mandelbaum, Esq.
Nevada Bar No. 318
Marie Ellerton, Esq.
Nevada Bar No. 4581
MANDELBAUM, ELLERTON & ASSOCIATES
2012 Hamilton Lane
Las Vegas, Nevada 89106
Telephone: (702) 367-1234
Fax No.: (702) 367-1978
E-mail: filing@meklaw.net
Attorneys for Defendant
Las Vegas Radiology, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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; 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.

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

DEFENDANT LAS VEGAS RADIOLOGY, LLC'S JOINDER TO DEFENDANT DANIELLE MILLER'S SUPPLEMENTAL BRIEFING ON MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Date of Hearing: 11/09/16
Time of Hearing: 10:00 a.m.

Defendant LAS VEGAS RADIOLOGY, LLC, a Nevada Limited Liability Company, by and through its counsel of record, Kim Irene Mandelbaum, Esq. and Marie Ellerton, Esq. of Mandelbaum Ellerton & Associates, hereby submits its Joinder to Defendant Danielle Miller's Supplemental Briefing on Motion to Dismiss Plaintiff's Complaint prior to the Evidentiary Hearing set by this Court.

This Joinder is made and based upon the papers and pleadings on file herein, the Memorandum of Points and Authorities attached hereto, such other documentary evidence as may be presented and any oral arguments at the time of the hearing of this matter.

Defendant LAS VEGAS RADIOLOGY, LLC, expressly adopts and incorporates by reference, as if fully set out herein, all of the facts and argument set out in the Memorandum of Points and Authorities in Co- Defendant Danielle Miller's Supplemental Briefing on Motion to Dismiss Plaintiff's Complaint.

By reason of this joinder, Defendant LAS VEGAS RADIOLOGY, LLC, requests that this Honorable Court grant the Motion to Dismiss and this Joinder, and that an Order dismissing with prejudice Plaintiff's Complaint be entered.

Dated this 8th day of October, 2016.

MANDELBAUM, ELLERTON & ASSOCIATES

KIM IRENE MANDELBAUM, ESQ.
Nevada Bar No. 318
MARIE ELLERTON, ESQ.
Nevada Bar No. 4581
2012 Hamilton Lane
Las Vegas, Nevada 89106
Attorneys for Defendant
Las Vegas Radiology, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of October, 2016, I forwarded a copy of the above and foregoing **DEFENDANT LAS VEGAS RADIOLOGY, LLC'S JOINDER TO DEFENDANT DANIELLE MILLER'S SUPPLEMENTAL BRIEFING ON MOTION TO DISMISS PLAINTIFF'S COMPLAINT** 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:

David Barron, Esq.
John D. Barron, Esq.
BARRON & PRUITT, LLP
3890 West Ann Road
North Las Vegas, Nevada 89031
Phone: (702) 870-3940
Facsimile: (702) 870-3950
Attorneys for Plaintiff

James E. Murphy, Esq.
Daniel C. Tetreault, Esq.
LAXALT & NOMURA
6720 Via Austi Parkway, Suite 430
Las Vegas, Nevada 89119
Phone: (702)388-1551
Facsimile: (702) 388-1559
Attorneys for Defendant
Neuromonitoring Associates, Inc.

Robert C. McBride, Esq.
Heather S. Hall, Esq.
CARROLL, KELLY TROTTER
FRANZEN, McKENNA & PEABODY
8329 West Sunset Road, Suite 260
Las Vegas, Nevada 89113
Phone: (702)792-5855
Facsimile: (702)796-5855
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

John H. Cotton, Esq.
Michael D. Navratil, Esq.
JOHN H. COTTON & ASSOCIATES
7900 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Phone: (702)832-5909
Facsimile: (702)832-5910
Attorneys for Defendants
James D. Balodimas, M.D. and
James D. Balodimas, M.D., P.C.

James R. Olson, Esq.
Max E. Corrick, II, Esq.
Stephanie M. Zinna, Esq.
OLSON CANNON GORMLEY ANGULO & STOBERSKI
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
Phone: (702) 384-4012
Facsimile: (702) 383-0701
Attorneys for Defendants
Bruce Katuna, M.D. and
Rocky Mountain Neurodiagnostics, LLC

Anthony D. Lauria, Esq.
Lauria Tokunaga Gates & Linn, LLP
1755 Creekside Oaks Drive, Suite 240
Sacramento, CA 95833
601 South Seventh Street
Las Vegas, Nevada 89101
Facsimile: (702) 387-8635
Attorneys for Defendant Danielle Miller
a/k/a Danielle Shopshire

Rebecca Daly

An employee of *Mandelbaum, Ellerton & Associates*

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
12/13/2016 06:27:30 AM

CLERK OF THE COURT

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; 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.	CASE NO.: A-16-738123-C DEPT. XXX ORDER RE: THE CASH DEFENDANTS' MOTION TO DISMISS, THE BALODIMAS DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS, AND DANIELLE MILLER'S MOTION TO DISMISS, AND ALL JOINDERS

The above-captioned matter came on for hearing before Judge Jerry A. Wiese II, on Tuesday, October 4, 2016, with regard to the Cash Defendants' Motion to Dismiss, the Balodimas Defendants' Motion for Judgment on the Pleadings, and Danielle Miller's Motion to Dismiss, and all related Joinders. The Court having reviewed the briefs submitted by all parties, entertained oral argument by counsel for all parties. Following oral argument, the Court indicated that it would enter a written decision from chambers. The Court then issued a Minute Order on October 13, 2016, setting an Evidentiary Hearing for November 9, 2016. Various parties submitted supplemental briefing, and an Evidentiary Hearing occurred on November 9, 2016. The Court indicated that an Order would issue, and this Order follows:

This case stems from a motor vehicle accident which occurred on or about January 14, 2012, involving Marie Gonzales and a commercial garbage truck owned

and operated by Republic, and driven by its employee Deval Hatcher. As a result of the accident, Marie Gonzales allegedly suffered personal injuries, and treated with various medical care providers, including those named as Defendants herein. On or about September 3, 2013, Marie Gonzales filed a lawsuit against Republic and its driver, alleging negligence, and seeking compensation for her injuries. On or about July 6, 2015, Republic settled the underlying case with Ms. Gonzales, and paid the amount of $2,000,000.00. Republic thereafter filed a Complaint in this separate litigation, alleging that from January 29, 2013 forward, Ms. Gonzales' damages were the direct result of the professional negligence of the Defendants named herein.

All pending motions and joinders essentially make the same arguments – 1) that the Plaintiff does not have standing to assert a direct claim for medical malpractice or medical negligence (now known in Nevada as "professional negligence"); 2) that the Plaintiff failed to bring its claims for professional negligence, respondeat superior, and negligent supervision and retention, within the applicable statutes of limitations; and 3) that Plaintiff's contribution claim fails pursuant to NRS 17.225(3), as Plaintiff's settlement with Maria Gonzales did not extinguish any liability on the part of the Defendants in this case.

With regard to the first argument, that the Plaintiff does not have standing, even the Plaintiff's Opposition concedes that Plaintiff has "no stand-alone right under NRS Ch.41A to pursue Marie Gonzales' – or anyone else's – claim of medical malpractice." (See Plaintiff's Opposition to the Cash Motion to Dismiss at pg. 7). Plaintiff simply argues that its claim is for contribution, based upon claims for professional negligence, respondeat superior, and negligent supervision and retention. With this understanding, this Court agrees that the Plaintiff does not have standing to bring these claims directly against the Defendants. The Court acknowledges that the Plaintiff's claim for contribution is based upon the Defendants' alleged professional negligence, respondeat superior, and negligent supervision and retention. As noted by the Plaintiff, Nevada law obligates a Plaintiff seeking contribution from health care providers, asserting claims for professional negligence, to satisfy the requirements of NRS Chapter 41A. (See Plaintiff's Opposition to the Cash Motion to Dismiss at pg. 8).

Having concluded that the Plaintiff's claims for professional negligence, respondeat superior, and negligent supervision and retention are all subsumed within

and are part of, and the premise of the Plaintiff's claim for contribution, the more difficult issue is whether the Plaintiff's claim for contribution fails under NRS 17.225(3).

NRS 17.225 reads as follows:

> **NRS 17.225 Right to contribution.**
> 1. Except as otherwise provided in this section and NRS 17.235 to 17.305, inclusive, where two or more persons become jointly or severally liable in tort 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.
> 2. The right of contribution exists only in favor of a tortfeasor who has paid more than his or her equitable share of the common liability, and the tortfeasor's total recovery is limited to the amount paid by the tortfeasor in excess of his or her equitable share. No tortfeasor is compelled to make contribution beyond his or her own equitable share of the entire liability.
> 3. ***A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement*** nor in respect to any amount paid in a settlement which is in excess of what was reasonable.
> (Added to NRS by 1973, 1303; A 1979, 1355, emphasis added).

NRS 17.285, also dealing with contribution, reads as follows:

> **NRS 17.285 Enforcement of right of contribution.**
> 1. Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.
> 2. Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.
> 3. If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by the tortfeasor to enforce contribution must be commenced within 1 year after the judgment has become final by lapse of time for appeal or after appellate review.
> 4. If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, the tortfeasor's right of contribution is barred unless the tortfeasor has:
> (a) Discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against him or her and has commenced an action for contribution within 1 year after payment; or
> (b) Agreed while action is pending against him or her to discharge the common liability and has within 1 year after the agreement paid the liability and commenced an action for contribution.
> 5. The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution.
> (Added to NRS by 1973, 1304)

The Defendants argue that since the professional negligence statute of limitations set forth in NRS 41A.097, expired prior to the settlement between Maria Gonzales and Republic, there was no liability on the part of the doctors that could have

been extinguished by such settlement, and consequently, pursuant to 17.225(3), the Plaintiff has no claim for contribution.

In order to evaluate the applicable statute of limitations, the Court must briefly analyze each of the Defendants' involvement in the care and treatment of Ms. Gonzales. In Plaintiff's Amended Complaint, filed on 6/27/16, the Plaintiff alleges that Maria Gonzales began treating with Dr. Cash on 4/4/12, who performed an OLIF procedure on or about 1/29/13, which procedure involved the placement of pedicle screws. (See Amended Complaint at ¶23-27). Plaintiff alleges that Katuna and Rocky Mountain Neurodiagnostices and Miller and Neuromonitoring Associates were involved in neurophysiological monitoring prior to the OLIF procedure. (See Amended Complaint ¶28-29). Plaintiff alleges that Defendant Miller was present and providing neurophysiologic monitoring services during the procedure on 1/29/13. (See Amended Complaint ¶33). Ms. Gonzales was apparently discharged from Spring Valley Hospital on 2/2/13. (Id., at ¶38). A CT study was apparently performed by Las Vegas Radiology on 2/12/13. (Id., at ¶40-41). On or about June 7 and July 12, 2013, Gonzales consulted with Drs. Jason Garber and Stuart Kaplan, and on 7/15/13, Dr. Kaplan performed an anterior fusion surgery at Spring Valley Hospital. (Id., at ¶45). Ms. Gonzales allegedly continued to have back problems and on or about 2/10/15, Dr. Kaplan implanted a spinal cord stimulator. (Id., at ¶46-47). On 9/3/13, Gonzales filed her Complaint in *Gonzales v. Hatcher* (Case No.: A687931) against Republic and Hatcher. (Id., at ¶48). On 7/6/15, Republic settled that case with Gonzales for $2,000,000.00. (Id., at ¶51).

Based upon the foregoing chronology, it appears that the medical care providers named as Defendants in the present litigation were involved in the care of Ms. Gonzales from 4/4/12 through approximately 2/12/13. Plaintiff's original Complaint in this matter was filed on 6/8/16. If NRS 41A.097 applies, the statute reads as follows:

> **NRS 41A.097 Limitation of actions; tolling of limitation.**
> 1. Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 4 years after the date of injury or 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:
> (a) Injury to or the wrongful death of a person occurring before October 1, 2002, based upon alleged professional negligence of the provider of health care;
> (b) Injury to or the wrongful death of a person occurring before October 1, 2002, from professional services rendered without consent; or
> (c) Injury to or the wrongful death of a person occurring before October 1, 2002, from error or omission in practice by the provider of health care.
> 2. Except as otherwise provided in subsection 3, ***an action for injury or death against a provider of health care may not be commenced more than 3***

years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:

(a) Injury to or the wrongful death of a person occurring on or after October 1, 2002, based upon alleged professional negligence of the provider of health care;

(b) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from professional services rendered without consent; or

(c) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from error or omission in practice by the provider of health care.

3. This time limitation is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action is based and which is known or through the use of reasonable diligence should have been known to the provider of health care.

4. For the purposes of this section, the parent, guardian or legal custodian of any minor child is responsible for exercising reasonable judgment in determining whether to prosecute any cause of action limited by subsection 1 or 2. If the parent, guardian or custodian fails to commence an action on behalf of that child within the prescribed period of limitations, the child may not bring an action based on the same alleged injury against any provider of health care upon the removal of the child's disability, except that in the case of:

(a) Brain damage or birth defect, the period of limitation is extended until the child attains 10 years of age.

(b) Sterility, the period of limitation is extended until 2 years after the child discovers the injury.

(Added to NRS by 1971, 366; A 1975, 407; 1977, 857, 954, 1082; 1985, 2011; 1989, 424; 1991, 1131; 1993, 2224; 1995, 2350; 1999, 5; 2001, 1107; 2002 Special Session, 8; 2004 initiative petition, Ballot Question No. 3, emphasis added).

Defendants argue that the Plaintiff's claims are barred because the Complaint was filed more than 3 years after the date of injury (date of any treatment), and more than 1 year since the Plaintiff discovered or through the use of reasonable diligence should have discovered the injury. Since the Plaintiff's treatment with the Defendants concluded on or about 2/12/13, and the Plaintiff's Complaint was not filed until 6/8/16, it appears that more than 3 years elapsed since any treatment by any Defendant, and consequently, the statute would have expired.

In a case very similar to the present case, the Nevada Supreme Court has recently held that a claim for contribution carries a fixed limitation period pursuant to NRS 17.285, and arises "[w]here a judgment has been entered in an action against two or more tortfeasors for the same . . . wrongful death."[1]

In *Saylor v. Arcotta*, a motor vehicle accident occurred in which a passenger in a cab was injured. Two weeks after the accident, the passenger was hospitalized for a heart attack and died during surgery. The heirs sued the taxi cab driver and the cab company. Through discovery, the cab company learned that the death may have been

---

[1] *Saylor v. Arcotta*, 126 Nev. 92, 225 P.3d 1276 (2010).

caused by medical negligence, and they subsequently filed a third-party complaint against the passenger's treatment physicians for equitable indemnity and contribution. The doctors moved for summary judgment arguing that the claims were time-barred by the medical malpractice statute of limitations contained in NRS 41A.097. The district court agreed and dismissed the case. On appeal, the Nevada Supreme Court held that "equitable indemnity claims are not governed by the limitations period applicable to the underlying tort." [2] The Court held that "equitable indemnity claims that arise out of medical malpractice allegations are not subject to NRS 41A.097(2)'s limitations period for medical malpractice claims, but are instead subject to NRS 11.190(2)(c)'s limitations period for actions on implied contracts."[3] The Supreme Court's analysis of the "contribution" claim was separate, and in that regard the Court stated the following:

> In Nevada, a claim for contribution is preserved by statute – NRS 17.225 – and carries a fixed limitations period under NRS 17.285. Pursuant to NRS 17.285(2), a contribution claim arises "[w]here a judgment has been entered in an action against two or more tortfeasors for the same ... wrongful death." The contribution claim must be filed "within 1 year after the judgment has become final by lapse of time for appeal or after appellate review." Thus, once a contribution claim arises, it is subject to a one-year statute of limitations.[4]

Two years later, in 2012, the Nevada Supreme Court addressed another similar case, in *Pack v. Latourette*.[5] In that case, David Zinni was injured in a motor vehicle accident and brought an action against a taxi cab driver who caused the accident, and the cab company. The cab company brought a third-party complaint against the doctors who treated Zinni, asserting claims for equitable indemnity and contribution, based on medical malpractice. Dr. LaTourette moved to dismiss the third-party complaint, alleging that it was time-barred by NRS 41A.097. Dr. LaTourette argued alternatively that the Complaint should be dismissed because the cab company failed to attach an expert affidavit as required by NRS 41A.071. The district court concluded that the cab company's claims were time-barred by NRS 41A.097's medical malpractice statute of limitations, and didn't address the alternative arguments.

---

[2] *Saylor* at pg. 95, citing to *Reggio v. E.T.I.* 15 So.3d 951, 955 (La. 2008).
[3] *Saylor* at pg. 95.
[4] *Saylor* at pg. 96, citing to *Aetna Casualty & Surety v. Aztec Plumbing*, 106 Nev. 474, 476, 796 P.2d 227, 229, and NRS 17.285(3).
[5] *Pack v. LaTourette*, 128 Nev.Adv.Op. 28, 277 P.3d 1246 (2012).

The Supreme Court noted that while the appeal was pending in the Pack case, the Court decided the Saylor case, and the Court stated:

> In *Saylor*, we clarified that ***"NRS 41A.097(2)'s limitations period does not apply to equitable indemnity and contribution claims,"*** and that such claims are instead subject to the limitations period laid out in NRS 11.190(2)(c) and NRS 17.285, respectively.[6]

Dr. LaTourette argued that because the cab company had not yet "paid" Zinni more than its fair share of liability, the contribution claim was premature. The Supreme Court did not agree. The Court indicated that NRS 17.285 sets forth two methods for enforcing a claim for contribution – "either by a separate action following entry of judgment or 'in the same action in which [the] judgment is entered against two or more tortfeasors.'"[7] The Court further indicated that because the cab company's complaint rested upon the theory that Dr. Lautorette committed medical malpractice, the cab company was required to satisfy the statutory prerequisites in place for malpractice cases before bringing its contribution claim. Because the cab company failed to attach an expert affidavit to its claim for contribution, the complaint in that regard was void ab initio and should have been dismissed without prejudice.[8]

This Court notes that the facts underlying both the *Saylor* and *Pack* cases, are almost identical to the facts underlying the present case. Significantly, however, in neither *Saylor* nor *Pack*, did the Nevada Supreme Court address sub-paragraph (3) of NRS 17.225. In the present case, the Defendants contend that the Plaintiff is not entitled to recover contribution from the doctors, because their liability for the injury to Ms. Gonzales was not extinguished by the settlement, because Ms. Gonzales' statute of limitations for any claims against the doctors had expired prior to the settlement.

In *McNulty v. Eighth Jud. Dist. Ct.*,[9] the Nevada Supreme Court did have an opportunity to consider sub-paragraph (3) of NRS 17.225. That case stemmed from a motor vehicle accident, in which a cab passenger, Michael Cicchini, suffered injuries. Subsequent to the accident, McNulty and others were involved in performing a back

---

[6] *Pack* at 1248, citing *Saylor v. Arcotta*, 126 Nev. --, 225 P.3d 1276, 1278-79 (2010), emphasis added.

[7] *Pack* at pg. 1249-1250, citing *Bell & Gossett Co. v. Oak Grove Investors*, 108 Nev. 958, 963, 843 P.2d 351, 354 (1992), ant NRS 17.285(1),(2).

[8] *Pack* at pg. 1250, citing to *Fierle v. Perez*, 125 Nev. 728, 736-38, 219 P.3d 906, 911-12 (2009), and *Washoe Med. Ctr.*, 122 Nev. 1298, 1300, 148 P.3d 790, 792 (2006).

[9] *McNulty v. Eighth Jud. Dist. Ct.*, 127 Nev. 1159, 373 P.3d 942 (unpublished 2011),

surgery on Mr. Cicchini, which allegedly left him partially paralyzed. Cicchini sued the cab company, and settled his claim for $1,150,000.00. Cicchini signed a release, but it did not extinguish McNulty's liability. The release actually included specific language that indicated that the subject accident did not cause the need for surgery, and neither the surgery nor any complications relating to it were caused by the accident. After settling, both Cicchini and the cab company each sued Dr. McNulty. Cicchini's suit sought damages for alleged medical malpractice. The cab company sued for contribution and indemnity, based on the contention that the surgery, not the accident, caused Cicchini's damages. Dr. McNulty moved for dismissal, and the district court denied the motion. McNulty then filed a writ with the Nevada Supreme Court. The Supreme Court concluded that McNulty was entitled to a writ of mandamus compelling the dismissal of the case, based upon the clear statutory language of NRS 17.225(3):

> A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement . . . [10]

The Court held that "the statute's wording is plain and its application clear: VWC [the cab company] has no contribution claim against McNulty."[11]

In *McNulty*, the Nevada Supreme Court held that because McNulty's liability had not been extinguished by the settlement between Cicchini and the cab company, the cab company had no claim for contribution against McNulty. In the present case, Plaintiff's counsel offered during oral argument to make the settlement agreement available, but neither party attached a copy of the settlement agreement to the original pleadings. Following the October 4, 2016, hearing with regard to the foregoing, this Court issued a Minute Order, and scheduled an Evidentiary Hearing, asking the parties to respond to the following two specific issues:

1) Do the terms of the settlement agreement between Gonzales and Republic extinguish the liability of the Defendants named in the present litigation? (See *Saylor v. Arcotta*, 126 Nev. 92, 225 P.3d 1276 [2010]; *Pack v. LaTourette*, 128 Nev.Adv.Op. 25, 277 P.3d 1246 [2012]; and *McNulty v. Eighth Judicial Dist. Ct.*, 127 Nev. 1159, 373 P.3d 942 [2011]).

---

10 McNulty at pg. 2, citing NRS 17.225(3).

11 Id.

2) If the statute of limitations set forth in NRS 41A.097 applies, is there sufficient evidence to determine, for purposes of the pending Motions, when the statute of limitations expired as it relates to each Defendant?

Prior to the November 9, 2016, Evidentiary Hearing, counsel for the Plaintiff submitted to the Court a copy of the subject Release between Marie Gonzales and Republic Silver State Disposal. The Release specifically includes the following language:

> . . . this SETTLEMENT AGREEMENT, RELEASE and COVENANT NOT TO SUE ***shall discharge and extinguish any and all claims or liabilities***, including those for "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.[12]

Although Defense Counsel noted that the Release was not specific as to which "medical treatment providers" liability would be extinguished, this Court finds that the Release is very clear that it was the intent of the parties that the Release would extinguish any claims or liabilities that Ms. Garcia had against her medical treatment providers, relating to the injuries she alleged as a result of the subject accident. Consequently, the Court concludes that the terms of the settlement agreement do extinguish the liability of the Defendants named in the present litigation, pursuant to *Saylor, Pack*, and *McNulty*.[13]

The next issue the Court must address, is whether any of the medical treatment providers (particularly those named as Defendants in the present case) had any liability to Ms. Gonzales that could have been extinguished on July 6, 2015. NRS 41A.079 provides that "an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first."[14] Defendants argue that any claim that Ms. Gonzales had against the treating doctors, expired prior to the July 6, 2015, Release, and consequently, she had no claims against these Defendants which could have been extinguished on that date. Plaintiff argues that the NRS 41A.079 Limitation of Action

---

[12] See Exhibit 3 to Plaintiff's Brief Re: Evidentiary Hearing, at pg. 2 of 10 (emphasis added).

[13] *Saylor v. Arcotta,* 126 Nev. 92, 225 P.3d 1276 [2010]; *Pack v. LaTourette*, 128 Nev.Adv.Op. 25, 277 P.3d 1246 [2012]; and *McNulty v. Eighth Judicial Dist. Ct.*, 127 Nev. 1159, 373 P.3d 942 [2011]).

[14] NRS 41A.079.

does not apply, because this is a claim for "contribution," and in the *Saylor* and *Pack* cases, the Nevada Supreme Court indicated that the NRS 41A.079 limitation of actions does not apply to a claim for equitable indemnity or contribution.

If this Court were to agree with Defendants, the result would be the following: If the parties to the underlying negligence case "settle" their claims, after the statute of limitations set forth in NRS 41A.079 has expired, then the settling Defendant cannot bring a claim for contribution because pursuant to NRS 17.225(3), there would be no liability from the alleged tortfeasor (doctor) to be extinguished. On the other hand, if the parties to the underlying negligence case do not "settle" their case, but instead go to trial and obtain a "Judgment," against a Defendant, that Defendant can bring a claim for contribution against an alleged tortfeasor (doctor), even if the statute of limitations set forth in NRS 41A.079 has expired, because NRS 17.285(3) would apply instead of NRS 17.225(3). This would seem to provide a disincentive to the parties to settle, and cannot be the intent of the legislature.

The Nevada Supreme Court has made it clear in *Saylor* and *Pack*, that in a claim for contribution, NRS 41A.079 does not apply.[15] This Court finds and concludes that the language in NRS 17.225(3), (***whose liability for the injury or wrongful death is not extinguished by the settlement)***, refers to the need for the parties to extinguish liability in the Settlement Agreement, and that was done in this case. This Court finds and concludes that the liability of the Defendant Doctors was extinguished by the underlying Settlement Agreement, and consequently, pursuant to NRS 17.225 and 17.285, as well as the above-referenced case law, the Plaintiff in this case has preserved

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

---

[15] *Saylor v. Arcotta,* 126 Nev. 92, 225 P.3d 1276 [2010]; *Pack v. LaTourette*, 128 Nev.Adv.Op. 25, 277 P.3d 1246 [2012].

its right to assert a claim for contribution, and in that regard, the Defendants' Motions must be Denied.

Based upon the foregoing, the pending Motions are GRANTED, as they relate to all claims other than the claim for Contribution, but they are DENIED as they relate to the Plaintiff's claim for Contribution.

DATED this 2nd day of December, 2016.

JERRY A. WIESE II
DISTRICT COURT JUDGE, DEPT. 30

DISTRICT COURT
CLARK COUNTY, NEVADA

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; 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.	CASE NO.: A-16-738123-C DEPT. XXX NOTICE OF ENTRY OF ORDER RE: THE CASH DEFENDANTS' MOTION TO DISMISS, THE BALODIMAS DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS, AND DANIELLE MILLER'S MOTION TO DISMISS, AND ALL JOINDERS

You are hereby notified that this Court entered an Order Re: The Cash Defendants' Motion to Dismiss, The Balodimas Defendants' Motion for Judgment, and Danielle Miller's Motion to Dismiss, and All Joinders, a copy of which is attached hereto.

DATED this 13th day of December, 2016.

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 through the Eighth Judicial District Court EFP system, or, if no e-mail was provided, mailed or placed in the Clerk's Office attorney folder for:

BARRON & PRUITT, LLP

Name	Email	Select
eserive	eservice@lvnvlaw.com	☑

Barron & Pruitt, LLP

Name	Email	Select
David Barron	dbarron@lvnvlaw.com	☑
Doris Ligat	dligat@lvnvlaw.com	☑
John Barron	jbarron@lvnvlaw.com	☑
MaryAnn Dillard	mdillard@lvnvlaw.com	☑

Carroll Kelly Trotter Franzen McKenna & Peabody

Name	Email	Select
Heather S. Hall	hshall@cktfmlaw.com	☑
Lori Harrison	lharrison@cktfmlaw.com	☑
Robert C. McBride	rcmcbride@cktfmlaw.com	☑
Sharlene Reed	sreed@cktfmlaw.com	☑
Terri Strickland	tstrickland@cktfmlaw.com	☑

John H. Cotton & Associates

Name	Email	Select
Jessica Pincombe	JPincombe@jhcottonlaw.com	☑
John H. Cotton, Esq.	jhcotton@jhcottonlaw.com	☑
Michael D. Navratil, Esq.	mnavratil@jhcottonlaw.com	☑
Terri Bryson	TBryson@jhcottonlaw.com	☑

Lauria Tokunaga Gates & Linn

Name	Email	Select
Anthony D. Lauria, Esq.	alauria@ltglaw.net	☑
Marisa Perez	mperez@ltglaw.net	☑

Laxalt & Nomura, Ltd.

Name	Email	Select
James E. Murphy, Esq.	jmurphy@laxalt-nomura.com	☑
Mike Bale	mbale@laxalt-nomura.com	☑
Nancy Rozan	nrozan@laxalt-nomura.com	☑

Mandelbaum Ellerton & Associates

Name	Email	Select
Anita Sambuco	Anita@meklaw.net	☑
Filing	Filing@meklaw.net	☑
Kim Irene Mandelbaum	Kim@meklaw.net	☑
Marie Ellerton	marie@meklaw.net	☑
Rebecca Daly	Rebecca@meklaw.net	☑

Olson Cannon Gormley Angulo & Stoberski

Name	Email	Select
Stephane Zinna	szinna@ocgas.com	☑

Olson, Cannon, Gormley, Angulo & Stoberski

Name	Email	Select
Cheri Hartle	chartle@ocgas.com	☑
Julie Brown	jbrown@ocgas.com	☑
Kathleen Bratton	kbratton@ocgas.com	☑
Margaret Anthis	manthis@ocgas.com	☑
Max Corrick	mcorrick@ocgas.com	☑

Tatyana Ristic, JEA

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
12/13/2016 06:27:30 AM

CLERK OF THE COURT

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; 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.	CASE NO.: A-16-738123-C DEPT. XXX ORDER RE: THE CASH DEFENDANTS' MOTION TO DISMISS, THE BALODIMAS DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS, AND DANIELLE MILLER'S MOTION TO DISMISS, AND ALL JOINDERS

The above-captioned matter came on for hearing before Judge Jerry A. Wiese II, on Tuesday, October 4, 2016, with regard to the Cash Defendants' Motion to Dismiss, the Balodimas Defendants' Motion for Judgment on the Pleadings, and Danielle Miller's Motion to Dismiss, and all related Joinders. The Court having reviewed the briefs submitted by all parties, entertained oral argument by counsel for all parties. Following oral argument, the Court indicated that it would enter a written decision from chambers. The Court then issued a Minute Order on October 13, 2016, setting an Evidentiary Hearing for November 9, 2016. Various parties submitted supplemental briefing, and an Evidentiary Hearing occurred on November 9, 2016. The Court indicated that an Order would issue, and this Order follows:

This case stems from a motor vehicle accident which occurred on or about January 14, 2012, involving Marie Gonzales and a commercial garbage truck owned

and operated by Republic, and driven by its employee Deval Hatcher. As a result of the accident, Marie Gonzales allegedly suffered personal injuries, and treated with various medical care providers, including those named as Defendants herein. On or about September 3, 2013, Marie Gonzales filed a lawsuit against Republic and its driver, alleging negligence, and seeking compensation for her injuries. On or about July 6, 2015, Republic settled the underlying case with Ms. Gonzales, and paid the amount of $2,000,000.00. Republic thereafter filed a Complaint in this separate litigation, alleging that from January 29, 2013 forward, Ms. Gonzales' damages were the direct result of the professional negligence of the Defendants named herein.

All pending motions and joinders essentially make the same arguments – 1) that the Plaintiff does not have standing to assert a direct claim for medical malpractice or medical negligence (now known in Nevada as "professional negligence"); 2) that the Plaintiff failed to bring its claims for professional negligence, respondeat superior, and negligent supervision and retention, within the applicable statutes of limitations; and 3) that Plaintiff's contribution claim fails pursuant to NRS 17.225(3), as Plaintiff's settlement with Maria Gonzales did not extinguish any liability on the part of the Defendants in this case.

With regard to the first argument, that the Plaintiff does not have standing, even the Plaintiff's Opposition concedes that Plaintiff has "no stand-alone right under NRS Ch.41A to pursue Marie Gonzales' – or anyone else's – claim of medical malpractice." (See Plaintiff's Opposition to the Cash Motion to Dismiss at pg. 7). Plaintiff simply argues that its claim is for contribution, based upon claims for professional negligence, respondeat superior, and negligent supervision and retention. With this understanding, this Court agrees that the Plaintiff does not have standing to bring these claims directly against the Defendants. The Court acknowledges that the Plaintiff's claim for contribution is based upon the Defendants' alleged professional negligence, respondeat superior, and negligent supervision and retention. As noted by the Plaintiff, Nevada law obligates a Plaintiff seeking contribution from health care providers, asserting claims for professional negligence, to satisfy the requirements of NRS Chapter 41A. (See Plaintiff's Opposition to the Cash Motion to Dismiss at pg. 8).

Having concluded that the Plaintiff's claims for professional negligence, respondeat superior, and negligent supervision and retention are all subsumed within

and are part of, and the premise of the Plaintiff's claim for contribution, the more difficult issue is whether the Plaintiff's claim for contribution fails under NRS 17.225(3).

NRS 17.225 reads as follows:

> **NRS 17.225 Right to contribution.**
> 1. Except as otherwise provided in this section and NRS 17.235 to 17.305, inclusive, where two or more persons become jointly or severally liable in tort 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.
> 2. The right of contribution exists only in favor of a tortfeasor who has paid more than his or her equitable share of the common liability, and the tortfeasor's total recovery is limited to the amount paid by the tortfeasor in excess of his or her equitable share. No tortfeasor is compelled to make contribution beyond his or her own equitable share of the entire liability.
> 3. ***A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement*** nor in respect to any amount paid in a settlement which is in excess of what was reasonable.
> (Added to NRS by 1973, 1303; A 1979, 1355, emphasis added).

NRS 17.285, also dealing with contribution, reads as follows:

> **NRS 17.285 Enforcement of right of contribution.**
> 1. Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.
> 2. Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.
> 3. If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by the tortfeasor to enforce contribution must be commenced within 1 year after the judgment has become final by lapse of time for appeal or after appellate review.
> 4. If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, the tortfeasor's right of contribution is barred unless the tortfeasor has:
> (a) Discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against him or her and has commenced an action for contribution within 1 year after payment; or
> (b) Agreed while action is pending against him or her to discharge the common liability and has within 1 year after the agreement paid the liability and commenced an action for contribution.
> 5. The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution.
> (Added to NRS by 1973, 1304)

The Defendants argue that since the professional negligence statute of limitations set forth in NRS 41A.097, expired prior to the settlement between Maria Gonzales and Republic, there was no liability on the part of the doctors that could have

been extinguished by such settlement, and consequently, pursuant to 17.225(3), the Plaintiff has no claim for contribution.

In order to evaluate the applicable statute of limitations, the Court must briefly analyze each of the Defendants' involvement in the care and treatment of Ms. Gonzales. In Plaintiff's Amended Complaint, filed on 6/27/16, the Plaintiff alleges that Maria Gonzales began treating with Dr. Cash on 4/4/12, who performed an OLIF procedure on or about 1/29/13, which procedure involved the placement of pedicle screws. (See Amended Complaint at ¶23-27). Plaintiff alleges that Katuna and Rocky Mountain Neurodiagnostices and Miller and Neuromonitoring Associates were involved in neurophysiological monitoring prior to the OLIF procedure. (See Amended Complaint ¶28-29). Plaintiff alleges that Defendant Miller was present and providing neurophysiologic monitoring services during the procedure on 1/29/13. (See Amended Complaint ¶33). Ms. Gonzales was apparently discharged from Spring Valley Hospital on 2/2/13. (Id., at ¶38). A CT study was apparently performed by Las Vegas Radiology on 2/12/13. (Id., at ¶40-41). On or about June 7 and July 12, 2013, Gonzales consulted with Drs. Jason Garber and Stuart Kaplan, and on 7/15/13, Dr. Kaplan performed an anterior fusion surgery at Spring Valley Hospital. (Id., at ¶45). Ms. Gonzales allegedly continued to have back problems and on or about 2/10/15, Dr. Kaplan implanted a spinal cord stimulator. (Id., at ¶46-47). On 9/3/13, Gonzales filed her Complaint in *Gonzales v. Hatcher* (Case No.: A687931) against Republic and Hatcher. (Id., at ¶48). On 7/6/15, Republic settled that case with Gonzales for $2,000,000.00. (Id., at ¶51).

Based upon the foregoing chronology, it appears that the medical care providers named as Defendants in the present litigation were involved in the care of Ms. Gonzales from 4/4/12 through approximately 2/12/13. Plaintiff's original Complaint in this matter was filed on 6/8/16. If NRS 41A.097 applies, the statute reads as follows:

> **NRS 41A.097 Limitation of actions; tolling of limitation.**
> 1. Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 4 years after the date of injury or 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:
> (a) Injury to or the wrongful death of a person occurring before October 1, 2002, based upon alleged professional negligence of the provider of health care;
> (b) Injury to or the wrongful death of a person occurring before October 1, 2002, from professional services rendered without consent; or
> (c) Injury to or the wrongful death of a person occurring before October 1, 2002, from error or omission in practice by the provider of health care.
> 2. Except as otherwise provided in subsection 3, ***an action for injury or death against a provider of health care may not be commenced more than 3***

years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:

(a) Injury to or the wrongful death of a person occurring on or after October 1, 2002, based upon alleged professional negligence of the provider of health care;

(b) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from professional services rendered without consent; or

(c) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from error or omission in practice by the provider of health care.

3. This time limitation is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action is based and which is known or through the use of reasonable diligence should have been known to the provider of health care.

4. For the purposes of this section, the parent, guardian or legal custodian of any minor child is responsible for exercising reasonable judgment in determining whether to prosecute any cause of action limited by subsection 1 or 2. If the parent, guardian or custodian fails to commence an action on behalf of that child within the prescribed period of limitations, the child may not bring an action based on the same alleged injury against any provider of health care upon the removal of the child's disability, except that in the case of:

(a) Brain damage or birth defect, the period of limitation is extended until the child attains 10 years of age.

(b) Sterility, the period of limitation is extended until 2 years after the child discovers the injury.

(Added to NRS by 1971, 366; A 1975, 407; 1977, 857, 954, 1082; 1985, 2011; 1989, 424; 1991, 1131; 1993, 2224; 1995, 2350; 1999, 5; 2001, 1197; 2002 Special Session, 8; 2004 initiative petition, Ballot Question No. 3, emphasis added).

Defendants argue that the Plaintiff's claims are barred because the Complaint was filed more than 3 years after the date of injury (date of any treatment), and more than 1 year since the Plaintiff discovered or through the use of reasonable diligence should have discovered the injury. Since the Plaintiff's treatment with the Defendants concluded on or about 2/12/13, and the Plaintiff's Complaint was not filed until 6/8/16, it appears that more than 3 years elapsed since any treatment by any Defendant, and consequently, the statute would have expired.

In a case very similar to the present case, the Nevada Supreme Court has recently held that a claim for contribution carries a fixed limitation period pursuant to NRS 17.285, and arises "[w]here a judgment has been entered in an action against two or more tortfeasors for the same . . . wrongful death."[1]

In *Saylor v. Arcotta*, a motor vehicle accident occurred in which a passenger in a cab was injured. Two weeks after the accident, the passenger was hospitalized for a heart attack and died during surgery. The heirs sued the taxi cab driver and the cab company. Through discovery, the cab company learned that the death may have been

---

[1] *Saylor v. Arcotta*, 126 Nev. 92, 225 P.3d 1276 (2010).

caused by medical negligence, and they subsequently filed a third-party complaint against the passenger's treatment physicians for equitable indemnity and contribution. The doctors moved for summary judgment arguing that the claims were time-barred by the medical malpractice statute of limitations contained in NRS 41A.097. The district court agreed and dismissed the case. On appeal, the Nevada Supreme Court held that "equitable indemnity claims are not governed by the limitations period applicable to the underlying tort." [2] The Court held that "equitable indemnity claims that arise out of medical malpractice allegations are not subject to NRS 41A.097(2)'s limitations period for medical malpractice claims, but are instead subject to NRS 11.190(2)(c)'s limitations period for actions on implied contracts."[3] The Supreme Court's analysis of the "contribution" claim was separate, and in that regard the Court stated the following:

> In Nevada, a claim for contribution is preserved by statute – NRS 17.225 – and carries a fixed limitations period under NRS 17.285. Pursuant to NRS 17.285(2), a contribution claim arises "[w]here a judgment has been entered in an action against two or more tortfeasors for the same ... wrongful death." The contribution claim must be filed "within 1 year after the judgment has become final by lapse of time for appeal or after appellate review." Thus, once a contribution claim arises, it is subject to a one-year statute of limitations.[4]

Two years later, in 2012, the Nevada Supreme Court addressed another similar case, in *Pack v. Latourette*.[5] In that case, David Zinni was injured in a motor vehicle accident and brought an action against a taxi cab driver who caused the accident, and the cab company. The cab company brought a third-party complaint against the doctors who treated Zinni, asserting claims for equitable indemnity and contribution, based on medical malpractice. Dr. LaTourette moved to dismiss the third-party complaint, alleging that it was time-barred by NRS 41A.097. Dr. LaTourette argued alternatively that the Complaint should be dismissed because the cab company failed to attach an expert affidavit as required by NRS 41A.071. The district court concluded that the cab company's claims were time-barred by NRS 41A.097's medical malpractice statute of limitations, and didn't address the alternative arguments.

---

[2] *Saylor* at pg. 95, citing to *Reggio v. E.T.I.* 15 So.3d 951, 955 (La. 2008).
[3] *Saylor* at pg. 95.
[4] *Saylor* at pg. 96, citing to *Aetna Casualty & Surety v. Aztec Plumbing*, 106 Nev. 474, 476, 796 P.2d 227, 229, and NRS 17.285(3).
[5] *Pack v. LaTourette*, 128 Nev.Adv.Op. 28, 277 P.3d 1246 (2012).

The Supreme Court noted that while the appeal was pending in the Pack case, the Court decided the Saylor case, and the Court stated:

> In *Saylor*, we clarified that ***"NRS 41A.097(2)'s limitations period does not apply to equitable indemnity and contribution claims,"*** and that such claims are instead subject to the limitations period laid out in NRS 11.190(2)(c) and NRS 17.285, respectively.[6]

Dr. LaTourette argued that because the cab company had not yet "paid" Zinni more than its fair share of liability, the contribution claim was premature. The Supreme Court did not agree. The Court indicated that NRS 17.285 sets forth two methods for enforcing a claim for contribution – "either by a separate action following entry of judgment or 'in the same action in which [the] judgment is entered against two or more tortfeasors.'"[7] The Court further indicated that because the cab company's complaint rested upon the theory that Dr. Lautorette committed medical malpractice, the cab company was required to satisfy the statutory prerequisites in place for malpractice cases before bringing its contribution claim. Because the cab company failed to attach an expert affidavit to its claim for contribution, the complaint in that regard was void ab initio and should have been dismissed without prejudice.[8]

This Court notes that the facts underlying both the *Saylor* and *Pack* cases, are almost identical to the facts underlying the present case. Significantly, however, in neither *Saylor* nor *Pack*, did the Nevada Supreme Court address sub-paragraph (3) of NRS 17.225. In the present case, the Defendants contend that the Plaintiff is not entitled to recover contribution from the doctors, because their liability for the injury to Ms. Gonzales was not extinguished by the settlement, because Ms. Gonzales' statute of limitations for any claims against the doctors had expired prior to the settlement.

In *McNulty v. Eighth Jud. Dist. Ct.*,[9] the Nevada Supreme Court did have an opportunity to consider sub-paragraph (3) of NRS 17.225. That case stemmed from a motor vehicle accident, in which a cab passenger, Michael Cicchini, suffered injuries. Subsequent to the accident, McNulty and others were involved in performing a back

---

[6] *Pack* at 1248, citing *Saylor v. Arcona*, 126 Nev. --, 225 P.3d 1276, 1278-79 (2010), emphasis added.

[7] *Pack* at pg. 1249-1250, citing *Bell & Gossett Co. v. Oak Grove Investors*, 108 Nev. 958, 963, 843 P.2d 351, 354 (1992), ant NRS 17.285(1),(2).

[8] *Pack* at pg. 1250, citing to *Fierle v. Perez*, 125 Nev. 728, 736-38, 219 P.3d 906, 911-12 (2009), and *Washoe Med. Ctr.*, 122 Nev. 1298, 1300, 148 P.3d 790, 792 (2006).

[9] *McNulty v. Eighth Jud. Dist. Ct.*, 127 Nev. 1159, 373 P.3d 942 (unpublished 2011).

surgery on Mr. Cicchini, which allegedly left him partially paralyzed. Cicchini sued the cab company, and settled his claim for $1,150,000.00. Cicchini signed a release, but it did not extinguish McNulty's liability. The release actually included specific language that indicated that the subject accident did not cause the need for surgery, and neither the surgery nor any complications relating to it were caused by the accident. After settling, both Cicchini and the cab company each sued Dr. McNulty. Cicchini's suit sought damages for alleged medical malpractice. The cab company sued for contribution and indemnity, based on the contention that the surgery, not the accident, caused Cicchini's damages. Dr. McNulty moved for dismissal, and the district court denied the motion. McNulty then filed a writ with the Nevada Supreme Court. The Supreme Court concluded that McNulty was entitled to a writ of mandamus compelling the dismissal of the case, based upon the clear statutory language of NRS 17.225(3):

> A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement . . . [10]

The Court held that "the statute's wording is plain and its application clear: VWC [the cab company] has no contribution claim against McNulty."[11]

In *McNulty*, the Nevada Supreme Court held that because McNulty's liability had not been extinguished by the settlement between Cicchini and the cab company, the cab company had no claim for contribution against McNulty. In the present case, Plaintiff's counsel offered during oral argument to make the settlement agreement available, but neither party attached a copy of the settlement agreement to the original pleadings. Following the October 4, 2016, hearing with regard to the foregoing, this Court issued a Minute Order, and scheduled an Evidentiary Hearing, asking the parties to respond to the following two specific issues:

1) Do the terms of the settlement agreement between Gonzales and Republic extinguish the liability of the Defendants named in the present litigation? (See *Saylor v. Arcotta*, 126 Nev. 92, 225 P.3d 1276 [2010]; *Pack v. LaTourette*, 128 Nev.Adv.Op. 25, 277 P.3d 1246 [2012]; and *McNulty v. Eighth Judicial Dist. Ct.*, 127 Nev. 1159, 373 P.3d 942 [2011]).

---

[10] McNulty at pg. 2, citing NRS 17.225(3).
[11] Id.

2) If the statute of limitations set forth in NRS 41A.097 applies, is there sufficient evidence to determine, for purposes of the pending Motions, when the statute of limitations expired as it relates to each Defendant?

Prior to the November 9, 2016, Evidentiary Hearing, counsel for the Plaintiff submitted to the Court a copy of the subject Release between Marie Gonzales and Republic Silver State Disposal. The Release specifically includes the following language:

> . . . this SETTLEMENT AGREEMENT, RELEASE and COVENANT NOT TO SUE ***shall discharge and extinguish any and all claims or liabilities***, including those for "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.[12]

Although Defense Counsel noted that the Release was not specific as to which "medical treatment providers" liability would be extinguished, this Court finds that the Release is very clear that it was the intent of the parties that the Release would extinguish any claims or liabilities that Ms. Garcia had against her medical treatment providers, relating to the injuries she alleged as a result of the subject accident. Consequently, the Court concludes that the terms of the settlement agreement do extinguish the liability of the Defendants named in the present litigation, pursuant to *Saylor, Pack*, and *McNulty*.[13]

The next issue the Court must address, is whether any of the medical treatment providers (particularly those named as Defendants in the present case) had any liability to Ms. Gonzales that could have been extinguished on July 6, 2015. NRS 41A.079 provides that "an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first."[14] Defendants argue that any claim that Ms. Gonzales had against the treating doctors, expired prior to the July 6, 2015, Release, and consequently, she had no claims against these Defendants which could have been extinguished on that date. Plaintiff argues that the NRS 41A.079 Limitation of Action

---

[12] See Exhibit 3 to Plaintiff's Brief Re: Evidentiary Hearing, at pg. 2 of 10 (emphasis added).

[13] *Saylor v. Arcotta*, 126 Nev. 92, 225 P.3d 1276 [2010]; *Pack v. LaTourette*, 128 Nev.Adv.Op. 25, 277 P.3d 1246 [2012]; and *McNulty v. Eighth Judicial Dist. Ct.*, 127 Nev. 1159, 373 P.3d 942 [2011]).

[14] NRS 41A.079.

does not apply, because this is a claim for "contribution," and in the *Saylor* and *Pack* cases, the Nevada Supreme Court indicated that the NRS 41A.079 limitation of actions does not apply to a claim for equitable indemnity or contribution.

If this Court were to agree with Defendants, the result would be the following: If the parties to the underlying negligence case "settle" their claims, after the statute of limitations set forth in NRS 41A.079 has expired, then the settling Defendant cannot bring a claim for contribution because pursuant to NRS 17.225(3), there would be no liability from the alleged tortfeasor (doctor) to be extinguished. On the other hand, if the parties to the underlying negligence case do not "settle" their case, but instead go to trial and obtain a "Judgment," against a Defendant, that Defendant can bring a claim for contribution against an alleged tortfeasor (doctor), even if the statute of limitations set forth in NRS 41A.079 has expired, because NRS 17.285(3) would apply instead of NRS 17.225(3). This would seem to provide a disincentive to the parties to settle, and cannot be the intent of the legislature.

The Nevada Supreme Court has made it clear in *Saylor* and *Pack*, that in a claim for contribution, NRS 41A.079 does not apply.[15] This Court finds and concludes that the language in NRS 17.225(3), (***whose liability for the injury or wrongful death is not extinguished by the settlement)***, refers to the need for the parties to extinguish liability in the Settlement Agreement, and that was done in this case. This Court finds and concludes that the liability of the Defendant Doctors was extinguished by the underlying Settlement Agreement, and consequently, pursuant to NRS 17.225 and 17.285, as well as the above-referenced case law, the Plaintiff in this case has preserved

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

. . . .

---

[15] *Saylor v. Arcotta*, 126 Nev. 92, 225 P.3d 1276 [2010]; *Pack v. LaTourette*, 128 Nev.Adv.Op. 25, 277 P.3d 1246 [2012].

its right to assert a claim for contribution, and in that regard, the Defendants' Motions must be Denied.

Based upon the foregoing, the pending Motions are GRANTED, as they relate to all claims other than the claim for Contribution, but they are DENIED as they relate to the Plaintiff's claim for Contribution.

DATED this 2nd day of December, 2016.

JERRY A. WIESE II
DISTRICT COURT JUDGE, DEPT. 30

Electronically Filed
01/04/2017 09:09:00 AM

CLERK OF THE COURT

ANSC

ROBERT C. MCBRIDE, ESQ.
Nevada Bar No.: 7082
HEATHER S. HALL, ESQ.
Nevada Bar No.: 10608
CARROLL, KELLY, TROTTER,
FRANZEN, McKENNA & PEABODY
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Telephone No. (702) 792-5855
Facsimile No. (702) 796-5855
E-mail: rcmcbride@cktfmlaw.com
E-mail: hshall@cktfmlaw.com
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

DISTRICT COURT

CLARK COUNTY, NEVADA

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; 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.

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

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'S ANSWER TO PLAINTIFF'S COMPLAINT

COME 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, by and through their counsel of record, Robert C. McBride, Esq. and Heather S. Hall, Esq. of the law firm of Carroll, Kelly, Trotter, Franzen, McKenna & Peabody and hereby submit their answer to Plaintiff's Complaint as follows:

PARTIES

1. Answering Paragraph 1, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

2. Answering Paragraph 2, these answering Defendants admit each and every allegation contained therein.

3. Answering Paragraph 3, these answering Defendants admit each and every allegation contained therein.

4. Answering Paragraph 4, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

5. Answering Paragraph 5, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

6. Answering Paragraph 6, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

7. Answering Paragraph 7, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

8. Answering Paragraph 8, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

9. Answering Paragraph 9, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

10. Answering Paragraph 10, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

11. Answering Paragraph 11, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

12. Answering Paragraph 12, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

13. Answering Paragraph 13, these answering Defendants deny each and every

allegation contained therein insofar as such allegations pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

14. Answering Paragraph 14, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

15. Answering Paragraph 15, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

16. Answering Paragraph 16, these answering Defendants admit that Marie Gonzales first became a patient on April 4, 2012. As to the remainder, denied.

17. Answering Paragraph 17, these answering Defendants admit that spinal surgery was recommended. As to the remainder, denied.

18. Answering Paragraph 18, these answering Defendants admit that Marie Gonzales underwent spinal surgery on January 29, 2013. As to the remainder, denied.

19. Answering Paragraph 19, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

20. Answering Paragraph 20, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

21. Answering Paragraph 21, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

22. Answering Paragraph 22, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

23. Answering Paragraph 23, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

24. Answering Paragraph 24, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

25. Answering Paragraph 25, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

26. Answering Paragraph 26, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants.

As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

27. Answering Paragraph 27, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

28. Answering Paragraph 28, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

29. Answering Paragraph 29, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

30. Answering Paragraph 30, these answering Defendants admit each and every allegation contained therein.

31. Answering Paragraph 31, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. These answering Defendants specifically deny falling below the standard of care in any treatment rendered to Marie Gonzales. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a

belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

32. Answering Paragraph 32, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. These answering Defendants specifically deny falling below the standard of care in any treatment rendered to Marie Gonzales. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

33. Answering Paragraph 33, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. These answering Defendants specifically deny falling below the standard of care in any treatment rendered to Marie Gonzales. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

34. Answering Paragraph 34, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. These answering Defendants specifically deny falling below the standard of care in any treatment rendered to Marie Gonzales. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

35. Answering Paragraph 35, these answering Defendants admit that Dr. Cash's testimony is cited correctly. As to the remainder, denied.

36. Answering Paragraph 36, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. These answering Defendants specifically deny falling below the standard of care in any treatment rendered to Marie Gonzales. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

37. Answering Paragraph 37, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. These answering Defendants specifically deny falling below the standard of care in any treatment rendered to Marie Gonzales. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

38. Answering Paragraph 38, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. These answering Defendants specifically deny falling below the standard of care in any treatment rendered to Marie Gonzales. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

39. Answering Paragraph 39, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. These answering Defendants specifically deny falling below the standard of care in any treatment rendered to Marie Gonzales. As to the remainder of the allegations contained therein,

these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

40. Answering Paragraph 40, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. These answering Defendants specifically deny falling below the standard of care in any treatment rendered to Marie Gonzales. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

41. Answering Paragraph 41, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. These answering Defendants specifically deny falling below the standard of care in any treatment rendered to Marie Gonzales. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

42. Answering Paragraph 42 subsections (a) through (d), these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied. These answering Defendants specifically deny falling below the standard of care in any treatment rendered to Marie Gonzales.

43. Answering Paragraph 43, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. These answering Defendants specifically deny falling below the standard of care in any

treatment rendered to Marie Gonzales. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

44. Answering Paragraph 44, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. These answering Defendants specifically deny falling below the standard of care in any treatment rendered to Marie Gonzales. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

45. Answering Paragraph 45, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. These answering Defendants specifically deny falling below the standard of care in any treatment rendered to Marie Gonzales. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

46. Answering Paragraph 46, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. These answering Defendants specifically deny falling below the standard of care in any treatment rendered to Marie Gonzales. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

FIRST CAUSE OF ACTION

(Medical Malpractice and/or Medical Negligence Against All Defendants)

47. Answering Paragraph 47, these answering Defendants repeat each and every response to Paragraphs 1 through 46, inclusive, and incorporates the same by reference as though set forth fully herein.

48. Answering Paragraphs 48, 49, 50, 51, 52, 53, 54, and 55, these answering Defendants aver that no responses is required as this cause of action has been dismissed by Court Order. To the extent a response is required, these answering Defendants deny each and every allegation contained therein.

SECOND CAUSE OF ACTION

(Respondeat Superior/Vicarious Liability: Defendants Cash; Desert Institute of Spine Care, LLC; KATUNA; Rocky Mountain Neurodiagnostics, LLC; Neuromonitoring Associates; Las Vegas Radiology, LLC; Does 1 & 6, and Roe Corporations 1 &6)

49. Answering Paragraph 56, these answering Defendants repeat each and every response to Paragraphs 1 through 55, inclusive, and incorporates the same by reference as though set forth fully herein.

50. Answering Paragraphs 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68 and 69, these answering Defendants aver that no responses is required as this cause of action has been dismissed by Court Order. To the extent a response is required, these answering Defendants deny each and every allegation contained therein.

THIRD CAUSE OF ACTION

(Negligent Supervision and Retention)

51. Answering Paragraph 70, these answering Defendants repeat each and every response to Paragraphs 1 through 69, inclusive, and incorporates the same by reference as though set forth fully herein.

52. Answering Paragraphs 71, 72, 73, 74, 75, and 76, these answering Defendants aver that no responses is required as this cause of action has been dismissed by Court Order. To the extent a response is required, these answering Defendants deny each and every allegation contained therein.

FOURTH CAUSE OF ACTION

(Contribution Against All Defendants)

53. Answering Paragraph 77, these answering Defendants repeat each and every response to Paragraphs 1 through 76, inclusive, and incorporates the same by reference as though set forth fully herein.

54. Answering Paragraph 78, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

55. Answering Paragraph 79, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

56. Answering Paragraph 80, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

57. Answering Paragraph 81, these answering Defendants deny each and every allegation contained therein insofar as such allegations pertain to these answering Defendants. As to the remainder of the allegations contained therein, these answering Defendants are without sufficient knowledge and information to formulate a belief as to the truth of such allegations and, based upon such lack of information and belief, the same are hereby denied.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim against these answering Defendants upon which relief can be granted.

2. Defendants allege that in all medical attention and care rendered to Ms. Gonzales, these answering Defendants possessed and exercised that degree of skill and learning ordinarily possessed and exercised by members of the medical profession in good standing practicing in similar localities and that at all times these answering Defendants used reasonable care and diligence in the exercise of their skill and application of learning, and at all times acted in accordance with their best medical judgment.

3. Defendants allege that any injuries or damages alleged sustained or suffered by Ms. Gonzales at the times and places referred to in Plaintiff's Complaint were caused in whole or in part or were contributed to by the negligence or fault or want of care of the Plaintiff, and the negligence, fault or want of care on the part of the Plaintiff was greater than that, if any, of these answering Defendants.

4. That in all medical attention rendered by these answering Defendants to Ms. Gonzales, these Defendants possessed and exercised the degree of skill and learning ordinarily possessed and exercised by members of their profession in good standing, practicing in similar localities, and that at all times, these answering Defendants used reasonable care and diligence in the exercise of their skills and the application of their learning, and at all times acted according to their best judgment; that the medical treatment administered by these answering Defendants was the usual and customary treatment for the physical condition and symptoms exhibited by Ms. Gonzales, and that at no time were these answering Defendants guilty of negligence or improper treatment; that, on the contrary, these answering Defendants performed each and every act of such treatment in a proper and efficient manner and in a manner approved and followed by the medical profession generally and under the circumstances and conditions as they existed when such medical attention was rendered.

5. Defendants allege that they made, consistent with good medical practice, a full and complete disclosure to Ms. Gonzales of all material facts known to them or reasonably believed by them to be true concerning Ms. Gonzales' physical condition and the appropriate alternative procedures available for treatment of such condition. Further, each and every service rendered to Ms. Gonzales by these answering Defendants was expressly and impliedly consented

to and authorized by Ms. Gonzales on the basis of said full and complete disclosure.

6. Defendants allege that they are entitled to a conclusive presumption of informed consent pursuant to NRS §41A.110.

7. Defendants allege that the Complaint is barred by the applicable statute of limitations.

8. Defendants allege that Ms. Gonzales assumed the risks of the procedures, if any, performed.

9. Plaintiff's damages, if any, were caused by and due to an unavoidable condition or occurrence.

10. Plaintiff has failed to mitigate its damages.

11. Defendants allege that the injuries and damages, if any, alleged by the Plaintiff were caused in whole or in part by the actions or inactions of third parties over whom these answering Defendants had no liability, responsibility or control.

12. Defendants allege that the injuries and damages, if any, complained of by the Plaintiff were unforeseeable.

13. Defendants allege that the injuries and damages, if any, complained of by the Plaintiff were caused by forces of nature over which these answering Defendants had no responsibility, liability or control.

14. Defendants allege that the injuries and damages, if any, complained of by the Plaintiff were not proximately caused by any acts and/or omissions on the part of these answering Defendants.

15. Defendants allege that Ms. Gonzales' need for medical treatment was caused solely by the negligence of Plaintiff and, therefore, Plaintiff is responsible for any alleged medical malpractice of these Defendants, the existence of which is specifically denied.

16. Plaintiff's Complaint violates the Statute of Frauds.

17. Defendants allege that pursuant to Nevada law, they would not be jointly liable, and that if liability is imposed, such liability would be several for that portion of the Plaintiff's damages, if any, that represents the percentage attributed to these answering Defendants.

18. Defendants allege that the injuries and damages, if any, suffered by the Plaintiff were caused by new, independent, intervening and superseding causes and not by these answering Defendants' alleged negligence or other actionable conduct, the existence of which is specifically denied.

19. Defendants allege that Plaintiff's damages, if any, are subject to the limitations and protections as set forth in Chapter 41A of the Nevada Revised Statutes including, without limitation, several liability and limits on non-economic damages.

20. Defendants allege that it has been necessary to employ the services of an attorney to defend this action and a reasonable sum should be allowed these Defendants for attorney's fees, together with the costs expended in this action.

21. Defendants allege that they are not guilty of fraud, oppression or malice, express or implied, in connection with the care rendered to Plaintiff at any of the times or places alleged in the Complaint.

22. Defendants allege that at all relevant times they were acting in good faith and not with recklessness, oppression, fraud or malice.

22. Defendants allege that the injuries and damages, if any, suffered by Plaintiff can and do occur in the absence of negligence.

23. Plaintiff has failed to allege any facts sufficient to satisfy Plaintiff's burden of proof by clear and convincing evidence that these answering Defendants engaged in any conduct that would support an award of punitive damages.

24. No award of punitive damages can be awarded against these answering Defendants under the facts and circumstances alleged in Plaintiff's Complaint.

25. The facts of this case do not meet any of the circumstances set forth in NRS 41A.100.

26. Pursuant to NRS 41A.100(3), Plaintiff would never be entitled to a rebuttal presumption under NRS 41A.100(1) because Plaintiff has purportedly submitted an affidavit pursuant to NRS 41A.071.

27. Defendants assert that Plaintiff failed to properly perfect a contribution claim

against these Defendants.

28. Defendants assert they are entitled to contribution and/or indemnity from Plaintiff, other parties and/or non-parties to this action.

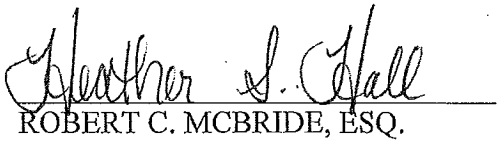
29. Defendants assert that any settlement paid by Plaintiff to Ms. Gonzales represented Plaintiff's proportional share of liability to Ms. Gonzales.

30. Pursuant to N.R.C.P. 11 all possible affirmative defenses may not have been alleged since sufficient facts were not available and, therefore, these Defendants reserve the right to amend this Answer to allege additional affirmative defenses if subsequent investigation warrants. Additionally, one or more of these Affirmative Defenses may have been pled for the purposes of non-waiver.

WHEREFORE, these answering Defendants pray that Plaintiff take nothing by way of its Complaint, that the Complaint be dismissed with prejudice and that the Court award fees and expenses as deemed appropriate.

DATED this 4th day of January 2017.

CARROLL, KELLY, TROTTER,
FRANZEN, McKENNA & PEABODY



ROBERT C. MCBRIDE, ESQ.
Nevada Bar No.: 7082
HEATHER S. HALL, ESQ.
Nevada Bar No.: 10608
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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of January 2017, I served a true and correct copy of the foregoing **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'S ANSWER TO PLAINTIFF'S COMPLAINT** addressed to the following counsel of record at the following address(es):

☒ **VIA ELECTRONIC SERVICE by mandatory electronic service (e-service), proof of e-service attached to any copy filed with the Court; or**

☐ **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

☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number indicated on the service list below.

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

Kim Irene Mandelbaum, Esq.
Marie Ellerton, Esq.
MANDELBAUM, ELLERTON & ASSOCIATES
2012 Hamilton Lane
Las Vegas, NV 89106
Attorneys for Defendant
Las Vegas Radiology, LLC

Daniel C. Tetreault, Esq.
LAXALT & NOMURA
6720 Via Austi Parkway, Suite 430
Las Vegas, NV 89119
Attorneys for Defendant
Neuromonitoring Associates, Inc.

John H. Cotton, Esq.
Michael D. Navratil, Esq.
JOHN H. COTTON & ASSOCIATES, LTD.
7900 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
Attorneys for Defendant
Balodimas, M.D. and Balodimas, M.D., P.C.

Max E. Corrick, II, Esq.
OLSON CANNON GORMLEY
ANGULO & STOBERSKI
9950 W. Cheyenne Avenue
Las Vegas, NV 89129
Attorneys for Defendant
Katuna, M.D. and Rocky Mountain Neurodiagnostics, LLC

Anthony Lauria, Esq.
LAURIA TOKUNAGA GATES & LINN, LLP
601 South Seventh Street
Las Vegas, NV 89101
Attorneys for Defendant
Danielle Miller a/k/a Danielle Shopshire

An Employee of *CARROLL, KELLY, TROTTER, FRANZEN, McKENNA & PEABODY*

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES D. BALODIMAS, M.D., and JAMES D. BALODIMAS, M.D., P.C.,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark, and the HONORABLE JERRY A. WIESE, District Court Judge,

Respondents,

and

REPUBLIC SILVER STATE DISPOSAL, INC., 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; 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; and NEUROMONITORING ASSOCIATES,

Real Parties in Interest.

Supreme Court Case No.:

Dist. Ct. Case No. A-16-738123-C

PETITION FOR WRIT OF MANDAMUS

John H. Cotton, Esq.
Nevada Bar No. 5268
Michael D. Navratil, Esq.
Nevada Bar No. 7460
JOHN H. COTTON & ASSOCIATES
7900 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
T: (702) 832-5909 / F: (702) 832-5910
Attorneys for Petitioners

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. There is no such corporation that owns 10% or more of James D. Balodimas, M.D., P.C.'s stock.

Dated this 13th day of January, 2017.

JOHN H. COTTON & ASSOCIATES

By: /s/Michael D. Navratil

John H. Cotton, Esq.
Nevada Bar No. 5268
Michael D. Navratil, Esq.
Nevada Bar No. 7460
7900 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorneys for Petitioners

TABLE OF CONTENTS

I. STATEMENT OF CASE 3

A. PLAINTIFF'S COMPLAINT AND ALLEGATIONS 3

II. STATEMENT OF UNDISPUTED FACTS 4

III. PROCEDURAL HISTORY 6

IV. ISSUE PRESENTED 7

V. REASONS WHY THE COURT SHOULD HEAR ISSUE 7

VI. REASONS WHY WRIT SHOULD ISSUE 8

A. APPLICABLE LAW 9

B. REPUBLIC DID NOT "EXTINGUISH THE LIABILITY" OF DR. BALODIMAS THROUGH ITS RELEASE AND THEREFORE, IS NOT ENTITLED TO CONTRIBUTION. 9

VII. CONCLUSION 11

TABLE OF AUTHORITIES

CASES

Libby v. Dist. Ct.,
325 P.3d. 1276, 130 Nev. Adv. Rep. 39 (2014) 7

Medallion Development v. Converse Consultants,
113 Nev. 27, 930 P.2d. 115 (1997) 8

Oahu Ry & Land Co. v. United States,
73 F.Supp. 707, 1947 U.S. Dist. LEXIS 2160 (1947) 11

Saylor v. Arcotta,
126 Nev. 92; 225 P.3d. 1276 (2010) 11

Smith v. Dist. Ct.,
107 Nev. 674, 818 P.2d. 849 (1991) 7

TDC v. Vincent,
120 Nev. 644, 98 P.3d. 681 (2004) 8

STATUTES

NRS 17.225 ..... 2, 9, 11

NRS 17.225(3) 2, 10

NRS 34.150 1

NRS 41A.097 11

NRS 41A.097(2) 10

OTHER AUTHORITIES

BLACK'S LAW DICTIONARY 326 (6th Ed. 1991) 8

RULES

NRAP 21 1

CONSTITUTIONAL PROVISIONS

Nevada Constitution, Art. 6, Sec. 4 1

PETITION FOR WRIT OF MANDAMUS

Petitioners James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C., hereby petition this Court to issue a writ of mandamus pursuant to NRS 34.150 et seq., NRAP 21, and Article 6, Section 4 of the Nevada Constitution.

Petitioners request this Court for a Writ of Mandamus directing Respondent District Court to GRANT Defendant's Motion for Judgment on the Pleadings regarding Real Party in Interest Republic Silver State Disposal, Inc's claim for contribution against Dr. Balodimas and his corporation (joined by all other Defendants to the case).

Petitioners are Defendants in a case entitled REPUBLIC SILVER STATE DISPOSAL INC., v. ANDREW CASH, M.D., ET AL; Defendants; District Court case number A-16-738123.

The Complaint in this matter was filed on June 27, 2016, by real parties in interest Republic Silver State Disposal ("Republic"). Plaintiff alleges the following causes of action against Defendants: 1) medical negligence; 2) respondeat superior against various parties; 3) negligent supervision and retention; and 4) contribution. The District Court properly dismissed the first three causes of action, but denied the motion to dismiss the contribution claim.

Republic's claims all derive from care and treatment Dr. Balodimas (and the other health care providers named as Defendants) provided to Maria Gonzales in 2012/2013. Republic alleges that the named Defendants exacerbated/caused

Ms. Gonzales to suffer injuries for which Republic alleges it was liable. (Republic caused the initial accident which led to the treatment at issue in the case). The treatment at issue in this case all took place ***before*** Ms. Gonzales filed her complaint against Republic in the personal injury action.

In July of 2014, Republic entered into a settlement agreement to resolve Ms. Gonzales's claims for $2,000,000. Despite the fact that neither Ms. Gonzales nor Republic named Dr. Balodimas (or the other health care Defendants) in the underlying personal injury action, and the statute of limitations had already extinguished any potential claim by Ms. Gonzales against Dr. Balodimas before Republic entered into a settlement with Ms. Gonzales, Republic claims that it is entitled to contribution from Dr. Balodimas and the other Defendants in this case because it paid more than its share of liability for the damages in the case.

The District Court manifestly abused its discretion by failing to follow NRS 17.225(3) which precludes a settling tortfeasor from making a contribution claim unless it extinguishes the liability of the non-settling tortfeasor. There was not even theoretical liability to extinguish at the time of the settlement because the statute of limitations had run on Ms. Gonzales's claims against Dr. Balodimas long before the settlement agreement was reached between Ms. Gonzales and Republic. Accordingly, NRS 17.225(3) precludes Republic's claim for contribution in this case as a matter of law.

A Writ of Mandamus is proper to compel the performance of acts by Respondent from the office held by respondent. Petitioner has no plain, speedy, or adequate remedy at law to compel the Respondent to perform its duty. Furthermore, this is an important issue of law, and there are no facts in dispute in this case.

I. STATEMENT OF CASE

A. PLAINTIFF'S COMPLAINT AND ALLEGATIONS

This is an alleged medical malpractice/contribution case. Real Party in Interest/Plaintiff Republic Silver State Disposal, Inc. ("Republic") injured Maria Gonzales when its truck driven by its employee crashed into her causing her to require surgery on her back. After receiving treatment from several health care providers, including James Balodimas ("Dr. Balodimas"), the patient filed suit against Republic. Ms. Gonzales never named Dr. Balodimas (or any of her other treating providers) as defendants in her lawsuit; nor did Republic add them as third party defendants. Before trial, in the underlying case, Republic entered into a settlement agreement with Ms. Gonzales for $2,000,000.

In this action, Republic alleges that its settlement was too high and the health care providers are responsible for a portion of these damages. Republic alleged four causes of action against the health care providers: 1) medical negligence; 2) respondeat superior against various parties; 3) negligent supervision and retention; and 4) contribution. The District Court properly found that Republic

Services had no standing to assert the first three causes of action and properly dismissed them.

For the contribution action, the District Court denied the Motion to Dismiss/Motion for Judgment on the pleadings even though there was never a common liability between Republic and the health care provider defendants, and the statute of limitations for any claims by the patient had expired prior to Republic and Ms. Gonzales entering into their settlement agreement. Therefore, Republic could not have extinguished the liability for Dr. Balodimas or any of the other medical defendants, as liability had already been extinguished as a matter of law by the expiration of the statute of limitations.

II. STATEMENT OF UNDISPUTED FACTS

On January 14, 2012, a commercial garbage truck owned and operated by Republic and driven by its employee Deval Hatcher caused injuries to patient Marie Gonzalez, resulting in a legal action brought by Ms. Gonzalez against Plaintiff for personal injuries related to Plaintiff's negligence. *See Appendix page 5, 9.*

On January 29, 2013, Ms. Gonzalez underwent surgery by Defendant Cash, M.D. *See Appendix 5.*

On February 12, 2013 a CT study of Ms. Gonzalez's spine was performed at Las Vegas Radiology. *See Appendix 7-8.*

Defendant Balodimas, M.D., is alleged to have interpreted the report and is alleged to have failed to appreciate misplacement of pedicle screws placed by Defendant Cash, M.D. *Id.*

On or about June 7 and July 12, 2013, Ms. Gonzalez consulted with Dr. Jason Garber and Stuart Kaplan of Western Regional Center for Brain and Spine Surgery for continuing debilitating post-surgical pain. Plaintiff alleges that Dr. Garber and Kaplan opined that the pain was in the L5 and S1 nerve distributions and that the pedicle screws on the left at L4-L5 and L5-S1 had breached the pedicles. *See Appendix 8.*

On or about September 13, 2013, Ms. Gonzales filed her complaint against Republic. *See Appendix 9.*

Republic alleges that Ms. Gonzalez required additional care and treatment related to the placement of the pedicle screws by Defendant Cash, M.D. *See Appendix 9-10.*

On July 6, 2015, Republic settled the case involving Ms. Gonzalez and her alleged injuries resulting from Republic's negligence for $2,000,000. *See Appendix 9.*

The language in the release pertinent to these issues reads as follows:

> As part of their settlement and their mutual consideration stated above, this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE shall discharge and extinguish any and all claims or liabilities, including those for "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.

See Appendix 153.

On June 27, 2016, Republic filed an amended complaint for medical negligence and medical malpractice against various health care providers involved in Ms. Gonzales' care. *See Appendix 1-42.*

III. PROCEDURAL HISTORY

On October 4, 2016, the parties appeared before the District Court to argue Defendant Cash's Motion to Dismiss; Defendant Balodimas's Motion for Judgment on the Pleadings, and Danielle Miller's Motion to Dismiss, and all related joinders. The Court entertained oral argument and took the matter under advisement. Later, the District Court issued a minute order setting an Evidentiary Hearing for November 9, 2016. *See Appendix 121-122*. The Evidentiary hearing was to address the following questions/issues:

1. Do the terms of the settlement agreement between Gonzales and Republic extinguish the liability of the Defendants named in the present litigation?

2. If the statute of limitations set forth in NRS 41A.097 applies, is there sufficient evidence to determine for purposes of the pending motions, when the statute of limitations expired as it relates to each Defendant?

At the evidentiary hearing, Republic Services produced a copy of the release agreement between the injured patient and itself. After Oral argument, the District

Court issued a Decision and Order on December 13, 2016 granting in part the motions to dismiss (all claims except the contribution claims were dismissed). *See Appendix 193-203*.

IV. ISSUE PRESENTED

Does a settling tortfeasor have a claim for contribution against a non-party/non-settling defendant, where operation of law extinguishes the potential liability between the underlying Plaintiff and the non-party Defendant, prior to the settlement between the settling tortfeasor and the underlying Plaintiff?

V. REASONS WHY THE COURT SHOULD HEAR ISSUE

Whether to consider a writ of mandamus is within the court's discretion. *Libby v. Dist. Ct.*, 325 P.3d. 1276, 130 Nev. Adv. Rep. 39 (2014)(*citing Smith v. Dist. Ct.*, 107 Nev. 674, 818 P.2d. 849 (1991). As a general rule, the Nevada Supreme Court will not exercise its discretion to challenge district court orders denying summary judgment, but an exception applies when no disputed factual issues exist and, pursuant to clear authority under a statute or a rule, the district court is obliged to dismiss an action. *Id.*

In this case, there are no factual disputes and this is strictly an interpretation of law. This is an important issue before the Court involving claims for contribution against medical doctors alleged to have negligently exacerbated injuries in personal injury cases. In this case, the District Court misinterpreted Nevada law regarding contribution, as the legislature explicitly stated that a

settling tortfeasor does not have a claim for contribution unless the settling tortfeasor extinguishes liability of the non-settling alleged tortfeasor.

Furthermore, there can be no question based upon the allegations contained in Republic's Complaint that the statute of limitations for the patient's claim against the Petitioners had run at the time she entered into the settlement with Republic. Therefore, the settlement could not have extinguished a legally non-existent liability of the Petitioners vis-à-vis the patient. The Court could use this case as an opportunity to further clarify regarding application of these statutes to contribution claims would be beneficial and would further justify the Court entertaining this Petition for Writ of Mandamus.

VI. REASONS WHY WRIT SHOULD ISSUE

Contribution is defined as the right of one who had discharged a common liability to recover of another also liable, the aliquot portion which he ought to pay or bear. *Medallion Development v. Converse Consultants*, 113 Nev. 27, 930 P.2d. 115 (1997); *citing* BLACK'S LAW DICTIONARY 326 (6th Ed. 1991). Under the principle of contribution, a tortfeasor against whom a judgment is rendered is entitled to recover proportional shares of judgment from joint tortfeasors whose negligence contributed to the injury and ***who are also liable to the plaintiff***. *Id.* (Citations omitted.) (Emphasis added.) Contribution is strictly a statutory remedy. *TDC v. Vincent*, 120 Nev. 644, 98 P.3d. 681 (2004).

A. APPLICABLE LAW

The pertinent statute applicable to this issue is NRS 17.225. That statute provides as follows:

> Right to contribution.
>
> 1. Except as otherwise provided in this section and NRS 17.235 to 17.305, inclusive, ***where two or more persons become jointly or severally liable in tort 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.
>
> 2. The right of contribution exists only in favor of a tortfeasor who has paid more than his or her equitable share of the common liability, and the tortfeasor's total recovery is limited to the amount paid by the tortfeasor in excess of his or her equitable share. No tortfeasor is compelled to make contribution beyond his or her own equitable share of the entire liability.
>
> 3. ***A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable***.

(Emphasis added).

B. REPUBLIC DID NOT "EXTINGUISH THE LIABILITY" OF DR. BALODIMAS THROUGH ITS RELEASE AND THEREFORE, IS NOT ENTITLED TO CONTRIBUTION.

A tortfeasor who enters into a settlement with a claimant is <u>not</u> entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished <u>by the settlement</u> nor in respect to any amount paid in a settlement which is in excess of what was reasonable. NRS

17.225(3). In other words, ***unless*** the settling tortfeasor extinguishes the liability of the non-settling alleged tortfeasor ***by the settlement agreement***, there is ***no*** claim for contribution.

In this case, operation of law extinguished any of the patient's claims against the Defendants prior to the settlement between Republic and Ms. Gonzales. Petitioners' liability was not extinguished by the settlement between Republic Services and the underlying Plaintiff. The statute of limitations had run on any potential claim that Ms. Gonzalez brought against Defendants by the time the Plaintiff entered into its release agreement with her. On the face of the Complaint, Ms. Gonzalez had knowledge of a potential claim of malpractice by July 12, 2013 when Dr. Garber and Dr. Kaplan discovered the alleged misplacement of the screws. Therefore, the statute of limitations on Ms. Gonzalez's claims against the Defendants would have run on July 12, 2014. *See* NRS 41A.097(2).

Republic did not attempt to secure the release of any potential claims against the health care Defendants until **July 6, 2015**, more than one year after the statute of limitations had run on Ms. Gonzalez's potential claims for malpractice. Therefore, Republic could not have "extinguished" even Defendants' theoretical liability through the release because liability had already been extinguished by law and the expiration of the statute of limitations. Therefore, because there was no "common liability" either in fact or even theoretically at the time Plaintiff settled with Ms. Gonzalez, there can be no contribution claim against the Defendants.

There can be no contribution where the injured person has no right of action against the third-party defendant. The right of contribution is a derivative right and not a new cause of action. *Oahu Ry & Land Co. v. United States*, 73 F.Supp. 707, 1947 U.S. Dist. LEXIS 2160 (1947). This is consistent with the legislature's requirement that a settling tortfeasor seeking contribution from a non-settling defendant extinguish the liability of the non-settling defendant. If there is nothing to extinguish, because there is no viable claim, there can be no contribution from a settling tortfeasor pursuant to NRS 17.225.

VII. CONCLUSION

In this case, there are two facts that prohibit a contribution action by Republic against Dr. Balodimas: ***(1) Dr. Balodimas was NOT liable in tort to the patient Maria Gonzalez at the time of the release (and in fact, never was); and (2) Republic Services did not "extinguish" liability for Dr. Balodimas as part of its settlement with Ms. Gonzalez because it had already been extinguished prior to the settlement***.[1]

[1] Petitioners believe that this is an "an action for injury or death against a health care provider" and subject to NRS 41A.097, notwithstanding this Court's decision in *Saylor v. Arcotta*, 126 Nev. 92; 225 P.3d. 1276 (2010). However, the fact that Republic did not extinguish any claim by the patient against Dr. Balodimas is dispositive of the case and warrants dismissal without addressing that issue. Petitioners reserve all rights to ask the Court to revisit the statute of limitations issue addressed in *Saylor*, as Petitioners believe that allowing a contribution claim to proceed in violation of NRS 41A.097 undermines the clear legislative purpose behind NRS 41A.097.

Nevada law is certainly clear that a settling tortfeasor does not have a contribution claim if it does not extinguish the liability of the non-settling alleged tortfeasors. Therefore, there is no basis under Nevada law for Republic to have a contribution claim in this case.

Dated this 13th day of January 2017.

JOHN H. COTTON & ASSOCIATES

By: /s/Michael D. Navratil
John H. Cotton, Esq.
Nevada Bar No. 5268
Michael D. Navratil, Esq.
Nevada Bar No. 7460
7900 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorneys for Petitioners

DECLARATION OF MICHAEL D. NAVRATIL, ESQ. IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

Michael D. Navratil, Esq., declares as follows:

I am an attorney with the law firm of John H. Cotton & Associates, and attorney of record for Petitioners, James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C., in the above-captioned case. I have personal knowledge of the matters stated in this declaration, except for those stated upon information and belief. To those matters stated upon information and belief, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will do so if called upon.

This declaration is made by the undersigned attorney pursuant to NRS 15.010, on the ground that the matters stated and relied upon in the foregoing Petition are all contained in the prior pleadings and other records of the district court, true and correct copies of which have been attached hereto.

I certify and affirm that the Petition is filed in good faith, and that the Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law that the Petitioners could pursue in absence of the extraordinary relief requested.

Dated this 13th day of January 2017.

/s/Michael D. Navratil
Michael D. Navratil, Esq.

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this petition, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 13th day of January 2017.

JOHN H. COTTON & ASSOCIATES

By: /s/Michael D. Navratil

John H. Cotton, Esq.
Nevada Bar No. 5268
Michael D. Navratil, Esq.
Nevada Bar No. 7460
7900 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PETITION FOR WRIT OF MANDAMUS** was filed electronically with the Nevada Supreme Court on the 13th day of January, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

n/a

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

David Barron, Esq.
BARRON & PRUITT, LLP
3890 West Ann Road
North Las Vegas, Nevada 89031
Attorney for Republic Silver State Disposal, Inc.

Marie Ellerton, Esq.
MANDELBAUM ELLERTON
2012 Hamilton Lane
Las Vegas, Nevada 89106
Attorney for Las Vegas Radiology, LLC.

Tony Lauria, Esq.
LAURIA, TOKUNAGA, ET. AL.
1755 Creekside Oaks Dr., # 240
Sacramento, California 95833
Attorney for Danielle Miller, M.D. aka Danielle Shopshire

Robert McBride, Esq.
CARROLL, KELLY, TROTTER, ET. AL.
8329 West Sunset Road, Suite 260
Las Vegas, Nevada 89113
Attorney for Andrew M. Cash, M.D.; Andrew M. Cash, M.D., P.C.; and Desert Institute of Spine Care, LLC

James Olsen, Esq.
OLSEN, CANNON, ET. AL.
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
Attorney for Bruce Katuna, M.D. and Rocky Mountain Neurodiagnostics, LLC

James Murphy, Esq.
LAXALT & NOMURA, LTD.
6720 Via Austi Parkway, Suite 430
Las Vegas, Nevada 89119
Attorney for Neuromonitoring Associates

The Honorable Jerry Wiese
Clark County, State of Nevada
200 Lewis Avenue
Las Vegas, Nevada 89101
Respondent

/s/Katie Johnson
An employee of John H. Cotton & Associates