

Electronically Filed  
Aug 23 2019 10:44 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FIELDEN HANSON ISAACS MIYADA  
ROBINSON YEH, LTD.,

Plaintiff,

vs.

SCOTT VINH DUONG, M.D., ANNIE LYNN  
PENACO DUONG, M.D., DUONG  
ANESTHESIA, PLLC and DOE  
DEFENDANTS I-X,

Defendants.

**CASE No. A-19-789110-B**  
**DEPT. No. XI**

**AMENDED NOTICE OF APPEAL**

Defendants Scott Vinh Duong, M.D.; Annie Lynn Penaco Duong, M.D.; and Duong Anesthesia, PLLC appeal to the Supreme Court of Nevada from the Court's Order Denying Defendants' Motion to Alter or Amend Judgment enter in this action on July 17, 2019.

DATED this 16<sup>th</sup> day of August, 2019.

**HOWARD & HOWARD ATTORNEYS PLLC**

By: /s/Ryan O'Malley

Martin A. Little (#7067)  
Ryan T. O'Malley (#12461)  
3800 Howard Hughes Parkway, #1000  
Las Vegas, Nevada 89169  
*Attorneys for Defendants*

**Howard & Howard, Attorneys PLLC**  
3800 Howard Hughes Pkwy., Suite 1000  
Las Vegas, NV 89169  
(702) 257-1483



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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FIELDEN HANSON ISAACS MIYADA  
ROBINSON YEH, LTD.,

Plaintiff,

vs.

SCOTT VINH DUONG, M.D., ANNIE LYNN  
PENACO DUONG, M.D., DUONG  
ANESTHESIA, PLLC and DOE  
DEFENDANTS I-X,

Defendants.

**CASE No. A-19-789110-B**  
**DEPT. No. XIII**

**AMENDED CASE APPEAL STATEMENT**

Defendants Scott Vinh Duong, M.D., Annie Lynn Penaco Duong, M.D.,  
Duong Anesthesia, PLLC hereby submit their Case Appeal Statement.

**1. Name of Appellant filing this Case Appeal Statement:**

This case appeal statement is being filed jointly by:

**A.** Scott Vinh Duong, M.D.

**B.** Annie Lynn Penaco Duong, M.D.

**C.** Duong Anesthesia, PLLC

**2. Identify the Judge Issuing the Decision, Judgment or Order Appealed From:**

The Honorable Mark R. Denton

3. **Identify each Appellant and the name and address of counsel for each Appellant:**

Appellants Scott Vinh Duong, M.D.; Annie Lynn Penaco Duong, M.D.; and Duong Anesthesia, PLLC are represented by:

Martin A. Little (#7067)  
Ryan T. O'Malley (#12461)  
HOWARD & HOWARD ATTORNEYS PLLC  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, NV 89169

4. **Identify each Respondent and the name and address of Appellate counsel, if known, for each Respondent (if the name of Respondent's Appellate counsel is unknown, indicated as much and provide the name and address of that Respondent's trial counsel.)**

Respondent Fielden Hanson Isaacs Miyada Robinson Yeh, Ltd. is represented by:

Michael N. Feder (#7332)  
Gabriel A. Blumberg (#12332)  
Dickinson Wright, PLLC  
8363 West Sunset Road, Suite 200  
Las Vegas, NV 89113

5. **Indicate whether any attorney identified above in Response to Question 3 or 4 is not licensed to practice law in Nevada, and if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):**

All attorneys are licensed to practice law in Nevada.

6. **Indicate whether Appellant was represented by appointed or retained counsel in the district court:**

Appellants were represented by retained counsel in district court.

7. **Indicate whether Appellant was represented by appointed or retained counsel on appeal:**

Appellants are represented by retained counsel on appeal.

8. **Indicate whether Appellant was granted leave to proceed in *forma pauperis*, and the date of entry of the district court order granting such leave:**

N/A

1 **9. Indicate the date the proceedings commenced in district court (e.g.,**  
2 **date complaint, indictment, information, or petition was filed):**

3 Plaintiff/Respondent's Complaint was filed February 8, 2019.

4 **10. Provide a brief description of the nature of the action and result in the**  
5 **district court, including the type of judgment or order being appealed**  
6 **and the relief granted by the district court:**

7 This case arises from an unenforceable covenant not to compete.  
8 Appellants Scott Duong, M.D. and Annie Lynn Penaco Duong, M.D. (the  
9 "Duongs") had been employed by an anesthesiology practice called Premier  
10 Anesthesiology Consultants ("PAC"). In or around December of 2016, a  
11 multistate anesthesiology conglomerate called U.S. Anesthesia Partners  
12 ("USAP") came to Las Vegas in a merger deal which involved PAC/ACI and  
13 another group called Summit Anesthesia Consultants. Respondent Fielden  
14 Hanson Isaacs Miyada Robinson Yeh, Ltd. ("Fielden Hanson") is a subsidiary of  
15 USAP.

16 In connection with this acquisition, USAP/Fielden Hanson required the  
17 Duongs to execute Physician-Track Employment Agreements ("Agreements") if  
18 they wished to continue their employment. The Agreements span 23 single-  
19 spaced pages, and it includes a non-competition provision. This provision lacks  
20 any geographical limitation, and instead casts its scope in terms of "Facilities" – a  
21 definition broad enough to include every major hospital in Las Vegas. In addition  
22 to barring the Duongs from these hospitals, the Agreements additionally purport  
23 to require them to terminate their privileges at every "Facility" under the  
24 agreement should they leave Fielden Hanson, apparently indefinitely.

25 In or around August of 2018, the Duongs provided 90 days' notice of their  
26 intent to terminate their employment with Fielden Hanson, as provided in Section  
27 6.2.9 of the Agreement. The Duongs had no intention of competing with Fielden  
Hanson following their departure by attempting to divert any business from them,

1 and they have not done so. However, they also did not conceal their intention to  
2 continue working as anesthesiologists in Las Vegas following their departure  
3 from Fielden Hanson.

4 In or around November of 2018, the Duongs' notice period ended, and they  
5 became independent contractors. Since their departure, they have made  
6 affirmative efforts not to compete with Fielden Hanson. The Duongs associated  
7 with an anesthesia practice called Red Rock Anesthesia Consultants ("Red  
8 Rock"), and their practice since their departure from USAP has consisted  
9 primarily of accepting assignments from Red Rock.

10 Aside from their relationship with Red Rock, the Duongs have never  
11 solicited work from any physician, physician group, or other healthcare provider.  
12 Specifically, the Duongs have never solicited any work from any physician,  
13 physician group, or healthcare provider with whom they had ever formed a  
14 relationship because of their time at USAP. Nor have they ever encouraged any  
15 physician, physician group, or healthcare provider to terminate a relationship with  
16 USAP or to divert any portion of their anesthesiology coverage from USAP. To  
17 the Duongs' knowledge, no physician, physician group, or healthcare provider  
18 has ever terminated a relationship with USAP or diverted any portion of their  
19 anesthesiology coverage from USAP because of their departure or their affiliation  
20 with Red Rock or any other provider.

21 Nevertheless, Fielden Hanson's parent company, USAP, sent the Duongs a  
22 cease and desist letter in December of 2018. This litigation followed in February  
23 of 2019, and Fielden Hanson sought a preliminary injunction shortly thereafter.

24 On April 9, 2019, the district court issued an order granting Fielden  
25 Hanson's motion in part. The district court held that the contract was  
26 unenforceable as written, but invoked NRS 613.195(5) to modify its terms.  
27 However, NRS 613.195(5) was enacted *after* the contract at issue was executed,

and it was nevertheless invoked retroactively to modify the terms of the terms of the parties' agreement. The Duongs moved to alter or amend the judgment on May 7, 2019. The court denied the motion on July 17, 2019. This appeal followed on August 16, 2019.

**11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceedings:**

N/A

**12. Indicate whether this appeal involves child custody or visitation.**

This case does not involve child custody or visitation.

**13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:**

At this time, it is unknown whether settlement is a possibility in this case.

DATED this 16<sup>th</sup> day of August, 2019.

HOWARD & HOWARD ATTORNEYS, PLLC

By: /s/Ryan T. O'Malley

Martin A. Little (#7067)

Ryan T. O'Malley (#12461)

3800 Howard Hughes Pkwy, #1000

Las Vegas, Nevada 89169

Telephone: (702) 257-1483

*Attorneys for Defendants*

Howard & Howard, Attorneys PLLC  
3800 Howard Hughes Pkwy., Suite 1000  
Las Vegas, NV 89169  
(702) 257-1483

**CERTIFICATE OF SERVICE**

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is Howard & Howard Attorneys PLLC, 3800 Howard Hughes Parkway, 10<sup>th</sup> Floor, Las Vegas, Nevada, 89169.

On this day I served the preceding **AMENDED CASE APPEAL STATEMENT** in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will cause this document to be served upon the following counsel of record:

Michael N. Feder (#7332)  
Gabriel A. Blumberg (#12332)  
Dickinson Wright, PLLC  
8363 West Sunset Road, Suite 200  
Las Vegas, NV 89113

I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on **August 16, 2019**, at Las Vegas, Nevada.

*/s/ Anya Ruiz*

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An Employee of Howard & Howard Attorneys PLLC

4824-7177-9233, v. 1



DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-19-789110-B**

**Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.,**  
**Plaintiff(s)**  
**vs.**  
**Scott Duong, M.D., Defendant(s)**

§  
§  
§  
§  
§

Location: **Department 13**  
Judicial Officer: **Denton, Mark R.**  
Filed on: **02/08/2019**  
Case Number History:  
Cross-Reference Case Number: **A789110**

CASE INFORMATION

Case Type: **Other Business Court Matters**  
Case Flags: **Discovery heard by Department  
Appealed to Supreme Court  
Jury Demand Filed  
Employment Contract Case**

DATE

CASE ASSIGNMENT

**Current Case Assignment**

Case Number A-19-789110-B  
Court Department 13  
Date Assigned 02/27/2019  
Judicial Officer Denton, Mark R.



PARTY INFORMATION

		<i>Lead Attorneys</i>
<b>Plaintiff</b>	<b>Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.</b>	<b>Blumberg, Gabriel A</b> <i>Retained</i> 702-382-4002(W)
<b>Defendant</b>	<b>Duong Anesthesia, PLLC</b>	<b>Little, Martin A.</b> <i>Retained</i> 7026997500(W)
	<b>Duong, Scott Vinh, M.D.</b>	<b>Little, Martin A.</b> <i>Retained</i> 7026997500(W)
	<b>Penaco Duong, Annie Lynn, M.D.</b>	<b>Little, Martin A.</b> <i>Retained</i> 7026997500(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

02/08/2019	 Complaint (Business Court) Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Complaint</i>	
02/08/2019	 Initial Appearance Fee Disclosure Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Initial Fee Disclosure</i>	
02/13/2019	 Peremptory Challenge Filed by: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Plaintiff's Peremptory Challenge of Judge</i>	
02/15/2019	 Summons Filed by: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Summons - Civil</i>	

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-19-789110-B**

02/15/2019	 Summons Filed by: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Summons - Civil</i>
02/15/2019	 Summons Filed by: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Summons - Civil</i>
02/15/2019	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
02/18/2019	 Acceptance of Service Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Acceptance of Service</i>
02/19/2019	 Motion for Preliminary Injunction Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, LTD.'s Motion for Preliminary Injunction on Order Shortening Time</i>
02/22/2019	 Initial Appearance Fee Disclosure Filed By: Defendant Penaco Duong, Annie Lynn, M.D.; Defendant Duong Anesthesia, PLLC <i>Defendants' Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
02/22/2019	 Discharge Request Party: Defendant Duong, Scott Vinh, M.D.; Defendant Penaco Duong, Annie Lynn, M.D.; Defendant Duong Anesthesia, PLLC <i>NRCP 7.1 Disclosure Statement</i>
02/22/2019	 Stipulation and Order Filed by: Defendant Duong, Scott Vinh, M.D.; Defendant Penaco Duong, Annie Lynn, M.D.; Defendant Duong Anesthesia, PLLC <i>Stipulation and Order to Continue Hearing on Motion for Preliminary Injunction</i>
02/25/2019	 Notice of Entry Filed By: Defendant Duong, Scott Vinh, M.D.; Defendant Penaco Duong, Annie Lynn, M.D.; Defendant Duong Anesthesia, PLLC <i>Notice of Entry of Stipulation and Order to Continue Hearing on Motion for Preliminary Injunction</i>
02/25/2019	 Peremptory Challenge Filed by: Defendant Duong, Scott Vinh, M.D.; Defendant Penaco Duong, Annie Lynn, M.D.; Defendant Duong Anesthesia, PLLC <i>Peremptory Challenge</i>
02/26/2019	 Opposition Filed By: Defendant Duong, Scott Vinh, M.D.; Defendant Penaco Duong, Annie Lynn, M.D.; Defendant Duong Anesthesia, PLLC <i>Opposition to Motion for Preliminary Injunction</i>
02/27/2019	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-19-789110-B**



03/04/2019	 Reply in Support Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Plaintiff Fielden Hanson Isaacs Miyada Robinson Yeh, Ltd.'s Reply in Support of Motion for Preliminary Injunction on Order Shortening Time</i>
03/11/2019	 <b>Motion for Preliminary Injunction</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.'s Motion for Preliminary Injunction on Order Shortening Time</i> Granted in Part; <i>Granted in Part</i>
03/19/2019	 <b>Minute Order</b> (7:00 AM) (Judicial Officer: Denton, Mark R.) <i>Re: Plaintiff's Motion for Preliminary Injunction</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
04/09/2019	 Order Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Order Granting, In Part, Plaintiff's Motion for Preliminary Injunction</i>
04/09/2019	 Notice of Entry of Order Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Notice of Entry of Order Granting, In Part, Plaintiff's Motion for Preliminary Injunction</i>
04/09/2019	 Notice of Posting Bond Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Notice of Posting Check in Lieu of Bond</i>
04/23/2019	 Motion to Reconsider Filed By: Defendant Duong, Scott Vinh, M.D.; Defendant Penaco Duong, Annie Lynn, M.D.; Defendant Duong Anesthesia, PLLC <i>Motion for Reconsideration</i>
04/24/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
05/02/2019	 Answer Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.; Defendant Duong, Scott Vinh, M.D.; Defendant Duong Anesthesia, PLLC <i>Answer</i>
05/07/2019	 Opposition to Motion Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Plaintiff's Opposition to Defendants' MOTion for Reconsideration</i>
05/07/2019	 Motion to Amend Filed By: Defendant Duong, Scott Vinh, M.D.; Defendant Penaco Duong, Annie Lynn, M.D.; Defendant Duong Anesthesia, PLLC <i>Motion to Alter/Amend Judgment</i>
05/08/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
05/09/2019	 Business Court Order

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-19-789110-B**

*Business Court Order*

05/21/2019	 Opposition to Motion <i>Plaintiff's Opposition to Motion to Alter/Amend Judgment</i>
05/22/2019	 Reply Filed by: Defendant Duong, Scott Vinh, M.D.; Defendant Penaco Duong, Annie Lynn, M.D.; Defendant Duong Anesthesia, PLLC <i>Reply in Support of Motion for Reconsideration</i>
05/28/2019	 <b>Motion For Reconsideration</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Motion For Reconsideration</i> Denied; <i>Denied</i>
05/28/2019	 <b>Mandatory Rule 16 Conference</b> (3:15 PM) (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>
06/04/2019	 Demand for Jury Trial Filed By: Defendant Duong, Scott Vinh, M.D.; Defendant Penaco Duong, Annie Lynn, M.D.; Defendant Duong Anesthesia, PLLC <i>Defendants' Demand for Jury Trial</i>
06/06/2019	 Order Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Order Denying Defendants' Motion for Reconsideration</i>
06/07/2019	 Notice of Entry of Order Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Notice of Entry of Order Denying Defendants' Motion for Reconsideration</i>
06/07/2019	 Scheduling and Trial Order
06/10/2019	 <b>Motion to Amend Judgment</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Motion to Alter/Amend Judgment</i> Denied Without Prejudice; Defendant's Motion to Alter/Amend Judgment <i>Denied Without Prejudice</i>
06/14/2019	 Joint Case Conference Report Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Joint Case Conference Report</i>
06/14/2019	Scheduling and Trial Order <i>JCCR does not affect trial date</i>
06/20/2019	<b>CANCELED Status Check</b> (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Vacated</i> <i>Status Check: JCCR</i>
07/05/2019	 Demand for Jury Trial Filed By: Defendant Duong, Scott Vinh, M.D.; Defendant Penaco Duong, Annie Lynn, M.D.; Defendant Duong Anesthesia, PLLC <i>Defendants' Demand for Jury Trial</i>

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-19-789110-B**

07/17/2019	 Order Denying Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Order Denying Defendants' Motion to Alter/Amend Judgment</i>
07/17/2019	 Notice of Entry of Order Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Notice of Entry of Order Denying Defendants' Motion to Alter/Amend Judgment</i>
08/14/2019	 Stipulated Protective Order <i>Stipulated Confidentiality Agreement and Protective Order</i>
08/14/2019	 Notice of Entry of Order Filed By: Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. <i>Notice of Entry of Stipulated Confidentiality Agreement and Protective Order</i>
08/16/2019	 Notice of Appeal Filed By: Defendant Duong, Scott Vinh, M.D.; Defendant Penaco Duong, Annie Lynn, M.D.; Defendant Duong Anesthesia, PLLC <i>Notice of Appeal</i>
08/16/2019	 Case Appeal Statement Filed By: Defendant Duong, Scott Vinh, M.D.; Defendant Penaco Duong, Annie Lynn, M.D.; Defendant Duong Anesthesia, PLLC <i>Case Appeal Statement</i>
08/16/2019	 Amended Notice of Appeal Party: Defendant Duong, Scott Vinh, M.D.; Defendant Penaco Duong, Annie Lynn, M.D.; Defendant Duong Anesthesia, PLLC <i>Amended Notice of Appeal</i>
08/16/2019	 Amended Case Appeal Statement Party: Defendant Duong, Scott Vinh, M.D.; Defendant Penaco Duong, Annie Lynn, M.D.; Defendant Duong Anesthesia, PLLC <i>Amended Case Appeal Statement</i>
03/16/2020	<b>Pre Trial Conference (3:50 PM)</b> (Judicial Officer: Denton, Mark R.)
03/30/2020	<b>Calendar Call (2:00 PM)</b> (Judicial Officer: Denton, Mark R.)
04/07/2020	<b>Jury Trial (9:00 AM)</b> (Judicial Officer: Denton, Mark R.)

DATE	FINANCIAL INFORMATION
	<b>Defendant</b> Duong, Scott Vinh, M.D. Total Charges 2,017.00 Total Payments and Credits 2,017.00 <b>Balance Due as of 8/20/2019 0.00</b>
	<b>Plaintiff</b> Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. Total Charges 1,980.00 Total Payments and Credits 1,980.00 <b>Balance Due as of 8/20/2019 0.00</b>
	<b>Defendant</b> Duong, Scott Vinh, MD Appeal Bond Balance as of 8/20/2019 <b>500.00</b>
	<b>Plaintiff</b> Fielden Hanson Isaacs Miyada Robison Yeh, Ltd. Injunction Balance as of 8/20/2019 <b>1,000.00</b>

DISTRICT COURT  
**CASE SUMMARY**  
**CASE NO. A-19-789110-B**

# BUSINESS COURT CIVIL COVER SHEET

A-19-789110-B

County, Nevada

Department 16

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

## I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.   Attorney (name/address/phone): Michael N. Feder, Esq. and Gabriel A. Blumberg, Esq. Dickinson Wright PLLC 8363 W. Sunset Rd., Suite 200 Las Vegas, NV 89113 702-550-4400	Defendant(s) (name/address/phone): Scott Vinh Duong, M.D., Annie Lynn Penaco Duong, M.D. Duong Anesthesia, PLLC   Attorney (name/address/phone):   
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## II. Nature of Controversy *(Please check the applicable boxes for both the civil case type and business court case type)*

☐ Arbitration Requested

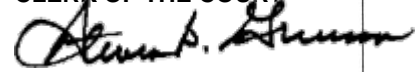
Civil Case Filing Types		Business Court Filing Types
<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Torts</b> <b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort	<b>CLARK COUNTY BUSINESS COURT</b> <input type="checkbox"/> NRS Chapters 78-89 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Mergers (NRS 92A) <input type="checkbox"/> Uniform Commercial Code (NRS 104) <input type="checkbox"/> Purchase/Sale of Stock, Assets, or Real Estate <input type="checkbox"/> Trademark or Trade Name (NRS 600) <input type="checkbox"/> Enhanced Case Management <input checked="" type="checkbox"/> Other Business Court Matters
<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input checked="" type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Civil Writs</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	<b>WASHOE COUNTY BUSINESS COURT</b> <input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 91) <input type="checkbox"/> Securities (NRS 90) <input type="checkbox"/> Investments (NRS 104 Art.8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademark/Trade Name (NRS 600) <input type="checkbox"/> Trade Secrets (NRS 600A) <input type="checkbox"/> Enhanced Case Management <input type="checkbox"/> Other Business Court Matters
<b>Judicial Review/Appeal/Other Civil Filing</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court		
<b>Other Civil Filing</b> <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters		

2-8-19

Date

  
 Signature of initiating party or representative





1 **ORDD**  
2 **DICKINSON WRIGHT PLLC**  
3 MICHAEL N. FEDER  
4 Nevada Bar No. 7332  
5 Email: mfeder@dickinson-wright.com  
6 GABRIEL A. BLUMBERG  
7 Nevada Bar No. 12332  
8 Email: gblumberg@dickinson-wright.com  
9 8363 West Sunset Road, Suite 200  
10 Las Vegas, Nevada 89113-2210  
11 Tel: (702) 550-4400  
12 Fax: (844) 670-6009  
13 *Attorneys for Plaintiff*

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 FIELDEN HANSON ISAACS MIYADA  
12 ROBISON YEH, LTD.,

13 Plaintiff,

14 vs.

15 SCOTT VINH DUONG, M.D., ANNIE  
16 LYNN PENACO DUONG, M.D., DUONG  
17 ANESTHESIA, PLLC and DOE  
18 DEFENDANTS I-X,

19 Defendants.

Case No.: A-19-789110-B  
Dept.: 13

**ORDER DENYING DEFENDANTS'  
MOTION TO ALTER/AMEND  
JUDGMENT**

20 This matter having come for hearing on June 10, 2019, Gabriel A. Blumberg, Esq. of  
21 Dickinson Wright PLLC appearing on behalf of Plaintiff Fielden Hanson Isaacs Miyada Robison  
22 Yeh. Ltd. ("Fielden Hanson"); Ryan O'Malley, Esq. of Howard and Howard PLLC appearing on  
23 behalf of Defendants Scott Vinh Duong, M.D., Annie Lynn Penaco Duong, M.D., and Duong  
24 Anesthesia, PLLC ("Defendants"); the Court having reviewed the pleadings and papers on file  
25 herein and considered the argument of counsel, and good cause appearing therefore,

26 ...

27 ...



1           **IT IS HEREBY ORDERED** that Defendants' Motion to Alter/Amend Judgment is  
2 **DENIED** for the reasons set forth by the Court on the record at the hearing.

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4           Dated this 15<sup>th</sup> day of July, 2019.

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\_\_\_\_\_  
THE HONORABLE MARK R. DENTON

Respectfully submitted by:

**DICKINSON WRIGHT PLLC**

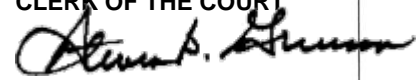
  
\_\_\_\_\_  
Michael N. Feder  
Nevada Bar No. 7332  
Gabriel A. Blumberg  
Nevada Bar No. 12332  
8363 West Sunset Road, Suite 200  
Las Vegas, Nevada 8911  
*Attorneys for Plaintiff*

Approved as to form and content by:

**HOWARD & HOWARD ATTORNEYS PLLC**

\_\_\_\_\_  
Martin A. Little  
Nevada Bar No. 7067  
Ryan T. O'Malley  
Nevada Bar No. 12461  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, NY 89169  
*Attorneys for Defendants*





1 **NEOJ**  
2 **DICKINSON WRIGHT PLLC**  
3 MICHAEL N. FEDER  
4 Nevada Bar No. 7332  
5 Email: mfeder@dickinson-wright.com  
6 GABRIEL A. BLUMBERG  
7 Nevada Bar No. 12332  
8 Email: gblumberg@dickinson-wright.com  
9 8363 West Sunset Road, Suite 200  
10 Las Vegas, Nevada 89113-2210  
11 Tel: (702) 550-4400  
12 Fax: (844) 670-6009  
13 *Attorneys for Plaintiff*

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 FIELDEN HANSON ISAACS MIYADA  
17 ROBISON YEH, LTD.,

18 Plaintiff,

19 vs.

20 SCOTT VINH DUONG, M.D., ANNIE  
21 LYNN PENACO DUONG, M.D., DUONG  
22 ANESTHESIA, PLLC and DOE  
23 DEFENDANTS I-X,

24 Defendants.


Case No.: A-19-789110-B  
Dept.: 13

**NOTICE OF ENTRY OF ORDER  
DENYING DEFENDANTS' MOTION  
TO ALTER/AMEND JUDGMENT**

25 PLEASE TAKE NOTICE that the Order Denying Defendants' Motion to Alter/Amend  
26 Judgment was entered by the Court on July 17, 2019. A copy of said Order is attached hereto.

27 Dated this 17<sup>th</sup> day of July, 2019.

28 **DICKINSON WRIGHT PLLC**



Michael N. Feder  
Nevada Bar No. 7332  
Gabriel A. Blumberg  
Nevada Bar No. 12332  
8363 West Sunset Road, Suite 200  
Las Vegas, Nevada 8911  
*Attorneys for Plaintiff*

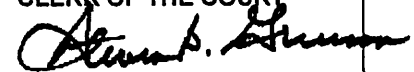
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 17<sup>th</sup> day of July, 2019, a true and correct copy of the **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION TO ALTER/AMEND JUDGMENT** was served via the Court's Odyssey E-File & Serve System as follows:

Martin A. Little  
Ryan T. O'Malley  
HOWARD & HOWARD ATTORNEYS PLLC  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, NV 89169  
*Attorneys for Defendants*



\_\_\_\_\_  
An Employee of Dickinson Wright PLLC



1 **ORDD**  
2 **DICKINSON WRIGHT PLLC**  
3 **MICHAEL N. FEDER**  
4 Nevada Bar No. 7332  
5 Email: [mfeder@dickinson-wright.com](mailto:mfeder@dickinson-wright.com)  
6 **GABRIEL A. BLUMBERG**  
7 Nevada Bar No. 12332  
8 Email: [gblumberg@dickinson-wright.com](mailto:gblumberg@dickinson-wright.com)  
9 8363 West Sunset Road, Suite 200  
10 Las Vegas, Nevada 89113-2210  
11 Tel: (702) 550-4400  
12 Fax: (844) 670-6009  
13 *Attorneys for Plaintiff*

9  
10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

11 **FIELDEN HANSON ISAACS MIYADA**  
12 **ROBISON YEH, LTD.,**

13 **Plaintiff,**

14 **vs.**

15 **SCOTT VINH DUONG, M.D., ANNIE**  
16 **LYNN PENACO DUONG, M.D., DUONG**  
17 **ANESTHESIA, PLLC and DOE**  
18 **DEFENDANTS I-X,**

18 **Defendants.**

Case No.: A-19-789110-B  
Dept.: 13

**ORDER DENYING DEFENDANTS'**  
**MOTION TO ALTER/AMEND**  
**JUDGMENT**

20 This matter having come for hearing on June 10, 2019, Gabriel A. Blumberg, Esq. of  
21 Dickinson Wright PLLC appearing on behalf of Plaintiff Fielden Hanson Isaacs Miyada Robison  
22 Yeh. Ltd. ("Fielden Hanson"); Ryan O'Malley, Esq. of Howard and Howard PLLC appearing on  
23 behalf of Defendants Scott Vinh Duong, M.D., Annie Lynn Penaco Duong, M.D., and Duong  
24 Anesthesia, PLLC ("Defendants"); the Court having reviewed the pleadings and papers on file  
25 herein and considered the argument of counsel, and good cause appearing therefore,

26 ...

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1           **IT IS HEREBY ORDERED** that Defendants' Motion to Alter/Amend Judgment is  
2 **DENIED** for the reasons set forth by the Court on the record at the hearing.

3  
4           Dated this 15<sup>th</sup> day of ~~June~~ 2019.

5  
6   
7 \_\_\_\_\_  
8 THE HONORABLE MARK R. DENTON

9  
10          Respectfully submitted by:

11          **DICKINSON WRIGHT PLLC**

12   
13 \_\_\_\_\_  
14 Michael N. Feder  
15 Nevada Bar No. 7332  
16 Gabriel A. Blumberg  
17 Nevada Bar No. 12332  
18 8363 West Sunset Road, Suite 200  
19 Las Vegas, Nevada 89111  
20 *Attorneys for Plaintiff*

21  
22          Approved as to form and content by:

23          **HOWARD & HOWARD ATTORNEYS PLLC**

24 \_\_\_\_\_  
25 Martin A. Little  
26 Nevada Bar No. 7067  
27 Ryan T. O'Malley  
28 Nevada Bar No. 12461  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, NV 89169  
*Attorneys for Defendants*

**IT IS HEREBY ORDERED** that Defendants' Motion to Alter/Amend Judgment is **DENIED** for the reasons set forth by the Court on the record at the hearing.

Dated this \_\_\_\_\_ day of June, 2019.

See previous page  
THE HONORABLE MARK R. DENTON

*[Signature]*

Respectfully submitted by:

Approved as to form and content by:

**DICKINSON WRIGHT PLLC**

**HOWARD & HOWARD ATTORNEYS PLLC**

Michael N. Feder  
Nevada Bar No. 7332  
Gabriel A. Blumberg  
Nevada Bar No. 12332  
8363 West Sunset Road, Suite 200  
Las Vegas, Nevada 8911  
*Attorneys for Plaintiff*

Martin A. Little  
Nevada Bar No. 7067  
Ryan T. O'Malley  
Nevada Bar No. 12461  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, NY 89169  
*Attorneys for Defendants*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**March 11, 2019**

---

A-19-789110-B      Fielden Hanson Isaacs Miyada Robison Yeh, Ltd., Plaintiff(s)  
vs.  
Scott Duong, M.D., Defendant(s)

---

**March 11, 2019      9:00 AM      Motion for Preliminary  
Injunction**

**HEARD BY:** Denton, Mark R.

**COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

**PRESENT:**      Blumberg, Gabriel A      Attorney  
                         O'Malley, Ryan      Attorney

**JOURNAL ENTRIES**

- Court noted this is not being consolidated with trial on the merits and it will determine if an Evidentiary Hearing is warranted. Following arguments by Mr. Blumberg and Mr. O'Malley, COURT ORDERED, Plaintiff Fielden Hanson Isaacs Miyada Robison Yeh, Ltd.'s Motion for Preliminary Injunction on Order Shortening Time UNDER ADVISEMENT.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**March 19, 2019**

---

A-19-789110-B      Fielden Hanson Isaacs Miyada Robison Yeh, Ltd., Plaintiff(s)  
vs.  
Scott Duong, M.D., Defendant(s)

---

**March 19, 2019      7:00 AM      Minute Order**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** Chambers

**COURT CLERK:** Madalyn Kearney

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- HAVING further considered the Matter of Plaintiff s Motion for Preliminary Injunction heard on March 11, 2019, and then taken under advisement, the Court determines that the confidentiality aspects are entirely enforceable and that, while the non-compete agreement aspect is overbroad in the first instance, it is amenable to blue penciling under NRS 613.195(5), and that the other requisites for preliminary injunctive relief as briefed and argued by Plaintiff have been demonstrated. Accordingly, the Court GRANTS Plaintiff s Motion IN PART as follows:

The confidentiality aspect is entitled to full enforcement.

The non-compete/non-solicitation aspect shall be blue penciled to reflect the restraints set forth in Defendants Opposition to the Motion at: page 9, line 22 through USAP at page 10, line 1; page 10, lines 5 through 9, to include declination of coverage requests from any facilities having an on-going relationship with USAP/Fielden Hanson; and page 10, lines 10 through 13 (ending with the word provider ). With regard to the last reference, Defendants shall be enjoined from encouraging Red Rock Anesthesia Consultants from inducing facilities and physicians to divert their business away from Plaintiff, but such injunction shall not preclude Defendants from fulfillment of assignments by Red Rock to physicians and health care providers which have requested its services.

Security shall be set in the sum of \$1,000.00.

Counsel for Plaintiff is directed to submit a proposed order consistent with the foregoing and including preliminary findings of fact/conclusions of law. NRCP 65(d)(1) and 52(a)(2), as both were amended effective March 1, 2019. Prior to submission of such proposed order to the Court, the same should be submitted to opposing counsel for signification of approval/disapproval. Instead of seeking to clarify or litigate meaning or any disapproval through correspondence directed to the Court or to counsel with copies to the Court, any such clarification or disapproval should be the subject of appropriate motion practice.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 3/19/19

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters**

**COURT MINUTES**

**May 28, 2019**

---

A-19-789110-B      Fielden Hanson Isaacs Miyada Robison Yeh, Ltd., Plaintiff(s)  
vs.  
Scott Duong, M.D., Defendant(s)

---

**May 28, 2019      9:00 AM      Motion For  
Reconsideration**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** RJC Courtroom 03D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**REPORTER:**

**PARTIES**

**PRESENT:**      Blumberg, Gabriel A      Attorney  
                         O'Malley, Ryan      Attorney

**JOURNAL ENTRIES**

- Following arguments by Mr. O'Malley and Mr. Blumberg, COURT ORDERED, Motion for Reconsideration DENIED. Mr. Blumberg to prepare the order.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Other Business Court Matters

COURT MINUTES

May 28, 2019

A-19-789110-B      Fielden Hanson Isaacs Miyada Robison Yeh, Ltd., Plaintiff(s)  
vs.  
Scott Duong, M.D., Defendant(s)

May 28, 2019

3:15 PM

**Mandatory Rule 16  
Conference**

HEARD BY: Denton, Mark R.

COURTROOM: No Location

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

**PARTIES**

**PRESENT:**      Blumberg, Gabriel A      Attorney  
                         O'Malley, Ryan      Attorney

**JOURNAL ENTRIES**

- Counsel met with the Court in Chambers for the purpose of the Mandatory Rule 16 Conference. Court advised the Department would handle discovery matters and all discovery motions should be directed to this Court's attention. Further, Court noted counsel could consider today's conference to be their Rule 16.1 Conference. Thereafter, Court stated that it still requires a Joint Case Conference Report and directed it to be submitted by the close of business on June 14th; the JCCR is to comply with NRCP 16.1(c)(2)(A), (D), (E), (I) and (K). COURT ORDERED, status check SET for June 20, 2019 at 9:00 am to determine if the Joint Case Conference Report (JCCR) has been filed. If filed, attendance is not required. However, if the JCCR has not been filed counsel must appear to explain why it has not been filed and the amount of time needed for compliance. Court inquired if the case is being carried as a jury case. Mr. O'Malley advised a jury demand will be made by the end of tomorrow if there is a desire for one. Court noted if it does not come in the matter will be scheduled for non-jury. Upon Court's inquiry as to how much time counsel would require for discovery; both counsel confirmed they would require 180 days until the close of discovery. Court advised that it will issue a combined Scheduling/ Trial Order that reflects that discovery period. Upon further inquiry of the Court as to case management or a need for a protective order, counsel indicated there were no case

management issues and if a protective order is needed they will draft a stipulation. Court so noted.

6/20/19 9:00 AM STATUS CHECK: JCCR

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Business Court Matters****COURT MINUTES****June 10, 2019**

A-19-789110-B      Fielden Hanson Isaacs Miyada Robison Yeh, Ltd., Plaintiff(s)  
                                  vs.  
                                  Scott Duong, M.D., Defendant(s)

<b>June 10, 2019</b>	<b>9:00 AM</b>	<b>Motion to Amend Judgment</b>	<b>Defendant's Motion to Alter/Amend Judgment</b>
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**HEARD BY:** Denton, Mark R.**COURTROOM:** RJC Courtroom 03D**COURT CLERK:** Phyllis Irby**RECORDER:** Jennifer Gerold**REPORTER:****PARTIES**

<b>PRESENT:</b> Blumberg, Gabriel A	Attorney
O'Malley, Ryan	Attorney

**JOURNAL ENTRIES**

- Mr. O'Malley advised the Court this is a non-compete case. Mr. O'Malley's client was employed by Plaintiff which they had executed a non-competition clause which was for the facilities. Mr. O'Malley stated the way facilities would work was that it would prevent Defendants with working with any physicians, with whom they worked with at Fielden Hanson also, working at any major hospitals in Las Vegas. Mr. O'Malley referred to the provision in the Order that stated the Defendants are required to decline any coverage request from any facility that has an ongoing relationship with Fielden Hanson; the Defendants have a dispute as to what the language in the Order is intended to mean,

Mr. Blumberg stated Plaintiffs find that the Courts Order was very clear regarding the facilities clause. Mr. Blumberg further argued that in section F which allows Defendant to work if it comes through Red Rock absent Defendants soliciting work. Mr. Blumberg further stated Plaintiff offered to provide a list of surgeons that were covered under the Order so that there was no confusion.

**COURT ORDERED, MOTION DENIED WITHOUT PREJUDICE.**

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

AMENDED NOTICE OF APPEAL; AMENDED CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER DENYING DEFENDANTS' MOTION TO ALTER/AMEND JUDGMENT; NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION TO ALTER/AMEND JUDGMENT; DISTRICT COURT MINUTES

FIELDEN HANSON ISAACS MIYADA  
ROBINSON YEH, LTD,

Plaintiff(s),

vs.

SCOTT VINH DUONG, M.D.; ANNIE LYNN  
PENACO DUONG, M.D.; DUONG  
ANESTHESIA, PLLC,

Defendant(s),

Case No: A-19-789110-B

Dept No: XIII

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 20 day of August 2019.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk