

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

HILLSBORO ENTERPRISE, INC. A  
NEVADA CORPORATION; MOBILE  
BILLBOARDS, LLC, A NEVADA LIMITED  
LIABILITY COMPANY, VINCE AND ERICA  
BARTELLO, VS. FITZGERALD

No. 79698

Electronically Filed  
Oct 24 2019 11:33 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

DOCKETING STATEMENT  
CIVIL APPEALS

## GENERAL INFORMATION

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

## WARNING

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

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

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

1. Judicial District Eighth Judicial Department 9  
County Clark Judge Cristina D. Silva  
District Ct. Case No. A-15-716570-C

**2. Attorney filing this docketing statement:**

Attorney Jonathon R. Patterson, Esq. Telephone 702-966-5200  
Firm Hurtik Law and Associates  
Address 6767 West Tropicana Ave., Suite #200  
Las Vegas, Nevada, 89103

Client(s) Mobile Billboards, LLC, Erica/Vince Bartello, EBVB Holdings, LLC, Hillsboro et al.

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

**3. Attorney(s) representing respondents(s):**

Attorney James P. Kemp Esq. Telephone (702) 258-1183  
Firm Kemp & Kemp  
Address 7435 W Azure Dr # 110, Las Vegas, NV 89130

Client(s) Sean Fitzgerald

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

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

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

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

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

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

Nevada Supreme Court Case No. 72803

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

A-16-737119-C, Eighth Judicial District Court, Department 32. This Case is currently Open.

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

This matter is an employment claim for Wrongful Termination and Conversion of personal property. Plaintiff alleged that he was terminated because he filed a Workers Compensation claim and that Defendant did not return certain items of personal property. Defendants contend the Plaintiff voluntarily left his job and did not prove that Defendant was responsible for any missing personal property.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The Principal Issues are;

Personal Liability for the Individual Defendants; No reasonable Jury could have found that Plaintiff proved his damages. Certain objections overruled by the Judge and certain Jury Instructions.

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

None.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: Plaintiff alleges he was terminated for filing a Workers Compensation claim.

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

This case can be assigned to the Court of Appeals.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 5

Was it a bench or jury trial? Jury

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

No

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** 08/23/2019

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

**17. Date written notice of entry of judgment or order was served** 08/23/2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** 09/20/2019

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

Erica Bartello-9/20/2019; Vince Bartello-09/20/2019; Mobile Billboards, LLC-09/20/2019; Hillsboro Enterprises, Inc.-09/20/2019; EBVB Holdings, LLC-09/20/2019

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

NRAP 4(a)(1)

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**SUBSTANTIVE APPEALABILITY**

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

(a)

- |                                                   |                                       |
|---------------------------------------------------|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) _____    |                                       |

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

This is an appeal from final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Sean Fitzgerald-Plaintiff;

Erica Bartello; Vince Bartello; EBVB Holdings, LLC; Hillsboro Enterprises Inc.;

Mobile Billboards, LLC; Defendants.

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

N/A

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

Sean Fitzgerald-Wrongful termination and Conversion.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☒ No

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

☐ Yes

☒ No

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

This order is appealable under NRAP 3A(b)(1) as a final judgment.

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

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

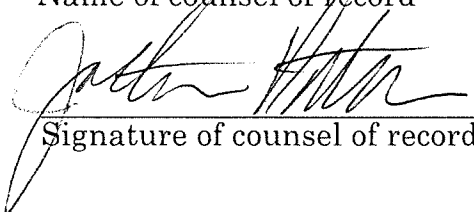
I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Erica Bartello; Vince Bartello, et al.  
Name of appellant

10/23/2019  
Date

Clark County  
State and county where signed

Jonathon R. Patterson  
Name of counsel of record

  
Signature of counsel of record

## CERTIFICATE OF SERVICE

I certify that on the 24 day of October, 2019, I served a copy of this completed docketing statement upon all counsel of record:

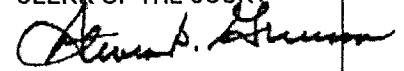
☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Kemp & Kemp; 7435 W Azure Dr # 110, Las Vegas, NV 89130

Dated this 24 day of October, 2019

Jonathon R. Patterson  
Signature



1 JAMES P. KEMP, ESQ.  
Nevada Bar No.: 6375  
2 VICTORIA L. NEAL, ESQ.  
Nevada Bar No.: 13382  
3 KEMP & KEMP  
4 7435 W. Azure Drive, Ste 110  
Las Vegas, NV 89130  
5 702-258-1183 ph./702-258-6983 fax  
jp@kemp-attorneys.com  
6 vneal@kemp-attorneys.com

7 *Attorneys for Plaintiff*  
8 *Sean Fitzgerald*

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*

10 SEAN FITZGERALD, )  
11 ) Case No.: A-15-716570-C  
12 Plaintiff, )  
13 vs. ) Dept. No. IX  
14 ) Trial Date: July 15, 2019  
15 HILLSBORO ENTERPRISES INC., a Nevada )  
Corporation; and, MOBILE BILLBOARDS, )  
16 LLC, a Nevada Limited Liability Company; )  
EBVB HOLDINGS, LLC, a Nevada Limited )  
17 Liability Company; VINCE BARTELLO, an )  
individual; ERICA BARTELLO, an )  
18 individual; and DOES I through X; and ROE )  
BUSINESS ENTITIES I through X, inclusive, )  
19 Defendants. )

JUDGMENT UPON JURY VERDICT

21  
22 THIS MATTER came on for a trial by jury on July 15, 2019 – July 19, 2019. Plaintiff  
23 Sean Fitzgerald appeared in person, and by and through his counsel, James P. Kemp, Esq., and  
24 Victoria L. Neal, Esq., of the law firm Kemp & Kemp, and for All Defendants, Carrie E. Hurtik,  
25 Esq., and Jonathan R. Patterson, Esq., of the law firm Hurtik Law & Associates. Testimony was  
26 taken, evidence was offered, introduced and admitted. Counsel argued the merits of their cases.  
27  
28

**KEMP & KEMP**  
ATTORNEYS AT LAW  
7435 W. Azure Drive, Suite 110  
LAS VEGAS, NEVADA 89130  
Tel. (702) 258-1183 • Fax (702) 258-6983

1 Pursuant to the Special Verdict Form dated July 19, 2019, the jury rendered a verdict in  
2 favor of Plaintiff on his claim for Conversion of Property against Defendants Vince Bartello,  
3 Mobile Billboards, LLC, and Hillsboro Enterprises, Inc., in the amount of \$3,111.16 plus post-  
4 judgment interest. The jury further rendered a verdict for Plaintiff's claim for Wrongful  
5 Discharge In Violation of Public Policy against All Defendants, Vince Bartello, Mobile  
6 Billboards, LLC, and Hillsboro Enterprises, Inc., Erica Bartello, and EBVB HOLDINGS, LLC  
7 in the amount of \$56,000.00 plus post-judgment interest.  
8

9 NOW THEREFORE, judgment upon the verdict is hereby entered in favor of Plaintiff  
10 Sean Fitzgerald and against Defendants as follows:

11 \*\*\* REMAINDER OF PAGE INTENTIONALLY LEFT BLANK \*\*\*  
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KEMP & KEMP  
ATTORNEYS AT LAW  
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LAS VEGAS, NEVADA 89130  
Tel. (702) 258-1183 • Fax (702) 258-6983

1 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff Sean Fitzgerald shall  
2 have and recover against Defendants Vince Bartello, Mobile Billboards, LLC, and Hillsboro  
3 Enterprises, Inc., the sum of THREE THOUSAND ONE-HUNDRED ELEVEN DOLLARS  
4 AND 16/100 (\$3,111.16) plus post-judgment interest. Plaintiff Sean Fitzgerald shall further  
5 have and recover against All Defendants, Vince Bartello, Mobile Billboards, LLC, and Hillsboro  
6 Enterprises, Inc., Erica Bartello, and EBVB HOLDINGS, LLC, the sum of FIFTY SIX  
7 THOUSAND DOLLARS (\$56,000.00) plus post-judgment interest.  
8

9 IT IS SO ORDERED:

10 DATED this 21<sup>st</sup> day of August, 2019.

11  
12   
DISTRICT COURT JUDGE  
CRISTINA SILVA  
13

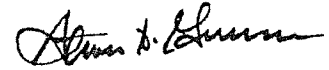
14 Respectfully Submitted By:

15  
16   
VICTORIA L. NEAL, ESQ.  
17 Attorney for the Plaintiff

18 Defendants' attorney, Ms. Hurtik, was contacted via email and provided this Judgment  
19 Upon Jury Verdict on August 4, 2019. On August 5, 2019, via email, Ms. Hurtik disagreed with  
20 the Judgment Upon Jury Verdict.  
21

22  
23 Approved as to form and content:  
24

25 Does Not Agree/Declined to Sign  
26 CARRIE E. HURTIK, ESQ.  
27 Attorney for Defendants  
28



CLERK OF THE COURT

JAMES P. KEMP, ESQ.  
Nevada Bar No.: 6375  
VICTORIA L. NEAL, ESQ.  
Nevada Bar No.: 13382  
KEMP & KEMP  
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jp@kemp-attorneys.com  
vneal@kemp-attorneys.com

*Attorneys for Plaintiff*

DISTRICT COURT  
CLARK COUNTY, NEVADA

SEAN FITZGERALD,

Plaintiff,

vs.

HILLSBORO ENTERPRISES INC., a Nevada  
Corporation; and, MOBILE BILLBOARDS,  
LLC, a Nevada Limited Liability Company;  
EBVB HOLDINGS, LLC, a Nevada Limited  
Liability Company; VINCE BARTELLO, an  
individual; ERICA BARTELLO, an individual;  
and DOES I through X; and ROE BUSINESS  
ENTITIES I through X, inclusive,

Defendants.

Case No.: A - 15 - 716570 - C

Dept No.: VIII

COMPLAINT

JURY TRIAL DEMANDED

Arbitration Exemption: action seeking  
equitable or extraordinary relief.

COMES NOW Plaintiff, SEAN FITZGERALD, by and through Counsel, KEMP &  
KEMP, ATTORNEYS AT LAW, and hereby complains and alleges the following:

JURISDICTION

1. SEAN FITZGERALD (herein "Plaintiff") is a resident of Clark County, Nevada. The amount in controversy in this case is in excess of \$10,000.00.
2. Defendant HILLSBORO ENTERPRISES, INC., (herein "Hillsboro") is a Nevada Corporation. It has continuous and ongoing business operations in the state of Nevada and

KEMP & KEMP  
ATTORNEYS AT LAW  
7435 W. Azure Drive, Suite 110  
LAS VEGAS, NEVADA 89130  
Tel. (702) 258-1183 • Fax (702) 258-6983

1 Clark County. Plaintiff reserves the right to amend this Complaint to name any and all  
2 appropriate parties in addition to this Defendant or instead of this Defendant should Plaintiff  
3 learn of additional or different facts from those set forth herein, or as a result of further  
4 discovery, analysis, and fact development in this case. Plaintiff thus brings these causes of  
5 action against HILLSBORO ENTERPRISES, INC. as a successor or successor-in-interest, or  
6 as an integrated enterprise, or as a joint venturer, or otherwise jointly and severally responsible  
7 for Plaintiff's damages.  
8

9 3. Defendant MOBILE BILLBOARDS, LLC (herein "Mobile") is a Nevada Limited Liability  
10 Company. It has continuous and ongoing business operations in the state of Nevada and  
11 Clark County. Plaintiff reserves the right to amend this Complaint to name any and all  
12 appropriate parties in addition to this Defendant or instead of this Defendant should Plaintiff  
13 learn of additional or different facts from those set forth herein, or as a result of further  
14 discovery, analysis, and fact development in this case. Plaintiff thus brings these causes of  
15 action against MOBILE BILLBOARDS, LLC as a successor or successor-in-interest, or as an  
16 integrated enterprise, or as a joint venturer, or otherwise jointly and severally responsible for  
17 Plaintiff's damages.  
18

19 4. Defendant EBVB HOLDINGS, LLC, (herein "EBVB") is a Nevada Limited Liability  
20 Company. It has continuous and ongoing business operations in the state of Nevada and  
21 Clark County. Plaintiff reserves the right to amend this Complaint to name any and all  
22 appropriate parties in addition to this Defendant or instead of this Defendant should Plaintiff  
23 learn of additional or different facts from those set forth herein, or as a result of further  
24 discovery, analysis, and fact development in this case. Plaintiff thus brings these causes of  
25 action against EBVB HOLDINGS, LLC, as a successor or successor-in-interest, or as an  
26  
27  
28

integrated enterprise, or as a joint venturer, or otherwise jointly and severally responsible for Plaintiff's damages.

5. Defendants HILLSBORO ENTERPRISES, INC., MOBILE BILLBOARDS, LLC, and EBVB HOLDINGS, LLC, are responsible for the acts of its owners, officers, employees and/or agents pursuant to the doctrine of respondeat superior and/or other vicarious liability law. HILLSBORO, MOBILE, and EBVB HOLDINGS, LLC are collectively referred to as Defendants.

6. Defendant VINCE BARTELLO (herein "BARTELLO") was at all relevant times mentioned herein, an owner, operating principal, employee, servant and/or agent authorized to act on behalf of Defendants HILLSBORO, MOBILE, and EBVB at its Clark County place of business. On information and belief this Defendant is, and was at all relevant times mentioned herein, a resident of Clark County, Nevada.

7. Defendant ERICA BARTELLO (herein "MRS. BARTELLO") was at all relevant times mentioned herein, an owner, operating principal, employee, servant and/or agent authorized to act on behalf of Defendants HILLSBORO, MOBILE, and EBVB at its Clark County place of business. On information and belief this Defendant is, and was at all relevant times mentioned herein, a resident of Clark County, Nevada.

8. Plaintiff is unaware of the true names and capacities whether individuals, corporations, associates, or otherwise of Defendants DOE INDIVIDUALS I through X and ROE BUSINESS ENTITIES I through X, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff is informed and believes and thereupon alleges that the Defendants, and each of them, are in some manner responsible and liable for the acts and damages alleged in this Complaint. Plaintiff will seek leave of this Court to amend this Complaint to allege the true names and capacities of the DOE INDIVIDUAL and ROE CORPORATION

Defendants when the true names of the DOE INDIVIDUAL and ROE CORPORATION  
Defendants are ascertained.

9. The Court has jurisdiction over the parties named herein and the subject matter of this case.  
10. This action has been timely filed.

**FACTS COMMON TO ALL CLAIMS**

11. Plaintiff repeats and realleges each and every pertinent allegation contained in and every other  
pertinent paragraph contained in this Complaint, as if set forth fully herein.

12. Plaintiff began his employment with Defendants in April 2014, as head fleet mechanic.

13. Plaintiff was hired and paid by Defendant Hillsboro until he sustained an industrial accident  
on April 30, 2015. After that date, Plaintiff was paid by Defendant Mobile because, upon  
information and belief, Defendant Hillsboro was not insured for workers' compensation as  
required by Nevada state law.

14. Plaintiff was never subject to any disciplinary action during his employment with Defendants.

15. Plaintiff sustained a serious on-the-job industrial injury to his hand/finger on April 30, 2014.

16. Plaintiff called an employee, Ken, to drive him to the emergency room on April 30, 2014, after  
sustaining the industrial injury.

17. Plaintiff filled out a C-4 form for workers' compensation the day of the industrial accident,  
April 30, 2014.

18. Plaintiff additionally inquired as to workers' compensation from his employer in the days  
following his industrial injury.

19. Plaintiff continued to inquire about his workers' compensation benefits and on May 5, 2014,  
Plaintiff exchanged text messages with Defendant Bartello inquiring if any word had been  
received about his workers' compensation so Plaintiff could receive continuing care of his  
industrial injury.

1 20. On May 9, 2014, after receiving an angry text message from Defendant Bartello about not  
2 having cleaned and washed the trucks, Plaintiff texted back reminding Defendant Bartello that  
3 he had been placed on light duty because of his industrial injury and that he could not wash  
4 the trucks because he could not get his open wound wet. In response, Defendant Bartello  
5 told Plaintiff he could not come back to work until he had received "a doctor's note saying  
6 that [Plaintiff] can perform [his] job duties including washing the trucks and doing  
7 maintenance on the trucks."  
8

9 21. On May 10, 2014, Plaintiff messaged Defendant Bartello asking if he was being laid off or  
10 going on disability because of Defendant Bartello's statement that Plaintiff could not return to  
11 work until he was at full-capacity. In a rambling series of text messages, Defendant Bartello  
12 responded:

13 If your doctor tells you that you can't perform your job duties that  
14 consist of: washing trucks/cars, maintenance and repair on the  
15 truck/cars, any maintenance and cleaning in the shop and the  
16 building, auto electrical, welding/fabricating as well than you won't  
be able to return until the dr says you can perform these duties.

17 22. In addition to the numerous text messages exchanged between Plaintiff and Defendant  
18 Bartello, the men often spoke on the phone and each time Defendant Bartello reinforced his  
19 anger with Plaintiff because of Plaintiff's duty restrictions and for Plaintiff's filing of a  
20 workers' compensation claim which cost Defendant Bartello time and money.

21 23. On May 13, 2014, Plaintiff had surgery as result of the industrial accident sustained on April  
22 30, 2015.

23 24. On May 14, 2014, at 7:54 p.m., Defendant Bartello initiated text messages with Plaintiff which  
24 would go until 3:00 a.m. on May 15, 2014. The exchange started over the issue of a missing  
25 time card and evolved into accusing Plaintiff of theft. At the end of the exchanges, Defendant  
26 Bartello messaged Plaintiff,  
27  
28

1 today's meeting is to get your timecard and your note from your  
2 doctor and your key to the shop! Please do the right things and bring  
3 your key! NOTE: If you do not bring your key to the shop today as  
4 scheduled, I will be forced to change the locks immediately! That  
said, I will have to sell any personal property you may have there to  
cover the cost.

5 25. On May 15, 2014, Plaintiff and his father went Defendants' property to retrieve Plaintiff's  
6 property including a computer, stereo and tools. Plaintiff was met and talked only to Mrs.  
7 Bartello, the wife of Bartello and a named co-defendant in this action.

8 26. Defendant Mrs. Bartello refused to allow Plaintiff to retrieve his personal property, at which  
9 point Plaintiff contacted Las Vegas Metropolitan Police Department for assistance. The  
10 responding officers informed Plaintiff that his situation was a civil dispute and they could  
11 offer no assistance. However, after talking to Defendant Mrs. Bartello, the responding officers  
12 did inform Plaintiff that he was being trespassed off the property. Plaintiff did not receive his  
13 personal property.  
14

15 27. In addition to subjecting Plaintiff to retaliation in termination of his employment, and  
16 refusing to return his personal property, Defendants continued their attack against Plaintiff for  
17 exercising his rights under the Nevada workers' compensation statutes by making  
18 unsubstantiated allegations that Plaintiff had obtained a prescription narcotic by means of  
19 fraud. This was done by Defendants specifically to interfere with Plaintiff's right to receive  
20 workers' compensation and in an attempt to get the workers' compensation insurance  
21 company to limit or deny Plaintiff benefits due him because of the industrial accident he  
22 received while being employed by Defendants.  
23

24 ...

25 ...

26 ...

27 ...

28

FIRST CAUSE OF ACTION:  
RETALIATORY DISCHARGE IN VIOLATION OF PUBLIC POLICY-  
WORKERS' COMPENSATION RETALIATION  
(AGAINST ALL DEFENDANTS)

28. Plaintiff repeats and re-alleges each and every pertinent allegation contained in and every other pertinent paragraph contained in this Complaint, as if set forth fully herein.

29. Plaintiff's employment was terminated by Defendant in retaliation for his being injured on the job and his filing of a valid Workers Compensation claim and, thus, exercising his rights under the Nevada Industrial Insurance Act.

30. Termination of Plaintiff's employment was in violation of strong public policy of the state of Nevada.

31. Plaintiff suffered mental and emotional distress as a direct and proximate result of Defendant's actions.

32. Plaintiff has suffered and will suffer lost wages and/or benefits as a direct and proximate result of the actions of the Defendant.

33. The actions of Defendants were willful, malicious, fraudulent, or oppressive, and calculated to discourage Plaintiff and other of Defendants' employees from pursuing their rights under Nevada law. The Defendants should be subjected to Punitive and Exemplary damages to deter future conduct of this sort.

34. Plaintiff should be reinstated to his position with all wages, benefits, and seniority restored as though the unlawful and tortious termination had never occurred.

35. Plaintiff has been required to hire an attorney and expend fees and costs to pursue his rights through this action.

...

...

**SECOND CAUSE OF ACTION:**  
**CONVERSION**  
**(AGAINST ALL DEFENDANTS)**

36. Plaintiff repeats and re-alleges each and every pertinent allegation contained in and every other pertinent paragraph contained in this Complaint, as if set forth fully herein.

37. Plaintiff owned or had the right to possess his personal property including, but not limited to, his tools, stereo and computer.

38. Defendants interfered with Plaintiff's personal property by refusing to return the property to Plaintiff in derogation, exclusion, or defiance of Plaintiff's title to his personal property.

39. Defendants have deprived Plaintiff of the use of his personal property.

40. Plaintiff has been caused damage by Defendants' serious, major, and important interferences with the Plaintiff's right to control the chattels which justify requiring Defendants to pay their full value.

41. Plaintiff has been required to hire an attorney and expend fees and costs to pursue his rights through this action.

**WHEREFORE**, Plaintiff expressly reserves the right to amend his Complaint at or before the time of trial of the action herein to include all items of damages not yet ascertained, and demands judgment against the Defendants, upon each of them, as follows:

A. All applicable monetary relief provided for under common law and Nevada state law including, but not limited to the following:

1. Money damages in excess of \$10,000.00;
2. Economic damages including, but not limited to, lost wages and benefits of employment, incidental and consequential damages;
3. General damages including emotional distress and general economic harm;
4. The full value of all chattels converted by Defendants;

- 1 5. Punitive and/or Exemplary Damages to deter the Defendants from future
- 2 malicious, fraudulent, and oppressive conduct of a similar nature;
- 3 6. Pre-judgment and post-judgment interest on the amounts awarded at the
- 4 prevailing legal rate;
- 5 7. Reasonable attorney fees, reasonable expert witness fees, and other costs of the
- 6 action pursuant to statute, agreement, or court rule;
- 7 8. For extraordinary and equitable relief ordering that the Plaintiff shall be
- 8 reinstated to his position with all wages, benefits, and seniority restored as
- 9 though the unlawful and tortious termination had never occurred;
- 10
- 11 B. A trial by jury on all issues that may be tried to a jury; and/or
- 12 C. For such other and further relief as the Court may deem just and proper.
- 13

14 DATED this 6th day of April 2015.

15  
16 /s/ James P. Kemp  
17 JAMES P. KEMP, ESQ.  
18 Nevada Bar No.: 6375  
19 VICTORIA L. NEAL, ESQ.  
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