

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

BARRY RIVES, M.D.; LAPAROSCOPIC
SURGERY OF NEVADA, LLC et al.,

Appellants,
vs.

TITINA FARRIS and PATRICK FARRIS

Cross-Appellants/Respondents

No. 80271

**DOCKETING STATEMENT
CIVIL APPEALS**

Electronically Filed
Jan 21 2020 12:38 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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 Department 31
County Clark Judge Joanna Kishner
District Ct. Case No. A-16-739464-C

2. Attorney filing this docketing statement:

Attorney Kimball Jones, Esq. Telephone 702-333-1111
Firm Bighorn Law
Address 716 S. Jones Blvd.
Las Vegas, Nevada 89107

Client(s) Titina Farris and Patrick Farris

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 Robert L. Eisenberg, Esq. Telephone (775)786-6868
Firm Lemons, Grundy, & Eisenberg
Address 6005 Plumas Street, Third Floor
Reno, Nevada 89519

Client(s) BARRY M. RIVES, M.D., AND LAPAROSCOPIC SURGERY OF NEVADA, LLC.

Attorney Thomas J. Doyle, Esq. Telephone (916) 567-0400
Firm Scuering Zimmerman & Doyle, LLP
Address 400 University Avenue
Sacramento, California 95825-6502

Client(s) BARRY M. RIVES, M.D., AND LAPAROSCOPIC SURGERY OF NEVADA, LLC.

(List additional counsel on separate sheet if necessary)

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

Plaintiff Titina Farris was a patient of Defendants. Defendant RIVES, while performing surgery on Plaintiff, negligently cut her colon. Thereafter, RIVES failed to adequately repair the colon and sanitize the abdominal cavity. RIVES then failed to recommend any surgery to repair the punctured colon for eleven (11) days, during which time Plaintiff was on the verge of death due to the predictable sepsis that ensued as a result of RIVES' initial negligence. As a further result of RIVES' negligence, Plaintiff developed "dropped feet" and now cannot walk without assistance.

This case was tried before Judge Kishner. The jury returned with a damages award in favor of Plaintiffs/Respondents/Cross-Appellants in the amount of \$13,640,479.94. The Court, however, reduced this award to \$6,365,830.84, based upon the damages "cap" of \$350,000.00 noted in NRS 41A.035

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

Trial in this matter concluded with the jury awarding Plaintiffs/Cross-Appellants damages in the amount of \$13,640,479.94. The Court reduced this award to a judgment of \$6,365,830.84 based upon the damages "cap" of \$350,000.00 noted in NRS 41A.035. Plaintiffs/Cross-Appellants appeal this reduction since the NRS 41A.035 "cap" of \$350,000.00 for noneconomic damages is specifically preempted by federal law in this case as Plaintiffs/Cross-Appellants/Respondents' health plan is an ERISA plan.

(See Attached Sheet)

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:

N/A

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: This issue affects whether the "cap" limiting non-economic damages in medical malpractice cases found in NRS 41A.035 is pre-empted when a health plan is a Federal ERISA plan. Although the Court found that similar limitations in NRS 42.021 were pre-empted in *McCrosky v. Carson Tahoe Reg'l Med. Ctr.*, 133 Nev. 930 (2017), Plaintiffs/Cross-Appellants/ Respondents are unaware of any decisions of the Supreme Court on this issue relating to NRS 41A.035. As such, Plaintiffs/Cross-Appellants/ Respondents believe this to be a substantial issue of first impression.

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 matter is presumptively retained by the Supreme Court. The issues at bar are matters of first impression. NRAP 17(a)(11). Additionally, due to the implications to citizens of the state with ERISA health plans, this is a matter of statewide public importance. NRAP 17(a)(12). Finally, the appeal exceeds the \$250,000 "limit" noted in NRAP 17(b)(5).

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

Was it a bench or jury trial? Jury Trial

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 November 14, 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 November 19, 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 December 19, 2019 by Appellants

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:
Notice of Cross-Appeal filed on December 31, 2019 by Cross-Appellants/Respondents

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)(2)

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:
NRAP 3A(b)(1) provides an appeal may be taken from a final judgment entered in an action. The Court's Judgment upon Jury Verdict served on November 19, 2019 is a final judgment in this action.

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

(a) Parties:

Titina Farris and Patrick Farris Plaintiffs/Cross-Appellants/Respondents

Barry M. Rives, M.D. and Laparoscopic Surgery of Nevada, LLC, Defendants/
Appellants/Cross-Respondents

(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.

TITINA AND PATRICK FARRIS: Complaint for medical malpractice;
judgment on jury verdict November 14, 2019

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:

N/A

(b) Specify the parties remaining below:
N/A

(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)):

N/A

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.

Titina Farris and Patrick Farris
Name of appellant

Kimball Jones, Esq.
Name of counsel of record

1/21/2020
Date

/s/ Kimball Jones
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 21st day of January, 2020, 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.)

Robert L. Eisenberg, Esq.
6005 Plumas Street, Third Floor
Reno, Nevada 89519

Thomas J. Doyle, Esq.
400 University Avenue
Sacramento, California 95825-6502

Stephen E. Haberfeld
8224 Blackburn Ave., #100
Los Angeles, California 90048

Dated this 21st day of January, 2020

/s/ Erick Finch
Signature

Trial in this matter concluded with the jury awarding Plaintiffs/Cross-Appellants damages in the amount of \$13,640,479.94. The Court reduced this award to a judgment of \$6,365,830.84 based upon the damages “cap” of \$350,000.00 noted in NRS 41A.035. Plaintiffs/Cross-Appellants appeal this reduction since the NRS 41A.035 “cap” of \$350,000.00 for noneconomic damages is specifically preempted by federal law in this case as Plaintiffs/Cross-Appellants/Respondents’ health plan is an ERISA plan.

The preemption doctrine, which provides that federal law supersedes conflicting state law, arises from the Supremacy Clause of the United States Constitution. The Supremacy Clause, found in Article VI, requires that “the Laws of the United States ... shall be the supreme Law of the Land; ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” Thus, when a conflict exists between federal and state law, valid federal law overrides, *i.e.*, preempts, an otherwise valid state law.

Nanopierce Techs., Inc. v. Depository Tr. & Clearing Corp., 123 Nev. 362, 370, 168 P.3d 73, 79 (2007)

The Nevada Supreme Court noted that Nevada Medical Malpractice statutes are preempted by ERISA as to evidence of collateral source benefits:

Federal law complicates matters. 42 U.S.C. § 2651(a) provides that when the United States is required to pay for medical treatment on behalf of an individual, and the hospital becomes liable in tort to that individual, “the United States shall have a right to recover ... the reasonable value of the care

and treatment so furnished,” and the United States’ right to payment is subrogated to the individual’s claim against the hospital. In short, § 2651(a) allows the United States to recover from a plaintiff who prevails in a medical malpractice suit the Medicaid payments the plaintiff received—exactly what NRS 42.021(2) prohibits. When state and federal law directly conflict, federal law governs.

McCrosky v. Carson Tahoe Reg'l Med. Ctr., 133 Nev. 930, 936–37, 408 P.3d 149, 154–55 (2017).

Just as the Supreme Court in *McCrosky* noted that economic damage limitations under NRS 42.021 are preempted by Federal law, the \$350,000.00 cap noted for noneconomic damages in NRS 41A.035 runs afoul of ERISA in this case.

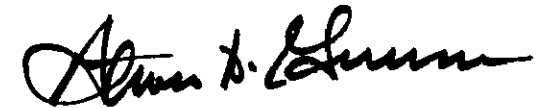
Plaintiff’s “ERISA” Plan notes:

“Recoveries” means all monies paid to the Covered Person—or to any agent, attorney or beneficiary of, or trustee for, such Covered Person—by way of judgment, settlement, or otherwise to compensate for all losses caused by an injury or sickness, whether or not said losses reflect Covered Expenses. “Recoveries” further includes, but is not limited to, recoveries for medical, dental or other expenses, attorneys’ fees, costs and expenses, pain and suffering, loss of consortium, wrongful death, lost wages and any other recovery of any form of damages or compensation whatsoever. All such payments received from any sources shall be deemed to be first for Covered Expenses regardless of whether the payments are so designated by the parties, and regardless of any limitations on the ability of the Covered Person to collect medical expenses from the Third Party. The Plan shall be reimbursed in full, regardless of whether the Covered Person has been made

whole, before any amounts (including attorney fees and court costs) are deducted from such payments.

As such, this “potential” conflict between ERISA and Nevada’s statutory cap for noneconomic damages is realized here, as the plan calls for reimbursement from any source, including non-economic damages—and yet, State Law precludes non-economic damages of more than \$350,000.

Given the above, the cap on non-economic damages is pre-empted in this matter as Plaintiff/Cross-Appellant Titina Farris’ health plan is an ERISA plan. Plaintiffs/Cross-Appellants therefore appeal the reduction of the jury award by the Court as this cap, as applied, violates the Supremacy Clause of the United States Constitution. The jury awards given by the jury are properly upheld, and not reduced.



CLERK OF THE COURT

1 **COMP**
George F. Hand, Esq.
2 Nevada State Bar No. 8483
ghand@handsullivan.com
3 Michael E. Bowman, Esq.
Nevada State Bar No. 13833
4 **HAND & SULLIVAN, LLC**
hsadmin@handsullivan.com
5 3442 North Buffalo Drive
Las Vegas, Nevada 89129
6 Telephone: (702) 656-5814
Facsimile: (702) 656-9820

7
8 Attorneys for Plaintiffs
TITINA FARRIS and PATRICK FARRIS

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

12 TITINA FARRIS and PATRICK FARRIS,

13 Plaintiffs,

14 vs.

15 BARRY RIVES, M.D., LAPAROSCOPIC
16 SURGERY OF NEVADA LLC; DOES I-V,
inclusive; and ROE CORPORATIONS I-V,
inclusive,

17 Defendants.
18

} Case No.: A- 16 - 739464 - C

} Dept No.: XX I I

} **COMPLAINT**

} **Arbitration Exemption Claimed:**
} **MEDICAL MALPRACTICE**

19 Plaintiffs, TITINA FARRIS and PATRICK FARRIS, by and through their attorneys,
20 George F. Hand, Esq. and Michael E. Bowman, Esq. of Hand & Sullivan, LLC, complains of
21 Defendants, and each of them, and alleges as follows:

22 **JURISDICTION AND VENUE**

23 1. This Court has subject matter jurisdiction pursuant to NRS 4.370 and Nevada
24 Constitution, Art. VI, § 6.

25 2. This Court is the proper venue pursuant to NRS 13.040.

26 ///

27 ///

28 ///

3. Where applicable, all matters set forth herein are incorporated by reference in the various causes of action which follow.

PARTIES

4. Plaintiff TITINA FARRIS is and was at all times relevant hereto a resident of the County of Clark, State of Nevada.

5. Plaintiff, PATRICK FARRIS, is and was at all times relevant hereto a resident of the County of Clark, State of Nevada.

6. That TITINA FARRIS and PATRICK FARRIS are, and at all times relevant herein were, duly married and living together in the County of Clark, State of Nevada.

7. Defendant BARRY RIVES, M.D. (hereinafter sometimes referred to as (“DR. RIVES”), is and was at all relevant times a physician licensed to practice medicine within the State of Nevada, as defined by N.R.S. Chapter 630, et seq.

8. Upon information and belief, it is alleged that at all times relevant hereto Defendant LAPAROSCOPIC SURGERY OF NEVADA LLC was, and still is, a domestic Limited Liability Company regularly doing business in the County of Clark, State of Nevada.

9. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants DOES I through V, inclusive, and ROE CORPORATIONS I through V, inclusive, are unknown to the Plaintiff, who therefore sues these Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the Defendants designated herein as a Does I through V, inclusive, and/or Roe Corporations I through V, inclusive, is responsible in some manner for the events and happenings herein referred to and caused injury and damages proximately thereby to Plaintiff as herein alleged, and Plaintiff will ask leave of this Court to amend this Complaint to insert the true names and capacities of Defendants DOE and/or ROE CORPORATION when the same have been ascertained by Plaintiff, together with appropriate charging allegations, and adjoin such Defendants in this action.

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111

111

10. At all relevant times, Defendants, and each of them, were the agents, ostensible agents, servants, employees, employers, partners, co-owners, and/or joint venturers of each other and of their co-defendants, and were acting within the color, purpose and scope of their employment, agency, ownership and/or joint ventures and by reason of such relationships the Defendants, and each of them, are vicariously and jointly and severally responsible and liable for the acts and/or omissions of their co-Defendants.

GENERAL ALLEGATIONS

11. Plaintiff incorporates by reference the above paragraphs as though set forth fully hereunder.

12. From on or about July 31, 2014 to July 16, 2015, Plaintiff was under the care of Defendants.

13. That the Defendants, their agents and/or employees, represented themselves to be competent to perform all professional services, treatments and tests that were to be rendered to the Plaintiff, .

14. That at all times herein mentioned, Defendant BARRY RIVES, M.D. was employed by co-defendant LAPAROSCOPIC SURGERY OF NEVADA LLC and acting within the scope of his employment.

FIRST CAUSE OF ACTION

(Medical Malpractice)

15. Plaintiff incorporates by reference the above paragraphs as though set forth fully hereunder.

16. That at all times pertinent hereto, Defendants had a duty to adequately and properly evaluate, diagnose and/or otherwise provide competent medical care within the accepted standard of care to TITINA FARRIS, as well as properly supervise, monitor, communicate with others, and otherwise ensure her health and safety while this patient was under their care.

17. Defendants, each individually, breached the standard of care they owed to Plaintiff TITINA FARRIS by failing to provide reasonable and competent medical treatment and monitoring.

1 18. In support of the allegations contained within this Complaint, Plaintiff has attached
2 as Exhibit 1 the *Affidavit of Vincent E. Pesiri, M.D.* and as Exhibit 2, his *Curriculum Vitae*. Dr.
3 Pesiri was at the time of the events alleged herein, and still is, Board Certified in Surgery. Dr.
4 Pesiri has reviewed the relevant medical records. Based upon his training, background, knowledge
5 and experience, he is familiar with the applicable standards of care for the treatment of individuals
6 demonstrating the symptoms and conditions presented by Plaintiff TITINA FARRIS. Further, he is
7 qualified on the basis of his training, background, knowledge, and experience to offer an expert
8 medical opinion regarding those accepted standards of medical care, the breaches thereof in this
9 case, and any resulting injuries and damages arising therefrom.

10 19. Dr. Pesiri has opined in the attached Exhibit 1 that, to a reasonable degree of
11 medical probability, Defendants fell below the accepted standard of care in their treatment of
12 Plaintiff. On July 3, 2015, Barry Rives, M.D. of Laparoscopic Surgery of Nevada performed a
13 laparoscopic reduction and repair of incarcerated incisional hernia on Titina Farris at St. Rose
14 Dominican Hospital – San Martin Campus. Post-operatively, the patient, Titina Farris became
15 septic as a result of a perforated colon. Dr. Pesiri opined that Dr. Rives deviated from the accepted
16 standard of care in his treatment of Titina Farris. The records indicate Titina Farris was a type 2
17 diabetic, obese and had a history of c-sections. On August 7, 2014, Dr. Rives performed an
18 excision of abdominal wall lipoma with repair of ventral hernia with mesh on Titina Farris. After
19 the August, 2014 surgery, Titina Farris indicated that she thought there was a recurrence of the
20 hernia. After a CT scan in June, 2015, it was determined by Dr. Rives that there was a recurrent
21 abdominal wall hernia. Dr. Rives recommended laparoscopic ventral hernia repair with mesh.

22 20. On July 3, 2015, Dr. Rives performed “1. Laparoscopic reduction and repair of
23 incarcerated incisional hernia with mesh; and 2. Colonorrhaphy x2.” on Titina Farris, a 52 year old
24 female. The operative report of Dr. Rives indicates that the transverse colon was severely stuck
25 and adhered to prior mesh repair. The mesh would not come free from the skin. A small tear was
26 created in the colon using a Endo-GIA blue load. Dr. Rives stapled across the small colotomy. A
27 second small colotomy was also noticeable and was repaired. Dr. Rives noted that after successive
28 firings, the staple lines appeared to be intact. He noted no further serosal or full-thickness injuries

1 to the colon. A piece of mesh was placed in the intrabdominal cavity. The colon was noted to be
2 healthy, viable with no further injuries or tears. The patient was extubated in the OR and noted to
3 be in stable condition.

4 21. After the July 3, 2015 surgery, Titina Farris was noted to have an extremely high
5 WBC. Titina Farris was transferred to the ICU on July 4, 2015. Titina Farris continued to
6 deteriorate. She was noted to have respiratory failure, atrial fibrillation, fever, leukocytosis and
7 ileus. There was evidence of sepsis. Dr. Rives did not determine the cause of the infection post-
8 operatively and Titina Farris did not improve. Titina Farris was placed on a ventilator and received
9 a tracheostomy. Dr. Elizabeth Hamilton was called in for a second opinion.

10 22. On July 16, 2015, Dr. Hamilton operated on Titina Farris. The procedure performed
11 was: 1. Exploratory laparotomy; 2. Removal of prosthetic mesh and washout of abdomen; 3.
12 Partial colectomy and right ascending colon end ileostomy; 4. Extensive lysis of adhesions over 30
13 minutes; 5. Retention suture placement; 6. Decompression of the stool from the right colon into
14 the ostomy; The postoperative diagnosis was: 1. Perforated viscus with free intra-abdominal air;
15 2. Sepsis; 3. Respiratory failure; 4. Anasarca; 5. Fever; 6. Leukocytosis; 7. Fecal disimpaction
16 of the rectum. Of significance, the operative report states: "Decision was made that she had
17 evidence of perforation and likely perforation of the colon from the previous colon injuries. A
18 decision was made that it would be in her best interest to take her to the operating room to evaluate
19 this and try to get rid of the source of continued sepsis in this patient, who is failing". The
20 transverse colon was visualized and there was an approximately quarter-size or 2.5 to 3 cm hole.
21 Around it was an active leak of green feculent material and free air. Feculent material was noted
22 on the mesh with 3 cm colotomy in the transverse colon at the staple line. Titina Farris currently
23 has bilateral foot drop as well as a colostomy. Dr. Pesiri opined that Dr. Rives fell beneath the
24 accepted standard of care as follows: a. Intraoperative technique; b. Failure to adequately repair
25 bowel perforations at the time of July 3, 2015 surgery; c. Poor post-operative management of
26 perforated bowel and resultant sepsis.

1 23. The Defendants' breaches of the respective standards of care and the duty of care
2 owed to Plaintiff TITINA FARRIS constituted a departure from the accepted standard of care or
3 practice and constitutes medical malpractice as that term is defined in NRS 41A.009. (See,
4 Exhibits "1" through "2").

5 24. That as a direct and proximate result of the medical negligence and failures to meet
6 the standard of care by Defendants, Dr. Pesiri has further opined that Plaintiff FARRIS suffered
7 injury and damage to within a reasonable degree of medical probability (Exhibit 1), all to Plaintiff's
8 damages in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00).

9 25. That as a direct and proximate result of the medical negligence and failures to meet
10 the standard of care by Defendants, it has been necessary for Plaintiff to retain the law firm of
11 HAND & SULLIVAN, LLC, to prosecute this action, and Plaintiff is therefore entitled to recover
12 reasonable attorney's fees and costs.

13 **SECOND CAUSE OF ACTION**

14 **(Corporate Negligence/Vicarious Liability)**

15 26. Plaintiffs incorporates by reference the above paragraphs as though set forth fully
16 hereunder.

17 27. Defendant LAPAROSCOPIC SURGERY OF NEVADA LLC's employees, agents,
18 residents and/or servants were acting in the scope of their employment, under BARRY RIVES,
19 M.D.'s control, and in furtherance of LAPAROSCOPIC SURGERY OF NEVADA LLC's interest
20 at the time their actions caused injuries to TITINA FARRIS.

21 28. Defendant LAPAROSCOPIC SURGERY OF NEVADA LLC is vicariously liable
22 for damages resulting from its agents and/or employees and/or servants regarding the injuries to
23 TITINA FARRIS.

24 29. As a result of these breaches, TITINA FARRIS sustained permanent injuries
25 through the employees' and/or agents' negligence and was the proximate cause of injuries.

26 30. As a direct result of these actions/or omissions, TITINA FARRIS sustained
27 permanent injuries resulting in continuing medical treatment and disability.

28 ///

31. As a proximate result of these actions and/or omissions, TITINA FARRIS has had to endure extreme pain and suffering.

32. As a proximate result of these actions and/or omissions, TITINA FARRIS will incur future medical and other special expense, in an amount to be determined at trial.

33. As a result of these actions and/or omissions, TITINA FARRIS is entitled to be compensated in an amount to be determined at the time of trial of this matter, but which is in excess of TEN THOUSAND DOLLARS (\$10,000.00).

34. That as a direct result of these actions and/or omissions, TITINA FARRIS was required to retain the services of an attorney and seeks reimbursement for attorney's fees and costs.

THIRD CAUSE OF ACTION

(Loss of Consortium)

35. Plaintiff incorporates by reference the above paragraphs as though set forth fully hereunder.

36. That TITINA FARRIS suffered injuries as a direct result of Defendants actions as alleged herein.

37. At the time of the events complained of in the Plaintiffs' Complaint, the Plaintiffs were married and that the Plaintiffs continue to be married.

38. That as a result of the wrongful and negligent acts of the Defendants, and each of them, the Plaintiffs were caused to suffer, and will continue to suffer in the future, loss of consortium, loss of society, affection, assistance, and conjugal fellowship, all to the detriment of their marital relationship.

39. That all the aforesaid injuries and damages were caused solely and proximately by the negligence of the Defendants.

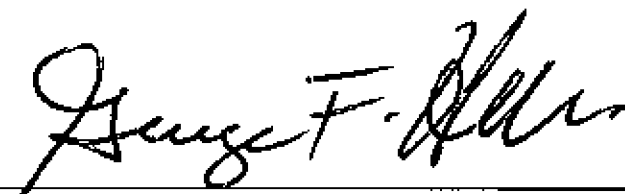
WHEREFORE, Plaintiffs prays for judgment against the Defendants, and each of them, as follows:

1. For general damages and loss in an amount in excess of TEN THOUSAND DOLLARS (\$10,000);

- 1 2. For special damages in an amount to be determined at time of trial;
2 3. For reasonable attorneys fees, pre and post-judgment interest, and costs of suit; and
3 4. For such other and further relief as the Court may deem just and proper.
4

5 Dated: July / , 2016

HAND & SULLIVAN, LLC

6
7 By: 

8 George F. Hand, Esq.
9 Nevada State Bar No. 8483
10 Michael E. Bowman, Esq.
11 Nevada State Bar No. 13833
12 3442 North Buffalo Drive
13 Las Vegas, Nevada 89129
14 Attorneys for Plaintiffs
15 TITINA FARRIS and PATRICK
16 FARRIS
17
18
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EXHIBIT 1

AFFIDAVIT OF VINCENT E. PESIRI, M.D.

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

Vincent E. Pesiri, M.D. being duly sworn, deposes and says:

1. Affiant is over the age of 18, has personal knowledge of the facts set forth herein, and is competent to testify thereto, except as to those matters stated upon information and belief, and as to those matters, I believe them to be true.

2. I am a Board Certified Surgeon. A copy of my curriculum vitae is attached hereto. I am qualified on the basis of my training, background, knowledge and experience to offer expert medical opinions in this matter.

3. I have reviewed the relevant medical records of Titina Farris and my opinions are to a reasonable degree of medical probability.

4. During the course of my career, I have performed a significant amount of hernia surgeries, including repairs of incisional hernias.

5. On July 3, 2015, Barry Rives, M.D. of Laparoscopic Surgery of Nevada performed a laparoscopic reduction and repair of incarcerated incisional hernia on Titina Farris at St. Rose Dominican Hospital – San Martin Campus. Post-operatively, the patient, Titina Farris became septic as a result of a perforated colon.

6. It is my professional opinion, to a reasonable degree of medical probability, that Dr. Rives deviated from the accepted standard of care in his treatment of Titina Farris.

7. The records indicate Titina Farris was a type 2 diabetic, obese and had a history of c-sections. On August 7, 2014, Dr. Rives performed an excision of abdominal wall lipoma with repair of ventral hernia with mesh on Titina Farris. After the August, 2014 surgery, Titina Farris indicated that she thought there was a recurrence of the hernia.

8. After a CT scan in June, 2015, it was determined by Dr. Rives that there was a recurrent abdominal wall hernia. Dr. Rives recommended laparoscopic ventral hernia repair with mesh.

9. On July 3, 2015, Dr. Rives performed "1. Laparoscopic reduction and repair of incarcerated incisional hernia with mesh; and 2. Colonography x2." on Titina Farris, a 52 year old female.

10. The operative report of Dr. Rives indicates that the transverse colon was severely stuck and adhered to prior mesh repair. The mesh would not come free from the skin. A small tear was created in the colon using a Endo-GIA blue load. Dr. Rives stapled across the small colotomy. A second small colotomy was also noticeable and was repaired. Dr. Rives noted that after successive firings, the staple lines appeared to be intact. He noted no further serosal or full-thickness injuries to the colon. A piece of mesh was placed in the intrabdominal cavity. The colon was noted to be healthy, viable with no further injuries or tears. The patient was extubated in the OR and noted to be in stable condition.

11. After the July 3, 2015 surgery, Titina Farris was noted to have an extremely high WBC. Titina Farris was transferred to the ICU on July 4, 2015. Titina Farris continued to deteriorate. She was noted to have respiratory failure, atrial fibrillation, fever, leukocytosis and ileus. There was evidence of sepsis. Dr. Rives did not determine the cause of the infection post-operatively and Titina Farris did not improve. Titina Farris was placed on a ventilator and received a tracheostomy.

12. Dr. Elizabeth Hamilton was called in for a second opinion.

13. On July 16, 2015, Dr. Hamilton operated on Titina Farris. The procedure performed was: 1. Exploratory laparotomy; 2. Removal of prosthetic mesh and washout of abdomen; 3. Partial colectomy and right ascending colon end ileostomy; 4. Extensive lysis of adhesions over 30 minutes; 5. Retention suture placement; 6. Decompression of the stool from the right colon into the ostomy; The postoperative diagnosis was: 1. Perforated viscus with free intra-abdominal air; 2. Sepsis; 3. Respiratory failure; 4. Anasarca; 5. Fever; 6. Leukocytosis; 7. Fecal disimpaction of the rectum.

14. Of significance, the operative report states: "Decision was made that she had evidence of perforation and likely perforation of the colon from the previous colon injuries. A

decision was made that it would be in her best interest to take her to the operating room to evaluate this and try to get rid of the source of continued sepsis in this patient, who is failing". The transverse colon was visualized and there was an approximately quarter-size or 2.5 to 3 cm hole. Around it was an active leak of green feculent material and free air. Feculent material was noted on the mesh with 3 cm colotomy in the transverse colon at the staple line.

15. Titina Farris currently has bilateral foot drop as well as a colostomy.


16. In this case, to a reasonable degree of medical probability, Dr. Rives fell beneath the accepted standard of care as follows:

- a. Intraoperative technique;
- b. Failure to adequately repair bowel perforations at the time of July 3, 2015 surgery;
- c. Poor post-operative management of perforated bowel and resultant sepsis.

17. It is my opinion to a reasonable degree of medical probability that the aforesaid breaches of the standard of care by Dr. Rives caused damage to the Plaintiff resulting in the injuries noted above.

18. I declare that the foregoing is true and correct to the best of my knowledge, that all opinions are stated to a reasonable degree of medical probability, and that this declaration was executed by me. My opinion may be supplemented as more information becomes available.

FURTHER, Affiant sayeth naught.


VINCENT E. PESIRI, M.D.

SUBSCRIBED AND SWORN to before me
this 1st day of July, 2016.


NOTARY PUBLIC

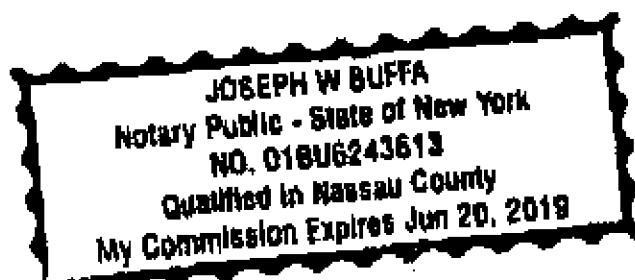


EXHIBIT 2

VINCENT E. PESIRI, MD

93 Fordham Street
Williston Park, NY 11596

Direct: 516-976-4466

Email: DRVME018@gmail.com

EDUCATION:

Fellowship:	Vascular Surgery, State University of New York Lutheran Medical Center, Brooklyn, New York	1983 - 1984
Chief Resident Surgery:	State University of New York, Downstate Medical Center, Kings County Hospital Center	1982 - 1983
Resident Surgery:	State University of New York, Downstate Medical Center, Kings County Hospital Center	1979 - 1982
Internship:	State University of New York, Downstate Medical Center, King County Hospital Center	1978 - 1979
Medical Doctor:	State University of New York, Downstate Medical Center, Brooklyn, New York	1974 - 1978
B.S.	St. John's University, Queens, New York	1971 - 1974

STATE LICENSES: New York and Michigan

**BOARD
CERTIFICATIONS:** AMERICAN BOARD OF SURGERY
AMERICAN BOARD OF QUALITY ASSURANCE
CWS: CERTIFIED WOUND CARE SPECIALIST
CERTIFIED HYPERBARIC MEDICINE

**PROFESSIONAL
SOCIETIES:** FELLOW OF THE AMERICAN COLLEGE OF SURGEONS, AMERICAN
COLLEGE OF HYPERBARIC MEDICINE, UNDERSEAS HYPERBARIC
SOCIETY, STATE OF MICHIGAN MEDICAL SOCIETY, JACKSON
SOCIETY

EMPLOYMENT:	MOBILE HYPERBARICS, Binghamton, NY and Jackson, MI	08/11- 09/14
	NORTH SHORE LIJ WOUND CARE CENTER Lake Success, NY	01/01- 05/11
	DR. VINCENT PESIRI, PRIVATE SURGICAL PRACTICE Glen Cove, NY	1986- 07/09

HOSPITAL AFFILIATIONS:

North Shore University Hospital, Glen Cove, NY	1986 - 2009
Woodhull Medical Center, Brooklyn, NY	1984 - 1987

HOSPITAL POSITIONS AND ACTIVITIES HELD:

(All North Shore University Hospital, Glen Cove, NY)

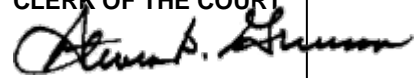
Vice President of Medical Board	2008 - 2009
Secretary - Treasurer of Medical Board	2007 - 2008
Chairman of Tissue Committee	2005 - 2009
Member of Tissue Committee	1992 - 2005
Member of House Staff Committee	1986 - 1992
Member of Nurse-Physician Liaison Committee	1991 - 2009
Member of Ambulatory Care Committee	1990 - 1996
Member of Ambulatory Care Committee	1990 - 1996
Member of Utilization Review Committee	1986 - 2009
Quality Assurance Reviewer of Surgery	1986 - 2009
Secretary of Surgery Department	1986 - 1991

AWARDS:

Outstanding Surgical Teacher in Family Practice Residency	06/2005
Outstanding Surgical Teacher in Family Practice Residency	06/2001
Outstanding Surgical Teacher in Family Practice Residency	06/1988

POST GRADUATE COURSES:

Advanced Cardiac Life Support	06/2010
Primary - Hyperbaric Medicine NBS	09/2010
SWAC	04/2010
Advanced Hernia	10/2008
Sentinel Lymph node Dissection	01/2000
Laparoscopic Surgery	05/1997
Laparoscopic Hernia Repair	09/1994
Advance Laparoscopic Surgery	10/1993
KTP-YAG Laser Surgery	09/1990
F.A.C.S.	10/1989
American College of Surgeons Post Graduate Vascular Surgery	01/1989



1 **NEOJ**

2 KIMBALL JONES, ESQ.

3 Nevada Bar No.: 12982

4 JACOB G. LEAVITT, ESQ.

5 Nevada Bar No.: 12608

6 **BIGHORN LAW**

7 716 S. Jones Blvd.

8 Las Vegas, Nevada 89107

9 Phone: (702) 333-1111

10 Email: Kimball@BighornLaw.com

11 Jacob@BighornLaw.com

12 GEORGE F. HAND, ESQ.

13 Nevada Bar No.: 8483

14 **HAND & SULLIVAN, LLC**

15 3442 N. Buffalo Drive

16 Las Vegas, Nevada 89129

17 Phone: (702) 656-5814

18 Email: GHand@HandSullivan.com

19 *Attorneys for Plaintiffs*

20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 TITINA FARRIS and PATRICK FARRIS,

23 Plaintiffs,

24 vs.

25 BARRY RIVES, M.D.; LAPAROSCOPIC
26 SURGERY OF NEVADA, LLC et al.,

27 Defendants.

CASE NO.: A-16-739464-C

DEPT. NO.: XXXI

NOTICE OF ENTRY OF JUDGMENT

28 YOU, AND EACH OF YOU WILL PLEASE TAKE NOTICE that a Judgment on Verdict
was entered, in the above-entitled matter, on November 14, 2019, a copy of which is attached hereto.

DATED this 19th day of November, 2019.

BIGHORN LAW

By: /s/ Kimball Jones

KIMBALL JONES, ESQ.

Nevada Bar.: 12982

JACOB G. LEAVITT, ESQ.

Nevada Bar No.: 12608

716 S. Jones Blvd.

Las Vegas, Nevada 89107

1 **CERTIFICATE OF SERVICE**

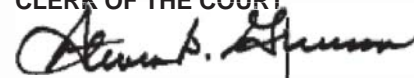
2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of
3 **BIGHORN LAW**, and on the 19th day of November, 2019, I served the foregoing ***NOTICE OF***
4 ***ENTRY OF JUDGMENT*** as follows:
5

6 ☒ Electronic Service – By serving a copy thereof through the Court’s electronic
7 service system; and/or

8 ☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage
9 prepaid and addressed as listed below:

10 Kim Mandelbaum, Esq.
11 MANDELBAUM ELLERTON & ASSOCIATES
12 2012 Hamilton Lane
13 Las Vegas, Nevada 89106
14 &
15 Thomas J. Doyle, Esq.
16 Chad C. Couchot, Esq.
17 SCHUERING ZIMMERMAN & DOYLE, LLP
18 400 University Avenue
19 Sacramento, California 95825
20 *Attorneys for Defendants*
21
22
23
24
25
26
27
28

/s/ *Erickson Finch*
An employee of **BIGHORN LAW**



JGJV

KIMBALL JONES, ESQ.

Nevada Bar No.: 12982

JACOB G. LEAVITT, ESQ.

Nevada Bar No. 12608

BIGHORN LAW

716 S. Jones Blvd.

Las Vegas, Nevada 89107

Phone: (702) 333-1111

Email: Kimball@BighornLaw.com

Jacob@BighornLaw.com

GEORGE F. HAND, ESQ.

Nevada Bar No. 8483

HAND & SULLIVAN, LLC

3442 North Buffalo Drive

Las Vegas, Nevada 89129

Phone: (702) 656-5814

ghand@handsullivan.com

Attorneys for Plaintiffs

TITINA FARRIS and PATRICK FARRIS

DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS and PATRICK FARRIS,

Plaintiffs,

vs.

**BARRY RIVES, M.D., LAPAROSCOPIC
SURGERY OF NEVADA LLC; DOES I-V,
inclusive; and ROE CORPORATIONS I-V,
inclusive,**

Defendants.

Case No.: A-16-739464-C

Dept. No.: 31

JUDGMENT ON VERDICT

The above-entitled matter having come on for trial by jury on October 14, 2019, before the Honorable Joanna S. Kishner, District Court Judge, presiding. Plaintiffs TITINA FARRIS and PATRICK FARRIS ("Plaintiffs"), appeared in person with their counsel of record, KIMBALL JONES, ESQ. and JACOB LEAVITT, ESQ., of the law firm of Bighorn Law, and GEORGE HAND, ESQ., of the law firm of Hand & Sullivan, LLC. Defendants BARRY J. RIVES, M.D. and LAPAROSCOPIC SURGERY OF NEVADA, LLC ("Defendants") appeared by and through their counsel of record, THOMAS DOYLE, ESQ., of the law firm of Schuering, Zimmerman & Doyle,

1 LLP.

2 Testimony was taken, evidence was offered, introduced and admitted. Counsel argued the
3 merits of their cases. The jury rendered a verdict in favor of Plaintiffs and against the Defendants as
4 to claims concerning medical malpractice in the following amounts:

- 5 1. \$1,063,006.94 for TITINA FARRIS' past medical and related expenses;
- 6 2. \$4,663,473.00 for TITINA FARRIS' future medical and related expenses;
- 7 3. \$1,571,000.00 for TITINA FARRIS' past physical and mental pain, suffering,
8 anguish, disability and loss of enjoyment of life;
- 9 4. \$4,786,000.00 for TITINA FARRIS' future physical and mental pain, suffering,
10 anguish, disability and loss of enjoyment of life;
- 11 5. \$821,000.00 for PATRICK' past loss of companionship, society, comfort and
12 consortium; and
- 13 6. \$736,000.00 for PATRICK' future loss of companionship, society, comfort and
14 consortium.

15 The Defendants requested that the jury be polled, and the Court found that seven (7) out of
16 the eight (8) jurors were in agreement with the verdict.

17 NOW, THEREFORE, judgment upon the verdict is hereby entered in favor of the Plaintiffs
18 and against the Defendants as follows:

19 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs shall have and recover
20 against Defendants non-economic damages of \$350,000.00 pursuant to NRS 41A.035, economic
21 damages of \$5,726,479.94, and the pre-judgment interest of \$291,325.58, calculated as follows:

- 22 1. \$1,063,006.94 for TITINA FARRIS' past medical and related expenses, plus
23 prejudgment interest in the amount of \$258,402.69 (interest calculated at 5.50%
24 prime plus 2% for a total of 7.50% from date of service August 16, 2016 to
25 November 12, 2019, for a total of 1,183 days = \$218.43 per day) pursuant to NRS
26 17.130 for a total judgment of \$1,321,409.63; with daily post-judgment interest
accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained
by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be
adjusted accordingly on each January 1 and July 1 thereafter until the judgment is
satisfied;

27 ///

28 ///

2. \$4,663,473.00 for TITINA FARRIS' future medical and related expenses, plus post-judgment interest accruing at \$958.25 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%) pursuant to NRS 17.130 from the time of entry of the judgment with daily post-judgment interest accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied;
3. \$43,225.00 for TITINA FARRIS' past physical and mental pain, suffering, anguish, disability and loss of enjoyment of life, plus prejudgment interest in the amount of \$10,505.04 (interest calculated at 5.50% prime plus 2% for a total of 7.50% from date of service August 16, 2016 to November 12, 2019, for a total of 1,183 days = \$8.88 per day) pursuant to NRS 17.130 for a total judgment of \$53,730.04; with daily post-judgment interest accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied;
4. \$131,775.00 for TITINA FARRIS' future physical and mental pain, suffering, anguish, disability and loss of enjoyment of life, plus post-judgment interest accruing at \$27.07 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%) pursuant to NRS 17.130 from the time of entry of the judgment with daily post-judgment interest accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied;
5. \$92,225.00 for PATRICK FARRIS' past loss of companionship, society, comfort and consortium, plus prejudgment interest in the amount of \$22,417.85 (interest calculated at 5.50% prime plus 2% for a total of 7.50% from date of service August 16, 2016 to November 12, 2019, for a total of 1,183 days = \$18.95 per day) pursuant to NRS 17.130 for a total judgment of \$114,642.85; with daily post-judgment interest accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied; and
6. \$82,775.00 for PATRICK FARRIS' future loss of companionship, society, comfort and consortium, plus post-judgment interest accruing at \$17.00 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%) pursuant to NRS 17.130 from the time of entry of the judgment with daily post-judgment interest accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

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1 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs TITINA FARRIS and
2 PATRICK FARRIS has judgment against Defendants BARRY RIVES, M.D. and
3 LAPAROSCOPIC SURGERY OF NEVADA LLC as follows:

4 Principal \$ 6,076,479.94

5 Pre-Judgment Interest \$ 291,325.58 (1,183 days @ 7.50%)

6 **TOTAL JUDGMENT of:** \$ **6,367,805.52**

7 Pursuant to NRS 17.130, the judgment shall continue to accrue daily post-judgment interest
8 at \$1,248.58 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%); daily post-
9 judgment interest shall accrue at a rate equal to the prime rate at the largest bank in Nevada as
10 ascertained by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted
11 accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

12 SO ORDERED this 12 day of November, 2019.

13
14  JOANNA S. KISHNER
15 HONORABLE JOANNA S. KISHNER
16 District Court Judge

17 Respectfully Submitted by:

Approved as to form and content:

18 Dated this 11th day of November, 2019.

Dated this 11th day of November, 2019.

19
20 **BIGHORN LAW**

21 By: George F. Hand (8483)
22 Kimball Jones, Esq.
23 Nevada Bar No. 12982
716 S. Jones Blvd
Las Vegas, NV 89107

24 George F. Hand, Esq.
25 Nevada Bar No. 8483
3442 N. Buffalo Drive
26 Las Vegas, NV 89129
27 Attorneys for Plaintiffs
28

SCHUERING ZIMMERMAN & DOYLE, LLP

By: /s/ Thomas J. Doyle, Esq.
Thomas J. Doyle, Esq.
Nevada Bar No. 1120
Aimee Clark Newberry, Esq.
Nevada Bar No. 11084
400 University Avenue
Sacramento, CA 95825
Attorneys for Defendants
Barry J. Rives, M.D.;
Laparoscopic Surgery of Nevada, LLC