

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRY JAMES RIVES, M.D.; and
LAPAROSCOPIC SURGERY OF NEVADA,
LLC,

Appellants/Cross-Respondents,

vs.

TITINA FARRIS and PATRICK FARRIS,

Respondents/Cross-Appellants.

BARRY JAMES RIVES, M.D.; and
LAPAROSCOPIC SURGERY OF NEVADA,
LLC,

Appellants,

vs.

TITINA FARRIS and PATRICK FARRIS,

Respondents.

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APPELLANTS' APPENDIX
VOLUME 2

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51.	Offer of Proof re Defendants’ Exhibit C	11/1/19	9	1974-1976
	<u>Exhibit C</u> : Medical Records (Dr. Chaney) re Titina Farris		10	1977-2088
52.	Offer of Proof re Michael Hurwitz, M.D.	11/1/19	10	2089-2091
	<u>Exhibit A</u> : Partial Transcript of Video Deposition of Michael Hurwitz, M.D.	10/18/19	10	2092-2097
	<u>Exhibit B</u> : Transcript of Video Deposition of Michael B. Hurwitz, M.D., FACS	9/18/19	10 11	2098-2221 2222-2261

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53.	Offer of Proof re Brian Juell, M.D.	11/1/19	11	2262-2264
	<u>Exhibit A</u> : Expert Report of Brian E. Juell, MD FACS	12/16/18	11	2265-2268
	<u>Exhibit B</u> : Expert Report of Brian E. Juell, MD FACS	9/9/19	11	2269-2271
	<u>Exhibit C</u> : Transcript of Video Transcript of Brian E. Juell, M.D.	6/12/19	11	2272-2314
54.	Offer of Proof re Sarah Larsen	11/1/19	11	2315-2317
	<u>Exhibit A</u> : CV of Sarah Larsen, RN, MSN, FNP, LNC, CLCP		11	2318-2322
	<u>Exhibit B</u> : Expert Report of Sarah Larsen, R.N.. MSN, FNP, LNC, C.L.C.P.	12/19/18	11	2323-2325
	<u>Exhibit C</u> : Life Care Plan for Titina Farris by Sarah Larsen, R.N., M.S.N., F.N.P., L.N.C., C.L.C.P	12/19/18	11	2326-2346
55.	Offer of Proof re Erik Volk	11/1/19	11	2347-2349
	<u>Exhibit A</u> : Expert Report of Erik Volk	12/19/18	11	2350-2375
	<u>Exhibit B</u> : Transcript of Video Deposition of Erik Volk	6/20/19	11	2376-2436
56.	Offer of Proof re Lance Stone, D.O.	11/1/19	11	2437-2439
	<u>Exhibit A</u> : CV of Lance R. Stone, DO		11	2440-2446
	<u>Exhibit B</u> : Expert Report of Lance R. Stone, DO	12/19/18	11	2447-2453
	<u>Exhibit C</u> : Life Care Plan for Titina Farris by Sarah Larsen, R.N., M.S.N., F.N.P., L.N.C., C.L.C.P	12/19/18	12	2454-2474
57.	Special Verdict Form	11/1/19	12	2475-2476

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59.	Judgment on Verdict	11/14/19	12	2479-2482
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	Declaration of George F. Hand in Support of Motion for Attorneys' Fees and Costs	11/22/19	12	2496-2497
	Memorandum of Points and Authorities	11/22/19	12	2498-2511
	<u>Exhibit "1"</u> : Plaintiffs' Joint Unapportioned Offer of Judgment to Defendant Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC	6/5/19	12	2512-2516
	<u>Exhibit "2"</u> : Judgment on Verdict	11/14/19	12	2517-2521
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	<u>Exhibit "4"</u> : Declarations of Patrick Farris and Titina Farris		12	2537-2541
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72.	<i>Transcript of Proceedings Re:</i> Status Check: Judgment — Show Cause Hearing	11/7/19	15	3302-3363
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77.	<i>Jury Trial Transcript — Day 2</i> (Tuesday)	10/15/19	18	3910-4068
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79.	<i>Jury Trial Transcript — Day 4</i> (Thursday)	10/17/19	20	4285-4331
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80.	<i>Jury Trial Transcript — Day 5</i> (Friday)	10/18/19	20	4332-4533
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83.	<i>Jury Trial Transcript</i> — Day 8 (Wednesday)	10/23/19	23	4939-5121
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89.	<i>Jury Trial Transcript</i> — Day 14 (Friday)	11/1/19	29	6337-6493

ADDITIONAL DOCUMENTS¹

91.	Defendants Barry Rives, M.D. and Laparoscopic Surgery of, LLC's Supplemental Opposition to Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigation And Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time	10/4/19	30	6494-6503
92.	Declaration of Thomas J. Doyle in Support of Supplemental Opposition to Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time	10/4/19	30	6504-6505

¹ These additional documents were added after the first 29 volumes of the appendix were complete and already numbered (6,493 pages).

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93.	<i>Partial Transcript re: Trial by Jury – Day 4 Testimony of Justin Willer, M.D. (Filed 11/20/19)</i>	10/17/19	30	6514-6618
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95.	Notice of Appeal	12/18/19	30	6665-6666
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96.	Notice of Cross-Appeal	12/30/19	30	6673-6675
	<u>Exhibit “1”</u> : Notice of Entry Judgment	11/19/19	30	6676-6682
97.	<i>Transcript of Proceedings Re: Pending Motions</i>	1/7/20	31	6683-6786
98.	<i>Transcript of Hearing Re: Defendants Barry J. Rives, M.D.’s and Laparoscopic Surgery of Nevada, LLC’s Motion to Re-Tax and Settle Plaintiffs’ Costs</i>	2/11/20	31	6787-6801
99.	Order on Plaintiffs’ Motion for Fees and Costs and Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs	3/30/20	31	6802-6815
100.	Notice of Entry Order on Plaintiffs’ Motion for Fees and Costs and Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs	3/31/20	31	6816-6819
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(Cont. 101)	<u>Exhibit 2</u> : Order on Plaintiffs' Motion for Fees and Costs and Defendants' Motion to Re-Tax and Settle Plaintiffs' Costs	3/30/20	31	6842-6857

EXHIBIT “2”



December 19, 2018

Chad Couchot, Esq.
Schuering, Zimmerman & Doyle
400 University Avenue
Sacramento, CA 95825

Re: Titina Farris v. Barry Rives, M.D.; Laparoscopic Surgery of Nevada, LLC, et al.

Mr. Couchot:

Pursuant to your request, I have prepared a Life Care Plan Report in connection with the above entitled matter based on my review of the expert reports, depositions and medical records provided, and upon the recommendations of Lance Stone, M.D. The Life Care Plan Report has been prepared in accordance with Federal Rules of Civil Procedure - Rule 26 and is attached.

Opinions and Life Care Plan:

My opinions, which are set forth in the Life Care Plan Report for Ms. Farris, are based upon the review of expert reports, my 19 years of experience in nursing, academia and life care planning, and the current costs associated from the Las Vegas and Henderson, Nevada areas for the outlined recommendations for medical care, treatment and supplies. I have consulted with Dr. Stone regarding his opinions of future care needs for Ms. Farris. I have outlined the recommendations of Dr. Stone in the Life Care Plan Report. I reserve the right to modify my report in the event additional information is provided.

Records Reviewed:

A list of the expert reports, depositions and medical records reviewed is attached.

Qualifications:

I have been working in the nursing field since 1999. As a Master's prepared Registered Nurse and Family Nurse Practitioner my experience includes, but is not limited to, the following: (1) Medical – Surgical Nursing for Adult and Pediatric patients in the acute care setting; (2) Skilled Nursing care for critically ill patients in the Pediatric Intensive Care Unit of the hospital, including trauma patients and patients with

cardiac, neurological, surgical, hematological and respiratory problems; (3) Supervision and instruction of student nurses in classroom, hospital and home care settings in all areas of patient care; (4) Supervision and training of Registered Nurses, Licensed Vocational Nurses, and Nursing Assistants in Adult Acute and Long Term care, and Neonatal and Pediatric Acute and Long Term care; (5) Medical assessment, management, and education of adult and pediatric patients in the specialty ambulatory care / primary care settings with acute and chronic comorbidities; (6) Continuing Education units for individual licensure and certification; (7) Life Care Planning and Legal Nurse Consulting. My current Curriculum Vitae is attached.

Compensation:

My fee for Trial or Deposition Testimony is \$400.00 an hour. My fee for preparation of the Life Care Plan Report, record review and all other services is \$275.00 an hour. A copy of my fee schedule is attached.

List of Previous Cases:

A list of cases in which I have testified in depositions, arbitrations and trials is attached.

Resources for Life Care Plan:

A list of resources used for the costs in the Life Care Plans is attached.

After your review of this report, please do not hesitate to contact me if you have any questions or comments.

Sincerely,



Sarah Larsen, R.N., MSN, FNP, C.L.C.P.
Olzack Healthcare Consulting, Inc.

SL:bc

Enclosures

LIFE CARE PLAN

FOR

TITINA FARRIS

*** * ***

Dated: December 19, 2018

Prepared by:
OLZACK HEALTHCARE CONSULTING, INC.
Sarah Larsen, R.N., M.S.N., F.N.P., L.N.C., C.L.C.P.
2092 Peace Court, Atwater, CA 95301
Phone: 209-358-8104 / Fax: 209-358-8115

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Name: Titina Farris
Date of Birth: 10-24-1962
Date Prepared: 12-19-2018

LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
Sarah Larsen, RN, BSN, FNPc, CLCP
2092 Peace Ct, Alwater, CA 95301

OPTION I - HOME CARE (DIRECT HIRE)					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Option I Home Care Trained Attendant Direct Hire - 90% and Agency Hire - 10% (Hourly)	Age 56 to Life	2-4 hours / day	To assist Ms. Farris with activities of daily living and day to day chore work	Trained Attendant Direct Hire - 90% \$13.00 to \$15.00 per hour and 18% Employer Taxes and Agency Hire - 10% \$21.50 / hour	Option I Annually \$13,806.45 \$2,485.16 \$2,355.86
Option I Payroll Service	1 x Only 1 x / 2 weeks	1 x Only 1 x / 2 weeks	To manage payroll services for the trained attendant	Initial Fee \$200.00 Bi-Weekly \$44.00 to \$68.00	Option I One Time Only \$200.00 Annually \$1,456.00
Option I Advertising, Agency Referral Fee Allowance	1 x / year	1 x / year	To cover costs for advertising/referral service for trained attendant	\$1,000.00 / year	Option I Annually \$1,000.00

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Page 1

Name: Titina Farris
 Date of Birth: 10-24-1962
 Date Prepared: 12-19-2018

LIFE CARE PLAN

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 2092 Peace Ct, Atwater, CA 95301

OPTION I - HOME CARE (DIRECT HIRE) - Continued					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Option I Housekeeping	Age 56 to Life	2-4 hours / month	For heavy housekeeping including scrubbing, vacuuming, mopping, etc.	\$65.77 / hour	Option I Annually \$2,367.72
Option I Case Management	Age 56 to Life	4-8 hours / year	Coordinates care and communicates with Ms. Farris and her health care providers as necessary	\$105.00 / hour	Option I Annually \$630.00
TOTALS:					Option I One Time Only \$200.00 Annually \$24,101.19
Resources: Paychex, Inc. United States Department of Labor - Occupational Wage and Salary Data					

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Page 2

Name: Titina Farris
 Date of Birth: 10-24-1962
 Date Prepared: 12-19-2018

LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
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 2092 Peace Ct, Atwater, CA 95301

OPTION II - HOME CARE (AGENCY HIRE)					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Option II Home Care Trained Attendant Agency Hire 100%	Age 56 to Life	2-4 hours / day	To assist Ms. Farris with activities of daily living and day to day chore work	Trained Attendant Agency Hire - 100% \$21.50 / hour	Option II Annually \$23,558.63
Option II Housekeeping	Age 56 to Life	2-4 hours / month	For heavy housekeeping including scrubbing, vacuuming, mopping, etc.	\$65.77 / hour	Option II Annually \$2,367.72
Option II Case Management	Age 56 to Life	4-8 hours / year	Coordinates care and communicates with Ms. Farris and her health care providers as necessary	\$105.00 / hour	Option II Annually \$630.00
TOTALS:					Option II Annually \$26,556.35

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Page 3

Name: Tiffina Farris
Date of Birth: 10-24-1962
Date Prepared: 12-19-2018

LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
Sarah Larsen, RN, BSN, FNPC, CLCP
2092 Peace Ct, Atwater, CA 95301

FUTURE MEDICAL CARE					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Physical Medicine and Rehabilitation Specialist	Age 56	1 Evaluation	To evaluate and manage issues related to mobility, pain and orthotics	Evaluation \$254.00 to \$500.00 Follow Up Visit \$100.00 to \$154.00	One Time Only \$377.00
	Age 56 to Life	4 x / year			Annually \$508.00
Podiatrist	Age 56	1 Evaluation	To evaluate and manage wound care/foot care for Ms. Farris	Evaluation \$75.00 to \$175.00 Follow Up Visit \$45.00 to \$50.00	One Time Only \$125.00
	Age 56 to 57	6-12 x / year x 1 year			Annually To Age 57 \$427.50
	Age 57 to Life	4-6 x / year			Age 57 to Life \$237.50

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Name: Titina Farris
 Date of Birth: 10-24-1962
 Date Prepared: 12-19-2018

LIFE CARE PLAN

Ozack Healthcare Consulting, Inc.
 Sarah Larsen, RN, BSN, FNPC, CLCP
 2092 Peace Ct, Alwater, CA 95301

FUTURE MEDICAL CARE - Continued						
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost	
Psychologist	Age 56 to Life	10-20 x / Life	For individual and family therapy related to adjusting to health care needs	Session \$100.00 to \$225.00	One Time Only \$2,437.50	
Dietician	Age 56 Age 56 to Life	1 Evaluation 1 x / year	For dietary counselling related to weight, blood pressure and diabetes management	Evaluation \$75.00 to \$130.00 Follow Up Visit \$45.00 to \$90.00	One Time Only \$102.50 Annually \$67.50	
Wound Clinic	Age 56	2 x / week x 3-6 months	For the evaluation and treatment of wound to left heel	Visit \$249.24	One Time Only \$9,720.36	

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Name: Tina Farris
 Date of Birth: 10-24-1962
 Date Prepared: 12-19-2018

LIFE CARE PLAN

Oizack Healthcare Consulting, Inc.
 Sarah Larsen, RN, BSN, FNPC, CLCP
 2092 Peace Ct, Atwater, CA 95301

FUTURE MEDICAL CARE - Continued	
<p style="text-align: center;">TOTALS:</p>	Annual Cost
	One Time Only \$12,762.36
	Annually To Age 57 \$1,003.00
	Age 57 to Life \$813.00
<div> <div> Resources: Desert Orthopedic Center Advance Orthopedics and Sports Medicine Dynamic Pain Rehabilitation McKenna, Ruggeroli & Helmi Eric Brimhall, M.D. - Physiatrist Eastern Podiatry Jerry T Henry, DPM Foot Care Clinic Apache Foot and Ankle Specialist Foot and Ankle Specialist of Nevada Swenson Foot and Ankle Danielson Therapy </div> <div> Bree Mullin, Psy.D. - Psychologist Life Quest Behavioral Health Quest Anders and Dunaway Nutrition Consultants, Inc. Your Dietician for Diabetes and Weight Control Nutrition Moves Nutrition by Joey The Food Connection </div> </div>	

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Name: Titina Farris
 Date of Birth: 10-24-1962
 Date Prepared: 12-19-2018

LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
 Sarah Larsen, RN, BSN, FNPC, CLCP
 2092 Peace Ct, Atwater, CA 95301

WHEELCHAIR NEEDS					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Power Scooter or Power Wheelchair	Age 56 to Life	1 x / 7 years	For distance and community mobility	\$1,678.17	Annually \$239.74
Manual Wheelchair	Age 56 to Life	1 x / 7 years	For community mobility	\$179.75	Annually \$25.68
Wheelchair Cushion	Age 56 to Life	1 x / 2 years	For increased safety when using scooter or wheelchair	\$31.29	Annually \$15.65
Portable Ramps	Age 56 to Life	1 x / 7 years	For increased safety and mobility	\$100.85	Annually \$14.41
TOTALS:					Annually \$295.47

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Name: Titina Farnis
 Date of Birth: 10-24-1962
 Date Prepared: 12-19-2018

LIFE CARE PLAN

Oizack Healthcare Consulting, Inc.
 Sarah Larsen, RN, BSN, FNPC, CLCP
 2092 Peace Ct, Alwater, CA 95301

DURABLE MEDICAL EQUIPMENT AND SUPPLIES					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
4-Wheeled Walker	Age 56 to Life	1 x / 5 years	For increased safety and independence with ambulation	\$65.83	Annually \$13.17
Reacher	Age 56 to Life	1 x / 5 years	For increased safety and independence in the home and community	\$11.56	Annually \$2.31
Handheld Shower Head	Age 56 to Life	1 x / 5 years	For increased safety and independence with hygiene	\$25.19	Annually \$5.04
Shower Bench	Age 56 to Life	1 x / 5 years	For increased safety and independence with hygiene	\$56.08	Annually \$11.22
Grab Bars	Age 56 to Life	1 x / 5 years	For increased safety and independence with hygiene	\$14.66	Annually \$2.93
Single Point Cane	Age 56 to Life	1 x / 5 years	For increased safety and independence with ambulation	\$14.81	Annually \$2.96

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Page 8

Name: Titina Farris
Date of Birth: 10-24-1962
Date Prepared: 12-19-2018

LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
Sarah Larsen, RN, BSN, FNPc, CLCP
2092 Peace Ct, Alwater, CA 95301

DURABLE MEDICAL EQUIPMENT AND SUPPLIES - Continued	
TOTALS:	Annual Cost
	Annually \$37.63

Name: Tina Farris
Date of Birth: 10-24-1962
Date Prepared: 12-19-2018

LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
Sarah Larsen, RN, BSN, FNPc, CLCP
2092 Peace Ct, Atwater, CA 95301

PROJECTED THERAPEUTIC MODALITIES					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Physical Therapy Evaluation	Age 56 to Life	1 x / year	To evaluate and assist in formulating a home exercise program	Evaluation \$85.00 to \$120.00	Annually \$102.50
Occupational Therapy Evaluation	Age 56 to Life	1 x / year	To evaluate for any needs related to activities of daily living and assistive devices	Evaluation \$85.00 to \$120.00	Annually \$102.50
Gym Membership with Pool	Age 56 to Life	Enrollment Fee 1 x Only Annual Fee 1 x / year Monthly Membership Fee 1 x / month	For physical activity to improve overall health and cardiovascular status, assist with weight management	Enrollment Fee \$40.00 to \$99.00 Annual Fee \$0.00 to \$45.00 Monthly Membership Fee \$23.00 to \$45.00	One Time Only \$69.50 Annually \$22.50 Annually \$408.00

Confidential

Name: Titina Farris
Date of Birth: 10-24-1962
Date Prepared: 12-19-2018

LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
Sarah Larsen, RN, BSN, FNPc, CLCP
2092 Peace Ct, Atwater, CA 95301

PROJECTED THERAPEUTIC MODALITIES - Continued		
TOTALS:	Annual Cost	
		One Time Only \$69.50 Annually \$635.50
<div>Resources:</div> <div>Select Physical Therapy</div> <div>ATI Physical Therapy</div> <div>Matt Smith Physical Therapy</div> <div>Tim Soder Physical Therapy</div> <div>Tru Physical Therapy</div> <div>Leavitt Physical Therapy</div> <div>Affiliated Therapy</div> <div>Skyview YMCA</div> <div>Las Vegas Athletic Clubs</div> <div>Anytime Fitness Desert Inn</div>		

Name: Titina Farris
Date of Birth: 10-24-1962
Date Prepared: 12-19-2018

LIFE CARE PLAN

Olzack Healthcare Consulting, Inc.
Sarah Larsen, RN, BSN, FNPC, CLCP
2092 Peace Ct, Atwater, CA 95301

ORTHOTICS					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Bilateral Custom Fit AFO	Age 56 to Life	1 pair / 3-4 years	To maintain anatomical and functional positioning of ankles and feet	\$66.30 / each	Annually \$37.89
PRAFO	Age 56 to Life	1 x / 3-4 years	For nighttime use to help prevent pressure sores on feet	\$236.30	Annually \$67.51
TOTALS:					Annually \$105.40

Name: Titina Farris
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TRANSPORTATION					
Recommendations:	Age When Initiated / Suspended:	Frequency:	Purpose:	Cost:	Annual Cost
Wheelchair Accessible Van (Conversion Package)	Age 56 to Life	1 x / 7 years	To transport wheelchair or power scooter for community mobility	\$22,240.00	Annually \$3,177.14
TOTALS:					Annually \$3,177.14

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2092 Peace Ct, Atwater, CA 95301

RESOURCES

Name: Titina Farris
Date of Birth: 10-24-1962
Date Prepared: 12-19-2018

Payroll Service / Bookkeeping

Paychex, Inc.
(855) 973-2408 / National Sales Line
Set-Up Fee: \$200.00 *one-time fee
Bi-Weekly: \$44.00 - \$68.00 / pay period
*payroll fees for 1-5 employee; prices range based on
complexity of payroll (for example if wages need to be
garnished)

Physical Medicine and Rehabilitation

Desert Orthopedic Center
Andrew Kim D.O. – Physiatrist
2800 East Desert Inn Road, Suite 100
Las Vegas, NV 89121
(702) 731-4088 / Caren
Evaluation: \$300.00 - \$500.00
Follow Up Visit: \$ 100.00

Advance Orthopedics and Sports Medicine
Matthew HC Otten M.D. – Physiatrist
8420 West Warm Springs Road, Suite 100
Las Vegas, NV 89113
(702) 740-5327 / Anette
Evaluation: \$254.00
Follow Up visit: \$154.00

Dynamic Pain Rehabilitation

Alexander Inas, M.D. – Physiatrist
1358 Paseo Verde Parkway, Suite 100
Henderson, NV 89012
(702)982-7100 / Stephanie
Evaluation: \$ 275.00
Follow Up visit: \$ 100.00

McKenna, Ruggeroli & Helmi
6070 South Fort Apache Road 100
Las Vegas, NV 89148
702) 307-7700 / Daisy
Evaluation: \$400.00
Follow Up Visit: \$100.00

Physical Medicine and Rehabilitation - Cont.

Innovative Pain Center
Eric Brimhall, M.D. – Physiatrist
503 South Rancho Drive, Suite G44
Las Vegas, CA 89106
(702) 684-7246 / Jesiree
Evaluation: \$455.00
Follow Up Visit: \$100.00

Name: Titina Farris
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RESOURCES

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Podiatry

Eastern Podiatry
 3777 Pecos-McLeod, Suite 103
 Las Vegas, NV 89121
 (702) 434-2023 / Perala
 Evaluation: \$120.00
 Follow Up Visit: \$45.00

Jerry T Henry, DPM
 341 North Buffalo Drive, Suite A
 Las Vegas NV 89145
 (702) 242-3870 / Heather
 Evaluation: \$75.00
 Follow Up Visit: \$45.00

Foot Care Clinic
 3650 South Eastern Avenue, Suite 200
 Las Vegas, NV 89169
 (702) 420-7970 / Cindy
 Evaluation: \$97.00
 Follow Up Visit: \$50.00

Apache Foot and Ankle Specialist
 Lee Wittenberg, DPM
 4840 South Fort Apache Road, Suite 101
 Las Vegas, NV 89147
 (702) 362-6634 / Jasmine
 Evaluation: \$110.00
 Follow Up Visit: \$45.00

Podiatry - Cont.

Foot and Ankle Specialist of Nevada
 7135 West Sahara Avenue, Suite 201
 Las Vegas, NV 89117
 (702) 878-2455 / Yolanda
 Evaluation: \$175.00
 Follow Up Visit: \$50.00

Swenson Foot and Ankle
 5380 Rainbow Boulevard, Suite 318
 Las Vegas, NV 89118
 (702) 873-3556 / Yarcely
 Evaluation: \$120.00-\$140.00
 Follow Up Visit: \$45.00

Psychology

Danielson Therapy
 Melissa Danielson, Ph.D. – Psychologist
 9480 South Eastern Avenue, Suite 258
 Las Vegas, NV 89123
 (702) 339-5663 / Melissa Danielson
 Session: \$125.00 – \$150.00

Bree Mullin, Psy.D. – Psychologist ☐
 1820 East Warm Springs Road, Suite 115
 Las Vegas, NV 89119
 (702) 270-4357 / Cassidy
 Session: \$225.00

Life Quest Behavioral Health Quest
 4780 Arville Street
 Las Vegas, NV 89103
 (720) 830-9740 / Carla
 Sessions: \$100.00

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Name: Titina Farris
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Date Prepared: 12-19-2018

RESOURCES

Olzack Healthcare Consulting, Inc.
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Dietician

Anders and Dunaway Nutrition Consultants, Inc.
2121 East Flamingo Road, Suite 110
Las Vegas, NV 89119
(702) 382-8841 / Brenda
Evaluation: \$75.00
Follow Up Visit: \$45.00

Your Dietician for Diabetes and Weight Control
7655 West Sahara Avenue, Suite 110
Las Vegas, NV 89117
(702) 525-1105 / Lydia
Evaluation: \$85.00
Follow Up Visit: \$45.00

Nutrition Moves

Geri Lynn Grossan, Med, RDN, CDE, HTCP
7721 Leavonite Drive
Las Vegas, NV 89128
(702) 242-5730
Evaluation: \$130.00
Follow Up Visit: \$90.00

Nutrition by Joey

8275 South Eastern Avenue #118
Las Vegas, NV 89123
(702) 878-5639 / Cecelia
Evaluation: \$95.00
Follow Up Visit: \$55.00

Dietician - Cont.

The Food Connection
4215 South Grand Canyon
Las Vegas, NV 90147
(702) 664-1204 / Stephanie
Evaluation: \$95.00
Follow Up Visit: \$45.00 - \$90.00

Physical Therapy

Select Physical Therapy
821 North Nellis Boulevard, Suite 130
Las Vegas, NV 89110
(702) 452-4563 / Liz
Evaluation: \$120.00

ATI Physical Therapy

7301 Peak Drive, Suite 101
Las Vegas, NV 89128
(702) 940-3000 / Kandra / Sherry
Evaluation: \$85.00

Matt Smith Physical Therapy

1505 Wigwam Parkway, Suite 240
Henderson, NV 89074
(702) 568-0195 / Brent, Donna
Evaluation: \$85.00

Tim Soder Physical Therapy

2779 West Horizon Ridge Parkway, Suite 100
Henderson, NV 89052
(702) 897-1222 / Chelsea
Evaluation: \$95.00

Tru Physical Therapy

70 East Horizon Ridge Parkway Suite 180
Henderson, NV 89002
(702) 856-0422 / Kylie / Tayslie
Evaluation: \$120.00

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RESOURCES

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Physical Therapy - Cont.

Leavitt Physical Therapy
3037 West Horizon Ridge Parkway, Suite 120
Henderson, NV 89052
(702) 263-4993 / Jeff
Evaluation: \$120.00

Affiliated Therapy
9050 West Cheyenne Avenue, Suite 210
Las Vegas, NV 89129
(702) 209-0069 / Carol
Evaluation: \$100.00

Occupational Therapy

Affiliated Therapy
9050 West Cheyenne Avenue, Suite 210
Las Vegas, NV 89129
(702) 209-0069 / Carol
Evaluation: \$100.00

Select Physical Therapy
821 North Nellis Boulevard, Suite 130
Las Vegas, NV 89110
(702) 452-4563 / Liz
Evaluation: \$120.00

Matt Smith Physical Therapy
1505 Wigwam Parkway, Suite 240
Henderson, NV 89074
(702) 568-0195 / Brent, Donna
Evaluation: \$85.00

ATI Physical Therapy
7301 Peak Drive, Suite 101
Las Vegas, NV 89128
(702) 940-3000 / Kandra / Sherry
Evaluation: \$85.00

Gym Membership with Pool

Skyview YMCA
3050 East Centennial Parkway
North Las Vegas, NV 89081
(702) 522-7500 / Crystal
Monthly Membership: \$39.00

Las Vegas Athletic Clubs
2655 South Maryland Parkway
Las Vegas, NV 89109
(702) 734-5822 / Tony
Enrollment Fee: \$49.00 - \$99.00
Monthly Fee: \$23.00 - \$31.00
Annual Fee: \$0.00

Anytime Fitness Desert Inn
8490 West Desert Inn Road
Las Vegas, NV 89117
(702) 820-0660 / Steve
Enrollment Fee: \$40.00 - \$50.00
Monthly Fee: \$35.99 - \$44.99
Annual Fee: \$45.00

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Name: Titina Farris
Date of Birth: 10-24-1962
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RESOURCES

Olzack Healthcare Consulting, Inc.
Sarah Larsen, RN, BSN, FNPC, CLCP
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UNITED STATES DEPARTMENT OF LABOR

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Occupational Employment Statistics Query System

Occupational Employment Statistics

Multiple occupations for one geographical area



Area: Las Vegas-Henderson-Paradise, NV
Period: May 2017

Occupation (SOC code)	Hourly mean wage
Home Health Aides (311011)	15.83
Personal Care Aides (319021)	11.27
Sources:	
SOC code Standard Occupational Classification code — see http://www.bls.gov/soc/ for more	
Data obtained on 12/19/18	

**LIST OF RECORDS REVIEWED FOR
TITINA FARRIS**

Depositions:

- Deposition of Patrick Farris taken 10-11-18
- Deposition of Titina Farris taken 10-11-18

Medical Reports:

- PM&R Life Care Planning Evaluation Report by Alex Barchuk, M.D. dated 3-20-18
- Life Care Plan Report by Dawn Cook, R.N. dated 6-6-18; Includes:
 - Past Medical Bill Review by Dawn Cook, R.N. dated 11-15-18
- Expert Report by Justin Aaron Willer, M.D. dated 10-22-18

Medical / Billing Records:

- Medical and Billing Records from Advanced Orthopedics Sports Medicine
- Medical and Billing Records from Barry Rives, M.D.
- Medical and Billing Records from Bess Chang, M.D.
- Medical and Billing Records from Care Meridian
- Medical and Billing Records from Desert Valley Therapy
- Medical and Billing Records from Naomi Chaney, M.D.
- Medical and Billing Records from Elizabeth Hamilton, M.D. (x2)
- Medical and Billing records from Steven Y. Chinn, M.D.
- Medical and Billing Records from Laparoscopic Surgery of Nevada
- Medical and Billing Records from St. Rose Dominican - Siena Campus
- Medical Records from St. Rose Dominican Hospital

Miscellaneous Records and Reports:

- 15 Wound Photos
- Video "M2U00211" (00:48 seconds)
- Video "M2U00212" (01:03 minutes)
- Video "M2U00213" (01:07 minutes)
- Video "M2U00214" (01:17 minutes)

- Video "M2U00215" (00:42 seconds)
- Video "M2U00216" (00:27 seconds)
- Video "M2U00217" (00:44 seconds)
- Video "M2U00218" (00:10 seconds)
- Video "M2U00219" (00:59 seconds)
- Video "M2U00220" (00:37 seconds)
- Video "M2U00221" (00:18 seconds)
- Video "M2U00222" (00:11 seconds)
- Video "M2U00223" (00:10 seconds)
- Video "M2U00224" (00:33 seconds)
- 2 Photos - In LCP File

SARAH LARSEN, RN, MSN, FNP, LNC, CLCP

1120 Commerce Avenue #15 | Atwater, CA 95301 | 661-205-6917 | slarsen@olzackhealthcare.com

EDUCATION AND DEGREES

- University of Florida Life Care Planning Post Graduate Certification Program - Completion August, 2014
- National Association of Legal Nurse Consultants Certification Program - December, 2012
- California State University Bakersfield, Bakersfield, CA, Masters of Science in Nursing - 2004
- California State University Bakersfield, Bakersfield, CA, Bachelors of Science in Nursing - 1999
- California State University Fresno, Fresno, CA, General Education 1993-1995

CERTIFICATIONS AND LICENSURES

- Certified Life Care Planner, August 2014
- Legal Nurse Consultant, December 2012
- Nurse Practitioner, California Board of Registered Nursing, 2004
- Registered Nurse, California Board of Registered Nursing, 1999
- Pediatric Advanced Life Support - ongoing certification

EMPLOYMENT HISTORY

1/20/2017 - current

California State University, Bakersfield – Nursing Professor

Bakersfield, CA

- Lecturer, content expert, and lead instructor for pediatric nursing - Educate students at the baccalaureate degree RN level in both didactic and clinical instruction
- Comply with regulatory board standards
- Developed lectures, assignments and exams relating to pharmacology and pediatric didactic content
- Coordinate and conduct clinical and simulation laboratory experiences for nursing students
- Participate in faculty meetings

October 2016 – March 2017

All Season's Hospice – Nurse Practitioner

Lancaster, CA

- Home / Site visits with hospice patients under service of All Season's Hospice
- Conduct physical assessments, assess for any changes in client's status
- Prescribing medications and necessary supplies for self-care and medical management
- Collaborate with the patient care team for plan of care
- Documentation of client progress in the medical chart

January 2014 - current

Olzack Healthcare Consulting - Life Care Planner

Atwater, CA

- Medical record review, summarization, and chronologies for litigation
- Participate in independent medical examinations
- Development of life care plans
- Medical – legal consulting for litigation
- Expert witness testimony

June 2012 - current

SS Legal Consulting - Legal Nurse Consulting

Bakersfield, CA

- Medical record review, summarization, and chronologies for litigation
- Participate in initial intake interviews and provide professional nursing opinion on standard of care
- Participate in independent medical examinations

8/2/2001 – 11/2015

Bakersfield Memorial Hospital – Registered Nurse

Bakersfield, CA

- Registered nurse working in pediatric acute care and pediatric intensive care
- Continually assess patients in the inpatient setting with acute and chronic healthcare needs

- Develop and implement individualized plan of care for each patient including medication administration, procedures, equipment and various treatment modalities and therapies
- Evaluate patient response to treatment and therapies
- Work collaboratively with multidisciplinary team of physicians, dieticians, respiratory therapists, case managers, and occupational and physical therapists
- Precept, mentor and educate new graduate nurses in the clinical and classroom settings

8/1/2007 - 7/31/2013

Bakersfield College – Nursing Professor

Bakersfield, CA

- Tenured professor, content expert, and lead instructor for pediatric nursing - Educated students at the associate degree RN and LVN level in both didactic and clinical instruction
- Complied with regulatory board standards
- Developed lectures, assignments and exams relating to medical surgical and pediatric didactic content
- Coordinated and conducted clinical and simulation laboratory experiences for nursing students
- Participated in faculty meetings and committees

12/30/2004 - 8/1/2007

Kaiser Permanente – Nurse Practitioner

Bakersfield, CA

- Coordinator of pre and post bariatric surgery/weight management clinic
- Coordinated care and case management for pre and post bariatric patients through the Health Education Department
- Instructed classes for weight management and pre and post bariatric healthcare information
- Examined adult and pediatric patients, evaluated and managed care and comorbid conditions while in the weight management program
- Collaborated with primary care physicians, specialty services and case management as needed for patient care
- Ordered and interpreted diagnostic tests, and ordered medications to manage comorbid conditions
- Initiated referrals to specialty care providers as necessary for medical conditions

8/1/2004 - 7/31/2007

California State University, Bakersfield – Lecturer, Clinical Instructor

Bakersfield, CA

- Tenured professor, content expert, and lead instructor for pediatric nursing - Educated students at the baccalaureate degree RN level in both didactic and clinical instruction
- Complied with regulatory board standards
- Developed lectures, assignments and exams relating to pediatric didactic content
- Conducted clinical and simulation laboratory experiences for nursing students
- Participated in faculty meetings

7/6/1999 - 8/1/2001

Mercy Southwest Hospital – Registered Nurse

Bakersfield, CA

- Registered nurse for inpatient medical surgical and pediatric units
- Continually assess patients in the inpatient setting with acute and chronic healthcare needs
- Develop and implement individualized plan of care for each patient including medication administration, procedures, therapies and various treatment modalities
- Evaluate patient response to treatment and therapies
- Work collaboratively with multidisciplinary team of physicians, dietitians, respiratory therapists, case managers, and occupational and physical therapists
- Precept, mentor and educate new graduate nurses in the clinical and classroom setting

PROFESSIONAL ORGANIZATIONS

- AANLCP America Association of Nurse Life Care Planners
- AALNC American Association of Legal Nurse Consultants
- Sigma Theta Tau International Honor Society for Nursing



Olzack Healthcare Consulting, Inc.

1120 Commerce Avenue #15, Atwater, CA 95301

Phone: 209-358-8104 Fax: 209-358-8115

olzackhealthcare@gmail.com

FEE SCHEDULE

To Whom It May Concern:

Effective November 1, 2017:

Fee Schedule for Professional Services rendered by Sarah Larsen, R.N., C.L.C.P.:

Review of Medical Records, Life Care Plans,
Depositions, Responses to Interrogatories;
Research; Preparation of Life Care Plans and
Reports; Evaluation of Facilities for Placement;
Patient Evaluations; Consultation; and Travel: \$275.00 per hour
(Travel rate same as hourly rate)

**ALL REPORTS (VERBAL OR WRITTEN)
REQUESTED WITHIN 8 WEEKS OF DUE
DATE WILL BE BILLED AT A RUSH RATE: \$325.00 per hour**

Deposition, Arbitration and Trial Testimony: \$400.00 per hour
1 hour minimum

Printing Fee: \$0.10 per page

Scanning Fee: \$0.15 per page
(We request all case material be sent to us electronically,
i.e. CD, flash drive, email or secure website. All hard copy
material will be scanned by our office)

Make checks payable to: **Olzack Healthcare Consulting, Inc. Tax ID#46-1649947**



Olzack Healthcare Consulting

2092 Peace Court, Atwater, CA 95301
 Phone: 209-358-8104 Fax: 209-358-8115
 olzackhealthcare@gmail.com

DEPOSITIONS

2015 to 2018

Name	Year	Name	Year
Corey Abrahms (D)	2015	Heather Campbell (D)	2017
Mikala Osborn (D)	2015	Elizabeth Bolden (D)	2017
Florence Kuhlmann (D)	2015	Steven Handrop (D)	2017
Paulette Johnson (D)	2015	Steven Meier (D)	2017
Linda Crete (D)	2016	Patricia Colombo (D)	2017
Charles Draper (D)	2016	Robert Fisher (D)	2017
Alexa Simpson (D)	2016	Mason Banuelos (D)	2017
Michael Crump (P)	2016	Anthony Ford (D)	2017
Bai Quan Su (D)	2016	Banuelos, Mason (D)	2018
Steven Kennedy (D)	2016	Winstead, Porche (D)	2018
Leslie Topping (D)	2017	Ramirez, Sonia (D)	2018
D.M. (D)	2017	Smith, Paul (D)	2018
Jorge Frias (D)	2017	Su Kyong Pae (D)	2018
Sabrina Zavala (D)	2017	Cullinane, Karan (P)	2018
Ali, Tehezzeb (D)	2017		
Total Depositions			29

ARBITRATIONS

2015 to 2018

Name	Year
Veronica Bland (D)	2016
Su Kyong Pae (D)	2018
Total Arbitrations	2



Olzack Healthcare Consulting

2092 Peace Court, Atwater, CA 95301

Phone: 209-358-8104 Fax: 209-358-8115

olzackhealthcare@gmail.com

TRIALS

2015 to 2018

Name	Year
Florence Kuhlmann (D)	2015
Linda Crete (D)	2016
Alexa Simpson (D)	2016
Jorge Frias (D)	2017
Steven Meier (D)	2017
Steven Kennedy (D)	2017
Stephen Handrop (D)	2017
Culinane, Karen (P)	2018
Total Trials	8

EXHIBIT “3”



Life Expectancy Group

SCOTT J. KUSH, MD JD MPH
101 Jefferson Drive, Menlo Park, CA 94025
skush@LifeExpectancyGroup.com

Life Expectancy Report
Ms. Titina Farris
December 19, 2018

Chad C. Couchot, Esq.
Schuering Zimmerman & Doyle, LLP
400 University Avenue
Sacramento, CA 95825-6502

Mr. Couchot,

This report responds to your request for my opinions on Ms. Titina Farris' life expectancy, as of the date of this report, and for a summary of my scientific analyses.

Information Reviewed

My information on Ms. Titina Farris is taken from the materials that have been provided and which include:

Medical records

- St. Rose Dominican Hospital - San Martin Campus
- St. Rose Dominican Hospital - Siena Campus
- Laparoscopic Surgery of Nevada
- Elizabeth Hamilton, MD
- Steven Y. Chinn, MD
- Naomi Chaney, MD
- Desert Valley Therapy
- Care Meridian
- Bess Chang, MD
- Barry Rives, MD
- Advanced Orthopedics & Sports Medicine

Report

- Justin Willer, MD (10/22/2018)

Depositions

- Titina Farris (10/11/2018)
- Patrick Farris (10/11/2018)
- Barry Rives, MD (10/24/2018)

Other

- Plaintiff's responses to First Request for Production of Documents
- Plaintiff's responses to First Set Interrogatories
- Plaintiff's Expert Disclosure with exhibits
- Defendant's Expert Disclosure

Life Expectancy Group
101 Jefferson Drive, Menlo Park, CA 94025
Phone: (650) 387-7972 Fax: (650) 745-1034

An Introduction to Life Expectancy

In medicine and science, the term *life expectancy* is defined as the average survival time in a large group of similar persons. Survival time is the actual number of years, months, days, and hours a person will live. Life expectancy is not survival time.

The National Center for Health Statistics reports that the life expectancy of a U.S. female at birth is 81.3 additional years.¹ This represents the average, arithmetic mean, survival time of U.S. females born today. It is a summary measure of more extensive information contained in a life table including annual probabilities of survival and age-specific mortality rates. Life expectancy is not intended to predict the actual survival time of any individual and it does not mean that we expect a given female, born today, will die *precisely* at age 81.3 (her actual survival time may be longer or shorter).

The US life tables provided by the National Center for Health Statistics and the Center for Disease Control and Prevention account for age, sex, and race/ethnicity. However, once we know more than simply the age and sex of an individual, we must use the peer-reviewed medical literature to take into consideration any *significant* additional risks of mortality.

For instance, an overwhelming body of government data reports that the mortality rates for persons who *diabetes* and/or *significant reductions in mobility* are higher than the age and sex-matched general population.

Ms. Titina Farris' Condition

Ms. Titina Farris is a U.S. female who was born on October 24, 1962. She is 56.2 years of age as of the date of this report. The general population life expectancy for a female this age is 28.0 additional years (or to age 84.2). However, Ms. Farris' risk factors and condition must be taken into consideration when assessing her life expectancy. The details and the effects of these factors are noted and discussed below.

Ms. Farris has had long-standing history of type II diabetes. Her diabetes requires insulin. She has diabetic peripheral neuropathy dating back to at least mid 2014. Ms. Farris also has hypertension that is generally controlled with medication. Ms. Farris has hyperlipidemia. The records indicate that she has had compliance issues that have led to elevated Hemoglobin A1c and lipid levels.

Ms. Farris had surgery in August 2014 for repair of an incarcerated ventral hernia. In July 2015, she had a laparoscopic reduction and repair of an incarcerated incisional hernia. She experienced colon perforations, sepsis, and ultimately the need for trach placement. She then had an abdominal washout, partial colectomy, right ascending colon end-ileostomy, and lysis of adhesions. She improved and was extubated and discharged in August 2015 to the Care Meridian Facility. Ms. Farris underwent rehabilitation there until discharge home in late August 2015. In July 2016 Ms. Farris was able to have her colostomy reversed.

Ms. Farris developed severe distal weakness and sensory loss of the lower extremities. She was diagnosed with a bilateral foot drop with neuropathic pain in her legs. Ms. Farris continues to experience foot drop and difficult walking. She uses a walker and wheelchair for mobility. She complains of shoulder pain to her ill-fitting walker. She has a history of chronic pain (bilateral foot

Ms. Titina Farris
Page 3

and ankle, and shoulder). She continues to experience chronic pain which she requires medication for. She depends heavily on her husband and family to assist with daily activities. She was previously independent and active. She misses walking her daughter to school, being outside with their four dogs, going dancing with her husband, and general activities such as taking care of the household chores.

Ms. Farris also has gastroesophageal reflux disease and Dupuytren's contractures in her bilateral hands. She has been experiencing anxiety and depression (Cymbalta) and she complains of impaired short-term memory.

Ms. Farris' is married is and lives with her husband Patrick and her daughters Elizabeth and Sky. She has a high school education and currently works as a clairvoyant.

Diabetes / Hypertension / Hyperlipidemia

Serious medical conditions increase mortality rates and reduce life expectancy. In the case of diabetes, there is a significant body of peer-reviewed medical and scientific literature documenting this increased mortality and reduced life expectancy.^{2-10,36}

Diabetes is characterized by a defective response of the body tissue to insulin (resistance). Increased mortality results from both macrovascular and microvascular processes. From a macrovascular standpoint, there is increased risk of death due to cardiovascular disease, stroke, and peripheral vascular disease. From a microvascular standpoint, there is an increased rate of retinopathy (causing blindness), neuropathy (causing damage to the nervous system and leading to potential amputation), and nephropathy (causing kidney disease).^{2-10,36}

Hypertension is high blood pressure. It is a measurement of the force against the walls of your arteries as your heart pumps blood through your body. Blood pressure readings are given as two numbers and one or both of these numbers can be too high (normal being 120/80). High blood pressure increases the chance of heart disease, stroke, and kidney problems and results in higher mortality rates.^{4,10-15,36} Hyperlipidemia is the presence of elevated levels of lipids in the bloodstream. It is strongly associated with cardiovascular disease & stroke as it promotes plaque formation in the arteries.^{15,36}

Dr. Naomi Chaney stated in her March 23, 2018 note: "The patient was asked to come in with her husband for frank discussion regarding noncompliance with recommendations. ... the patient will need to be on cholesterol lowering medications as I explained that she is at high risk for pancreatitis and quite frankly death."

I have considered Ms. Farris' diabetes (with polyneuropathy), her hypertension, and her hyperlipidemia. I have examined the peer-reviewed articles on this subject and found the studies clearly indicate an increase in mortality as compared to the rates of the general population.

I have found the literature to be broadly consistent and indicative of a relative risk of 1.5 for diabetes without complications (or an excess risk of 50%). This is *conservative* in that Ms. Farris actually has polyneuropathy (a complication) and additionally has hypertension and hyperlipidemia. I have also *conservatively* assumed that she will no longer have compliance issues in the future. The corresponding excess death rates appear in **column DIAB** on page 8.^{2-15,36}

Physical Impairments / Reduced Mobility / Chronic Pain

Ms. Farris was previously independent and fully ambulatory prior to August 2015. However, she now has physical impairments which include bilateral foot drop and severe truncal instability requiring physical contact. She uses a walker and wheelchair for mobility. She has severe sensory loss below the knees, quadriparesis, and a right ankle fracture. She is unable to lift more than three pounds. She requires her husband and family to assist with daily activities.

Mild to moderate physical impairments and disabilities, such as those seen with reductions in mobility, impact life expectancy.^{16-24,36} This should not be surprising given that long term reduced mobility that occurs, even by choice (i.e., being sedentary), is associated with increased mortality rates.^{25-28,36}

Persons who lose a portion of their mobility become subject to increased risk of death from a variety of causes. The leading causes are pneumonia and other diseases of the respiratory system. Other major causes are pulmonary embolisms, urinary tract infections and septicemia. And diseases of the circulatory system, the leading cause of death in the general population, have even higher rates in the reduced mobility population.^{16-28,36}

Ms. Farris also has a history of bilateral foot, ankle, and shoulder pain. She continues to experience chronic pain which now includes neuropathic leg pain and some additional shoulder pain she attributes to her ill-fitting walker. She requires pain medication for relief.

Chronic pain increases mortality and reduces life expectancy. Possible reasons for higher mortality rates include increased cancer rates, psychological stress (anxiety and depression), body fatigue, reductions in mobility, and polypharmacy.^{29-33,36}

Ms. Farris' physical impairments and disabilities are quite similar to that of a person with an ASIA (American Spinal Injury Association) classification D spinal cord injury (SCI). Ms. Farris impairments and resulting reduction in physical activity closely mirror those of an ASIA D SCI (a mild to moderate spinal cord injury) with similarities to preserved motor function and some ability to walk.

The corresponding excess death rates appear in **column PHYS** on page 8.^{18-20,36}

Additional Risk Factors

Additional risk factors were considered but not explicitly quantified in the life expectancy calculations. These factors would not be expected to have *significantly* changed Ms. Farris' life expectancy *after* explicit consideration of her diabetes (including hypertension and hyperlipidemia) and physical impairments (including reduced mobility and chronic pain).

These additional factors included: Gastroesophageal reflux disease, Dupuytren's contractures in her bilateral hands, anxiety and depression, and impaired short-term memory.

These factors were not quantified into my analyses.

My Opinion

My analyses and opinion of Ms. Titina Farris' life expectancy is based on (1) a review of the materials provided including her medical records, a report, depositions, and other documents, (2) a review of a relevant body of medical and scientific literature,^{2,33,36} (3) the standard scientific methods for calculating life expectancy,^{1,34-54} and (4) my education, training, experience and expertise.

To a reasonable degree of scientific certainty, I have calculated Ms. Titina Farris' life expectancy, as of the date of this report, to be 21.5 additional years.

The life table is provided on page 9 of this report. A summary table is provided, for quick reference purposes, below.

Life expectancies for various risk profiles of a 56.2 year-old U.S. female	
Risk Profiles	Remaining Years
General Population of females this age	28.0
... including diabetes	24.5
... including physical impairments	24.0
... including diabetes AND physical impairments	21.5

I reserve the right to amend this report and revise my opinions if further information becomes available.

Methodology

It is not possible for anyone to predict an individual's *exact survival time* (i.e., the exact date and time of death of an individual). Rather, medical researchers, scientists, epidemiologists, biostatisticians, life actuaries, and medical doctors can calculate a person's *average survival time* by comparing that person to the survival data derived from large groups ("cohorts") of people with similar characteristics and circumstances. This *average survival time*, by the exact definition, is *the life expectancy*.^{1,34-54}

In arriving at my opinion, I used standard and generally-accepted scientific methods that are routinely used by other researchers, annuitists, and scientists concerned with life expectancy. The methodology consists of: (1) reviewing the medical records of treating or examining physicians, hospital records, reports of experts, and other available information to understand an individual's medical history, past medical conditions, and to determine medical risk factors; (2) reviewing relevant peer reviewed medical literature and other scientific evidence in order to identify groups of similar persons; (3) determining the individual or joint effects of the various risk factors on survival; and (4) constructing a life table using similar methods as those used by the U.S. government to construct life tables for the general population.^{1,34-54}

A precise and detailed description of this procedure has been subjected to peer review and published.^{41,46,53} It is also covered, more generally and conceptually, in the many books and articles which I have cited under scientific methods.^{1,34-54} Many medical conditions have been demonstrated to be associated with increased rates of mortality compared to those of the standard tables, and much has been written about how to make adjustments to the life table to account for such factors.^{34-36,41-42,46,49-54}

This process of calculating relative risks and excess death rates is the standard by which the insurance industry produces rated ages and table ratings for life annuities and life insurance. It is discussed in actuarial textbooks and is regularly discussed in a multitude of articles published by the Journal of Insurance Medicine.^{34-36,42,44} This is not simply my methodology but rather the generally accepted methodology that is utilized and has been conducted by medical researchers, scientists, life actuaries, and the insurance industry for well over 100 years (life tables have been constructed and used since the 1600s).^{35-36,41-44,46,49-50,52-54} This process is used daily to calculate rated ages, table ratings, and life expectancies for life annuities and life insurance (e.g., with smoking and/or diabetes).^{34-36,41-42,49,53-54} If this process did not properly result broadly in accurate life expectancies, the insurance and life actuarial industry would most certainly have ceased to exist.

Much like the work of an economist or life care planner, the numbers I have extracted and calculated can be verified, validated, and/or critiqued by another trained and experienced expert. This scientist can perform an analysis and assess if an error or improper assumption was made. To the extent there is disagreement by similarly qualified experts, one would need to examine the underlying assumptions and evidence (including the peer reviewed research and any data) that were relied upon. Furthermore, ongoing validation comes in the underlying peer reviewed research that the calculations are based upon.²⁻⁵⁴

Additional longitudinal research continually becomes available which consistently reveals and confirms that mortality rates have been and are currently consistently elevated (above the general population rates) in particular conditions and ailments.

In each case, I review the literature and consider all the factors listed in the medical records. I am aware, from reviewing the literature extensively and week to week, that major conditions such as diabetes and reduced mobility do impact one's mortality rate and life expectancy and that other factors have a far less significant impact. Careful research in each case and of each factor, over a decade of research in this area, and experience from having researched and worked on over 1800 cases aid me in identifying the factors that are most significant for life expectancy and performing a life expectancy calculation.

Academic and Professional Qualifications

I am a medical researcher in the area of life expectancy. I have presented and consulted in that capacity. I have been both an author of peer-reviewed articles as well as a peer reviewer on the subject. I have taught instructional sessions on life expectancy to clinicians receiving continuing medical education (CME) credits.

I am a Fellow with the American Academy for Cerebral Palsy & Developmental Medicine and the founder of the Life Expectancy Group. This is a research & consulting group whose focus is on

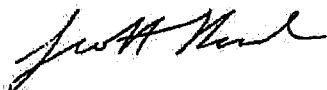
Ms. Titina Farris
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life expectancy, factors that impact it, and legal issues surrounding it. This includes statistical and epidemiological mortality research on persons with developmental disabilities, injuries, and myriad chronic medical conditions across the various body systems including the cardiovascular, respiratory, gastrointestinal, endocrine, urinary, and neurologic systems.

I earned an MD from Stanford University School of Medicine in 2004, a JD from Stanford University School of Law in 2000, and an MPH from San Diego State University in 1995. You will find further professional qualifications provided in my curriculum vitae.

Thank you for the opportunity to assist on this matter and please do not hesitate to contact me if you would like any clarification of this report.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Scott Kush".

Scott Kush, MD JD MPH
Medical Researcher
Life Expectancy Group

Schedule of Mortality Rates & Excess Death Rates

AGE	GP	DIAB	PHYS	TOTAL
56	0.0052	0.0026	0.0061	0.0139
57	0.0055	0.0028	0.0063	0.0146
58	0.0059	0.0030	0.0065	0.0154
59	0.0063	0.0032	0.0067	0.0162
60	0.0067	0.0034	0.0070	0.0171
61	0.0072	0.0036	0.0072	0.0181
62	0.0078	0.0039	0.0075	0.0191
63	0.0084	0.0042	0.0078	0.0203
64	0.0090	0.0045	0.0081	0.0217
65	0.0098	0.0049	0.0084	0.0230
66	0.0106	0.0053	0.0087	0.0246
67	0.0115	0.0058	0.0091	0.0264
68	0.0126	0.0063	0.0095	0.0283
69	0.0138	0.0069	0.0099	0.0306
70	0.0153	0.0076	0.0104	0.0333
71	0.0169	0.0084	0.0109	0.0362
72	0.0187	0.0093	0.0114	0.0393
73	0.0206	0.0103	0.0119	0.0427
74	0.0226	0.0113	0.0125	0.0464
75	0.0249	0.0124	0.0132	0.0505
76	0.0275	0.0138	0.0138	0.0551
77	0.0306	0.0153	0.0146	0.0604
78	0.0342	0.0171	0.0154	0.0666
79	0.0385	0.0192	0.0163	0.0740
80	0.0430	0.0215	0.0173	0.0819
81	0.0480	0.0240	0.0182	0.0903
82	0.0535	0.0267	0.0193	0.0995
83	0.0599	0.0300	0.0205	0.1104
84	0.0676	0.0338	0.0218	0.1232
85	0.0755	0.0377	0.0231	0.1363
86	0.0853	0.0427	0.0248	0.1527
87	0.0963	0.0481	0.0264	0.1708
88	0.1085	0.0542	0.0281	0.1909
89	0.1221	0.0610	0.0302	0.2133
90	0.1371	0.0685	0.0319	0.2375
100	0.4348	0.2174	0.0639	0.7160

GP = U.S female general population mortality rates**DIAB** = *Excess death rates* (EDRs) for diabetes, hypertension, and hyperlipidemia**PHYS** = EDRs for physical impairments, reduced mobility, and chronic pain**TOTAL** = GP + DIAB + PHYS

This total also appears in the m(x) column of the life table on the next page.

Life Table for Ms. Titina Farris

Age	$l(x)$	$d(x)$	$q(x)$	$m(x)$	$L(x)$	$T(x)$	$e(x)$
56.2	100000	1170	0.0117	0.0139	84503	2153632	21.5
57	98830	1434	0.0145	0.0146	98113	2069129	20.9
58	97396	1490	0.0153	0.0154	96651	1971016	20.2
59	95906	1543	0.0161	0.0162	95135	1874365	19.5
60	94364	1598	0.0169	0.0171	93564	1779230	18.9
61	92765	1662	0.0179	0.0181	91934	1685666	18.2
62	91103	1728	0.0190	0.0191	90239	1593731	17.5
63	89375	1799	0.0201	0.0203	88476	1503492	16.8
64	87576	1876	0.0214	0.0217	86638	1415016	16.2
65	85700	1952	0.0228	0.0230	84724	1328378	15.5
66	83748	2036	0.0243	0.0246	82730	1243654	14.8
67	81712	2127	0.0260	0.0264	80648	1160924	14.2
68	79585	2222	0.0279	0.0283	78473	1080276	13.6
69	77362	2329	0.0301	0.0306	76198	1001802	12.9
70	75033	2454	0.0327	0.0333	73806	925604	12.3
71	72579	2580	0.0356	0.0362	71288	851799	11.7
72	69998	2701	0.0386	0.0393	68648	780510	11.2
73	67297	2813	0.0418	0.0427	65891	711862	10.6
74	64484	2925	0.0454	0.0464	63022	645972	10.0
75	61559	3032	0.0493	0.0505	60043	582950	9.5
76	58527	3139	0.0536	0.0551	56958	522907	8.9
77	55389	3246	0.0586	0.0604	53766	465949	8.4
78	52143	3361	0.0645	0.0666	50462	412183	7.9
79	48782	3479	0.0713	0.0740	47042	361720	7.4
80	45303	3560	0.0786	0.0819	43522	314678	6.9
81	41742	3604	0.0863	0.0903	39940	271156	6.5
82	38138	3612	0.0947	0.0995	36332	231216	6.1
83	34526	3609	0.1045	0.1104	32721	194884	5.6
84	30917	3583	0.1159	0.1232	29125	162162	5.2
85	27333	3482	0.1274	0.1363	25592	133037	4.9
90	11521	2436	0.2114	0.2375	10303	37769	3.3
100	228	116	0.5113	0.7160	169	331	1.5

Table Terminology:

x	age
$l(x)$	the number of persons alive at age x
$d(x)$	number of deaths in the interval from x to $x+1$
$q(x)$	probability of dying at age x
$m(x)$	age-specific mortality rate
$L(x)$	total number of person-years lived by the cohort from x to $x+1$
$T(x)$	total number of person-years lived by the cohort from age x until all members of the cohort have died
$e(x)$	the life expectancy of persons alive at age x

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Exhibits

U.S. Life Expectancy

<u>Age</u>	<u>Male</u>	<u>Female</u>
0	76.5	81.3
10	67.1	71.8
20	57.3	61.9
30	48.0	52.2
40	38.8	42.6
50	29.8	33.4
60	21.7	24.7
70	14.5	16.7
80	8.4	9.8
90	4.1	4.9
100	2.1	2.3

Arias E (2017). United States Life Tables, 2014. National Vital Statistics Reports, Volume 66, Number 4. Hyattsville, Maryland: Centers for Disease Control and Prevention, National Center for Health Statistics.

Spinal Cord Injury Comparison

Person's current age	<input type="text" value="56"/>
Injury Date	<input type="text" value="7/3/2015"/>
Male or Female	<input checked="" type="radio"/> Male <input type="radio"/> Female
Ethnicity	<input type="radio"/> White <input type="radio"/> Black <input checked="" type="radio"/> American Native <input type="radio"/> Hispanic* <input type="radio"/> Asian* <input type="radio"/> Other*
Highest Level of Education	<input type="radio"/> Less than HS <input type="radio"/> HS Grad/GED <input type="radio"/> College Grad <input checked="" type="radio"/> Post Grad
Type of Insurance	<input type="radio"/> Worker Comp/Private <input checked="" type="radio"/> Medicare/Medicaid/Other
Ventilator Used	<input type="radio"/> No Ventilator <input checked="" type="radio"/> Ventilator

Please answer the next questions based on the cause of injury, current neurologic level of injury and degree of completeness of the injury (American Spinal Injury Association Impairment Scale (AIS)). Determination of the level and AIS grade should be based on the Motor Exam Guide and Sensory Exam Guide which are part of the International Standards for Neurological Classification of Spinal Cord Injury.

Cause of the spinal cord injury	<input checked="" type="radio"/> Sport <input type="radio"/> MVA <input type="radio"/> Fall <input type="radio"/> Violence <input type="radio"/> Other
Current level of the spinal cord injury	<input type="radio"/> C1-4 <input checked="" type="radio"/> C5 <input type="radio"/> C6-C7 <input type="radio"/> C8-S3
Current completeness of the SCI (AIS)	<input checked="" type="radio"/> A <input type="radio"/> B <input type="radio"/> C <input type="radio"/> D

Click the "Calculate" button for results based on your selections.

Life Expectancy:	24.11
Census number for general population: **	28
<input type="button" value="Calculate"/>	

National Spinal Cord Injury Statistical Center (2018). Life Expectancy Calculator.
https://www.nscisc.uab.edu/Public_Pages/LifeExp

Scott J. Kush

Contact Information

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 skush@LifeExpectancyGroup.com

Education

MD	Medicine	Stanford University, School of Medicine 2004
JD	Law	Stanford University, School of Law 2000
MPH	Public Health	San Diego State University 1995
BS	Biochemistry	University of California, San Diego 1992
BA	Psychology	University of California, San Diego 1992

Present Position

2009 – current	Medical Researcher/Consultant	
Life Expectancy Group		<i>Menlo Park, California</i>

Employment

2006 – 2009	Medical Researcher/Consultant	
Life Expectancy Project (Strauss & Shavelle Inc.)		<i>San Francisco, California</i>
2005 – 2006	Physician Health Care Utilization Review	
Physician based Medical Management		<i>Menlo Park, California</i>
2005	Instructor	
American River College		<i>Sacramento, California</i>
2000 – 2005	Project Developer – Enterprise Services, Education	
Sun Microsystems		<i>Menlo Park, California</i>
2003 – 2004	Management Consultant	
Boston Consulting Group		<i>San Francisco, California</i>
1998 – 2003	Residential Computer Consultant	
Stanford Academic Computing		<i>Stanford, California</i>
1997 – 2003	Special Projects Lead/Multimedia Developer	
Stanford School of Medicine		<i>Stanford, California</i>

1997 - 2001, 1988 - 1992 Teaching Assistant

Stanford: Venture Capital, Corporate Finance, and Intro to Economics

UCSD: Genetics, Nutrition, Intro to Psych, Drugs & Behavior, and Electrochemistry

1992 - 1996 Instructor

Kaplan Educational Services

San Diego, California

1992

Research Associate

DepoTech Inc.

*San Diego, California***Publications**

Day SM, Reynolds RJ, Kush SJ (2016). Extrapolating published survival curves to obtain evidence-based estimates of life expectancy in cerebral palsy. *Developmental Medicine & Child Neurology*. DMCN 12849.

Day SM, Reynolds RJ, Kush SJ (2015). The relationship of life expectancy to the development and valuation of life care plans. *NeuroRehabilitation*. 36:253-266.

Reynolds RJ, Kush SJ, Day SM, Vachon P (2015). Comparative mortality and risk factors for death among Justices of the Supreme Court of the United States, 1789-2013: experience from an occupational cohort with over two centuries of follow-up. *J Insur Med*. 45:9-16.

Day S, Reynolds R, Kush SJ (2013). Regarding "Life Expectancy Projections Supporting Life Care Planning". *Journal of Life Care Planning*. 12(2) 5-7.

Kush SJ, Day S, Reynolds R (2013). Life Expectancy for Life Care Planners. *Journal of Life Care Planning*. 12(1) 31-49.

Shavelle RM, Paculdo DR, Strauss DJ, Kush SJ (2009). Cognitive impairment and mortality in the Cardiovascular Health Study. *Journal of Insurance Medicine*, 41:110116.

Shavelle RM, Paculdo DR, Kush SJ, Mannino DM, Strauss DJ (2009). Life expectancy and years of life lost in chronic obstructive pulmonary disease: Findings from the NHANES III follow-up study. *International Journal of COPD*, 4:137-148.

Kush SJ (2009). Life Expectancy. HCM: Health Cost Management Newsletter. Volume 10, Number 2.

Shavelle RM, Paculdo DR, Strauss DJ, Kush SJ (2008). Smoking habit and mortality: A meta-analysis. *Journal of Insurance Medicine*, 40:170-178.

Shavelle RM, Kush SJ, Paculdo DR, Strauss DJ, Day SM (2008). Underwriting the Presidents. *Journal of Insurance Medicine*, 40:120-123.

Day SM, Brooks J, Strauss D, Shumway S, Shavelle RM, Kush S, Sasco AJ (2008). Cancer mortality in cerebral palsy in California, 1988-2002. *International Journal on Disability and Human Development*, 7:427-434.

Moffett SE, Menon AS, Meites EM, Kush S (2003). Preparing doctors for bedside computing. *Lancet*. Jul 5;362(9377):86.

Ochroch EA, Hollander JE, Kush S, et. al. (1999). Assessment of laryngeal view: Percentage of glottic opening score vs Cormack & Lehane grading. *Can J Anaesth*. Oct;46(10):987-990.

Levitan RM, Kush S, Hollander JE (1999). Devices for difficult airway management in academic emergency departments: Results of a national survey. *Ann Emerg Med*. Jun;33(6):694-698.

Levitan RM, Ochroch EA, Kush S, et. al. (1998). Assessment of airway visualization: Validation of percentage of glottic opening (POGO) scale. *Acad Emerg Med*. Sep;5(9):919-923.

Presentations

Kush S (2017). Life Expectancy – Statistics from Around the World. Keynote Speech. Life Expectancy Symposium. October 27, 2017. Durban, South Africa.

Reynolds RJ, Kush S, Day SM (2017). Using Machine Learning to Identify Diagnostic Profiles for Children with Cerebral Palsy and Other Developmental Disabilities in the 2011-2012 National Survey of Children's Health. 71st Annual Meeting of the American Academy for Cerebral Palsy and Developmental Medicine. September 15, 2017. Montreal, Quebec. Canada.

Kush S (2017). Life Expectancy in Cerebral Palsy and Brain Injury. The South African Medico-Legal Association. September 8, 2017. Cape Town, South Africa.

Heine, SJ, Kush S (2017). Exploration of Life Expectancy. The National Association of Railroad Trial Counsel. 2017 Winter Meeting. March, 2017. Phoenix, Arizona.

Day, SM, Reynolds RJ, Kush S (2016). What Can a Telephone Survey Tell Us About the Health and Well-Being of Children With Cerebral Palsy and Other Developmental Disabilities? Findings of the US, 2011-2012 National Survey of Children's Health. Presentation, September 2016. 70th Annual Meeting of the American Academy for Cerebral Palsy and Developmental Medicine.

Reynolds RJ, Day SM, Kush S (2014). Life Expectancy in Cerebral Palsy: Methods for Clinicians. Instructional Course. September 2014. 68th Annual Meeting of the American Academy for Cerebral Palsy and Developmental Medicine.

Kush S, Sharpe J (2014). Life Expectancy and Worklife Expectancy Calculations in Valuations. June 19, 2014. National Association of Certified Valuators and Analysts. NACVA 2014 Conference.

Kush S, Day SM, Reynolds RJ (2013). Evidence-Based Calculations of Life Expectancy of Children and Adults with Cerebral Palsy and Other Developmental Disabilities. Seminar on October 19th. 67th Annual Meeting of the American Academy for Cerebral Palsy and Developmental Medicine.

Kush S (2011). Life Expectancy – The Basics. Luncheon. Business Entrepreneurs of Silicon Valley.

Kush S (2010). Life Expectancy Issues. 11th Annual Neuroscience of Brain Injury: Research Informing Medical Treatment and Legal Practice Conference. California Brain Injury Association.

Durack J, Grappone T, Kush S, Nevarez A (2001). SKOLAR Cards – mobile access to high quality clinical information. Biomedical Computation at Stanford (BCATS) Symp, 43. http://bcats.stanford.edu/previous_bcats/bcats01/BCATS2001Abstract.pdf

Dev P, Rindfleisch T, Kush S, Stringer J (2000). An analysis of technology usage for streaming digital video in support of a preclinical curriculum. Proc AMIA Symp., 180-184. <http://www.amia.org/pubs/symposia/D200922.pdf>

Dev P, Stringer J, Kush S (1999). Institutional approaches to web-enabled curriculum delivery: The curriculum web. Proc AMIA Sym. www.amia.org/pubs/symposia/D005705.htm

Professional Organizations

Member of the American Medical Association

Member of the American Statistical Association

Fellow – American Academy for Cerebral Palsy & Developmental Medicine

Scott J. Kush, MD JD MPH**Deposition and Trial Testimony****Deposition Testimony**

July 30, 2007	Stewart v. Welch Community Hospital, et al.; West Virginia U.S. No. 06-C-151-M Stephen New (Law Office of Stephen New; Beckley, West Virginia)
August 24, 2007	H. Christine Gregory, deceased v. GHA, et al.; Cincinnati, Ohio No. A0602988 Joel L. Peschke (Triona, Calderhead & Lockemeyer; Cincinnati, Ohio)
November 14, 2007	Ecxford v. City of Zion, et al.; County of Lake, Illinois No. 05L855 Gerard W. Cook (O'Halloran Kosoff Geitner & Cook, LLC; Northbrook, Illinois)
February 8, 2008	Ecxford v. City of Zion, et al.; County of Lake, Illinois No. 05L855 Gerard W. Cook (O'Halloran Kosoff Geitner & Cook, LLC; Northbrook, Illinois)
April 9, 2008	Roy Skinner v. Florida Power and Light Company; Tampa District Office, Florida No. 82-00014IJEM Timothy A. Dunbrack (Kelley Kronenberg Attorneys at Law; Orlando, Florida)
August 15, 2008	Daniel Budd, et al. v. Edward Schuesser, MD, et al.; Warren County, Missouri No. 06AU-CC00055-01 Edward Clausen (Carson & Coil, P.C.; Jefferson City, Missouri)
December 9, 2008	Estate of Ida McQueen v. Earline Drumgoole, et al.; County of Alameda, California No. HP 05 237 122 James Reed (Nichols, Catterton, Downing & Reed, Inc.; Lafayette, California)
January 6, 2009	Kenneth Taylor, et al. v. Michael Schmerler, MD et al.; Hamilton County, Ohio No. A0606042 Joel L. Peschke (Triona, Calderhead & Lockemeyer; Cincinnati, Ohio)
January 28, 2009	Ivonne Guerrero, et al. v. County of San Benito; County of San Benito, California U.S. District Court Case No. C08-00307 PVT Michael C. Serverian (Rankin, Landsness, Lahde, Serverian, & Stock; San Jose, CA)
February 4, 2009	Rodney F. Gimpel v. Kadlec Medical Center et al.; Benton County, Washington No. 07-2-03128-3 Felix Luna (Peterson Young Putra; Seattle, WA)
April 16, 2009	Renate Herrera v. Best Buy Company; Harris County, Texas No. 2008-00818 J. Daniel Woodall (Gauntt, Earl & Binney, LLP; The Woodlands, TX)
June 11, 2009	James Olliphant, Sr., et al. v. Nissan Motor Co., LTD, et al. No. 32567 John Gersch (Rodriguez, Ghorayeb & Gersch, LLP; Dallas, TX)

June 17, 2009	Bridgette Jeffries v. United States of America No. C08-1514RSL Jeffrey Sullivan (U.S. Department of Justice, WA)
July 16, 2009	Ivon Toe, et al. v. Cooper Tire and Rubber Company, et al. No. CL 106914 Stephen A. Rothschild (Shumaker, Loop & Kendrick, LLP; Des Moines, IA)
January 21, 2010	Mary E. O'Neal, et al. v. Forest Park Hospital Corp., et al. No. 0722-CC00939 J. Thaddeus Eckenrode (Eckenrode-Maupin; St. Louis, MO)
February 15, 2010	Sebastian Rinelli, et al. v. Danbury Hospital, et al. No. DBD-CV-07-6000490-S Edward W. Mayer, Jr (Danaher, Lagnese & Sacco, P.C.; Hartford, CT)
July 26, 2010	Vivian Fisher, et al. v. United States of America No. C08 5146 BHS Priscilla T. Chan (U.S. Department of Justice; Seattle, WA)
July 30, 2010	Kathy Profitt, et al. v. DaimlerChrysler Corp., et al. No. CV-03-512980 Kevin M. Young (Tucker, Ellis & West LLP; Cleveland, OH)
September 16, 2010	Lynette Wells v. Kaiser No. 9873 George E. Clause (Hayes, Scott, Bonino, Ellingson & McLay; Santa Clara, CA)
September 21, 2010	James W. Walker v. Cleveland Clinic Health System No. CV-08-655236 George M. Moscarino (Moscarino & Treu LLP; Cuyahoga County, CA)
November 3, 2010	Roger Taylor v. Kathrynne Rupley et al. No. 09CE CG 02319 AMS Kevin M. Smith (Bradley, Curley, Asiano, Barrabee & Gale, PC; Fresno, CA)
November 9, 2010	Peggie Bacon-McDaniel v. Kaiser Foundation Hospitals Ram Fletcher (Bohn & Bohn, LLP; Santa Clara, CA)
January 14, 2011	Erica Morataya v. City of Bakersfield No. S-1500-CV267729-WDP Michael L. O'Dell (Clifford & Brown, PC; Bakersfield, CA)
March 22, 2011	John Curtis v. Stuart A. Nerzig No. AAN-CV-08-5007001-S Jonathan A. Kocienda (Danaher, Lagnese & Sacco, CT)
April 4, 2011	John Cox, et al. v. Tom Ivey, MD et al. No. A 0810744 Joel L. Peschke (Triona, Calderhead & Lockemeyer; OH)

April 26, 2011 Estate of Lalone et al. v. Riedstra Dairy Ltd. et al.
No. 07-914-NH
C. Zachary Vaughn (Patton & Ryan, LLC; St. Joseph, MI)

May 6, 2011 Carol Ropella et al. v. Red Cedar Medical Center et al.
No. 10CV93
Carolyn J. Nearing (Geraghty O'Loughlin & Kenney, P.A.; Dunn County, WI)

June 20, 2011 Alison Skamangas v. Valley Care Health System, et al.; County of Alameda, CA
No. VG09438029
David Lucchese (Galloway, Lucchese, Everson; Walnut Creek, CA)

June 21, 2011 Donald E. Koehne et al. v. American Multispecialty Group, Inc., et al.; St. Louis, MO
No. 22052-08776
J. Thaddeus Eckenrode (Eckenrode Maupin; St. Louis, MO)

August 12, 2011 Nicholas Onofrio v. City of Riviera Beach; Palm Beach County, FL
No. 50 2010 CA 019126 MB AJ
Lonniell Olds (Olds, Stephens & Harper; West Palm Beach, FL)

August 27, 2011 L'Heureux v. Maine Medical Center, et al.; Cumberland, ME
No. CV-008-191
Philip M. Coffin III (Lambert Coffin; Portland, ME)

December 8, 2011 Castro-Reyes v. United States of America; Southern District of California
No. 10-cv-1559-IEG-JMA
Stephen L. Waldman (Law Offices of Stephen L. Waldman; San Diego, CA)

April 17, 2012 Zechariah Bonner v. Woodland Women's Health et al.; Hartford, CT
No. HHD CV 08 50211331S
David A. Haught (Cooney, Scully and Dowling; Hartford, CT)

May 17, 2012 Robert Rodriguez v. JLG Industries, Inc., Oskosh Corp, et al.; U.S. District Ct, CA
No. 2:11-cv-04586
Susan E. Foe (Dryden, Margoles, Schimaneck & Wertz, CA)

June 4, 2012 Bruce Beard, et al. v. Emad Mahmoud Hasan et al.; Boone County, MO
No. 09BA-CV03578
R. Max Humphreys (Ford, Parshall & Baker, MS)

June 11, 2012 Pauline Gogol v. Mills Peninsula Health Services, et al.; San Mateo County, CA
No. CTV 509469
Cyrus A. Tabari (Sheuerman, Martini, & Tabari; San Jose, CA)

July 9, 2012 Tucker v. Kaiser Foundation Hospitals et al.; Los Angeles, CA
No. ARB
Cyndi Douglass (La Follette, Johnson, De Haas, Fesler & Ames; CA)

August 28, 2012 Zion Emerson v. Alta Bates Medical Center, et al.; County of Alameda, CA
No. RG094747
Sukhwinder K. Bajwa (Galloway, Lucchese, Everson; Walnut Creek, CA)

September 11, 2012 J. Jacobs and A. Jacobs v. Sacramento Regional Transit District, et al.; Sacramento, CA
No. 34-2008-00028013
Tim Spangler (Sacramento Regional Transit District, CA)

September 19, 2012 Green v. Darnall, et al.; Shawnee County, KS
No. 11C379
N. Larry Bork (Goodell Stratton Edmonds & Palmer, KS)

December 7, 2012 Joann R. Kay, et al. v. Harper Excavating, Inc., et al.; Juab County, UT
No. 100600079
Terry M. Plant (Plant, Christensen & Kanell, UT)

December 12, 2012 Takaria Hosea v. Long Beach memorial Med Center, et al.; San Bernardino Cty, CA
No. CIVDS1112997
Louis H. DeHaas (LaFollette Johnson, CA)

January 21, 2013 David S. Gronik v. Susan Balthasar, et al.; US District Court, Northern District of CA
No. 10-CV-954
Timothy Bascom (Bascom, Budish & Ceman, S.C., WI)

June 24, 2013 James Diaz v. Sutter Memorial Hospital, et al.; Superior Court, Sacramento, CA
No. 34-2009-00056031
Larry Thornton (LaFollette, Johnson, DeHaas, Fesler, & Ames)

July 19, 2013 Zaya Carter v. United States of America; US District Court, Eastern District, PA
No. 11-6669
Richard Bernstein (US DOJ, Eastern District of Pennsylvania)

July 22, 2013 Sanjiv Barse v. San Gorgonia Memorial Hospital, et al.; Superior Court, Riverside, CA
No. RIC10019685
Alphonsie Nelson (Watten, Discoe, Bassett, & McMains)

August 15, 2013 Becky S. Anderson v. Central Washington Health, et al.; Superior Court, WA
No. 12-2-17928-0 SEA
Jerry R. Aiken (Meyer, Fluegge & Tenney, P.S.)

September 13, 2013 Brian M. Stoedter v. BNSF Railway Company; Rock Island Cty, IL
No. 10L 157
Stephen J. Heine (Heyl, Royster, Voelker & Allen)

October 7, 2013 Woodrow Gruninger v. Sabitha Srinivasan Sehgal, MD et al.; Los Angeles, CA
No. BC401650
Michael A. Dembicer (Lewis Brisbois Bisgaard & Smith LLP)

December 23, 2013 Gilberto Rebollar v. LA Cty Metropolitan Transportation; County of Los Angeles, CA
No. BC421357
William J. Glazer (Veatch Carlson, LLP)

December 31, 2013 Tenaya Strand v. Memorial Medical Center, Modesto et al.; County of Stanislaus, CA
No. 648369
Larry Thornton (La Follette, Johnson, DeHaas, Fesler, & Ames)

February 21, 2014 Taja Allen v. The Regents of the University of California.; County of Sacramento, CA
No. 34-2011-00104589
Kat Todd (Schuering Zimmerman & Doyle)

March 7, 2014 Aidan Lee v. Jolene Caruso-Soares.; County of Santa Clara, CA
No. 112CV227044
Stephen L. Dahm (Cesari Werner and Moriarty)

June 12, 2014 Martha O. Cahan v. D.D. Real Estate Holdings & Trave lynx Inc.; Brevard County, FL
No. 05-2012-CA-038994
Cary N. Bos (Kubicki Draper)

August 21, 2014 Nicolas Mercado et al. v. Kaiser Foundation Hospital; County of Los Angeles, CA
No. BC512365
Brenda Ligorsky (Carroll, Kelly, Trotter, Franzen, McKenna, & Peabody)

August 29, 2014 Caryl Harrison v. Derek A. Taggard, MD., et al.; County of San Francisco, CA
No. CGC-12-524952
David J. Van Dam (Schuering Zimmerman & Doyle, LLP)

November 13, 2014 Victoria Adarmes v. David Klain MD, et al.; Superior Court California, Cty of Stanislaus
No. 677305
Daniela P. Stoutenburg (Dummit, Buchholz & Trapp)

November 19, 2014 Isabella Palacio v. United States of America; District Court for the ED of California
No. 2:13-CV-01012-JAM-CKD
Thomas J. Doyle (Schuering Zimmerman & Doyle)

November 25, 2014 Jose Sanchez v. James Gatrost, et al.; Superior Court of CA, County of Los Angeles
No. BC506397
Scott Mizen (Veatch Carlson, LLP)

December 4, 2014 Alan Hoskins v. Michael James Shannon, et al.; Weber County, UT
No. 130904254
C. Ryan Christensen (Siegfried & Jensen)

January 7, 2015 Manuel Gonzalez Lopez et al. v. Preston Pipelines, et al.; Alameda County, CA
No. HG13699138
Joshua S. Goodman (Goodman Neuman Hamilton, LLP)

March 24, 2015 Julian Albarado et al. v. James Babcock, Ahern Rental, et al.; Orange County, CA
No. 30-2012-00604351-CU-PP-CJC
Jorge Martinez (Taylor Anderson, LLP)

April 6, 2015 Jodie Bullock v. Philip Morris USA, Inc. et al.; US District Court, Central Dist. of CA
No. 2:14 cv 01258 DSF (JC)
Patrick Gregory (Shook Hardy & Bacon LLP)

May 12, 2015 A. Sharma v. Dignity Health et al.; Superior Court of CA, County of Sacramento
No. 34-2013-00138981
Patrick Lanius (Lanius & Associates)

May 19, 2015 A. Haywood v. Bethesda Memorial et al.; Circuit Court of FL, Palm Beach County
No. 2012 CA 007494 AN
Steven M. Lury (Sonneborn, Rutter & Cooney)

July 30, 2015 I. Hernandez v. Tenet California et al.; Superior Ct of CA, County of San Luis Obispo
No. 14CVP0083
Stephanie Bowen (Hall, Hieatt & Connely)

August 18, 2015 Jacqueline Clinton v. Kaiser Foundation; Folsom, CA
No. 12699
Mark Muro (Muro & Lampe)

August 27, 2015 Booker Page v. Mark Dawson, Desoto Cab, et al.; San Francisco, CA
No. CGC-14-537297
Amy Maclear (Gordon & Rees)

September 2, 2015 Gawronski et al. v. Andrew Nelson MD, et al.; Sauk County, WI
No. 13-CV-240
Michael Luebke (Gingras, Cates & Luebke)

September 3, 2015 Un Suk Guernsey v. Sammut Brothers Development, et al.; Monterey County, CA
No. M126693
James D. Biernat (Biernat Law Group)

September 10, 2015 Reyes Flores v. New Mexico Dept of Trans., et al.; County of Santa Fe, NM
No. D101-CV-2013-00632
John Anderson (Holland & Hart)

September 15, 2015 Carolin Baker v. Mercy Hospital Anderson, et al.; Hamilton County, OH
No. A1400720
Joel L. Peschke (Calderhead, Lockemeyer & Peschke)

September 22, 2015 Burton and Kincaid v. Florida Hospital Orlando, et al.; Orange County, FL
No. 2011 CA 014421-O
J. Charles Ingram (Estes, Ingram, Foels & Gibbs P.A.)

October 22, 2015 Powell v. Joel Kahn MD, et al.; County of Solano, CA
No. FCS042540
Kevin Smith (Bradley, Curley, Asiano, Barrabee, Abel & Kowalski, P.C.)

December 15, 2015 Ruiz v. Willowglen Academy, et al.; Stephenson County, IL
No. 12 L 5
Sheila N. Osei (Kopka Pinkus Dolan)

January 7, 2016 Reed v. UCLA Medical Center, et al.; County of Los Angeles, CA
No. SC116173
Benjamin R. Minkow (Law Offices of David J. Weiss)

January 21, 2016	Graham v. Stormont-Vail Healthcare, et al.; Shawnee County, KS No. 2012-CV-1079 Nathan D. Leadstrom (Goodell Stratton Edmonds & Palmer)
July 8, 2016	Gutierrez v. Le, Mandel, et al.; County of Orange, CA No. 30-2015-00797352-CU-MM-CJC Michael C. Ting, Esq. (Schmid & Voiles)
August 12, 2016	Lingenfelser v. United Parcel Service, et al.; Camden County, NJ No. L 735-15 Roman T. Galas, Esq. (Ansa Assuncao LLP)
September 1, 2016	Johnson v. The Christ Hospital, et al.; Hamilton County, OH No. A1501878 Joel Peschke, Esq. (Calderhead Lockemeyer & Peschke Law Office)
October 7, 2016	E.R. vs. Sutter Davis Hospital, et al.; District Court, East District of CA No. 2:14-2053 WBS CKD Larry Thornton, Esq. (La Follette, Johnson, DeHaas, Fesler, & Ames)
October 20, 2016	Cordero v. Anhalt.; Superior Court, San Mateo County, CA No. CIV536193 Jon A. Heaberlin, Esq. (Rankin Stock Heaberlin)
October 21, 2016	Breanna Romero v. Robert Prada, et al.; Superior Court, Imperial County, CA No. ECU08320 James Brown, Esq. (Law Office James Matthew Brown APLC)
October 25, 2016	James Mayfield v. Ivan Orozco, et al.; U.S. District Court, Eastern District, CA No. 2:13-CV-02499-JAM-AC Robert F. Tyler, Esq. (Wilke, Fleury, Hoffelt, Gould & Birney, LLP)
December 1, 2016	William Baxter v. Dignity Health, et al.; District Court, Clark County, NV No. A-13-687208-CF Chad Couchot, Esq. (Schuering Zimmerman & Doyle LLP)
January 6, 2017	Dawn & Cree Miller v. Sutter Amador Hosp. et al.; Sup. Ct, Cty of Amador, CA No. 13-CV-8253 Kevin Smith, Esq. (J. Supple Law, P.C.)
February 22, 2017	Perez v. MultiCare Health System, et al.; Sup. Court, County of King, WA No. 15-2-18647-7 SEA James B. Meade Jr., Esq. (Fain Anderson Vanderhoeft)
February 23, 2017	Perez v. City of Anaheim et al.; Sup. Court, County of Orange, CA No. 30-2015-00807504 Jade Tran, Esq. (Wood Smith Henning & Berman LLP)
March 3, 2017	Woods v. Ralph Prezioso, Jr MD et al.; Sup. Court, J.D. of Hartford, CT No. HHD-CV-13-6043250-S Gina M. Hall, Esq. (Morrison Mahoney LLP)

March 14, 2017 York v. Trader Joe's Company, Inc. et al.; Sup. Court, WA
No. 15-2-00024-9
Ted Buck, Esq. (Frey Buck P.S.)

April 7, 2017 Ledesma, et al. v. Joyce Anne Stotz, et al.; Sup. Court, Cty of Riverside, CA
No. INC1302238
Janice Walshok, Esq. (Tyson & Mendes)

April 12, 2017 McFarlane v. Urbana Tahoe, et al.; Sup. Court, Cty of El Dorado, CA
No. SC20150085
David Hunt, Esq. (Anderson, McPharlin & Conners LLP.)

April 14, 2017 Sanchez v. County of San Bernardino.; Sup. Court, Cty of San Bernardino, CA
No. CIVDS1309504
Robert S. Rubin, Esq. (Law offices of Norman R. Nadel)

May 4, 2017 Tobin v. Scripps Health, et al.; Sup. Court, Cty of San Diego, CA
No. 37-2016-00004169-CU-MM-CTL
Samuel R. Crockett, Esq. (Doyle, Schafer, McMahon LLP)

May 11, 2017 Richards v. Palo Verde Healthcare, et al.; Sup. Court, Cty of Riverside, CA
No. PSC1600219
Jeffery W. Grass, Esq. (Davis, Grass, Goldstein & Finlay)

May 19, 2017 Androlia v. Entertainment Center LLC, et al.; Sup. Court, Cty of Los Angeles, CA
No. BC534479
Kate Stimeling, Esq. (Riley Safer Holmes & Cancila LLP)

August 22, 2017 Nisley v. Bay Imaging Consultants, et al.; Sup. Court, Cty of Alameda, CA
No. RG15796088
Lisa T. Ungerer, Esq. (Rankin, Sproat, Mires, Reynolds, Shuey & Mintz)

August 25, 2017 Davis v. Lifemark Hospitals of Florida, et al.; Miami-Dade County, Florida
No. 2016-019843-CA-01
James C. Sawran, Esq. (McIntosh Sawran & Cartaya, P.A.)

September 26, 2017 Quezada v. Kaiser Foundation Hospitals, et al.; Miami-Dade County, Florida
No. 14465
David Rubaum, Esq. (Reback, McAndrews, Kjar, Warford & Stockalper LLP)

November 6, 2017 Arteaga v. Fresno Community Med Ctr, et al.; Sup. Court, County of Fresno
No. 13CECG03906
William White, Esq. (White Canepa LLP)

February 15, 2018 Goncalves v. Machado et al.; Sup. Court, County of Sacramento
No. 34-2014-00167270
Bruce Salenko, Esq. (Low McKinley Baleria & Salenko, LLP)

February 28, 2018 Ingle v. Dignity Health et al.; Sup. Court, County of Sacramento
No. 34-2015-00178462
Barry Vogel, Esq. (La Follette Johnson De Haas Fesler & Ames)

March 13, 2018	Frances Durbin v. Gustavo Barajas et al.; Sup. Court, County of Los Angeles No. BC655001 Ashley R. Morris, Esq. (Wilson Elser Moskowitz Edelman & Dicker, LLP)
March 28, 2018	Antoinette Satchel v. Sacramento RTD et al.; Sup. Court, County of Sacramento No. 34-2014-00171169 Timothy S. Spangler, Esq. (Sacramento Regional Transit District)
April 4, 2018	Littlejohn v. Intown Suites Piedmont, LLC; Sup. Court, County of Fulton, Georgia No. 13EV018439 Jake Daly, Esq. (Freeman, Mathis & Gary)
May 2, 2018	Aki v. Dr. Alfred Roland Lonser, MD, et al.; Sup. Court, 3 rd Judicial District, Alaska No. 3AN-17-04308 CI Chester D. Gilmore, Esq. (Cashion Gilmore LLC)
June 14, 2018	Licciardi v. Lutheran Hospital Assoc., et al.; District Court, Colorado No. 16-cv-3000-RBJ Andrew C. Efaw, Esq. (Wheeler Trigg O'Donnell LLP)
July 19, 2018	Steadman v. Shawn P. McManus, DO, et al.; 4 th Judicial District Court, Utah No. 160400870 Kurt M. Frankenburg, Esq. (Frankenburg Jensen)
August 15, 2018	England v. Dignity Health, et al.; Sup. Court, Yolo County, CA No. CVPO-2017-1027 Sarah C. Gosling (Schuering Zimmerman)
August 30, 2018	Gutierrez v. Santa Rosa Memorial Hospital, et al.; District Court, Northern District of CA No. 3:16-cv-02645-SI Diana Kaempfer (La Follette, Johnson De Haas, Fesler, & Ames)
September 11, 2018	Brantley v. UPS Ground Freight, et al.; District Court, Eastern District of Arkansas No. 3:16-CV-352 (DPM) Robert Cox (Glassman, Wyatt, Tuttle, & Cox, PC)
October 30, 2018	Hernandez v. Kaiser; San Francisco, CA Arbitration John S. Simonson (Hayes Scott Bonino Ellingson Guslani Simonson & Clause LLP)
November 20, 2018	Aurelia Rivas v. Kaiser Foundation Health Plan, Inc., et al. Arbitration Gillian N. Pluma (La Follette, Johnson, DeHaas, Fesler & Ames)

Trial and Arbitration Testimony

June 7, 2007	Ryan Todd Schweizer v. The City of Fredericton et al.; New Brunswick, Canada; No. F/C/533/02 Barry Spalding (Barry Spalding Lawyers; Saint John, New Brunswick)
August 30, 2007	Stewart v. Welch Community Hospital, et al.; WV No. 06-C-151-M Stephen New (Law Office of Stephen New; Beckley, West Virginia)
January 7, 2009	Kenneth Taylor, et al. v. Michael Schmerler, MD et al.; Hamilton County, OH No. A0606042 Joel L. Peschke (Triona, Calderhead & Lockemeyer; Cincinnati, Ohio)
September 15, 2009	Bianchi v. Salazar Equipment Co., Inc., et al.; Santa Clara, CA No. 1-08-CV104548 John Simonson (Hayes Scott Bonino Ellingson McLay, LLP; Redwood Shores, CA)
September 30, 2009	Bridgette Jeffries v. United States of America; Seattle, WA No. C08-1514 RSL Jeffrey C. Sullivan (U.S. Department of Justice, WA)
September 16, 2010	Lynette Wells v.. Kaiser; Santa Clara, CA No. 9873 George E. Clause (Hayes, Scott, Bonino, Ellingson & McLay; Santa Clara, CA)
July 14, 2011	Alison Skamangas v. Valley Care Health System, et al.; County of Alameda, CA No. VG09438029 David Lucchese (Galloway, Lucchese, Everson; Walnut Creek, CA)
December 21, 2011	Gann, et al. v. Ferrellgas, LP; County of Madera, CA No. MCV052091 Michael C. McMullen (Schlee, Huber, McMullen & Krause PC; Kansas City, MO)
March 7, 2012	Frankel v. Palo Alto Foundation & Medical Group, et al.; Santa Clara, CA No. 1-08-CV103310 Susan Foe (Dryden, Margoles, Schimaneck & Wertz; Santa Clara, CA)
June 29, 2012	Pauline Gogol v. Mills Peninsula Health Services, et al.; San Mateo County, CA No. CTV 509469 Cyrus A. Tabari (Sheuerman, Martini, & Tabari; San Jose, CA)
August 3, 2012	Tucker v. Kaiser Foundation Hospitals et al.; Los Angeles, CA Arbitration Cyndi Douglass (La Follette, Johnson, De Haas, Fesler & Ames; CA)
October 25, 2012	J. Jacobs and A. Jacobs v. Sacramento Regional Transit District, et al.; Sacramento, CA No. 34-2008-00028013 Tim Spangler (Sacramento Regional Transit District, CA)

February 3, 2014	William E. Wilson et al. v. State of Oregon, et al.; Multnomah, OR No. 1204-04632 Ted Buck (Frey Buck P.S. Seattle, WA)
August 19, 2014	O'Neill v. Pentin; Seattle, WA Ruth Laura Edlund (Law Offices Wechsler Becker, LLP)
December 12, 2014	Caryl Harrison v. Derek A. Taggard, MD., et al.; County of San Francisco, CA No. CGC-12-524952 Thomas J. Doyle (Schuering Zimmerman & Doyle, LLP)
March 16, 2015	Martha O. Cahan v. D.D. Real Estate Holdings & Travelynx Inc.; Brevard County, FL No. 05-2012-CA-038994 Cary N. Bos (Kubicki Draper)
May 8, 2015	A. Sharma v. Dignity Health et al.; Superior Court of CA, County of Sacramento No. 34-2013-00138981 Patrick Lanius (Lanius & Associates)
May 12, 2015	J. Axelrad v. Morgan Stanley et al.; County of San Francisco, CA Arbitration Peter Boutin (Keesal, Young & Logan)
June 23, 2015	State of Washington v. Christopher Monfort; County of King, WA No. 09-1-07187-6 SEA Todd Gruenhagen (Associated Counsel for the Accused)
August 28, 2015	Jacqueline Clinton v. Kaiser Foundation; Folsom, CA No. 12699 Mark Muro (Muro & Lampe)
November 2, 2015	Un Suk Guernsey v. Sammut Brothers Dev, et al.; County of Monterey CA No. M126693 Vincent P. Hurley (Law Offices of Vincent P. Hurley)
November 13, 2015	Carolyn Baker v. Mercy Hospital Anderson, et al.; Hamilton County, OH No. A1400720 Joel L. Peschke (Calderhead, Lockemeyer & Peschke)
March 15, 2016	Ruiz v. Willowglen Academy, et al.; Stephenson County, IL No. 12 L 5 Robert J. Kopka (Kopka Pinkus Dolan)
November 9, 2016	Gutierrez v. Le, Mandel, et al.; County of Orange, CA No. 30-2015-00797352-CU-MM-CJC Michael C. Ting, Esq. (Schmid & Voiles)
June 9, 2017	Diane Lewis v. Muhammad Alghannam MD, et al.; County of Sutter, CA No. CVCS-12-0874 Anthony D. Lauria, Esq. (Lauria Tokunaga Gates & Linn, LLP)

September 11, 2017 Sanchez v. County of San Bernardino.; Sup. Court, Cty of San Bernardino, CA
 No. CIVDS1309504
 Kate Stimeling, Esq. (Riley Safer Holmes & Cancila LLP)

October 6, 2017 Miller v. Sutter Amador Hospital, et al.; Sup Court, Cty of Amador, CA
 No. 13-CV-8243
 Kevin M. Smith, Esq. (Law Offices of Kevin M. Smith)

October 13, 2017 Quezada v. Kaiser Foundation Hospitals, et al.; Miami-Dade County, Florida
 No. 14465
 David Rubaum, Esq. (Reback, McAndrews, Kjar, Warford & Stockalper LLP)

April 20, 2018 McKnight v. Mercy Health-Fairfield Hospital, et al.; Hamilton County, Ohio
 No. A1601099
 Joel Peshke, Esq. (Calderhead, Lockemeyer & Peschke)



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EXHIBIT “4”

December 18, 2018

Chad C. Couchot, esq.
Schuering, Zimmerman & Doyle, LLP
400 University Avenue
Sacramento, CA 95825

RE: FARRIS VERSUS RIVES

Dear Mr. Couchot:

Per your request, I reviewed this matter to rebut the opinions of Dr. Justin Willer and to comment on the cause of Titina Farris' injuries.

My qualifications to offer an opinion are detailed in my attached Curriculum Vitae. I am a physician licensed to practice medicine in the State of California. I earned a medical degree from UC San Diego in 1972. From 1973 to 1976 I attended residencies in internal medicine and neurology at the University of California, San Francisco Hospitals. From 1976 to 1978, I was a fellow at the National Institutes of Health in Neuromuscular Disease and served as a lieutenant commander in the United States Public Health Service. I am board certified in internal medicine, neurology, electrodiagnostic medicine and sleep medicine. I have practiced neurology for nearly 40 years and I have been on the adjunct clinical faculty at Stanford School of Medicine since 1978. I am currently an adjunct clinical professor at Stanford University School of Medicine and have active privileges as attending physician at the Palo Alto Veterans Administration Hospital.

I have extensive experience in diagnosing and treating patients with peripheral neuropathy, having completed a fellowship in peripheral nerve and muscle disease and being board certified in electrodiagnostic medicine. In addition, I have conducted independent research in the area of diabetic neuropathy and I have published several papers in that area. I was Director of the Stanford Neuromuscular Laboratory for five years and have performed and reviewed hundreds of peripheral nerve biopsies.

My publication history is included in my attached CV. My fee schedule is attached as is also a statement of my court and deposition testimony in the past 4 years.

With respect to this matter, I have reviewed extensive medical records including those of Advanced Orthopedics and Sports Medicine, Desert Valley Therapy, the medical records of Dr. Naomi Chaney, St. Rose Dominican Hospital records, and records of Dr. Beth Cheng, and the report of plaintiff's expert Dr. Justin Willer.

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My review of the records has revealed the following pertinent facts: Ms. Farris has longstanding diabetes mellitus, which, according to her physician, historically been "poorly controlled" and "the patient continues to engage in dietary indiscretion".

Her history of diabetes mellitus is recorded in the 09/16/14 office note of Dr. Naomi Chaney. At the time, her symptoms included foot pain as a result of her diabetic neuropathy. In 2014, a year prior to the events in question, Ms. Farris was treated with substantial amounts of oral narcotics in the form of Norco and was also taking gabapentin for nerve pain.

In her intake questionnaire in her visits to the orthopedists, she in her own hand describes "nerve pain" ... "since 2012".

With respect to her hospitalization in 2015 and her clinical care therein, I believe that the attending physicians are correct in that she most likely did suffer what is termed critical care neuropathy, a poorly understood, but well recognized sensory and motor neuropathy which can be precipitated by prolonged critical care status and which may have been exacerbated by her underlying and longstanding diabetic peripheral neuropathy.

I find that the report of Dr. Willer, plaintiff's expert neurologist, is lacking in that he fails to acknowledge Ms. Farris's pre existent diabetic neuropathy as a significant factor in her current disability. Her preexistent history of severe diabetic neuropathy required narcotic medication, and gabapentin, a medication commonly used to treat nerve pain. Most of Dr. Chaney's office visit notes before and after August 2015 mention the diabetic neuropathy and poor control of blood sugars. In the section of Dr. Willer's report regarding reviewed materials, he acknowledges that the records of Advanced Orthopedics and Sports Medicine from 07/02/14, 11/25/14, and 05/05/15 indicate a history of "diabetic neuropathy," but he does not comment as to the severity of the problem, which required narcotic medication and consultation. In addition, he did not mention that following the events in the summer of 2015 when she underwent her hernia surgery and ICU hospitalization, she continued to engage in dietary indiscretion and continued to have neuropathic pain.

For example, the 04/26/17 office note of Dr. Naomi Chaney notes that the patient continues to have neuropathic pain. She says: "I have explained this is in part related to diabetes." She notes that the patient continued to have poorly controlled diabetes.

Based on my education, training, and experience and review of the pertinent documents, I have reached the opinion that Ms. Farris suffered from a significant painful diabetic neuropathy prior to the events of August 2015 and that this was in part due to her poorly controlled diabetes, which continues to the present time.


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It is my opinion that it is more likely than not that she will continue to have painful diabetic neuropathy and that this characteristically and typically worsens with time in terms of disability due to pain, weakness, and impaired sensation, often accompanied by gait imbalance.

None of these facts are considered by Dr. Willer in his report.

Furthermore, it is my opinion that a substantial portion of her current disabilities and pain are related to her underlying neuropathy in addition to her critical care neuropathy.

All the opinions offered in this report are offered to a reasonable degree of medical probability.



Bruce T. Adornato, M.D.
Adjunct Clinical Professor of Neurology
Stanford School of Medicine
Palo Alto Neurology

BRUCE T. ADORNATO, M.D.

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San Mateo, California, 94402
TELEPHONE: 650.638.2308
Email: bador nato@stanford.edu
adornato@gmail.com

PERSONAL INFORMATION:

Year of Birth: 1946
Citizenship: USA
Medical Licensure: California G25289

EDUCATION:

- University of California, Santa Barbara, 1964-1968, A.B.
- University of California, San Diego, 1968-1972, M.D.
- University of California, San Francisco, 1973-1976, internal medicine and neurology
- National Institutes of Health, Bethesda, Maryland, 1976-1978, neurology fellowship

HONORS AND AWARDS:

- Cum Laude, University of California, 1968
- Award for Research Promise, Department of Psychology, University of California, Santa Barbara, 1968
- USPHS Traineeship in Physiological Psychology, 1966-1968
- USPHS Traineeship in Neurosciences, 1969
- USPHS Traineeship in Neuropathology, 1970
- "Doctor's Recommended – Physicians Name 621 of the Best Doctors in the Bay Area", September, 1992, Focus magazine
- "Top 500 Doctors in the Bay Area", 2001, San Francisco magazine
- American Academy of Neurology Annual Meeting, Neuro Bowl Competition, Toronto, 1999, winning team captain
- "Top Doctors in the San Francisco Bay Area", Focus magazine, Jan 2000
- "Top Docs in the San Francisco Bay Area-The A List", San Jose Magazine, Feb, 2003
- American Academy Neurology Annual Meeting, Neuro Bowl Competition, 2004, winning team captain
- American Academy of Neurology, Annual Meeting, Neuro Bowl Competition, Miami, Finalist, 2005
- American Academy of Neurology, Annual Meeting, Neuro Bowl winning team captain, San Diego, 2006
- Participant, Presidential Address, Annual Meeting, American Academy of Neurology, Boston, 2007
- Recipient, Serra High School Award of Merit, Science and Technology, October 2007

- American Academy of Neurology, Annual Meeting, Neuro Bowl Competition Team Participant, Seattle Washington, 2009; Honolulu, 2011
- Top Doctor , San Francisco Magazine, January 2015
- Lifetime Honorary Staff Membership, Stanford Hospital, May 2016

TRAINING:

-
- Internship, Internal Medicine, University Hospital, San Diego, 1972-1973
 - Resident, Internal Medicine, University of California, San Francisco, 1973-1974
 - Resident, Neurology, University of California, San Francisco, 1974-1976
 - Clinical Fellowship, National Institutes of Health, Medical Neurology Branch, Bethesda, Maryland, 1976-1978 (LT.CDR, USPHS)

BOARD CERTIFICATION:

-
- American Board Internal Medicine, 1975
 - American Board Psychiatry & Neurology, 1978
 - American Board Electrodiagnostic Medicine, 1983
 - American Board Sleep Medicine, 1991

PRESENT PRACTICE POSITIONS:

-
- Adjunct Clinical Professor of Neurology, Stanford University Medical School
 - Attending Physician, active staff, Palo Alto Veterans Administrative Hospital
 - Chief Medical Officer, Core Mobility Inc, San Jose, California

ADMINISTRATIVE POSITIONS:

-
- Membership Committee, American Academy of Neurology, 2011-2012
 - Community Liaison, International Medical Services, Stanford Hospital, 2003-2006
 - Department of Neurology and Neurosciences, Stanford Medical School, Adjunct Clinical Faculty Review Committee, 2003-2006
 - Dean's Committee on Adjunct Clinical Faculty, 2002-2008
 - Bylaws Committee, Stanford Hospital 2004- 2012
 - Presidential Nominating Committee, American Academy of Neurology, 2012
 - Council Member, Society of Clinical Neurologists, 2010-2013
 - American Academy of Neurology, President's Physician Burnout Task Force, 2015

PREVIOUS POSITIONS:

-
- American Academy of Neurology, Member Research Committee, 2005- 2011

- Finance Committee, Stanford Hospital, 2006-2007
- Stanford Hospital Medical Board, 2005-2006
- President, Stanford Hospital Medical Staff 2003-2005
- Active medical staff, Stanford Hospital, 1978-2016
- Examiner American Board Psychiatry and Neurology 1978-2004
- Vice-President, Stanford Hospital Medical Staff, 2001-2003
- Deputy Chief, Department of Neurology, 2001-2004
- Neurologist, Palo Alto Medical Foundation, 1978-1983
- Clinical Assistant Professor, Department of Neurology, Stanford University, 1979-1990
- Director, Neuromuscular Laboratory, Stanford University Hospital, 1979-1983
- Neurologist, Neurological Associates, Boise, Idaho, 1983-1986
- Clinical Assistant Professor, Department of Medicine, University of Washington, Seattle, 1983-1986
- Director, CPMC Sleep Center, San Francisco, 1987-1996
- President, San Francisco Neurological Society, 1993-1994
- Credentials Committee, Stanford Hospital, 1986-1995
- Member, Physician Assisted Suicide Committee, Stanford Hospital, 1996-1997
- Clinical Advisory Committee, Blue Shield (Medicare) 1995-1997
- Member, Ad Hoc Physician Credentials Committee, Stanford Hospital, 1997
- Medical Director, Stanford Health Services Sleep Clinic, San Francisco, California, 1996-2000
- Examiner, American Board of Psychiatry and Neurology 1979-1991
- Legislative Affairs Committee, American Academy of Neurology, 1994-1998
- Program Chairman, Society of Clinical Neurologists, 1999
- Legislative Affairs Committee, American Academy of Neurology, 1994-2000
- Member, Strategic Planning Committee, American Academy of Neurology, 1999-2000
- Member, Strategic Planning Committee, American Academy of Neurology, 1999- 2000
- Council Member, San Francisco Neurological Society, 1994-2001
- Qualified Medical Examiner, State of California, 1986-2002
- Medical Director, Sleep Solutions, Inc., 1998-2002
- Chairman, Bylaws Committee, Stanford Hospital, 2002-2003
- Medical Advisor, Blue Shield of California, 1998-2005
- Member, Palliative Care Committee, Stanford Hospital, 2000-2003
- American Academy Neurology Speakers Bureau, 2000-2003
- Stanford Medical Quality Assurance Review 2002-2005
- Stanford Hospital Medical Staff Nominating Committee 2008

CONSULTANT ACTIVITIES:

-
- Stanford Research Institute: Calcium Channel Blockers and Multi-infarct Dementia, 1990
 - Syntex: Ticlopidine Antiplatelet Study – Adjudicator, 1986-1989
 - Physiometrix: Electrode Technology Development, 1991-1996
 - Genentech: Nerve Growth Factor Testing, 1992-present
 - Stanford Hospital: Occupational Injury Evaluation Program, 1993
 - Krames Communication: Sleep Apnea, 1993
 - JP Morgan Partners, Healthcare Group

- Sofinnova Biotechnology
- Interwest Partners, Biomedical Venture Capital
- Skyline Ventures, Palo Alto venture capital
- Panorama Capital, Menlo Park venture capital
- Coleman Research Group

MEMBERSHIPS:

-
- American Academy of Neurology
 - Society of Clinical Neurologists
 - San Francisco Neurological Society
 - Bay Area Stroke Society
 - Sleep Section, American Academy of Neurology
 - Movement Disorders Section, American Academy of Neurology
 - Neuromuscular Section, American Academy of Neurology
 - Spine Section, American Academy of Neurology
 - American Heart Association, Fellow, Stroke Council

FELLOWSHIPS:

-
- Fellow, American College of Physicians, 1980
 - Fellow, American Academy of Neurology, 1982
 - Fellow, American Sleep Disorders Association, 1992
 - Fellow, American Association of Electrodiagnostic Medicine, 1991

PREVIOUS POSITIONS:

-
- Program Committee, American Association of Electromyography and Electrodiagnosis, 1985-1987
 - President, Society of Clinical Neurologists, 1987-1989
 - Assistant Secretary, Scientific Advisory Panel, CMA, 1987-1989
 - Editor, Health Tips, CMA, 1988-1989
 - Examiner, American Board of Neurology and Psychiatry, 1980-1992
 - Examiner, American Board of Electrodiagnostic Medicine, 1985-1988
 - Membership Committee, American Academy of Neurology, 1986-1991
 - Section Chairman, Scientific Advisory Panel, California Medical Association, 1989-1990
 - Program Chairman, San Francisco Neurological Society, 1992, 1993 Meetings
 - Independent Medical Examiner, State of California, Neurology and Internal Medicine, 1989-present
 - Secretary-Treasurer, San Francisco Neurological Society, 1989-1990
 - Vice President, San Francisco Neurological Society, 1991-1992
 - Lecturer, Department of Pathology, Neuropathology, Stanford Medical School, 1986-present
 - Department Chairmanship Search Committee, Neurology, Stanford, 1992
 - Board of Directors, Stanford Private Physicians Group, 1993-1994
 - Founder, Sleep Disorders Center, St. Lukes Hospital, Boise, Idaho, 1984

- Founder, Director, Sleep Disorders Center, Pacific Presbyterian Hospital, San Francisco, 1986
- Instructor, School of Sleep Medicine, Palo Alto, 1994

HOSPITAL AFFILIATIONS:

- Stanford University Medical Center; Lifetime Honorary Staff Member, former Attending Physician
- Veterans Administration Hospital, Palo Alto; Active Staff, Attending Physician

PREVIOUS RESEARCH PROJECTS:

- Clinical Investigator, Ticlopidine Antiplatelet Stroke Study, 1982-1988
- Clinical Investigator, Naproxen Headache Study, 1989
- Principal Investigator: "Syntex Bioequivalence Study of Two Oral Contraceptives", 1990
- Principal Investigator: "Pilot Study of Phase 1 Triphasil, An Oral Contraceptive"
- Co-Investigator: "Study of Mitochondrial DNA and Oxidative Phosphorylation In Skeletal Muscle In Parkinson's Disease", 1991-1993
- Principal Investigator: "Dynamic Imaging of the Nasopharynx In Sleep Apnea", 1991-present
- Principal Investigator: "A New Proportional-fit Electrode Placement Device For Ambulatory Monitoring", 1991-1992
- Principal Investigator: "Clopidogrel vs. Aspirin In Patients At Risk For Ischemic Events", 1992-1996
- Principal Investigator: "A Phase 1 Open-label Study Of The Safety of Recombinant Human Nerve Growth Factor (rhNGF) In Patients With Small fiber Sensory Neuropathy", 1993-1995
- Principal Investigator: "A Phase 1 Double-blind Study Of The Safety And Pharmacokinetic Profile of Recombinant Human Nerve Growth Factor (rhNGF) In Healthy Volunteers"
- Principal Investigator: "Multicenter Dose-ranging Safety And Effectiveness Study Of Peg-Superoxide Dismutase In Severe Head Injury", 1992-1993
- Co-investigator: "Signal Analysis Of A New EEG Capsule Electrode And Comparison To The Electro-cap And Silver-silver Chloride Electrodes," 1993
- Principal Investigator: "Phase II Multicenter Double Blind, Placebo Controlled Study Of The Safety And Efficacy Of Nerve Growth Factor In Diabetic Peripheral Neuropathy", 1994-1996
- Principal Investigator: "Lymphocyte Characterization In Multiple Sclerosis", (Immulogic), 1993-1995
- Principal Investigator: "Phase II Trial of Botulinum B Toxin In Cervical Dystonia", 1995-1996
- Principal Investigator: "NGF Trial In HIV Polyneuropathy", 1995-1998
- Principal Investigator: "Phase III Trial NGF In Diabetic Neuropathy", 1997-1999
- Principal Investigator: "Open Label Botulinum B In Cervical Dystonia", 1997-present
- Principal Investigator: "Open Label NGF In Diabetes", 1998-1999
- Principal Investigator: "Ambulatory Sleep Recording In Sleep Apnea" 2000

- Principal Investigator: "NINDS trial of magnets in diabetic peripheral neuropathy" 2000-2001

ABSTRACTS PRESENTED:

- Association of Professional Sleep Societies 6th Meeting, Phoenix, Arizona; "Dynamic CT Pharyngeal Imaging During Sleep In Patients With Sleep Apnea", BT Adornato, M.D., T Pace, R.Psgt.T., G Gamsu, M.D. et al
- Symposium On Etiology, Parkinson's Disease, Boston, MA, October, 1993
- "ATP Production by Intact Mitochondria Is Not Decreased in Parkinson's Disease", DA DiMonte, MS Sandy, BT Adornato, S Jewell, C Tanner and JW Langston
- "Phase Ib Study of Nerve Growth Factor In Peripheral Neuropathy", S Apfel, BT Adornato, D Cornblath, et al, ANA, 1996
- Benign Transient Neuromyalgic Response, AAN, Boston, 1997
- "Clinically Relevant Doses of Recombinant Human Nerve Growth Factor (rhNGF) Have a Large Margin of Safety", C Rask, B Adornato, C Sansers, Endocrine Society, New Orleans, June, 1998
- Severe Sleep Apnea in Non-obese Asians, AAN, Toronto, April, 1999

RECENT PRESENTATIONS:

- "Stroke as a cause of hemidiaphragmatic palsy", Society of Clinical Neurologists, Death Valley, Nov 4, 2010
- "A novel treatment for Restless Leg Syndrome", Society of Clinical Neurologists, Asheville, North Carolina, October 15, 2011
- "Tarlov's Cyst: A cause of persistent orthostatic headache", Society of Clinical Neurologists, St. John's, Newfoundland

A Puzzling Case, Diagnosis and Treatment, Society of Clinical Neurologists, Cranwell, Massachusetts, October 13, 2016

"Unsafe at Any Speed- a novel handsfree upright mobility device". Society of Clinical Neurologists, Lincoln Oregon, September 2017

INVITED LECTURES:

- "Sleep Disorders", Annual Meeting of the San Francisco Neurological Society, February 11, 1990
- "Neck Pain", Annual Meeting of California Society of Industrial Medicine and Surgery, Monterey, August, 1990
- "Tryptophan-induced Myalgias", Society of Clinical Neurologists, October, 1991
- "Parkinson's Disease", Stanford Medical Center, February, 1991

- "Antiplatelet Agents: Clopidogrel", Physical Medicine Department Rounds, Stanford/Palo Alto VA, February 3, 1993
- "Neuropathology of Muscle Disease", Stanford School of Medicine, January 20, 1993
- "The Normal Neurologic Exam", Stanford School of Medicine, February 10, 1993
- "What Every Doctor Needs to Know About Stroke", Natividad Medical Center, December 7, 1992
- "Antiplatelet Agents And Stroke", Lompoc District Hospital, November 20, 1992
- "New Agents And Stroke", Circle City Medical Center, Corona, CA, October 28, 1992
- "Stroke Prevention", Riverside Community Hospital, November 10, 1992
- "New Treatment Options In Stroke", South Coast Medical Center, Laguna Beach, September 15, 1992
- "Update On Stroke", Samaritan Hospital, San Clemente, CA, May 15, 1992
- "New Options For Stroke Prevention", Petaluma General Hospital, May 21, 1992
- "Update On Stroke Prevention", HOAG Hospital, Newport Beach, March 19, 1992
- "Reducing The Risk of Stroke", Samaritan Hospital, San Jose, March 18, 1992
- "Stroke Update", Salinas Valley Memorial Hospital, August 11, 1992
- "New Agents in Stroke", Tucson Memorial Hospital, April 20, 1992
- "Strategies In Stroke Prevention", Marin General Hospital, July 21, 1992
- "CAPRIE – New Stroke Agent Clopidogrel", Kaiser Hospital, Redwood City, May 19, 1992
- "Clopidogrel – New Antiplatelet Agent", Mills Hospital, November 23, 1992
- "Stroke And A New Agent – Clopidogrel", Department of Medicine Resident Rounds, June 5, 1992
- "Sleep Disorders", California Pacific Medical Center, August 14, 1992
- "Polysomnography In A Clinical Sleep Center", Eight Annual Meeting Of The American Academy of Clinical Neurophysiology, June 18, 1993
- "Nerve Growth Factor", Society of Clinical Neurologist, Sedona, AZ, October, 1993
- "Practical Neurology, The Old, The New, and The Promising: Sleep Disorders", California Medical Association, Anaheim, CA, March, 1994
- "Sleep Apnea", Department of Otolaryngology, UCSF, November, 1993
- "Narcolepsy", Stanford Sleep School, Palo Alto, November, 1993 and May, 1994
- "Head Injury", Stanford University Emergency Room, March, 1993
- "Muscle Disease", Stanford Department Pathology Medical Student Series, January, 1994
- "Diseases Of The Motor Unit", Stanford Physical Medicine and Rehabilitation, VA Hospital, March, 1994
- "Stroke", VA Hospital Resident's Lecture, Palo Alto, March, 1994
- "Stroke Implications Of Therapy For Patients", REACH Program, Palo Alto, July, 1994
- "Sleep Disorders", St. Francis Hospital, San Francisco, October, 1994
- "Sleep Disorders", UCSF Rounds, September, 1995 and November, 1995
- "Diabetic Neuropathy", El Camino Hospital Rounds, July, 1995
- "Muscle Disorders", Stanford Neuropathology, January, 1995
- "Nerve Growth Factor", Basic Science Rounds, UCSB, March, 1995
- "Narcolepsy", Stanford School of Sleep Medicine, January, 1996
- "Sleep Phenomena", Neurology Grand Rounds, CPMC, San Francisco, June, 1996
- "Neurology of Sleep Disorders", UCSF, November, 1996
- "Diabetic Neuropathy", Santa Clara County Diabetes Association, October, 1996
- "Diabetic Neuropathy", O'Connor Hospital, San Jose, August 2, 1997
- "Diabetes and NGF", Palo Alto Medical Clinic Diabetes Support Group, August 5, 1997

- "Nerve Growth Factor Neuropathy Trials", Genentech Quarterly Meeting, October 14, 1997
- "Approaches to Peripheral Neuropathy", Medicine Grand Rounds, El Camino Hospital, November 7, 1997
- "Diabetic Neuropathy", Los Gatos Community Hospital Rehabilitation Department, November 18, 1997
- "Stroke Treatment", Medicine Grand Rounds, Mt. Diablo Hospital, November 19, 1997
- "Narcolepsy and Sleep Disorders", Department of Neurology, Resident Rounds, UCSF, November 10, 1997
- "Excessive Daytime Sleepiness and Narcolepsy", American Lung Association Meeting, Monterey, November 21, 1997
- "Narcolepsy", Stanford School Sleep Medicine, July, 1998
- "Biology of Nerve Growth Factors", Society of Clinical Neurologists, September, 1998, Dixville Notch, NH
- "Growth Factors in Diabetic Neuropathy", American Diabetes Assoc. Meeting, Orlando, FL, January, 1999
- "Nerve Growth Factors in Neuropathy", Grand Rounds, Stanford Neurology, April, 1999
- "Sleep apnea in the Surgical Patient" Surgical Resident teaching rounds, Stanford, October, 2001
- Global Pacific Stanford Conference, Manila: Parkinson's Disease, Dementia, Migraine, November 2003

VIDEO CONSULTANT:

- AMA Video Clinic, April 22, 1987, "Understanding the Neuropathies"
- Video Back Program, Karen Perlroth, March, 1992
- Physiometrix Instructional Video: "Electroencephalographic Electrodes", August, 1994
- Genentech Video Presentation "NGF in Diabetic Neuropathy", November, 1997
- Sleep Solutions Video Presentation

REVIEWER:

- Annals of Neurology
- Annals of Internal Medicine
- Diabetes Care
- Neurowatch
- American College of Physicians Medicine, Neurology Section
- "Continuum" American Academy of Neurology Continuing Education in Neurorehabilitation, 2010
- Practice Guidelines, American Academy of Neurology, Peripheral Neuropathy, 2011
- American Academy of Neurology, 2015

PUBLICATIONS:

1. Meeker MR, Reynold RW and Adornato BT: The Effect Of Thiosemicarbazide And Mild Shock Treatment On Subsequent Probabilistic Escape Behavior In Rats. *Psychonomic Bulletin* 1:27-31, 1967
2. O'Brien JS, Okada S, Fillerup DL, Veath MI, Adornato BT and Brenner PH: Tay-Sachs Disease: Prenatal Diagnosis. *Science* 172:61-64, 1971
3. O'Brien JS, Okada S, Fillerup DL, Veath MI, Adornato BT and Brenner PH: Tay-Sachs Disease: Prenatal Diagnosis. In: *Antenatal Diagnosis*, Albert Dorman, ed., University Press, 1972, pp 175-184
4. Adornato BT, O'Brien JS, Lampert PW, Roe TF and Neustein HB: Cerebral Spongy Degeneration Of Infancy, A Biochemical And Ultrastructural Study of Affected Twins. *Neurology* 22:202-210, 1972
5. Adornato BT and Lampert PW: Status Spongiosus Of Nervous Tissue: An Electron Microscopic Study. *Acta Neuropath.* 19:271-289, 1971
6. Adornato BT: Factitial Pulmonary Edema. *JAMA* 235:101, 1976
7. Adornato BT, Winestock D: Acute Renal Failure, *Arch Neurology* 33:687-688
8. Adornato BT, Winestock D: Acute Renal Failure: In: *Contemporary Aspects Of Cerebrovascular Disease*. G.M. Austin, ed., 1976. Professional Information Library, Dallas
9. Adornato BT: Hemopexin In Neuromuscular Disease. *Neurology* 27:380, 1977, (Abstract)
10. Askanas V, Engel WK, Brittan DE, Adornato BT and Elben RM: An Unusual Mitochondrial Abnormality Re-innervated Ex Aergro and Induced De Novo In Cultured Muscle Fibers. *Neurology* 27:348, 1977 (Abstract)
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- Adornato, BT: Sleep Disorders And Insomnia In The Elderly. Albarede J, Morley J, Roth T and Vellas B. In *Contemporary Gerontology*, Volume 1:50, 1994

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- "Disorders of Sleep and Circadian Rhythms" in *Harrison's Principles of Internal Medicine Companion Handbook*, 14th Edition, McGraw-Hill, New York
 - "Diseases of The Spinal Cord In Clinical Neurology", Adornato BT and Glasberg MR, in *The Science Of Practice of Clinical Medicine*, Rosenberg RN, ed., Vol 5, Grunc and Stratton, 1980
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Bruce T. Adornato MD Testimony 2015-2018

Trials:

Yazon v Fountain Valley (2015) Orange County

Moore v Simopoulos (2015) South Lake Tahoe

Herger v Cammarosano (2015) Woodland Ca

Gunter v Schneier (2016) Van Nuys, Ca

Ubaldo v MMG, (2016) Kahilui, Hi

King v Sloan (2017) Oakland Ca

Boyle v Jordan (2017) Alameda, Ca.

Okelley v Bryant (2018) Napa, Ca

Depositions:

Nakada (2015 Palo Alto

Rosenwald v Petaluma (2015)

Yazon (2015)

Moore (2015)

Herger (2015)

Gunter (2015)

Newell (2016)

Galbreath (2016)

Bledsaw (2016)

Hash (2016)

Galinis v Bayer March 2017

Baxter v Selco June 2017

Strand v Pebble Beach March 2018

Bailey v RL Carriers October 2018

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July 15, 2018

MEDICOLEGAL CONSULTATIVE SERVICES

- | | |
|--|------------|
| 1. Retainer/Administrative Fee | \$575 |
| 2. Review of records, conferences, testimony | \$575/hour |
| 3. Depositions (one hour minimum) | \$700/hour |

4. CANCELLATION PROVISIONS

In the event of a cancellation of scheduled services, advance notification is necessary: Three full working days prior to depositions, conferences and Independent Medical Examinations and seven working days for courtroom or arbitration or mediation testimony. Late cancellations billed in full for time reserved.

The party scheduling the appointment is responsible for the late cancellation/missed appointment fee. Secondary collection of these fees from another law firm or from the examinee is the responsibility of the scheduling party.

Responsible Party

Date

EXHIBIT “5”

Chad C. Couchot, Esq.
12/19/18
SCHUERING ZIMMERMAN & DOYLE, LLP
400 University Avenue
Sacramento, CA 95825-6502

Dear Mr. Couchot

RE: Titina Marie Farris

I was retained by your office as a Board Certified Physical Medicine and Rehabilitation (PMR) physician expert. You requested I review the Life Care Plan (LCP) authored by Dr. Alex Barchuck and attest to any separate and divergent opinions I may hold. In preparation I reviewed the LCP document and also Titina Marie Farris medical records provided by your office.

I maintain a current full time clinical and prior academic medicine practice within the specialty of Physical Medicine and Rehabilitation as a healthcare provider for disabled individuals including but not limited to those with critical illness polyneuropathy. I am a qualified rehabilitation medical expert due to my professional training and clinical experience. I have not examined Ms. Farris notwithstanding I reserve the possibility my opinions may evolve if the opportunity to examine her availed itself. Based upon the documents I reviewed listed below I am confident in submitting an opinion of her future medical and rehabilitation care. My opinions are expressed below and within a separate LCP document jointly prepared with Sarah Larson, RN.

ADVANCED ORTHOPEDICS SPORTS MEDICINE
ALEX BARCHUCK, M.D.'S LCP evaluation
BARRY RIVES, M.D.
BESS CHANG, M.D.
CARE MERIDIAN (MEDICAL BILLING
CTE STONE RE RECORDS FOR REVIEW
DAWN COOK'S LIFE CARE PLAN
DESERT VALLEY THERAPY
DR. CHANEY
DR. HAMILTON
DR. STEVEN Y. CHINN MEDICAL BILLING
ELIZABETH HAMILTON, M.D.
JUSTIN WILLER, M.D.'S REPORT
LAPAROSCOPIC SURGERY OF NEVADA
PATRICK FARRIS
PHOTOGRAPHS OF PLAINTIFF
ST. ROSE DOMINICAN - SIENA CAMPUS
ST. ROSE DOMINICAN HOSPITAL

The following are the list of diagnosis Dr. Barchuck documented following his clinical examination of plaintiff:

“Ms. Titina Marie Farris is a 55-year-old married female with history of a perforated viscus with intra-abdominal sepsis with numerous sequelae who was seen at Kentfield Rehabilitation & Specialty Hospital on 3/20/2018 at which time a history was obtained and a physical examination was performed”.

- 1. Reducible ventral hernia**
- 2. Bilateral hand Dupuytren's Contracture**
- 3. Probable bilateral Carpal Tunnel Syndrome**
- 4. Probable left rotator cuff tendonitis**
- 5. Chronic left heel stage 3 decubitus**
- 6. Situational depression, anxiety and sleep disturbance**
- 7. Viscus perforation with intra-abdominal sepsis status post exploratory laparotomy and removal of prosthetic mesh ☐**
- 8. Acute respiratory failure status post tracheostomy placement ☐**
- 9. History of incarcerated incisional hernia status post laparoscopic repair with mesh**
- 10. Encephalopathy secondary to sepsis and medications ☐**
- 11. Acute blood loss anemia ☐**
- 12. Acute kidney injury ☐**
- 13. Neuropathy from prolonged immobilization ☐**

- 14. Severe sensory loss and motor weakness below the knees bilaterally involving the Tibial and Peroneal nerves ☐**

- 15. Right ankle contracture with bilateral foot drop ☐
- 16. Weight gain ☐
- 18. Chronic neuropathic musculoskeletal myo-fascial pain ☐
- 19. High fall risk ☐
- 20. Impaired mobility and ADL status ☐
- 21. Impaired avocational status ☐

Based upon my independent review of Ms. Farris medical records I agree in general with Dr. Barchuck's diagnosis. However, the medical records I reviewed support my conclusions that several medical problems were pre-existing or unrelated to surgery

- 1. Ventral hernia- Pre-existing condition
- 2. Bilateral Dupuytren contracture- May be inherited and develops more commonly within diabetic patient population. Dupuytren is unrelated to her procedure and surgical complications
- 3. Probable Carpal Tunnel Syndrome- Unconfirmed. Pre-existing related to diabetic polyneuropathy
- 4. Probable left rotator cuff tendonitis- Records reflect this was a pre-existing condition
- 5. Chronic left heel Stage 3 Decubitus- Inaccurate diagnosis. Wounds are no longer diagnosed or staged as "Decubitus". Ms. Farris most likely has a calcaneal pressure wound that requires accurate staging by a certified wound care specialist
- 6. Situational depression, anxiety and sleep disturbance- Pre-existing condition with exacerbation following surgery
- 7. Viscus perforation with intra-abdominal sepsis status post exploratory laparotomy and removal of prosthetic mesh- Related to surgery ☐
- 8. Acute respiratory failure status post tracheostomy placement- Complication of the surgery. Decannulated ☐
- 9. History of incarcerated incisional hernia status post laparoscopic repair with mesh
- 10. Encephalopathy secondary to sepsis and medications- Resolved complication no longer requiring care
- 11. Acute blood loss anemia- Resolved complication no longer requiring care
- 12. Acute kidney injury- Resolved complication no longer requiring care
- 13. Neuropathy from prolonged immobilization- Pre-existing diabetic polyneuropathy exacerbated by surgical complication
- 14. Severe sensory loss and motor weakness below the knees bilaterally involving the Tibia and Peroneal nerves- Pre-existing diabetic polyneuropathy exacerbated by surgical complication
- 15. Right ankle contracture with bilateral foot drop- Surgical complication related to

- prolonged bed rest and polyneuropathy
- 16. Weight gain- BMI is unchanged from pre hospital weight. Obesity was present prior to surgery
- 17. Chronic neuropathic musculoskeletal myofascial pain- Pre-existing. Exacerbated following surgery
- 18. Neuropathy from prolonged immobilization- Polyneuropathy was pre-existing condition secondary to diabetes
- 19. High fall risk- No supporting standard fall risk assessment, for example, Morse Fall Risk Scale to support conclusion
- 20. Impaired mobility and ADL status- Surgical complication
- 21. Impaired avocational status- Pre-existing exacerbated by surgical complication

Dr. Barchuck future care recommendations:

- 1. Physical Medicine & Rehabilitation specialist
- 2. Primary care physician
- 3. Podiatrist
- 4. Orthopedic, Hand Surgery
- 5. Psychology/Psychiatry
- 6. Dietician
- 7. Physical and Occupational Therapy
- 8. Massage therapy and acupuncture therapy
- 9. Wound clinic
- 10. Adaptive aquatic swim therapy program
- 11. Carpal Tunnel surgery
- 12. Joint and trigger point injections
- 13. MRI left shoulder
- 14. Electrodiagnostic studies of upper and lower extremities
- 15. Electric wheelchair
- 16. Bilateral custom AFO's
- 17. Heel protector boots
- 18. Single point cane
- 19. Four-wheeled seated walker
- 20. Reacher
- 21. Abdominal binder
- 22. Four to six hours of daily attendant/chore care services
- 23. Fully wheelchair accessible home in 5-10 years.

Based upon my independent review of Ms. Farris medical records, images and video I have formed conclusions that both share and differ from Dr. Barchuck's future recommendations:

1. **Physical Medicine and Rehabilitation specialist-** Ms. Farris has an acquired disability as a result of her post surgical complications. I support future PMR sub specialty care
2. **Primary Care physician-** Ms. Farris has several major pre existing medical co-morbidities and was receiving primary physician care that should continue. The medical necessity and frequency was due to pre-existing condition unchanged following surgery
3. **Podiatrist-** Ms. Farris has pre existing diabetic polyneuropathy. Consequently, the standard of care is Podiatric treatment. The medical necessity was pre- existing
4. **Orthopaedic/Hand Surgery-** Ms. Farris has polyneuropathy and perhaps Carpal Tunnel Syndrome which is speculative. The Dupuytren contractures are unrelated to her surgery and post surgical complications. Hand Surgery Orthopaedic care is therefore unrelated to her surgery and post surgical complications
5. **Psychology/ Psychiatry-** Ms. Farris mood disorder has been impacted by her acquired disability and functional impairment. I would support episodic behavioral health services
6. **Dietician-** Ms. Farris was and currently a non-compliant obese diabetic and the need for nutritional care and counseling was pre-existing
7. **Physical and Occupational Therapy-** Ms. Farris has an acquired disability as a consequence of her surgery and I would support episodic therapy services
8. **Massage and acupuncture therapy-** Ms. Farris had pre-existing chronic pain disorder related to her shoulder and polyneuropathy. Chronic pain was pre-existing. Furthermore, there is no proven advantage of complementary therapy over standard physical therapy, exercise and pharmacologic care. For these reasons I do not support massage and acupuncture
9. **Wound clinic-** Ms. Farris likely developed a calcaneal pressure wound due to pre-existing polyneuropathy, skin care non compliance. The exacerbation of her neuropathy, improper fitted bracing and improper limb positioning likely contributed to her acquired wound. I support a comprehensive wound care center or home health nurse
10. **Carpal Tunnel surgery-** I am unable to identify confirmation of Carpal Tunnel Syndrome and if present is likely due to pre-existing diabetic polyneuropathy. At this time, I cannot support surgery without a confirmed diagnosis based upon EMG/NCV studies
11. **Joint and trigger point injections-** Ms. Farris was receiving care for pre-existing shoulder pain with injection therapy. Pre-existing condition
12. **Adaptive aquatic swim therapy program-** Ms. Farris has an open wound and is not medically appropriate for aquatic therapy. Furthermore, there is no proven advantage of aquatics for her condition. I do not support this recommendation
13. **MRI Left shoulder-** The shoulder injury and related disability are pre-existing
14. **Electrodiagnostic studies of upper and lower extremities-** EMG studies have been performed of the LE. The polyneuropathy was pre-existing
15. **Electric wheelchair-** I support the need for a future powered mobility device
16. **Bilateral custom AFO-** Bilateral foot drop is a new acquired disability and I support the need for bilateral custom AFO
17. **Single point cane, reacher, abdominal binder heel protector boots (PRAFO), 4 WW-**

- I support providing these assistive devices which are standard care for the disability**
- 18. Four to six hours of daily attendant/chore care services- Ms. Farris had pre-existing medical co-morbidities, non compliance with medical care and in all probability would have needed future attendant care. The onset of the need for a caregiver and number of hours has changed as a result of her disability**
 - 19. Fully wheelchair accessible home in 5-10 years- Ms. Farris had pre-existing medical co-morbidities, chronic pain and non compliance with her medical care. In all probability she would have become wheelchair dependent regardless of her surgical complications**

In addition to this supplemental report I shared specific medical, rehabilitation and equipment recommendations in a separate detailed life care plan prepared jointly with Sarah Larsen, RN. I do not endorse Dr. Barchuck's life expectancy projection and defer to medical researcher and life expectancy expert Scott J. Kush, MD who has provided a separate analysis

Lance R. Stone, DO

Lance R. Stone, DO

LANCE R STONE, D.O.

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PROFESSIONAL ACTIVITIES

2018- current

Medical Director

Santa Rosa Memorial Hospital-ARU
Santa Rosa, California

2011 - 2017

Chair

Department of Rehabilitation Medicine
Alameda Health Systems
Oakland, California

Health Information Management Committee

2010 - 2011

Associate

The Neurology Center of Southern California Physician Group
The Rehabilitation Center at Scripps Memorial Hospital / Encinitas

2010 - 2012

Voluntary Faculty Instructor

Department of Neurology
University of California San Diego, San Diego, California

1994 - 2010

Medical Director

San Diego Rehabilitation Institute
Alvarado Hospital, San Diego, California

2006 - 2010

Medical Director

Rehabilitation Services
Scripps-Mercy Medical Center, San Diego, California

1997 - 2010

Medical Director

Rehabilitation Services
UCSD Medical Center / Hillcrest, San Diego, California

1989 - 1991

Assistant Medical Director

Rancho Los Amigos National Rehabilitation Center
University of Southern California, Downey, California

1988 - 1992

Service Chief, Adult Brain Injury Program

Rancho Los Amigos National Rehabilitation Center
University of Southern California, Downey, California

ACADEMIC APPOINTMENTS

1992 - 1993	Chairman, Department of Neurosciences Rancho Los Amigos National Rehabilitation Center University of Southern California, Downey, California
1987 - 1992	Residency and Fellowship Program Director Physical Medicine and Rehabilitation Rancho Los Amigos National Rehabilitation Center/USC Affiliation - Wadsworth Veteran's Administration Medical Center, Department of Physical Medicine and Rehabilitation Los Angeles, California
1987 - 1992	Clinical Assistant Professor Department of Neurology University of Southern California Los Angeles, California
1997 - 2011	Clinical Assistant Professor Department of Orthopedics University of California San Diego San Diego, California

EDUCATION

Fellowship	Neurologic Rehabilitation Rancho Los Amigos National Rehabilitation Center University of Southern California, Downey, California 1988 - 1989
Residency	Physical Medicine and Rehabilitation University of Colorado Health Sciences Center and Craig Hospital Denver, Colorado 1984 - 1987, Chief Resident 1985 - 1986
Internship	Beaumont Hospital Farmington Hills, Michigan 1981 - 1982
Medical School	Midwestern University Chicago, Illinois 1977 - 1981, Doctor of Osteopathy
Undergraduate	Michigan State University East Lansing, Michigan 1976 - 1977, Baccalaureate of Science Tulane University New Orleans, Louisiana 1975 - 1976 New England College Henniker, New Hampshire 1974 - 1975
High School	Cranbrook High School Bloomfield Hills, Michigan

1970 – 1973

LICENSURE & BOARD CERTIFICATION

Licensure, California 1987

Board Certification, American Osteopathic Board of Rehabilitation Medicine 1992

PUBLISHED ARTICLES

Ramachandran VS, Altschuler EL, Stone LR: Can mirrors alleviate visual hemi neglect?

The Journal of Medical Hypothesis, 1999, Volume 52, No. 4, 303-305

Stone LR, Friedlund P: Trauma top ten: Acute rehabilitation of the tetraplegic patient.

Journal of Trauma Nursing, October/December 1998, Volume 5, Issue 4, 105-107

Altschuler EL, Wisdom SB, Stone LR, Ramachandran VS: Rehabilitation of Hemiparesis after stroke with a mirror. The Lancet, 1999, Volume 353, No. 9169, 2035-2036.

Kim SJ, Shin DY, Stone L: Cranial nerve injuries in the adult with traumatic brain injury.

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Stone LR, Keenan MAE: Deep Venous thrombosis of the upper extremity following traumatic brain injury.

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Druitt S, Kramer WG, Howard NW, Keenan MAE, Stone LR, Waters RL, Gellman H: Carpal tunnel syndrome secondary to wrist and finger flexor spasticity. The Journal of Hand Surgery, 1990, Volume 15, No. 6, 940-944

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Young S, Keenan MAE, Stone L: The treatment of spastic plano valgus foot deformity in the neurologically impaired adult. Foot and Ankle, 1990, Volume 10, No. 6.

Keenan MAE, Tomas SE, Stone L, Gersten LM: Percutaneous phenol block of the musculocutaneous nerve to control elbow flexor spasticity.

The Journal of Hand Surgery, 1990, Volume 15A, No. 2, 340-346

Stone LR, Keenan MAE, Shin DY: Acquired limb loss following traumatic brain injury.

American Journal of Physical Medicine and Rehabilitation, 1990, Volume 69, No. 3, 135-139.

Aboulafia AJ, Keenan MAE, Stone LR: An uncommon cause of fever in a brain injured patient.

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Hurvitz SA, Stone LR, Keenan MAE, Waters RL: Acute subdural hematoma mimicking an epidural hematoma on a CT scan. Brain Injury, 1989, Volume 3, No. 1, 63-65.

Stone L, Keenan MAE: Peripheral nerve injuries in the adult with traumatic brain injury.

Clinical Orthopedics and Related Research, No. 233, August 1988, 136-144.

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Stone LR, Fanchiang SP, Keenan MAE, Young S: Outcome of traumatic brain injured patients with delayed admission to inpatient rehabilitation.

Archives of Physical Medicine & Rehabilitation, October 1989, Volume 70, No. 11, A-35.

Stone LR, Keenan MAE, Stewart CA, Hardy SE: Diagnosis and incidence of reflex sympathetic dystrophy in traumatic brain injury.

Archives of Physical Medicine & Rehabilitation, October 1989, Volume 70, No. 11, A-35

Keenan MAE, Ahearn R, Stone LR: Selective release of spastic elbow flexor muscles in the brain injured adult.

Archives of Physical Medicine & Rehabilitation, October 1989, Volume 70, No. 11, A-10

Orcutt SA, Stone LR, Keenan MAE, Waters RL, Gellman H: Carpal tunnel syndrome secondary to wrist and finger flexion spasticity.

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Payne WK, Keenan MAE, Stone LR: Foot complications in non-ambulatory spastic patients.

Archives of Physical Medicine & Rehabilitation, October 1989, Volume 70, No. 11, A-15.

Stone LR, Cohen SA, Keenan MAE, Waters RL: Rehabilitation of combined severe traumatic brain and spinal cord injury. American Spinal Injury Association Annual Meeting, 1989.

Hardy S, Stewart CA, Stone L, Keenan MAE, Hung G: Incidence of diagnosis of reflex sympathetic dystrophy in traumatic brain injury: Use of bone scintigraphy.

Clinical Nuclear Medicine, Volume 13, No. 9, 16.

Jamieson K, Stone L, Keenan MAE: Preventable complications and missed injuries in patients with severe head trauma.

Archives of Physical Medicine & Rehabilitation, September 1988, Volume 69, No. 9, 702.

Keenan MAE, Stone L, Thomas B, Gersten LM: Percutaneous phenol block of the musculocutaneous nerve.

Archives of Physical Medicine & Rehabilitation, September 1988, Volume 69, No. 9, 702.

Stone L, Keenan MAE: Peripheral nerve injuries in the adult with traumatic brain injury.

Archives of Physical Medicine & Rehabilitation, September 1988, Volume 69, No. 9, 702.

Keenan MAE, Halder T, Stone L: Electromyographic assessment of hand placement in brain injured adults.

Archives of Physical Medicine & Rehabilitation, September 1988, Volume 69, No. 9, 702.

Keenan MAE, Romanelli RR, Lunsford MS, Stone L: Evaluation of motor control in the hands of adults with spasticity from brain injury using dynamic EMG.

Archives of Physical Medicine & Rehabilitation, September 1988, Volume 69, No. 9, 702.

SCIENTIFIC PRESENTATIONS

Introduction to Transcranial Direct Current Stimulation (TDCS) in Neuropsychiatric Research.

Course Co-Director

Highland Hospital. Oakland California. *October 20, 2012.*

Neural Repair: Current Trends in Restorative Therapies Following Traumatic Brain Injury.

Faculty

Scripps Memorial Hospital - 6th Annual Brain Injury Rehabilitation Conference. Carlsbad, California. *March 17 and 18, 2011.*

Late Physical Complications Following Stroke and Traumatic Brain Injury.

Medical Grand Rounds. John F. Kennedy Memorial Hospital. Indo, California. *February 16, 1994.*

Management of Pain and Reflex Sympathetic Dystrophy Following Traumatic Brain Injury.

International Congress of Orthopaedic Rehabilitation. Anaheim, California. *June 22, 1990.*

Pathophysiology of Traumatic Brain Injury.

Neurology Grand Rounds. Harbor UCLA Medical Centers, Department of Neurology. Torrance, California.
February 26, 1990.

SCIENTIFIC PRESENTATIONS *(continued)***The Treatment of Spastic Plano valgus Foot Deformity in the Neurologically Impaired Adult.**

The 57th American Academy of Orthopedic Surgeons. New Orleans, Louisiana. *February 10, 1990.*

Diagnosis and Incidence of Reflex Sympathetic Dystrophy in Traumatic Brain Injury.

The 51st Annual Assembly, American Academy of Physical Medicine and Rehabilitation. San Antonio, Texas. *November 6, 1989.*

Outcome of Traumatic Brain Injured Patients with Delayed Admission to Inpatient Rehabilitation.

The 51st Annual Assembly, American Academy of Physical Medicine and Rehabilitation. San Antonio, Texas.
November 6, 1989.

Rehabilitation of Trauma Patients.

Eighth Annual Modern Concepts in Trauma Care Symposium.
 Orange, California. *April 27, 1989.*

Incidence and Diagnosis of Reflex Sympathetic Dystrophy in Traumatic Brain Injury:

Use of bone Scintigraphy. First Biennial World Congress, International Association of the Study of Traumatic Brain Injury. San Jose, California. *April 9, 1989.*

Pathophysiology of Traumatic Brain Injury.

Medical Grand Rounds Rancho Los Amigos Medical Center. Downey, California. *March 2, 1989.*

Peripheral Nerve Injuries in the Adult with Traumatic Brain Injury.

50th Assembly, American Academy of Physical Medicine and Rehabilitation. Seattle, Washington. *November 3, 1988.*

Percutaneous Phenol Block of the Musculocutaneous Nerve.

50th Assembly, American Academy of Physical Medicine and Rehabilitation. Seattle, Washington. *November 3, 1988.*

Evaluation of Motor Control in the Hand of Adults with Spasticity from brain Injury using

Dynamic Electromyography. 50th Assembly, American Academy of Physical Medicine and Rehabilitation. Seattle, Washington. *November 3, 1988.*

Intrinsic Release for Spastic Hand Deformity.

American Association for Surgery of the Hand, Annual Meeting. Toronto, Canada. *October 1988.*

POSTER EXHIBIT PRESENTATIONS**Foot Complications in Non-ambulatory Spastic Patients.**

The 58th Annual Meeting of the American Academy of Orthopaedic Surgeons. Anaheim, California.
March 7, 1991.

Autonomic Dysfunction Syndrome (ADS): Report of a case with observations at necropsy.

The 52th Annual Assembly of the American Academy of Physical Medicine and Rehabilitation. Phoenix, Arizona. *October 23, 1990.*

Posterior Tibial Nerve Phenol Block to Control Spastic Equinus Deformity.

The 57th Annual Meeting of the American Academy of Orthopaedic Surgeons. New Orleans, Louisiana.
February 8-12, 1990. Course Objectives.

COURSE FACULTY

Critical Care Summer Session 99.

UCSD School of Medicine. Rehabilitation in the Critically Ill Patients. San Diego, California.
August 5, 1999. Faculty.

Spinal Cord Injury Rehabilitation.

Third Annual Neurotrauma Nursing Conference. UCSD Medical Center. San Diego, California.
November 10, 1998.

Acute Rehabilitation of the Tetraplegic Patient.

Trauma Grand Rounds, UCSD Medical Center, Department of Surgery. San Diego, California.
October 13, 1998

Neuropathology As a guide to Rehabilitation Following Traumatic Brain Injury.

Trauma Grand Rounds. UCSD Medical Center, Department of Surgery. San Diego, California. May
23, 1997

Sociedad Occidental de Medicina de Rehabilitacion Annual Internal Meeting.

Peurto Vallarta, Mexico. May
15-19, 1995. Faculty.

San Diego Head Injury Foundation, Mild Traumatic Brain Injury: The Reconstruction Phase.
San Diego, California.

American Academy of Neurology, Traumatic Brain Injury Rehabilitation Course.

Daniel Freeman Memorial Hospital and Rancho Los Amigos Medical Center.
October 14-18, 1991. Faculty.

**Third International Symposium, Neuro-Orthopaedic Management of the Traumatic brain Injured
Adult.** Anaheim, California. June 21-23, 1990. Course Director.

VOLUNTEER ACTIVITIES

2005 - 2011: Red Cross Physician Volunteer (Comprehensive Combat and Casualty Care CC5) Balboa
Naval Medical Center
San Diego, California

LETTERS TO THE EDITOR

New England Journal of Medicine. Editorials and Conflicts of Interest. Volume 336: 728-729, No. 10., March 6,
1997

BOOKS

Neuro-Orthopaedic Complication Following Traumatic Brain Injury.

Physical Medicine and Rehabilitation: State of the Art Reviews. Publisher Hanley and Belfus, Inc. 1993, Volume
7, No. 3, Editor.

CHAPTERS

Spasticity: Management Using Nerve Blocks.

Physical Medicine and Rehabilitation: State of the Art Reviews 1993, Volume 7, No. 3, 527-558.

WRITING
E

Fee Schedule

- **Medical Record Review-300.00/hour**
- **Telephone Consultation-400.00/hour**
- **Physician Examination-400.00/hour***
- **Preparation of Written Life Care Plan Report-500.00/hour**
- **Deposition-750.00/hour**
- **Expert Trial Testimony-2,000.00 half day, 5,000.00 full day ****
- **Retainer Fee-2,000.00**

***Office**

****Excluding travel expenses, including preparation**

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EXHIBIT “6”

DEC 03 2018

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Northern Peninsula Infectious Diseases Medical Group
1501 Trousdale Drive
Burlingame, California 94010
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Kerlich@Norpenid.com

November 26, 2018

Chad Couchot
Schuering Zimmerman & Doyle, LLP
400 University Avenue
Sacramento, CA 95825-6502

Re: Farris, Titina v. Rives, Barry

Dear Mr. Couchot:

As per your request, I have reviewed this matter and have formed an opinion as it relates to the care provided by Barry Rives, M.D. to Titina Farris. Specifically, I have been asked to comment on the opinions and conclusions expressed by Alan Stein, M.D., an expert witness.

I am a physician licensed to practice medicine in the State of California. I am a Consultant in Infectious Diseases in a private practice named Northern Peninsula Infectious Diseases Medical Group, located at 1501 Trousdale Drive, Burlingame, California 94010. I am Board Certified by the American Board of Internal Medicine in both Internal Medicine and Infectious Diseases. I am a fellow in the Infectious Diseases Society of America. I am an Associate Clinical Professor of Medicine at the University of California, San Francisco, and I am the Medical Director of Infection Prevention and Control, and Antibiotic Stewardship at Mills Peninsula Medical Center in Burlingame California. In my day to day activities I provide Infectious Diseases consultations and follow-up care to hospitalized patients with Infectious Diseases, including patients who have had complications following surgery. A true and correct copy of my Curriculum Vitae is attached which sets forth my education, training, clinical experience, and qualifications to provide expert medical opinions regarding his case.

In preparation for this report and my opinions, I have reviewed the medical records of Titina Farris. These records include PDF files labeled St. Rose Dominican Hospital, and St. Rose Dominican Hospital – San Martin Campus (excerpts). In addition, I have reviewed reports that have been submitted by Alan Stein M.D., Bart J. Carter, M.D., and Brian E. Juell, M.D.

I disagree with the opinions and conclusions reached by Dr. Stein regarding the care provided by Dr. Rives. Specifically:

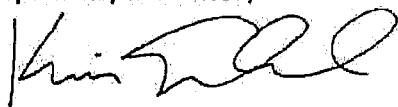
1. Dr. Stein states in his letter that, *"An Infectious Diseases (ID) consultant who saw the patient on July 4 believed Ms. Farris had fecal peritonitis."* Later in his letter, Dr. Stein states that there was, *"... An impression of fecal peritonitis from the ID consultant...."* I disagree with this conclusion, and believe that this misrepresents the comments made by the Infectious Diseases consultant. Although Farooq Shaikh, M.D, the Infectious Diseases physician who evaluated Ms. Farris on July 4, 2015 stated in his note that "This could represent fecal peritonitis.", this was not a definitive diagnosis. Although the diagnosis of fecal peritonitis was in Dr. Shaikh's differential diagnosis, since it was known that there had been bowel perforations during the surgery, Dr. Shaikh did not conclusively make this diagnosis, nor did he imply in his notes that this was the only possibility to explain Ms. Ferris's clinical condition. Dr. Shaikh broadened the antibiotics being administered to Ms. Farris to cover for many potential infectious disease conditions, but he did not make a specific diagnosis of fecal peritonitis. Furthermore, even if a diagnosis of fecal peritonitis was confirmed at the time that Ms. Farris was evaluated by Dr. Shaikh, there was no suggestion of an active bowel perforation that was still present, nor were there indications for surgical intervention.
2. Dr. Stein states in his letter that, *"Dr. Ripplinger suspected a bowel leak and states that there should be a fairly low threshold for reoperation."* In fact, Dr. Ripplinger stated that *"that there should be a fairly low threshold for at least a diagnostic laparoscopy or even laparotomy if there are any significant abnormalities noted on the CT scan; especially if there is increase in free fluid in the abdomen."* Following this clinical evaluation, a CT scan was performed that revealed a small amount of abdominal ascites, a right supra umbilical parasagittal ventral hernia, a hernia sac that contained fluid and free air with a decreased amount of free air compared to a prior study, and no extravasation of oral contrast from the bowel. These findings did not suggest the presence of a bowel perforation nor did they indicate a need for emergent surgery. These findings were not significant abnormalities that should have triggered a diagnostic laparoscopy or laparotomy.
3. Dr. Stein states in his letter that, *"The patient's persistent rapid heartbeat, high WBC, and fever were not properly evaluated by Dr. Rives."* I disagree with this conclusion. The medical records clearly indicate that Ms. Farris was seen and managed by multiple consultants, including a hospitalist, a nephrologist, a critical care specialist, a cardiologist, and an Infectious Diseases physician. This medical team thoroughly and repeatedly evaluated the patient, and coordinated numerous diagnostic tests to be performed, including numerous blood tests and numerous radiographs. In fact, between the dates of July 3, 2015 and July 15, 2015, Ms. Farris had three plain X-rays of the abdomen and three CT scans of the abdomen. On each occasion, the radiographs were performed as part of the evaluation to determine the cause of Ms. Farris's clinical condition, with a suspicion of a possible intraabdominal process.

4. Dr. Stein states in his letter that, *"He should have re-operated to rule out a bowel leak as soon as Ms. Farris was medically stable and other obvious causes of post-operative deterioration (pneumonia, urinary tract infection, pulmonary embolism) were eliminated."* I disagree with this conclusion. Although there remained a concern over the possibility of a bowel leak, none of the diagnostic tests confirmed the presence of a bowel leak until the CT scan that was performed on July 15, 2015. In fact, all of X-ray studies performed prior to the July 15, 2015 CT scan suggested that a bowel leak was not present at the time that these studies were performed. These studies repeatedly showed the absence of free air or bowel obstruction. It was only on July 15, 2015, when her third CT scan revealed pneumoperitoneum with free fluid in the abdomen, a large pocket of air, and the presence of subcutaneous air/fluid along the right lateral abdominal wall that a bowel perforation became apparent. There were multiple possibilities to explain Ms. Farris's clinical features, and a decision to perform emergent surgery once she was stabilized to "rule out a bowel leak" was not necessarily indicated nor would it be considered standard of care.
5. Dr. Stein states in his letter that, *"Instead, he [Dr. Rives] allowed Ms. Farris to linger with a bowel leak perforation for eleven days before recommending surgery, at which point she was in critical condition."* I disagree with this conclusion. The significant change in the CT scan findings on July 15, 2015 as compared to the prior studies provides strong evidence that the perforation was a relatively new finding. The abnormalities seen on July 15, 2015 had not been present on the CT scan which was performed on July 9, 2015, and therefore the patient did not have a bowel perforation at that time. It is my opinion that the bowel perforation was a relatively recent event, and occurred sometime between the July 9, 2015 and July 15, 2015 CT scans. Once the perforation was identified, Dr. Rives immediately suggested the need for definitive surgical intervention.

In summary, I disagree with many of the statements and conclusions reached by Dr. Stein regarding the evaluation and care provided by Dr. Rives. It is my opinion that, from an Infectious Diseases standpoint, Dr. Rives met the standard of care in his evaluation and management of Ms. Farris.

All of the above professional opinions are held and expressed to a reasonable degree of medical certainty, and I am willing to testify in the above matter.

Respectively submitted,



Kim S. Erlich, M.D.

CURRICULUM VITAE

Kim Steven Erlich, M.D.

**Northern Peninsula Infectious Diseases Medical Group
 Medical Director, Infection Prevention and Control
 Mills Peninsula Medical Center
 1501 Trousdale Drive
 Burlingame CA 94010**

Phone: (650) 696-5777

**Kerlich@NorpenID.com,
Erlichk@SutterHealth.org**

Clinical Position:	Consultant in Infectious Diseases, Northern Peninsula Infectious Diseases Medical Group
Academic Appointment:	Associate Clinical Professor of Medicine, University of California, San Francisco Guest Faculty, California STD/HIV Prevention Training Center
Hospital Positions:	<u>Mills Peninsula Medical Center, Burlingame, CA</u> Medical Director, Infection Prevention and Control Medical Director, Antibiotic Stewardship Program Chairman, Infection Control Committee Member, Pharmacy and Therapeutics Committee Chief of Staff (7/2016-6/2018) Vice-Chief of Staff (7/2014-6/2016) Chairman, Department of Internal Medicine (7/2013-7/2015) Member at Large, Executive Committee (7/2009-7/2013) <u>Seton Medical Center</u> Chairman, Pharmacy & Therapeutics (1990-2008) Co-chairman, Ethics Committee (1998-2005) Secretary-Treasurer, Medical Staff (1998-2000)
Government Position:	Committee Member California Department of Public Health Healthcare-Associated Infections Program
Licensure and certification:	2003 American Academy of HIV Medicine, HIV Specialist

1986 American Board of Internal Medicine,
 Subspecialty in Infectious Diseases
 1984 American Board of Internal Medicine
 1984 State of California, G052407
 1982 National Board of Medical Examiners
 1981 State of Illinois, C36-065302 (inactive)

Professional Organizations:
 Fellow, Infectious Disease Society of America
 Fellow, Society for Hospital Epidemiology of America
 American Society for Microbiology

Hospital Appointments:
 Mills-Peninsula Medical Center
 1501 Trousdale Drive
 Burlingame, California 94010
 Membership status: Active staff

Seton Medical Center
 1900 Sullivan Avenue
 Daly City, California 94015
 Membership status: Active staff

EDUCATION

<u>Dates</u> <u>Attended</u>	<u>Institution and Location</u>	<u>Status</u>
1986-88	University of California, San Francisco General Hospital, San Francisco, California	Postgraduate Fellowship in Sexually Transmitted Diseases
1984-86	University of California, San Francisco General Hospital, San Francisco, California	Postgraduate Fellowship in Infectious Diseases
1982-84	Northwestern University Chicago, Illinois	Residency in Internal Medicine
1981-82	Northwestern University Chicago, Illinois	Internship in Internal Medicine

1977-81	University of Illinois College of Medicine Chicago, Illinois	Doctor of Medicine
1973-77	University of Illinois Champaign-Urbana, Illinois	Bachelors of Science In Chemistry

PROFESSIONAL CAREER

<u>Dates</u> <u>Attended</u>	<u>Institution and Location</u>	<u>Status</u>
1988-present	Northern Peninsula Infectious Diseases Medical Group, Burlingame, California	Consultant in Infectious Diseases
1990-1994	Curaflex Infusion and Coram Health Services Ontario, California	Medical Advisor and Quality Assurance Director
1990-1994	Wound Care Center Seton Medical Center Daly City, California	Co-Medical Director
1983-84	Northwestern Memorial Faculty Foundation Clinic for Sexually Transmitted Diseases	Staff Physician

CURRENT RESEARCH INVESTIGATION

Nutritional deficits and the effects of a targeted feeding program in children ages 0 to 10 years in the municipality of Jagna on the province of Bohol in the Visayas, Philippines

SCIENTIFIC AND CLINICAL PUBLICATIONS

Varicella-Zoster Virus Infection: Update on Chickenpox and Shingles. San Mateo County Physician; A Publication of the San Mateo County Medical Assoc; March 2013; Vol 2, No. 3.

Erlich KS, Congeni B. Importance of circulating antibodies in protection against meningococcal disease. Human Vaccines & Immunotherapeutics. 8(8). 1029-1035, 2012.

Lawrence, W.D, Erlich, K.S., Management of Herpesvirus Infections (Cytomegalovirus, Herpes

Simplex Virus, and Varicella-Zoster Virus) In: Volberding, P. A., Sande's HIV/AIDS Medicine, Elsevier 2012

Erlach KS: Hot Topics in Infectious Diseases. San Mateo County Physician; A Publication of the San Mateo County Medical Association; April 2012; Vol 1, No. 3.

Erlach KS: Varicella-Zoster and HIV. In: Coffey S, Volberding PA, eds. University of California, San Francisco HIV InSite Knowledge Base [textbook on-line, revised November 2011. Available at <http://hivinsite.ucsf.edu/InSite?page=kb-05-03-01>

Erlach KS. Primary herpes simplex virus type 1 (HSV-1) in multiple areas following a facial in a commercial spa facility. Infectious Diseases in Clinical Practice. 18(6):402-403, 2010.

Erlach KS: Community Acquired Methicillin Resistant Staphylococcus Aureus (CA-MRSA) Infections. San Mateo County Medical Association Bulletin 56:10; 1-13, 2007.

Drew WL, Erlach KS: Management of herpes virus infections (CMV, HSV, VZV). In: Global HIV/AIDS Medicine, Volberding PA, Sande MA, Lange J, Greene WC (eds.), Saunders Elsevier, Philadelphia, PA; 437-462, 2008.

Herpes Virus Infections. Erlach KS: Audio-Digest Obstetrics/Gynecology 53:15, 2006.

Erlach KS: Influenza-A Outbreak and Lessons Learned. San Mateo County Medical Association Bulletin 55:5; 1-14, 2006.

Rumack JS, Erlach KS: Avian Influenza H5N1: Are We Ready for it? San Mateo County Medical Association Bulletin 54:10; 1-6, 2005.

Erlach K. Herpes Simplex Virus and HIV. In: Peiperl L, Volberding PA, eds. HIV InSite Knowledge Base [textbook on-line], revised 2003. Available at <http://hivinsite.ucsf.edu/InSite.jsp?page=kb-05-03-02>

Drew WL, Stampen MJ, Kheraj M, Erlach KS: Management of herpesvirus infections (CMV, HSV, VZV). In: Medical Management of AIDS, Sande MA, Volberding PA (eds.), W.B. Saunders, Philadelphia, PA; 429-452, 1999.

Erlach KS: Management of herpes simplex and varicella-zoster virus infections. Western J Med 166:211-215, 1997.

Drew WL, Buhles W, Erlach KS: Management of herpes virus infections (CMV, HSV, VZV). In: Medical Management of AIDS, Sande MA, Volberding PA (eds.), W.B. Saunders, Philadelphia, PA; 512-536, 1995.

Erlich KS, Mills J: Varicella-zoster virus. In: The AIDS Knowledge Base. Cohen PT, Sande MA, Volberding PA (eds.); Little, Brown and Company, Boston, Mass, 6.11; 1-9, 1994.

Erlich KS, Mills J: Herpes simplex virus infections. In: The AIDS Knowledge Base. Cohen PT, Sande MA, Volberding PA (eds.); Little, Brown and Company, Boston, Mass, 6.12; 1-19, 1994.

Erlich KS, Rumack JS: Evaluation and management of non-healing infected wounds in diabetics. *Infect Med* 10(8):21-27, 1993.

Erlich KS, Fitzgibbons TC, Gibbons GW: Management of infections in non-healing wounds. *Treatment of Chronic Wounds*, Number 4 in a Series. Curative Technologies, Inc. 1993

Erlich KS, Normoyle J: Sexually transmitted disease co-infection. *J Am Acad Phys Assist* 5:647-652, 1992.

Landers DV, Erlich K, Sung M, Schachter J. Role of L3T4-bearing T-cell populations in experimental murine chlamydial salpingitis, *Infect Immun* 59:3774-3777, 1991.

Erlich KS, Mills J: Varicella-zoster virus infection. *Bulletin of Experimental Treatments for AIDS*. 27-31. May, 1991.

Katzung BG, Erlich KS: Drugs used in bacterial, fungal, and viral infections. In: Clinical Pharmacology, Katzung BG (ed.). Lange Medical Publications, East Norwalk, Conn; 135-180, 1991.

Drew WL, Erlich KS: Cytomegalovirus. In: The AIDS Knowledge Base. Cohen PT, Sande MA, Volberding (eds.), Massachusetts Medical Society, Waltham, Mass, 6.4.3-6.4.8, 1990.

Drew WL, Erlich KS, Jacobson M: Cytomegalovirus. *AIDS Clinical Care* 2:65-68, 1990.

Erlich, KS, Mills J: Epstein-Barr Virus. In: The AIDS Knowledge Base. Cohen PT, Sande MA, Volberding PA (eds.), Massachusetts Medical Society, Waltham, Mass, 6.4.9; 1-3, 1990.

Erlich KS, Mills J, Chatis PA, Mertz GJ, Busch DF, Follansbee SE, Grant R, Crumpacker CS: Acyclovir resistant herpes simplex virus infections in patients with the acquired immunodeficiency syndrome. *N Engl J Med* 320:293-296, 1989.

Erlich KS, Jacobson MA, Koehler JE, Follansbee SE, Drennan D, Safrin S, Mills J: Foscarnet for severe acyclovir-resistant herpes simplex virus infections in patients with the acquired immunodeficiency syndrome. *Ann Intern med* 110:710-713, 1989.

Marks GL, Nolan PE, Erlich KS, Ellis NM: Mucocutaneous dissemination of acyclovir-resistant herpes simplex virus in a patient with AIDS. *Rev Infect Dis* 11:474-476, 1989.

Erlich KS, Wofsy D, Dix RD, Mills J: Effects of selective depletion of L3T4+ T-lymphocytes in herpes simplex virus encephalitis. *Clin Immunol Immunopath* 52:190-201, 1989.

Erlich KS, Mills J, Shanley JD: Effects of L3T4+ lymphocyte depletion on acute murine cytomegalovirus infection. *J Gen Virol* 70:1765-1771, 1989.

Erlich KS: Herpes simplex and varicella zoster virus infections in AIDS. In: Opportunistic Infections in Patients with the Acquired Immunodeficiency Syndrome, Leoung GS, Mills J (eds.). Marcel Dekker, Inc., New York; 173-193, 1989.

Drew WL, Erlich KS: Herpesviruses in AIDS patients: Cytomegalovirus. *J Crit Illness* 4:20-32, 1989.

Drew WL, Erlich KS: Herpesviruses in AIDS patients: Herpes simplex and varicella-zoster viruses. *J Crit Illness* 4:92-105, 1989.

Erlich KS, Hauer L, Mills J: Effects of acyclovir chemosuppression on IgG antibody to herpes simplex virus. *J Med Virol* 26:33-39, 1988.

Erlich KS, Mills J: Herpes simplex virus. In: AIDS: Pathogenesis and Treatment, Levy JA (ed.). Marcel Dekker, Inc., New York. 534-553, 1988.

Erlich KS, Dix RD, Mills J: Prevention and treatment of experimental HSV encephalitis with human immune serum globulin. *Antimicrob Agents Chemother* 31:1006-1009, 1987.

Erlich KS: Laboratory diagnosis of herpesvirus infections. *Clin Lab Med* 7:759-776, 1987.

Erlich KS, Normoyle JL: Condyloma acuminata: Waging a successful fight against anogenital warts. *The Female Patient* 12:51-66, 1987.

Erlich KS, Mills J: Passive immunotherapy of HSV encephalitis. *Rev Infect Dis* 8(suppl 4):S439-S445, 1986.

Dix RD, Bredesen DE, Erlich KS, Mills J: Recovery of herpesviruses from the cerebrospinal fluid of immunodeficient homosexual men. *Ann Neurol* 18:611-614, 1985.

Erlich KS, Mills J: Chemotherapy of herpes simplex virus infections. *West J Med* 143:648-655, 1985.

Zeiss CR, Kallish SB, Erlich KS, Levitz D, Metzger E, Radin R, Phair JP: IgG antibody to purified protein derivative by enzyme-linked immunosorbent assay in the diagnosis of pulmonary tuberculosis. *Am Rev Respir Dis* 130:845-848, 1984.

MISCELLANEOUS PUBLICATIONS

Erlich KS (Consultant): MRSA Infection: Stop the Spread. Krames/StayWell Health and Safety Education. San Bruno, California. 2008.

Erlich KS (Consultant): C. difficile Infection: Stop the Spread. Krames/StayWell Health and Safety Education. San Bruno, California. 2008.

Erlich KS (Consultant): VRE Infection: Stop the Spread. Krames/StayWell Health and Safety Education. San Bruno, California. 2008.

Erlich KS (Consultant): Pneumonia: Limit the Risk. Krames/StayWell Health and Safety Education. San Bruno, California. 2008.

Erlich KS, Rumack JS: Mills-Peninsula Health Services Antibiotic Ruler. (Distributed to Medical Staff). 1999, 2002, 2005.

Rumack JS, Erlich KS: Seton Medical Center Antibiotic Ruler. (Distributed to Medical Staff). 1997, 1999, 2002, 2005.

Erlich KS (Main Consultant): The Love Bugs. Krames/StayWell Health and Safety Education. San Bruno, California. 2003.

Erlich KS (Main Consultant): Sexually Transmitted Disease. Krames/StayWell Health and Safety Education. San Bruno, California. 2003.

Erlich KS (Main Consultant): Herpes. Krames/StayWell Health and Safety Education. San Bruno, California. 2002.

Erlich KS (Co-contributor): HPV and Genital Warts. Krames/StayWell Health and Safety Education. San Bruno, California. 2002.

Erlich KS (Co-contributor): Hepatitis C: Understanding Chronic HCV Infection. Krames/StayWell Health and Safety Education. San Bruno, California. 2002.

Infectious Diseases (Co-author); In: Best Practice in Medicine: A Clinical Guide by Physicians. DeFelice RD, Massoud NA (eds). Sutter Health and Mercy Health Care Sacramento, 1998.

Pneumonia (Co-author); In: Best Practice in Medicine: A Clinical Guide by Physicians. DeFelice RD, Massoud NA (eds). Sutter Health and Mercy Health Care Sacramento, 1998.

Erlich KS (Consultant): What You Need to Know About Condoms and STD's. Krames

Communications. San Bruno, California. 1992.

ABSTRACTS

Coleman RR, Lo S, Erlich KS, Hanni J, Dracker ME: Results of a pharmacy-based antibiotic program on drug usage, costs, and clinical outcome in a community hospital. Presented at the 35th American Society of Health-System Pharmacists Meeting, Las Vegas, NV 2000.

Coleman RR, Lo S, Erlich KS, Dracker ME: Successful pharmacy-based antibiotic monitoring and usage intervention program at a community hospital. Presented at the 33rd American Society of Health-System Pharmacists Meeting, Las Vegas, NV 1998.

Erlich KS, Mills J, Shanley JD: Effects of L3T4+ depletion on murine cytomegalovirus (MCMV) infection. Clin Res 36:145A, 1988.

Chatis PA, Erlich KS, Mills J, Crumpacker CS: Analysis of acyclovir resistant herpes simplex viruses isolated from patients with AIDS. Presented at the 13th International Herpesvirus Workshop, Irvine, CA, 1988.

Erlich KS, Wofsy D, Dix RD, Mills J: L3T4+ lymphocyte depletion in a murine model of HSV encephalitis. Clin Res 35:4734A, 1987.

Erlich KS, Dix RD, Mills J: Synthesis of HSV antibody following repletion of L3T4+ lymphocytes in previously infected mice. Presented at the 12th International Herpesvirus Workshop, Abstract #208, Philadelphia, PA, 1987.

Erlich KS, Wofsy D, Dix RD, Mills J: Effects of helper T-lymphocyte depletion on the pathogenesis of murine HSV encephalitis. Presented at the 11th International Herpesvirus Workshop, Abstract #179, Leeds, United Kingdom, 1986.

Erlich KS, Dix RD, Mills J: Passive immunotherapy of HSV encephalitis. Presented at the 11th International Herpesvirus Workshop, Abstract #253, Leeds, United Kingdom, 1986.

LECTURE SUBJECTS AND TOPICS

Herpes Simplex Virus Infections, Varicella-Zoster Virus Infections, Human Papillomavirus Infection, Sexually Transmitted Diseases, HIV and AIDS, Antibiotic Resistance and Antibiotic Stewardship, Update on "Hot-Topics" in Infectious Diseases, Meningococcal Infections

Revised 7/1/18

Kim S. Erlich, M.D.
November 20, 2018

DEPOSITION AND TRIAL TESTIMONY OVER 4 YEAR PERIOD

Date: January 25, 2013
Case: Lowy v. Peace Health
Expert for: Plaintiff
Function: Pretrial deposition
Attorney: Michael Myers and Joel Cunningham
701 5th Avenue; Suite 6700
Seattle, Washington 98104

Date: April 22, 2013
Case: Raymond Montes v. Kaiser
Expert for: Plaintiff
Function: Pretrial deposition
Attorney: Lawrence Knapp
Stuart Tabak
Tabak Law Firm
250 Dorris Place
Stockton, California 95204

Date: July 19, 2013
Case: Baires v. Kern County and USA
Expert for: Defense
Function: Pretrial deposition
Attorney: Robert K. Lawrence
Bjork Lawrence Law Firm
1850 Mt. Diablo Boulevard
Suite 120
Walnut Creek, California 94596

Date: October 23, 2013
Case: Barella v. Lucas et al.
Expert for: Defense
Function: Pre-arbitration deposition
Attorney: John Supple
Supple & Canvel, LLP
2320 Marinship Way, Suite 301
Sausalito, California 94965

Date: October 31, 2013
Case: Barella v. Lucas et al.
Expert for: Defense
Function: Arbitration
Attorney: John Supple
 Supple & Canvel, LLP
 2320 Marinship Way, Suite 301
 Sausalito, California 94965

Date: April 9, 2014
Case: Arellano v. Polito
Expert for: Plaintiff
Function: Trial testimony
Attorney: Michael Mandel
 1390 Market Street
 San Francisco, California 94102

Date: July 31, 2015
Case: May-McNary v. Murray
Expert for: Plaintiff
Function: Pretrial deposition
Attorney: Michael Mandel
 1438 Market Street
 San Francisco, California 94102

Date: April 6, 2016
Case: Dill v. Coconut Joe's
Expert for: Defense
Function: Pretrial deposition
Attorney: Michael Mutalipassi
 Cholakian & Associates
 400 Oyster Point Blvd., Ste 415
 South San Francisco, CA 94080

Date: April 22, 2016
Case: Korade v. Passport Health
Expert for: Defense
Function: Pretrial deposition
Attorney: Kimberlei D. Evans, Esq.
 Lewis Brisbois Bisgaard & Smith LLP
 333 Bush Street, Suite 1100
 San Francisco, CA 94104

Date: December 22, 2016
Case: Brown v. Rives
Expert for: Defense
Function: Pretrial deposition
Attorney: Chad C. Couchot
Schuering Zimmerman & Doyle, LLP
400 University Avenue
Sacramento, CA 95825

Date: April 13, 2018
Case: Roshan v. Liu et al.
Expert for: Defense
Function: Pretrial deposition
Attorney: Candace Herling, Esq.
Alverson, Taylor, Mortensen & Sanders
6605 Grand Montecito Parkway, Suite 200
Las Vegas, Nevada 89149

Kim S. Erlich, M.D.
Northern Peninsula Infectious Diseases Medical Group
2445 Skyfarm Drive
Hillsborough, California 94010
(650) 696-5777
FAX: (650) 696-5735
Kerlich@Norpenid.com
Tax ID# 94-3128496

June 26, 2018

Riesa R. Rice
Legal Secretary to Thomas J. Doyle
SCHUERING ZIMMERMAN & DOYLE
400 University Avenue
Sacramento, CA 95825

Dear Ms. Rice,

Review of records:	\$400/hour
Meetings and telephone discussions:	\$400/hour
Travel	\$200/hour
 Depositions:	 \$1000/hour
 Court testimony:	 \$1000/hour or, \$3000/half-day or, \$6000/full-day

If I am required to travel out of area, all travel expenses must be reimbursed. Cancelled depositions and court testimonies are charged for three hours unless they have been cancelled within 48 hours of the scheduled time. I have sent you an updated CV with this e-mail.

Sincerely,



Kim S. Erlich, M.D.

EXHIBIT “7”



Premiere Surgical Specialists

General, Vascular, Trauma & Laparoscopic Surgery

Alvaro H. Devia, M.D., F.R.C.S.
Certified
American Board
of Surgery

Brian E. Juell, M.D., F.R.C.S.
Certified
American Board
of Surgery and
Surgical Critical Care

Thomas E. Rembetski, M.D.
Certified
American Board
of General and
Vascular Surgery

12/16/2018

I have been asked to review the deposition transcript of Dr. Barry Rives and to respond to reports of expert witnesses in the case of Farris v. Rives.

Response to Expert Report of Michael B. Hurwitz, MD

Dr Hurwitz indicates that he regards himself to be an expert in hernia repair and management of infections. He does not explicitly indicate his experience in the diagnosis of anastomotic leaks. Patient presentations from bowel and stomach spontaneous perforations and from leaks from surgical repairs and anastomoses present in highly variable patterns. I frequently see patients with perforated colon who have been sick for days and sometimes weeks before presenting to the ER. The response to sepsis by the patient is also highly variable. Some patients are genetically prone to sepsis and may have rapidly fatal courses despite heroic medical and surgical intervention. Other patients seem to be able to withstand major intestinal perforations and infections and survive despite diagnostic delays. Surgical bowel repairs and anastomoses fail with some regularity. All surgeons who perform these surgeries have such failures. Some failures can be managed without reoperation. These failures may be immediate early or quite delayed. All surgeons performing these surgeries have a high index of suspicion for these complications when the patient has complications after surgery. Diagnosis can be vexing. Reoperation has inherent risks in and of itself. Dr Hurwitz from the position of a Monday Morning Quarterback supports the allegations of the plaintiff but fails to make the case that intervention was explicitly warranted based on the collective data at hand at any one time in Ms. Farris's course. Patient was attended to and evaluated by multiple physicians and surgeons and until a leak was diagnosed on post op day #12 a decision for reoperation based the inherent risks vs benefits was unclear.

Ms. Farris underwent laparoscopic hernia repair complicated by colon injury and repair. The use of an energy device to free the colon from the adherent mesh has been associated with an increased risk of bowel perforation and delayed leak development. The use of sharp dissection has similar complications. Dr Rives was aware of this, recognized and repaired the resulting injuries and inspected the adequacy of the repairs.

Ms. Rives had surgery. Postoperatively she had pain and developed abdominal and bowel distension. She developed a tachycardia and increasing respiratory failure and hypoxia. She had an elevated WBC count and a moderate lactic acidosis. She had hypovolemia and required vigorous fluid resuscitation and developed acute kidney injury. She was admitted to ICU and ultimately required intubation and ventilator support. She did not have bacteremia. She did have septic syndrome criteria but also could have had respiratory failure due to progressive hypoventilation and atelectasis or more likely pulmonary aspiration syndrome. The Infectious Disease specialist operational diagnosis of fecal peritonitis is supported primarily from the events in surgery and supported the use of broad-spectrum



antibiotics. Abdominal pain following surgery is expected. An elevated WBC is nonspecific and could be due to stress. CT scan on post op day 2 had findings expected following the surgery performed but no incontrovertible evidence of bowel leak. Physical findings did support such diagnosis. As Dr Rives stated in his deposition there was no bowel contents leaking out of her wounds. Her condition was stabilized. Dr Hurwitz states that the patient continued to deteriorate. This in fact is not true. She was sick but her condition actually improved. Her tachycardia and lactic acidosis resolved. She had no significant fever. Her abdominal exam did not progress adversely. She had a persistently elevated WBC count but that is a nonspecific finding. Her overall failure to improve led to a second surgical opinion by Dr Ripplinger on POD #6. He like Dr Rives felt there should be a low threshold for considering reoperation. In fact, he did not state there was an absolute indication to proceed to surgery based on his examination of the patient, her clinical course and all available data. Dr Ripplinger recommended that another CT scan be obtained. One was this time with radio-opaque contrast in the intestine. The CT scan showed no leak of contrast from the bowel and no adverse changes from the previous pathognomonic for bowel leak. Is this the point where Dr Hurwitz felt that reoperation was mandatory?

Ms. Farris remained relatively stable until POD #12 when her condition did deteriorate. CT done then demonstrated findings consistent with a leak. She did not have surgery until the next day by Dr. Hamilton. Findings at surgery were both acute and chronic inflammation and leaking surgical repairs. She had a protracted course but ultimately survived and recovered. MS Farris had significant comorbidities. It is open to speculation that a any earlier operation would have altered her necessary surgery or subsequent recovery.

Dr Hurwitz concludes that Dr Rives fell below the standard of care on 4 counts:

1. Intraoperative technique; Dr Hurwitz does not specify which techniques. Use of thermal energy in approximation to the bowel is relatively contraindicated but may have been unavoidable was successful, and the resulting injuries were reasonably repaired. These repairs were later inspected before the conclusion of surgery. The subsequent suture line disruption cannot be directly linked to a technical failure.
2. Failure to adequately repair the colon injuries on initial operation. Dr Rives was satisfied. Dr Hurwitz does not indicate why stapling the holes closed was inadequate.
3. Failure to timely diagnose and treat feculent peritonitis. It is abundantly unclear when there was an absolute indication to reoperate based on the patient's course and subsequent favorable outcome. Surgical decision making was difficult for multiple surgeons. It is unclear that Ms. Farris's course would have significantly different.
4. Poor post-operative management; redundant at best.

Dr Hurwitz supports the allegations of the plaintiff. He fails to make the case for a smoking gun for earlier reoperation or a technical error by Dr Rives constituting an act of malpractice.

Response to Expert Report of Dr Alan J. Sein, MD

Dr Stein is an Infectious Disease specialist practicing in New York. Clearly, he is not an expert in surgery. He retrospectively states that Dr Rives fell below the standard of care regarding a decision for reoperation. He correctly reiterates Ms. Farris's failure to progress on a day to day basis. Ms. Farris certainly was in critical condition. His statement that other causes of her early postoperative deterioration were eliminated is clearly open to debate. Bowel perforation and abdominal sepsis were

always on the list but the precise point where surgery was necessary is not specified. He does not make a case that Ms. Farris outcome, which was favorable would have been significantly improved by earlier intervention. Dr. Stein statement that CT scans are not sensitive to determine sources of intra-abdominal sources of infection in the early postoperative period is a misleading statement at best.

Ms. Farris had an unusually confounding postoperative course but likely had the same operation she would have received had the indications for reoperation been mandated at an earlier point in her care. These experts fail to make a case that her clinical course and recovery would have been significantly altered to point constituting malpractice on the part of Dr Rives.

In conclusion, I continue to believe the care Mrs. Farris received from Dr. Rives met the standard of care. The opinions expressed in this report and my original report are held to a reasonable degree of medical probability.



Brian E Juell MD FACS

EXHIBIT “8”

2240 WEST 16th STREET
SAFFORD, ARIZONA 85546
(928) 348-4030
(928) 348-4033

BART J. CARTER, M.D., F.A.C.S.

Diplomate, American Board of Surgery
General Surgery
Laparoscopic Surgery

December 19th, 2018

Dear Mr. Couchot:

Per your request, I reviewed the deposition of Dr. Barry Rives and the expert reports by Dr. Michael Hurwitz and Dr. Alan Stein. I continue to believe the surgical care Dr. Rives provided to Titina Farris was within the standard of care, as discussed in my previous report.

Dr. Hurwitz' report does not include any reference to the findings of the CT scan of the abdomen and pelvis from July 9, 2015. That study was important, because it did not demonstrate an increase in free air or significant fluid collections. There was no evidence in this important CT for air acute intra-abdominal process.

In both their reports, Dr. Hurwitz and Dr. Stein included an incomplete quote from Dr. Greg Ripplinger's note for his second opinion examination performed on July 9, 2015, which seems to take Dr. Ripplinger out of context. Dr. Hurwitz and Dr. Stein both stated that Dr. Ripplinger "suspected a bowel leak and stated there should be a fairly low threshold for reoperation," implying Dr. Ripplinger thought Mrs. Farris should be taken to surgery at that time. What Dr. Ripplinger actually said, after discussing his recommendation for a CT scan with intravenous oral and rectal contrast was:

"I think there should be a fairly low threshold for at least a diagnostic laparoscopy or even laparotomy if there are any significant abnormalities noted on the CT scan especially if there is increase in fluid in the abdomen, I would be concerned for a possible bowel leak."

In other words, Dr. Ripplinger's recommendation to return Mrs. Farris to surgery was contingent upon observing significant abnormalities on the CT scan performed on July 9, 2015. There were no such abnormalities on the CT scan.

Dr. Hurwitz noted the two colotomies "should have put Dr. Rives on notice of a potential problem and the source of the infectious process." It is clear from both the records of Dr. Rives' care, and his deposition testimony, that Dr. Rives was aware of a potential failure of the repair of the colostomies. Dr. Rives testified in deposition that a failure of the repair was considered when Mrs. Farris' condition began to deteriorate. Appropriate imaging studies were ordered to evaluate for such a possibility and that examination was negative.

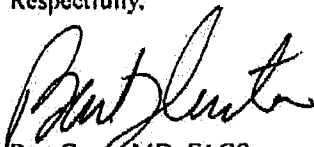
The "signs of infection" Dr. Hurwitz describes are also signs of the acute inflammatory condition which may also occur following surgery. Only in retrospect are we able to clearly see that the failure of this colotomy repair may have been the primary culprit. Further, Mrs. Farris' postoperative deterioration is more consistent with pulmonary complications than an intra-abdominal infection. Acute pulmonary edema pulmonary embolism or pulmonary aspiration are all significant items on the differential diagnosis. On postoperative day one, Mrs. Farris became short of breath. Later that day, she required intubation for acute respiratory failure. The CT scan of the chest, abdomen, and pelvis, performed on July 5, 2015 showed a small right pleural effusion, as well as bilateral pulmonary consolidation. There was no clear evidence of a bowel perforation or any other acute intra-abdominal process until July 15, 2018. At that point, the third post-operative CT scan showed findings concerning for a leak and the appropriate decision was made to return to surgery.

Dr. Hurwitz noted "the stapled repairs were inadequate and did not hold, resulting in leakage of fecal material into the abdominal cavity." I agree that the repair failed. It appears the suture line for one or both of the colotomies did ultimately fail. But the fact that a repair fails does not mean there is a breach of the standard of care. Stapled repair of the bowel is a commonly utilized technique for repair with or without over sewing of the stapled line. Stapled repairs are acceptable and are clearly within the standard. In other words, repairs can and will fail even when the standard of care is met. The description of the repairs Dr. Rives gave during his deposition demonstrates the repairs were performed properly. Dr. Rives repaired both colotomies with an Endo-GIA stapler. Before firing the stapler, Dr. Rives inspected the surrounding tissue and determined it was healthy enough to hold staples. After the repairs, he inspected the staple sites and squeezed the colon with a clamp to see if any air bubbles arose or stool exuded out. There was no sign of leakage from the repairs and there was no fecal contamination observed. Before the procedure was completed, the repairs were irrigated and the abdomen was drained, per Dr. Rives' custom and practice. In addition, Dr. Rives inspected the mesenteric side of the colon to assure there was no injury.

If the repair of the colotomies failed immediately, as Dr. Hurwitz seems to suggest, one would expect to see extravasation of contrast from the bowel on the CT scan performed on July 9, 2015. There was no such extravasation. Accordingly, one or both of the colotomy repairs most likely failed at some point between July 9, 2015, and July 15, 2015, when the subsequent CT scan showed increased free air.

The opinions I have expressed in this report are held to a reasonable degree of medical probability. I reserve the right to supplement my opinions as new and/or additional information is provided to me.

Respectfully,



Bart Carter MD, FACS

A-16-739464-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Malpractice - Medical/Dental

COURT MINUTES

September 20, 2019

A-16-739464-C Titina Farris, Plaintiff(s)
vs.
Barry Rives, M.D., Defendant(s)

September 20, 2019 3:15 PM

**Minute Order: Vacate
Plaintiffs' Motion to Strike set 9-25-19**

HEARD BY: Truman, Erin

COURTROOM: No Location

COURT CLERK: Jennifer Lott

JOURNAL ENTRIES

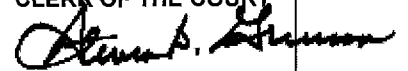
- Plaintiffs' Motion to Strike was VACATED per Judge Kishner. (9-25-19 Hearing in Discovery was VACATED in Odyssey on 9-20-19.)

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jennifer Lott, to all registered parties for Odyssey File & Serve. jl

PRINT DATE: 09/20/2019

Page 1 of 1

Minutes Date: September 20, 2019



1 **OBJ**

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

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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

28 **PLAINTIFFS' OBJECTION TO DEFENDANTS' SECOND AMENDED NOTICE OF
TAKING DEPOSITION OF DR. GREGG RIPPLINGER**

COMES NOW Plaintiffs PATRICK FARRIS and TITINA FARRIS, by and through their attorney of record, KIMBALL JONES, ESQ. and JACOB G. LEAVITT, ESQ., with the Law Offices of **BIGHORN LAW** and GEORGE F. HAND, ESQ., with the Law Offices of HAND & SULLIVAN, LLC, and hereby submits this Objection to Defendants' Second Amended Notice of Taking Deposition of Dr. Gregg Ripplinger.

1 This Notice was served on September 20, 2019, nearly sixty (60) days past the discovery
2 deadline in this matter of July 24, 2019 and therefore, is attempting to conduct discovery outside of
3 and in direct violation of, this Court's Order.

4 DATED this 20th day of September, 2019.

5 **BIGHORN LAW**

6 By: /s/ Kimball Jones

7 **KIMBALL JONES, ESQ.**

8 Nevada Bar.: 12982

9 **JACOB G. LEAVITT, ESQ.**

10 Nevada Bar No.: 12608

11 716 S. Jones Blvd.

12 Las Vegas, Nevada 89107

13 **GEORGE F. HAND, ESQ.**

14 Nevada Bar No.: 8483

15 **HAND & SULLIVAN, LLC**

16 3442 N. Buffalo Drive

17 Las Vegas, Nevada 89129

18 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE


Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of **BIGHORN LAW**, and on the 20th day of September, 2019, I served the foregoing ***PLAINTIFFS' OBJECTION TO DEFENDANTS' SECOND AMENDED NOTICE OF TAKING DEPOSITION OF DR. GREGG RIPPLINGER*** as follows:

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

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

Kim Mandelbaum, Esq.
MANDELBAUM ELLERTON & ASSOCIATES
2012 Hamilton Lane
Las Vegas, Nevada 89106
&
Thomas J. Doyle, Esq.
Chad C. Couchot, Esq.
SCHUERING ZIMMERMAN & DOYLE, LLP
400 University Avenue
Sacramento, California 95825
Attorneys for Defendants

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



1 **OBJ**

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.

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11 Jacob@BighornLaw.com

12 GEORGE F. HAND, ESQ.

13 Nevada Bar No.: 8483

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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

28 **PLAINTIFFS' OBJECTIONS TO DEFENDANTS' PRE-TRIAL DISCLOSURE**
STATEMENT PURSUANT TO NRCP 16.1(a)(3)(C)

29 COMES NOW Plaintiffs PATRICK FARRIS and TITINA FARRIS, by and through their
30 attorneys of record, KIMBALL JONES, ESQ. and JACOB G. LEAVITT, ESQ., with the Law Offices
31 of **BIGHORN LAW** and GEORGE F. HAND, ESQ., with the Law Offices of **HAND & SULLIVAN,**
32 LLC, and hereby objects to Defendants' Pre-Trial Disclosure Statement Pursuant to NRCP
33 16.1(a)(3)(C) as follows:

34 ///

1 **I. WITNESSES/PARTIES DEFENDANT EXPECTS TO PRESENT AT TRIAL**

2 Plaintiffs objects to Defendants' listed witness number 12, Gary Ripplinger, M.D., as
3 Defendant was aware of this witness from the beginning of the case, but failed to disclose this witness
4 prior to the close of discovery in this matter. As such, Plaintiffs did not have reasonable opportunity
5 to investigate this witness.
6

7 Further, Plaintiffs object to any testimony by Defendants' "Rebuttal" Experts Lance Stone,
8 D.O., Sarah Laren, RN, Bruce Adornator, M.D., Kim Erlich, M.D., and Scott Kush, M.D.¹

9 Finally, Plaintiffs object to the Reports of Defendants' Initial Experts, Bart Carter, M.D., Brian
10 E. Juell, M.D., as they are cumulative given that both experts have virtually identical qualifications
11 and opinions in the present case.
12

13 **II. WITNESSES/PARTIES DEFENDANT MAY PRESENT AT TRIAL**

14 Plaintiffs objects to Defendants' listed witnesses numbers 3 through 19, as Defendants failed
15 to disclosure this witnesses prior to the close of discovery in this matter and as such provided Plaintiffs
16 no opportunity to depose this witnesses.

17 **V. DOCUMENTS DEFENDANT MAY USE AT TRIAL**

18 Plaintiffs object to the use of any depositions of non-party witnesses for any other purpose
19 other than impeachment or refreshing recollection, minus a proper showing of unavailability of the
20 witness. Plaintiffs object to all exhibits attached to the deposition transcript based on relevance,
21 hearsay, and foundation.
22

23 Plaintiffs object to the Reports of Defendants' "Rebuttal" Experts Lance Stone, D.O., Sarah
24 Laren, RN, Bruce Adornator, M.D., Kim Erlich, M.D., and Scott Kush, M.D.
25

26 ///

27
28

¹ Plaintiffs' arguments for excluding Defendants' Rebuttal Witnesses have been previously briefed in Plaintiffs' Motion to Strike Defendants' Rebuttal Witnesses.

1 Plaintiffs objects to the Reports of Defendants' Initial Experts, Bart Carter, M.D., Brian E.
2 Juell, M.D., as they are cumulative given that both experts have virtually identical qualifications and
3 opinions in the present case.

4 Plaintiffs reserve the right to make additional arguments and/or further objections at trial.

5 DATED this 20th day of September, 2019.

6 **BIGHORN LAW**

7 By: /s/ Kimball Jones

8 **KIMBALL JONES, ESQ.**

9 Nevada Bar.: 12982

10 **JACOB G. LEAVITT, ESQ.**

11 Nevada Bar No.: 12608

12 716 S. Jones Blvd.

13 Las Vegas, Nevada 89107

14 **GEORGE F. HAND, ESQ.**

15 Nevada Bar No.: 8483

16 **HAND & SULLIVAN, LLC**

17 3442 N. Buffalo Drive

18 Las Vegas, Nevada 89129

19 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of **BIGHORN LAW**, and on the 20th day of September, 2019, I served the foregoing **PLAINTIFFS' OBJECTIONS TO DEFENDANTS' PRE-TRIAL DISCLOSURE STATEMENT PURSUANT TO NRCP 16.1(a)(3)(C)** as follows:

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

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

Kim Mandelbaum, Esq.
MANDELBAUM ELLERTON & ASSOCIATES
2012 Hamilton Lane
Las Vegas, Nevada 89106
&
Thomas J. Doyle, Esq.
Chad C. Couchot, Esq.
SCHUERING ZIMMERMAN & DOYLE, LLP
400 University Avenue
Sacramento, California 95825
Attorneys for Defendants

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

RECEIVED

By Trish Pearson at 10:52 am, Sep 21, 2019

A.App.355

Electronically Filed
9/20/2019 6:15 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

Sep 21 2019 BY PAP

CALENDARED

ENTRY

N/E

OBJ

KIMBALL JONES, ESQ.

Nevada Bar No.: 12982

JACOB G. LEAVITT, ESQ.

Nevada Bar No.: 12608

BIGHORN LAW

716 S. Jones Blvd.

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Phone: (702) 656-5814

Email: GHand@HandSullivan.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS and PATRICK FARRIS,

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-16-739464-C

DEPT. NO.: XXXI

**PLAINTIFFS' OBJECTION TO DEFENDANTS' TRIAL SUBPOENA OF NAOMI
CHANEY, M.D.**

COMES NOW Plaintiffs PATRICK FARRIS and TITINA FARRIS, by and through their attorneys of record, KIMBALL JONES, ESQ. and JACOB G. LEAVITT, ESQ., with the Law Offices of **BIGHORN LAW** and GEORGE F. HAND, ESQ., with the Law Offices of **HAND & SULLIVAN, LLC**, and hereby objects to Defendants' Trial Subpoena of Naomi Chaney, M.D.

Defendants Trial Subpoena commands Dr. Chaney to appear for Trial on Monday, October 14, 2019 at 10:00 a.m. Defendants are well aware that Trial in this matter commences on Monday, October

1 14, 2019 and that with jury selections and opening arguments, testimony will not begin on the first
2 day of trial. Voir Dire in this case will be just beginning at the time noted on Defendant's Trial
3 Subpoena. Moreover, certainly Defendants' case in chief will not commence on the first day of trial.

4 Therefore, commanding a doctor's appearance, just to sit at ideal outside the courtroom, for
5 days on end, creates undue burden and expense and is in direct violation of NRCP 30(c)(1). *(A party*
6 *or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid*
7 *imposing undue burden or expense on a person subject to the subpoena. The court that issued the*
8 *subpoena must enforce this duty and may impose an appropriate sanction — which may include lost*
9 *earnings and reasonable attorney fees — on a party or attorney who fails to comply.)*

10 DATED this 20th day of September, 2019.

11 **BIGHORN LAW**

12 By: /s/ Kimball Jones

13 **KIMBALL JONES, ESQ.**

14 Nevada Bar.: 12982

15 **JACOB G. LEAVITT, ESQ.**

16 Nevada Bar No.: 12608

17 716 S. Jones Blvd.

18 Las Vegas, Nevada 89107

19 **GEORGE F. HAND, ESQ.**

20 Nevada Bar No.: 8483

21 **HAND & SULLIVAN, LLC**

22 3442 N. Buffalo Drive

23 Las Vegas, Nevada 89129

24 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

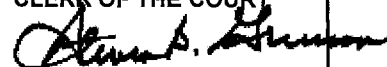
Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of **BIGHORN LAW**, and on the 20th day of September, 2019, I served the foregoing **PLAINTIFFS'** **OBJECTION TO DEFENDANTS' TRIAL SUBPOENA OF NAOMI CHANEY, M.D.** as follows:

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

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

Kim Mandelbaum, Esq.
MANDELBAUM ELLERTON & ASSOCIATES
2012 Hamilton Lane
Las Vegas, Nevada 89106
&
Thomas J. Doyle, Esq.
Chad C. Couchot, Esq.
SCHUERING ZIMMERMAN & DOYLE, LLP
400 University Avenue
Sacramento, California 95825
Attorneys for Defendants

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



[OPPM]
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DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS and PATRICK FARRIS,

Plaintiffs,

vs.

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

Defendants.

) CASE NO. A-16-739464-C
) DEPT. NO. 31

) **DEFENDANTS BARRY RIVES, M.D. and**
) **LAPAROSCOPIC SURGERY OF NEVADA,**
) **LLC'S OPPOSITION TO PLAINTIFFS'**
) **MOTION FOR SANCTIONS UNDER RULE**
) **37 FOR DEFENDANTS' INTENTIONAL**
) **CONCEALMENT OF DEFENDANT RIVES'**
) **HISTORY OF NEGLIGENCE AND**
) **LITIGATION AND MOTION FOR LEAVE**
) **TO AMEND COMPLAINT TO ADD CLAIM**
) **FOR PUNITIVE DAMAGES ON ORDER**
) **SHORTENING TIME**

I. INTRODUCTION

Plaintiffs Titina Farris and Patrick Farris' Motion for Sanctions alleges Defendant Barry Rives M.D.'s intentional concealment of a prior medical malpractice action, *Center*

1 *v. Rives*. Plaintiffs' Motion lacks merit because there was no such intentional
2 concealment. In an unverified response to interrogatories from Plaintiffs, Dr. Rives
3 identified various medical malpractice actions where he had been named as defendant.
4 Due to a mistake of counsel, the *Center* matter was omitted from the list of prior actions.
5 The omission by counsel was inadvertent. It was not an attempt by Dr. Rives, or anyone
6 else, to conceal the matter.

7 While the *Center* matter was inadvertently omitted from the discovery response,
8 it was disclosed and discussed, during the deposition of Dr. Rives. Further, when the
9 omission from the discovery responses was brought to the attention of Defendants, the
10 responses were supplemented. Plaintiffs have not been prejudiced in any way. The
11 information regarding the *Center* case has been available on the Eighth Judicial District
12 Court's website, since the inception of this case.

13 Plaintiffs' Motion seeks to take advantage of a mistake in an unverified discovery
14 response by introducing irrelevant and prejudicial facts of another medical malpractice
15 action at trial. Introduction of evidence relating the *Center* matter would be improper and
16 extremely prejudicial to Defendants. In essence, it would require Defendants to defend
17 both cases at trial.

18 There are no grounds for sanctions or punitive damages. Further, Plaintiffs' motion
19 to amend the complaint to plead punitive damages is untimely. The deadline to amend
20 the pleadings was November 15, 2018.

21 **II. FACTS AND PROCEDURAL HISTORY**

22 This is a medical malpractice action arising from the care and treatment Plaintiff
23 Titina Farris received from Dr. Barry Rives at St. Rose Dominican Hospital-San Martin
24 Campus, in July 2015. On July 3, 2015, Dr. Rives performed a laparoscopic reduction and
25 repair of an incarcerated incisional hernia with mesh. During the procedure there were
26 two inadvertant injuries to the colon which Dr. Rives repaired using an Endo-GIA stapler.

1 The day after the procedure, Mrs. Farris suffered respiratory distress. She was intubated
2 and placed on a ventilator. She was admitted to the intensive care unit where she was
3 followed by Dr. Rives and various other specialists. Mrs. Farris' condition slowly improved
4 until July 14, 2015.

5 On July 15, 2015, a CT scan of the abdomen and pelvis with oral and rectal contrast
6 was performed. Dr. Rives advised Mrs. Farris and her family the study was very
7 concerning for a possible leak and/or abscess, either of which would require surgical
8 intervention. He recommended an exploratory laparotomy with explantation of the mesh,
9 an abdominal washout, and a thorough inspection of the entire small and large bowel.
10 Plaintiff Patrick Farris, Mrs. Farris' husband, did not want to proceed with the surgery at
11 that time. Mr. Farris wanted to see how Mrs. Farris fared overnight before making a
12 decision.

13 On July 16, 2015, Dr. Rives had an hour-long conversation with Mrs. Farris' family
14 regarding the urgent need for surgery. Mrs. Farris' family indicated they were
15 uncomfortable with Dr. Rives as Mrs. Farris' surgeon, and they requested a second
16 surgical opinion. The family consulted with hospital administration and Dr. Gary Mono,
17 a general surgeon. After the meeting, Dr. Rives signed off the case and Dr. Elizabeth
18 Hamilton, a general surgeon, began following Mrs. Farris.

19 On July 16, 2015, Dr. Hamilton performed an exploratory laparotomy. She described
20 the procedure as incredibly difficult due to extreme inflammation. In her operative report,
21 Dr. Hamilton described a single perforation about 2.5 to 3 cm in the transverse colon. Mrs.
22 Farris' condition improved after the laparotomy. Two abdominal drains were placed by
23 a interventional radiologist, on July 29, 2015 and July 30, 2015. On August 11, 2015, she
24 was discharged to a rehabilitation facility.

25 Plaintiffs filed the Complaint on July 1, 2016. The Complaint included an affidavit
26 by Dr. Vincent Pesiri, a general surgeon. According to Dr. Pesiri several aspects of Dr.

1 Rives' care were below the standard of care:

2 Intraoperative technique;

3 Failure to adequately repair bowel perforations at the time of
4 July 3, 2015 surgery;

5 Poor post-operative management of perforated bowel and
6 resultant sepsis.

7 At the time the Complaint was filed, the matter of *Center v. Rives* was an open case
8 in the Eight Judicial District of Nevada. Information regarding the *Center* matter was
9 available on the Odyssey website throughout the entire duration of this lawsuit; the *Center*
10 Complaint was filed February 5, 2016. Defense counsel represents Dr. Rives in both this
11 matter and the *Center* matter.

12 On March 7, 2017, defense counsel served responses to interrogatories from
13 Plaintiffs, in the *Center* matter. (Exhibit A to Declaration of Chad Couchot.) The responses
14 included the description of prior medical malpractice actions where Dr. Rives had been
15 named as a defendant including: case name; jurisdiction; case number; the identity of
16 defense counsel; the identity of plaintiff's counsel and a summary of the allegations. The
17 discovery responses in *Center* specifically identified the Farris matter as follows:

18 *Farris v. Rives*; Eighth District Court, Clark County Nevada; A-1
19 6-739464-C; Thomas Doyle; George Hand; alleged failure to
20 diagnose and repair a bowel perforation; ongoing.

21 On April 17, 2017, defense counsel served responses to interrogatories from
22 Plaintiffs in this matter. (Exhibit B to Declaration of Chad Couchot.) Interrogatory No. 3
23 asked Dr. Rives if he had been named as a defendant in a lawsuit arising from alleged out
24 practice for professional negligence, and to identify such actions by the jurisdiction,
25 caption, and case number. In response to the interrogatory, defense counsel utilized the
26 information from Dr. Rives' response to the similar interrogatory in the *Center* matter. (Id.)
When transferring the information to the discovery responses, defense counsel neglected
to add the *Center* matter to the list, which was simply an oversight on the part of counsel.

1 Dr. Rives' responses to the interrogatories at issue in this case, were not verified by him.
2 (Declaration of Chad Couchot ¶¶ 2-3.)

3 George Hand, Plaintiffs' then and current counsel, took the deposition of Dr. Rives
4 in this matter on October 24, 2018. During the deposition, Mr. Hand reviewed the names
5 of the cases identified in response to Interrogatory No. 3 with Dr. Rives:

6 Q If I could direct you to Response No. 3 and the question
7 is if you had ever been named as a defendant in a case
8 arising from alleged malpractice or negligence. So I'm
9 just going to go over these with you. We're on Page 2.
There is a case, *Brown versus Rives*, Eighth District
Court. Is that case resolved or still ongoing; do you
know?

10 A It is still pending.

11 Q Can you tell me briefly just what the allegations of the
12 case are.

13 A The patient had to have a peritoneal dialysis catheter
14 removed. She had a incisional hernia at the same time.
15 She was very sick. And I made it clear we were just to
16 take care of the PD catheter for infection reasons. She
later had to have surgery to repair the incisional hernia
and a piece of the peritoneal dialysis catheter was
involved in the hernia sac.

17 Q And we have of *Lang versus Rives*. Can you tell me
18 what the allegations in that case were?

19 A That was a defense verdict. It was a delay in
recognizing a enterocutaneous fistula.

20 Q And we have *Doucette versus Garcia*. Can you tell me
21 what the allegations in that case were.

22 A Again, defense verdict. It was a patient with a
23 perforated colon due to metastatic lymphoma. And I
guess the allegation was delay in diagnosis of the
lymphoma.

24 Q And there is *Schorle versus Southern Hills Hospital*. Can
25 you tell me what the allegations in that case were.

26 A The case was a patient who had spinal surgery, had a
colon perforation. I ended up doing surgery to repair
the colon, gave her an ostotomy, ended up reversing

1 the patient's ostotomy, but because of the lawsuit,
2 every doctor on chart was named. And I was quickly
dropped thereafter.

3 Q And we have a case, *Tucker v. Rives*. Can you tell me
the allegations in that case.

4 A Ms. Tucker had a duct of Luschka leak post-operatively
5 after a laparoscopic colon discectomy. I guess it would
be complications from surgery.

6 Q Is that case resolved or ongoing?

7 A It was dismissed.

8 (Exhibit C to Declaration of Chad Couchot, 10:25-12:19)

9
10 Contrary to the assertion of Plaintiffs' counsel, Dr. Rives was not asked if there were any
11 other cases in which he was named as a defendant.

12 Immediately after the above quoted discussion of the facts regarding the prior
13 medical malpractice actions, Dr. Rives was asked about his response to Interrogatory No.
14 5, which pertained to testimony in court or at deposition. Dr. Rives was asked if there
15 were any other matters in which he had given the deposition, which was the subject of
16 interrogatory Number No. 5. When Dr. Rives did not recall the *Center* matter, defense
17 counsel reminded him:

18 Q And looking at Response No. 5, there is notes of
19 depositions you gave in some of these cases we just
20 talked about. Are there any other depositions that you
given, such as an expert for patient or for defendant
doctor in any cases?

21 A I've testified as a participant in care.

22 Q What case was that?

23 A There have been a few. One involved a patient who
24 was misdiagnosed with perforated appendicitis, delay
in treatment, presented to the OR in distress. I was the
25 surgeon on the case. And the suit was against the
internal medicine doctor. There was another suit
26 involving delay in diagnosis of a patient that was
treated by a rehab facility, transferred to a hospital. And
basically, was not doing well on arrival and there was

1 nothing we could do surgically for her.

2 Q That's it, that you recall?

3 A Those are the two that I can recall at this time.

4 MR. COUCHOT: Sinner is not on there?

5 THE WITNESS: Mm-hmm?

6 MR. COUCHOT: Sinner is not on there? Just to be compete,
7 when I prepared this he had not been deposed in the Sinner
8 case so that is not listed there. So that would be responsive to
9 that question.

10 MR. HAND: What was the name of that case?

11 THE WITNESS: Sinner versus Rives.

12 BY MR. HAND:

13 Q Is it on here? It's not listed here –

14 MR. COUCHOT: It's subsequent.

15 BY MR. HAND:

16 Q Can you tell me what that case involved.

17 A Patient had a diaphragmatic hernia tear
18 laparoscopically. She aspirated and became septic.

19 Q Is that still ongoing?

20 A That's pending.

21 Q And you gave a deposition in that case?

22 A Yes.

23 Q Is that a case in Las Vegas?

24 A Yes.

25 (Exhibit C, 12:20-14:11)

26 Defense counsel and Dr. Rives did not describe the matter as "Sinner v. Rives," as
erroneously transcribed. The misidentified name first came to the attention of defense
counsel approximately one week ago, Plaintiffs' counsel stated they intended to file this

1 Motion. (Declaration of Chad Couchot ¶ 5.)

2 Despite what Plaintiffs now allege to be significant similarities between the *Center*
3 matter, and the Rives matter, hernia repairs and subsequent sepsis, there were no further
4 questions posed to Dr. Rives during his deposition about the *Center* matter. Further,
5 Plaintiffs have never, to this date, requested clarification regarding the “Sinner” matter
6 from defendants, nor have they requested any additional information about the *Center*
7 matter.

8 Mr. Jones’ declaration states he became aware of the *Center* by searching Odyssey
9 “during the summer of 2019.” Plaintiffs’ counsel did not notify defense counsel of any
10 alleged concealment until September 11, 2019, the date of the EDCR 2.67 conference,
11 when Plaintiffs’ counsel stated they intended to file the instant motion.

12 Notably, Plaintiffs’ Motion does not include a declaration by George Hand, the
13 attorney who has represented Plaintiffs since the inception of this case, and continues to
14 do so. There is no information regarding what Mr. Hand was or was not aware of, his
15 thought process, and what different discovery he would have conducted.

16 Discovery in this matter closed on June 14, 2019. Mr. Jones did not associate as
17 counsel until July 15, 2019. What discovery Mr. Jones might have conducted, if he were
18 attorney of record when discovery was open, is irrelevant. Further, neither Mr. Jones, Mr.
19 Hand nor any other representative of Plaintiffs have asked for any additional information
20 regarding the *Center* matter, at any time. (Declaration of Chad Couchot ¶¶ 7-8.) Further,
21 Plaintiffs never asked Defendants to produce any deposition transcripts pertaining to the
22 five prior medical malpractice actions identified in Dr. Rives’ discovery responses.

23 Upon learning of the omission of the *Center* matter for the responses to
24 interrogatories, supplemental responses the interrogatories were prepared. The
25 supplemental responses were served September 13, 2019. (Exhibit E to Declaration of
26 Chad Couchot.)

III. LAW AND ARGUMENT

A. THERE IS NO EVIDENCE OF ANY INTENTIONAL CONCEALMENT

The crux of Plaintiffs' Motion is the allegation of intentional concealment by Dr. Rives. Plaintiffs contend Dr. Rives intentionally concealed both the *Center* matter during the course of this litigation, and the *Farris* matter during the *Center* litigation. Those allegations are not supported by evidence.

I. Plaintiffs' Motion Crucially Mischaracterizes Dr. Rives' Deposition Testimony.

Plaintiffs' Motion misrepresents the deposition testimony of Dr. Rives in a crucial manner. Plaintiffs contend Dr. Rives was asked, during his deposition, the "same question" as Interrogatory No. 3: to identify the prior actions where he had been named as a defendant. Dr. Rives was not asked that question during his deposition. Instead, he was asked to describe the facts surrounding each of the lawsuits identified in the discovery responses. (Exhibit C, 10:25-12:19) Specifically, Plaintiffs' counsel named each case identified in the interrogatory responses and asked Dr. Rives to describe the allegations. (Id.) There was no follow-up question posed asking Dr. Rives if there were any other actions where he was named as defendant.

The testimony Plaintiffs cite for the proposition that Dr. Rives was asked to name all medical malpractice actions where he had been named as a defendant, actually addressed Interrogatory No. 5. Interrogatory No. 5 asked Dr. Rives to identify each medical malpractice case in which he had testified in court or at deposition. Dr. Rives was asked to identify any other depositions he had given, aside from those listed in the response to Interrogatory No. 5. (Exhibit C, 12:20-14:11). In response, Dr. Rives described the matters he recalled in which he had testified. Defense counsel reminded Dr. Rives about the *Center* matter, because Dr. Rives had given a deposition in that matter after the date the response was repaired to Interrogatory No. 5.

Plaintiffs' Motion misrepresents the statements by defense counsel during the

1 deposition regarding *Center*. Plaintiffs contend defense counsel stated *Center* was a
2 "subsequent" case. The discussion and testimony Plaintiffs cite, as quoted above,
3 pertained to prior deposition testimony, the list of depositions in response to Plaintiffs'
4 Interrogatory No. 5. Dr. Rives' testimony in *Center*, was in fact given after the responses
5 to the interrogatories were served. The responses to the discovery requests were served
6 on April 17, 2017. Dr. Rives' deposition in *Center*, began on October 25, 2017, and was
7 concluded on April 17, 2018. Accordingly, defense counsel's statement that the
8 deposition was "subsequent" in relation to the time the discovery responses were
9 prepared, was accurate. It is unreasonable for Plaintiffs to contend those comments were
10 made in response a question which was not asked during the deposition-- Name all prior
11 lawsuits where Dr. Rives was named as a defendant.

12 Plaintiffs argument that Dr. Rives, and his counsel, intentionally provided the name
13 "Sinner," during the deposition in this matter, is unreasonable and incorrect. The
14 mistaken name is obviously a typographical error by the stenographer. Two other
15 examples of transcription errors are featured in the following excerpt: 1) the identification
16 of the first question by Plaintiffs' counsel as "A" instead of "Q;" and the reference to "val
17 prep" during a discussion about "bowel prep."

18 A Did Mrs. Farris have bowel prep prior to this
19 procedure?

20 A No, she did not.

21 Q Did you recommend that?

22 A No.

23 Q Why not?

24 A I don't do val preps for any of my colon or bowel
25 surgeries. It causes an inflammatory cascade.
26 Nowadays, with enhance recovery after surgery, bowel
preps are probably about -- most people don't do them
70 percent of the time. Some people are still doing
them 30 percent of the time.

1 (Exhibit C, 31:13-24).

2 It is obvious the court reporter misheard the word "*Center*," and instead recorded
3 "Sinner," just as the court reporter misheard the words "bowel preps," and instead
4 recorded "val preps." Further, Dr. Rives identified the matter as a Las Vegas case.
5 Plaintiffs could have used that information, through reasonable diligence, to learn the
6 information they claim was concealed, by searching the Odyssey website for matters
7 involving Dr. Rives, just as Mr. Jones did immediately after he associated as counsel. If Dr.
8 Rives and counsel intended to conceal the *Center* matter, counsel would not have
9 reminded Dr. Rives about his deposition testimony, and Dr. Rives would not have
10 identified the jurisdiction where the case was venued.

11 **ii. There Is No Evidence of a Conspiracy to Hide Information.**

12 Plaintiffs claim that the omission of the *Center* matter is evidence of a "coordinated
13 effort to avoid admitting Rives' habit of committing the same medical errors, which have
14 led to similar, life destroying outcomes for his unfortunate patients." That argument lacks
15 merit. If Dr. Rives, and his counsel, sought to conceal information about prior medical
16 malpractice actions, they would have objected to the request to provide that information,
17 and not answered the pertinent interrogatory. Instead, they provided the information
18 regarding: *Brown v. Rives*; *Lang v. Rives*; *Doucette v. Garcia*; *Schorle vs. Southern Hills*;
19 *and Tucker v. Rives*.

20 The *Center* matter was inadvertently omitted from the list of prior medical
21 malpractice actions. The inadvertent omission was due to the fact that defense counsel
22 utilized a list of prior medical malpractice actions prepared in responses to interrogatories
23 in the *Center* matter, which were served approximately one month prior. The utilization
24 of the prior list explains the reason why this matter, *Farris v. Rives*, is included in the
25 response to the interrogatories in this matter. Notably, Dr. Rives did not verify the
26 discovery responses. There is no evidence Dr. Rives intentionally concealed the *Center*

1 matter from Plaintiffs.

2 Plaintiffs contend that Dr. Rives "sought to hide the existence of *Farris* from *Center*,
3 and to hide the existence of *Center* from *Farris*..." That allegation is undermined by the
4 fact that Dr. Rives' responses to interrogatories propounded in the *Center* matter,
5 specifically identified the *Farris* matter by name, case number, counsel and factual
6 description:

7 *Farris v. Rives*; Eighth District Court, Clark County Nevada; A-1
8 6-739464-C; Thomas Doyle; George Hand; alleged failure to
diagnose and repair a bowel perforation; ongoing. (Exhibit B.)

9 Dr. Rives did not attempt to conceal the *Farris* matter. To the contrary, he provided
10 all of the information that was requested about the *Farris* case, including the name of
11 Plaintiffs' counsel, and a description of the alleged facts. (*Id.*) Under those
12 circumstances, it is unreasonable to argue Dr. Rives sought to hide the existence of the
13 *Farris* matter.

14 Plaintiff's claim that Dr. Rives' "lied about the facts" in his matter, during his
15 deposition in the *Center* case, is incorrect. Dr. Rives was asked to provide a brief
16 description of the facts in this case:

17 Q. With regards to the next case, *Farris*-versus *Rives*, is
18 that case still ongoing?

19 A. Yes.

20 Q. And in ten words or less, can you --you don't have to do
21 it in ten words or less, but can you just give us a brief
description of what that -- the allegations are in that
case?

22 A. Patient had a laparoscopic hernia repair and resulted
23 in a colocutaneous fistula postoperatively that required
subsequent surgery.

24 (Exhibit D, 18:3-12)

25 Dr. Rives' description of this matter was correct. Mrs. *Farris* underwent a laparoscopic
26 hernia repair. The procedure resulted in a colocutaneous fistula, a communication

1 between the colon and the skin. The description was reasonable because it was
2 accurate, and responsive to the request by Plaintiffs' counsel to be brief.

3 Plaintiffs' claim that Dr. Rives' description of the facts from the *Center* matter during
4 his deposition in this case, was entirely erroneous, is incorrect. The brief discussion
5 regarding the facts of *Center* during the deposition were as follows:

6 Q Can you tell me what that case involved.

7 A Patient had a diaphragmatic hernia tear
8 laparoscopically. She aspirated and became septic.

9 (Exhibit C, 14:2-5.)

10 Dr. Rives' brief explanation of the *Center* case was accurate. During his deposition
11 in the *Center* case, Dr. Rives explained his belief that the cause of Mrs. Center's sepsis was
12 aspiration:

13 Q. And at the time, what was your understanding of the
14 cause of the sepsis?

15 A. At the time that it happened, between myself and the
16 other consultants, there was talk about multiple
17 possible reasons. The most likely being aspiration
18 pneumonitis.

19 (Exhibit D, 11:9-14.)

20 Plaintiffs go on to cite testimony from Dr. Rives' deposition in the *Center* matter,
21 which quoted the bronchoscopy report by Dr. Yan-bor Lin, in which Dr. Lin stated "The
22 most likely etiology of the sepsis is extrapulmonary." Dr. Lin was deposed in the *Center*
23 matter and addressed those findings. He testified that he performed the bronchoscopy
24 because he and others were concerned about aspiration. Although he did not see any
25 overt signs of aspiration, it remained in his differential diagnosis because it might have
26 been too soon to see changes due to aspiration. (Exhibit F to Declaration of Chad
Couchot, 57:13-60:14.)

Dr. Rives' testimony about the facts of *Center* during the his deposition in this
matter, was entirely consistent with his testimony in the *Center* deposition, and it was

1 entirely consistent with his belief. Both he, and Defendants' retained expert witnesses in
2 the *Center* matter, believed the most likely cause of Mrs. Center's sepsis was aspiration.
3 See, for example, the report of Dr. Alex Balekian, a retained defense expert in the *Center*
4 matter. (Exhibit G to Declaration of Chad Couchot.)

5 Plaintiffs' Motion is premised on the contention they only recently learned facts of
6 Center which are "remarkably similar," to the facts in this case. The "similar" facts they
7 cite in support of that contention are 1) they both involved hernia surgery; 2) they both
8 involved a perforation of an organ; 3) both patients became septic; and 4) there were
9 injuries to the extremities. (Motion for Sanctions 9:14-20). As of the date of Dr. Rives'
10 deposition, Plaintiffs were aware that there was another case, filed in Las Vegas, involving
11 a diaphragmatic hernia tear, and the development of sepsis. Those facts encompass
12 three of the four alleged similarities. The fourth alleged similarity, the risk of damage to
13 the extremities from sepsis, was well known to Plaintiffs— It is the very basis of this
14 lawsuit.

15 Accordingly, each of the four alleged similarities between this case and *Center*
16 were known, or could have easily been discovered, as of the date of Dr. Rives' deposition.
17 That information was sufficient for Plaintiffs to perform whatever investigation they
18 deemed necessary. There were absolutely no follow-up questions asking for additional
19 details during the deposition. There was no subsequent request for additional
20 information. Instead of investigating the matter, Plaintiffs chose to wait until discovery
21 closed to file this Motion.

22 **B. THERE IS NO PREJUDICE TO PLAINTIFFS**

23 Plaintiffs' Motion alleges prejudice, but it demonstrates none. Plaintiffs contend the
24 alleged concealment of the *Center* matter:

25 ...prevented plaintiffs from inquiring into the notice which
26 defendant Rives necessarily would have had of the dangers of
perforating organs, sepsis setting in, and failing to immediately
recommend surgery in order to correct the damages.

1 Plaintiffs were in no way prevented from inquiring as to Dr. Rives' knowledge of the
2 dangers of organ perforation, sepsis, and the indication of urgent surgery. Those specific
3 areas of inquiry were well known to Plaintiffs since the inception of this lawsuit. In fact,
4 the Complaint included an affidavit by Dr. Vincent Pesiri, a general surgeon, who raised
5 those very issues. After describing Mrs. Farris' hospital course in detail, Dr. Pesiri opined
6 that Dr. Rives breached the standard of care by his intraoperative technique; his failure
7 to adequately repair bowel perforations at the time of surgery; and his post management
8 of a perforated bowel and resultant sepsis. According, Plaintiffs had the entire duration
9 of discovery to investigate whether Dr. Rives had notice of the danger of perforating
10 organs, the danger of sepsis, and the danger delayed surgery.

11 Further, those very subjects were addressed during Dr. Rives' deposition, at length.
12 Since the inception of this action, Plaintiffs have been critical of Dr. Rives' alleged failure
13 to appreciate an ongoing organ perforation, resulting in sepsis. Plaintiffs had every
14 opportunity to ask Dr. Rives about what notice he had about the dangers of perforating
15 organs during his deposition. Plaintiffs had every opportunity to ask Dr. Rives about the
16 dangers of sepsis. Finally, Plaintiffs had every opportunity to ask Dr. Rives about the
17 dangers of delayed surgery when it was indicated for a septic patient.

18 The claim that Plaintiffs' were unable to investigate those issues for lack of
19 knowledge regarding the *Center* matter is both inaccurate and disingenuous. As
20 discussed above, Dr. Rives described the facts of *Center* during his deposition, and the
21 issues Plaintiffs' claim they were unable to investigate have been well-known since the
22 inception of this case. Plaintiffs had every opportunity to conduct additional discovery on
23 those issues. They chose not to.

24 ///

25 ///

26 ///

C. EVIDENCE PERTAINING TO *CENTER V. RIVES* IS INADMISSIBLE

I. Evidence of Another Action for Medical Malpractice Is Not Relevant in a Medical Malpractice Action.

Relevant evidence is evidence “having any tendency to make the existence of any fact that is of consequence to the determination of an action more or less probable than it would without the evidence.” NRS 48.015. Evidence that is not relevant is inadmissible. NRS 48.025(2).

In this action, Plaintiffs’ theories of liability against Defendants arise from Dr. Rives’ alleged medical malpractice. In order to prevail on a claim for medical malpractice, a plaintiff must show a defendant’s conduct departed from the accepted standard of care or practice and the departure was the actual and proximate cause of the injuries suffered. *See Prabhu v. Levine*, 112 Nev. 1538, 930 P.2d 103 (1996).

Evidence of Dr. Rives’ involvement as a defendant in a prior action for medical malpractice is not relevant and it is therefore inadmissible. The fact Dr. Rives was a defendant in a prior lawsuit is not an element of Plaintiffs’ cause of action for medical malpractice. Further, this information has no tendency to make the existence of a fact of consequence to Plaintiffs’ causes of action more or less probable. Plaintiffs must demonstrate Dr. Rives’ care in this action fell below the standard of care, and that care was a cause of Plaintiffs’ injuries. Dr. Rives’ care of another patient is irrelevant to the care provided to Mrs. Farris.

ii. Evidence of Another Action for Medical Malpractice Should Be Excluded Because it Is Impermissible Character Evidence.

Evidence of character or a character trait is inadmissible for the purpose of showing a person acted in conformity with such evidence on a particular occasion. NRS 48.045(1). Evidence of character or a character trait is admissible only in limited circumstances, including criminal actions and for purposes of attacking a person’s credibility. *Id.*

1 Dr. Rives' involvement as a defendant in a prior action for medical malpractice
2 cannot be used to show he was negligent in this action. Plaintiffs must show Dr. Rives'
3 care was negligent as to Mrs. Farris; evidence of his prior involvement in another medical
4 malpractice action cannot be used to show a trait of negligence or carelessness in this
5 action.

6 None of the exceptions for admitting character evidence are applicable in this
7 action. This action is a civil action and evidence used to attack or support the credibility
8 of a witness is limited to opinion evidence relating to truthfulness or untruthfulness
9 pursuant to Nevada Revised Statutes 50.085(1). Dr. Rives' involvement in a prior medical
10 malpractice action is not an opinion and it does not relate to truthfulness or
11 untruthfulness.

12 **iii. Evidence of Involvement as a Defendant in Another Action for**
13 **Medical Malpractice Should Be Excluded Because it Would Be**
Unfairly Prejudicial and it Would Mislead the Jury.

14 Even if relevant, evidence is not admissible if its probative value is substantially
15 outweighed by the danger of unfair prejudice, confusion of the issues or misleading the
16 jury. NRS 48.035(1). Defendants contend any evidence of Dr. Rives' involvement as a
17 defendant in another action for medical malpractice is not relevant and is inadmissible.
18 However, even if such evidence was relevant, it is inadmissible because any probative
19 value the evidence would be substantially outweighed by the danger the evidence would
20 unfairly prejudice defendants and mislead the jury.

21 The obvious intent of presenting evidence of the *Center* matter in this case, is to
22 convince the jury that Dr. Rives has the tendency to provide negligent care to his patients.
23 Plaintiffs' counsel contends:

24 Like the instant case, the *Center* case involves a botched
25 hernia repair surgery by Rives wherein Rives negligently
26 punctured a patient's vital organ, failed to correct the error
during surgery, failed to properly diagnose the obvious cause
of the ensuing sepsis, and ultimately caused his patient's legs
to be destroyed for life by failing to timely correct his error

1 while leaving her in a prolonged critical, septic state. (Motion
2 for Sanctions 4:17-22.)

3 Evidence of Dr. Rives' involvement as a defendant in another medical malpractice
4 action would unfairly prejudice Defendants because a jury would infer he has a tendency
5 to provide negligent care to his patients. This is improper and unfairly prejudicial to
6 Defendants. It is extremely prejudicial considering Mrs. Center's serious injuries, the loss
7 of her lower legs, and the fact that a trial in the matter resulted in a verdict in favor of
8 Plaintiffs.

9 Plaintiffs in this action seek to argue that Dr. Rives' care in this case was similarly
10 negligent, resulting in bilateral footdrop. This is improper, and would necessarily result
11 in the need for Defendants to defend the care Dr. Rives provided to Mrs. Center, during
12 the trial in this matter, resulting in confusion, extreme prejudice, and undue burden.

13 **D. NEITHER SANCTIONS NOR PUNITIVE DAMAGES ARE WARRANTED**

14 **I. There Was No Wilful Noncompliance Warranting Sanctions.**

15 Generally, sanctions may only be imposed where there has been willful
16 noncompliance with a court order or where the adversary process has been halted by the
17 actions of the unresponsive party. *GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 900
18 P.2d 323 (1995). See also, *Temora Trading Co. v. Perry*, 98 Nev. 229, 645 P.2d 436, cert.
19 denied, 459 U.S. 1070, 103 S. Ct. 489, 74 L. Ed. 2d 632 (1982). Sanctions must be
20 proportional to the discovery violation. *City of Sparks v. Second Judicial Dist. Court ex rel.*
21 *County of Washoe*, 112 Nev. 952, 920 P.2d 1014 (1996).

22 In light of the fact that Plaintiffs are asking for Defendants' Answer to be stricken,
23 it is appropriate to consider Nevada case law analyzing when dismissal is an appropriate
24 discovery sanction. Discovery sanction of dismissal must be just and must relate to the
25 claims at issue in the discovery order which has been violated, dismissal should be
26 imposed only after careful consideration of all relevant factors, and the order of dismissal
must be supported by an express, careful and preferably written explanation of the district

1 court's analysis. *Stubli v. Big D Int'l Trucks, Inc.*, 107 Nev. 309, 810 P.2d 785 (1991).

2 A court may properly consider in deciding whether dismissal is an appropriate
 3 sanction the following factors: (1) the degree of willfulness of the offending party; (2) the
 4 extent to which the non-offending party would be prejudiced by a lesser sanction; (3) the
 5 severity of the sanction of dismissal relative to the severity of the discovery abuse; (4)
 6 whether any evidence has been irreparably lost; (5) the policy favoring adjudication on
 7 the merits; (6) whether sanctions unfairly operate to penalize a party for the misconduct
 8 of his or her attorney; and (7) the need to deter both the parties and future litigants from
 9 similar abuses. *Stubli v. Big D Int'l Trucks, Inc.*, 107 Nev. 309, 810 P.2d 785 (1991); *GNLV*
 10 *Corp. v. Service Control Corp.*, 111 Nev. 866, 900 P.2d 323 (1995).

11 The above cited case law, and the factors from *Stubli*, weigh heavily against
 12 imposing any sanction. The omission of the *Center* matter from Dr. Rives' unverified
 13 discovery responses was an inadvertant oversight by counsel. There was no willfulness
 14 on Dr. Rives' part. No evidence has been lost. There has been no prejudice to Plaintiffs.
 15 No discovery has been precluded. Any sanction would unfairly penalize Dr. Rives for an
 16 oversight by his counsel. There is no need to deter the parties or future litigants from
 17 similar conduct. Under those circumstances, any sanction would be unjust.

18 **ii. The Motion for Leave to Plead Punitive Damages Is Untimely.**

19 The deadline to amend the pleadings was November 15, 2018. Accordingly,
 20 Plaintiffs' request for leave to amend the Complaint to plead punitive damages is untimely
 21 and must be denied. Plaintiffs claim that they were only aware of the grounds for this
 22 motion upon receipt of the deposition transcript from the *Center* matter on September 10,
 23 2019 is incorrect. Plaintiffs were aware of the facts of the *Center* case when Dr. Rives
 24 described them during his deposition on October 24, 2018. Plaintiffs could have easily
 25 confirmed the name of the matter, the facts alleged, and the name of Plaintiffs' counsel,
 26 by simply searching the Eighth Judicial District Court website, as Mr. Jones did almost

1 immediately after he associated as counsel. Plaintiffs did nothing with the knowledge
2 that Dr. Rives was involved with another ongoing matter, involving a hernia repair and a
3 patient who developed sepsis, until this Motion was filed.

4 **iii. There Are No Grounds for Punitive Damages.**

5 To recover punitive damages in Nevada, a plaintiff must prove that a defendant has
6 been guilty of oppression, fraud or malice, express or implied. NRS 42.005. Implied malice
7 requires evidence that a defendant acted with a culpable state of mind. *Countrywide*
8 *Home Loans v. Thitchener*, 124 Nev. 725 (2008). Therefore, in order to properly plead
9 punitive damages, the plaintiff must allege the defendant's conduct exceeded mere
10 recklessness or gross negligence. Even unconscionable irresponsibility will not support
11 a punitive damages award. *Maduikie v. Agency Rent-a-Car*, 114 Nev. 1 (1998).

12 In essence, an allegation of punitive damages must be supported by allegations of
13 fraud, oppression or malice. See, NRS 42.005(1). NRS 42.001(2) defines fraud as
14 intentional misrepresentation, deception, or concealment of a material fact known to the
15 person with the intent to deprive another person of his rights or property or to otherwise
16 injure another person. NRS 42.001(3) defines malice as conduct intended to injure a
17 person or despicable conduct engaged in with a conscious disregard for the rights or
18 safety of others. NRS 42.001(4) defines oppression as despicable conduct that subjects
19 a person to cruel and unjust hardship with a conscious disregard of the rights of the
20 person. NRS 42.001(1) defines conscious disregard as the knowledge of probable harmful
21 consequences of a wrongful act and a willful and deliberate failure to act to avoid those
22 consequences.

23 Plaintiff claims punitive damages are appropriate because Dr. Rives:

24 ...had knowledge of the extremely dangerous nature of his
25 actions as they resulted in catastrophic injury mere months
before plaintiff Titina's own entries in this matter.

26 Those allegations are insufficient to warrant punitive damages. An injury to an organ,

1 sepsis, and associated injuries, are known risks of abdominal surgery. The fact that Dr.
2 Rives' previous patient suffered an adverse outcome does not demonstrate a conscious
3 disregard of Mrs. Farris' rights or safety. It is not oppressive conduct. Dr. Rives exercised
4 his best judgment in managing Mrs. Farris' care and treatment. His care is fully supported
5 by Defendants' retained expert witnesses. There is no evidence suggesting Dr. Rives did
6 anything malicious, oppressive or despicable. Plaintiffs' experts simply contend his care
7 fell below the standard of care. There is no evidence of any conduct which would warrant
8 punitive damages under Nevada law.

10 IV. CONCLUSION

11 Plaintiffs' Motion lacks merit because there was no intentional concealment. Due
12 to a mistake of counsel, the *Center* matter was omitted from the list of prior actions. The
13 omission by counsel was inadvertent. It was not an attempt by Dr. Rives, or anyone else,
14 to conceal the matter. Despite the error, Plaintiffs were aware of the facts of *Center*, and
15 the fact the matter was venued in Las Vegas, because those matters were discussed in
16 the deposition of Dr. Rives.

17 Plaintiffs have not been prejudiced in any way. There are no relevant subjects or
18 topics which Plaintiffs were unable to investigate. The issues they claim to have learned
19 from further investigation of the *Center* matter were the same issues that have existed in
20 this case since its inception.

21 Plaintiffs' Motion seeks to take advantage of a mistake in an unverified discovery
22 response by introducing irrelevant and prejudicial facts of another medical malpractice
23 action at trial. Introduction of evidence relating the *Center* matter would be improper and
24 extremely prejudicial to Defendants. In essence, it would require Defendants to defend
25 both cases at trial.

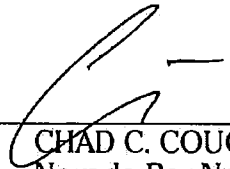
26 ///

1 Plaintiffs' request to amend the complaint to plead punitive damages is untimely.
2 Further, there are no grounds for sanctions or punitive damages. Accordingly, Plaintiffs
3 Motion for Sanctions and request for leave to amend must be denied.

4 Dated: September 24, 2019

5 **SCHUERING ZIMMERMAN & DOYLE, LLP**

6
7 By


CHAD C. COUCHOT

Nevada Bar No. 12946

400 University Avenue

Sacramento, CA 95825-6502

(916) 567-0400

Attorneys for Defendants BARRY RIVES,
M.D. and LAPAROSCOPIC SURGERY OF
NEVADA, LLC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 24th day of September, 2019, service of a true and correct copy of the foregoing:

DEFENDANTS BARRY RIVES, M.D. and LAPAROSCOPIC SURGERY OF NEVADA, LLC'S OPPOSITION TO PLAINTIFFS' MOTION FOR SANCTIONS UNDER RULE 37 FOR DEFENDANTS' INTENTIONAL CONCEALMENT OF DEFENDANT RIVES' HISTORY OF NEGLIGENCE AND LITIGATION AND MOTION FOR LEAVE TO AMEND COMPLAINT TO ADD CLAIM FOR PUNITIVE DAMAGES ON ORDER SHORTENING TIME

was served as indicated below:

- ☒ served on all parties electronically pursuant to mandatory NEFCR 4(b);
- ☐ served on all parties electronically pursuant to mandatory NEFCR 4(b), exhibits to follow by U.S. Mail;
- ☐ by depositing in the United States Mail, first-class postage prepaid, enclosed ;
- ☐ by facsimile transmission; or
- ☐ by personal service as indicated.

Attorney**Representing****Phone/Fax/E-Mail**

George F. Hand, Esq.
HAND & SULLIVAN, LLC
3442 North Buffalo Drive
Las Vegas, NV 89129

Plaintiffs

702/656-5814
Fax: 702/656-9820
hsadmin@handsullivan.com

Kimball Jones, Esq.
Jacob G. Leavitt, Esq.
BIGHORN LAW
716 S. Jones Boulevard
Las Vegas, NV 89107

Plaintiffs

702/333-1111
Kimball@BighornLaw.com
Jacob@BighornLaw.com

Chenault
an employee of Schuering Zimmerman &
Doyle, LLP
1737-10881



1 **[DECL]**

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 3 Nevada Bar No. 1120
 4 CHAD C. COUCHOT
 5 Nevada Bar No. 12946
 6 SCHUERING ZIMMERMAN & DOYLE, LLP
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 Las Vegas, Nevada 89106
 (702) 367-1234
 10 Email: filing@memlaw.net

11 Attorneys for Defendants BARRY
 12 RIVES, M.D. and LAPAROSCOPIC
 SURGERY OF NEVADA, LLC

13
 14 DISTRICT COURT
 15 CLARK COUNTY, NEVADA

16 TITINA FARRIS and PATRICK FARRIS,

17 Plaintiffs,

18 vs.

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

20 Defendants.

) CASE NO. A-16-739464-C
) DEPT. NO. 31

) **DECLARATION OF CHAD COUCHOT IN**
) **SUPPORT OF OPPOSITION TO**
) **PLAINTIFFS' MOTION FOR SANCTIONS**
) **UNDER RULE 37 FOR DEFENDANTS'**
) **INTENTIONAL CONCEALMENT OF**
) **DEFENDANT RIVES' HISTORY OF**
) **NEGLIGENCE AND LITIGATION AND**
) **MOTION FOR LEAVE TO AMEND**
) **COMPLAINT TO ADD CLAIM FOR**
) **PUNITIVE DAMAGES ON ORDER**
) **SHORTENING TIME**

21
 22
 23
 24 I, CHAD C. COUCHOT, declare:

25 1. I am an attorney at law licensed to practice in the State of Nevada. I am a
 26 partner of the law firm of Schuering Zimmerman & Doyle, LLP, attorneys of record for

1 Defendants BARRY J. RIVES, M.D.; LAPAROSCOPIC SURGERY OF NEVADA, LLC.

2 2. I prepared Dr. Barry Rives' responses to plaintiff's discovery requests,
3 including Dr. Rives' responses to interrogatories served April 17, 2017. (True and correct
4 copies of the pertinent portions of the Responses to Interrogatories as attached hereto as
5 Exhibit B.) Interrogatory No. 3 asked Dr. Rives if he had been named as a defendant in a
6 lawsuit arising from alleged out practice for professional negligence, and to identify such
7 actions by the jurisdiction, caption, and case number. In response to the interrogatory I
8 utilized information I learned in preparing Dr. Rives' response to a similar interrogatory
9 in the Center matter. (True and correct copies of the pertinent portions of the Responses
10 to Interrogatories in the Center matter are as attached hereto as Exhibit A.)

11 3. The responses to interrogatories in the Center matter were served on March
12 7, 2017, approximately one month before the responses to the interrogatories in the Farris
13 matter were served. When transferring the information from the Center responses to the
14 responses in the Farris matter, I neglected to add Center to the list of prior actions, which
15 was simply an oversight on my part. Dr. Rives' responses to the interrogatories in the
16 Farris matter, were not verified by him.

17 4. Mr. Hand took the deposition of Dr. Rives on October 24, 2018. (True and
18 correct copies of the pertinent pages of the deposition transcript are attached as Exhibit
19 C.) During the deposition, Mr. Hand reviewed the names of the cases identified in Dr.
20 Rives' discovery responses with him. Dr. Rives was not asked if there were any other
21 cases in which he was named as a defendant. Dr. Rives was asked if there were any
22 other matters in which he had given the deposition, which was the subject of
23 interrogatory Number No. 5. When Dr. Rives did not recall the Center matter, I reminded
24 him.

25 5. I did not describe the Center matter as "Sinner v. Rives," as erroneously
26 recorded in the deposition transcript. The misidentified name first came to my attention

1 on or about September 11, 2019, when I was advised that Plaintiffs' counsel intended to
2 file this Motion.

3 6. True and correct copies of the pertinent pages of the transcript of the
4 deposition of Dr. Rives in the Center matter are attached as Exhibit D.

5 7. The declaration of Kimball Jones states he became aware of the Center
6 matter by searching Odyssey "during the summer of 2019." Mr. Jones associated as
7 counsel on July 15, 2019. George Hand has been representing Plaintiffs since the
8 inception of this case; the Complaint was filed July 1, 2016. The information regarding the
9 Center matter was available on Odyssey website throughout that entire time; the Center
10 Complaint was filed February 5, 2016. Discovery in this matter closed on June 14, 2019.
11 Mr. Jones did not associate as counsel until July 15, 2019.

12 8. Plaintiffs' counsel did not notify me or my office of any alleged concealment
13 until September 11, 2019, during the EDCR 2.67 conference. On that date, Plaintiffs'
14 counsel stated they intended to file the instant motion. Neither Mr. Jones, Mr. Hand, nor
15 any other representative of Plaintiffs have ever asked for additional information regarding
16 the Center case. Further, Plaintiffs never asked Defendants to produce any deposition
17 transcripts pertaining to the five prior medical malpractice actions identified in Dr. Rives'
18 discovery responses.

19 9. Upon learning of the omission of the Center matter from the responses to
20 interrogatories, I prepared supplemental responses the interrogatories. (True and correct
21 copy of the pertinent portions of the supplemental responses to interrogatories are
22 attached hereto as Exhibit E.) The supplemental responses were served September 13,
23 2019.

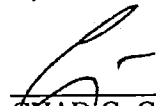
24 10. True and correct copies of pertinent portions of the deposition of Dr. Yan-bor
25 Lin, taken May 5, 2018, are attached hereto as Exhibit F.

26 11. A true and correct copy of the report of Dr. Alex Balekian from the Center

1 matter, is attached hereto as Exhibit G. Dr. Balekian was a retained expert on behalf of
2 Dr. Barry Rives.

3 I declare under penalty of perjury under the laws of the State of Nevada that the
4 foregoing is true and correct, and if called to testify, I could competently do so.

5 Executed this 24th day of September, 2019, at Sacramento, California.

6 
7 CHAD C. COUCHOT
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22
23
24
25
26

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 24th day of September, 2019, service of a true and correct copy of the foregoing:

DECLARATION OF CHAD COUCHOT IN SUPPORT OF OPPOSITION TO PLAINTIFFS' MOTION FOR SANCTIONS UNDER RULE 37 FOR DEFENDANTS' INTENTIONAL CONCEALMENT OF DEFENDANT RIVES' HISTORY OF NEGLIGENCE AND LITIGATION AND MOTION FOR LEAVE TO AMEND COMPLAINT TO ADD CLAIM FOR PUNITIVE DAMAGES ON ORDER SHORTENING TIME

was served as indicated below:

- ☒ served on all parties electronically pursuant to mandatory NEFCR 4(b);
- ☐ served on all parties electronically pursuant to mandatory NEFCR 4(b), exhibits to follow by U.S. Mail;
- ☐ by depositing in the United States Mail, first-class postage prepaid, enclosed;
- ☐ by facsimile transmission; or
- ☐ by personal service as indicated.

Attorney	Representing	Phone/Fax/E-Mail
George F. Hand, Esq. HAND & SULLIVAN, LLC 3442 North Buffalo Drive Las Vegas, NV 89129	Plaintiffs	702/656-5814 Fax: 702/656-9820 hsadmin@handsullivan.com
Kimball Jones, Esq. Jacob G. Leavitt, Esq. BIGHORN LAW 716 S. Jones Boulevard Las Vegas, NV 89107	Plaintiffs	702/333-1111 Kimball@BighornLaw.com Jacob@BighornLaw.com

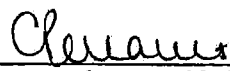

an employee of Schuering Zimmerman &
Doyle, LLP
1737-10881

EXHIBIT A

1 **[RSPN]**

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 3 Nevada Bar No. 1120
 4 **SCHUERING ZIMMERMAN & DOYLE, LLP**
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 9 Email: calendar@szs.com

6 **KIM MANDELBAUM**
 Nevada Bar No. 318
 7 **MANDELBAUM ELLERTON & ASSOCIATES**
 8 2012 Hamilton Lane
 9 Las Vegas, Nevada 89106
 (702) 367-1234
 Email: filing@memlaw.net

10 Attorneys for Defendants BARRY J. RIVES, M.D.; LAPAROSCOPIC
 11 SURGERY OF NEVADA, LLC

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **VICKIE CENTER; THOMAS CENTER,**
 15 individually, and as the Husband to VICKIE
 16 CENTER,

17 **Plaintiffs,**

18 **vs.**

19 **BARRY J. RIVES, M.D.; LAPAROSCOPIC**
 20 **SURGERY OF NEVADA, LLC, A Nevada**
 21 **Limited-Libility Company; ABDUL-SAMI**
 22 **SIDDIQUI, M.D.; A.S.F. SIDDIQUI, M.D.**
 23 **LTD.; YANN-BOR LIN, M.D., et al.,**

24 **Defendants.**

) **CASE NO. A-16-731390-C**
) **DEPT. NO. XIV**

) **DEFENDANT DR. BARRY RIVES'**
) **RESPONSE TO PLAINTIFF VICKIE**
) **CENTER'S FIRST SET OF**
) **INTERROGATORIES**

25 **TO: William R. Brenske, Esq., attorney for Plaintiff VICKIE CENTER:**

26 **Under authority of Rule 33 of the Nevada Rules of Civil Procedure, Defendant**
BARRY J. RIVES, M.D. hereby responds in writing and under oath to interrogatories
directed to him by Plaintiff VICKIE CENTER as follows:

1 **RESPONSE TO INTERROGATORY NO. 10:**

2 Not applicable.

3 **INTERROGATORY NO. 11:**

4 If any drawings, diagrams, photographs, motion pictures, or videotapes been
5 prepared or taken of any object or person involved in the incident, please identify the
6 person who took them and the date taken, what is depicted, and the name and address
7 of the person who now has custody of each drawing, diagram photograph, motion picture
8 and/or videotape.

9 **RESPONSE TO INTERROGATORY NO. 11:**

10 Not applicable.

11 **INTERROGATORY NO. 12:**

12 If it is your contention that the Plaintiff's injuries were caused in whole or in part
13 by the fault of some person or persons other than yourself, whether named as defendant
14 in this action or not, or that some such other person or persons may have shared in the
15 legal responsibility for the injuries set forth in Plaintiff's Complaint, please state the name
16 and present address of each such person or entity, each act or omission by which you
17 contend such person is at fault for causing Plaintiff's injuries, and the relationship of each
18 person or entity, if any, to you or any other party in this action.

19 **RESPONSE TO INTERROGATORY NO. 12:**

20 Objection: this Interrogatory calls for an expert opinion and seeks information
21 about the disclosure of expert witnesses and the deadline for such disclosure has not yet
22 arrived. As such, this Interrogatory constitutes a premature contention Interrogatory and
23 is subject to supplementation in accordance with the governing discovery deadlines.
24 *Racine v. PHW Las Vegas, LLC*, 2012 U.S. Dist. LEXIS 172632 (D. Nev. Nov. 4, 2012).

25 **INTERROGATORY NO. 13:**

26 If you every been sued for malpractice or professional negligence, please state the

1 name of the plaintiff(s) and the defendant(s), the case number and court where filed, the
2 name of the lawyer representing you and the parties, if any, the allegations of negligence
3 made against you, and the manner in which the claim was resolved.

4 **RESPONSE TO INTERROGATORY NO. 13:**

5 Objection: irrelevant and not reasonably calculated to lead to the discovery of
6 admissible evidence; constitutional right to privacy; compound; and overbroad and
7 burdensome. Without waiving these objections, Dr. Rives and/or Laparoscopic Surgery
8 of Nevada, to the best of Dr. Rives' recollection, have been named as a defendant in the
9 following actions:

10 Brown v. Rives; Eighth District Court, Clark County Nevada; A-15-718937-C; Thomas
11 Doyle; Christian Griffen; alleged failure to properly remove peritoneal dialysis catheter;
12 ongoing.

13 Farris v. Rives; Eighth District Court, Clark County Nevada; A-16-739464-C; Thomas
14 Doyle; George Hand; alleged failure to diagnose and repair a bowel perforation; ongoing.

15 Lang v. Rives; Eighth District Court, Clark County Nevada; A10-618207-C; Thomas
16 Doyle; Keith Gregory; alleged improper management of a ventral hernia; defense verdict.

17 Doucette v. Garcia; Eighth District Court, Clark County Nevada; A552664; Thomas
18 Doyle; Walter Cannon; alleged failure to inform patient of diagnosis of lymphoma;
19 defense verdict.

20 Schorle vs. Southern Hills Hospital; Eighth District Court, Clark County Nevada; A-
21 12-672833-C; Thomas Doyle; Michael D. Mazur; the case involved an exploratory
22 laparotomy following a surgical procedure to the spine; motion to dismiss granted.

23 Tucker v. Rives; Eighth District Court, Clark County Nevada; A576148; Thomas
24 Doyle; Patti S. Wise; the case involved a bile duct leak; the matter was dismissed without
25 any payment on behalf of Dr. Rives.

26 ///

1 Complaint you intend to offer at the time of trial, including the basis therefore including
2 any and all medical research and/or evidence you rely upon to support such alternative
3 theories of causation.

4 **RESPONSE TO INTERROGATORY NO. 30:**

5 Objection: this Interrogatory calls for an expert opinion and seeks information
6 about the disclosure of expert witnesses and the deadline for such disclosure has not yet
7 arrived. As such, this Interrogatory constitutes a premature contention Interrogatory and
8 is subject to supplementation in accordance with the governing discovery deadlines.

9 *Racine v. PHW Las Vegas, LLC*, 2012 U.S. Dist. LEXIS 172632 (D. Nev. Nov. 4, 2012).

10 Dated: March 7, 2017

11 **SCHUERING ZIMMERMAN & DOYLE, LLP**

12
13 By 

14 CHAD C. COUCHOT
15 Nevada Bar No. 12946
16 400 University Avenue
17 Sacramento, CA 95825-6502
18 (916) 567-0400
19 Attorneys for Defendants BARRY J. RIVES,
20 M.D.; LAPAROSCOPIC
21
22
23
24
25
26

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 7th day of March, 2017, service of a true and correct copy of the foregoing:

DEFENDANT DR. BARRY RIVES' RESPONSE TO PLAINTIFF VICKIE CENTER'S FIRST SET OF INTERROGATORIES

was served as indicated below:

- ☒ served on all parties electronically pursuant to mandatory NEFCR 4(b);
- ☐ served on all parties electronically pursuant to mandatory NEFCR 4(b), exhibits to follow by U.S. Mail;
- ☐ by depositing in the United States Mail, first-class postage prepaid, enclosed ;
- ☐ by facsimile transmission; or
- ☐ by personal service as indicated.

Attorney	Representing	Phone/Fax/E-Mail
Ryan Dr. Krametbauer, Esq. BRENSKE & ANDREEVSKI 3800 Howard Hughes Pkwy, Ste. 500 Las Vegas, NV 89169	Plaintiff	702/385-3300 wbrenske@hotmail.com
Robert C. McBride, Esq. CARROLL KELLY TROTTER 8329 W. Sunset Road, Suite 260 Las Vegas, NV 89113	Defendant Mir Mohammad, M.D.	702/792-5855 Fax: 702/796-5855
John H. Cotton, Esq. John J. Savage, Esq. John H. Cotton & Associates, Ltd. 7900 West Sahara Ave., Ste. 200 Las Vegas, NV 89117	Defendants Western Critical Associates (Watanabe), Ltd., Yann-Bor Lin, M.D., Antonio Flores Erazo, M.D.	702/832-5909 Fax: 702/832-5910
Patricia Egan Daehnke, Esq. Linda K. Rurangirwa, Esq. DAEHNKE STEVENS, LLP 2300 W. Sahara Ave., Ste. 680 Las Vegas, NV 89102	Defendants Abdul- Sami Siddiqui, M.D.; A.S.F. Siddiqui, M.D., Ltd.	702/979-2132 Fax: 702/979-2133


an employee of Schuering Zimmerman &
Doyle, LLP
1737-10766

EXHIBIT B

ELECTRONICALLY SERVED
04/17/2017 01:20:37 PM

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Attorneys for Defendants BARRY RIVES, M.D.;
LAPAROSCOPIC SURGERY OF NEVADA, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

<p>14 TITINA FARRIS and PATRICK FARRIS,</p> <p>15 Plaintiffs,</p> <p>16 vs.</p> <p>17 BARRY RIVES, M.D.; LAPAROSCOPIC</p> <p>18 SURGERY OF NEVADA, LLC, et al.,</p> <p>19 Defendants.</p>	<p>) CASE NO. A-16-739464-C</p> <p>) DEPT. NO. 22</p> <p>)</p> <p>) DEFENDANT DR. BARRY RIVES'</p> <p>) RESPONSE TO PLAINTIFF TITINA</p> <p>) FARRIS' FIRST SET OF</p> <p>) INTERROGATORIES</p> <p>)</p> <p>)</p> <p>)</p>
---	--

21 TO: George F. Hand, Esq., attorney for Plaintiff Titina Farris:

22 Under authority of Rule 33 of the Nevada Rules of Civil Procedure, Defendant Barry

23 Rives, M.D. hereby respond in writing and under oath to interrogatories directed to him

24 by Plaintiff Titina Farris as follows:

25 **INTERROGATORY NO. 1:**

26 State your full name, professional address and attach a current copy of your

1 curriculum vitae (CV). In the event you do not have a CV, state in detail your professional
2 qualifications, including your education by identifying schools from which you graduated
3 and the degrees granted and dates thereof, your medical internships and residencies,
4 fellowships and a bibliography of your professional writing(s).

5 **RESPONSE TO NO. 1:**

6 Barry James Rives. 10001 S. Eastern Avenue #309, Henderson, NV 89052. A copy
7 of Dr. Rives' curriculum vitae is attached.

8 **INTERROGATORY NO. 2:**

9 State whether you have held any position on a committee or with an administrative
10 body at any hospital, clinic or other similar health care facility. If so, state when you held
11 such position(s) and the duties and responsibilities involved in such position(s).

12 **RESPONSE TO NO. 2:**

13 Not applicable.

14 **INTERROGATORY NO. 3:**

15 Have you every been named as a defendant in a lawsuit arising from alleged
16 malpractice or professional negligence? If so, state the court/jurisdiction, the caption and
17 the case number for each lawsuit.

18 **RESPONSE TO NO. 3:**

19 Objection: irrelevant and not reasonably calculated to lead to the discovery of
20 admissible evidence; constitutional right to privacy; compound; and overbroad and
21 burdensome. Without waiving these objections, Dr. Rives and/or Laparoscopic Surgery
22 of Nevada, to the best of Dr. Rives' recollection, have been named as a defendant in the
23 following actions: Brown v. Rives; Eighth District Court, Clark County Nevada;
24 A-15-718937-C; Farris v. Rives; Eighth District Court, Clark County Nevada; A-16-739464-C;
25 Lang v. Rives; Eighth District Court, Clark County Nevada; A10-618207-C; Doucette v.
26 Garcia; Eighth District Court, Clark County Nevada; A552664; Schorle vs. Southern Hills

1 Hospital; Eighth District Court, Clark County Nevada; A-12-672833-C; and Tucker v. Rives;
2 Eighth District Court, Clark County Nevada; A576148.

3 **INTERROGATORY NO. 4:**

4 Since the institution of this action, have you been asked to appear before or attend
5 any meeting of a medical committee or official board of any medical society or other
6 entity for the purpose of discussing this case? If so, state the date(s) of each such meeting
7 and the name and address of the committee, society or other entity conducting each
8 meeting.

9 **RESPONSE TO NO. 4:**

10 Objection: This interrogatory seeks information protected by the peer review
11 privileges under NRS 49.119 and 49.265. Without waiving these objections: no.

12 **INTERROGATORY NO. 5:**

13 Have you ever testified in court or at deposition in a medical malpractice case in
14 any capacity (e.g., defendant, witness, etc.)? If so, state the court, the caption and the
15 case number of each such case, the approximate date of your testimony, whether you
16 testified as a treating physician or expert and whether you testified on your own behalf
17 or on behalf of the defendant or the plaintiff.

18 **RESPONSE TO NO. 5:**

19 Objection: irrelevant and not reasonably calculated to lead to the discovery of
20 admissible evidence; constitutional right to privacy; compound; and overbroad and
21 burdensome. Without waiving these objections, Dr. Rives has testified in depositions and
22 during trial in the matters of Lang v. Rives; Eighth District Court, Clark County Nevada;
23 A10-618207-C; and Doucette v. Garcia; Eighth District Court, Clark County Nevada;
24 A552664. He gave a deposition in the matter of Tucker v. Rives; Eighth District Court,
25 Clark County Nevada; A576148.

26 ///

1 Hospital, San Martin Campus.

2 **RESPONSE TO NO. 26:**

3 Pursuant to NRCP 33(d), see Titina Farris' medical records from St. Rose
4 Dominican Hospital-San Martin Campus. Further, the witnesses currently known to Dr.
5 Rives have been identified in his NRCP 16.1 disclosure.

6 Dated: April 17, 2017

7 **SCHUERING ZIMMERMAN & DOYLE, LLP**

8
9 By 

10 CHAD C. COUCHOT
11 Nevada Bar No. 12946
12 400 University Avenue
13 Sacramento, CA 95825-6502
14 (916) 567-0400
15 Attorneys for Defendants BARRY RIVES,
16 M.D.; LAPAROSCOPIC SURGERY OF
17 NEVADA, LLC
18
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 17th day of April, 2017, service of a true and correct copy of the foregoing:

DEFENDANT DR. BARRY RIVES' RESPONSE TO PLAINTIFF TITINA FARRIS' FIRST SET OF INTERROGATORIES

was served as indicated below:

- ☒ served on all parties electronically pursuant to mandatory NEFCR 4(b);
- ☐ served on all parties electronically pursuant to mandatory NEFCR 4(b), exhibits to follow by U.S. Mail;
- ☐ by depositing in the United States Mail, first-class postage prepaid, enclosed ;
- ☐ by facsimile transmission; or
- ☐ by personal service as indicated.

Attorney

Representing

Phone/Fax/E-Mail

George F. Hand, Esq.
HAND & SULLIVAN, LLC
3442 North Buffalo Drive
Las Vegas, NV 89129

Plaintiff

702/656-5814
Fax: 702/656-9820
hsadmin@handsullivan.com

Chenault
An employee of Schuering Zimmerman &
Doyle, LLP
1737-10881

EXHIBIT C

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DISTRICT COURT
CLARK COUNTY, NEVADA

TITINA FARRIS and PATRICK)	
FARRIS,)	
)	
Plaintiffs,)	CASE NO A-16-739464-C
	)	DEPT NO 22
)	
vs.)	
)	
BARRY RIVES, M.D.,)	
LAPAROSCOPIC SURGERY OF)	
NEVADA, LLC, et al,)	
)	
Defendants.)	
<hr/>		

DEPOSITION OF BARRY RIVES, M.D.

Taken on October 24, 2018

At 10:07 a.m.

At Veritex Las Vegas

2250 South Rancho Drive, Suite 195

Las Vegas, Nevada 89102

Reported by: Yvette Rodriguez, CCR NO. 860

LAS VEGAS REPORTING
scheduling@lvreporting.com
702.803.9363

1 Q Anything on that CV that has to be added
2 or deleted in any way?

3 A No. Except for the -- maybe the operation
4 dates of my licenses and stuff.

5 Q Can I see those interrogatories again for
6 a second? Thank you.

7 In July of 2015, were you part of a
8 practice?

9 A My solo practice, yes.

10 Q Is that Laparoscopic Surgery of Nevada,
11 LLC?

12 A That is correct.

13 Q How long has that been in existence?

14 A It started in May of 2007. So that's
15 about 11 years.

16 Q And has there ever been any other members
17 of that practice who are physicians?

18 A No.

19 Q Are there any other employees of that
20 entity?

21 A No.

22 Q Where is your office located?

23 A 8285 West Arby, Suite 190, Las Vegas,
24 Nevada 89113.

25 Q If I could direct you to Response No. 3

1 and the question is if you had ever been named as a
2 defendant in a case arising from alleged malpractice
3 or negligence. So I'm just going to go over these
4 with you. We're on Page 2. There is a case, Brown
5 versus Rives, Eighth District Court. Is that case
6 resolved or still ongoing; do you know?

7 A It is still pending.

8 Q Can you tell me briefly just what the
9 allegations of the case are.

10 A The patient had to have a peritoneal
11 dialysis catheter removed. She had a incisional
12 hernia at the same time. She was very sick. And I
13 made it clear we were just to take care of the PD
14 catheter for infection reasons. She later had to
15 have surgery to repair the incisional hernia and a
16 piece of the peritoneal dialysis catheter was
17 involved in the hernia sac.

18 Q And we have of Lang versus Rives. Can you
19 tell me what the allegations in that case were?

20 A That was a defense verdict. It was a
21 delay in recognizing a enterocutaneous fistula.

22 Q And we have Doucette versus Garcia. Can
23 you tell me what the allegations in that case were.

24 A Again, defense verdict. It was a patient
25 with a perforated colon due to metastatic lymphoma.

1 And I guess the allegation was delay in diagnosis of
2 the lymphoma.

3 Q And there is Schorle versus Southern Hills
4 Hospital. Can you tell me what the allegations in
5 that case were.

6 A The case was a patient who had spinal
7 surgery, had a colon perforation. I ended up doing
8 surgery to repair the colon, gave her an ostotomy,
9 ended up reversing the patient's ostotomy, but
10 because of the lawsuit, every doctor on chart was
11 named. And I was quickly dropped thereafter.

12 Q And we have a case, Tucker v. Rives. Can
13 you tell me the allegations in that case.

14 A Ms. Tucker had a duct of Luschka leak
15 post-operatively after a laparoscopic colon
16 discectomy. I guess it would be complications from
17 surgery.

18 Q Is that case resolved or ongoing?

19 A It was dismissed.

20 Q And looking at Response No. 5, there is
21 notes of depositions you gave in some of these cases
22 we just talked about. Are there any other
23 depositions that you given, such as an expert for
24 patient or for defendant doctor in any cases?

25 A I've testified as a participant in care.

1 Q What case was that?

2 A There have been a few. One involved a
3 patient who was misdiagnosed with perforated
4 appendicitis, delay in treatment, presented to the
5 OR in distress. I was the surgeon on the case. And
6 the suit was against the internal medicine doctor.

7 There was another suit involving
8 delay in diagnosis of a patient that was treated by
9 a rehab facility, transferred to a hospital. And
10 basically, was not doing well on arrival and there
11 was nothing we could do surgically for her.

12 Q That's it, that you recall?

13 A Those are the two that I can recall at
14 this time.

15 MR. COUCHOT: Sinner is not on there?

16 THE WITNESS: Mm-hmm?

17 MR. COUCHOT: Sinner is not on there?

18 Just to be compete, when I prepared this
19 he had not been deposed in the Sinner case so
20 that is not listed there. So that would be
21 responsive to that question.

22 MR. HAND: What was the name of that case?

23 THE WITNESS: Sinner versus Rives.

24 BY MR. HAND:

25 Q Is it on here? It's not listed here --

1 MR. COUCHOT: It's subsequent.

2 BY MR. HAND:

3 Q Can you tell me what that case involved?

4 A Patient had a diaphragmatic hernia tear
5 laparoscopically. She aspirated and became septic.

6 Q Is that still ongoing?

7 A That's pending.

8 Q And you gave a deposition in that case?

9 A Yes.

10 Q Is that a case in Las Vegas?

11 A Yes.

12 Q Have you given any lectures involving
13 hernia repair?

14 A Other than to medical students or
15 residents, no.

16 Q Prior to coming here today, what did you
17 review, if anything?

18 A I reviewed my office notes, progress
19 notes. My progress notes and my operative notes. I
20 think I reviewed some of the radiology findings.

21 Q Did you review any other operative
22 reports?

23 A No.

24 Q Is there anything that you would like to
25 review that you haven't looked at in this case?

1 has a blade that divides. So that it will remove
2 the tissue from the staple line.

3 Q Clarify this note. Did the small tear in
4 the colon come from trying to get the mesh out of
5 the -- I mean, getting the colon out of the mesh or
6 was it created with the stapler? I don't
7 understand.

8 A No. The colotomy was made by getting the
9 colon off of the mesh. Once you have a hole in the
10 colon, there is various ways to repair it. One of
11 the ways is you use a stapling device to close the
12 defect.

13 A Did Mrs. Farris have bowel prep prior to
14 this procedure?

15 A No, she did not.

16 Q Did you recommend that?

17 A No.

18 Q Why not?

19 A I don't do val preps for any of my colon
20 or bowel surgeries. It causes an inflammatory
21 cascade. Nowadays, with enhance recovery after
22 surgery, bowel preps are probably about -- most
23 people don't do them 70 percent of the time. Some
24 people are still doing them 30 percent of the time.

25 Q So do you recall the size of the tear in

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
3) ss:
COUNTY OF CLARK)

4 I, Yvette Rodriguez, a duly commissioned
5 Notary Public, Clark County, State of Nevada do
6 hereby certify:

7 That I reported the deposition of
8 BARRY RIVES, M.D., commencing on October 24,
9 2018 at 10:17 a.m.

10 That prior to being deposed, the witness
11 was duly sworn by me to testify to the truth;
12 that I thereafter transcribed my said shorthand
13 notes into typewriting; and that the
14 typewritten transcript is a complete, true, and
15 accurate transcription of my said shorthand
16 notes.

17 I further certify that I am not a relative
18 or employee of counsel or any of the parties
19 nor a relative or employee of the parties
20 involved in said action, nor a person
21 financially interested in the action.

22 IN WITNESS WHEREOF, I have set my hand in
23 my office in the County of Clark, State of
24 Nevada, this 30th day of October, 2018.

25 _____
YVETTE RODRIGUEZ, CCB NO. 860

LAS VEGAS REPORTING
scheduling@lvreporting.com
702.803.9363

EXHIBIT D

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 VICKIE CENTER; THOMAS CENTER,)
5 individually, and as the Husband)
6 to VICKIE CENTER,)
7)
8 Plaintiffs,)
9 vs.) CASE NO.
10) A-16-731390-C
11)
12 BARRY JAMES RIVES, M.D.;)
13 LAPAROSCOPIC SURGERY OF NEVADA)
14 LLC, A Nevada Limited-Liability)
15 Company; ABDUL-SAMI SIDDIQUI,)
16 M.D.; A.S.F. SIDDIQUI, M.D. LTD;)
17 YANN-BOR LIN, M.D.; WESTERN)
18 CRITICAL CARE ASSOCIATES)
19 (WANTANABE), LTD.; MIR MOHAMMAD,)
20 M.D.; ANTONIO FLORES ERAZO, M.D.,)
21 DOES 1-45; and ROE CORPORATIONS)
22 1-45; inclusive)
23 Defendants.)

16
17
18 VIDEO DEPOSITION OF BARRY JAMES RIVES, M.D.
19
20 Taken at the Law Offices of Brenske & Andreevski
21 3800 Howard Hughes Parkway
22 Suite 500
23 Las Vegas, Nevada 89169
24 Tuesday, April 17, 2018
25 10:59 a.m.
26
27 Job Number: 451742
28
29 Reported by: Angela Campagna, CCR #495

BARRY JAMES RIVES, M.D. - 04/17/2018

Page 11

1 Q. Now, was any part of Vickie Center's
2 stomach or surrounding organs injured
3 perioperatively as a result of that surgery?

4 A. No.

5 Q. And Ms. Center had suffered from sepsis
6 one day postop after that first surgery. Fair
7 statement?

8 A. That is correct.

9 Q. And at the time, what was your
10 understanding of the cause of the sepsis?

11 A. At the time that it happened, between
12 myself and the other consultants, there was talk
13 about multiple possible reasons. The most likely
14 being aspiration pneumonitis.

15 Q. Do you remember a bronchoscopy being
16 done?

17 A. I believe there was a bronchoscopy done
18 the next day or two, sometime afterwards.

19 Q. What were the results of that
20 bronchoscopy?

21 A. I don't recall them off the top of my
22 head.

23 Q. Okay. How long did you believe that
24 the source of that sepsis was from the lungs? If
25 you don't understand the question, it's a good time

BARRY JAMES RIVES, M.D. - 04/17/2018

Page 18

1 was left behind in a hernia sac, and the patient
2 later had to have surgery to remove it.

3 Q. With regards to the next case, Farris
4 versus Rives, is that case still ongoing?

5 A. Yes.

6 Q. And in ten words or less, can you --
7 you don't have to do it in ten words or less, but
8 can you just give us a brief description of what
9 that -- the allegations are in that case?

10 A. Patient had a laparoscopic hernia
11 repair and resulted in a colocutaneous fistula
12 postoperatively that required subsequent surgery.

13 Q. Did you perform that subsequent
14 surgery?

15 A. No.

16 Q. Do you remember who did?

17 A. I know the group. I don't remember
18 which member of the group did it.

19 Q. Who is the group?

20 A. Southern Nevada Surgery. I think it
21 was Dr. Hamilton or Dr. Ripplinger.

22 Q. As you sit here today, do you have a
23 recollection of why you did not do the surgical
24 repair?

25 A. The family asked for a second opinion.

BARRY JAMES RIVES, M.D. - 04/17/2018

Page 140

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Angela Campagna, a certified court reporter in Clark County, State of Nevada, do hereby certify:

That I reported the taking of the video deposition of the witness, BARRY JAMES RIVES, M.D., on Tuesday, April 17, 2018, commencing at the hour of 10:59 a.m.

That prior to being examined, the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true, and accurate transcription of shorthand notes taken down at said time.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 1st day of May 2018.



ANGELA CAMPAGNA, CCR #495

EXHIBIT E

[RSPN]
THOMAS J. DOYLE
Nevada Bar No. 1120
SCHUERING ZIMMERMAN & DOYLE, LLP
400 University Avenue
Sacramento, California 95825-6502
(916) 567-0400
Fax: 568-0400
Email: calendar@szs.com

KIM MANDELBAUM
Nevada Bar No. 318
MANDELBAUM ELLERTON & ASSOCIATES
2012 Hamilton Lane
Las Vegas, Nevada 89106
(702) 367-1234
Email: filing@memlaw.net

Attorneys for Defendants **BARRY RIVES, M.D.;**
LAPAROSCOPIC SURGERY OF NEVADA, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS and PATRICK FARRIS,	)	CASE NO. A-16-739464-C
	)	DEPT. NO. 22
Plaintiffs,)	
	)	DEFENDANT DR. BARRY RIVES'
vs.	)	SUPPLEMENTAL RESPONSE TO
	)	PLAINTIFF TITINA FARRIS' FIRST SET
BARRY RIVES, M.D.; LAPAROSCOPIC	)	OF INTERROGATORIES
SURGERY OF NEVADA, LLC, et al.,)	
)	
Defendants.)	

TO: George F. Hand, Esq., attorney for Plaintiff Titina Farris:

Under authority of Rule 33 of the Nevada Rules of Civil Procedure, Defendant Barry Rives, M.D. hereby respond in writing and under oath to interrogatories directed to him by Plaintiff Titina Farris as follows:

INTERROGATORY NO. 1:

State your full name, professional address and attach a current copy of your

1 curriculum vitae (CV). In the event you do not have a CV, state in detail your professional
2 qualifications, including your education by identifying schools from which you graduated
3 and the degrees granted and dates thereof, your medical internships and residencies,
4 fellowships and a bibliography of your professional writing(s).

5 **RESPONSE TO NO. 1:**

6 Barry James Rives. 10001 S. Eastern Avenue #309, Henderson, NV 89052. A copy
7 of Dr. Rives' curriculum vitae is attached.

8 **INTERROGATORY NO. 2:**

9 State whether you have held any position on a committee or with an administrative
10 body at any hospital, clinic or other similar health care facility. If so, state when you held
11 such position(s) and the duties and responsibilities involved in such position(s).

12 **RESPONSE TO NO. 2:**

13 Not applicable.

14 **INTERROGATORY NO. 3:**

15 Have you eery been named as a defendant in a lawsuit arising from alleged
16 malpractice or professional negligence? If so, state the court/jurisdiction, the caption and
17 the case number for each lawsuit.

18 **RESPONSE TO NO. 3:**

19 Objection: irrelevant and not reasonably calculated to lead to the discovery of
20 admissible evidence; constitutional right to privacy; compound; and overbroad and
21 burdensome. Without waiving these objections, Dr. Rives and/or Laparoscopic Surgery
22 of Nevada, to the best of Dr. Rives' recollection, have been named as a defendant in the
23 following actions: Brown v. Rives; Eighth District Court, Clark County Nevada;
24 A-15-718937-C; Farris v. Rives; Eighth District Court, Clark County Nevada; A-16-739464-C;
25 Lang v. Rives; Eighth District Court, Clark County Nevada; A10-618207-C; Doucette v.
26 Garcia; Eighth District Court, Clark County Nevada; A552664; Schorle vs. Southern Hills

1 Hospital; Eighth District Court, Clark County Nevada; A-12-672833-C; and Tucker v. Rives;
2 Eighth District Court, Clark County Nevada; A576148.

3 **SUPPLEMENTAL RESPONSE TO NO. 3:**

4 Objection: irrelevant and not reasonably calculated to lead to the discovery of
5 admissible evidence; constitutional right to privacy; compound; and overbroad and
6 burdensome. Without waiving these objections, Dr. Rives and/or Laparoscopic Surgery
7 of Nevada, to the best of Dr. Rives' recollection, have been named as a defendant in the
8 following actions: Brown v. Rives; Eighth District Court, Clark County Nevada;
9 A-15-718937-C; Farris v. Rives; Eighth District Court, Clark County Nevada; A-16-739464-C;
10 Lang v. Rives; Eighth District Court, Clark County Nevada; A10-618207-C; Doucette v.
11 Garcia; Eighth District Court, Clark County Nevada; A552664; Schorle vs. Southern Hills
12 Hospital; Eighth District Court, Clark County Nevada; A-12-672833-C; and Tucker v. Rives;
13 Eighth District Court, Clark County Nevada; A576148; Centerv. Rives, Eighth District Court,
14 Clark County Nevada, A-16-731390-C.

15 **INTERROGATORY NO. 4:**

16 Since the institution of this action, have you been asked to appear before or attend
17 any meeting of a medical committee or official board of any medical society or other
18 entity for the purpose of discussing this case? If so, state the date(s) of each such meeting
19 and the name and address of the committee, society or other entity conducting each
20 meeting.

21 **RESPONSE TO NO. 4:**

22 Objection: This interrogatory seeks information protected by the peer review
23 privileges under NRS 49.119 and 49.265. Without waiving these objections: no.

24 **INTERROGATORY NO. 5:**

25 Have you ever testified in court or at deposition in a medical malpractice case in
26 any capacity (e.g., defendant, witness, etc.)? if so, state the court, the caption and the

1 case number of each such case, the approximate date of your testimony, whether you
2 testified as a treating physician or expert and whether you testified on your own behalf
3 or on behalf of the defendant or the plaintiff.

4 **RESPONSE TO NO. 5:**

5 Objection: Irrelevant and not reasonably calculated to lead to the discovery of
6 admissible evidence; constitutional right to privacy; compound; and overbroad and
7 burdensome. Without waiving these objections, Dr. Rives has testified in depositions and
8 during trial in the matters of Lang v. Rives; Eighth District Court, Clark County Nevada;
9 A10-618207-C; and Doucette v. Garcia; Eighth District Court, Clark County Nevada;
10 A552664. He gave a deposition in the matter of Tucker v. Rives; Eighth District Court,
11 Clark County Nevada; A576148.

12 **SUPPLEMENTAL RESPONSE TO NO. 5:**

13 Objection: irrelevant and not reasonably calculated to lead to the discovery of
14 admissible evidence; constitutional right to privacy; compound; and overbroad and
15 burdensome. Without waiving these objections, Dr. Rives has testified in depositions and
16 during trial in the matters of Lang v. Rives; Eighth District Court, Clark County Nevada;
17 A10-618207-C; and Doucette v. Garcia; Eighth District Court, Clark County Nevada;
18 A552664. He gave a deposition in the matter of Tucker v. Rives; Eighth District Court,
19 Clark County Nevada; A576148. He gave a deposition and testified in trial in Center v.
20 Rives, Eighth District Court, Clark County Nevada, A-16-731390-C.

21 **INTERROGATORY NO. 6:**

22 If you have authored any professional or scholarly articles, such as medical journal
23 articles, etc., identify the writing in a matter sufficient to enable it to be obtained.

24 **RESPONSE TO NO. 6:**

25 Not applicable.

26 ///

1 Dominican Hospital-San Martin Campus. Further, the witnesses currently known to Dr.
2 Rives have been identified in his NRCP 16.1 disclosure.

3 Dated: September 13, 2019

4 **SCHUERING ZIMMERMAN & DOYLE, LLP**

5
6 By 

CHAD C. COUCHOT
Nevada Bar No. 12946
400 University Avenue
Sacramento, CA 95825-6502
(916) 567-0400
Attorneys for Defendants BARRY RIVES,
M.D.; LAPAROSCOPIC SURGERY OF
NEVADA, LLC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 13th day of September, 2019, service of a true and correct copy of the foregoing:

**DEFENDANT DR. BARRY RIVES' SUPPLEMENTAL RESPONSE TO PLAINTIFF
TITINA FARRIS' FIRST SET OF INTERROGATORIES**

was served as indicated below:

- ☒ served on all parties electronically pursuant to mandatory NEFCR 4(b);
- ☐ served on all parties electronically pursuant to mandatory NEFCR 4(b), exhibits to follow by U.S. Mail;
- ☐ by depositing in the United States Mail, first-class postage prepaid, enclosed ;
- ☐ by facsimile transmission; or
- ☐ by personal service as indicated.

Attorney

George F. Hand, Esq.
HAND & SULLIVAN, LLC
3442 North Buffalo Drive
Las Vegas, NV 89129

Representing

Plaintiff

Phone/Fax/E-Mail

702/656-5814
Fax: 702/656-9820
hsadmin@handsullivan.com



An employee of Schuering Zimmerman &
Doyle, LLP
1737-10881

EXHIBIT F

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 VICKIE CENTER; THOMAS CENTER,)
5 individually, and as the Husband)
6 to VICKIE CENTER,)
7)
8 Plaintiffs,)
9 vs.) CASE NO.
10) A-16-731390-C
11)
12 BARRY JAMES RIVES, M.D.;)
13 LAPAROSCOPIC SURGERY OF NEVADA)
14 LLC, A Nevada Limited-Liability)
15 Company; ABDUL-SAMI SIDDIQUI,)
16 M.D.; A.S.F. SIDDIQUI, M.D. LTD;)
17 YANN-BOR LIN, M.D.; WESTERN)
18 CRITICAL CARE ASSOCIATES)
19 (WANTANABE), LTD.; MIR MOHAMMAD,)
20 M.D.; ANTONIO FLORES ERAZO, M.D.,)
21 DOES 1-45; and ROE CORPORATIONS)
22 1-45; inclusive)
23 Defendants.)
24
25 VIDEO DEPOSITION OF YANN-BOR LIN, M.D.
26
27 Taken at the Law Offices of Brenske & Andreevski
28 3800 Howard Hughes Parkway
29 Suite 500
30 Las Vegas, Nevada 89169
31
32 Wednesday, May 9, 2018
33 10:23 a.m.
34
35 Job No.: 453556
36
37 Reported by: Angela Campagna, CCR #495

YANN-BOR LIN, M.D. - 05/09/2018

Page 57

1 proximity to -- to surgery. She had not only
2 complained of belly pain, but also possibly chest
3 pain. So we were also assessing her for possible
4 pulmonary embolism versus DVT, deep vein thrombosis.

5 THE REPORTER: I'm sorry?

6 THE WITNESS: DVT, it's called deep vein
7 thrombosis.

8 BY MR. KRAMETBAUER:

9 Q. Why -- you had said aspiration
10 pneumonia, is that also referred to as aspiration
11 pneumonitis?

12 A. That is correct.

13 Q. Why were you -- why was aspiration
14 pneumonitis part of your differential diagnosis?

15 A. She had acute hypoxic respiratory
16 failure requiring high levels of oxygen. She was in
17 severe respiratory distress. She had evidence of
18 lung disease on her x-ray. And she was within the
19 first 24 to 48 hours post-surgery.

20 Q. Now, as a result of that differential
21 diagnosis of aspiration pneumonitis, you performed a
22 bronchoscopy; correct?

23 A. That's correct.

24 Q. Am I saying that correctly,
25 bronchoscopy or bronchoscopy?

YANN-BOR LIN, M.D. - 05/09/2018

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1 A. Bronchoscopy.

2 Q. Bronchoscopy.

3 MR. KRAMETBAUER: We'll go ahead and attach
4 this as Exhibit -- we're on Exhibit 4 now, next in
5 order?

6 I apologized in advance, Doctor,
7 we've been jumping around.

8 (Exhibit 4 marked.)

9 BY MR. KRAMETBAUER:

10 Q. What are we looking at here, Doc?

11 A. This is a report of bronchoscopy with
12 bronchoalveolar lavage.

13 Q. And you had done this on the following
14 day, February 8th, 2018. Fair statement?

15 A. Yes.

16 Q. Why did you do this?

17 A. I was concerned about possible
18 aspiration and possible pneumonia.

19 Q. Aspiration pneumonitis?

20 A. The terminology aspiration pneumonitis
21 indicates a chemical reaction to aspiration.
22 Pneumonia would indicate that infection -- it was
23 accompanied by infection.

24 Q. And what was the result of your
25 bronchoscopy on the 8th of February 2015?

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1 A. There were -- there were minimal signs
2 of inflammation in the airways. So there was no
3 aspirated material that was seen and no foreign
4 material was seen.

5 Q. In fact, you write at the end of your
6 operative note that the most likely etiology of her
7 sepsis is extrapulmonary. Can you explain to this
8 jury what that means?

9 A. That means that the results of the
10 bronchoscopy were not -- did not indicate that she
11 had acutely aspirated. That is not to say that she
12 may not have. She may still have, we just didn't
13 see any overt signs of it.

14 Q. You didn't see any objective --

15 MR. DOYLE: Whoa, whoa, whoa. Can he finish
16 that answer, please.

17 MR. KRAMETBAUER: Were you finished, Doctor?

18 MR. DOYLE: No. You interrupted him in
19 mid-sentence.

20 BY MR. KRAMETBAUER:

21 Q. Go ahead.

22 A. So that's not to say that that was
23 still -- that still could not have happened. She
24 still could have had aspiration pneumonitis and
25 aspiration pneumonia, but it could have been too

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1 early for the body to react.

2 Q. So I just want to make sure I
3 understand your testimony here today, Doctor.

4 A. Yes.

5 Q. Is it your testimony that she could
6 have had aspiration pneumonitis prior to your
7 bronchoscopy, you just didn't see any evidence of it
8 during the bronchoscopy?

9 A. That is correct.

10 Q. So is it fair -- apologize.

11 A. You may -- you may or may not have --
12 it's not -- it's -- it's very sensitive, but it's
13 not a hundred percent. As with medicine, everything
14 is not a hundred percent.

15 Q. Sure. And this is only a day later.
16 Fair statement?

17 A. Yes.

18 Q. It's only two days postop. Fair
19 statement?

20 A. This is -- yes. Two days postop.

21 Q. She had surgery on the 6th?

22 A. Yes.

23 Q. You assess her on the 7th?

24 A. Yes.

25 Q. She codes on the 7th?

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REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Angela Campagna, a certified court reporter in Clark County, State of Nevada, do hereby certify:

That I reported the taking of the video deposition of the witness, YANN-BOR LIN, M.D., on Wednesday, May 9, 2018, commencing at the hour of 10:23 a.m.

That prior to being examined, the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true, and accurate transcription of shorthand notes taken down at said time.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 22nd day of May 2018.



ANGELA CAMPAGNA, CCR #495

EXHIBIT G

05 August 2018

SCHUERING ZIMMERMAN & DOYLE, LLP

400 University Avenue
Sacramento, CA 95825

Re: Center v Rives

Dear Mr. Couchot,

Thank you for allowing me the opportunity to review the case of Center v Rives. My qualifications to render an expert opinion are listed in my CV attached to this report. Briefly, I am in my eighth year of employment at the Keck School of Medicine of the University of Southern California, and I attend in the intensive care units (ICUs) of LAC+USC Medical Center, a safety-net hospital and Level 1 Trauma Center for Los Angeles County, and Keck Hospital of USC, a tertiary referral center for cardiothoracic, neurosurgical, and acute stroke care for Southern California. In the past five years, I have given a deposition in two cases. My pertinent malpractice consulting information is also attached to this report.

In preparation for this report, I have reviewed the following documents:

1. Medical records of Vickie Center from St. Rose Dominican Hospital
2. Complaint
3. Deposition of Dr. Barry Rives
4. Deposition of Dr. Yann-Bor Lin

It is my opinion, to a reasonable degree of medical probability, that the care and treatment provided to Ms. Center by Dr. Rives during her hospitalization at St. Rose Dominican Hospital (SRDH) met the standard of care.

Ms. Center was admitted to SRDH on 06 February 2015 for an elective repair of a paraesophageal hernia. After an uncomplicated laparoscopic repair with Nissin fundoplication, she was recovered in the post-anesthesia care unit. On post-operative day 1, at 0800, she was reported to have hypotension, which improved with fluid administration. Throughout the course of the morning, she had intermittent hypotension, as well as low oxygen saturations, which prompted transfer to the intensive care unit (ICU). There, she was intubated, with witnessed vomiting, aspiration, and bradycardia from worsened hypoxemia; this bradycardia necessitated ACLS protocol with CPR. Also on post-operative day 1, she developed acute respiratory distress syndrome (ARDS) with multi-organ failure, including hypotension, diffuse intravascular coagulation (DIC), and acute renal failure requiring hemodialysis briefly. Although her renal function recovered, she experienced necrosis of her extremities, requiring subsequent amputation procedures.

A bronchoscopy was performed well after her intubation and while she was on mechanical ventilation. In this bronchoscopy report, there was no mention of visible contents of vomitus within her airway. The findings of this bronchoscopy would not be inconsistent with a prior aspiration episode: (1) a bronchoscope cannot advance to the farthest recesses of the lungs where aspirated abdominal contents would eventually settle due to gravity; (2) immediately after an intubation for aspiration, a respiratory therapist or nurse would be expected to perform suctioning via the endotracheal tube to clear out any remaining secretions within the larger airways; and (3) the lung would be expected to clear out those settled secretions within the farthest recesses as part of the normal healing process.

Ms. Center's hospital stay can be divided into three periods: her initial elective operation, her immediate post-operative period, and her post-ARDS course. In this report, I will be commenting on her immediate post-operative period in the ICU and afterward. Around the time of her ICU transfer, Ms. Center had signs and symptoms – low white blood cell count, low blood pressure, low oxygen levels – consistent with sepsis and the development of ARDS with multi-organ failure. The possible sources of this sepsis and ARDS would include the following: (1) abdominal cavity infection from a surgical complication leading to peritoneal sepsis with resultant ARDS as a secondary complication; (2) pneumonia from peri-operative aspiration leading to ARDS as the primary process; (3) colitis not related to her surgery leading to sepsis and resultant ARDS as a secondary complication. According to the chest and abdominal computed tomography (CT) imaging done on 08 February 2015, she had radiographic changes consistent with a post-operative state, as well as colitis that was incidentally found. Whether the colitis was a primary process, or whether the colonic edema occurred as a result of her low blood pressure and aggressive fluid resuscitation is unclear. Nonetheless, with medical care alone (antibiotics and mechanical ventilation without surgery), her ARDS and sepsis improved to allow for extubation on 12 February 2015. This clinical response would argue against an abdominal abscess causing the initial insult; an abscess would have to be addressed with drainage.

The subsequent events during her hospital stay can all be traced to this one bout of sepsis and ARDS, whose probable cause was aspiration pneumonia:
Her limb necrosis occurred because of profound hypotension from her sepsis.

Her abdominal abscess, which developed between her CT scan on 08 February 2015 and her post-extubation CT scan on 17 February 2015, was likely a result of her bag-mask ventilation prior to her intubation. Because bag-mask ventilation is applied at the mouth, air can be introduced into both the lungs and the stomach; it is quite common to find gastric distention on x-rays immediately following an intubation with bag-mask ventilation, and a freshly post-operative stomach would be expected to be at greater risk of

perforation with subsequent abdominal abscess formation. However, this perforation risk cannot be avoided in a hypoxemic patient who requires bag-mask ventilation before intubation.

Deep venous thrombosis and gastric ulcer are the most frequently-documented complications in the ICU literature; they still occur with a frequency of roughly 15% even among patients who receive medical prophylaxis. Her gastric ulcer perforated and required exploratory laparotomy on 18 March 2015.

Empyema can occasionally complicate pneumonia, and her aspiration pneumonia was complicated by an empyema that required decortication.

Dr. Rives met the standard of care and treated Ms. Center's sepsis and ARDS; the sepsis and ARDS were caused by aspiration and pneumonia, which are well-described in the peri-operative period. The subsequent goings-on during her hospital stay can all be traced to this initial peri-operative event:

- empyema requiring decortication can result from pneumonia
- limb necrosis can result from the profound hypotension of sepsis
- a gastric defect leading to an abdominal abscess can form from the bag-mask ventilation of a patient who is being intubated
- gastric ulcer with perforation and deep venous thrombosis of the leg frequently occur in patients with ARDS regardless of the initial cause of the ARDS.

In summary, it is my opinion, to a reasonable degree of medical probability, that the care provided by Dr. Rives to Ms. Center at St. Rose Dominican Hospital was within the standard of care and did not lead to a missed diagnosis of post-operative abdominal abscess that resulted in sepsis and ARDS.

Cordially,

Alex A. Balekian, MD, MSHS

Electronically Filed
9/25/2019 12:51 PM
Steven D. Grierson
CLERK OF THE COURT



[OBJ]
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Attorneys for Defendants BARRY
RIVES, M.D. and LAPAROSCOPIC
SURGERY OF NEVADA, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS and PATRICK FARRIS,	)	CASE NO. A-16-739464-C
	)	DEPT. NO. 31
Plaintiffs,)	
	)	DEFENDANTS BARRY J. RIVES, M.D.'S
vs.	)	AND LAPAROSCOPIC SURGERY OF
	)	NEVADA, LLC'S OBJECTION TO
BARRY RIVES, M.D.; LAPAROSCOPIC	)	PLAINTIFFS' NINTH SUPPLEMENT TO
SURGERY OF NEVADA, LLC, et al.,	)	EARLY CASE CONFERENCE
	)	DISCLOSURE OF WITNESSES AND
Defendants.	)	DOCUMENTS

COMES NOW, Defendants BARRY J. RIVES, M.D. and LAPAROSCOPIC SURGERY OF NEVADA, LLC ("Defendants"), by and through their attorneys of record, Thomas J. Doyle and Aimee Clark Newberry of Schuering Zimmerman & Doyle, LLP, and hereby submits this objection to Plaintiffs TITINA FARRIS' and PATRICK FARRIS' ("Plaintiffs")

1 Ninth Supplement to Early Case Conference Disclosure of Witnesses and Documents as
2 follows:

3 **OBJECTIONS TO SUPPLEMENTAL DISCLOSURE OF WITNESSES**

4 26. **Vickie Center-** Defendants object to the disclosure of this witness on the
5 grounds it is untimely under NRCP 16.1 after the close of discovery, she does not possess
6 relevant testimony and her testimony will unduly prejudice, waste time, confuse the
7 issues and mislead the jury under NRS 48.035.

8 27. **Mary Jayne Langan-** Defendants object to the disclosure of this witness on
9 the grounds it is untimely under NRCP 16.1 after the close of discovery, she does not
10 possess relevant testimony and her testimony will unduly prejudice, waste time, confuse
11 the issues and mislead the jury under NRS 48.035.

12 **OBJECTION TO SUPPLEMENTAL DISCLOSURE OF DOCUMENTS**

13 **Barry James Rives, M.D.'s Deposition Transcript (October 25, 2017) from**
14 ***Center v. Rives (PLTF11620-PLFT11630)***- Defendants object to the disclosure of this
15 document on the grounds it was untimely disclosed under NRCP 16.1, it lacks relevance,
16 it is hearsay, it lacks foundation, it is impermissible character evidence, and it will unduly
17 prejudice, waste time, confuse the issues and mislead the jury under NRS 48.035.

18 **Barry James Rives, M.D.'s Deposition Transcript (April 17, 2018) from Center**
19 ***v. Rives (PLTF11631-PLFT11667)***- Defendants object to the disclosure of this document
20 on the grounds it was untimely disclosed under NRCP 16.1, it lacks relevance, it is

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1 hearsay, it lacks foundation, it is impermissible character evidence, and it will unduly
2 prejudice, waste time, confuse the issues and mislead the jury under NRS 48.035.

3 Dated: September 24, 2019

4 **SCHUERING ZIMMERMAN & DOYLE, LLP**

5
6 By /s/ Aimee Clark Newberry
AIMEE CLARK NEWBERRY
7 Nevada Bar No. 11084
400 University Avenue
8 Sacramento, CA 95825-6502
(916) 567-0400
9 Attorneys for Defendants BARRY RIVES,
M.D. and LAPAROSCOPIC SURGERY OF
10 NEVADA, LLC
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 25th day of September, 2019, service of a true and correct copy of the foregoing:

DEFENDANTS BARRY J. RIVES, M.D.'S AND LAPAROSCOPIC SURGERY OF NEVADA, LLC'S OBJECTION TO PLAINTIFFS' NINTH SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURE OF WITNESSES AND DOCUMENTS

was served as indicated below:

- ☒ served on all parties electronically pursuant to mandatory NEFCR 4(b);
- ☐ served on all parties electronically pursuant to mandatory NEFCR 4(b), exhibits to follow by U.S. Mail;
- ☐ by depositing in the United States Mail, first-class postage prepaid, enclosed ;
- ☐ by facsimile transmission; or
- ☐ by personal service as indicated.

Attorney

Representing

Phone/Fax/E-Mail

George F. Hand, Esq.
HAND & SULLIVAN, LLC
3442 North Buffalo Drive
Las Vegas, NV 89129

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Kimball Jones, Esq.
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Plaintiffs

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/s/ Jodie Chalmers

An employee of Schuering Zimmerman &
Doyle, LLP
1737-10881

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Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS

CASE No. A-16-739464-C

Titina Farris, Plaintiff(s) vs. Barry Rives, M.D., Defendant(s)

§
§
§
§
§
§

Case Type: Malpractice -
Medical/Dental
Date Filed: 07/01/2016
Location: Department 31
Cross-Reference Case Number: A739464

PARTY INFORMATION

Defendant Laparoscopic Surgery of Nevada LLC

Lead Attorneys
Thomas J. Doyle
Retained
9165670400(W)

Defendant Rives, Barry, M.D.

Thomas J. Doyle
Retained
9165670400(W)

Plaintiff Farris, Patrick

Kimball Jones
Retained
702-333-1111(W)

Plaintiff Farris, Titina

Kimball Jones
Retained
702-333-1111(W)

EVENTS & ORDERS OF THE COURT

09/28/2019 Motion for Sanctions (10:00 AM) (Judicial Officer Kishner, Joanna S.)
Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time

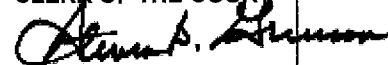
Minutes

09/28/2019 10:00 AM

- Arguments by counsel regarding allegations of intentional concealment of defense, deposition of Dr. Rives, and Plaintiff's request for sanctions and punitive damages. Court stated its findings; and offered to set an evidentiary hearing for Dr. Rives to appear. Court noted punitive damages are not appropriate on a sanction basis based on what was provided to the Court at this juncture and applicable case law. Following statements by counsel regarding scheduling, Plaintiff's counsel estimated no more than an hour for the hearing. COURT ORDERED, matter SET for evidentiary hearing. Parties to notify the Court in advance by no later than noon on October 3, 2019, confirming whether or not they want the evidentiary hearing to go forward; and the Court will issue a ruling, if the evidentiary hearing does not go forward. Issues not addressed today may be addressed at time of Calendar Call. 10/07/19 8:30 A.M. EVIDENTIARY HEARING 10/08/19 9:00 A.M. CALENDAR CALL 10/14/19 9:00 A.M. TRIAL BY JURY (MED MAL #1)

[Parties Present](#)

[Return to Register of Actions](#)



1 **OBJ**

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.

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12 GEORGE F. HAND, ESQ.

13 Nevada Bar No.: 8483

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18 Email: GHand@HandSullivan.com

19 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

20 TITINA FARRIS and PATRICK FARRIS,

21 Plaintiffs,

22 vs.

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

25 Defendants.

CASE NO.: A-16-739464-C

DEPT. NO.: XXXI

**PLAINTIFFS' OBJECTION TO DEFENDANTS' FOURTH AND FIFTH SUPPLEMENT
TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS**

26 COMES NOW Plaintiffs PATRICK FARRIS and TITINA FARRIS, by and through their
27 attorney of record, KIMBALL JONES, ESQ. and JACOB G. LEAVITT, ESQ., with the Law Offices
28 of **BIGHORN LAW** and GEORGE F. HAND, ESQ., with the Law Offices of HAND & SULLIVAN,
LLC, and hereby submits this Objection to Defendants' Fourth and Fifth Supplement to NRCP 16.1
Disclosure of Witnesses and Documents.

1 Discovery in this matter closed on July 24, 2019. Yet, on September 12, 2019 and over forty-
2 five (45) past the close of discovery, Defendants served their Fourth Supplement to NRCP 16.1
3 Disclosure of Witnesses and Documents. Within this disclosure, Defendants – for the first time – listed
4 eighteen (18) new witnesses.

5 Further, on September 23, 2019, Defendants served their Fifth Supplement to NRCP 16.1
6 Disclosure of Witnesses and Documents, providing a supplemental report from their expert and
7 additional medical articles, less than thirty (30) days before trial.

8 NRCP 37(c)(1) states, “(1) A party that without substantial justification fails to disclose
9 information required by Rule 16.1, 16.2, or 26(e)(1), or to amend a prior response to discovery as
10 required by Rule 26(e)(2), **is not, unless such failure is harmless, permitted to use as evidence at**
11 **a trial, at a hearing, or on a motion any witness or information not so disclosed.** In addition to or
12 in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose
13 other appropriate sanctions. **In addition to requiring payment of reasonable expenses, including**
14 **attorney’s fees, caused by the failure, these sanctions may include any of the actions authorized**
15 **under Rule 37(b)(2)(A), (B), and (C) and may include informing the jury of the failure to make**
16 **the disclosure.”**

17 The Ninth Circuit has analyzed the Federal Rule 37 enforcement provision--which mirrors
18 NRCP 37--and noted that adopted in was intended as a “broadening of the sanctioning power,” creating
19 an “automatic sanction” and “provid[ing] a strong inducement for disclosure of material.” *Yeti by*
20 *Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001).

21 Clearly, Defendants knew of these eighteen (18) new witnesses well in advance of the close of
22 discovery in this matter and for whatever reason failed to disclose them. Simply put—Defendants
23 failed to disclose these witnesses as they were required to under NRCP 16.1.

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1 Further, Defendants' deliberately provided their expert with articles to alter/add to his opinions
2 after the close of discovery and had their expert provide supplemental opinions after Plaintiffs
3 conducted his Deposition in this matter and disclosed such supplemental opinions, well past the thirty
4 (30) days before trial.

5 Defendants' late disclosures now leave Plaintiffs with insufficient time to depose these new
6 witnesses prior to Trial and to obtain a second deposition of their expert regarding these new opinions.
7 These late disclosures are all the more egregious as Defendants knew of their existence and desire to
8 produce, yet failed to timely disclose.

9 The harm to Plaintiffs' case in allowing these new witnesses and untimely supplemental expert
10 report will greatly prejudice Plaintiffs' case. There is no opportunity to cure this harm. As such, the
11 only course of action in this matter is that mandated by NRCP—these witnesses must not be allowed
12 to testify and Defendants' supplemental expert report, and opinions therein, must be excluded.
13 Frankly, they all must be Stricken. Based upon the mandatory guidance of NRCP and the harmful
14 nature of the late disclosures, Defendants' untimely disclosures should be Stricken.
15

16 DATED this 26th day of September, 2019.

17 **BIGHORN LAW**

18 By: /s/ Kimball Jones

19 **KIMBALL JONES, ESQ.**

20 Nevada Bar.: 12982

21 **JACOB G. LEAVITT, ESQ.**

22 Nevada Bar No.: 12608

23 716 S. Jones Blvd.

24 Las Vegas, Nevada 89107

25 **GEORGE F. HAND, ESQ.**

26 Nevada Bar No.: 8483

27 **HAND & SULLIVAN, LLC**

28 3442 N. Buffalo Drive

Las Vegas, Nevada 89129

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCp 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of **BIGHORN LAW**, and on the 26th day of September, 2019, I served the foregoing **PLAINTIFFS' OBJECTION TO DEFENDANTS' FOURTH AND FIFTH SUPPLEMENT TO NRCp 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS** as follows:

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

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

Kim Mandelbaum, Esq.
MANDELBAUM ELLERTON & ASSOCIATES
2012 Hamilton Lane
Las Vegas, Nevada 89106
&
Thomas J. Doyle, Esq.
Chad C. Couchot, Esq.
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Attorneys for Defendants

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


[OBJ]

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Attorneys for Defendants BARRY
RIVES, M.D. and LAPAROSCOPIC
SURGERY OF NEVADA, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

<p>TITINA FARRIS and PATRICK FARRIS,</p> <p style="padding-left: 100px;">Plaintiffs,</p> <p>vs.</p> <p>BARRY RIVES, M.D.; LAPAROSCOPIC SURGERY OF NEVADA, LLC, et al.,</p> <p style="padding-left: 100px;">Defendants.</p>	<p>) CASE NO. A-16-739464-C</p> <p>) DEPT. NO. 31</p> <p>)</p> <p>) DEFENDANTS BARRY RIVES, M.D.'S</p> <p>) AND LAPAROSCOPIC SURGERY OF</p> <p>) NEVADA, LLC'S OBJECTION TO</p> <p>) PLAINTIFFS' INITIAL PRE-TRIAL</p> <p>) DISCLOSURES</p> <p>)</p> <p>)</p>
--	--

Defendants BARRY J. RIVES, M.D., and LAPAROSCOPIC SURGERY OF NEVADA, LLC
("Defendants") hereby object to plaintiffs' pretrial disclosures made on September 13,
2019 as follows:

///

///

I.**WITNESSES****A. Witnesses Plaintiffs Expect to Present at Trial:**

26. Vickie Center - Defendants object to the disclosure of this witness on the grounds it is untimely under NRCP 16.1 after the close of discovery, she does not possess relevant testimony and her testimony will unduly prejudice, waste time, confuse the issues and mislead the jury under NRS 48.035.

27. Mary Jayne Langan- Defendants object to the disclosure of this witness on the grounds it is untimely under NRCP 16.1 after the close of discovery, she does not possess relevant testimony and her testimony will unduly prejudice, waste time, confuse the issues and mislead the jury under NRS 48.035.

B. Witnesses Plaintiffs' Plan to Subpoena:

10. Vickie Center- Defendants object to the disclosure of this witness on the grounds it is untimely under NRCP 16.1 after the close of discovery, she does not possess relevant testimony and her testimony will unduly prejudice, waste time, confuse the issues and mislead the jury under NRS 48.035.

11. Mary Jayne Langan- Defendants object to the disclosure of this witness on the grounds it is untimely under NRCP 16.1 after the close of discovery, she does not possess relevant testimony and her testimony will unduly prejudice, waste time, confuse the issues and mislead the jury under NRS 48.035.

II.**EXHIBITS****A. Plaintiffs' Exhibits:**

Defendants object to the following documents listed in Plaintiffs' pretrial disclosure:

2. Dr. Rives' Records- PLTF 008649-PLTF008697- Defendants object to these records on the grounds it contains a telephone note that is hearsay evidence and it lacks

1 foundation. Additionally, defendants object to the portion of these documents containing
2 the telephone note under NRS 48.035.

3 5. Photographs of Titina Farris- PLTF008728-PLTF8742- Defendants object to
4 these documents on the grounds the documents are cumulative, lack foundation and
5 should be excluded under NRS 48.035.

6 6. Desert Valley Therapy Records and Billing- PLTF008743-PLTF8823-
7 Defendants object to these documents on the grounds the documents lack foundation
8 on the issue of whether Ms. Farris' past medical expenses were reasonable or necessarily
9 incurred and should be excluded under NRS 48.035. If the bills are admitted, the bills
10 should be limited to the amounts actually paid by Ms. Farris or her health insurer. Further
11 objections are made on the grounds the records are hearsay and lack foundation.

12 7. Dr. Hamilton Records and Billing- PLTF008824-PLTF8907- Defendants object
13 to these documents on the grounds the documents lack foundation on the issue of
14 whether Ms. Farris' past medical expenses were reasonable or necessarily incurred and
15 should be excluded under NRS 48.035. If the bills are admitted, the bills should be limited
16 to the amounts actually paid by Ms. Farris or her health insurer. Further objections are
17 made on the grounds the records are hearsay and lack foundation.

18 8. St. Rose Dominican- San Martin Campus Records and Billing-
19 PLTF008908-PLTF9101- Defendants object to these documents on the grounds the
20 documents lack foundation on the issue of whether Ms. Farris' past medical expenses
21 were reasonable or necessarily incurred and should be excluded under NRS 48.035. If the
22 bills are admitted, the bills should be limited to the amounts actually paid by Ms. Farris
23 or her health insurer. Further objections are made on the grounds the records are
24 hearsay and lack foundation.

25 9. St. Rose Dominican- Siena Campus Records and Billing-
26 PLTF009102-PLTF9124- Defendants object to these documents on the grounds the

1 documents lack foundation on the issue of whether Ms. Farris' past medical expenses
2 were reasonable or necessarily incurred and should be excluded under NRS 48.035. If the
3 bills are admitted, the bills should be limited to the amounts actually paid by Ms. Farris
4 or her health insurer. Further objections are made on the grounds the records are
5 hearsay and lack foundation.

6 12. Videos of Titina Farris, Patrick Farris, Addison Durham, Lowell Pender and
7 Sky Prince- NOT BATES STAMPED- Defendants object to these videos on the grounds the
8 videos contain hearsay, improper lay opinions, are cumulative and should be excluded
9 under NRS 48.035.

10 14. Dr. Steven Y. Chinn, M.D. Records and Billing- PLTF010150-PLTF010174-
11 Defendants object to these documents on the grounds the documents lack foundation
12 on the issue of whether Ms. Farris' past medical expenses were reasonable or necessarily
13 incurred and should be excluded under NRS 48.035. If the bills are admitted, the bills
14 should be limited to the amounts actually paid by Ms. Farris or her health insurer. Further
15 objections are made on the grounds the records are hearsay and lack foundation.

16 15. CareMeridian Medical and Billing Records- PLTF010175-PLTF010174-
17 Defendants object to these documents on the grounds the documents lack foundation
18 on the issue of whether Ms. Farris' past medical expenses were reasonable or necessarily
19 incurred and should be excluded under NRS 48.035. If the bills are admitted, the bills
20 should be limited to the amounts actually paid by Ms. Farris or her health insurer. Further
21 objections are made on the grounds the records are hearsay and lack foundation.

22 17. National Vital Statistics Reports United States Life Tables 2015-
23 PLTF11457-PLTF11520- Defendants object to these documents on the ground the
24 documents lack foundation.

25 ///

26 ///

B. Plaintiffs' Exhibits Which May be Offered at the Time of Trial:

1. Defendants' responses to written discovery- Defendants' object on the ground these documents are hearsay and should be excluded under NRS 48.035.

2. Plaintiffs' responses to written discovery- Defendants' object on the ground these documents are hearsay and should be excluded under NRS 48.035.

3. Pleadings- Defendants' object on the ground these documents are hearsay and should be excluded under NRS 48.035.

4. Impeachment Evidence- Defendants object to the use of any impeachment evidence not properly disclosed under NRCp 16.1.

21. Report(s) by expert Dr. Barchuk- Defendants object to this document on the grounds it is hearsay and it is inadmissible under NRS 48.035.

22. Report(s) by expert Dawn Cook- Defendants object to this document on the grounds it is hearsay and it is inadmissible under NRS 48.035.

23. Report(s) by expert Dr. Willer- Defendants object to this document on the grounds it is hearsay and it is inadmissible under NRS 48.035.

24. Report(s) by expert Dr. Stein- Defendants object to this document on the grounds it is hearsay and it is inadmissible under NRS 48.035.

25. Report(s) by expert Terrence Clauretie- Defendants object to this document on the grounds it is hearsay and it is inadmissible under NRS 48.035.

26. Report(s) by expert Dr. Hurwitz- Defendants object to this document on the grounds it is hearsay and it is inadmissible under NRS 48.035.

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IV.

PLAINTIFFS' DEMONSTRATIVE EXHIBITS

Defendants reserve the right to object to any of the demonstrative exhibits listed in Plaintiffs' pretrial disclosure upon Defendants opportunity to review the demonstratives generically described in Plaintiffs' pretrial disclosures.

Dated: September 26, 2019

SCHUERING ZIMMERMAN & DOYLE, LLP

By /s/ Aimee Clark Newberry

AIMEE CLARK NEWBERRY

Nevada Bar No. 11084

400 University Avenue

Sacramento, CA 95825-6502

(916) 567-0400

Attorneys for Defendants BARRY RIVES,
M.D. and LAPAROSCOPIC SURGERY OF
NEVADA, LLC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 26th day of September , 2019, service of a true and correct copy of the foregoing:

DEFENDANTS BARRY RIVES, M.D.'S AND LAPAROSCOPIC SURGERY OF NEVADA, LLC'S OBJECTION TO PLAINTIFFS' INITIAL PRE-TRIAL DISCLOSURES

was served as indicated below:

- ☒ served on all parties electronically pursuant to mandatory NEFCR 4(b);
- ☐ served on all parties electronically pursuant to mandatory NEFCR 4(b) , exhibits to follow by U.S. Mail;
- ☐ by depositing in the United States Mail, first-class postage prepaid, enclosed ;
- ☐ by facsimile transmission; or
- ☐ by personal service as indicated.

Attorney	Representing	Phone/Fax/E-Mail
George F. Hand, Esq. HAND & SULLIVAN, LLC 3442 North Buffalo Drive Las Vegas, NV 89129	Plaintiffs	702/656-5814 Fax: 702/656-9820 hsadmin@handsullivan.com
Kimball Jones, Esq. Jacob G. Leavitt, Esq. BIGHORN LAW 716 S. Jones Boulevard Las Vegas, NV 89107	Plaintiffs	702/333-1111 Kimball@BighornLaw.com Jacob@BighornLaw.com

/s/ Jodie Chalmers

an employee of Schuering Zimmerman &
Doyle, LLP
1737-10881

Electronically Filed
9/27/2019 10:57 AM
Steven D. Grierson
CLERK OF THE COURT



MOTN
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 N. Buffalo Drive
Las Vegas, Nevada 89129
Phone: (702) 656-5814
Email: GHand@HandSullivan.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

DEPARTMENT XXXI
NOTICE OF HEARING
DATE 10/7/19 TIME 830 am
APPROVED BY JC

TITINA FARRIS and PATRICK FARRIS,

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-16-739464-C
DEPT. NO.: XXXI

HEARING DATE REQUESTED

**PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' FOURTH AND FIFTH
SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS ON
ORDER SHORTENING TIME**

COMES NOW Plaintiffs PATRICK FARRIS and TITINA FARRIS, by and through their attorneys of record, KIMBALL JONES, ESQ. and JACOB G. LEAVITT, ESQ., with the Law Offices of **BIGHORN LAW** and GEORGE F. HAND, ESQ., with the Law Offices of **HAND & SULLIVAN, LLC**, and hereby submit this Motion to Strike Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents on Order Shortening Time ("Motion").

1 This Motion is made and based upon all of the pleadings and papers on file herein and the
2 attached Memorandum of Points and Authorities.

3 DATED this 25th day of September, 2019.

4 **BIGHORN LAW**

5 By: /s/ Kimball Jones

6 **KIMBALL JONES, ESQ.**

Nevada Bar.: 12982

7 **JACOB G. LEAVITT, ESQ.**

Nevada Bar No.: 12608

8 716 S. Jones Blvd.

9 Las Vegas, Nevada 89107

10 **GEORGE F. HAND, ESQ.**

Nevada Bar No.: 8483

11 **HAND & SULLIVAN, LLC**

12 3442 N. Buffalo Drive

13 Las Vegas, Nevada 89129

14 *Attorneys for Plaintiffs*

NOTICE OF HEARING

TO: All INTERESTED PARTIES, AND THEIR ATTORNEYS OF RECORD

It appearing to the satisfaction of the Court, and good cause appearing therefore, IT IS
HEREBY ORDERED that the foregoing **MOTION** shall be heard on the 7th day of
October, 2019, at the hour of 8:30 a.m. in the above-noted Courtroom.

DATED this 26 day of September, 2019.

JOANNA S. KISHNER


DISTRICT COURT JUDGE

Respectfully submitted by:

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

GEORGE F. HAND, ESQ.

Nevada Bar No.: 8483

HAND & SULLIVAN, LLC

3442 N. Buffalo Drive

Las Vegas, Nevada 89129

Attorneys for Plaintiffs

personally
Motion must be filed/served by: 9/28/19 @ 2:00 pm
Opposition must be filed/served by: 10/2/19 @ 5 pm
Reply must be filed/served by: 10/3/19 @ 5 pm
Please provide courtesy copies to Chambers upon filing.

AFFIDAVIT OF KIMBALL JONES, ESQ. IN SUPPORT OF PLAINTIFF'S MOTION AND IN COMPLIANCE WITH EDCR 2.26

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

KIMBALL JONES, ESQ., being first duly sworn, under oath deposes and says:

1. That I am an attorney duly licensed to practice law in the State of Nevada and a partner with the Law Offices of Bighorn Law.
2. That I am personally familiar with the facts and circumstances surrounding this matter and am competent to testify hereto.
3. That Trial in this matter is currently scheduled for October 14, 2019, and thus Order Shortening Time is warranted to hear this instant Motion before Trial.
4. That this Affidavit is made in good faith, and not for the purposes of delay.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


KIMBALL JONES, ESQ.

SUBSCRIBED AND SWORN to before
me on this 27 day of September 2019.


NOTARY PUBLIC in and for
CLARK COUNTY, NEVADA



GRESIA TARANGO
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 12-15-21
Certificate No: 14-12816-1

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF RELEVANT FACTS**

3 Plaintiff Titina Farris was a patient of Defendant Rives. Rives, while performing surgery on
4 Plaintiff, negligently cut her colon in three places, though he only identified two holes during surgery.
5 Thereafter, Rives failed to adequately repair the colon and/or sanitize the abdominal cavity. With feces
6 actively in her abdomen, Plaintiff predictably went into septic shock and was transferred to the ICU.
7 Nevertheless, Rives still failed to recommend any surgery to repair the punctured colon until he was
8 ultimately removed from the case thirteen (13) days later. Unfortunately, the consequences of Rives'
9 negligence caused Plaintiff's organs to begin shutting down and her extremities to suffer permanent
10 impairment. Ultimately, Plaintiff developed critical care neuropathy, destroying all nerve function in
11 her lower legs and feet, commonly referred to as bilateral drop foot.
12

13
14 Discovery in this matter closed on July 24, 2019. Yet, on September 12, 2019 and over forty-
15 five (45) past the close of discovery, Defendants served their Fourth Supplement to NRCP 16.1
16 Disclosure of Witnesses and Documents. Within this disclosure, Defendants – for the first time – listed
17 eighteen (18) new witnesses. See Exhibit "1."

18
19 Further, on September 23, 2019, Defendants served their Fifth Supplement to NRCP 16.1
20 Disclosure of Witnesses and Documents, providing a supplemental report from their expert and
21 additional medical articles, less than thirty (30) days before trial. See Exhibit "2."

22 Defendants have offered no rationale for their failure to list these eighteen (18) new witnesses,
23 prior to the close of discovery, or in failing to provide their expert's supplemental report at least thirty
24 (30) days before trial, other than to now ambush Plaintiffs. As such, these untimely disclosed witnesses
25 and untimely produced supplemental expert report and additional articles, are properly Stricken and
26 Excluded from Trial.
27

28 ///

II. LEGAL ARGUMENT AND ANALYSIS

A. Legal Authority.

NRCP 37(c)(1) states, “(1) A party that without substantial justification fails to disclose information required by Rule 16.1, 16.2, or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), **is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed.** In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. **In addition to requiring payment of reasonable expenses, including attorney’s fees, caused by the failure, these sanctions may include any of the actions authorized under Rule 37(b)(2)(A), (B), and (C) and may include informing the jury of the failure to make the disclosure.**”

The Ninth Circuit has analyzed the Federal Rule 37 enforcement provision--which mirrors NRCP 37--and noted that adopted in was intended as a “broadening of the sanctioning power,” creating an “automatic sanction” and “provid[ing] a strong inducement for disclosure of material.” *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001).

As noted above, discovery closed in this matter on July 24, 2019. Yet, on September 12, 2019 and over forty-five (45) past the close of discovery, Defendants untimely disclosed eighteen (18) new witnesses in their Fourth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents. See Exhibit 1.

Clearly, Defendants knew of these witnesses well in advance of the close of discovery in this matter and for whatever reason failed to disclose them. Simply put—Defendants failed to disclose these witnesses as they were required to under NRCP 16.1.

Further, Defendants’ deliberately provided their expert with articles to alter/add to his opinions after the close of discovery and had their expert provide supplemental opinions after Plaintiffs

1 conducted his Deposition in this matter and disclosed such supplemental opinions, well past the thirty
2 (30) days before trial.

3 Defendants' late disclosures now leave Plaintiffs with insufficient time to depose these new
4 witnesses prior to Trial and to obtain a second deposition of their expert regarding these new opinions.
5 These late disclosures are all the more egregious as Defendants knew of their existence and desire to
6 produce, yet failed to timely disclose.
7

8 As noted above, NRCP 37 forbids the use of this late-disclosed evidence unless the failure to
9 disclose is "harmless." In assessing whether the late disclosure was substantially justified or harmless,
10 courts look to five (5) factors: (1) the surprise to the party against whom the evidence would be offered;
11 (2) the ability of that party to cure the surprise; (3) the extent to which allowing the evidence would
12 disrupt the trial; (4) the importance of the evidence; and (5) the non-disclosing party's explanation for
13 its failure to disclose the evidence. *Dey L.P.v. Ivas Pharms., Inc.*, 233 F.R.D. 567, 571 (C.D. Cal.
14 2005) (citing to *Southern States Rack & Fixture, Inc. v. SherwinWilliams Co.*, 318 F.3d 592 (4th Cir.
15 2003)).
16

17 Surprise to Party: Obviously, the disclosure of these new witnesses, after the close of
18 discovery, leaves Plaintiffs fundamentally unable to prepare for their testimony at Trial. Likewise, do
19 disclosing new expert opinions less than thirty (30) days before trial. Plaintiff simply has no way to
20 curb this prejudice due to Defendants' tactical decision to sit on these witnesses and supplemental
21 expert report and then ambush Plaintiffs at this late juncture.
22

23 Ability to Cure Surprise: As noted above, Plaintiffs has no recourse in this late date to prepare
24 for the Trial testimony of these late disclosed witnesses or of their expert's new opinions.
25

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1 Disruption of Trial: Trial is less than thirty (30) days away. There is simply insufficient time
2 to depose these late disclosed witnesses or for a second deposition of their expert. Any utility in the
3 testimony of these witnesses at Trial is substantially outweighed by the prejudice they will lend to the
4 proceedings.

5
6 Importance of Evidence: Defendants must not have thought highly of these witnesses, as they
7 failed to disclose any of them, prior to the close of discovery. Likewise, the new opinions from their
8 expert must not be critical to their case either. Any probative value, which is seemingly low based
9 upon Defendants' failure to timely disclose, would obviously be overshadowed by the prejudicial
10 effect of Plaintiffs being unable to perform proper discovery.

11 Defendants' Explanation: Defendants has not yet proffered an explanation for their failure to
12 disclose these late witnesses or the late supplemental expert report. However, Plaintiffs believe that
13 there can be no explanation which would satisfactorily explain their failure to disclose for such an
14 extended period of time.

15
16 All five (5) of the factors used by the Court to analyze if a failure to disclose fall in favor of
17 Plaintiffs. The harm to Plaintiffs' case in allowing these new witnesses and untimely supplemental
18 expert report will greatly prejudice Plaintiffs' case. There is no opportunity to cure this harm. As such,
19 the only course of action for this Court in this matter is that mandated by NRCP—these witnesses
20 must not be allowed to testify and Defendants' supplemental expert report, and opinions therein, must
21 be excluded. Frankly, they all must be Stricken. Based upon the mandatory guidance of NRCP and
22 the harmful nature of the late disclosures, Plaintiffs respectfully requests that the Court GRANT their
23 Motion and Strike Defendants' untimely disclosures.
24

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1 **III. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully requests that this Court GRANT Plaintiffs'
3 Motion to Strike Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and
4 Documents on Order Shortening Time.

5 DATED this 25th day of September, 2019.

6 **BIGHORN LAW**

7 By: /s/ Kimball Jones

8 **KIMBALL JONES, ESQ.**

9 Nevada Bar.: 12982

10 **JACOB G. LEAVITT, ESQ.**

11 Nevada Bar No.: 12608

12 716 S. Jones Blvd.

13 Las Vegas, Nevada 89107

14 **GEORGE F. HAND, ESQ.**

15 Nevada Bar No.: 8483

16 **HAND & SULLIVAN, LLC**

17 3442 N. Buffalo Drive

18 Las Vegas, Nevada 89129

19 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of **BIGHORN LAW**, and on the ____ day of September, 2019, I served the foregoing **PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' FOURTH AND FIFTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS ON ORDER SHORTENING TIME** as follows:

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

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

Kim Mandelbaum, Esq.
MANDELBAUM ELLERTON & ASSOCIATES
2012 Hamilton Lane
Las Vegas, Nevada 89106
&
Thomas J. Doyle, Esq.
Chad C. Couchot, Esq.
SCHUERING ZIMMERMAN & DOYLE, LLP
400 University Avenue
Sacramento, California 95825
Attorneys for Defendants

An employee of **BIGHORN LAW**

EXHIBIT “1”

[DDW]
THOMAS J. DOYLE
Nevada Bar No. 1120
CHAD C. COUCHOT
Nevada Bar No. 12946
SCHUERING ZIMMERMAN & DOYLE, LLP
400 University Avenue
Sacramento, California 95825-6502
(916) 567-0400
Fax: 568-0400
Email: calendar@szs.com

KIM MANDELBAUM
Nevada Bar No. 318
MANDELBAUM ELLERTON & ASSOCIATES
2012 Hamilton Lane
Las Vegas, Nevada 89106
(702) 367-1234
Email: filing@memlaw.net

Attorneys for Defendants BARRY RIVES, M.D.;
LAPAROSCOPIC SURGERY OF NEVADA, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS and PATRICK FARRIS,	)	CASE NO. A-16-739464-C
Plaintiffs,	)	DEPT. NO. 31
vs.	)	DEFENDANTS BARRY RIVES, M.D.'S
BARRY RIVES, M.D.; LAPAROSCOPIC	)	AND LAPAROSCOPIC SURGERY OF
SURGERY OF NEVADA, LLC, et al.,	)	NEVADA, LLC'S FOURTH SUPPLEMENT
Defendants.	)	TO NRCP 16.1 DISCLOSURE OF
	)	WITNESSES AND DOCUMENTS

Under the authority of Rule 16.1(a)(1) of the Nevada Rules of Civil Procedure, Defendants BARRY RIVES, M.D. and LAPAROSCOPIC SURGERY OF NEVADA, LLC hereby submits this fourth supplemental list of witnesses and documents as follows (the new information is in bold):

///

A. LIST OF WITNESSES

1. Titina Farris
c/o George F. Hand, Esq.
HAND & SULLIVAN, LLC
3442 North Buffalo Drive
Las Vegas, NV 89129

Ms. Farris is expected to testify regarding the facts and circumstances giving rise to this action.

2. Patrick Farris
c/o George F. Hand, Esq.
HAND & SULLIVAN, LLC
3442 North Buffalo Drive
Las Vegas, NV 89129

Mr. Farris is expected to testify regarding the facts and circumstances giving rise to this action.

3. Barry Rives, M.D.
c/o Thomas J. Doyle
Schuering Zimmerman & Doyle, LLP
400 University Avenue
Sacramento, CA 95825

Dr. Rives is expected to testify regarding the facts and circumstances surrounding this matter, including his care and treatment of Plaintiff Titina Farris.

4. Person Most Knowledgeable
Laparoscopic Surgery of Nevada
c/o Schuering Zimmerman & Doyle, LLP
400 University Avenue
Sacramento, California 95825-6502

Person Most Knowledgeable for Laparoscopic Surgery of Nevada is expected to testify regarding the facts and circumstances of the claims alleged in the Complaint and alleged damages.

5. Person Most Knowledgeable
St. Rose Dominican - San Martin Campus
8280 West Warm Springs Road
Las Vegas, Nevada 89113

Person Most Knowledgeable for St. Rose Dominican - San Martin Campus is

1 expected to testify regarding his/her examination, treatment, diagnosis and overall health
2 conditions of Plaintiff.

3 6. Bess Chang, M.D.
4 8530 W. Sunset Road
5 Las Vegas, NV 89113

6 Dr. Chang is expected to testify regarding his examination, treatment, diagnosis
7 and overall health conditions of Plaintiff.

8 7. Elizabeth Hamilton, M.D.
9 10001 Eastern Avenue, Ste. #200
10 Henderson, NV 89052

11 Dr. Hamilton is expected to testify regarding her examination, treatment, diagnosis
12 and overall health conditions of Plaintiff.

13 8. Naomi Chaney, M.D.
14 5380 South Rainbow Blvd.
15 Las Vegas, NV 89118

16 Dr. Chaney is expected to testify regarding her examination, treatment, diagnosis
17 and overall health conditions of Plaintiff.

18 9. Person Most Knowledgeable
19 Desert Valley Therapy
20 6830 W. Oquendo, #101
21 Las Vegas, NV 89119

22 Person Most Knowledgeable for Desert Valley Therapy is expected to testify
23 regarding his/her examination, treatment, diagnosis and overall health conditions of
24 Plaintiff.

25 10. Person Most Knowledgeable
26 Steinberg Diagnostic Medical Imaging Centers
9070 W. Post Road
Las Vegas, NV 89148

Person Most Knowledgeable for Steinberg Diagnostic Medical Imaging Centers is
expected to testify regarding his/her examination, treatment, diagnosis and overall health
conditions of Plaintiff.

- 1 11. Lowell Pender
2 (Son of Titina Farris)
3 3620 Mountain River Street
4 Las Vegas, NV 89129

5 Lowell Pender, is expected to testify regarding the facts and circumstances of the
6 claims alleged in the Complaint and alleged damages.

- 7 12. Addison Durham
8 (Brother of Titina Farris)
9 40 Montessori
10 Las Vegas, NV 89117

11 Addison Durham is expected to testify regarding the facts and circumstances of the
12 claims alleged in the Complaint and alleged damages.

- 13 13. Sky Prince
14 (Daughter of Titina Farris)
15 6450 Crystal Dew Drive
16 Las Vegas, NV 89118

17 Addison Durham is expected to testify regarding the facts and circumstances of the
18 claims alleged in the Complaint and alleged damages.

- 19 14. Steven Y. Chinn, M.D.
20 6950 W. Desert Inn Rd., #110
21 Las Vegas, NV 89117

22 Dr. Chinn is expected to testify regarding his examination, treatment, diagnosis and
23 overall health conditions of Plaintiff.

- 24 15. Person Most Knowledgeable
25 Care Meridian
26 3391 N. Buffalo Drive
 Las Vegas, NV 89129

 Person Most Knowledgeable for Care Meridian is expected to testify regarding
 his/her examination, treatment, diagnosis and overall health conditions of Plaintiff.

16. Gregg Ripplinger M.D.
 10001 S Eastern Ave #201
 Henderson, NV 89052
 (702) 914-2420

1 **Dr. Ripplinger is expected to testify about the care, and treatment, and**
2 **diagnosis of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.**

3 **17. Thomas Gebhard, M.D.**
4 **2400 S Cimarron Rd Ste 100**
5 **Las Vegas, NV 89117**
6 **(702) 477-0772**

7 **Dr. Gebhard is expected to testify about the care, and treatment, and diagnosis of**
8 **Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.**

9 **18. Matthew Treinen D.O.**
10 **5495 S Rainbow Blvd Ste 203**
11 **Las Vegas, NV 89118**
12 **(702) 477-0772**

13 **Dr. Treinen is expected to testify about the care, and treatment, and diagnosis**
14 **of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.**

15 **19. Ravishankar Konchada M.D.**
16 **5495 S Rainbow Blvd, Suite 101**
17 **Las Vegas, NV, 89118**
18 **(702) 477-0772**

19 **Dr. Konchada is expected to testify about the care, and treatment, and**
20 **diagnosis of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.**

21 **20. Tanveer Akbar M.D.**
22 **520 Fremont Street**
23 **Las Vegas, NV 89101**
24 **(702) 382-5200**

25 **Dr. Akbar is expected to testify about the care, and treatment, and diagnosis**
26 **of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.**

21. Kenneth Mooney M.D.
 10001 S Eastern Avenue, Suite 203
 Henderson, NV 89052
 (702) 616-5915

Dr. Mooney is expected to testify about the care, and treatment, and diagnosis

1 of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.

2 22. Alka Rebentish M.D.
3 6088 S Durango Drive 100
4 Las Vegas, NV 89113
(702) 380-4242

5 Dr. Rebentish is expected to testify about the care, and treatment, and
6 diagnosis of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.

7 23. Arvin Gupta M.D.
8 6970 W Patrick Lane, Suite 140
9 Las Vegas, NV 89113
(702) 588-7077

10 Dr. Gupta is expected to testify about the care, and treatment, and diagnosis
11 of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.

12 24. Ali Nauroz M.D.
13 657 N Town Center Drive
14 Las Vegas, NV 89144
(702) 233-7000

15 Dr. Nauroz is expected to testify about the care, and treatment, and diagnosis
16 of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.

17 25. Syed Zaidi M.D.
18 9280 W Sunset Road, Suite 320
19 Las Vegas, NV 89148
(702) 534-5464

20 Dr. Zaidi is expected to testify about the care, and treatment, and diagnosis
21 of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.

22 26. Ashraf Osman M.D.
23 5380 S Rainbow Blvd, Suite 110
24 Las Vegas, NV 89118
(725) 333-8465

25 Dr. Osman is expected to testify about the care, and treatment, and diagnosis
26 of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.

1 **27. Charles McPherson M.D.**
2 **3121 Maryland Pkwy #502**
3 **Las Vegas, NV 89109**
4 **(208) 415-5795**

5 **Dr. McPherson is expected to testify about the care, and treatment, and**
6 **diagnosis of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.**

7 **28. Teena Tandon M.D.**
8 **6970 W Patrick Lane, Suite 140**
9 **Las Vegas, NV 89113**
10 **(702) 588-7077**

11 **Dr. Tandon is expected to testify about the care, and treatment, and diagnosis**
12 **of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.**

13 **29. Farooq Shaikh M.D.**
14 **3880 S Jones Blvd**
15 **Las Vegas, NV 89103**
16 **(702) 636-6390**

17 **Dr. Shaikh is expected to testify about the care, and treatment, and diagnosis**
18 **of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.**

19 **30. Howard Broder M.D.**
20 **2865 Siena Heights Drive, Suite 331**
21 **Henderson, NV 89052**
22 **(702) 407-0110**

23 **Dr. Broder is expected to testify about the care, and treatment, and diagnosis**
24 **of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.**

25 **31. Doreen Kibby PAC**
26 **2865 Siena Heights Drive, Suite 331**
 Henderson, NV 89052
 (702) 407-0110

Dr. Kibby is expected to testify about the care, and treatment, and diagnosis
 of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.

1 **32. Herbert Cordero-Yordan M.D.**
2 **2300 Corporate Circle, # 100**
3 **Henderson, NV 89074**
4 **(702) 731-8224**

5 **Dr. Cordero-Yordan is expected to testify about the care, and treatment, and**
6 **diagnosis of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.**

7 **33. Darren Wheeler, M.D.**
8 **4230 Burnham Avenue**
9 **Las Vegas, NV 89119**
10 **(702) 733-7866**

11 **Dr. Wheeler is expected to testify about the care, and treatment, and diagnosis**
12 **of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.**

13 **B. DOCUMENTS**

14 1. Medical and billing records from Laparoscopic Surgery of Nevada
15 (BR000001-BR000049).

16 2. Medical records from St. Rose Dominican Hospital (previously produced by
17 plaintiffs.)

18 3. Medical records from Dr. Barry Rives (previously produced by plaintiffs.)

19 4. Medical records from Dr. Noami Change (previously produced by plaintiffs.)

20 5. Medical records from Dr. Elizabeth Hamilton (previously produced by
21 plaintiffs.)

22 6. Photographs of plaintiff Titina Farris (previously produced by plaintiffs.)

23 7. Medical and billing records from Desert Valley Therapy (previously produced
24 by plaintiffs.)

25 8. Medical and billing records from Dr. Hamilton (previously produced by
26 plaintiffs.)

 9. Medical and billing records from St. Rose Dominican Hospital - San Martin
Campus for July 2015 admission (previously produced by plaintiffs.)

- 1 10. Medical and billing records from St. Rose Dominican Hospital - San Martin
- 2 Campus for July 2016 admission (previously produced by plaintiffs.)
- 3 11. Medical records from Dr. Chaney (previously produced by plaintiffs.)
- 4 12. Billing records from Dr. Chaney (previously produced by plaintiffs.)
- 5 13. Medical and billing records from Advanced Orthopedics & Sports Medicine
- 6 (previously produced by plaintiffs.)
- 7 14. Diagnostic films taken at St. Rose Dominican Hospital (previously produced
- 8 by plaintiffs.)
- 9 15. Video of Titina Farris taken by Lowell Pender on April 15, 2015 (previously
- 10 produced by plaintiffs.)
- 11 16. Videos of Titina Farris, Patrick Farris, Addison Durham, Lowell Pender and
- 12 Sky Prince (previously produced by plaintiffs.)
- 13 17. Marriage certificate (previously produced by plaintiffs.)
- 14 18. Medical and billing records from Dr. Steven Y. Chinn (previously produced
- 15 by plaintiffs.)
- 16 19. Medical and billing records from Care Meridian (previously produced by
- 17 plaintiffs.)
- 18 20. Billing records from St. Rose Dominican Hospital - Siena Campus (BR-
- 19 SRDSB000001-BR-SRDSB000015);
- 20 21. Medical and billing records from Dr. Elizabeth Hamilton (BR-
- 21 HAMILTON000001-BR-HAMILTON000073);
- 22 22. Records of Bess Chang, M.D. (CHANG000001-CHANG000008) (CD will be
- 23 mailed);
- 24 23. Advanced Orthopedics & Sports Medicine (AOSM000001-AOSM000029) (CD
- 25 will be mailed);
- 26 24. Certificate of no imaging from Dr. Chang (CHANG-CNR-IMAGING000001-

1 **CHANG-CNR-IMAGING000002);**

2 **25. Medical records from Southern Nevada Pain Center (SNPC000001-**
3 **SNPC000051) (CD will be mailed);**

4 **26. Medical records from Internal Medicine of Spring Valley (IMSV000001-**
5 **IMSV000888) (CD will be mailed);**

6 **27. Medical records from Care Meridian (CM000001-CM000299) (CD will be**
7 **mailed);**

8 **28. Certificate of no imaging from Dr. Hamilton (HAMILTON-CNR-**
9 **IMAGING000001-HAMILTON-CNR-IMAGING000002) (CD will be mailed);**

10 **29. Medical records from ATI Physical Therapy (ATI000001-ATI000081) (CD will**
11 **be mailed);**

12 **30. Medical records from St. Rose Dominican Hospital - Siena Campus (BR-**
13 **SRDSM000001-BR-SRDSM000927) (CD will be mailed);**

14 **31. Certificate of no imaging from St. Rose Dominican Hospital - Siena Campus**
15 **(BR-SRDM-CNR-IMAGING000001-BR-SRDM-CNR-IMAGING000002) (CD will be mailed);**

16 **32. Dr. Bart Carter's expert report (previously produced);**

17 **33. Dr. Brian Juell's expert report (previously produced);**

18 **34. Dr. Carter's rebuttal expert report (previously produced);**

19 **35. Dr. Juell's rebuttal expert report (previously produced);**

20 **36. Dr. Lance Stone's rebuttal expert report (previously produced);**

21 **37. Sarah Larsen's rebuttal expert report (previously produced);**

22 **38. Dr. Bruce Adornato's rebuttal expert report (previously produced);**

23 **39. Dr. Kim Erlich's rebuttal expert report (previously produced);**

24 **40. Dr. Scott Kush's rebuttal expert report (previously produced);**

25 **41. Erik Volk's rebuttal expert report (previously produced);**

26 **42. Dr. Erlich's supplemental expert report;**

1 **43. Dr. Juell's supplemental expert report.**

2 Defendants reserve the right to supplement this list of documents as discovery
3 continues and to submit any exhibit of any other party. Said Defendants further reserve
4 the right to amend this list of witnesses, documents and tangible items should, during the
5 course of the discovery of this matter, additional witnesses and documentation become
6 known to defendants or defendants' counsel. Defendants hereby incorporate all
7 documents produced by the parties in their Early Case Conference Disclosures and
8 supplements by reference.

9 Dated: September 12, 2019

10 **SCHUERING ZIMMERMAN & DOYLE, LLP**

11
12 By _____

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16 Sacramento, CA 95825-6502
17 (916) 567-0400
18 Attorneys for Defendants BARRY RIVES,
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21
22
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26

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Certified
American Board
of General and
Vascular Surgery

September 9, 2019

To Whom it May Concern:

I was asked to provide a supplemental report explaining details brought up in my deposition in the Ferris case.

Sepsis and Systemic Inflammatory Response Syndrome (SIRS):

Sepsis commonly refers to a patient's metabolic and physiologic response to an underlying infection. Sepsis can occur with and without bacteremia where live bacterial organisms can be present and cultured from a patient's blood. In cases of sepsis when bacteria are not present in the blood, bacterial toxins may activate the patient's inflammatory response. The activation of the inflammatory response is the body's defense mechanism to the infection. The inflammatory response may escalate and become over amplified leading to a dysfunctional and dysregulated state which can lead to shock and ultimately tissue and organ injury. This injury chiefly occurs in the micro vascular circulation leading to cellular injury and cell death. Evidence of organ dysfunction is systemic resulting in acute lung, kidney, cardiac, gut, and brain injury. Unless the process is reversed this disorder can progress to multi-system organ failure and death.

In my deposition I referred to Systemic Inflammatory Response Syndrome (SIRS) or Septic Syndrome. The signs of SIRS include:

- Temperature >38 degrees C (fever) or less than 36 degrees C (hypothermia)
- Heart rate > 90 beats/ minute
- Respiratory Rate > 20 breathes/ minute (tachypnea)
- White blood cell count > 12,000 or < 4,000 or more than 10% bands (immature WBC)

Sepsis is a specific form of SIRS in which the inflammatory cascade is initiated by infection. This inflammatory cascade pathway can be initiated identically without infection as a cause. SIRS can be initiated by multiple traumatic injury, hemorrhagic shock, pancreatitis, tissue ischemia, tissue injury including crush injury, immune-mediated organ injury, and as in Ms. Ferris's case pulmonary aspiration syndrome. Sepsis and SIRS look the same clinically.

Testimony regarding my interpretation of serial radiologic studies:

In preparation for the deposition, I had received and reviewed the serial CT and chest radiographs obtained on Ms. Ferris prior to her return to the operating room for the colon anastomotic failure surgery. Briefly these are my findings and interpretations:

Ms. Ferris developed rapid onset respiratory failure and SIRS after the initial surgery. Her chest X-ray demonstrated evidence of likely pulmonary aspiration with a right upper lobe infiltrate. A CT angiogram

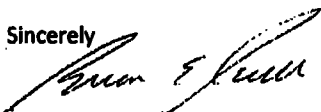


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performed at that time was negative for pulmonary embolism or blood clots in the lung blood vessels. I found evidence on that scan of early pneumonia likely due to pulmonary aspiration which included consolidation and airway changes in both the upper and lower lung lobes not specifically reported by the radiologist. The subsequent two CT scans demonstrated progressive and severe consolidation and pneumonia development particularly in the right lung. The right lung is almost completely collapsed and consolidated on the scan performed on the day prior to her return to surgery. This scan was the first scan diagnostic of the colon anastomotic failure; The progressive pneumonia was in my medical opinion the more likely explanation for the clinical findings of SIRS prior to her second abrupt deterioration immediately antecedent to her second surgery.

Ms. Ferris's initial operation for repair of her recurrent incisional hernia involved reduction of the protruded abdominal contents back into the confines of the abdomen and bridging mesh tacked in place to cover the gap in the abdominal wall. This left a space superficial to the mesh. This space filled with fluid that came very close to the overlying skin. This fluid communicated through and around the mesh prosthesis with the abdominal cavity below the mesh. This fluid collection persisted up to the time of the second surgery. The colon section that was repaired was immediately adjacent to the mesh and the fluid collection. Had the failure of the colon repair occurred earlier in the clinical course or had Ms. Ferris had progressive fecal peritonitis resulting from the colon injury the fluid above the repair would have abscessed which would have led to obvious signs of infection manifesting on the abdominal wall tissues covering the fluid collection. The lack of redness, swelling, blistering and other changes on physical exams by multiple physicians and surgeons over the 10 days prior to the colonic leak surgery is a strong argument against that advocated by the plaintiffs.

Sincerely



Brian E. Juell MD FACS

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 12th day of September, 2019,
service of a true and correct copy of the foregoing:

**DEFENDANTS BARRY RIVES, M.D.'S AND LAPAROSCOPIC SURGERY OF
NEVADA, LLC'S FOURTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF
WITNESSES AND DOCUMENTS**

was served as indicated below:

- ☐ served on all parties electronically pursuant to mandatory NEFCR 4(b);
- ☒ served on all parties electronically pursuant to mandatory NEFCR 4(b) , exhibits
to follow by U.S. Mail;
- ☐ by depositing in the United States Mail, first-class postage prepaid, enclosed ;
- ☐ by facsimile transmission; or
- ☐ by personal service as indicated.

Attorney


Representing

Phone/Fax/E-Mail

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Plaintiff

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