

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 3

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	<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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
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

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
58.	Order to Show Cause {To Thomas J. Doyle, Esq.}	11/5/19	12	2477-2478
59.	Judgment on Verdict	11/14/19	12	2479-2482
60.	Notice of Entry of Judgment	11/19/19	12	2483-2488
61.	Plaintiffs' Motion for Fees and Costs	11/22/19	12	2489-2490
	Declaration of Kimball Jones, Esq. in Support of Motion for Attorneys' Fees and Costs	11/22/19	12	2491-2493
	Declaration of Jacob G. Leavitt Esq. in Support of Motion for Attorneys' Fees and Costs	11/22/19	12	2494-2495
	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
	<u>Exhibit "3"</u> : Notice of Entry of Order	4/3/19	12	2522-2536
	<u>Exhibit "4"</u> : Declarations of Patrick Farris and Titina Farris		12	2537-2541
	<u>Exhibit "5"</u> : Plaintiffs' Verified Memorandum of Costs and Disbursements	11/19/19	12	2542-2550
62.	Defendants Barry J. Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Opposition to Plaintiffs' Motion for Fees and Costs	12/2/19	12	2551-2552

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 62)	Declaration of Thomas J. Doyle, Esq.		12	2553-2557
	Declaration of Robert L. Eisenberg, Esq.		12	2558-2561
	Memorandum of Points and Authorities	12/2/19	12	2562-2577
	<u>Exhibit 1</u> : Defendants Barry J. Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Initial Disclosure of Expert Witnesses and Reports	11/15/18	12	2578-2611
	<u>Exhibit 2</u> : Defendants Barry J. Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Rebuttal Disclosure of Expert Witnesses and Reports	12/19/18	12 13	2612-2688 2689-2767
	<u>Exhibit 3</u> : Recorder's Transcript Transcript of Pending Motions (Heard 10/10/19)	10/14/19	13	2768-2776
	<u>Exhibit 4</u> : 2004 Statewide Ballot Questions		13	2777-2801
	<u>Exhibit 5</u> : Emails between Carri Perrault and Dr. Chaney re trial dates availability with Trial Subpoena and Plaintiffs' Objection to Defendants' Trial Subpoena on Naomi Chaney, M.D.	9/13/19 - 9/16/19	13	2802-2813
	<u>Exhibit 6</u> : Emails between Riesa Rice and Dr. Chaney re trial dates availability with Trial Subpoena	10/11/19 - 10/15/19	13	2814-2828
	<u>Exhibit 7</u> : Plaintiff Titina Farris's Answers to Defendant's First Set of Interrogatories	12/29/16	13	2829-2841
	<u>Exhibit 8</u> : Plaintiff's Medical Records		13	2842-2877

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
63.	Reply in Support of Plaintiffs' Motion for Fees and Costs	12/31/19	13	2878-2879
	Memorandum of Points and Authorities	12/31/19	13	2880-2893
	<u>Exhibit "1"</u> : Plaintiffs' Joint Unapportioned Offer of Judgment to Defendant Barry Rives, M.D. and Defendant Laparoscopic Surgery of Nevada LLC	6/5/19	13	2894-2898
	<u>Exhibit "2"</u> : Judgment on Verdict	11/14/19	13	2899-2903
	<u>Exhibit "3"</u> : Defendants' Offer Pursuant to NRCPC 68	9/20/19	13	2904-2907
64.	Supplemental and/or Amended Notice of Appeal	4/13/20	13	2908-2909
	<u>Exhibit 1</u> : Judgment on Verdict	11/14/19	13	2910-2914
	<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	13	2915-2930
<u>TRANSCRIPTS</u>				
65.	<i>Transcript of Proceedings Re: Status Check</i>	7/16/19	14	2931-2938
66.	<i>Transcript of Proceedings Re: Mandatory In-Person Status Check per Court's Memo Dated August 30, 2019</i>	9/5/19	14	2939-2959
67.	<i>Transcript of Proceedings Re: Pretrial Conference</i>	9/12/19	14	2960-2970
68.	<i>Transcript of Proceedings Re: All Pending Motions</i>	9/26/19	14	2971-3042
69.	<i>Transcript of Proceedings Re: Pending Motions</i>	10/7/19	14	3043-3124

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
70.	<i>Transcript of Proceedings Re:</i> Calendar Call	10/8/19	14	3125-3162
71.	<i>Transcript of Proceedings Re:</i> Pending Motions	10/10/19	15	3163-3301
72.	<i>Transcript of Proceedings Re:</i> Status Check: Judgment — Show Cause Hearing	11/7/19	15	3302-3363
73.	<i>Transcript of Proceedings Re:</i> Pending Motions	11/13/19	16	3364-3432
74.	<i>Transcript of Proceedings Re:</i> Pending Motions	11/14/19	16	3433-3569
75.	<i>Transcript of Proceedings Re:</i> Pending Motions	11/20/19	17	3570-3660

TRIAL TRANSCRIPTS

76.	<i>Jury Trial Transcript — Day 1</i> (Monday)	10/14/19	17 18	3661-3819 3820-3909
77.	<i>Jury Trial Transcript — Day 2</i> (Tuesday)	10/15/19	18	3910-4068
78.	<i>Jury Trial Transcript — Day 3</i> (Wednesday)	10/16/19	19	4069-4284
79.	<i>Jury Trial Transcript — Day 4</i> (Thursday)	10/17/19	20	4285-4331
93.	<i>Partial Transcript re:</i> Trial by Jury – Day 4 Testimony of Justin Willer, M.D. [Included in “Additional Documents” at the end of this Index]	10/17/19	30	6514-6618
80.	<i>Jury Trial Transcript — Day 5</i> (Friday)	10/18/19	20	4332-4533
81.	<i>Jury Trial Transcript — Day 6</i> (Monday)	10/21/19	21	4534-4769
82.	<i>Jury Trial Transcript — Day 7</i> (Tuesday)	10/22/19	22	4770-4938

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
83.	<i>Jury Trial Transcript</i> — Day 8 (Wednesday)	10/23/19	23	4939-5121
84.	<i>Jury Trial Transcript</i> — Day 9 (Thursday)	10/24/19	24	5122-5293
85.	<i>Jury Trial Transcript</i> — Day 10 (Monday)	10/28/19	25 26	5294-5543 5544-5574
86.	<i>Jury Trial Transcript</i> — Day 11 (Tuesday)	10/29/19	26	5575-5794
87.	<i>Jury Trial Transcript</i> — Day 12 (Wednesday)	10/30/19	27 28	5795-6044 6045-6067
88.	<i>Jury Trial Transcript</i> — Day 13 (Thursday)	10/31/19	28 29	6068-6293 6294-6336
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).

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 92)	<u>Exhibit A</u> : Partial Deposition Transcript of Barry Rives, M.D.	10/24/18	30	6506-6513
93.	<i>Partial Transcript re:</i> Trial by Jury – Day 4 Testimony of Justin Willer, M.D. (Filed 11/20/19)	10/17/19	30	6514-6618
94.	Jury Instructions	11/1/19	30	6619-6664
95.	Notice of Appeal	12/18/19	30	6665-6666
	<u>Exhibit 1</u> : Judgment on Verdict	11/14/19	30	6667-6672
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:</i> Pending Motions	1/7/20	31	6683-6786
98.	<i>Transcript of Hearing Re:</i> Defendants Barry J. Rives, M.D.’s and Laparoscopic Surgery of Nevada, LLC’s Motion to Re-Tax and Settle Plaintiffs’ Costs	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
	<u>Exhibit “A”</u> : Order on Plaintiffs’ Motion for Fees and Costs and Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs	3/30/20	31	6820-6834
101.	Supplemental and/or Amended Notice of Appeal	4/13/20	31	6835-6836
	<u>Exhibit 1</u> : Judgment on Verdict	11/14/19	31	6837-6841

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(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”

1 **[DDW]**
 2 **THOMAS J. DOYLE**
 Nevada Bar No. 1120
 3 **CHAD C. COUCHOT**
 Nevada Bar No. 12946
 4 **SCHUERING ZIMMERMAN & DOYLE, LLP**
 400 University Avenue
 Sacramento, California 95825-6502
 5 (916) 567-0400
 Fax: 568-0400
 6 Email: calendar@szs.com

7 **KIM MANDELBAUM**
 Nevada Bar No. 318
 8 **MANDELBAUM ELLERTON & ASSOCIATES**
 2012 Hamilton Lane
 9 Las Vegas, Nevada 89106
 (702) 367-1234
 10 Email: filing@memlaw.net

11 **Attorneys for Defendants BARRY RIVES, M.D.;**
LAPAROSCOPIC SURGERY OF NEVADA, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

15	TITINA FARRIS and PATRICK FARRIS,	)	CASE NO. A-16-739464-C
		)	DEPT. NO. 31
16	Plaintiffs,)	
17	vs.	)	DEFENDANTS BARRY RIVES, M.D.'S
18	BARRY RIVES, M.D.; LAPAROSCOPIC	)	AND LAPAROSCOPIC SURGERY OF
	SURGERY OF NEVADA, LLC, et al.,	)	NEVADA, LLC'S FIFTH SUPPLEMENT TO
19		)	NRCP 16.1 DISCLOSURE OF
20	Defendants.	)	WITNESSES AND DOCUMENTS

21
 22 Under the authority of Rule 16.1(a)(1) of the Nevada Rules of Civil Procedure,
 23 Defendants BARRY RIVES, M.D. and LAPAROSCOPIC SURGERY OF NEVADA, LLC hereby
 24 submits this fifth supplemental list of witnesses and documents as follows (the new
 25 information is in bold):

26 ///

1 **A. LIST OF WITNESSES**

2 1. **Titna Farris**
3 **c/o George F. Hand, Esq.**
4 **HAND & SULLIVAN, LLC**
 3442 North Buffalo Drive
 Las Vegas, NV 89129

5 **Ms. Farris is expected to testify regarding the facts and circumstances giving rise**
6 **to this action.**

7 2. **Patrick Farris**
8 **c/o George F. Hand, Esq.**
9 **HAND & SULLIVAN, LLC**
 3442 North Buffalo Drive
 Las Vegas, NV 89129

10 **Mr. Farris is expected to testify regarding the facts and circumstances giving rise**
11 **to this action.**

12 3. **Barry Rives, M.D.**
13 **c/o Thomas J. Doyle**
14 **Schuering Zimmerman & Doyle, LLP**
 400 University Avenue
 Sacramento, CA 95825

15 **Dr. Rives is expected to testify regarding the facts and circumstances surrounding**
16 **this matter, including his care and treatment of Plaintiff Titina Farris.**

17 4. **Person Most Knowledgeable**
18 **Laparoscopic Surgery of Nevada**
19 **c/o Schuermg Zimmerman & Doyle, LLP**
 400 University Avenue
 Sacramento, California 95825-6502

20 **Person Most Knowledgeable for Laparoscopic Surgery of Nevada is expected to**
21 **testify regarding the facts and circumstances of the claims alleged in the Complaint and**
22 **alleged damages.**

23 5. **Person Most Knowledgeable**
24 **St. Rose Dominican - San Martin Campus**
25 **8280 West Warm Springs Road**
 Las Vegas, Nevada 89113

26 **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
 Las Vegas, NV 89129

4 Lowell Pender, is expected to testify regarding the facts and circumstances of the
5 claims alleged in the Complaint and alleged damages.

6 12. Addison Durham
7 (Brother of Titina Farris)
8 40 Montessori
 Las Vegas, NV 89117

9 Addison Durham is expected to testify regarding the facts and circumstances of the
10 claims alleged in the Complaint and alleged damages.

11 13. Sky Prince
12 (Daughter of Titina Farris)
13 6450 Crystal Dew Drive
 Las Vegas, NV 89118

14 Addison Durham is expected to testify regarding the facts and circumstances of the
15 claims alleged in the Complaint and alleged damages.

16 14. Steven Y. Chinn, M.D.
17 6950 W. Desert Inn Rd., #110
 Las Vegas, NV 89117

18 Dr. Chinn is expected to testify regarding his examination, treatment, diagnosis and
19 overall health conditions of Plaintiff.

20 15. Person Most Knowledgeable
21 Care Meridian
22 3391 N. Buffalo Drive
 Las Vegas, NV 89129

23 Person Most Knowledgeable for Care Meridian is expected to testify regarding
24 his/her examination, treatment, diagnosis and overall health conditions of Plaintiff.

25 16. Gregg Ripplinger M.D.
26 10001 S Eastern Ave #201
 Henderson, NV 89052
 (702) 914-2420

1 Dr. Ripplinger is expected to testify about the care, and treatment, and diagnosis
2 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 Mrs.
8 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 of
14 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 diagnosis
20 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 of Mrs.
26 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 of

1 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
5 (702) 380-4242

6 Dr. Rebentish is expected to testify about the care, and treatment, and diagnosis
7 of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.

8 23. Arvin Gupta M.D.
9 6970 W Patrick Lane, Suite 140
10 Las Vegas, NV 89113
11 (702) 588-7077

12 Dr. Gupta is expected to testify about the care, and treatment, and diagnosis of Mrs.
13 Farris at St. Rose Dominican Hospital - San Martin Campus.

14 24. Ali Nauroz M.D.
15 657 N Town Center Drive
16 Las Vegas, NV 89144
17 (702) 233-7000

18 Dr. Nauroz is expected to testify about the care, and treatment, and diagnosis of
19 Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.

20 25. Syed Zaidi M.D.
21 9280 W Sunset Road, Suite 320
22 Las Vegas, NV 89148
23 (702) 534-5464

24 Dr. Zaidi is expected to testify about the care, and treatment, and diagnosis of Mrs.
25 Farris at St. Rose Dominican Hospital - San Martin Campus.

26 26. Ashraf Osman M.D.
5380 S Rainbow Blvd, Suite 110
Las Vegas, NV 89118
(725) 333-8465

Dr. Osman is expected to testify about the care, and treatment, and diagnosis 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
 (208) 415-5795

4 Dr. McPherson is expected to testify about the care, and treatment, and diagnosis
5 of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.

6 28. Teena Tandon M.D.
7 6970 W Patrick Lane, Suite 140
8 Las Vegas, NV 89113
 (702) 588-7077

9 Dr. Tandon is expected to testify about the care, and treatment, and diagnosis of
10 Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.

11 29. Farooq Shaikh M.D.
12 3880 S Jones Blvd
13 Las Vegas, NV 89103
 (702) 636-6390

14 Dr. Shaikh is expected to testify about the care, and treatment, and diagnosis of
15 Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.

16 30. Howard Broder M.D.
17 2865 Siena Heights Drive, Suite 331
18 Henderson, NV 89052
 (702) 407-0110

19 Dr. Broder is expected to testify about the care, and treatment, and diagnosis of
20 Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.

21 31. Doreen Kibby PAC
22 2865 Siena Heights Drive, Suite 331
23 Henderson, NV 89052
 (702) 407-0110

24 Dr. Kibby is expected to testify about the care, and treatment, and diagnosis of Mrs.
25 Farris at St. Rose Dominican Hospital - San Martin Campus.

26

1 32. Herbert Cordero-Yordan M.D.
2 2300 Corporate Circle, # 100
3 Henderson, NV 89074
 (702) 731-8224

4 Dr. Cordero-Yordan is expected to testify about the care, and treatment, and
5 diagnosis of Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.

6 33. Darren Wheeler, M.D.
7 4230 Burnham Avenue
8 Las Vegas, NV 89119
 (702) 733-7866

9 Dr. Wheeler is expected to testify about the care, and treatment, and diagnosis of
10 Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.

11 **B. DOCUMENTS**

12 1. Medical and billing records from Laparoscopic Surgery of Nevada
13 (BR000001-BR000049).

14 2. Medical records from St. Rose Dominican Hospital (previously produced by
15 plaintiffs.)

16 3. Medical records from Dr. Barry Rives (previously produced by plaintiffs.)

17 4. Medical records from Dr. Noami Change (previously produced by plaintiffs.)

18 5. Medical records from Dr. Elizabeth Hamilton (previously produced by
19 plaintiffs.)

20 6. Photographs of plaintiff Titina Farris (previously produced by plaintiffs.)

21 7. Medical and billing records from Desert Valley Therapy (previously produced
22 by plaintiffs.)

23 8. Medical and billing records from Dr. Hamilton (previously produced by
24 plaintiffs.)

25 9. Medical and billing records from St. Rose Dominican Hospital - San Martin
26 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 Adomato'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;

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 RIVES, M.D.'S AND LAPAROSCOPIC SURGERY OF NEVADA, LLC'S FIFTH 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.

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September 20, 2019

RE: FARRIS VERSUS RIVES

Dear Mr. Couchot:

Per your request, I have reviewed the four articles provided by plaintiff's counsel regarding critical illness myopathy and critical illness polyneuropathy. These papers in general support my opinion that a major portion of Ms. Farris's current painful neuropathy is due to her pre-existent painful diabetic neuropathy. Three of the four papers do not discuss pain as an issue in critical illness neuropathy and one mentions and demonstrates that a minority have neuropathic pain as a component of their disability. This paper primarily authored by Koch, specifically excludes patients with preexisting neuropathy such as is the case with Ms. Farris, and therefore is not really addressing the issue that Ms. Farris has a pre-existent painful narcotics and gabapentin treated neuropathy due to her diabetes mellitus for years prior to her surgery with Dr. Rives which would be expected to worsen with time. Updated records including referral to the Southern Nevada Pain Center as of June 2019 indicate increased pain in hands and legs, more consistent with underlying and ongoing diabetic neuropathy rather than a monophasic critical illness neuropathy.

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

A handwritten signature in black ink, appearing to read "Bruce T. Adornato", followed by a horizontal line extending to the right.

Bruce T. Adornato MD
Adjunct Clinical Professor of Neurology
Stanford School of Medicine
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Bruce T. Adornato

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Bio



Bio

Dr. Adornato joined the Department of Neurology as Voluntary Clinical Faculty in 1978, (subsequently Adjunct Clinical Faculty) and has served as Director of the Neuromuscular Laboratory from 1978 until 1983, performing and interpreting nerve and muscle biopsies as well as serving as attending physician directing residents and medical students in the diagnosis and care of his private patients admitted to Stanford Hospital. Since 1986, he has been attending physician at the Palo Alto VA Hospital, directing Stanford Neurology residents and medical students in the care of veterans. He has published 69 peer reviewed papers and a number of book chapters in the field of neurology. He is currently the medical officer of a silicon valley startup exploring mobility devices for the neurologically impaired.

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The natural history of chronic painful peripheral neuropathy in a community diabetes population

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Accepted 16 January 2006

Abstract

Aims To examine the natural history of chronic painful diabetic neuropathy (CPDN).

Methods A cross-sectional study of 350 people with diabetes was performed during 1998–1999 to assess the prevalence of CPDN in the community. Fifty-six patients with CPDN were identified and were followed up an average of 5 years later.

Results From the original cohort, 12 patients had died and 14 had moved away or were unable to participate in the follow-up study. Thus 30 patients with CPDN [21 male, mean (SD) age 68.6 years (9.4), mean (SD) duration of diabetes 15.4 years (8.7)] were re-assessed. Seven (23%) had been pain free for at least 12 months and 23 continued to report neuropathic pain of similar quality and severity [total McGill Pain Questionnaire Score median (interquartile range) at follow-up 22 (16–39) vs. 20 (16–33) at baseline, $P = 0.3$; mean (SD) visual analogue scale (VAS) score for pain over the preceding 24 h 5.3 cm (2.9) vs. 4.6 cm (2.5) at baseline, $P = 0.1$]. Only 65% had ever received treatment for CPDN despite 96% (22/23) reporting pain to their physician; 43.5% had received antidepressants, 17.4% anticonvulsants, 39% opiates and 30% had tried complementary therapies.

Conclusions The neuropathic pain of CPDN can resolve completely over time in a minority (23%). In those in whom painful neuropathic symptoms had persisted over 5 years, no significant improvement in pain intensity was observed. Despite the improvement in treatment modalities for chronic pain in recent years, patients with CPDN continue to be inadequately treated.

Diabet. Med. 23, 1021–1024 (2006)

Keywords chronic pain, diabetic neuropathy, natural history, treatment

Abbreviations BMI, body mass index; CPDN, chronic painful diabetic neuropathy; CPPN, chronic painful peripheral neuropathy; MPQ, McGill Pain Questionnaire; NDS, neuropathy disability score; NSS, neuropathy symptom score; VAS, visual analogue scale; VPT, vibration perception threshold

Introduction

Chronic painful diabetic neuropathy (CPDN) is common, often under-recognized and under-treated [1]. Limited literature is available on the natural history of CPDN, mainly because of methodological differences and biases of the few

prospective studies conducted so far [2–6]. We determined the natural history and impact of CPDN in a community-based cohort over a 5-year period, by reassessing these patients using similar methodology, definitions and diagnostic criteria.

Patients and methods

In a cross-sectional prevalence study of 350 people with diabetes performed during 1998–1999 in the community, 56 patients were identified as suffering from CPDN [1]. These patients

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were re-assessed using the same methodology an average of 5 years later [1]. Sensorimotor peripheral neuropathy was assessed by the Neuropathy Disability Score (NDS) and the Neuropathy Symptom Score (NSS) [7]. Typical lower limb neuropathic pain was ascertained with the McGill Pain Questionnaire (MPQ) [8] and the Pain Symptom Score (PSS) [9]. A diagnosis of CPDN was made on the basis of the following criteria: neuropathic pain symptoms in the legs present for at least 1 year; a PSS ≥ 3 ; moderate neurological signs (NDS score ≥ 6) or mild neurological signs with at least moderate symptoms (NDS score ≥ 3 and NSS score ≥ 5) also had to be present [7]. At baseline, patients with a serum creatinine $> 150 \mu\text{mol/l}$ were excluded. Peripheral vascular disease was defined if there were less than three palpable peripheral pulses. The impact of chronic pain on patients' functional status was assessed by the Pain Disability Index (PDI) [10]. HbA_{1c} values from the first study were converted to Diabetes Control and Complications Trial (DCCT)-aligned values by means of a conversion factor so that comparison with HbA_{1c} from the follow-up study was possible. The study was approved by the South Sefton Research Ethics Committee and all patients gave written informed consent.

Statistical methods

Differences between patients who had become pain free and those whose pain persisted were examined with the *t*-test for normally distributed continuous data and the Mann-Whitney test for non-normally distributed data.

Differences in terms of categorical variables were tested using the χ^2 test. Correlations between non-normally distributed variables were examined by Spearman's rank correlation coefficient (*r*). Statistical significance was defined as $P < 0.05$ (two-tailed). Visual analogue scale (VAS) pain scores, MPQ, NDS, NSS and PDI scores from baseline and after 5 years of follow-up were analysed with the Wilcoxon signed ranks test for matched pairs. Results were analysed using SPSS v10.0 for Windows (SPSS Inc., Chicago, IL, USA).

Results

From the original cohort, 12 patients had died and 14 had moved away or were unable to participate in the follow-up study for various reasons. A total of 30 patients with CPDN [21 male, mean (sd) age 68.6 years (9.4), mean (sd) duration of diabetes 15.4 years (8.7), three (10%) with Type 1 diabetes, mean body mass index (BMI) (sd) 30.7 kg/m² (4.6)] were reassessed after 5 years.

Seven (23.3%) had been pain free for at least 12 months [five male, mean (sd) age 75.6 years (9.4), mean (sd) duration of diabetes 13 years (5.3), all with Type 2 diabetes]. The remaining 23 patients continued to report neuropathic pain.

Vitamin B12, renal profile, thyroid-stimulating hormone estimation and serum protein electrophoresis were undertaken in all subjects at follow-up to exclude other causes of neuropathy and no abnormalities were detected. Patients who had become pain free at follow-up were significantly older and the intensity of their pain at the time of initial assessment was significantly less compared with those who continued to

report neuropathic pain [at baseline mean (sd) VAS of pain over the preceding 24 h in patients with persistent symptoms 4.6 cm (2.5) vs. 1.5 cm (1.1) in patients who became pain free, $P = 0.005$]. These two patient groups also differed in their total MPQ scores at baseline [median [interquartile range (IQR)] 20 (16–33) in those with persistent pain vs. 13 (6–20) in those who became pain free; $P = 0.02$]. No differences were identified in terms of gender, type and duration of diabetes, smoking history, BMI, serum creatinine, presence of peripheral vascular disease, ischaemic heart disease, cerebrovascular events, hypertension, retinopathy or nephropathy. The severity of underlying neuropathy (assessed by the NDS score and vibration perception thresholds) was also similar in the two groups at baseline and follow-up (Table 1).

The majority (23/30, 76.6%) of patients continued to experience chronic neuropathic pain of similar quality and severity [total MPQ score median (IQR) at follow-up 22 (16–39) vs. 20 (16–33) at baseline, $P = 0.3$; mean (sd) VAS score for pain over the preceding 24 h 5.3 cm (2.9) vs. 4.6 cm (2.5) at baseline, $P = 0.1$].

The impact of chronic pain on the patients' daily activities did not change significantly over time [PDI median (IQR) 17.5 (7–37) at baseline vs. 30 (13–39) at follow up; $P = 0.1$].

A significant correlation was found between the degree of disability caused by chronic pain (as assessed by the PDI) and the intensity of the patients' painful symptoms at follow-up ($r = 0.75$, $P < 0.001$). No correlation was revealed between the severity of the underlying neuropathy as assessed by the NDS score and the severity of pain ($r = 0.38$, $P = 0.08$).

Although 96% (22/23) of patients with persistent pain at follow-up had reported this to their treating physician, only 65% (15/23) had ever received treatment for it. These included: tricyclic antidepressants 43.5% (10/23), anticonvulsants 17.4% (4/23), opiates 39.1% (9/23), non-steroidal anti-inflammatory agents 13% (3/23), quinine (one patient) and transcutaneous electrical nerve stimulation therapy (one patient). Seven patients (30.4%) had consulted at least once outside of mainstream medicine (reflexology, herbal remedies, acupuncture).

Discussion

This 5-year prospective study has shown that neuropathic symptoms of patients with CPDN can remit spontaneously over time, although the majority continue to experience troublesome painful symptoms with little change in their characteristics. Our previous study also demonstrated that complete resolution of pain with time is possible [2].

Although a substantial body of information is available on the long-term progression of sensorimotor peripheral neuropathy in patients with Type 1 [11,12] and Type 2 diabetes [13–16], less is known about the natural history of CPDN. Published studies so far have produced contrasting conclusions, mainly due to methodological differences. Some longitudinal studies have included patients with short duration of pain [3,4]



Table 1 Comparison of the characteristics of the patients who became pain free with those with persistent symptoms, at baseline and after 5 years' follow-up

Characteristic	Baseline			After 5 years follow-up		
	Patients with persistent pain (n = 23)	Patients who eventually became pain free (n = 7)	P-value	Patients with persistent pain (n = 23)	Patients who eventually became painfree (n = 7)	P-value
Age* (years)	61.7 (9.0)	70.0 (8.8)	0.04	66.4 (8.5)	75.6 (9.4)	0.02
Male† (%)	16/23 (69.6)	5/7 (71.5)	0.9	16/23 (69.6)	5/7 (71.5)	0.9
Duration of diabetes* (years)	11.5 (10.5)	8.0 (5.9)	0.4	16.3 (9.5)	13 (5.3)	0.4
Type 1 diabetes† (%)	3/23 (13)	0	1.0	3/23 (13)	0/7 (0)	1.0
Body mass index* (kg/m ²)	30.4 (4.4)	27.3 (7.0)	0.2	31.2 (4.0)	28.8 (6.6)	0.3
Smoking‡ (pack years)	14.5 (0-39.25)	27.5 (5.625-48.5)	0.9	23.5 (0-41.25)	24.125 (5.625-47)	0.9
Blood pressure (mmHg)						
Systolic*	155 (18.0)	159 (24.2)	0.6	153 (20.6)	148 (16.2)	0.5
Diastolic*	88 (12.1)	91 (16.2)	0.6	83 (11.5)	73 (14.4)	0.08
HbA _{1c} *	8.0 (1.5)	8.1 (1.3)	0.9	8.0 (1.36)	8.1 (0.9)	0.9
NDS‡	7 (6-9)	10 (5-10)	0.5	8 (6-10)	10 (6-10)	0.4
VPT* (Hz)	25.5 (22.7)	31.8 (22.6)	0.5	23.6 (11.3)	30.2 (13.3)	0.2
MPQ‡ (total)	20 (16-33)	13 (6-20)	0.02	22 (16-39)	9 (0-11)	0.002
PDI‡	17.5 (7-37)	10 (5-25)	0.2	30 (13-39)	5 (0-18)	0.02
VAS* (last 24 h)	4.6 (2.5)	1.5 (1.1)	0.005	5.3 (2.9)	0	< 0.0001
VAS* (current)	3.2 (2.4)	0.65 (0.8)	0.009	3.7 (2.7)	0	< 0.0001

*Values are expressed as mean (so).

†Values are expressed as number (%).

‡Values are expressed as median (interquartile range).

NDS, Neuropathy Disability Score; VAS, visual analogue scale; VPT, vibration perception threshold; MPQ, McGill Pain Questionnaire; PDI, Pain Disability Index.

and varying neuropathic syndromes [5,6,17] known to have differing prognoses [18-20]. As a result, some studies report no change in painful symptomatology [5,6,21], whereas others have observed substantial improvement in pain [3,4,17] after a variable follow-up period.

Acute painful neuropathy associated with poor glycaemic control or rapid improvement of glucose control with initiation of insulin treatment has a generally favourable outcome [22-24]. Therefore, when studying the epidemiology and natural history of CPDN, symptoms should be present longer than 6 months. Only two previous studies have done this [2,21]. Boulton *et al.* [21] reported no significant change in the severity of pain in 36 patients after a mean of 4.7 years of follow-up. No patients from that cohort experienced complete resolution of pain. This contrasts with the findings of the present and our previous study [2], where a symptomatic improvement in the majority of the 33 patients with CPDN, followed up prospectively for a mean of 3.6 years, was noted. Complete remission of pain was observed in a total of seven (21%) patients from that cohort [2].

The management of CPDN is a challenge and our findings that chronic painful symptoms can resolve may help patients cope better with their pain and increase compliance with the pharmacological therapy prescribed for pain relief. In our present study some associations with the likelihood of becoming pain free over time were identified, e.g. older age and lower intensity of initial pain.

One of the strengths of the present study is that the patients studied were part of a community-based cohort of patients with CPDN. This is in contrast to patients included in the two previously published studies on the natural history of CPDN, who were identified from hospital out-patient diabetes clinics, not representative of the overall diabetes population [2,21]. One limitation, however, of the present study is the high drop-out rate (46%).

Compared with the treatments that had been offered to the patients when first assessed 5 years earlier, there was now a trend towards prescribing drugs whose efficacy in the relief of chronic neuropathic pain is supported by clinical trial evidence. Disappointingly, many patients remained without treatment for their symptoms, despite reporting these to their treating physician. A substantial proportion of the patients of this cohort were cared for solely in primary care. This emphasizes the need to raise awareness among healthcare professionals of the increased frequency with which CPDN is encountered in everyday clinical practice and of the negative impact on well-being if left untreated.

In conclusion, this 5-year follow-up study of community patients with chronic painful diabetic neuropathy has demonstrated that complete remission of neuropathic symptoms occurs over time, although most patients will continue to experience pain which does not appear to progress relentlessly. Further follow-up of these patients will enable us to ascertain whether relapses of painful symptomatology occur. Despite recent



advances in the management of chronic neuropathic pain, a substantial proportion of sufferers remain inadequately treated.

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The natural history of painful diabetic neuropathy—a 4-year study

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Summary

Thirty-nine patients with painful diabetic peripheral neuropathy were selected for a follow-up study to determine the natural history of this condition. Symptoms, motor conduction velocities (MCV) and ankle pressure indices were recorded at the initial assessment and after a mean study period of 4.7 years. Thirty-six patients completed the study and showed no significant changes in symptoms, but there was a significant fall in median nerve MCV. It is concluded that symptoms of established diabetic neuropathy persist for several years, and the changes in MCV may reflect continuing deterioration in nerve function.

KEY WORDS: diabetic neuropathy, diabetic complications.

Introduction

Although peripheral neuropathy is probably the commonest long-term complication of diabetes (Ellenberg, 1982), little is known of its natural history and prognosis. The few reported studies have produced conflicting results (Fry, Hardwich and Scott, 1962; Mayne, 1968; Bischoff, 1981) and, have usually involved all groups of neuropathy, including mononeuropathy and autonomic neuropathy. These different conditions may have a variable prognosis (Ellenberg, 1982; Thomas, Ward and Watkins, 1982; Ewing, Campbell and Clarke, 1976). Since the commonest manifestation is painful peripheral neuropathy of the lower limbs, we have identified and followed 39 patients with these symptoms in order to determine the natural history of this condition.

Materials and methods

Thirty-nine patients (29 males) with sensorimotor diabetic neuropathy were selected for study between

1976 and 1978. There were 12 insulin-dependent diabetics and 27 non-insulin-dependent diabetics, mean age 55.5 years (range 40-72 years) and duration of diabetes 10.9 years (range 1-34 years). All subjects were outpatients, were assessed independently by two investigators before their selection, and satisfied the following strict criteria for diagnosis of neuropathy:—

- (1) Painful symptoms in both legs for at least 6 months before the study. All patients experienced two or more of the following symptoms: paraesthesiae, numbness, burning pains with nocturnal exacerbation, hyperaesthesiae.
- (2) Motor conduction velocity in peroneal nerve less than 40 m/sec.
- (3) No symptoms or signs of peripheral vascular disease: ankle pressure index greater than 1.0 (Hobbs and Irvin, 1969).

In addition, none had a history of alcohol abuse (McCulloch *et al.*, 1980) and all had a haemoglobin greater than 12 g/dl. Other diabetic complications were present in 14 patients: 10 had background retinopathy and 4 had proliferative changes.

All subjects were asked to score their painful symptoms on a 10 cm horizontal graphic rating scale (no pain = 0; maximum pain = 10) (Scott and Huskinson, 1976). This scale consists of a 10 cm horizontal straight line, each end representing the extreme of either maximum symptoms or no symptoms. Subjects were asked to mark the scale at a point corresponding with their symptoms. The point was then measured, giving a score of between 0 and 10; the higher the score the more severe the symptoms. The same pain scale was used for the follow-up appointment, so that any change in symptoms could be indicated by the patient. Motor conduction velocities (MCV) were measured in the right median and peroneal nerves as previously described (Ward *et al.*, 1971), and the ankle pressure index, the ratio of posterior tibial

systolic pressure to brachial systolic pressure was recorded using a Doppler ultrasound stethoscope (Yao *et al.*, 1969). The subjects were followed for a mean period of 4.7 years (range 2-5 years) during which they continued to attend the diabetic clinic. They received symptomatic treatment for their neuropathic symptoms, which generally consisted of simple analgesics, aspirin and dipyridamole or tricyclic antidepressants. A blood glucose level was recorded at most clinic visits (glucose oxidase technique) and the mean number of results available for each patient during the study was 22 (range 7-36).

There were no changes in diabetic management during the study, with the exception of 5 subjects who changed to insulin therapy because of poor diabetic control on maximum doses of sulphonylurea drugs. Two patients died within a year of the initial assessment, one following a cerebral infarct and the other of a myocardial infarction. A third patient emigrated, and the follow-up study therefore included 36 patients. All the initial investigations were repeated at the follow-up appointment, and the subjects were asked to score current neuropathic symptoms on their original 10 cm graphic rating scale. This enabled changes in the severity of symptoms during the study to be assessed.

Wilcoxon's signed rank test, the Chi squared test and the sign test were used for statistical analyses: all results are shown as mean \pm s.d.

Results

The results of the investigations are summarised in Table 1. No significant changes in symptom scores were found during the 4-year study and furthermore, no subject experienced complete resolution of symptoms, though some improvement was noted by 11 subjects (Fig. 1). There was no significant difference between the clinic blood glucose levels in the subjects who experienced improvement of symptoms during the study ($9.7 \text{ mmol/litre} \pm 2.6$), when compared with those experiencing no changes in symptoms ($9.8 \text{ mmol/litre} \pm 2.4$), or worsening of symptoms ($10.2 \text{ mmol/litre} \pm 2.3$). Moreover, there was no significant

difference in blood glucose levels after starting insulin therapy in the 5 subjects whose treatment was changed during the study. One of these subjects experienced improvement in symptoms, 2 noted worsening and the other 2 experienced no change in symptoms. There was a small, though non-significant fall in ankle pressure index during the study period (Table 1). Five patients developed symptoms and signs of peripheral vascular disease with ankle pressure index less than 1.0 on review, and one required an above knee amputation for peripheral gangrene, despite easily palpable pulses on entry into the study. Motor conduction studies showed a significant decrease in the median nerve, though there was no significant change in peroneal nerve MCV.

Discussion

No significant changes in symptoms and few significant changes in objective tests were found during the 4-year study. This conclusion is in broad agreement with that of Bischoff, who followed 30 patients with symmetrical sensory neuropathy for an average of 5.6 years (Bischoff, 1981). In an earlier study, Fry *et al.* (1962) reported 39 patients with symmetrical neuropathy, and concluded that only one-third of patients showed a satisfactory improvement. Conversely, Mayne (1968), in his series of 73 patients followed for an average of 3 years, concluded that symptoms of neuropathy tended to improve. However, in these 3 earlier studies subjects with peripheral neuropathy were grouped with other patients suffering from mononeuropathy and autonomic dysfunction. A follow-up of such a broad group may well produce conflicting results, as the mononeuropathies have been shown to carry a good prognosis (Ellenberg, 1982; Thomas *et al.*, 1982), whereas Ewing *et al.* (1976) have demonstrated that established autonomic neuropathy carries a significant mortality. Furthermore, these earlier studies used questionnaires and interviews to assess the severity of symptoms. We chose to use the most reliable, semiquantitative method available to assess changes in symptoms (Scott and Huskisson, 1976).

TABLE 1. Results of investigations in 36 neuropathic patients

	Initial assessment	Follow-up assessment	P
Pain score (cm)	5.3 \pm 2.0	5.6 \pm 2.5	NS
Ankle pressure index	1.27 \pm 0.25	1.20 \pm 0.34	NS
Median nerve MCV (m/sec)	45.8 \pm 6.6	42.7 \pm 6.1	<0.025
Peroneal nerve MCV (m/sec)	36.2 \pm 5.2	36.0 \pm 4.8	NS

MCV = motor conduction velocity; NS = not significant.

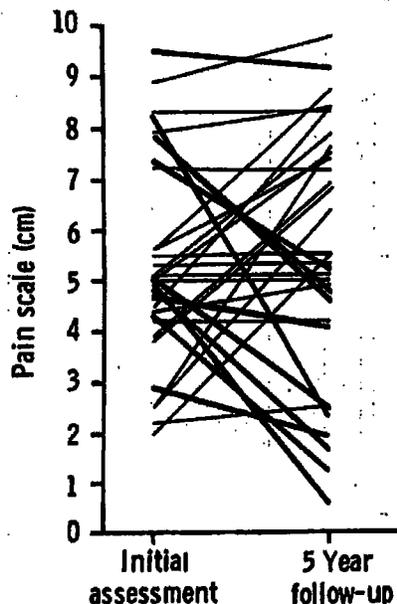


FIG. 1. Changes in symptom scores during the study. Subjects noting improvement in symptoms are represented by a thick line, those showing no change or deterioration of symptoms by a thin line.

A recent study of 8 patients with severe painful neuritis has suggested a very good prognosis (Archer *et al.*, 1982) but symptoms resolved within 10 months of onset and such patients would not have satisfied our strict criteria for established diabetic neuropathy. Moreover, each of these patients had severe and incapacitating pain associated with marked weight loss. Greene *et al.* (1981) have recently emphasised the importance of strict criteria in the selection of subjects with neuropathy for clinical studies. They also expressed major reservations concerning the relevance of nerve conduction studies to symptomatic changes in neuropathy. However, as many investigators still use changes in MCV as major determinants of success in clinical trials, we chose to assess symptoms together with measurement of MCV. It thus appears that, whereas symptoms of short duration may carry a good prognosis (Archer *et al.*, 1982) established neuropathic symptoms do not resolve spontaneously and may persist for many years. Although 11 of our subjects noted some improvement (Fig. 1), none experienced complete resolution of painful symptoms. Nerve conduction studies may reflect deterioration in nerve function during such time.

A study of the natural history of untreated diabetic neuropathy would be unethical: however, as neither the use of aspirin and dipyridamole, nor tricyclic antidepressants has been shown to influence neuro-

pathic symptoms significantly (Thomas *et al.*, 1980; Ward *et al.*, 1981), the present study probably reflects the natural history of this condition. Despite strict selection criteria, several patients developed symptoms and signs of peripheral vascular disease. The differentiation between neuropathic and vascular symptoms can be very difficult (Ward, 1982) and even an ankle pressure index of greater than unity does not necessarily exclude patients with early large vessel disease (Boulton *et al.*, 1981). Earlier studies have stressed the importance of diabetic control in the management of peripheral neuropathy (Goodman *et al.*, 1953; Fry *et al.*, 1962; Mayne, 1968), but methods of assessment of control in such studies are now known to be suspect (Molnar *et al.*, 1979). Thus, no conclusion as to the effect of diabetic control on the natural history of neuropathy can be made from the present study, as routine use of home blood glucose monitoring and glycosylated haemoglobin measurement was not available until 1980. An estimate of the degree of control can, however, be achieved by the analysis of multiple random blood sugar results, as has recently been demonstrated by Dornan, Mann and Turner (1982). From such results, it is apparent that, in the present study, there was no significant difference in control between groups that showed improvement, deterioration or no change in symptoms. Boulton *et al.* (1982a,b) have recently confirmed the importance of strict glycaemic control in the aetiology and management of neuropathy using more valid measurements of control. However, no group in the present study achieved near normalisation of blood glucose as reported by Boulton *et al.* (1982b). Thus, though we conclude that symptoms of diabetic neuropathy frequently persist for several years, recent studies suggest that glycaemic control may offer symptomatic relief to such patients. Further similar longitudinal studies with strict blood glucose control are now required.

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12 SURGERY OF NEVADA, LLC

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15	TITINA FARRIS and PATRICK FARRIS,)	CASE NO. A-16-739464-C
16		)	DEPT. NO. 31
17	Plaintiffs,)	
18	vs.	)	DEFENDANTS BARRY RIVES, M.D.'S
19	BARRY RIVES, M.D.; LAPAROSCOPIC	)	AND LAPAROSCOPIC SURGERY OF
20	SURGERY OF NEVADA, LLC, et al.,	)	NEVADA, LLC'S PRETRIAL
21	Defendants.	)	MEMORANDUM

22 Defendants BARRY J. RIVES and LAPAROSCOPIC CENTER OF NEVADA, LLC
23 ("Defendants"), by and through Defendants' counsel of record, Schuering Zimmerman &
24 Doyle, LLP, hereby files the following Pretrial Memorandum pursuant to EDCR 2.67. A
25 conference pursuant to EDCR 2.67 was held on September 11, 2019. The EDCR 2.67
26 conference was attended by Kimball Jones, Esq., and Jacob Leavitt, Esq., for plaintiffs

1 TITINA FARRIS and PATRICK FARRIS ("Plaintiffs") and Thomas J. Doyle, Esq., for
2 Defendants. The parties met and conferred and have been working on a joint pretrial
3 memorandum, however, as time became too short to finalize the joint pretrial
4 memorandum by the deadline, Defendants submit their separate pretrial memorandum.

5 **I.**

6 **BRIEF STATEMENT OF FACTS**

7 This medical malpractice action arises from the care Dr. Rives provided to Ms.
8 Farris in connection with a laparoscopic ventral hernia repair procedure. Plaintiffs alleged
9 Dr. Rives' care of Ms. Farris was below the standard of care. Plaintiffs also alleged
10 Laparoscopic Surgery of Nevada, LLC, is vicariously liable for Dr. Rives' alleged medical
11 malpractice. Defendants deny all allegations of medical malpractice and wrong-doing.

12 **II.**

13 **DEFENDANTS' CLAIM FOR RELIEF**

14 Plaintiffs' Complaint should be dismissed with prejudice and for any other relief the
15 Court deems just and proper.

16 **III.**

17 **AFFIRMATIVE DEFENSES**

18 **FIRST AFFIRMATIVE DEFENSE**

19 Plaintiffs fail to state causes of action upon which relief can be granted.

20 **SECOND AFFIRMATIVE DEFENSE**

21 Plaintiffs' causes of action are barred by the doctrines of laches, waiver and
22 estoppel.

23 **THIRD AFFIRMATIVE DEFENSE**

24 Plaintiffs failed to use ordinary care for the safety of their person and property, were
25 negligent and careless concerning the matters set forth in this action, and any damages
26 suffered by them proximately resulted therefrom.

FOURTH AFFIRMATIVE DEFENSE

At all times and places alleged in Plaintiffs' complaint, the negligence, misconduct and fault of Plaintiffs exceeded that of these Defendants and/or all Defendants, if any, and Plaintiffs are therefore barred from any recovery.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from asserting any causes of action against Defendants because the alleged damages were the result of the intervening and/or superseding conduct of others.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' causes of action against Defendants are barred by the applicable statutes of limitations in NRS. 41A or any other applicable statutes of limitations.

SEVENTH AFFIRMATIVE DEFENSE

In all of the treatment provided to Plaintiff TITINA FARRIS by Defendants, she was fully informed of the risks inherent in such medical treatment and the risks inherent in her own failure to comply with medical instructions, and did voluntarily assume all attendant risks.

EIGHTH AFFIRMATIVE DEFENSE

Defendants reserve the right to introduce evidence of any amounts paid or to be paid as a benefit for Plaintiffs pursuant to NRS 42.021, and claims the protection of NRS 41A.035.

NINTH AFFIRMATIVE DEFENSE

Defendants may elect to have future damages, if any, paid in whole or in part pursuant to NRS 42.021.

TENTH AFFIRMATIVE DEFENSE

Defendants are immune from liability pursuant to NRS 41.500, NRS 41.503 and NRS 41.505.

1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 Plaintiffs claim damages have been suffered, but Plaintiffs failed, neglected and
3 refused to exercise efforts to mitigate said damages.

4 **TWELFTH AFFIRMATIVE DEFENSE**

5 Defendants would be severally liable for only the portion of Plaintiffs' damages that
6 represent the percentage of negligence, if any, attributed to them.

7 **THIRTEENTH AFFIRMATIVE DEFENSE**

8 Defendants reserve the right to amend this answer to raise additional affirmative
9 defenses pursuant to NRCP 11.

10 **IV.**

11 **DEFENDANTS' DEFENSES TO BE ABANDONED**

12 Defendants abandon their first, second, third, fourth, sixth, tenth, and thirteenth
13 affirmative defenses.

14 **V.**

15 **DEFENDANTS' EXHIBITS**

16 A. Medical records from Laparoscopic Surgery of Nevada, excluding the note
17 regarding the telephone call dated November 17, 2015.

18 B. Medical records from St. Rose Dominican Hospital - San Martin Campus, for
19 the admission on July 3, 2015.

20 C. Medical records from St. Rose Dominican Hospital - San Martin Campus, for
21 the admission on August 7, 2014.

22 D. Medical records from Spring Valley Internal Medicine (Dr. Naomi Chaney).

23 E. Medical records from Advanced Orthopedics and Sports Medicine
24 (Dr. Randall Yee/Dr. Tomman Kuruvilla).

25 F. Imaging studies from St. Rose Dominican Hospital - San Martin Campus.

26 G. Plaintiffs' responses to written discovery.

- 1 H. Medical illustrations.
- 2 I. Charts and summaries of voluminous information.
- 3 J. Medical records from Advanced Orthopedics and Sports Medicine.

4 **DOCUMENTS DEFENDANTS MAY USE AT TRIAL**

- 5 1. Deposition transcript of Plaintiff Titina Farris, including exhibits.
- 6 2. Deposition transcript of Plaintiff Patrick Farris, including exhibits.
- 7 3. Deposition transcript of Dr. Barry Rives, including exhibits.
- 8 4. Deposition transcript of Dr. Naomi Chaney, including exhibits.
- 9 5. Deposition transcript of Dr. Justin Willer, including exhibits.
- 10 6. Deposition transcript of Dr. Alan Stein, including exhibits.
- 11 7. Deposition transcript of Dawn Cook, including exhibits.
- 12 8. Deposition transcript of Terrence Clauretie, including exhibits.
- 13 9. Deposition transcript of Dr. Alex Barchuk, including exhibits.
- 14 10. Deposition transcript of Dr. Michael Hurwitz, including exhibits.
- 15 11. Initial and rebuttal reports by expert Dr. Brian Juell.
- 16 12. Initial and rebuttal reports by expert Dr. Bart Carter.
- 17 13. Rebuttal report by expert Dr. Lance Stone.
- 18 14. Rebuttal report by expert Erik Volk.
- 19 15. Rebuttal reports by expert Dr. Bruce Adornato.
- 20 16. Rebuttal reports expert Dr. Kim Erlich.
- 21 17. Rebuttal report by expert Dr. Scott Kush.
- 22 18. Report(s) by plaintiffs' expert Dr. Barchuk.
- 23 19. Report(s) by plaintiffs' expert Ms. Cook.
- 24 20. Report(s) by plaintiffs' expert Dr. Willer.
- 25 21. Report(s) by plaintiffs' expert Dr. Stein.
- 26 22. Report(s) by plaintiffs' expert Mr. Clauretie.

1 23. Report(s) by plaintiffs' expert Dr. Hurwitz.

2 24. Any documents listed by any other party.

3 Defendants reserve the right to use any exhibits designated by Plaintiffs as may be
4 necessary including for rebuttal and/or impeachment, and to object to the foundation of
5 any and all medical and billing records. For impeachment purposes only, Defendants
6 reserve the right to introduce the deposition transcript of any witnesses who may testify
7 at trial.

8 Defendants reserve the right to withdraw any exhibits they have listed prior to its
9 introduction into evidence.

10 **DEFENDANTS' OBJECTIONS TO PLAINTIFFS' EXHIBITS**

11 Defendants object to the following documents listed by Plaintiffs:

12 2. Dr. Rives' Records- PLTF 008649-PLTF008697- Defendants object to a portion
13 of these records on the grounds it contains a telephone note that is hearsay evidence and
14 it lacks foundation. Additionally, defendants object to the telephone note under
15 NRS 48.035.

16 3. Dr. Chang's Records- PLTF008698-PLTF008706- Defendants object to these
17 documents on the grounds they are hearsay, not relevant and lack foundation.

18 4. Dr. Hamilton's Records- PLTF008707-PLTF008727- Defendants object to
19 these documents on the grounds they are hearsay, not relevant and lack foundation.

20 5. Photographs of Titiana Farris- PLTF008728-PLTF8742- Defendants object to
21 these documents on the grounds the documents are cumulative, lack foundation and
22 should be excluded under NRS 48.035.

23 6. Desert Valley Therapy Records and Billing- PLTF008743-PLTF8823-
24 Defendants object to these documents on the grounds the billing records lack foundation
25 on the issue of whether Ms. Farris' past medical expenses were reasonable or necessarily
26 incurred and should also be excluded under NRS 48.035. If the bills are admitted, the bills

1 should be limited to the amounts actually paid by Ms. Farris or her health insurer. Further
2 objections are made on the grounds the medical records are hearsay, are not relevant
3 and lack foundation.

4 7. Dr. Hamilton Records and Billing- PLTF008824-PLTF8907- Defendants object
5 to these documents on the grounds the billing records lack foundation on the issue of
6 whether Ms. Farris' past medical expenses were reasonable or necessarily incurred and
7 should also be excluded under NRS 48.035. If the bills are admitted, the bills should be
8 limited to the amounts actually paid by Ms. Farris or her health insurer. Further objections
9 are made on the grounds the medical records are hearsay, are not relevant and lack
10 foundation.

11 8. St. Rose Dominican- San Martin Campus Billing Records-
12 PLTF008908-PLTF9101- Defendants object to these documents on the grounds the billing
13 records lack foundation on the issue of whether Ms. Farris' past medical expenses were
14 reasonable or necessarily incurred and should also be excluded under NRS 48.035. If the
15 bills are admitted, the bills should be limited to the amounts actually paid by Ms. Farris
16 or her health insurer.

17 9. St. Rose Dominican- Siena Campus Records and Billing-
18 PLTF009102-PLTF9124- Defendants object to these documents on the grounds the billing
19 records lack foundation on the issue of whether Ms. Farris' past medical expenses were
20 reasonable or necessarily incurred and should also be excluded under NRS 48.035. If the
21 bills are admitted, the bills should be limited to the amounts actually paid by Ms. Farris
22 or her health insurer. Further objections are made on the grounds the medical records
23 are hearsay, are not relevant and lack foundation.

24 11. Video of Titina Farris taken by Lowell Pender on April 13, 2015- NOT BATES
25 STAMPED- Defendants object to these videos on the grounds the videos contain hearsay,
26 improper lay opinions, are cumulative and should be excluded under NRS 48.035.

1 12. Videos of Titina Farris, Patrick Farris, Addison Durham, Lowell Pender and
2 Sky Prince- NOT BATES STAMPED- Defendants object to these videos on the grounds the
3 videos contain hearsay, improper lay opinions, are cumulative and should be excluded
4 under NRS 48.035.

5 14. Dr. Steven Y. Chinn, M.D. Records and Billing- PLTF010150-PLTF010174-
6 Defendants object to these documents on the grounds the billing records lack foundation
7 on the issue of whether Ms. Farris' past medical expenses were reasonable or necessarily
8 incurred and should also be excluded under NRS 48.035. If the bills are admitted, the bills
9 should be limited to the amounts actually paid by Ms. Farris or her health insurer. Further
10 objections are made on the grounds the medical records are hearsay, are not relevant
11 and lack foundation.

12 15. CareMeridian Medical and Billing Records- PLTF010175-PLTF010174-
13 Defendants object to these documents on the grounds the billing records lack foundation
14 on the issue of whether Ms. Farris' past medical expenses were reasonable or necessarily
15 incurred and should also be excluded under NRS 48.035. If the bills are admitted, the bills
16 should be limited to the amounts actually paid by Ms. Farris or her health insurer. Further
17 objections are made on the grounds the medical records are hearsay, are not relevant
18 and lack foundation.

19 17. National Vital Statistics Reports United States Life Tables 2015-
20 PLTF11457-PLTF11520- Defendants object to these documents on the ground the
21 documents lack foundation.

22 18. Bolton, CF, Neuromuscular Manifestations of Critical Illness, Muscle & Nerve
23 32: 140-163, 2005- PLTF11562-PLTF11585- Defendants object to this document on the
24 grounds it lacks foundation and is hearsay.

25 ///

26 ///

1 19. Govindarajan, R, Jones, D, Galvez, N, AANEM Case Study: Critical Illness
2 Polyneuropathy, October 2014- PLTF11586-PLTF11594- Defendants object to this
3 document on the grounds it lacks foundation and is hearsay.

4 20. Lacomis, D, Electrophysiology of Neuromuscular Disorders in critical illness,
5 Muscle & Nerve 47:452-463, 2013- PLTF11595-PLTF11606- Defendants object to this
6 document on the grounds it lacks foundation and is hearsay.

7 21. Koch, S, et. al., Long-term recovery in critical illness myopathy is complete,
8 contrary to polyneuropathy, Muscle & Nerve 50:431-436- PLTF11607-PLTF11612-
9 Defendants object to this document on the grounds it lacks foundation and is hearsay.

10 22. Verena, N., N. Kornmann, Bert van Ramshorst, Anke B.Smits, Thomas L.
11 Bollen, Djamila Boerma, Beware of false-negative CT scan for anastomotic leakage after
12 colonic surgery, International Journal of Colorectal Disease (2014) 29:445-451-
13 PLTF11613-PLTF11619- Defendants object to this document on the grounds it lacks
14 foundation and is hearsay.

15 23. Deposition of Dr. Rives- PLTF11620-PLTF11630- Defendants object to this
16 document on the grounds it lacks foundation, is hearsay and it should be excluded
17 pursuant to NRS 48.035.

18 24. Deposition of Dr. Rives- PLTF11631-PLTF116677- Defendants object to this
19 document on the grounds it lacks foundation, is hearsay and it should be excluded
20 pursuant to NRS 48.035.

21 **DEFENDANTS' OBJECTIONS TO PLAINTIFFS' DOCUMENTS**
22 **THAT MAY BE OFFERED AT TRIAL**

23 Defendants object to the following documents Plaintiffs indicated they may offer
24 at trial, to the extent Defendants can identify the documents identified by Plaintiffs as
25 these listed documents are not described in a manner that fully allows Defendants to
26 evaluate and assert all possible objections:

1 1. Defendants' responses to written discovery- Defendants' object on the
2 ground these documents are hearsay and should be excluded under NRS 48.035.

3 3. Pleadings- Defendants' object on the ground these documents are hearsay
4 and should be excluded under NRS 48.035.

5 4. Impeachment Evidence- Defendants object to the use of any impeachment
6 evidence not properly disclosed under NRCP 16.1.

7 21. Report(s) by expert Dr. Barchuk- Defendants object to this document on the
8 grounds it is hearsay and it is inadmissible under NRS 48.035.

9 22. Report(s) by expert Dawn Cook- Defendants object to this document on the
10 grounds it is hearsay and it is inadmissible under NRS 48.035. Defendants further object
11 to the admission of any opinion in a report or a correspondence prepared by Ms. Cook in
12 a report or correspondence after her deposition.

13 23. Report(s) by expert Dr. Willer- Defendants object to this document on the
14 grounds it is hearsay and it is inadmissible under NRS 48.035.

15 24. Report(s) by expert Dr. Stein- Defendants object to this document on the
16 grounds it is hearsay and it is inadmissible under NRS 48.035.

17 25. Report(s) by expert Terrence Clauretie- Defendants object to this document
18 on the grounds it is hearsay and it is inadmissible under NRS 48.035. Defendants further
19 object to the admission of any opinion in a report or a correspondence prepared by Mr.
20 Clauretie in a report or correspondence after her deposition.

21 26. Report(s) by expert Dr. Hurwitz- Defendants object to this document on the
22 grounds it is hearsay and it is inadmissible under NRS 48.035.

23 Defendants also object to Plaintiffs' description of "[p]leadings, depositions and
24 other discovery are not listed as exhibits but plaintiff does intend to utilize some or all as
25 appropriate. Exhibits from any and all depositions. Impeachment exhibits as
26 appropriate" as such documents are not described in a specific manner that allows

1 Defendants to evaluate the propriety of the admission or use of such documents.
2 Defendants object to the extent those documents are not relevant, should not be admitted
3 under NRS 48.035, are hearsay, lack foundation, were not disclosed pursuant to NRC
4 16.1, or are impermissible character evidence.

5 Defendants reserve the right to object to any of the demonstrative exhibits listed
6 in Plaintiffs' pretrial disclosure upon Defendants opportunity to review the demonstratives
7 generically described in by Plaintiffs in their disclosures and pretrial memorandum.

8 VI.

9 **AGREEMENTS AS TO THE LIMITATIONS OR EXCLUSIONS OF EVIDENCE**

10 In connection with the parties' conference pursuant to ECDR 2.47, Plaintiffs agreed
11 they would exclude mention of the fact Defendants' counsel does not maintain an office
12 in the state of Nevada or reference their out of state law practice. Plaintiffs also agreed to
13 exclude evidence of Defendants' professional liability insurance.

14 VII.

15 **WITNESSES**

16 **Defendants' List of Witnesses Defendants Expect to Call**

- 17 1. Barry Rives, M.D.
18 c/o Thomas J. Doyle
19 Schuering Zimmerman & Doyle, LLP
400 University Avenue
Sacramento, CA 95825

20 This witness will testify about his care and treatment of Ms. Farris, and his opinions
21 regarding the standard of care and causation.

- 22 2. Person Most Knowledgeable
23 Laparoscopic Surgery of Nevada
24 c/o Schuering Zimmerman & Doyle, LLP
400 University Avenue
25 Sacramento, California 95825-6502
26

1 3. Bart Carter, M.D., P.C. (Defendants' Expert Witness)
2 2240 West 16th Street
 Safford, AZ 85546

3 This witness will testify as to the issues of the standard of care, causation and
4 damages, as outlined in his reports, his deposition and in defense thereof.

5 4. Brian E. Juell, M.D. (Defendants' Expert Witness)
6 6554 S. McCarran Blvd., Suite B
 Reno, Nevada 89509

7 This witness will testify as to the issues of the standard of care, causation and
8 damages, as outlined in his reports, his deposition and in defense thereof.

9 5. Lance Stone, D.O. (Defendants' Expert Witness)
10 484 Lake Park Avenue
 Oakland, CA 94610

11 This witness will testify as to the issues of causation and damages, as outlined in
12 his reports, his deposition and in defense thereof.

13 6. Sarah Larsen, RN (Defendants' Expert Witness)
14 Olzack Healthcare Consulting
15 2092 Peace Court
 Atwater, CA 95301

16 This witness will testify as to the issues of damages, as outlined in her reports, her
17 deposition and in defense thereof.

18 7. Bruce Adornato, M.D. (Defendants' Expert Witness)
19 177 Bovet Road, Suite 600
 San Mateo, CA 94402

20 This witness will testify as to the issues of causation and damages, as outlined in
21 his reports, his deposition and in defense thereof.

22 8. Kim Erlich, M.D. (Defendants' Expert Witness)
23 1501 Trousdale Drive, Room 0130
 Burlingame, CA 94010

24 This witness will testify as to the issues of the standard of care, causation and
25 damages, as outlined in his reports, his deposition and in defense thereof.

26 ///

1 9. Scott Kush, M.D. (Defendants' Expert Witness)
2 101 Jefferson Drive
 Menlo Park, CA 94025

3 This witness will testify as to the issue of damages, as outlined in his report, his
4 deposition and in defense thereof.

5 10. Erik Volk (Defendants' Expert Witness)
6 1155 Alpine Road
 Walnut Creek, CA 94596

7 This witness will testify as to the issue of damages, as outlined in his report, his
8 deposition and in defense thereof.

9 11. Naomi Chaney, M.D.
10 5380 South Rainbow Blvd.
 Las Vegas, NV 89118

11 This witness will testify regarding her care and treatment of Ms. Farris and the
12 causes of her various medical issues.

13 12. Gregg Ripplinger M.D.
14 10001 S Eastern Ave #201
 Henderson, NV 89052

15 This witness will testify regarding his consultation of Ms. Harris, including his
16 thoughts and opinions developed in connection with his care and treatment.

17 **Defendants' List of Witnesses Defendants May Present At Trial**

18 1. Titina Farris
19 c/o George F. Hand, Esq.
 HAND & SULLIVAN, LLC
20 3442 North Buffalo Drive
 Las Vegas, NV 89129

21 2. Patrick Farris
22 c/o George F. Hand, Esq.
 HAND & SULLIVAN, LLC
23 3442 North Buffalo Drive
 Las Vegas, NV 89129

24 ///

25 ///

26 ///

1 3. Thomas Gebhard, M.D.
2 2400 S Cimarron Rd Ste 100
3 Las Vegas, NV 89117

4 This witness will testify about his care and treatment of Ms. Farris and the opinions
5 and conclusions he formed in connection with his care and treatment of Ms. Farris.

6 4. Matthew Treinen D.O.
7 5495 S Rainbow Blvd Ste 203
8 Las Vegas , NV 89118

9 This witness will testify about his care and treatment of Ms. Farris and the opinions
10 and conclusions he formed in connection with his care and treatment of Ms. Farris.

11 5. Ravishankar Konchada M.D.
12 5495 S Rainbow Blvd, Suite 101
13 Las Vegas, NV, 89118

14 This witness will testify about his care and treatment of Ms. Farris and the opinions
15 and conclusions he formed in connection with his care and treatment of Ms. Farris.

16 6. Tanveer Akbar M.D.
17 520 Fremont Street
18 Las Vegas, NV 89101

19 This witness will testify about his care and treatment of Ms. Farris and the opinions
20 and conclusions he formed in connection with his care and treatment of Ms. Farris.

21 7. Kenneth Mooney M.D.
22 10001 S Eastern Avenue, Suite 203
23 Henderson, NV 89052

24 This witness will testify about his care and treatment of Ms. Farris and the opinions
25 and conclusions he formed in connection with his care and treatment of Ms. Farris.

26 8. Alka Rebentish M.D.
 6088 S Durango Drive 100
 Las Vegas, NV 89113

 This witness will testify about his care and treatment of Ms. Farris and the opinions
 and conclusions he formed in connection with his care and treatment of Ms. Farris.

 9. Arvin Gupta M.D.
 6970 W Patrick Lane, Suite 140
 Las Vegas, NV 89113

1 This witness will testify about his care and treatment of Ms. Farris and the opinions
2 and conclusions he formed in connection with his care and treatment of Ms. Farris.

3 10. Ali Nauroz M.D.
4 657 N Town Center Drive
5 Las Vegas, NV 89144

6 This witness will testify about his care and treatment of Ms. Farris and the opinions
7 and conclusions he formed in connection with his care and treatment of Ms. Farris.

8 11. Syed Zaidi M.D.
9 9280 W Sunset Road, Suite 320
10 Las Vegas, NV 89148

11 This witness will testify about his care and treatment of Ms. Farris and the opinions
12 and conclusions he formed in connection with his care and treatment of Ms. Farris.

13 12. Ashraf Osman M.D.
14 5380 S Rainbow Blvd, Suite 110
15 Las Vegas, NV 89118

16 This witness will testify about his care and treatment of Ms. Farris and the opinions
17 and conclusions he formed in connection with his care and treatment of Ms. Farris.

18 13. Charles McPherson M.D.
19 3121 Maryland Pkwy #502
20 Las Vegas, NV 89109

21 This witness will testify about his care and treatment of Ms. Farris and the opinions
22 and conclusions he formed in connection with his care and treatment of Ms. Farris.

23 14. Teena Tandon M.D.
24 6970 W Patrick Lane, Suite 140
25 Las Vegas, NV 89113

26 This witness will testify about his care and treatment of Ms. Farris and the opinions
and conclusions he formed in connection with his care and treatment of Ms. Farris.

15. Farooq Shaikh M.D.
3880 S Jones Blvd
Las Vegas, NV 89103

This witness will testify about his care and treatment of Ms. Farris and the opinions
and conclusions he formed in connection with his care and treatment of Ms. Farris.

1 16. Howard Broder M.D.
2 2865 Siena Heights Drive, Suite 331
3 Henderson, NV 89052

4 This witness will testify about his care and treatment of Ms. Farris and the opinions
5 and conclusions he formed in connection with his care and treatment of Ms. Farris.

6 17. Doreen Kibby PAC
7 2865 Siena Heights Drive, Suite 331
8 Henderson, NV 89052

9 This witness will testify about her care and treatment of Ms. Farris and the opinions
10 and conclusions he formed in connection with her care and treatment of Ms. Farris.

11 18. Herbert Cordero-Yordan M.D.
12 2300 Corporate Circle, # 100
13 Henderson, NV 89074

14 This witness will testify about his care and treatment of Ms. Farris and the opinions
15 and conclusions he formed in connection with his care and treatment of Ms. Farris.

16 19. Darren Wheeler, M.D.
17 4230 Burnham Avenue
18 Las Vegas, NV 89119

19 This witness will testify about his pathological findings.

20 20. Steven Y. Chinn, M.D.
21 6950 W. Desert Inn Rd., #110
22 Las Vegas, NV 89117

23 This witness will testify about his care and treatment of Ms. Farris and the opinions
24 and conclusions he formed in connection with his care and treatment of Ms. Farris.

25 **Defendants' Objections to Plaintiffs' Witnesses**

26 Defendants hereby object to Plaintiffs' witnesses as follows:

27 20. Vickie Center- Defendants object to the disclosure of this witness on the
28 grounds it is untimely under NRCP 16.1 after the close of discovery, she does not possess
29 relevant testimony and her testimony will unduly prejudice, waste time, confuse the
30 issues and mislead the jury under NRS 48.035.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 30th 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 PRETRIAL MEMORANDUM

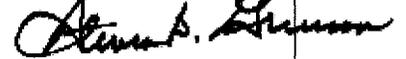
was served as indicated below:

- 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 <u>hsadmin@handsullivan.com</u>
Kimball Jones, Esq. Jacob G. Leavitt, Esq. BIGHORN LAW 716 S. Jones Boulevard Las Vegas, NV 89107	Plaintiffs	702/333-1111 <u>Kimball@BighornLaw.com</u> <u>Jacob@BighornLaw.com</u>

/s/ Jodie Chalmers
an employee of Schuering Zimmerman &
Doyle, LLP
1737-10881

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Steven D. Grierson
CLERK OF THE COURT



1 **PMEM**
2 KIMBALL JONES, ESQ.
3 Nevada Bar No.: 12982
4 JACOB G. LEAVITT, ESQ.
5 Nevada Bar No.: 12608
6 **BIGHORN LAW**
7 716 S. Jones Blvd.
8 Las Vegas, Nevada 89107
9 Phone: (702) 333-1111
10 Email: Kimball@BighornLaw.com
11 Jacob@BighornLaw.com

12 GEORGE F. HAND, ESQ.
13 Nevada Bar No.: 8483
14 **HAND & SULLIVAN, LLC**
15 3442 N. Buffalo Drive
16 Las Vegas, Nevada 89129
17 Phone: (702) 656-5814
18 Email: GHand@HandSullivan.com
19 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

15 TITINA FARRIS and PATRICK FARRIS,

16 Plaintiffs,

17 vs.

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

20 Defendants.

CASE NO.: A-16-739464-C
DEPT. NO.: XXXI

21 **Plaintiffs' Pre-Trial Memorandum Pursuant to EDCR 2.67**

22 COMES NOW Plaintiffs PATRICK FARRIS and TITINA FARRIS, by and through their
23 attorneys of record, KIMBALL JONES, ESQ. and JACOB G. LEAVITT, ESQ., with the Law Offices
24 of **BIGHORN LAW** and GEORGE F. HAND, ESQ., with the Law Offices of **HAND & SULLIVAN,**
25 **LLC**, and hereby submit their Pre-Trial Memorandum pursuant to E.D.C.R. 2.67:

27 **DATE OF CONFERENCE:** September 11, 2019

28 ///

1 III.

2 **AFFIRMATIVE DEFENSES**

3 Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada LLC have raised the
4 following affirmative defenses:

5 **FIRST AFFIRMATIVE DEFENSE**

6 Plaintiffs fail to state causes of action upon which relief can be granted.

7 **SECOND AFFIRMATIVE DEFENSE**

8 Plaintiffs' causes of action are barred by the doctrines of laches, waiver and estoppel.

9 **THIRD AFFIRMATIVE DEFENSE**

10 Plaintiffs failed to use ordinary care for the safety of their person and property, were negligent
11 and careless concerning the matters set forth in this action, and any damages suffered by them
12 proximately resulted therefrom.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 At all times and places alleged in Plaintiffs' complaint, the negligence, misconduct and fault
15 of Plaintiffs exceeded that of these Defendants and/or all Defendants, if any, and Plaintiffs are
16 therefore barred from any recovery.

17 **FIFTH AFFIRMATIVE DEFENSE**

18 Plaintiffs are barred from asserting any causes of action against Defendants because the alleged
19 damages were the result of the intervening and/or superseding conduct of others.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 Plaintiffs' causes of action against Defendants are barred by the applicable statutes of
22 limitations in NRS. 41A or any other applicable statutes of limitations.

23 ///

24 ///

SEVENTH AFFIRMATIVE DEFENSE

1
2 In all of the treatment provided to Plaintiff TITINA FARRIS by Defendants, she was fully
3 informed of the risks inherent in such medical treatment and the risks inherent in her own failure to
4 comply with medical instructions, and did voluntarily assume all attendant risks.
5

EIGHTH AFFIRMATIVE DEFENSE

6
7 Defendants reserve the right to introduce evidence of any amounts paid or to be paid as a
8 benefit for Plaintiffs pursuant to NRS 42.021, and claims the protection of NRS 41A.035.
9

NINTH AFFIRMATIVE DEFENSE

10 Defendants may elect to have future damages, if any, paid in whole or in part pursuant to NRS
11 42.021.
12

TENTH AFFIRMATIVE DEFENSE

13
14 Defendants are immune from liability pursuant to NRS 41.500, NRS 41.503 and NRS 41.505.
15

ELEVENTH AFFIRMATIVE DEFENSE

16 Plaintiffs claim damages have been suffered, but Plaintiffs failed, neglected and refused to
17 exercise efforts to mitigate said damages.
18

TWELFTH AFFIRMATIVE DEFENSE

19
20 Defendants would be severally liable for only the portion of Plaintiffs' damages that represent
21 the percentage of negligence, if any, attributed to them.
22

THIRTEENTH AFFIRMATIVE DEFENSE

23 Defendants reserve the right to amend this answer to raise additional affirmative defenses
24 pursuant to NRCP 11.
25

26 ///

27 ///

28 ///

IV.

LIST OF CLAIMS OR DEFENSES TO BE ABANDONED

Defendants abandon their first, second, third, fourth, sixth, tenth, and thirteenth affirmative defenses.

V.

A. PLAINTIFFS' LIST OF EXHIBITS

1	St. Rose Dominican Hospital Record	PLTF000001-PLTF008505
2	Dr. Rives Records	PLTF008649-PLTF008697
3	Dr. Chang Records	PLTF008698-PLTF008706
4	Dr. Hamilton Records	PLTF008707-PLTF008727
5	Photographs of Titina Farris	PLTF008728-PLTF008742
6	Desert Valley Therapy Records and Billing	PLTF008743-PLTF008823
7	Dr. Hamilton Records and Billing	PLTF008824-PLTF008907
8	St. Rose Dominican – San Martin Campus Billing Records for July, 2015 admission	PLTF008908-PLTF009101
9	St. Rose Dominican – Siena Campus Billing Records for July, 2016 admission	PLTF009102-PLTF009124
10	Diagnostic films taken at St. Rose Dominican Hospital	Not bates stamped
11	Video of Titina Farris taken by Lowell Pender on April 13, 2015	Not bates stamped
12	Videos of Titina Farris, Patrick Farris, Addison Durham, Lowell Pender and Sky Prince	Not bates stamped
13	Marriage Certificate	PLTF0010149
14	Dr. Steven Y. Chinn, M.D. Medical and Billing Records	PLTF0010150-PLTF0010174
15	CareMeridian Medical and Billing Records	PLTF0010175-PLTF10474
16	St. Rose Dominican Hospital-Siena Campus Medical Records	PLTF10475-PLTF11390
17	National Vital Statistics Reports United States Life Tables, 2015	PLTF11457-PLTF11520
18	Bolton, CF, Neuromuscular Manifestations of Critical Illness, Muscle & Nerve 32: 140-163, 2005	PLTF11562-PLTF11585
19	Govindarajan, R, Jones, D, Galvez, N, AANEM Case Study: Critical Illness Polyneuropathy, October 2014	PLTF11586-PLTF11594
20	Lacomis, D, Electrophysiology of Neuromuscular Disorders in critical illness, Muscle & Nerve 47:452-463, 2013	PLTF11595-PLTF11606

1	21	Koch, S, et. al., Long-term recovery in critical illness myopathy is complete, contrary to polyneuropathy, Muscle & Nerve 50:431-436	PLTF11607-PLTF11612
2	22	Verena, N., N. Kornmann, Bert van Ramshorst, Anke B.Smits, Thomas L. Bollen, Djamila Boerma, Beware of false-negative CT scan for anastomotic leakage after colonic surgery, International Journal of Colorectal Disease (2014) 29:445-451	PLTF11613-PLTF11619
3	23	Barry James Rives, M.D. Deposition Transcript Dtd. October 25, 2017 Re: Vickie Center v. Rives, M.D.	PLTF11620-PLTF11630
4	24	Barry James Rives, M.D. Deposition Transcript Dtd. April 17, 2018 Re: Vickie Center v. Rives, M.D.	PLTF11631-PLTF11667

10 **B. PLAINTIFFS' LIST OF EXHIBITS PLAINTIFFS' MAY OFFER AT TRIAL**

- 11 1. Defendants' responses to written discovery.
- 12 2. Plaintiffs' responses to written discovery.
- 13 3. Pleadings.
- 14 4. Impeachment evidence.
- 15 5. Report(s) by expert Dr. Brian Juell.
- 16 6. Report(s) by expert Dr. Bart Carter.
- 17 7. Report(s) by expert Dr. Lance Stone.
- 18 8. Report(s) by expert Erik Volk.
- 19 9. Report(s) by expert Dr. Bruce Adornato.
- 20 10. Report(s) by expert Dr. Kim Erlich.
- 21 11. Report(s) by expert Dr. Barchuk.
- 22 12. Report(s) by expert Dawn Cook.
- 23 13. Report(s) by expert Dr. Willer.
- 24 14. Report(s) by expert Dr. Stein.
- 25 15. Report(s) by expert Terence Clauretie.

1 16. Report(s) by expert Dr. Hurwitz.

2 Pleadings, depositions and other discovery are not listed as exhibits, but Plaintiffs do intend to
3 utilize some or all as appropriate.

4 Exhibits from any and all depositions.

5 Impeachment exhibits as appropriate.

6 All radiology films, x-rays, MRI, CT-scans, videos, and diagnostic testing/documentation taken
7 in connection with the care and treatment rendered to Plaintiff TITINA FARRIS as a result of the subject
8 case.
9

10 Plaintiffs may offer, at trial, certain Exhibits for demonstrative purposes including, but not
11 limited to, the following:

- 12 1. Video, story boards, and/or power point images, blow ups and/or transparencies of
13 exhibits.
- 14 2. Diagrams and/or models of the human body, specifically related to Plaintiff Titina
15 Farris' injuries.
- 16 3. Actual surgical tools and surgical equipment as used in Plaintiff Titina Farris' medical
17 treatment.
- 18 4. Photographs and videos of surgical procedures and other diagnostic tests.
- 19 5. Actual diagnostic studies.
- 20 6. Samples of instruments, and /or equipment used in surgical procedures.
- 21 7. Diagrams, drawings, pictures, photos, film, video, DVD and CD ROM of various parts
22 of the human body, diagnostic tests and surgical procedures.
- 23 8. Computer simulation, finite element analysis and similar forms of computer
24 visualization.
- 25 9. Power point production which will include images, drawings, diagrams, animations,
26
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1 and/or story boards, of the surgical equipment involved and the parties involved.

2 10. Surgical timeline.

3 11. Medical timeline.

4 12. Total billing summary.

5
6 Plaintiffs further reserve the right to amend and/or supplement this list of documents as
7 discovery continues and additional information becomes available.

8 Plaintiffs reserve the right to utilize any evidence as designated by any other party to this litigation,
9 and any other documents or witnesses produced via NRCP Rule 16.1, via discovery responses, or via an
10 Order of the Court by any party.

11 Plaintiffs further reserve the right to amend and/or supplement this list of documents as
12 discovery continues and additional information becomes available.

13
14 **C. PLAINTIFFS' OBJECTIONS TO DEFENDANTS' PROPOSED EXHIBITS**

15 Plaintiffs incorporate their objections to Defendants' Proposed Exhibits as set forth in Plaintiffs
16 Objections to Defendants' Pre-Trial Disclosure of Documents Pursuant to NRCP 16.1(a)(3) filed on
17 September 20, 2019; Objection to Deposition of Dr. Ripplinger on September 20, 2019, Objection to
18 Trial Subpoena of Naomi Chaney, M.D. on September 20, 2019, Objection to Defendants Fourth and
19 Fifth NRCP disclosures on September 26, 2019 and Objection to Defendants Rebuttal Expert
20 Disclosure.
21

22 Regarding all of Defendants' documents or exhibits, Plaintiffs object as to foundation,
23 relevance, hearsay, vagueness, materiality, undue prejudice, and objects to the use of any document
24 that was not previously disclosed or designated by Defendants in Defendants' NRCP 16.1 disclosures,
25 as discovery is now closed. Plaintiffs reserve the right to object as to authenticity of any and all
26 documents at the time of trial. Plaintiffs reserve the right to make further objections to Defendants'
27
28

1 proposed documents or exhibits at the time of trial. Plaintiffs reserve the right make all other
 2 permissible objections based on the Nevada Rules of Civil Procedure and Nevada Rules of Evidence.

3 **VI.**

4 **AGREEMENTS AS TO THE LIMITATIONS OR EXCLUSIONS OF EVIDENCE**

5 In connection with the parties' conference pursuant to ECDR 2.47, Plaintiffs agreed they would
 6 exclude mention of the fact Defendants' counsel does not maintain an office in the state of Nevada or
 7 reference their out of state law practice. Plaintiffs also agreed to exclude evidence of Defendants'
 8 professional liability insurance.
 9

10 Defendants agreed to exclude the testimony of Dr. Juell, M.D. or Dr. Carter, M.D., as they are
 11 both general surgeons and their testimony would be cumulative.
 12

13 **VII.**

14 **PLAINTIFFS' LIST OF WITNESSES**

15 **A. Plaintiffs' List of Witnesses**

- 16 1. Titina Farris, Plaintiff
 17 c/o Hand & Sullivan, LLC
 18 3442 N. Buffalo Drive
 19 Las Vegas, NV 89129
- 20 2. Patrick Farris, Plaintiff
 21 c/o Hand & Sullivan, LLC
 22 3442 N. Buffalo Drive
 23 Las Vegas, NV 89129
- 24 3. Barry Rives, M.D., Defendant
 25 c/o Schuering Zimmerman & Doyle, LLP
 26 400 University Avenue
 27 Sacramento, California 95825-6502
- 28 4. Person Most Knowledgeable
 Laparoscopic Surgery of Nevada
 c/o Schuering Zimmerman & Doyle, LLP
 400 University Avenue
 Sacramento, California 95825-6502

///

- 1 5. Person Most Knowledgeable
2 St. Rose Dominican – San Martin Campus
3 8280 West Warm Springs Road
 Las Vegas, Nevada 89113
- 4 6. Bess Chang, M.D.
5 8530 W. Sunset Road
 Las Vegas, NV 89113
- 6 7. Elizabeth Hamilton, M.D.
7 10001 Eastern Avenue
8 Ste. #200
 Henderson, NV 89052
- 9 8. Naomi Chaney, M.D.
10 5380 South Rainbow Blvd.
11 Las Vegas, NV 89118
- 12 9. Person Most Knowledgeable
13 Desert Valley Therapy
 6830 W. Oquendo, #101
 Las Vegas, NV 89119
- 14 10. Person Most Knowledgeable
15 Steinberg Diagnostic Medical Imaging Centers
16 9070 W. Post Road
 Las Vegas, NV 89148
- 17 11. Lowell Pender
18 (Son of Titina Farris)
19 3620 Mountain River Street
 Las Vegas, NV 89129
- 20 12. Addison Durham
21 (Brother of Titina Farris)
22 2740 Montessori
 Las Vegas, NV 89117
- 23 13. Sky Prince
24 (Daughter of Titina Farris)
25 6450 Crystal Dew Drive
 Las Vegas, NV 89118
- 26 14. Steven Y. Chinn, M.D.
27 6950 W. Desert Inn Rd., #110
28 Las Vegas, NV 89117

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- 1 15. Person Most Knowledgeable
2 CareMeridian
3 3391 N. Buffalo Drive
4 Las Vegas, NV 89129
- 4 16. Amy Nelson
5 3213 Whites Drive
6 Austin, TX 78735
- 6 17. Christine Garcia
7 231 James Adkins Drive
8 Kyle, TX 78640
- 9 18. Person Most Knowledgeable
10 St. Rose Dominican – Siena Campus
11 3001 St. Rose Parkway
12 Henderson, Nevada 89052
- 12 19. Person(s) Most Knowledgeable and/or Custodian of Records
13 MGM Resorts International /UMR Medical
14 c/o Russell Oliver & Stephens Attorneys
15 5178 Wheelis Drive
16 Memphis, TN 38117
- 15 20. Vickie Center (Witness)
16 c/o William R. Brenske, Esq.
17 Law Office Of William R. Brenske
18 630 South Third Street
19 Las Vegas, NV 89101
- 19 21. Mary Jayne Langan (Witness)
20 Registered Respiratory Therapist
21 10672 Bonchester Hill Street
22 Las Vegas, NV 89141
23 (949) 922-3248
- 22 **B. Plaintiffs' Expert Witnesses**
- 23 22. Michael Hurwitz, M.D.
24 510 Superior Avenue
25 Suite 200G
26 Newport Beach, CA 92663
27 (949) 791-6767
- 27 23. Justin Willer, M.D.
28 741 Ocean Parkway
Brooklyn, NY 11230
(718) 859-8920

XII.**PLAINTIFFS' DEMONSTRATIVE EXHIBITS**

Plaintiffs may offer, at trial, certain Exhibits for demonstrative purposes including, but not limited to, the following:

1. Video, story boards, and/or power point images, blow ups and/or transparencies of exhibits.
2. Diagrams and/or models of the human body, specifically related to Plaintiff Titina Farris' injuries.
3. Actual surgical tools and surgical equipment as used in Plaintiff Titina Farris' medical treatment.
4. Photographs and videos of surgical procedures and other diagnostic tests.
5. Actual diagnostic studies.
6. Samples of instruments, and /or equipment used in surgical procedures.
7. Diagrams, drawings, pictures, photos, film, video, DVD and CD ROM of various parts of the human body, diagnostic tests and surgical procedures.
8. Computer simulation, finite element analysis and similar forms of computer visualization.
9. Power point production which will include images, drawings, diagrams, animations, and/or story boards, of the surgical equipment involved and the parties involved.
10. Surgical timeline.
11. Medical timeline.

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12. Total billing summary.

DATED this 30th day of September, 2019.

BIGHORN LAW

By: /s/ Kimball Jones

KIMBALL JONES, ESQ.

Nevada Bar.: 12982

JACOB G. LEAVITT, ESQ.

Nevada Bar No.: 12608

716 S. Jones Blvd.

Las Vegas, Nevada 89107

GEORGE F. HAND, ESQ.

Nevada Bar No.: 8483

HAND & SULLIVAN, LLC

3442 N. Buffalo Drive

Las Vegas, Nevada 89129

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCPC 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of **BIGHORN LAW**, and on the 30th day of September, 2019, I served the foregoing **PLAINTIFFS'** **PRE-TRIAL MEMORANDUM PURSUANT TO EDCR 2.67** as follows:

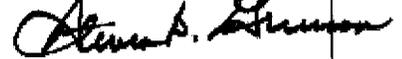
- Electronic Service – By serving a copy thereof through the Court’s electronic service system; and/or
- U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below:

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**

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1 **[SUPPL]**
2 THOMAS J. DOYLE
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4 CHAD C. COUCHOT
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11 Email: calendar@szs.com

12
13 KIM MANDELBAUM
14 Nevada Bar No. 318
15 MANDELBAUM CLARK NEWBERRY & ASSOCIATES
16 2012 Hamilton Lane
17 Las Vegas, Nevada 89106
18 (702) 367-1234
19 Email: filing@memlaw.net

20 Attorneys for Defendants BARRY RIVES, M.D.;
21 LAPAROSCOPIC SURGERY OF NEVADA, LLC

22 DISTRICT COURT

23 CLARK COUNTY, NEVADA

15	TITINA FARRIS and PATRICK FARRIS,	)	CASE NO. A-16-739464-C
16	Plaintiffs,	)	DEPT. NO. 31
17	vs.	)	DEFENDANTS BARRY RIVES, M.D.'S
18	BARRY RIVES, M.D.; LAPAROSCOPIC	)	AND LAPAROSCOPIC SURGERY OF
19	SURGERY OF NEVADA, LLC, et al.,	)	NEVADA, LLC'S FIRST SUPPLEMENTAL
20	Defendants.	)	NRCP 16.1(A)(3) PRETRIAL
		)	DISCLOSURE

21
22 Under authority of Rule 16.1(a)(1) of the Nevada Rules of Civil Procedure,
23 Defendants BARRY RIVES, M.D. AND LAPAROSCOPIC SURGERY OF NEVADA, LLC
24 ("Defendants") supplement their pretrial disclosures as follows:

25 ///

26 ///

I.

WITNESSES/PARTIES DEFENDANT EXPECTS TO PRESENT AT TRIAL

1. Barry Rives, M.D.
c/o Thomas J. Doyle
Schuering Zimmerman & Doyle, LLP
400 University Avenue
Sacramento, CA 95825

This witness will testify about his care and treatment of Ms. Farris, and his opinions regarding the standard of care and causation.

2. Person Most Knowledgeable
Laparoscopic Surgery of Nevada
c/o Schuering Zimmerman & Doyle, LLP
400 University Avenue
Sacramento, California 95825-6502

3. Bart Carter, M.D., P.C. (Defendants' Expert Witness)
2240 West 16th Street
Safford, AZ 85546

This witness will testify as to the issues of the standard of care, causation and damages, as outlined in his reports, his deposition and in defense thereof.

4. Brian E. Juell, M.D. (Defendants' Expert Witness)
6554 S. McCarran Blvd., Suite B
Reno, Nevada 89509

This witness will testify as to the issues of the standard of care, causation and damages, as outlined in his reports, his deposition and in defense thereof.

5. Lance Stone, D.O. (Defendants' Expert Witness)
484 Lake Park Avenue
Oakland, CA 94610

This witness will testify as to the issues of causation and damages, as outlined in his reports, his deposition and in defense thereof.

///

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///

///

1 6. Sarah Larsen, RN (Defendants' Expert Witness)
2 Olzack Healthcare Consulting
3 2092 Peace Court
4 Atwater, CA 95301

5 This witness will testify as to the issues of damages, as outlined in her reports, her
6 deposition and in defense thereof.

7 7. Bruce Adornato, M.D. (Defendants' Expert Witness)
8 177 Bovet Road, Suite 600
9 San Mateo, CA 94402

10 This witness will testify as to the issues of causation and damages, as outlined in
11 his reports, his deposition and in defense thereof.

12 8. Kim Erlich, M.D. (Defendants' Expert Witness)
13 1501 Trousdale Drive, Room 0130
14 Burlingame, CA 94010

15 This witness will testify as to the issues of the standard of care, causation and
16 damages, as outlined in his reports, his deposition and in defense thereof.

17 9. Scott Kush, M.D. (Defendants' Expert Witness)
18 101 Jefferson Drive
19 Menlo Park, CA 94025

20 This witness will testify as to the issue of damages, as outlined in his report, his
21 deposition and in defense thereof.

22 10. Erik Volk (Defendants' Expert Witness)
23 1155 Alpine Road
24 Walnut Creek, CA 94596

25 This witness will testify as to the issue of damages, as outlined in his report, his
26 deposition and in defense thereof.

 11. Naomi Chaney, M.D.
 5380 South Rainbow Blvd.
 Las Vegas, NV 89118

 This witness will testify regarding her care and treatment of Ms. Farris and the
 causes of her various medical issues.

 ///

1 6. Tanveer Akbar M.D.
2 520 Fremont Street
 Las Vegas, NV 89101

3 This witness will testify about his care and treatment of Ms. Farris and the opinions
4 and conclusions he formed in connection with his care and treatment of Ms. Farris.

5 7. Kenneth Mooney M.D.
6 10001 S Eastern Avenue, Suite 203
 Henderson, NV 89052

7 This witness will testify about his care and treatment of Ms. Farris and the opinions
8 and conclusions he formed in connection with his care and treatment of Ms. Farris.

9 8. Alka Rebentish M.D.
10 6088 S Durango Drive 100
 Las Vegas, NV 89113

11 This witness will testify about his care and treatment of Ms. Farris and the opinions
12 and conclusions he formed in connection with his care and treatment of Ms. Farris.

13 9. Arvin Gupta M.D.
14 6970 W Patrick Lane, Suite 140
 Las Vegas, NV 89113

15 This witness will testify about his care and treatment of Ms. Farris and the opinions
16 and conclusions he formed in connection with his care and treatment of Ms. Farris.

17 10. Ali Nauroz M.D.
18 657 N Town Center Drive
 Las Vegas, NV 89144

19 This witness will testify about his care and treatment of Ms. Farris and the opinions
20 and conclusions he formed in connection with his care and treatment of Ms. Farris.

21 11. Syed Zaidi M.D.
22 9280 W Sunset Road, Suite 320
 Las Vegas, NV 89148

23 This witness will testify about his care and treatment of Ms. Farris and the opinions
24 and conclusions he formed in connection with his care and treatment of Ms. Farris.

25 ///

26 ///

1 12. Ashraf Osman M.D.
2 5380 S Rainbow Blvd, Suite 110
3 Las Vegas, NV 89118

4 This witness will testify about his care and treatment of Ms. Farris and the opinions
5 and conclusions he formed in connection with his care and treatment of Ms. Farris.

6 13. Charles McPherson M.D.
7 3121 Maryland Pkwy #502
8 Las Vegas, NV 89109

9 This witness will testify about his care and treatment of Ms. Farris and the opinions
10 and conclusions he formed in connection with his care and treatment of Ms. Farris.

11 14. Teena Tandon M.D.
12 6970 W Patrick Lane, Suite 140
13 Las Vegas, NV 89113

14 This witness will testify about his care and treatment of Ms. Farris and the opinions
15 and conclusions he formed in connection with his care and treatment of Ms. Farris.

16 15. Farooq Shaikh M.D.
17 3880 S Jones Blvd
18 Las Vegas, NV 89103

19 This witness will testify about his care and treatment of Ms. Farris and the opinions
20 and conclusions he formed in connection with his care and treatment of Ms. Farris.

21 16. Howard Broder M.D.
22 2865 Siena Heights Drive, Suite 331
23 Henderson, NV 89052

24 This witness will testify about his care and treatment of Ms. Farris and the opinions
25 and conclusions he formed in connection with his care and treatment of Ms. Farris.

26 17. Doreen Kibby PAC
 2865 Siena Heights Drive, Suite 331
 Henderson, NV 89052

 This witness will testify about her care and treatment of Ms. Farris and the opinions
 and conclusions he formed in connection with her care and treatment of Ms. Farris.

 ///

 ///

1 B. Medical records from St. Rose Dominican Hospital - San Martin Campus, for
2 the admission on July 3, 2015.

3 C. Medical records from St. Rose Dominican Hospital - San Martin Campus, for
4 the admission on August 7, 2014.

5 D. Medical records from Spring Valley Internal Medicine (Dr. Naomi Chaney).

6 E. Medical records from Advanced Orthopedics and Sports Medicine (Dr.
7 Randall Yee/Dr. Tomman Kuruvilla)

8 F. Imaging studies from St. Rose Dominican Hospital - San Martin Campus.

9 G. Plaintiffs' responses to written discovery

10 H. Medical illustrations.

11 I. Charts and summaries of voluminous information.

12 J. Medical records from Advanced Orthopedics and Sports Medicine.

13 VI.

14 DOCUMENTS DEFENDANT MAY USE AT TRIAL

15 1. Deposition transcript of Plaintiff Titina Farris, including exhibits.

16 2. Deposition transcript of Plaintiff Patrick Farris, including exhibits.

17 3. Deposition transcript of Dr. Barry Rives, including exhibits.

18 4. Deposition transcript of Dr. Naomi Chaney, including exhibits.

19 5. Deposition transcript of Dr. Justin Willer, including exhibits.

20 6. Deposition transcript of Dr. Alan Stein, including exhibits.

21 7. Deposition transcript of Dawn Cook, including exhibits.

22 8. Deposition transcript of Terrence Clauretje, including exhibits.

23 9. Deposition transcript of Dr. Alex Barchuk, including exhibits.

24 10. Deposition transcript of Dr. Michael Hurwitz, including exhibits.

25 11. Report(s) by expert Dr. Brian Juell.

26 12. Report(s) by expert Dr. Bart Carter.

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- 13. Report(s) by expert Dr. Lance Stone.
- 14. Report(s) by expert Erik Volk.
- 15. Report(s) by expert Dr. Bruce Adornato.
- 16. Report(s) by expert Dr. Kim Erlich.
- 17. Report(s) by plaintiffs' expert Dr. Barchuk.
- 18. Report(s) by plaintiffs' expert Ms. Cook.
- 19. Report(s) by plaintiffs' expert Dr. Willer.
- 20. Report(s) by plaintiffs' expert Dr. Stein.
- 21. Report(s) by plaintiffs' expert Mr. Clauretie.
- 22. Report(s) by plaintiffs' expert Dr. Hurwitz.
- 23. Dr. Scott Kush's rebuttal report.

Dated: September 30, 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 30th 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 FIRST SUPPLEMENTAL NRCP 16.1(A)(3) PRETRIAL DISCLOSURE

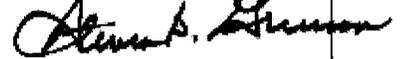
was served as indicated below:

- 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

/s/ Jodie Chalmers
An employee of Schuering Zimmerman &
Doyle, LLP
1737-10881

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Steven D. Grierson
CLERK OF THE COURT



1 **[OBJ]**
2 THOMAS J. DOYLE
3 Nevada Bar No. 1120
4 AIMEE CLARK NEWBERRY
5 Nevada Bar No. 11084
6 SCHUERING ZIMMERMAN & DOYLE, LLP
7 400 University Avenue
8 Sacramento, California 95825-6502
9 (916) 567-0400
10 Fax: 568-0400
11 Email: calendar@szs.com

12 KIM MANDELBAUM
13 Nevada Bar No. 318
14 MANDELBAUM CLARK NEWBERRY & ASSOCIATES
15 2012 Hamilton Lane
16 Las Vegas, Nevada 89106
17 (702) 367-1234
18 Email: filing@memlaw.net

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

DISTRICT COURT

CLARK COUNTY, NEVADA

15	TITINA FARRIS and PATRICK FARRIS,	)	CASE NO. A-16-739464-C
16		)	DEPT. NO. 31
17	Plaintiffs,)	
18	vs.	)	DEFENDANTS BARRY RIVES, M.D.'S
19	BARRY RIVES, M.D.; LAPAROSCOPIC	)	AND LAPAROSCOPIC SURGERY OF
20	SURGERY OF NEVADA, LLC, et al.,	)	NEVADA, LLC'S SUPPLEMENTAL
21		)	OBJECTION TO PLAINTIFFS' INITIAL
22	Defendants.	)	PRE-TRIAL DISCLOSURES

22 Defendants BARRY J. RIVES, M.D., and LAPAROSCOPIC SURGERY OF NEVADA, LLC
23 ("Defendants") hereby supplements their objections to plaintiffs' pretrial disclosures made
24 on September 13, 2019 as follows:

25 ///

26 ///

1 I.

2 WITNESSES

3 A. Witnesses Plaintiffs Expect to Present at Trial:

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 B. Witnesses Plaintiffs' Plan to Subpoena:

13 10. Vickie Center- Defendants object to the disclosure of this witness on the
14 grounds it is untimely under NRCP 16.1 after the close of discovery, she does not possess
15 relevant testimony and her testimony will unduly prejudice, waste time, confuse the
16 issues and mislead the jury under NRS 48.035.

17 11. Mary Jayne Langan- Defendants object to the disclosure of this witness on
18 the grounds it is untimely under NRCP 16.1 after the close of discovery, she does not
19 possess relevant testimony and her testimony will unduly prejudice, waste time, confuse
20 the issues and mislead the jury under NRS 48.035.

21 II.

22 EXHIBITS

23 A. Plaintiffs' Exhibits:

24 Defendants object to the following documents listed in Plaintiffs' pretrial disclosure:

25 2. Dr. Rives' Records- PLTF 008649-PLTF008697- Defendants object to a portion
26 of these records on the grounds it contains a telephone note that is hearsay evidence and

1 it lacks foundation. Additionally, defendants object to the telephone note under
2 NRS 48.035.

3 3. Dr. Chang's Records- PLFT008698-PLTF008706- Defendants object to these
4 documents on the grounds they are hearsay, not relevant and lack foundation.

5 4. Dr. Hamilton's Records- PLTF008707-PLTF008727- Defendants object to
6 these documents on the grounds they are hearsay, not relevant and lack foundation.

7 5. Photographs of Titina Farris- PLTF008728-PLTF8742- Defendants object to
8 these documents on the grounds the documents are cumulative, lack foundation and
9 should be excluded under NRS 48.035.

10 6. Desert Valley Therapy Records and Billing- PLTF008743-PLTF8823-
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 7. Dr. Hamilton Records and Billing- PLTF008824-PLTF8907- Defendants object
17 to these documents on the grounds the documents lack foundation on the issue of
18 whether Ms. Farris' past medical expenses were reasonable or necessarily incurred and
19 should be excluded under NRS 48.035. If the bills are admitted, the bills should be limited
20 to the amounts actually paid by Ms. Farris or her health insurer. Further objections are
21 made on the grounds the records are hearsay and lack foundation.

22 8. St. Rose Dominican- San Martin Campus Records and Billing-
23 PLTF008908-PLTF9101- Defendants object to these documents on the grounds the
24 documents lack foundation on the issue of whether Ms. Farris' past medical expenses
25 were reasonable or necessarily incurred and should be excluded under NRS 48.035. If the
26 bills are admitted, the bills should be limited to the amounts actually paid by Ms. Farris

1 or her health insurer. Further objections are made on the grounds the records are
2 hearsay and lack foundation.

3 9. St. Rose Dominican- Siena Campus Records and Billing-
4 PLTF009102-PLTF9124- Defendants object to these documents on the grounds the
5 documents lack foundation on the issue of whether Ms. Farris' past medical expenses
6 were reasonable or necessarily incurred and should be excluded under NRS 48.035. If the
7 bills are admitted, the bills should be limited to the amounts actually paid by Ms. Farris
8 or her health insurer. Further objections are made on the grounds the records are
9 hearsay and lack foundation.

10 12. Videos of Titina Farris, Patrick Farris, Addison Durham, Lowell Pender and
11 Sky Prince- NOT BATES STAMPED- Defendants object to these videos on the grounds the
12 videos contain hearsay, improper lay opinions, are cumulative and should be excluded
13 under NRS 48.035.

14 14. Dr. Steven Y. Chinn, M.D. Records and Billing- PLTF010150-PLTF010174-
15 Defendants object to these documents on the grounds the documents lack foundation
16 on the issue of whether Ms. Farris' past medical expenses were reasonable or necessarily
17 incurred and should be excluded under NRS 48.035. If the bills are admitted, the bills
18 should be limited to the amounts actually paid by Ms. Farris or her health insurer. Further
19 objections are made on the grounds the records are hearsay and lack foundation.

20 15. CareMeridian Medical and Billing Records- PLTF010175-PLTF010174-
21 Defendants object to these documents on the grounds the documents lack foundation
22 on the issue of whether Ms. Farris' past medical expenses were reasonable or necessarily
23 incurred and should be excluded under NRS 48.035. If the bills are admitted, the bills
24 should be limited to the amounts actually paid by Ms. Farris or her health insurer. Further
25 objections are made on the grounds the records are hearsay and lack foundation.

26 ///

1 17. National Vital Statistics Reports United States Life Tables 2015-
2 PLTF11457-PLTF11520- Defendants object to these documents on the ground the
3 documents lack foundation.

4 18. Bolton, CF, Neuromuscular Manifestations of Critical Illness, Muscle & Nerve
5 32: 140-163, 2005- PLTF11562-PLTF11585- Defendants object to this document on the
6 grounds it lacks foundation and is hearsay.

7 19. Govindarajan, R, Jones, D, Galvez, N, AANEM Case Study: Critical Illness
8 Polyneuropathy, October 2014- PLTF11586-PLTF11594- Defendants object to this
9 document on the grounds it lacks foundation and is hearsay.

10 20. Lacomis, D, Electrophysiology of Neuromuscular Disorders in critical illness,
11 Muscle & Nerve 47:452-463, 2013- PLTF11595-PLTF11606- Defendants object to this
12 document on the grounds it lacks foundation and is hearsay.

13 21. Koch, S, et. al., Long-term recovery in critical illness myopathy is complete,
14 contrary to polyneuropathy, Muscle & Nerve 50:431-436- PLTF11607-PLTF11612-
15 Defendants object to this document on the grounds it lacks foundation and is hearsay.

16 22. Verena, N., N. Kornmann, Bert van Ramshorst, Anke B.Smits, Thomas L.
17 Bollen, Djamila Boerma, Beware of false-negative CT scan for anastomotic leakage after
18 colonic surgery, International Journal of Colorectal Disease (2014) 29:445-451- PLTF11613-
19 PLTF11619- Defendants object to this document on the grounds it lacks foundation and
20 is hearsay.

21 23. Deposition of Dr. Rives- PLTF11620-PLTF11630- Defendants object to this
22 document on the grounds it lacks foundation, is hearsay and it should be excluded
23 pursuant to NRS 48.035.

24 24. Deposition of Dr. Rives- PLTF11631-PLTF116677- Defendants object to this
25 document on the grounds it lacks foundation, is hearsay and it should be excluded
26 pursuant to NRS 48.035.

1 **B. Plaintiffs' Exhibits Which May be Offered at the Time of Trial:**

2 Defendants object to the following documents Plaintiffs indicated they may
3 offer at trial, to the extent Defendants can identify the documents identified by Plaintiffs
4 as these listed documents are not described in a manner that fully allows Defendants to
5 evaluate and assert all possible objections:

6 1. Defendants' responses to written discovery- Defendants' object on the
7 ground these documents are hearsay and should be excluded under NRS 48.035.

8 2. Plaintiffs' responses to written discovery- Defendants' object on the
9 ground these documents are hearsay and should be excluded under NRS 48.035.

10 3. Pleadings- Defendants' object on the ground these documents are
11 hearsay and should be excluded under NRS 48.035.

12 4. Impeachment Evidence- Defendants object to the use of any
13 impeachment evidence not properly disclosed under NRCP 16.1.

14 21. Report(s) by expert Dr. Barchuk- Defendants object to this document
15 on the grounds it is hearsay and it is inadmissible under NRS 48.035.

16 22. Report(s) by expert Dawn Cook- Defendants object to this document
17 on the grounds it is hearsay and it is inadmissible under NRS 48.035.

18 23. Report(s) by expert Dr. Willer- Defendants object to this document
19 on the grounds it is hearsay and it is inadmissible under NRS 48.035.

20 24. Report(s) by expert Dr. Stein- Defendants object to this document on
21 the grounds it is hearsay and it is inadmissible under NRS 48.035.

22 25. Report(s) by expert Terrence Clauretje- Defendants object to this
23 document on the grounds it is hearsay and it is inadmissible under NRS 48.035.

24 26. Report(s) by expert Dr. Hurwitz- Defendants object to this document
25 on the grounds it is hearsay and it is inadmissible under NRS 48.035.

26

1 Defendants also object to Plaintiffs' description of "[p]leadings, depositions and other
2 discovery are not listed as exhibits but plaintiff does intend to utilize some or all as
3 appropriate. Exhibits from any and all depositions. Impeachment exhibits as appropriate"
4 as such documents are not described in a specific manner that allows Defendants to
5 evaluate the propriety of the admission or use of such documents. Defendants object to the
6 extent those documents are not relevant, should not be admitted under NRS 48.035, are
7 hearsay, lack foundation, were not disclosed pursuant to NRCP 16.1, or are impermissible
8 character evidence.

9 **IV.**

10 **PLAINTIFFS' DEMONSTRATIVE EXHIBITS**

11 Defendants reserve the right to object to any of the demonstrative exhibits listed
12 in Plaintiffs' pretrial disclosure upon Defendants opportunity to review the demonstratives
13 generically described in Plaintiffs' pretrial disclosures.

14 Dated: September 30, 2019

15 **SCHUERING ZIMMERMAN & DOYLE, LLP**

16
17 By /s/ Aimee Clark Newberry
18 AIMEE CLARK NEWBERRY
19 Nevada Bar No. 11084
20 400 University Avenue
21 Sacramento, CA 95825-6502
22 (916) 567-0400
23 Attorneys for Defendants BARRY RIVES,
24 M.D. and LAPAROSCOPIC SURGERY OF
25 NEVADA, LLC
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 30th day of September , 2019, service of a true and correct copy of the foregoing:

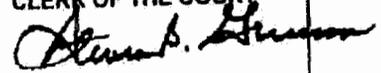
DEFENDANTS BARRY RIVES, M.D.'S AND LAPAROSCOPIC SURGERY OF NEVADA, LLC'S SUPPLEMENTAL OBJECTION TO PLAINTIFFS' INITIAL PRE-TRIAL DISCLOSURES was served as indicated below:

- 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 <u>hsadmin@handsullivan.com</u>
Kimball Jones, Esq. Jacob G. Leavitt, Esq. BIGHORN LAW 716 S. Jones Boulevard Las Vegas, NV 89107	Plaintiffs	702/333-1111 <u>Kimball@BighornLaw.com</u> <u>Jacob@BighornLaw.com</u>

/s/ Jodie Chalmers
an employee of Schuering Zimmerman &
Doyle, LLP
1737-10881

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Steven D. Grierson
CLERK OF THE COURT



1 **ORDR**

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 TITINA FARRIS and PATRICK FARRIS

Case No.: A-16-739464-C

7 **Plaintiffs,**

Dept. No.: XXXI

8 vs.

9
10 BARRY RIVES, M.D.; LAPAROSCOPIC
11 SURGERY OF NEVADA, LLC.

**ORDER DENYING DEFENDANTS'
ORDER SHORTENING TIME
REQUEST ON DEFENDANTS BARRY
RIVES, MD'S AND LAPROSCOPIC
SURGERY OF NEVADA, LLC'S
MOTION TO EXEND THE CLOSE OF
DISCOVERY (9TH REQUEST) AND
ORDER SETTING HEARING AT 8:30
AM TO ADDRESS COUNSEL'S
CONTINUED SUBMISSION OF
IMPERMISSABLE
PLEADINGS/PROPOSED ORDERS
EVEN AFTER RECEIVING
NOTIFICATION AND THE COURT
SETTING A PRIOR HEARING RE
SUBMITTING MULTIPLE
IMPERMISSABLE DOCUMENTS
THAT ARE NOT COMPLIANT WITH
THE RULES/ORDER(S)**

12 **Defendants.**

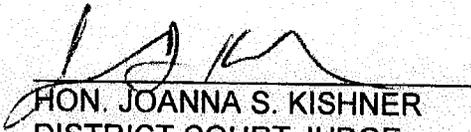
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24 The Court is in receipt of the attached Defendants' purported Motion on
25 Order Shortening Time to Extend the Close of Discovery (9th Request) which on
26 the face of the pleading had impermissibly been sought to be heard before the
27 Discovery Commissioner although Discovery had been over since July 2019, but

28
JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

1 was provided to the instant Court. The Court cannot sign its name to the Order
 2 Shortening Time due to its per se noncompliance with the rules including that the
 3 declaration(s) include purported "facts/statements" that are contrary to the record
 4 at Court hearing(s)¹. In addition, since Defendants have continued to engage in
 5 repeated conduct noncompliant with the rules and appear to have a disregard
 6 for complying with rules/orders/statutes from various sources despite receiving
 7 notice of their noncompliance and being provided with copies of such (See e.g.
 8 the Court's rejection memo of September 18, 2019, the Court's Order of
 9 September 19, 2019 as it relates to Defendants, and discussions of defense
 10 conduct at hearings in July and September 2019²,) the Court will also address
 11 their continued non-compliance and determine what sanctions, if any, would be
 12 appropriate including, *inter alia*, those pursuant to NRCP 11, NRCP 37, EDCR
 13 7.60, RPC 3.3(a) as well as the Court's inherent power³ at the 8:30 a. m. hearing
 14 on October 7, 2019.

17 IT IS SO ORDERED

18 Dated this 2ND day of October, 2019.

19
 20
 21 
 22 HON. JOANNA S. KISHNER
 23 DISTRICT COURT JUDGE

24
 25 ¹ The Court takes no position on the underlying request regarding the deposition of Dr. Hurwitz.

26 ² The Court also provided explanations as to why the August and September Stipulations to
 Extend should not have been submitted to the Court and could not be signed pursuant to *inter*
alia NRCP 16 and EDCR 2.35 as well as the fact there were NRCP 41 concerns.

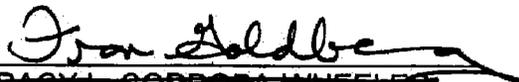
27 ³ See also, *Valley Health Sys., LLC v Estate of Doe* 134 Nev. Adv. Op. No. 76 , 427 P. 3d 1021
 (2018). The Court is setting this hearing independently of Plaintiff's Motion for Sanctions due to
 28 the pleadings submitted to the Court and conduct of counsel to the Court.

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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

ALL COUNSEL SERVED VIA E-SERVICE


~~TRACY I. CORDOBA-WHEELER~~
temp Judicial Executive Assistant

[Faint, illegible handwritten text]

1 **[MCOM]**
 2 THOMAS J. DOYLE
 3 Nevada Bar No. 1120
 4 SCHUERING ZIMMERMAN & DOYLE, LLP
 5 400 University Avenue
 6 Sacramento, California 95825-6502
 7 (916) 567-0400
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6 KIM MANDELBAUM
 7 Nevada Bar No. 318
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 9 2012 Hamilton Lane
 10 Las Vegas, Nevada 89106
 11 (702) 367-1234
 12 Email: filing@memlaw.net

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

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

<p>14 TITINA FARRIS and PATRICK FARRIS, 15 Plaintiffs, 16 vs. 17 BARRY RIVES, M.D.; LAPAROSCOPIC 18 SURGERY OF NEVADA, LLC, et al., 19 Defendants.</p>	<p>) CASE NO. A-16-739464-C) DEPT. NO. 31)) DEFENDANTS BARRY RIVES, M.D.'S) AND LAPAROSCOPIC SURGERY OF) NEVADA, LLC'S MOTION TO EXTEND) THE CLOSE OF DISCOVERY (9TH) REQUEST) ON AN ORDER) SHORTENING TIME</p>
---	---

20 **HEARING REQUESTED**

21 *To Be Heard Before the
 22 Discovery Commissioner*

23 Defendants BARRY J. RIVES, M.D. and LAPAROSCOPIC SURGERY OF NEVADA, LLC
 24 ("Defendants") hereby move this Court to extend the close of discovery deadline to
 25 September 18, 2019. The deposition of plaintiff's general surgery expert witness
 26 Dr. Michael Hurwitz occurred on September 18, 2019, after the close of discovery.



1 Accordingly, Defendants move for an Order extending the discovery deadline to
2 September 18, 2019, to encompass the deposition of Dr. Hurwitz within the sanctioned
3 bounds of discovery. Defendants are entitled to an Order extending the discovery
4 deadline to September 18, 2019 because the failure to take the deposition within the
5 allowable discovery period was based on the excusable neglect of Defendants and good
6 cause supports the extension. If Defendants are not granted an extension of the discovery
7 deadline, they will be unable to use Dr. Hurwitz' deposition at the time of the October 14,
8 2019 trial date, as it occurred outside the discovery deadline. Additionally, Defendants
9 request this Motion be heard on an Order shortening time in light of the October 14, 2019,
10 trial date. Defendants' Motion cannot be heard as a regularly noticed motion prior to the
11 start of trial on October 14, 2019. Accordingly, if this Motion is not heard on an Order
12 shortening time, Defendants will not have the ability to take and use the deposition of
13 both Dr. Hurwitz at trial.

14 Defendants' Motion is made and based on the Declaration of Aimee Clark
15 Newberry, Esq. and the documents attached thereto, the Declaration of Thomas J. Doyle,
16 the Points and Authorities that follow thereafter, and any oral or documentary evidence
17 that the Court may hear at the time this motion is heard.

18 Dated: September 20, 2019

19 **SCHUERING ZIMMERMAN & DOYLE, LLP**

20
21 By 

22 AIMEE CLARK NEWBERRY
23 Nevada Bar No. 11084
24 400 University Avenue
25 Sacramento, CA 95825-6502
26 (916) 567-0400
Attorneys for Defendants BARRY RIVES,
M.D. and LAPAROSCOPIC SURGERY OF
NEVADA, LLC

ORDER SHORTENING TIME

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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 DEFENDANTS' MOTION TO EXTEND THE
DISCOVERY DEADLINE (9TH REQUEST) shall be heard on the ____ day of _____,
2019, at the time of ____.

DID NOT SIGN

DISCOVERY COMMISSIONER

SEE COURT ORDER

Respectfully submitted this 20th day of September, 2019, by: *OCTOBER*

SCHUERING ZIMMERMAN & DOYLE, LLP

2, 2019

By: _____

[Signature]
AIMEE CLARK NEWBERRY, ESQ.
Nevada Bar No. 11084
400 University Avenue
Sacramento, California 95825
(916) 567-0400
Attorneys for Defendants
BARRY RIVES, M.D.; and
LAPAROSCOPIC SURGERY OF NEVADA, LLC

1 **DECLARATION OF AIMEE CLARK NEWBERRY, ESQ. IN SUPPORT OF**
2 **DEFENDANTS' MOTION ON ORDER SHORTENING TIME**

3 I, AIMEE CLARK NEWBERRY, declare:

4 1. I am an attorney at law licensed to practice in the State of Nevada, and I am
5 affiliated with the law firm of Schuering Zimmerman & Doyle, LLP, attorneys of record for
6 Defendants.

7 2. I am making this declaration in support of Defendants' Motion to Extend the
8 Close of Discovery Deadline on an Order Shortening Time (9th Request.) I am making this
9 declaration based upon my personal knowledge and if called to testify, I could and would
10 do so competently.

11 3. Defendants' Motion must be heard on an Order Shortening Time because
12 discovery is closed in this matter and trial commences on October 14, 2019. Defendants'
13 Motion cannot be heard as a regularly noticed motion prior to the October 14, 2019 trial
14 date. If this Motion is not heard on shortened time, before the October 14, 2019 trial date,
15 Defendants will not have the opportunity to use the deposition of Dr. Hurwitz at the time
16 of the October 14, 2019 trial, which would cause substantial prejudice to Defendants'
17 ability to put forth a defense.

18 4. Defendants initially noticed the deposition of Dr. Hurwitz for February 20,
19 2019. Attached hereto as **Exhibit 1** is a true and correct copy of the deposition notice for
20 the deposition of Dr. Hurwitz for February 20, 2019.

21 5. Defendants then, at the agreement of Plaintiffs, re-noticed the deposition of
22 Dr. Hurwitz for August 2, 2019. Attached hereto as **Exhibit 2** is a true and correct copy of
23 the deposition notice for the deposition of Dr. Hurwitz for August 2, 2019.

24 6. On July 16, 2019, the parties appeared before the Honorable Joanna Kishner
25 to request a continuance of trial at the scheduled status check conference. The parties
26 both agreed to continue trial. The parties went back and forth in an attempt to formalize

1 the continuance with the Court. An extension of the discovery deadlines was discussed
2 amongst the parties. The parties agreed the deposition of Dr. Hurwitz could be
3 accomplished within an extended discovery period to be established once the Court
4 officially continued trial.

5 7. On September 5, 2019, the Court advised that it would not grant the
6 continuance.

7 8. After the Court advised that the trial continuance would not be granted,
8 Defendants re-noticed the deposition of Dr. Hurwitz for September 18, 2019. Plaintiffs did
9 not object to the deposition of Dr. Hurwitz. The deposition of Dr. Hurwitz occurred on
10 September 18, 2019, and Plaintiffs attended the deposition.

11 9. Our failure to take the deposition of Dr. Hurwitz was based upon our
12 excusable neglect in the form of our reasonable expectation that trial would be continued
13 and a corresponding discovery extension obtained thereafter to relate to the new trial
14 date. The parties agreed to the trial continuance, the future discovery extension and the
15 deposition of Dr. Hurwitz occurring once trial was continued and discovery extended. We
16 relied on our stipulations with Plaintiffs and our reasonable expectation trial would be
17 continued. This excusable neglect supports an extension of the discovery cut off date after
18 its closure.

19 10. Trial is currently scheduled to commence on October 14, 2019.

20 11. On September 12, 2019, in connection with the pretrial conference, I
21 participated in a conversation with Plaintiffs' counsel, including Kimball Jones and George
22 Hand pursuant to EDCR 2.34 regarding our need to extend the discovery deadline as it
23 related to Dr. Hurwitz and another deposition that we have now resolved. At the end of
24 our discussion we advised that we would file a motion.

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12. This request for an extension of the close of discover is made in good faith and not for the purpose of delay. It will not impact the October 14, 2019 trial date.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct, and if called to testify, I could competently do so.

Executed this 20th day of September, at Las Vegas, Nevada



AIMEE CLARK NEWBERRY

DECLARATION OF THOMAS J. DOYLE, ESQ.

I, THOMAS J. DOYLE, declare as follows:

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

2. I am making this declaration of support of Defendants' Motion to Extend the Close of Discovery Deadline on an Order Shortening Time (9th Request.)

3. I am making this declaration based upon my personal knowledge and if called to testify, I could and would do so competently.

4. Plaintiffs requested a trial continuance because of scheduling conflicts. The week of July 15, 2019, I traveled to New York with counsel for Plaintiffs, George F. Hand, to complete the depositions of two expert witnesses in this case. At that time, we agreed to a continuance of the October 14, 2019, trial date, and we reasonably anticipated that a trial continuance would be granted. While we were traveling in connection with the July 2019 New York depositions, Mr. Hand and I had a conversation regarding the deposition of Dr. Hurwitz. We agreed that the deposition would occur at some future date, once trial was continued and discovery extended. Mr. Hand did not have an objection to our taking of the deposition. Our failure to take the deposition of Dr. Hurwitz as originally set in July and August 2019, was due to our reasonable reliance on our agreement with Plaintiffs' counsel regarding the deposition of Dr. Hurwitz and our reasonable expectation that the trial of this case would be continued. This constitutes our excusable neglect.

5. On September 5, 2019, at a status check conference, Judge Kishner denied the request for a trial continuance and affirmed the October 14, 2019, trial date.

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6. Pursuant to EDCR 2.34, after learning the October 14, 2019, trial date would not be continued, I have met and conferred with Plaintiffs' counsel regarding the need for the deposition of Dr. Hurwitz, now outside of the discovery deadline.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct, and if called to testify, I could competently do so.

Executed this 20th day of September, at Sacramento, California.

/s/ Thomas J. Doyle
THOMAS J. DOYLE, ESQ.

II.**DISCOVERY COMPLETED TO DATE AND
REASON OUTSTANDING DISCOVERY NOT COMPLETED**

All other depositions and discovery in this case have been completed to date, including the September 18, 2019 deposition of Dr. Hurwitz.

Dr. Hurwitz' deposition was not completed within the deadline for discovery because the parties reasonably anticipated their stipulated trial continuance made in July 2019 would be granted and the parties would be able to accomplish the then-agreed upon deposition of Dr. Hurwitz within the time frame of an extended discovery period associated with the new trial date. After learning on September 5, 2019, that the trial continuance was denied, Defendants immediately re-noticed the deposition of Dr. Hurwitz. The deposition of Dr. Hurwitz therefore did not occur during the discovery period based upon the excusable neglect of counsel in reasonably anticipating that the October 14, 2019, trial date would be moved pursuant to the agreement of the parties and that they would have the opportunity to take the deposition of Dr. Hurwitz during the extended discovery period the parties agreed to in connection with the continued trial date.

Good cause supports the extension of the discovery cut off date to September 18, 2019. The deposition of Dr. Hurwitz, Plaintiff's general surgery expert, occurred on September 18, 2019. If the discovery deadline is not extended to September 18, 2019, Dr. Hurwitz' deposition cannot be used at the time of trial, which would substantially prejudice Defendants' ability to cross-examine Dr. Hurwitz and put on their defense.

III.**CURRENT DISCOVERY SCHEDULE**

- | | | |
|----|-----------------------------|--------|
| 1. | Last Day to Amend Pleadings | Closed |
| 2. | Disclosure of Experts | Closed |

- 1 3. Disclosure of Rebuttal Experts Closed
- 2 4. Discovery Cut-Off Closed
- 3 5. Dispositive Motions Deadline Closed

IV.

PROPOSED NEW DISCOVERY SCHEDULE

- 6 1. Last Day to Amend Pleadings Closed
- 7 2. Disclosure of Experts Closed
- 8 3. Disclosure of Rebuttal Experts Closed
- 9 4. Discovery Cut-Off September 18, 2019
- 10 5. Dispositive Motions Deadline Closed

V.

CURRENT TRIAL DATE

The current trial date is set for October 14, 2019. The proposed amendment to the discovery deadlines will not impact the trial date.

VI.

CONCLUSION

For the reasons stated in more detail above, Defendants respectfully request an Order extending the close of discovery deadline to September 18, 2019.

Dated: September 20, 2019

SCHUERING ZIMMERMAN & DOYLE, LLP

By 

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

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 20th 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 MOTION TO EXTEND THE CLOSE OF DISCOVERY (9TH REQUEST) ON AN 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 1

1 THOMAS J. DOYLE
Nevada Bar No. 1120
2 CHAD C. COUCHOT
Nevada Bar No. 12946
3 SCHUERING ZIMMERMAN & DOYLE, LLP
400 University Avenue
4 Sacramento, California 95825-6502
(916) 567-0400
5 Fax: 568-0400
Email: calendar@szs.com

6 KIM MANDELBAUM
7 Nevada Bar No. 318
MANDELBAUM ELLERTON & ASSOCIATES
8 2012 Hamilton Lane
Las Vegas, Nevada 89106
9 (702) 367-1234
Email: filing@memlaw.net

10 Attorneys for Defendants BARRY RIVES, M.D.;
11 LAPAROSCOPIC SURGERY OF NEVADA, LLC

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 TITINA FARRIS and PATRICK FARRIS,
15 Plaintiffs,

16 vs.

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

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

) NOTICE OF TAKING DEPOSITION OF
) DR. MICHAEL HURWITZ

20
21 TO: ALL PARTIES ABOVE NAMED AND THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that on Wednesday, February 20, 2019, at 10:00 a.m.,
23 attorneys for Defendants will take the deposition of Dr. Michael Hurwitz.

24 Said deposition will be taken at 510 Superior Avenue, Suite 200G, Newport Beach,
25 California, upon oral examination pursuant to N.R.C.P., Rule 30, before a Notary Public,
26 or before some other officer authorized to administer oaths, and said depositions will

1 continue from day to day until completed.

2 The deponent has been disclosed as an expert in this matter and is required to
3 produce at the deposition the following documentation. Electronic data shall be
4 produced in paper form or in TIFF format on CDs.:

- 5 1. His current curriculum vitae.
- 6 2. Text chapters or journal articles referenced in his curriculum vitae that are
7 relevant to any of the issues in this action.
- 8 3. His complete written file concerning this action.
- 9 4. His complete e-mail or electronic file or records concerning this action,
10 including but not limited to, e-mails to or from plaintiff's counsel.
- 11 5. His billing records.
- 12 6. All scientific, technical or professional texts, treatises, journals or similar
13 publications referred to, considered or relied upon in arriving at or forming any of his
14 opinions.
- 15 7. All scientific, technical or professional texts, treatises, journals or similar
16 publications that he believes are a learned treatise and he plans to refer to or comment
17 on at trial.
- 18 8. All written or electronic general information files maintained by him that are
19 relevant to any of the issues in this action.
- 20 9. His records concerning all other medical malpractice actions in which he
21 has been retained as a expert witness and given a deposition.
- 22 10. His list of cases prepared pursuant to Federal Rule of Civil Procedure 26 or
23 a state statute or for any other reason.
- 24 11. His retainer, fee or other agreements with any expert witness service
25 through which he was retained in this case, together with all documents,
26 correspondence, e-mail, memoranda or other writings received by him from the service

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or sent by him to the service, including all instructions, internal memoranda and policy statements from the service and all billing statements generated by the service for his work on this case.

You are invited to attend and cross examine.

Dated: February 6, 2019

SCHUERING ZIMMERMAN & DOYLE, LLP

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

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 6th day of February, 2019, service of a true and correct copy of the foregoing:

NOTICE OF TAKING DEPOSITION OF DR. MICHAEL HURWITZ 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

Schuerer
 An employee of Schuerer Zimmerman &
 Doyle, LLP
 1737-10881

EXHIBIT 2

1 THOMAS J. DOYLE
 Nevada Bar No. 1120
 2 SCHUERING ZIMMERMAN & DOYLE, LLP
 400 University Avenue
 3 Sacramento, California 95825-6502
 (916) 567-0400
 4 Fax: 568-0400
 Email: calendar@szs.com

5 KIM MANDELBAUM
 Nevada Bar No. 318
 6 MANDELBAUM ELLERTON & ASSOCIATES
 2012 Hamilton Lane
 7 Las Vegas, Nevada 89106
 (702) 367-1234
 8 Email: filing@memlaw.net

9
 10 Attorneys for Defendants BARRY RIVES, M.D.;
 LAPAROSCOPIC SURGERY OF NEVADA, LLC

11
 12 DISTRICT COURT
 13 CLARK COUNTY, NEVADA

14	TITINA FARRIS and PATRICK FARRIS,	)	CASE NO. A-16-739464-C
		)	DEPT. NO. 31
15	Plaintiffs,)	
16	vs.	)	AMENDED NOTICE OF TAKING
		)	DEPOSITION OF DR. MICHAEL
17	BARRY RIVES, M.D.; LAPAROSCOPIC	)	HURWITZ
	SURGERY OF NEVADA, LLC, et al.,)	
18	Defendants.)	

19
 20 TO: ALL PARTIES ABOVE NAMED AND THEIR ATTORNEYS OF RECORD:
 21 PLEASE TAKE NOTICE that on Friday, August 2, 2019, at 2:00 p.m., attorneys for
 22 Defendants will take the deposition of Dr. Michael Hurwitz.

23 Said deposition will be taken at Litigation Services, 400 N. Tustin Avenue, Ste.
 24 350, Santa Ana, California, 92705 upon oral examination pursuant to N.R.C.P., Rule 30,
 25 before a Notary Public, or before some other officer authorized to administer oaths,
 26 and said depositions will continue from day to day until completed.

1 The deponent has been disclosed as an expert in this matter and is required to
2 produce at the deposition the following documentation. Electronic data shall be
3 produced in paper form or in TIFF format on CDs.:

- 4 1. His current curriculum vitae.
- 5 2. Text chapters or journal articles referenced in his curriculum vitae that
6 are relevant to any of the issues in this action.
- 7 3. His complete written file concerning this action.
- 8 4. His complete e-mail or electronic file or records concerning this action,
9 including but not limited to, e-mails to or from plaintiff's counsel.
- 10 5. His billing records.
- 11 6. All scientific, technical or professional texts, treatises, journals or similar
12 publications referred to, considered or relied upon in arriving at or forming any of his
13 opinions.
- 14 7. All scientific, technical or professional texts, treatises, journals or similar
15 publications that he believes are a learned treatise and he plans to refer to or
16 comment on at trial.
- 17 8. All written or electronic general information files maintained by him that
18 are relevant to any of the issues in this action.
- 19 9. His records concerning all other medical malpractice actions in which he
20 has been retained as a expert witness and given a deposition.
- 21 10. His list of cases prepared pursuant to Federal Rule of Civil Procedure 26
22 or a state statute or for any other reason.
- 23 11. His retainer, fee or other agreements with any expert witness service
24 through which he was retained in this case, together with all documents,
25 correspondence, e-mail, memoranda or other writings received by him from the
26 service or sent by him to the service, including all instructions, internal memoranda

1 and policy statements from the service and all billing statements generated by the
2 service for his work on this case.

3 You are invited to attend and cross examine.

4 Dated: July 16, 2019

5 **SCHUERING ZIMMERMAN & DOYLE, LLP**

6
7 By /s/ Thomas J. Doyle
8 THOMAS J. DOYLE
9 Nevada Bar No. 1120
400 University Avenue
10 Sacramento, CA 95825-6502
(916) 567-0400
11 Attorneys for Defendants BARRY RIVES,
M.D.; LAPAROSCOPIC SURGERY OF
NEVADA, LLC

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CERTIFICATE OF SERVICE

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Pursuant to NRCP 5(b), I certify that on the 16th day of July, 2019, service of a true and correct copy of the foregoing:

AMENDED NOTICE OF TAKING DEPOSITION OF DR. MICHAEL HURWITZ
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;

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


 An employee of Schuering Zimmerman & Doyle, LLP
 1737-10881

1 THOMAS J. DOYLE
 Nevada Bar No. 1120
 2 SCHUERING ZIMMERMAN & DOYLE, LLP
 400 University Avenue
 3 Sacramento, California 95825-6502
 (916) 567-0400
 4 Fax: 568-0400
 Email: calendar@szs.com

5 KIM MANDELBAUM
 Nevada Bar No. 318
 6 MANDELBAUM ELLERTON & ASSOCIATES
 2012 Hamilton Lane
 7 Las Vegas, Nevada 89106
 (702) 367-1234
 8 Email: filing@memlaw.net

9
 10 Attorneys for Defendants BARRY RIVES, M.D.;
 LAPAROSCOPIC SURGERY OF NEVADA, LLC
 11

12 DISTRICT COURT
 13 CLARK COUNTY, NEVADA

14	TITINA FARRIS and PATRICK FARRIS,	)	CASE NO. A-16-739464-C
		)	DEPT. NO. 31
15	Plaintiffs,)	
		)	SECON DAMENDED NOTICE OF TAKING
16	vs.	)	DEPOSITION OF DR. MICHAEL
		)	HURWITZ
17	BARRY RIVES, M.D.; LAPAROSCOPIC	)	(Location change only)
	SURGERY OF NEVADA, LLC, et al.,)	
18)	
	Defendants.)	
19	_____)	

20 TO: ALL PARTIES ABOVE NAMED AND THEIR ATTORNEYS OF RECORD:
 21 PLEASE TAKE NOTICE that on Friday, August 2, 2019, at 2:00 p.m., attorneys for
 22 Defendants will take the deposition of Dr. Michael Hurwitz.
 23 Said deposition will be taken at 510 Superior Ave., Ste. 200G, Newport Beach,
 24 California, 92663 upon oral examination pursuant to N.R.C.P., Rule 30, before a Notary
 25 Public, or before some other officer authorized to administer oaths, and said
 26 depositions will continue from day to day until completed.

1 The deponent has been disclosed as an expert in this matter and is required to
2 produce at the deposition the following documentation. Electronic data shall be
3 produced in paper form or in TIFF format on CDs.:

- 4 1. His current curriculum vitae.
- 5 2. Text chapters or journal articles referenced in his curriculum vitae that
6 are relevant to any of the issues in this action.
- 7 3. His complete written file concerning this action.
- 8 4. His complete e-mail or electronic file or records concerning this action,
9 including but not limited to, e-mails to or from plaintiff's counsel.
- 10 5. His billing records.
- 11 6. All scientific, technical or professional texts, treatises, journals or similar
12 publications referred to, considered or relied upon in arriving at or forming any of his
13 opinions.
- 14 7. All scientific, technical or professional texts, treatises, journals or similar
15 publications that he believes are a learned treatise and he plans to refer to or
16 comment on at trial.
- 17 8. All written or electronic general information files maintained by him that
18 are relevant to any of the issues in this action.
- 19 9. His records concerning all other medical malpractice actions in which he
20 has been retained as a expert witness and given a deposition.
- 21 10. His list of cases prepared pursuant to Federal Rule of Civil Procedure 26
22 or a state statute or for any other reason.
- 23 11. His retainer, fee or other agreements with any expert witness service
24 through which he was retained in this case, together with all documents,
25 correspondence, e-mail, memoranda or other writings received by him from the
26 service or sent by him to the service, including all instructions, internal memoranda

1 and policy statements from the service and all billing statements generated by the
2 service for his work on this case.

3 You are invited to attend and cross examine.

4 Dated: July 25, 2019

5 **SCHUERING ZIMMERMAN & DOYLE, LLP**

6
7 By /s/ Thomas J. Doyle
8 THOMAS J. DOYLE
9 Nevada Bar No. 1120
10 400 University Avenue
11 Sacramento, CA 95825-6502
12 (916) 567-0400
13 Attorneys for Defendants BARRY RIVES,
14 M.D.; LAPAROSCOPIC SURGERY OF
15 NEVADA, LLC
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CERTIFICATE OF SERVICE

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Pursuant to NRCP 5(b), I certify that on the 25th day of July, 2019, service of a true and correct copy of the foregoing:

SECOND AMENDED NOTICE OF TAKING DEPOSITION OF DR. MICHAEL HURWITZ

was served as indicated below:

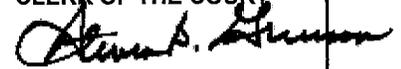
- served on all parties electronically pursuant to mandatory NEFCR 4(b);
- served on all parties electronically pursuant to mandatory NEFCR 4(b) , exhibits to follow by U.S. Mail;

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

Electronically Filed
10/2/2019 4:10 PM
Steven D. Grierson
CLERK OF THE COURT



1 **[OPPM]**
2 THOMAS J. DOYLE
3 Nevada Bar No. 1120
4 CHAD C. COUCHOT
5 Nevada Bar No. 12946
6 SCHUERING ZIMMERMAN & DOYLE, LLP
7 400 University Avenue
8 Sacramento, California 95825-6502
9 (916) 567-0400
10 Fax: 568-0400
11 Email: calendar@szs.com

12 KIM MANDELBAUM
13 Nevada Bar No. 318
14 MANDELBAUM ELLERTON & ASSOCIATES
15 2012 Hamilton Lane
16 Las Vegas, Nevada 89106
17 (702) 367-1234
18 Email: filing@memlaw.net

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

22 DISTRICT COURT

23 CLARK COUNTY, NEVADA

24 TITINA FARRIS and PATRICK FARRIS,
25
26 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 TO STRIKE DEFENDANTS'**
) **FOURTH AND FIFTH SUPPLEMENT TO**
) **NRCP 16.1 DISCLOSURE OF**
) **WITNESSES AND DOCUMENTS ON**
) **ORDER SHORTENING TIME**

27 **I. INTRODUCTION**

28 Plaintiffs seek to strike Defendants' Fourth and Fifth Supplements to NRCP 16.1
29 Disclosures. Defendants agree to withdraw certain witnesses, as discussed below. The
30 remaining portion of the Motion should be denied because the disclosures related to

1 expert reports, and witnesses were either timely pursuant to NRCP 26(e), or substantially
2 justified or harmless under NRCP 37(c)(1).

3 II. FACTS

4 This is a medical malpractice action arising from the care and treatment Plaintiff
5 Titina Farris received from Dr. Barry Rives at St. Rose Dominican Hospital-San Martin
6 Campus, in July 2015. On July 3, 2015, Dr. Rives performed a laparoscopic reduction and
7 repair of an incarcerated incisional hernia with mesh. During the procedure there were
8 two inadvertant injuries to the colon which Dr. Rives repaired using an Endo-GIA stapler.
9 The day after the procedure, Mrs. Farris suffered respiratory distress. She was intubated
10 and placed on a ventilator. She was admitted to the intensive care unit where she was
11 followed by Dr. Rives and various other specialists. Mrs. Farris' condition slowly improved
12 until July 14, 2015.

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

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

1 Chad Couchot).

2 On September 11, 2019, Plaintiffs served their Ninth Supplement to NRCP 16.1
3 Disclosures. The disclosure included two previously unidentified witnesses: Vickie Center,
4 and Mary Jayne Langan. (Exhibit E to Declaration of Chad Couchot). According to
5 William Brenske, counsel for Vickie Center, Mr. Brenske had spoken to George Hand,
6 Plaintiffs' counsel, about the *Center v. Rives* case in the "weeks to months" prior to the
7 trial in the *Center v Rives* case, which began April 1, 2019. (Declaration of Thomas J.
8 Doyle ¶ 2).

9 On September 12, 2019, Defendants served their Fourth Supplement to NRCP 16.1
10 Disclosures. The disclosure identified 18 witnesses who were involved in the care and
11 treatment Mrs. Farris received at St. Rose Dominican Hospital. Each of the witnesses was
12 identified in the reports or summaries of Plaintiffs' or Defendants' experts, with the
13 exception of: Howard Broder M.D.; Doreen Kibby PAC; Herbert Cordero-Yordan M.D.; Dr.
14 Alka Rebentish; Dr. Ali Nauroz; Dr. Charles McPherson; and Dr. Teena Tandon. (Exhibit
15 F to Declaration of Chad Couchot). Defendants have no objection to the request to strike
16 those seven witnesses.

17 Defendants' Fourth Supplement to NRCP 16.1 Disclosures included a supplemental
18 report by Dr. Juell which described details discussed during his deposition, pursuant to
19 NRCP 26(e)(2). The report was drafted on September 9, 2019. (Exhibit F to Declaration
20 of Chad Couchot).

21 On September 23, 2019, Defendants served their Fifth Supplement to NRCP 16.1
22 Disclosures. The disclosure included a supplemental report by Dr. Adornato. The report
23 addresses his opinions regarding the four articles Plaintiffs produced on July 24, 2019, the
24 day after Dr. Adornato was deposed. In addition, the disclosure included a printout of Dr.
25 Adornato's profile from the Stanford School of Medicine website. Finally, the disclosure
26 included two articles which were germane to Dr. Adornato's supplemental report

1 discussing the articles produced by Plaintiffs. (Exhibit G to Declaration of Chad Couchot).

2 **IV. LAW AND ARGUMENT**

3 **A. Dr. Juell's Supplemental Report Was Timely Pursuant to NRCP 26(e).**

4 Pursuant to NRCP 26(e)(2), expert reports must be supplemented or corrected by
5 the time the party's disclosures under Rule 16.1(a)(3) are due. Pretrial disclosures were
6 due on September 13, 2019. Accordingly, Dr. Juell's supplemental report, produced
7 September 12, 2019, was timely.

8 **B. The Untimely Nature of the Remaining Witness and Documents in Defendants'
9 Disclosures Are Substantially Justified or Harmless under NRCP 37(c)(1)**

10 Like Federal Rule of Civil Procedure (FRCP) 37(c)(1), NRCP 37(c)(1), governs the
11 failure to make disclosures. If a party provides untimely or inadequate disclosures, NRCP
12 37(c)(1) states that "the party is not allowed to use that information or witness to supply
13 evidence on a motion, at a hearing, or at a trial, unless the failure was substantially
14 justified or is harmless." NRCP 37(c)(1). Federal courts have held that district courts have
15 broad discretion and should consider the following factors when determining whether
16 the nondisclosure of evidence is substantially justified or harmless under Rule 37(c)(1):

17 (1) the surprise to the party against whom the evidence would
18 be offered; (2) the ability of that party to cure the surprise; (3)
19 the extent to which allowing the evidence would disrupt the
20 trial; (4) the importance of the evidence; and (5) the
nondisclosing party's explanation for its failure to disclose the
evidence.

21 *Southern States Rack and Fixture, Inc. v. Sherwin Williams Co.*, 318 F.3d 592, 597
22 (4th Cir. 2003).

23 The purpose of Rule 37(c)(1) is to prevent a party from surprising and, thus,
24 prejudicing the opposing party. *Southern States*, 318 F.3d at 596. Furthermore, Rule 26(e)
25 requires that disclosures made under Rule 26(a) must be timely supplemented if a party
26 learns that "the disclosure or response is incomplete or incorrect . . . or as ordered by the

1 court.” Fed.R.Civ.P. 26(e).

2 **i. The *Southern States* Factors Weigh Against Striking Witnesses Disclosed**
3 **in Defendants’ Fourth Supplement to NRCP 16.1 Disclosures on**
4 **September 12, 2019.**

5 The disclosure of the witnesses in Defendants’ Fourth Supplement to NRCP 16.1
6 Disclosures on September 12, 2019 was made the day after Plaintiffs disclosed two
7 previously unidentified witnesses, Vickie Center and Mary Jayne Langan. Plaintiffs had
8 known about Mrs. Center and her case since at least March 2019, when George Hand,
9 Plaintiffs’ counsel, spoke to William Brenske, Mrs. Center’s counsel, about the matter. To
10 this date, Defendants do not know who Ms. Langan is or what information she may have
11 regarding this case.

12 The witnesses Defendants disclosed were healthcare providers who treated Mrs.
13 Farris between the date of the surgery by Dr. Rives, and the subsequent surgery by Dr.
14 Hamilton. Of the 18 witnesses, 11 were discussed in reports by expert witnesses, or
15 summaries produced by expert witnesses during their depositions. Defendants withdraw
16 the witnesses who were not discussed in expert reports or summarizes: Dr. Howard
17 Broder; Doreen Kibby PAC; Dr. Herbert Cordero-Yordan ; Dr. Alka Rebentish; Dr. Ali
18 Nauroz; Dr. Charles McPherson; and Dr. Teena Tandon.

19 The disclosure of the names of additional providers involved in Mrs. Farris’ care
20 poses no surprise to Plaintiffs. Both Dr. Michael Hurwitz, Plaintiffs’ retained expert general
21 surgeon, and Dr. Alan Stein, Plaintiffs’ retained expert infectious disease specialist,
22 described Dr. Gregg Ripplinger’s role in Mrs. Farris’ care in their expert reports. (Exhibits
23 H and I to Declaration of Chad Couchot). Those reports were disclosed in November 2018.
24 Similarly, both experts described the role of Dr. Shaikh in Mrs. Farris’ care, although the
25 report of Dr. Stein refers to Dr. Shaikh as “an infectious diseases consultant,” rather than
26 by name. Finally, Defendants had noticed the deposition of Dr. Ripplinger. (Id).

The report by Dr. Bart Carter, one of Defendants’ general surgery experts, described

1 the roles of the following physicians in Mrs. Farris' care: Dr. Ripplinger, Dr. Thomas
2 Gebhard, Dr. Matthew Greinen, Dr. Ravishankar Konchada, Dr. Tanveer Akbar, Dr. Ashraf
3 Osman, and Dr. Darren Wheeler. (Exhibit J to Declaration of Chad Couchot). Further, Dr.
4 Alex Barchuk, Plaintiffs' retained expert physical medicine and rehabilitation specialist,
5 produced a summary he prepared during his deposition which described the care by Dr.
6 Akbar, Dr. Kenneth Mooney, Dr. Arvin Gupta, Dr. Syed Zaidi, and Dr. Osman. (Exhibit K
7 to Declaration of Chad Couchot).

8 The disclosure of the providers discussed in the reports and summaries produced
9 by the experts of Plaintiffs and Defendants created no surprise to Plaintiffs. Accordingly,
10 the first two *Southern State* factors weigh against striking the witnesses.

11 The third factor, the extent to which allowing the evidence would disrupt the trial,
12 weighs against striking the disclosure of the witnesses. The identity of the healthcare
13 providers, and their role in Mrs. Farris' treatment has been well-known to Plaintiffs.
14 Plaintiffs did not depose a single treating physician from St. Rose Dominican Hospital,
15 aside from Dr. Rives, throughout the time discovery was open. (Declaration of Chad
16 Couchot ¶ 14). There is no indication Plaintiffs would have deposed any of these treating
17 physicians, had they been disclosed on an earlier date.

18 The fourth factor, the importance of the evidence, depends on how matters
19 proceed to trial. In the reports of Plaintiffs' experts, Dr. Hurwitz and Dr. Stein, (Exhibits H
20 and I) the note of Dr. Ripplinger is taken out of context, as addressed in the supplemental
21 report by Dr. Juell. (Exhibit L to Declaration of Chad Couchot). Should the need arise at
22 trial, the testimony of Dr. Ripplinger or the other providers involved in Mrs. Farris could be
23 extremely important to address exactly what care was provided, indications for the care,
24 and the thought process of the care providers.

25 Admittedly, the fifth factor, Defendants' explanation, does not weigh strongly
26 Defendants' favor. The potential need to call the various treating providers was

1 determined during preparation of this matter for trial. However, the disclosure was made
2 the day after Plaintiffs disclosed two additional witnesses, in their Ninth Supplement to
3 NRCP 16.1 Disclosures.

4 On balance, the *Southern States* factors weigh against striking witnesses disclosed,
5 whose care was discussed in the reports and summaries prepared by each party's
6 experts. There is no indication Plaintiff would have deposed any of those persons.
7 Further, there is no an indication Plaintiffs are prejudiced at all. If the Court is inclined to
8 strike the witnesses as untimely, the witnesses Plaintiffs disclosed on September 11, 2019
9 must also be stricken.

10 **ii. The *Southern States* Factors Weigh Against Striking Defendants' Fifth**
11 **Supplement to NRCP 16.1 Disclosures on September 23, 2019.**

12 Defendant's Fifth Supplement to NRCP 16.1 Disclosures consisted of a
13 supplemental expert report by Dr. Adornato, articles supporting the opinions expressed
14 in his supplemental report, and Dr. Adornato's website profile from Stanford School of
15 Medicine. The supplemental report, and articles in support thereof, were produced to
16 address four articles cited by Dr. Willer. Those articles were only produced by Plaintiffs
17 on July 24, 2019.

18 The Stanford School of Medicine Profile addressed an issue raised during Dr.
19 Adornato's deposition taken on July 23, 2019. Plaintiffs' counsel raised the issue of a lack
20 of information on the Stanford School of Medicine website to confirm Dr. Adornato's
21 status as an Adjunct Clinical Professor. The website printout confirms Dr. Adornato is in
22 fact an Adjunct Clinical Professor at Stanford School of Medicine.

23 The first two *Southern State* factors weigh against striking the disclosures. There
24 should have been no surprise to Plaintiffs that Dr. Adornato would comment on the
25 articles Dr. Willer provided in support of his opinions, and that he would produce
26 literature supporting his rebuttal opinions. Defendants asked Dr. Willer for the articles

1 during his deposition on July 17, 2019. They were not produced until July 24, 2019, the day
2 after Dr. Ardonato was deposed. The printout from the Stanford School of Medicine
3 website merely confirms Dr. Adornato's status as an Adjunct Clinical Professor. That fact
4 was known to Plaintiffs long ago.

5 The third *Southern State* factor weighs against striking the disclosures. It is
6 completely reasonable for Dr. Ardonato to comment upon articles produced by Dr. Willer.
7 As noted in his brief supplemental report, Dr. Ardonato believes the articles Dr. Willer
8 produced support Dr. Ardonato's opinions. Testifying in accordance with the
9 supplemental report would not disrupt the trial.

10 The fourth *Southern State* factor weighs against striking the disclosures. The issue
11 of whether Mrs. Farris' pain is caused, at least in large part, by critical illness
12 polyneuropathy, as Dr. Willer believes, or diabetic neuropathy, as Dr. Ardonato believes,
13 is extremely important. Plaintiffs should not be permitted to preclude Dr. Ardonato from
14 offering opinions to rebut the literature Plaintiffs produced, by producing the literature
15 after his deposition and on the last day of discovery.

16 The fifth *Southern State* factor weighs against striking the disclosures. The four
17 articles which necessitated the production of Dr. Adornato's supplemental report were
18 only produced on July 24, 2019. The articles were produced after Dr. Adornato's
19 deposition. The timing of the production of Dr. Adornato's report, and the articles in
20 support thereof, is reasonable considering the timing of the articles produced by Plaintiffs.

21 V. CONCLUSION

22 Defendants' Fourth Supplement to NRCP 16.1 Disclosures produced on September
23 12, 2019 was made the day after Plaintiffs' Ninth Supplement to NRCP Disclosures, which
24 disclosed two previously unidentified witnesses. The healthcare providers who had been
25 identified in the reports and summaries of the party's experts should not be stricken. If
26 the Court is inclined to strike the witnesses as untimely, the witnesses identified in

1 Plaintiffs' Ninth Supplement to NRCP 16.1 Disclosures should also be stricken.

2 The report by Dr. Juell, produced in Defendants' Fourth Supplement to NRCP 16.1
3 Disclosure, was timely pursuant to NRCP 26(e). Further, the report by Dr. Adornato, and
4 the articles in support of his opinions, were produced in response to articles Plaintiffs
5 produced on the date of the close of discovery. Under those circumstances, the report
6 and articles should not be considered untimely.

7 Defendants have no objection to striking the witnesses who were not previously
8 identified in expert reports or summaries, as discussed above. As to the remaining
9 portions of Defendants' Fourth and Fifth NRCP 16.1 Disclosures, Plaintiffs' Motion to Strike
10 should be denied.

11 Dated: October 2, 2019

12 **SCHUERING ZIMMERMAN & DOYLE, LLP**

13
14 By  _____

15 CHAD C. COUCHOT
16 Nevada Bar No. 12946
17 400 University Avenue
18 Sacramento, CA 95825-6502
19 (916) 567-0400
20 Attorneys for Defendants BARRY RIVES,
21 M.D. and LAPAROSCOPIC SURGERY OF
22 NEVADA, LLC
23
24
25
26

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 2nd day of October, 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 TO STRIKE DEFENDANTS' FOURTH AND FIFTH SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS ON ORDER SHORTENING TIME

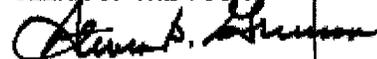
was served as indicated below:

- 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

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

Electronically Filed
10/2/2019 4:10 PM
Steven D. Grierson
CLERK OF THE COURT



1 **[DECL]**
2 THOMAS J. DOYLE
3 Nevada Bar No. 1120
4 CHAD C. COUCHOT
5 Nevada Bar No. 12946
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14 MANDELBAUM ELLERTON & ASSOCIATES
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18 Email: filing@memlaw.net

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

22 DISTRICT COURT

23 CLARK COUNTY, NEVADA

24 TITINA FARRIS and PATRICK FARRIS,
25
26 Plaintiffs,

vs.

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

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

) **DECLARATION OF CHAD COUCHOT IN**
) **SUPPORT OF OPPOSITION TO**
) **PLAINTIFFS' MOTION TO STRIKE**
) **DEFENDANTS' FOURTH AND FIFTH**
) **SUPPLEMENT TO NRCP 16.1**
) **DISCLOSURE OF WITNESSES AND**
) **DOCUMENTS ON ORDER SHORTENING**
) **TIME**

27 I, CHAD C. COUCHOT, declare:

28 1. I am an attorney at law licensed to practice in the State of Nevada. I am a
29 partner of the law firm of Schuering Zimmerman & Doyle, LLP, attorneys of record for
30 Defendants BARRY J. RIVES, M.D.; LAPAROSCOPIC SURGERY OF NEVADA, LLC.

1 **[DECL]**
 2 THOMAS J. DOYLE
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11 Attorneys for Defendants BARRY
 RIVES, M.D. and LAPAROSCOPIC
 12 SURGERY OF NEVADA, LLC

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 TITINA FARRIS and PATRICK FARRIS,
 16 Plaintiffs,

17 vs.

18 BARRY RIVES, M.D.; LAPAROSCOPIC
 19 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 TO STRIKE**
) **DEFENDANTS' FOURTH AND FIFTH**
) **SUPPLEMENT TO NRCP 16.1**
) **DISCLOSURE OF WITNESSES AND**
) **DOCUMENTS ON ORDER SHORTENING**
) **TIME**

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

24 1. I am an attorney at law licensed to practice in the State of Nevada. I am a
 25 partner of the law firm of Schuering Zimmerman & Doyle, LLP, attorneys of record for
 26 Defendants BARRY J. RIVES, M.D.; LAPAROSCOPIC SURGERY OF NEVADA, LLC.

1 2. The deposition of Dr. Brian Juell was taken on June 12, 2019. A true and
2 correct copy of the pertinent portions of the deposition transcript are attached hereto as
3 Exhibit A.

4 3. The deposition of Dr. Justin Willer was taken on July 17, 2019. A true and
5 correct copy of the pertinent portions of the deposition transcript are attached hereto as
6 Exhibit B.

7 4. The deposition of Dr. Bruce Adornato was taken on July 23, 2019. A true and
8 correct copy of the pertinent portions of the deposition transcript are attached hereto as
9 Exhibit C.

10 5. A true and correct copy of Plaintiff's Eighth Supplement to NRCP 16.1
11 Disclosures without attachments, served July 24, 2019, is attached hereto as Exhibit D.

12 6. A true and correct copy of Plaintiff's Ninth Supplement to NRCP 16.1
13 Disclosures without attachments, served September 11, 2019, is attached hereto as
14 Exhibit E.

15 7. A true and correct copy of Defendant's Fourth Supplement to NRCP 16.1
16 Disclosures, served September 12, 2019, is attached hereto as Exhibit F.

17 8. A true and correct copy of Defendant's Fifth Supplement to NRCP 16.1
18 Disclosures, served September 23, 2019, is attached hereto as Exhibit G.

19 9. A true and correct copy of the report of Dr. Michael Hurwitz, produced in
20 Plaintiffs' Initial Expert Witness Disclosure, is attached hereto as Exhibit H.

21 10. A true and correct copy of the report of Dr. Alan Stein, produced in Plaintiffs'
22 Initial Expert Witness Disclosure, is attached hereto as Exhibit I.

23 11. A true and correct copy of the report of Dr. Bart Carter, produced in
24 Defendants' Initial Expert Witness Disclosure, is attached hereto as Exhibit J.

25 12. A true and correct copy of a report/summary prepared by Dr. Alan Barchuk,
26 produced in Plaintiffs' Initial Expert Witness Disclosure, is attached hereto as Exhibit K.

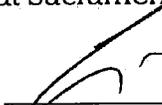
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13. A true and correct copy of a rebuttal report, by Dr. Juell, produced in Defendants' Rebuttal Expert Witness Disclosure, is attached hereto as Exhibit L.

14. Plaintiffs did not depose a single treating physician from St. Rose Dominican Hospital, aside from Dr. Rives, throughout the time discovery was open.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct, and if called to testify, I could competently do so.

Executed this 2ND day of October, 2019, at Sacramento, California.



CHAD C. COUCHOT

EXHIBIT A

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DISTRICT COURT
CLARK COUNTY, NEVADA

TITINA FARRIS and	:	
PATRICK FARRIS,	:	Case No.
	:	A-16-739464-C
Plaintiffs,	:	
	:	Dept. 31
vs.	:	
	:	
BARRY RIVES, M.D.,	:	
LAPAROSCOPIC SURGERY OF	:	
NEVADA LLC; et al.,	:	
Defendants.	:	

VIDEOTAPED DEPOSITION OF BRIAN E. JUELL, M.D.
Wednesday, June 12, 2019
8:41 a.m.
Reno, Nevada

Reported by: Terry Ellis Thompson
Nevada CCR #6
Computer-Assisted Transcription

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A P P E A R A N C E S

FOR THE PLAINTIFFS:
HAND & SULLIVAN, LLC
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3442 North Buffalo Drive
Las Vegas, Nevada 89129

FOR THE DEFENDANTS:
SCHUERING ZIMMERMAN & DOYLE LLP
Attorneys at Law
By: THOMAS J. DOYLE, ESQ.
400 University Avenue
Sacramento, California 95825

ALSO PRESENT:
BILL STEPHENS, Videographer
BILL STEPHENS PRODUCTIONS, INC.

1 case that she probably had, you know, aspiration, you
2 know, gastric content, or stomach contents into her
3 lungs.

4 And that that created a problem with oxygen
5 delivery. So she required higher levels of oxygen in
6 order to meet her, her needs.

7 Q Then you say she had low urine output. Why
8 did she have low urine output?

9 A I think she developed like a systemic
10 inflammatory syndrome, and probably had fluid
11 leakage, you know, from her capillaries; and was
12 requiring fluid resuscitation. While they were
13 catching up with that, she develops evidence of acute
14 kidney injury; and, you know, her urine output was
15 low as a consequence.

16 Q Then you said (reading): She required IV
17 fluid boluses. Why was that?

18 A To meet those fluid needs that she was
19 developing due to the inflammation.

20 Q Then you state she had a tachycardic
21 arrhythmia. Do you have an opinion why she had that?

22 A Well, I think it was part of the syndrome
23 that she had with the tachycardia.

24 That certainly can be a direct consequence
25 of pulmonary aspiration. But inflammation, in

1 that the white blood count was 25.8.

2 Is that a high white blood count?

3 A Yes.

4 Q Do you have an opinion as to the cause of
5 the high white blood count on July 6th, '15?

6 A She had persistent inflammatory syndrome.

7 Q In your opinion did she have any signs or
8 symptoms of infection on July 6th, '15?

9 A Well, I think that that was the presumptive
10 diagnosis, that she had infection. And they did
11 bring in an infectious disease specialist, and she
12 had been placed on broad spectrum antibiotics.

13 They didn't have positive blood cultures or
14 urine culture.

15 I don't believe I ever saw them get a
16 sputum culture, although I wouldn't be surprised if I
17 reviewed the records that there was one at some point
18 in time.

19 But that her condition, you know, was this
20 systemic inflammatory syndrome, which infection is a
21 possible cause of.

22 Q You state she developed lactic acidosis.
23 What is that?

24 A Lactate is a metabolite that rises in the
25 blood and can be measured; that's the blood test.

1 STATE OF NEVADA,)
 2 COUNTY OF WASHOE.) ss.

3 I, TERRY ELLIS THOMPSON, a Certified Court
 4 Reporter in and for the County of Washoe, State of
 5 Nevada, do hereby certify;

6 That on the 12th day of June, 2019, at the
 7 offices of Bonanza Reporting & Videoconferencing
 8 Center, 1111 Forest Street, Reno, Nevada, I reported
 9 the videotaped deposition of BRIAN E. JUELL, M.D.,
 10 who was sworn by me and deposed in the matter
 11 entitled herein; that the reading and signing of the
 12 deposition were requested by Counsel for Defendants;

13 That the foregoing transcript, consisting
 14 of pages 1 through 99, is a full, true and correct
 15 transcript of my stenotype notes of said deposition
 16 to the best of my knowledge, skill and ability.

17 That I further certify that I am not an
 18 attorney or counsel for any of the parties, nor a
 19 relative or employee of any attorney or counsel
 20 involved in said action, nor a person financially
 21 interested in the action.

22 DATED: At Reno, Nevada, this 24th day of
 23 June, 2019.

24
 25 Terry Ellis Thompson, Nevada CCR #6

EXHIBIT B

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DISTRICT COURT
CLARK COUNTY, NEVADA

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TITINA FARRIS and PATRICK FARRIS,

Plaintiffs,

Case No.:
A-16-739464-C

-against-

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

Defendants,

-----X

26 Court Street, Suite 506
Brooklyn, New York 11242

Wednesday, July 17, 2019
10:17 a.m. - 12:20 p.m.

EXAMINATION BEFORE TRIAL of The
Non-Party Witness, BY: JUSTIN A. WILLER, M.D.
Pursuant to Order, before Jasmine Rodriguez,
Certified Court Reporter and Notary Public
of the State of New York.

JUSTIN A. WILLER, M.D. - 07/17/2019

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A P P E A R A N C E S ,

HAND & SULLIVAN, LLC
Attorneys for Plaintiffs
3442 North Buffalo Drive
Las Vegas, Nevada 89129
BY: GEORGE HAND, ESQ.

SCHUERING ZIMMERMAN & DOYLE, LLP
Attorneys for Defendant
400 University Avenue
Sacramento, California 95825
(916) 567-0400
BY: THOMAS J. DOYLE, ESQ.

JUSTIN A. WILLER, M.D. - 07/17/2019

Page 54

1 Q. The beginning was when?

2 A. It started in '97.

3 Q. If we go back five years, would the
4 average that you gave me, two to three inpatient
5 consults per year be a reasonable average?

6 A. I can't answer that because, basically, I
7 was getting the consults until Russian internists
8 opened up in Borough Park, and then they started using
9 Russian neurologists, and I don't remember the exact
10 date.

11 Q. You did some research for this case,
12 correct? If you look at Page 10 of your report, you
13 have references?

14 A. Yes.

15 Q. Did you go and find those references, or
16 were you already familiar with them and simply cited to
17 them?

18 A. Both in I was familiar with; the rest I
19 had to look up.

20 Q. What was it about the second reference
21 that was pertinent to our case?

22 A. It was a case of critical illness
23 polyneuropathy.

24 Q. Do you have these four references in your
25 laptop?

JUSTIN A. WILLER, M.D. - 07/17/2019

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1 A. I might. I usually keep them, but I
2 would need to --

3 Q. Because they weren't attached -- the
4 articles themselves weren't attached to the report.

5 A. That article was relevant in that it was
6 a case of critical illness polyneuropathy, which is
7 similar to this case.

8 Q. Are you able to send the articles, not
9 abstracts, but the articles to Mr. Hand, these four
10 references?

11 A. Well, I would have to check that I had
12 the article rather than just the abstract. I wouldn't
13 remember that off the top of my head.

14 Q. For Item No. 2, did you look at the
15 abstract or the article?

16 A. The article. That's an AANEM case, so I
17 have access to those articles. Anything muscle and
18 nerve, I have access to.

19 Q. So the third reference, you have access
20 to the article?

21 A. Actually, in this case it would be all of
22 them because they're all from muscle and nerve except
23 for the case study from the American Association of
24 Neuromuscular & Electrodiagnostic Medicine.

25 Q. Let me ask the question. Of the

JUSTIN A. WILLER, M.D. - 07/17/2019

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1 references one, two, three and four, did you look at
2 the abstract or the article for which ones?

3 A. I don't recall, but I would say that it's
4 likely it was the article because anything in muscle
5 and nerve, I have access to the entire PDF of the
6 article, and I would usually -- what I usually do is if
7 I have access to the whole article without having to
8 buy it, I take access to the whole article.

9 Q. Have you discussed this case with any
10 colleagues?

11 A. No.

12 Q. In any of the cases in which you've been
13 an expert, have there been similar facts?

14 A. You mean critical illness polyneuropathy?

15 Q. Yes.

16 A. No.

17 Q. In what states have you had a medical
18 license?

19 A. New York, New Jersey and Florida.

20 Q. In those states has there ever been an
21 inquiry about your care of a patient by the medical
22 board?

23 A. Yes. In New York State.

24 Q. When did that happen?

25 A. 2004.

JUSTIN A. WILLER, M.D. - 07/17/2019

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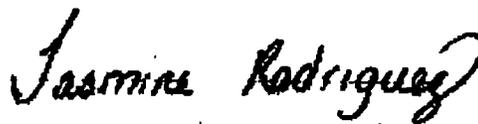
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C E R T I F I C A T E

I, Jasmine Rodriguez, a Shorthand Reporter and Notary Public of the State of New York, do hereby certify:

That, JUSTIN A. WILLER, Non-Party Witness, whose examination is hereinbefore set forth, was duly sworn, and that such examination is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.



Notary Public

EXHIBIT C

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DISTRICT COURT
CLARK COUNTY, NEVADA

-----x

TITINA FARRIS and PATRICK : Case No.
 FARRIS, : A-16-739464-C
 Plaintiffs, :
 v. :
 BARRY RIVES, M.D., LAPAROSCOPIC :
 SURGERY OF NEVADA LLC; DOES :
 I-V, inclusive; and ROE :
 CORPORATIONS I-V, inclusive, :
 Defendants. :

-----x

VIDEOTAPED DEPOSITION OF BRUCE ADORNATO, M.D.
 San Mateo, California
 Tuesday, July 23, 2019
 10:10 a.m.

Job No.: 247243
 Pages: 1 - 93
 Reported By: Charlotte Lacey, RPR, CSR No. 14224

Transcript of Bruce Adornato, M.D
Conducted on July 23, 2019

1 VIDEOTAPED DEPOSITION OF BRUCE ADORNATO, M.D., held
2 at 951 Mariners Island Boulevard, Suite 300, San Mateo,
3 California

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Pursuant to notice, before Charlotte Lacey,
Certified Shorthand Reporter, in and for the State of
California.

Transcript of Bruce Adornato, M.D
Conducted on July 23, 2019

3

1 A P P E A R A N C E S
2 ON BEHALF OF PLAINTIFFS TITINA FARRIS and PATRICK
3 FARRIS:
4 KIMBALL JONES, ESQUIRE
5 (Via videoconference)
6 BIGHORN LAW
7 716 South Jones Boulevard
8 Las Vegas, Nevada 89107
9 (702) 333-1111
10 -and-
11 GEORGE F. HAND, ESQUIRE
12 (Via videoconference)
13 HAND & SULLIVAN, LLC
14 3442 North Buffalo Drive
15 Las Vegas, Nevada 89129
16 (702) 656-5814
17 ON BEHALF OF DEFENDANTS BARRY RIVES, M.D., and
18 LAPAROSCOPIC SURGERY OF NEVADA LLC:
19 CHAD C. COUCHOT, ESQUIRE
20 SCHUERING ZIMMERMAN & DOYLE LLP
21 400 University Avenue
22 Sacramento, California 95825
23 (916) 567-0400
24 ALSO PRESENT:
25 Lucien Newell, Videographer

Transcript of Bruce Adornato, M.D
Conducted on July 23, 2019

33

1 Q Okay. So when you talk about going to the 10:46:51
2 Stanford Hospital -- or let's see. What -- what do you 10:46:53
3 have here? 10:46:57
4 Adjunct clinical professor at Stanford 10:46:58
5 University School of Medicine, do you actually teach any 10:47:04
6 courses there? 10:47:06
7 A Well, I don't teach any courses. We teach by 10:47:07
8 being the attending physician, in which all the -- all 10:47:10
9 the issues, all the examination, all of the interaction 10:47:16
10 with the patient is in conjunction with the medical 10:47:21
11 students and the residents. So that is the -- the 10:47:25
12 apprenticeship that they're going through. I'm -- I'm 10:47:29
13 teaching in that apprenticeship. 10:47:33
14 Q Understood. 10:47:35
15 So you don't actually teach any courses at -- 10:47:36
16 at Stanford, correct? 10:47:39
17 A Correct. 10:47:40
18 Q Okay. Do you actually -- are you actually 10:47:40
19 paid to work within the -- any -- any Stanford hospital? 10:47:43
20 A No, I'm not. 10:47:47
21 Q Okay. So the only -- the only time that 10:47:49
22 you're training residents is the volunteer time at the 10:47:54
23 VA; is that correct? 10:47:57
24 A That's right. 10:47:59
25 Q Okay. All right. So -- so when you say "I am 10:47:59

Transcript of Bruce Adornato, M.D
Conducted on July 23, 2019

34

1 currently an adjunct clinical professor at Stanford 10:48:05
2 University School of Medicine," what you mean by that is 10:48:09
3 that you do volunteer work at the VA, and Stanford 10:48:14
4 medical students who are residents are also there and 10:48:20
5 you give them training during that time? 10:48:24
6 A That's correct. 10:48:26
7 Q Okay. It -- it doesn't surprise you, then, 10:48:27
8 if -- if I were to tell you that I -- I looked you up at 10:48:33
9 Stanford, and I couldn't find any evidence of you being 10:48:36
10 faculty at Stanford at any time? 10:48:40
11 A Does it surprise me? 10:48:45
12 Q Correct. That wouldn't surprise you then, 10:48:47
13 correct? 10:48:50
14 A It wouldn't surprise me, although I am listed. 10:48:50
15 There is -- in the department of neurology, at least the 10:48:56
16 last time I checked, which was more than a year ago, I 10:48:59
17 am listed as an adjunct clinical faculty. 10:49:04
18 Q Okay. All right. I -- I tried to look you up 10:49:07
19 more recently than -- than a year ago, and I was unable 10:49:11
20 to find your -- your name or -- or any indication that 10:49:14
21 you had been on -- on their list of adjunct clinical 10:49:17
22 professors. 10:49:20
23 A Well, if you call Frank Longo, who's a 10:49:21
24 department chairman, or Tom Rando, who's at -- the 10:49:27
25 department chairman at the VA, I'll give you his e-mail 10:49:30

Transcript of Bruce Adornato, M.D
Conducted on July 23, 2019

35

1	address, I'm sure they'll confirm my credentials.	10:49:31
2	Q Okay. All right. Thank you.	10:49:35
3	Okay. Let's see. Doctor, what -- what were	10:49:56
4	you specifically retained to do in this matter?	10:49:58
5	A I was asked to look -- as I recall, I was	10:50:02
6	asked to look at this case from the perspective of the	10:50:07
7	causation of her neurologic situation.	10:50:11
8	Q Got it.	10:50:29
9	So let's -- let's talk a little bit about the	10:50:29
10	opinions that you formed. I'd like -- let's -- let's	10:50:32
11	start off -- if you wouldn't mind, let's -- let's start	10:50:35
12	going through just kind of a listing of opinions that	10:50:38
13	you -- that you formed in this case.	10:50:41
14	The -- well, let me -- I guess -- I guess let	10:50:44
15	me ask you one question about opinions.	10:50:47
16	Within your report, you provided all of the	10:50:49
17	opinions that you had about that -- this case at that	10:50:52
18	time; is that fair?	10:50:56
19	A Say that again. I'm sorry. Could you repeat	10:50:58
20	that, please.	10:51:00
21	Q Absolutely. Absolutely. When you composed	10:51:02
22	your report, you included all of the opinions you had	10:51:05
23	regarding this case at that time; is that fair?	10:51:09
24	A Yes.	10:51:13
25	Q Okay. And you understand that in Nevada, it	10:51:15

Transcript of Bruce Adornato, M.D
Conducted on July 23, 2019

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CERTIFICATE OF SHORTHAND REPORTER

I, Charlotte Lacey, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my direction; that reading and signing was requested; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 6th of August, 2019.



Charlotte Lacey, RPR, CSR #14224

EXHIBIT D

1 **SECD**
 George F. Hand, Esq.
 2 Nevada State Bar No. 8483
ghand@handsullivan.com
 3 Samantha A. Herebeck, Esq.
 Nevada State Bar No. 14542
 4 sherbeck@handsullivan.com
HAND & SULLIVAN, LLC
 5 3442 North Buffalo Drive
 Las Vegas, Nevada 89129
 6 Telephone: (702) 656-5814
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7
 Kimball Jones, Esq.
 8 Nevada Bar No. 12982
Kimball@BighornLaw.com
 9 Jacob G. Leavitt, Esq.
 Nevada Bar No. 12608
 10 Jacob@BighornLaw.com
BIGHORN LAW
 11 716 S. Jones Blvd.
 Las Vegas, Nevada 89107
 12 Telephone: (702) 333-1111

13 Attorneys for Plaintiffs
 TITINA FARRIS and PATRICK FARRIS

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

16 TITINA FARRIS and PATRICK FARRIS,

17 Plaintiffs,

18 vs.

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

22 Defendants.

Case No.: A-16-739464-C

Dept. No.: 31

**PLAINTIFFS' EIGHTH
 SUPPLEMENT TO EARLY CASE
 CONFERENCE DISCLOSURE OF
 WITNESSES AND DOCUMENTS**

24 Pursuant to NRCP 16.1, Plaintiffs, TITINA FARRIS and PATRICK FARRIS, by and
 25 through their attorneys of record, George F. Hand, Esq. of Hand & Sullivan, LLC, hereby submits
 26 their **Eighth Supplement** to Early Case Conference Production of Documents and List of
 27

28 Witnesses:

PRELIMINARY STATEMENT

1
2 Plaintiff's NRC 16.1 Disclosures are subject to, and incorporates by reference, the
3 following objections:

4 A. Plaintiff objects to each and every individual request for pretrial disclosure of
5 witnesses and evidence by Plaintiff to the extent that it requests either documents or information
6 about documents that are protected from discovery by the attorney-client privilege or attorney work
7 product immunity. Plaintiff's response to each and every individual request is limited to
8 documents that are not subject to such privilege or immunity. However, in the event that a
9 document subject to immunity or privilege is produced by Plaintiff, it will have been through
10 inadvertence and shall not constitute waiver of the privilege or immunity applicable to the
11 document produced or any other protected documents.

12 B. This response is limited to documents which Plaintiff knows are in its custody,
13 possession, or control as of the date of production. Plaintiff reserves the right to produce and use
14 responsive documents when discovered, or when their significance becomes known.

15 C. All evidentiary objections are reserved to time of trial, and no waiver of any
16 objection is to be implied from any response made in the spirit of cooperation and discovery
17 obtained herein. Nor is it Plaintiffs' intention by these responses to make any information,
18 otherwise objectionable at the time of trial, admissible by these responses. Any and all objections,
19 including but not limited to, foundation and admissibility are reserved.

20 D. The following responses reflect the total information in possession of Plaintiffs and
21 their attorney, employees, agents or other representatives. Obviously, not all of the facts and
22 information contained in the responses are within the personal knowledge of Plaintiffs themselves.
23 Accordingly, Plaintiffs have relied on the advice and assistance of their attorney in providing this
24 list of witnesses and exhibits.

25 E. Each of the following responses is rendered and based upon information in the
26 possession of the responding party at the time of the preparation of this disclosure. Discovery will
27 continue as long as permitted by statute or stipulation of the parties, and the investigation of these
28 responding parties' attorney and agents will continue to and throughout the trial of this action.

1 Plaintiffs therefore, specifically reserve the right to introduce, at the time of trial, any evidence
2 from any source which may hereinafter be discovered, and testimony from any witness whose
3 identity may hereinafter become known.

4 If any information has unintentionally been omitted from these responses, this responding
5 party reserves the right to apply for relief so as to permit the insertion of the omitted data from
6 these responses.

7 These introductory comments shall apply to each and every response given herein, and shall
8 be incorporated by reference as though fully set forth in all of the responses appearing on the
9 following pages.

10 I.

11 WITNESSES

- 12 1. Titina Farris, Plaintiff
13 c/o Hand & Sullivan, LLC
14 3442 N. Buffalo Drive
15 Las Vegas, NV 89129

16 Titina Farris, Plaintiff, is expected to testify regarding the facts and circumstances of the
17 claims alleged in the Complaint and alleged damages.

- 18 2. Patrick Farris, Plaintiff
19 c/o Hand & Sullivan, LLC
20 3442 N. Buffalo Drive
21 Las Vegas, NV 89129

22 Patrick Farris, Plaintiff, is expected to testify regarding the facts and circumstances of the
23 claims alleged in the Complaint and alleged damages.

- 24 3. Barry Rives, M.D., Defendant
25 c/o Schuering Zimmerman & Doyle, LLP
26 400 University Avenue
27 Sacramento, California 95825-6502

28 Dr. Rives is expected to testify regarding the facts and circumstances of the claims alleged
in the Complaint and alleged damages.

4. Person Most Knowledgeable
Laparoscopic Surgery of Nevada
c/o Schuering Zimmerman & Doyle, LLP
400 University Avenue

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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 expected to testify regarding his/her examination, treatment, diagnosis and overall health conditions of Plaintiff.

- 6. Bess Chang, M.D.
8530 W. Sunset Road
Las Vegas, NV 89113

Dr. Chang is expected to testify regarding his examination, treatment, diagnosis and overall health conditions of Plaintiff.

- 7. Elizabeth Hamilton, M.D.
10001 Eastern Avenue
Ste. #200
Henderson, NV 89052

Dr. Hamilton is expected to testify regarding her examination, treatment, diagnosis and overall health conditions of Plaintiff.

- 8. Naomi Chaney, M.D.
5380 South Rainbow Blvd.
Las Vegas, NV 89118

Dr. Chaney is expected to testify regarding her examination, treatment, diagnosis and overall health conditions of Plaintiff.

- 9. Person Most Knowledgeable
Desert Valley Therapy
6830 W. Oquendo, #101
Las Vegas, NV 89119

Person Most Knowledgeable for Desert Valley Therapy is expected to testify regarding his/her examination, treatment, diagnosis and overall health conditions of Plaintiff.

1 10. Person Most Knowledgeable
2 Steinberg Diagnostic Medical Imaging Centers
3 9070 W. Post Road
 Las Vegas, NV 89148

4 Person Most Knowledgeable for Steinberg Diagnostic Medical Imaging Centers is expected
5 to testify regarding his/her examination, treatment, diagnosis and overall health conditions of
6 Plaintiff.

7 11. Lowell Pender
 (Son of Titina Farris)
8 3620 Mountain River Street
 Las Vegas, NV 89129

9 Lowell Pender, is expected to testify regarding the facts and circumstances of the claims
10 alleged in the Complaint and alleged damages.

11 12. Addison Durham
 (Brother of Titina Farris)
12 2740 Montessori
13 Las Vegas, NV 89117

14 Addison Durham is expected to testify regarding the facts and circumstances of the claims
15 alleged in the Complaint and alleged damages.

16 13. Sky Prince
 (Daughter of Titina Farris)
17 6450 Crystal Dew Drive
 Las Vegas, NV 89118

18 Sky Prince is expected to testify regarding the facts and circumstances of the claims alleged
19 in the Complaint and alleged damages.

20 14. Steven Y. Chinn, M.D.
21 6950 W. Desert Inn Rd., #110
22 Las Vegas, NV 89117

23 Dr. Chinn is expected to testify regarding his examination, treatment, diagnosis and overall
24 health conditions of Plaintiff.

25 15. Person Most Knowledgeable
26 CareMeridian
 3391 N. Buffalo Drive
27 Las Vegas, NV 89129

1 Person Most Knowledgeable for CareMeridian is expected to testify regarding his/her
2 examination, treatment, diagnosis and overall health conditions of Plaintiff.

3 16. Amy Nelson
4 3213 Whites Drive
5 Austin, TX 78735

6 Amy Nelson is expected to testify regarding the facts and circumstances of the claims
7 alleged in the Complaint and alleged damages.

8 17. Christine Garcia
9 231 James Adkins Drive
10 Kyle, TX 78640

11 Christine Garcia is expected to testify regarding the facts and circumstances of the claims
12 alleged in the Complaint and alleged damages.

13 18. Person Most Knowledgeable
14 St. Rose Dominican – Siena Campus
15 3001 St. Rose Parkway
16 Henderson, Nevada 89052

17 Person Most Knowledgeable for St. Rose Dominican – Siena Campus is expected to testify
18 regarding his/her examination, treatment, diagnosis and overall health conditions of Plaintiff.

19 19. Michael Hurwitz, M.D.
20 510 Superior Avenue
21 Suite 200G
22 Newport Beach, CA 92663
23 (949) 791-6767

24 Dr. Hurwitz will testify as to his expert opinion regarding the medical treatment and care
25 rendered to Titina Farris and causation of the injuries to Titina Farris. Dr. Hurwitz will also testify
26 in accordance with his expert report, curriculum vitae and testimony list.

27 20. Justin Willer, M.D.
28 741 Ocean Parkway
Brooklyn, NY 11230
(718) 859-8920

Dr. Willer will testify as to his expert opinion regarding the medical treatment and care
rendered to Titina Farris and causation of the injuries to Titina Farris. Dr. Willer will also testify in
accordance with his expert report, curriculum vitae and testimony list.

///

///

1 21. Alan J. Stein, M.D.
2 509 12th Street
3 Apt. 1D
4 Brooklyn NY 11215
5 (718) 369-4850

6 Dr. Stein will testify as to his expert opinion regarding the medical treatment and care
7 rendered to Titina Farris and causation of the injuries to Titina Farris. Dr. Willer will also testify in
8 accordance with his expert report, curriculum vitae and testimony list.

9 22. Dawn Cook, RN, CNLCP, LNCP-C, CLCP, LNC, CFLC
10 1001 E. Sunset Road, #97553
11 Las Vegas, NV 89193-7553
12 (702) 544-2159

13 Dawn Cook will testify as to her expert opinion regarding the Life Care Plan formulated for
14 Titina Farris, including the necessary future medical treatment, therapies and services required for
15 Titina Farris and the costs and expenses associated with Titina Farris's life care plan. It is expected
16 that Dawn L. Cook will testify as to her expert opinion regarding the medical treatment and care
17 rendered to Titina Farris and causation of her injuries; the reasonableness and necessity of the
18 treatment and care rendered to Plaintiff Titina Farris; the costs of medical care and treatment,
19 including the usual, customary and reasonable charges for said treatment. Dawn L. Cook will also
20 testify in accordance with her expert report, curriculum vitae and testimony list.

21 23. Terence M. Clauretje, PHD
22 4505 S. Maryland Parkway
23 Las Vegas, Nevada 89154-6025
24 (702) 985-3223

25 Dr. Clauretje will testify as to his expert opinion regarding the economic losses of Titina
26 Farris, including the present value of Titina Farris's Life Care Plan. Dr. Clauretje will also testify
27 in accordance with his expert reports, curriculum vitae and testimony list.

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1	Video of Titina Farris taken by Lowell Pender on April 13, 2015	Not bates stamped
2	Videos of Titina Farris, Patrick Farris, Addison Durham, Lowell Pender and Sky Prince	Not bates stamped
3	Marriage Certificate	PLTF0010149
4	Dr. Steven Y. Chinn, M.D. Medical and Billing Records	PLTF0010150- PLTF0010174
5	CareMeridian Medical and Billing Records	PLTF0010175-PLTF10474
6	St. Rose Dominican Hospital-Siena Campus Medical Records	PLTF10475-PLTF11390
7	Steinberg Diagnostic Medical Imaging Medical and Billing Records	PLTF11391-PLTF11451
8	Notice of No Film/Images on file for St. Rose Dominican Hospital-Siena Campus	PLTF11452-PLTF11456
9	National Vital Statistics Reports United States Life Tables, 2015	PLTF11457-PLTF11520
10	MGM Resorts Health and Welfare Benefit Plan	PLTF11521-PLTF11561
11	Bolton, CF, Neuromuscular Manifestations of Critical Illness, Muscle & Nerve 32: 140-163, 2005	PLTF11562-PLTF11585
12	Govindarajan, R, Jones, D, Galvez, N, AANEM Case Study: Critical Illness Polyneuropathy, October 2014	PLTF11586-PLTF11594
13	Lacomis, D, Electrophysiology of Neuromuscular Disorders in critical illness, Muscle & Nerve 47:452-463, 2013	PLTF11595-PLTF11606
14	Koch, S, et. al., Long-term recovery in critical illness myopathy is complete, contrary to polyneuropathy, Muscle & Nerve 50:431-436	PLTF11607-PLTF11612
15	Verena, N., N. Kornmann, Bert van Ramshorst, Anke B.Smits, Thomas L. Bollen, Djamila Boerma, Beware of false-negative CT scan for anastomotic leakage after colonic surgery, International Journal of Colorectal Disease (2014) 29:445-451	PLTF11613-PLTF11619

20 Plaintiff also designates and incorporates herein all documents, witnesses, and
21 tangible items disclosed by any other party in this action pursuant to NRCP 16.1; all
22 documents produced by all parties in response to Requests for Production of Documents;
23 and all exhibits to depositions taken in this action.

24 III.

25 COMPUTATION OF DAMAGES

26 Pursuant to NRCP 16.1 (a)(1)(C), Plaintiff provides the following computation of damages,
27 which is not intended to be all-inclusive. Discovery is continuing and Plaintiff reserves the right to
28 supplement any computation and damage amount.

	Provider	Charges
1	1 St. Rose Dominican San Martin Campus	\$ 908,033.12
2	2 St. Rose Dominican Siena Campus	\$ 104,120.04
3	3 Barry Rives, M.D.	\$ 11,929.00
4	4 Bess Chang, M.D.	\$ 1,018.00
5	5 Naomi Chaney, M.D.	\$ 6,570.00
6	6 Elizabeth Hamilton, M.D.	\$ 12,801.00
7	7 Desert Valley Therapy	\$ 4,473.15
8	8 Advanced Orthopedic & Sports Medicine	\$ 4,973.00
9	9 Southern Nevada Pain Center	\$ 1,015.00
10	10 CareMeridian	\$ 28,747.63
11	11 Steinberg Diagnostic Medical Imaging	\$ 6,126.30
12	TOTAL	\$ 1,089,806.24

10 Past Medical and Related Expenses \$ 1,089,806.24

11 Future Medical and Associated Expenses

12	Medical Care	\$ 98,503.98
13	Allied Health	\$ 1,112,088.31
14	Complications	\$ 31,362.20
15	Diagnostics	\$ 23,322.20
16	Procedures	\$ 77,975.10
17	Home Care	\$ 2,588,325.00
18	Equipment	\$ 114,799.71
19	Home Modifications	\$ 81,080.00

20 **Total:** \$ 4,127,456.00

21 **The present value of the life care plan is** \$ 4,663,473.00

22 **Total Special Damages** \$ 5,217,262.24

23 Plaintiffs reserve the right to supplement this Calculation of Damages with any and all other
 24 relevant documents and records, which come into their possession during discovery. Further,
 25 Plaintiffs reserve the right to seek other damages in an amount to be proven at trial, whereby a jury
 26 will decide upon a sum of money sufficient to reasonably and fairly compensate Plaintiffs for the
 27 following items:

28 1. The reasonable medical expenses Plaintiff has necessarily incurred as a result of the
 accident/incident and the medical expenses which the Jury believes the Plaintiff is reasonably
 certain to incur in the future as a result of the accident/incident.

2. The physical and mental pain, suffering, anguish, and disability endured by the
 Plaintiff from the date of the accident/incident to the present.

1 3. The physical and mental pain, suffering, anguish, and disability which the Jury
2 believes the Plaintiff is reasonably certain to experience in the future as a result of the
3 accident/incident.

4 4. The loss of consortium, loss of society, affection, assistance and conjugal fellowship
5 by Plaintiff Patrick Farris from the date of the accident/injury to present.

6 5. The loss of consortium, loss of society, affection, assistance and conjugal fellowship
7 which the Jury believes Plaintiff Patrick Farris is reasonably certain to experience in the future as a
8 result of the accident/injury.

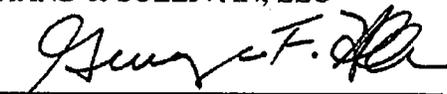
9 Plaintiff reserves the right to supplement this Calculation of Damages with any and all other
10 relevant documents and records which come into their possession during discovery.

11 Plaintiffs TITINA FARRIS and PATRICK FARRIS reserve the right to supplement this
12 witness list as discovery proceeds and to call any witness identified by any party. Plaintiffs
13 TITINA FARRIS and PATRICK FARRIS further reserve the right to supplement this witness list
14 as discovery proceeds to call any witness identified, for purposes of impeachment/rebuttal.

15 Dated: July 24, 2019

HAND & SULLIVAN, LLC

16
17 By:


George F. Hand, Esq.
Nevada State Bar No. 8483
Samantha A. Herbeck, Esq.
Nevada State Bar No. 14542
3442 North Buffalo Drive
Las Vegas, Nevada 89129
Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I am employed in the County of Clark, State of Nevada. I am over the age of 18 and not a party to the within action. My business address is 3442 N. Buffalo Drive, Las Vegas, NV 89129.

On July 24, 2019, I served the within document(s) described as:

PLAINTIFFS' EIGHTH SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURE OF WITNESSES AND DOCUMENTS

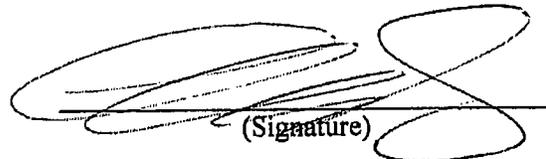
on the interested parties in this action as stated on the below mailing list.

(BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed to Defendant's last-known address. I placed such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Las Vegas, Nevada. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(BY ELECTRONIC SERVICE) By e-serving through Odyssey, pursuant to Administrative Order 14-2 mandatory electronic service, a true file stamped copy of the foregoing document(s) to the last known email address listed below of each Defendant which Plaintiff knows to be a valid email address for each Defendant.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Anna Grigoryan
(Type or print name)



(Signature)

Farris v. Rives, et al.

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

SERVICE LIST

Thomas J. Doyle, Esq.
Chad C. Couchot, Esq.
calendar@szs.com
SCHUERING ZIMMERMAN & DOYLE, LLP
400 University Avenue
Sacramento, California 95825-6502
(916) 567-0400
(916) 568-0400 Fax

Kim Mandelbaum, Esq.
filing@memlaw.net
MANDELBAUM ELLERTON & ASSOCIATES
2012 Hamilton Lane
Las Vegas, Nevada 89106
(702) 367-1234

Attorneys for Defendants

Attorneys for Defendants

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Kimball Jones, Esq.
Nevada Bar No. 12982
Kimball@BighornLaw.com
Jacob G. Leavitt, Esq.
Nevada Bar No. 12608
Jacob@BighornLaw.com
BIGHORN LAW
716 S. Jones Blvd.
Las Vegas, Nevada 89107
Telephone: (702) 333-1111

Attorneys for Plaintiffs
TITINA FARRIS and PATRICK FARRIS

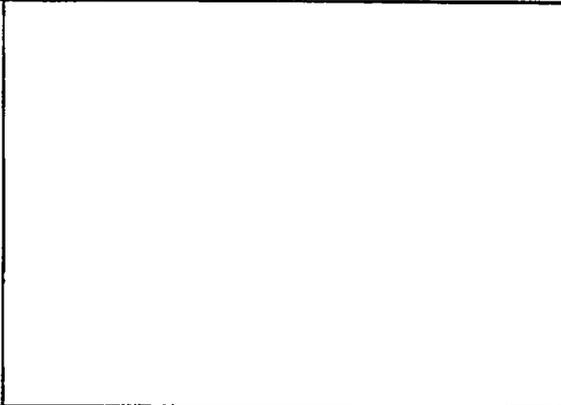


EXHIBIT E

ELECTRONICALLY SERVED
9/11/2019 12:14 PM

1 **SECD**
 George F. Hand, Esq.
 2 Nevada State Bar No. 8483
ghand@handsullivan.com
 3 Samantha A. Herebeck, Esq.
 Nevada State Bar No. 14542
 4 sherbeck@handsullivan.com
HAND & SULLIVAN, LLC
 5 3442 North Buffalo Drive
 Las Vegas, Nevada 89129
 6 Telephone: (702) 656-5814
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 8 Kimball Jones, Esq.
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 9 Jacob G. Leavitt, Esq.
 Nevada Bar No. 12608
 10 Jacob@BighornLaw.com
BIGHORN LAW
 11 716 S. Jones Blvd.
 Las Vegas, Nevada 89107
 12 Telephone: (702) 333-1111

13 Attorneys for Plaintiffs
 TITINA FARRIS and PATRICK FARRIS

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

16 TITINA FARRIS and PATRICK FARRIS,
 17 Plaintiffs,
 18 vs.
 19 BARRY RIVES, M.D.; LAPAROSCOPIC
 20 SURGERY OF NEVADA LLC; DOES I-V,
 inclusive; and ROE CORPORATIONS I-V,
 21 inclusive,
 22 Defendants.

Case No.: A-16-739464-C
 Dept. No.: 31

**PLAINTIFFS' NINTH SUPPLEMENT
 TO EARLY CASE CONFERENCE
 DISCLOSURE OF WITNESSES AND
 DOCUMENTS**

24 Pursuant to NRC P 16.1, Plaintiffs, TITINA FARRIS and PATRICK FARRIS, by and
 25 through their attorneys of record, George F. Hand, Esq. of Hand & Sullivan, LLC, hereby submits
 26 their **Ninth Supplement** to Early Case Conference Production of Documents and List of
 27 Witnesses:
 28

PRELIMINARY STATEMENT

1
2 Plaintiff's NRCP 16.1 Disclosures are subject to, and incorporates by reference, the
3 following objections:

4 A. Plaintiff objects to each and every individual request for pretrial disclosure of
5 witnesses and evidence by Plaintiff to the extent that it requests either documents or information
6 about documents that are protected from discovery by the attorney-client privilege or attorney work
7 product immunity. Plaintiff's response to each and every individual request is limited to
8 documents that are not subject to such privilege or immunity. However, in the event that a
9 document subject to immunity or privilege is produced by Plaintiff, it will have been through
10 inadvertence and shall not constitute waiver of the privilege or immunity applicable to the
11 document produced or any other protected documents.

12 B. This response is limited to documents which Plaintiff knows are in its custody,
13 possession, or control as of the date of production. Plaintiff reserves the right to produce and use
14 responsive documents when discovered, or when their significance becomes known.

15 C. All evidentiary objections are reserved to time of trial, and no waiver of any
16 objection is to be implied from any response made in the spirit of cooperation and discovery
17 obtained herein. Nor is it Plaintiffs' intention by these responses to make any information,
18 otherwise objectionable at the time of trial, admissible by these responses. Any and all objections,
19 including but not limited to, foundation and admissibility are reserved.

20 D. The following responses reflect the total information in possession of Plaintiffs and
21 their attorney, employees, agents or other representatives. Obviously, not all of the facts and
22 information contained in the responses are within the personal knowledge of Plaintiffs themselves.
23 Accordingly, Plaintiffs have relied on the advice and assistance of their attorney in providing this
24 list of witnesses and exhibits.

25 E. Each of the following responses is rendered and based upon information in the
26 possession of the responding party at the time of the preparation of this disclosure. Discovery will
27 continue as long as permitted by statute or stipulation of the parties, and the investigation of these
28 responding parties' attorney and agents will continue to and throughout the trial of this action.

1 Plaintiffs therefore, specifically reserve the right to introduce, at the time of trial, any evidence
2 from any source which may hereinafter be discovered, and testimony from any witness whose
3 identity may hereinafter become known.

4 If any information has unintentionally been omitted from these responses, this responding
5 party reserves the right to apply for relief so as to permit the insertion of the omitted data from
6 these responses.

7 These introductory comments shall apply to each and every response given herein, and shall
8 be incorporated by reference as though fully set forth in all of the responses appearing on the
9 following pages.

10 I.

11 WITNESSES

- 12 1. Titina Farris, Plaintiff
13 c/o Hand & Sullivan, LLC
14 3442 N. Buffalo Drive
15 Las Vegas, NV 89129

16 Titina Farris, Plaintiff, is expected to testify regarding the facts and circumstances of the
17 claims alleged in the Complaint and alleged damages.

- 18 2. Patrick Farris, Plaintiff
19 c/o Hand & Sullivan, LLC
20 3442 N. Buffalo Drive
21 Las Vegas, NV 89129

22 Patrick Farris, Plaintiff, is expected to testify regarding the facts and circumstances of the
23 claims alleged in the Complaint and alleged damages.

- 24 3. Barry Rives, M.D., Defendant
25 c/o Schuering Zimmerman & Doyle, LLP
26 400 University Avenue
27 Sacramento, California 95825-6502

28 Dr. Rives is expected to testify regarding the facts and circumstances of the claims alleged
in the Complaint and alleged damages.

4. Person Most Knowledgeable
Laparoscopic Surgery of Nevada
c/o Schuering Zimmerman & Doyle, LLP
400 University Avenue

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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 expected to testify regarding his/her examination, treatment, diagnosis and overall health conditions of Plaintiff.

- 6. Bess Chang, M.D.
8530 W. Sunset Road
Las Vegas, NV 89113

Dr. Chang is expected to testify regarding his examination, treatment, diagnosis and overall health conditions of Plaintiff.

- 7. Elizabeth Hamilton, M.D.
10001 Eastern Avenue
Ste. #200
Henderson, NV 89052

Dr. Hamilton is expected to testify regarding her examination, treatment, diagnosis and overall health conditions of Plaintiff.

- 8. Naomi Chaney, M.D.
5380 South Rainbow Blvd.
Las Vegas, NV 89118

Dr. Chaney is expected to testify regarding her examination, treatment, diagnosis and overall health conditions of Plaintiff.

- 9. Person Most Knowledgeable
Desert Valley Therapy
6830 W. Oquendo, #101
Las Vegas, NV 89119

Person Most Knowledgeable for Desert Valley Therapy is expected to testify regarding his/her examination, treatment, diagnosis and overall health conditions of Plaintiff.

1 10. Person Most Knowledgeable
2 Steinberg Diagnostic Medical Imaging Centers
3 9070 W. Post Road
 Las Vegas, NV 89148

4 Person Most Knowledgeable for Steinberg Diagnostic Medical Imaging Centers is expected
5 to testify regarding his/her examination, treatment, diagnosis and overall health conditions of
6 Plaintiff.

7 11. Lowell Pender
 (Son of Titina Farris)
8 3620 Mountain River Street
 Las Vegas, NV 89129

9 Lowell Pender, is expected to testify regarding the facts and circumstances of the claims
10 alleged in the Complaint and alleged damages.

11 12. Addison Durham
 (Brother of Titina Farris)
12 2740 Montessori
13 Las Vegas, NV 89117

14 Addison Durham is expected to testify regarding the facts and circumstances of the claims
15 alleged in the Complaint and alleged damages.

16 13. Sky Prince
 (Daughter of Titina Farris)
17 6450 Crystal Dew Drive
 Las Vegas, NV 89118

18 Sky Prince is expected to testify regarding the facts and circumstances of the claims alleged
19 in the Complaint and alleged damages.

20 14. Steven Y. Chinn, M.D.
21 6950 W. Desert Inn Rd., #110
22 Las Vegas, NV 89117

23 Dr. Chinn is expected to testify regarding his examination, treatment, diagnosis and overall
24 health conditions of Plaintiff.

25 15. Person Most Knowledgeable
26 CareMeridian
 3391 N. Buffalo Drive
27 Las Vegas, NV 89129

1 Person Most Knowledgeable for CareMeridian is expected to testify regarding his/her
2 examination, treatment, diagnosis and overall health conditions of Plaintiff.

3 16. Amy Nelson
4 3213 Whites Drive
5 Austin, TX 78735

6 Amy Nelson is expected to testify regarding the facts and circumstances of the claims
7 alleged in the Complaint and alleged damages.

8 17. Christine Garcia
9 231 James Adkins Drive
10 Kyle, TX 78640

11 Christine Garcia is expected to testify regarding the facts and circumstances of the claims
12 alleged in the Complaint and alleged damages.

13 18. Person Most Knowledgeable
14 St. Rose Dominican – Siena Campus
15 3001 St. Rose Parkway
16 Henderson, Nevada 89052

17 Person Most Knowledgeable for St. Rose Dominican – Siena Campus is expected to testify
18 regarding his/her examination, treatment, diagnosis and overall health conditions of Plaintiff.

19 19. Michael Hurwitz, M.D.
20 510 Superior Avenue
21 Suite 200G
22 Newport Beach, CA 92663
23 (949) 791-6767

24 Dr. Hurwitz will testify as to his expert opinion regarding the medical treatment and care
25 rendered to Titina Farris and causation of the injuries to Titina Farris. Dr. Hurwitz will also testify
26 in accordance with his expert report, curriculum vitae and testimony list.

27 20. Justin Willer, M.D.
28 741 Ocean Parkway
Brooklyn, NY 11230
(718) 859-8920

Dr. Willer will testify as to his expert opinion regarding the medical treatment and care
rendered to Titina Farris and causation of the injuries to Titina Farris. Dr. Willer will also testify in
accordance with his expert report, curriculum vitae and testimony list.

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1 21. Alan J. Stein, M.D.
2 509 12th Street
3 Apt. 1D
4 Brooklyn NY 11215
5 (718) 369-4850

6 Dr. Stein will testify as to his expert opinion regarding the medical treatment and care
7 rendered to Titina Farris and causation of the injuries to Titina Farris. Dr. Willer will also testify in
8 accordance with his expert report, curriculum vitae and testimony list.

9 22. Dawn Cook, RN, CNLCP, LNCP-C, CLCP, LNC, CFLC
10 1001 E. Sunset Road, #97553
11 Las Vegas, NV 89193-7553
12 (702) 544-2159

13 Dawn Cook will testify as to her expert opinion regarding the Life Care Plan formulated for
14 Titina Farris, including the necessary future medical treatment, therapies and services required for
15 Titina Farris and the costs and expenses associated with Titina Farris's life care plan. It is expected
16 that Dawn L. Cook will testify as to her expert opinion regarding the medical treatment and care
17 rendered to Titina Farris and causation of her injuries; the reasonableness and necessity of the
18 treatment and care rendered to Plaintiff Titina Farris; the costs of medical care and treatment,
19 including the usual, customary and reasonable charges for said treatment. Dawn L. Cook will also
20 testify in accordance with her expert report, curriculum vitae and testimony list.

21 23. Terence M. Clauretje, PHD
22 4505 S. Maryland Parkway
23 Las Vegas, Nevada 89154-6025
24 (702) 985-3223

25 Dr. Clauretje will testify as to his expert opinion regarding the economic losses of Titina
26 Farris, including the present value of Titina Farris's Life Care Plan. Dr. Clauretje will also testify
27 in accordance with his expert reports, curriculum vitae and testimony list.

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24. Alex Barchuk, M.D.
1125 Sir Francis Drake Blvd.
Kentfield, CA 94904
(415) 485-3508

Dr. Barchuk will testify as to his expert opinion regarding the medical treatment and care rendered to Titina Farris and causation of the injuries to Titina Farris as well as his examination of Titina Farris. Dr. Barchuk will also testify in accordance with his expert report, curriculum vitae and testimony list.

25. Person(s) Most Knowledgeable and/or Custodian of Records
MGM Resorts International /UMR Medical
c/o Russell Oliver & Stephens Attorneys
5178 Wheelis Drive
Memphis, TN 38117

Person(s) Most Knowledgeable and/or Custodian of Records for MGM Resorts International/UMR Medical is expected to testify as to his/her knowledge of the provisions, terms, claims and/or payments regarding the subject MGM Resorts Health and Welfare Benefit Plan in regard to Titina Farris and Patrick Farris.

26. Vickie Center (Witness)
c/o William R. Brenske, Esq.
Law Office Of William R. Brenske
630 South Third Street
Las Vegas, NV 89101

Vickie Center is expected to testify regarding the facts and circumstances of the claims alleged in the Complaint and alleged damages.

27. Mary Jayne Langan (Witness)
Registered Respiratory Therapist
10672 Bonchester Hill Street
Las Vegas, NV 89141
(949) 922-3248

Mary Jayne Langan is expected to testify regarding the facts and circumstances of the claims alleged in the Complaint and alleged damages.

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II.

DOCUMENTS PRODUCED

1. CD containing the following documents:

DOCUMENT	BATES LABEL NO.
St. Rose Dominican Hospital Record	PLTF000001-PLTF008648
Dr. Rives Records	PLTF008649-PLTF008697
Dr. Chang Records	PLTF008698-PLTF008706
Dr. Hamilton Records	PLTF008707-PLTF008727
Photographs of Titina Farris	PLTF008728-PLTF008742
Desert Valley Therapy Records and Billing	PLTF008743-PLTF008823
Dr. Hamilton Records and Billing	PLTF008824-PLTF008907
St. Rose Dominican – San Martin Campus Billing Records for July, 2015 admission	PLTF008908-PLTF009101
St. Rose Dominican – Siena Campus Billing Records for July, 2016 admission	PLTF009102-PLTF009124
Dr. Chaney Medical Records	PLTF009125-PLTF0010091
Dr. Chaney Billing Records	PLTF0010092- PLTF0010121
Advanced Orthopedics & Sports Medicine Records and Billing	PLTF0010122- PLTF0010148
Diagnostic films taken at St. Rose Dominican Hospital	Not bates stamped
Video of Titina Farris taken by Lowell Pender on April 13, 2015	Not bates stamped
Videos of Titina Farris, Patrick Farris, Addison Durham, Lowell Pender and Sky Prince	Not bates stamped
Marriage Certificate	PLTF0010149
Dr. Steven Y. Chinn, M.D. Medical and Billing Records	PLTF0010150- PLTF0010174
CareMeridian Medical and Billing Records	PLTF0010175-PLTF10474
St. Rose Dominican Hospital-Siena Campus Medical Records	PLTF10475-PLTF11390
Steinberg Diagnostic Medical Imaging Medical and Billing Records	PLTF11391-PLTF11451
Notice of No Film/Images on file for St. Rose Dominican Hospital-Siena Campus	PLTF11452-PLTF11456
National Vital Statistics Reports United States Life Tables, 2015	PLTF11457-PLTF11520
MGM Resorts Health and Welfare Benefit Plan	PLTF11521-PLTF11561
Bolton, CF, Neuromuscular Manifestations of Critical Illness, Muscle & Nerve 32: 140-163, 2005	PLTF11562-PLTF11585
Govindarajan, R, Jones, D, Galvez, N, AANEM Case Study: Critical Illness Polyneuropathy, October 2014	PLTF11586-PLTF11594
Lacomis, D, Electrophysiology of Neuromuscular Disorders in critical illness, Muscle & Nerve 47:452-463, 2013	PLTF11595-PLTF11606

1	Koch, S, et. al., Long-term recovery in critical illness myopathy is complete, contrary to polyneuropathy, <i>Muscle & Nerve</i> 50:431-436	PLTF11607-PLTF11612
2		
3	Verena, N., N. Kornmann, Bert van Ramshorst, Anke B.Smits, Thomas L. Bollen, Djamila Boerma, Beware of false-negative CT scan for anastomotic leakage after colonic surgery, <i>International Journal of Colorectal Disease</i> (2014) 29:445-451	PLTF11613-PLTF11619
4		
5	Barry James Rives, M.D. Deposition Transcript Dtd. October 25, 2017 Re: Vickie Center v. Rives, M.D.	PLTF11620-PLTF11630
6		
7	Barry James Rives, M.D. Deposition Transcript Dtd. April 17, 2018 Re: Vickie Center v. Rives, M.D.	PLTF11631-PLTF11667
8		

9 Plaintiff also designates and incorporates herein all documents, witnesses, and
10 tangible items disclosed by any other party in this action pursuant to NRCP 16.1; all
11 documents produced by all parties in response to Requests for Production of Documents;
12 and all exhibits to depositions taken in this action.

13 **III.**

14 **COMPUTATION OF DAMAGES**

15 Pursuant to NRCP 16.1 (a)(l)(C), Plaintiff provides the following computation of damages,
16 which is not intended to be all-inclusive. Discovery is continuing and Plaintiff reserves the right to
17 supplement any computation and damage amount.

18	Provider	Charges
19	1 St. Rose Dominican San Martin Campus	\$ 908,033.12
20	2 St. Rose Dominican Siena Campus	\$ 104,120.04
21	3 Barry Rives, M.D.	\$ 11,929.00
22	4 Bess Chang, M.D.	\$ 1,018.00
23	5 Naomi Chaney, M.D.	\$ 6,570.00
24	6 Elizabeth Hamilton, M.D.	\$ 12,801.00
25	7 Desert Valley Therapy	\$ 4,473.15
26	8 Advanced Orthopedic & Sports Medicine	\$ 4,973.00
27	9 Southern Nevada Pain Center	\$ 1,015.00
28	10 CareMeridian	\$ 28,747.63
	11 Steinberg Diagnostic Medical Imaging	\$ 6,126.30
	TOTAL	\$ 1,089,806.24

Past Medical and Related Expenses \$ 1,089,806.24

1	Future Medical and Associated Expenses	
	Medical Care	\$ 98,503.98
2	Allied Health	\$ 1,112,088.31
	Complications	\$ 31,362.20
3	Diagnostics	\$ 23,322.20
	Procedures	\$ 77,975.10
4	Home Care	\$ 2,588,325.00
	Equipment	\$ 114,799.71
5	Home Modifications	\$ 81,080.00
6	Total:	\$ 4,127,456.00
	The present value of the life care plan is	\$ 4,663,473.00
7		
8	Total Special Damages	\$ 5,217,262.24

9 Plaintiffs reserve the right to supplement this Calculation of Damages with any and all other
10 relevant documents and records, which come into their possession during discovery. Further,
11 Plaintiffs reserve the right to seek other damages in an amount to be proven at trial, whereby a jury
12 will decide upon a sum of money sufficient to reasonably and fairly compensate Plaintiffs for the
13 following items:

14 1. The reasonable medical expenses Plaintiff has necessarily incurred as a result of the
15 accident/incident and the medical expenses which the Jury believes the Plaintiff is reasonably
16 certain to incur in the future as a result of the accident/incident.

17 2. The physical and mental pain, suffering, anguish, and disability endured by the
18 Plaintiff from the date of the accident/incident to the present.

19 3. The physical and mental pain, suffering, anguish, and disability which the Jury
20 believes the Plaintiff is reasonably certain to experience in the future as a result of the
21 accident/incident.

22 4. The loss of consortium, loss of society, affection, assistance and conjugal fellowship
23 by Plaintiff Patrick Farris from the date of the accident/injury to present.

24 5. The loss of consortium, loss of society, affection, assistance and conjugal fellowship
25 which the Jury believes Plaintiff Patrick Farris is reasonably certain to experience in the future as a
26 result of the accident/injury.

27 Plaintiff reserves the right to supplement this Calculation of Damages with any and all other
28 relevant documents and records which come into their possession during discovery.

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CERTIFICATE OF SERVICE

I am employed in the County of Clark, State of Nevada. I am over the age of 18 and not a party to the within action. My business address is 3442 N. Buffalo Drive, Las Vegas, NV 89129.

On September_11, 2019, I served the within document(s) described as:

PLAINTIFFS' NINTH SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURE OF WITNESSES AND DOCUMENTS

on the interested parties in this action as stated on the below mailing list.

(BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed to Defendant's last-known address. I placed such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Las Vegas, Nevada. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(BY ELECTRONIC SERVICE) By e-serving through Odyssey, pursuant to Administrative Order 14-2 mandatory electronic service, a true file stamped copy of the foregoing document(s) to the last known email address listed below of each Defendant which Plaintiff knows to be a valid email address for each Defendant.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Erickson Finch
(Type or print name)

/s/ Erickson Finch
(Signature)

Farris v. Rives, et al.

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

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SERVICE LIST

<p>Thomas J. Doyle, Esq. Chad C. Couchot, Esq. <u>calendar@szs.com</u> SCHUERING ZIMMERMAN & DOYLE, LLP 400 University Avenue Sacramento, California 95825-6502 (916) 567-0400 (916) 568-0400 Fax</p> <p><i>Attorneys for Defendants</i></p>	<p>Kim Mandelbaum, Esq. <u>filing@memlaw.net</u> MANDELBAUM ELLERTON & ASSOCIATES 2012 Hamilton Lane Las Vegas, Nevada 89106 (702) 367-1234</p> <p><i>Attorneys for Defendants</i></p>
<p>Kimball Jones, Esq. Nevada Bar No. 12982 <u>Kimball@BighornLaw.com</u> Jacob G. Leavitt, Esq. Nevada Bar No. 12608 <u>Jacob@BighornLaw.com</u> BIGHORN LAW 716 S. Jones Blvd. Las Vegas, Nevada 89107 Telephone: (702) 333-1111</p> <p><i>Attorneys for Plaintiffs</i> TITINA FARRIS and PATRICK FARRIS</p>	

EXHIBIT F

1 **A. LIST OF WITNESSES**

- 2 1. **Titina Farris**
3 c/o George F. Hand, Esq.
4 **HAND & SULLIVAN, LLC**
 3442 North Buffalo Drive
 Las Vegas, NV 89129

5 **Ms. Farris is expected to testify regarding the facts and circumstances giving rise**
6 **to this action.**

- 7 2. **Patrick Farris**
8 c/o George F. Hand, Esq.
9 **HAND & SULLIVAN, LLC**
 3442 North Buffalo Drive
 Las Vegas, NV 89129

10 **Mr. Farris is expected to testify regarding the facts and circumstances giving rise**
11 **to this action.**

- 12 3. **Barry Rives, M.D.**
13 c/o Thomas J. Doyle
14 **Schuering Zimmerman & Doyle, LLP**
 400 University Avenue
 Sacramento, CA 95825

15 **Dr. Rives is expected to testify regarding the facts and circumstances surrounding**
16 **this matter, including his care and treatment of Plaintiff Titina Farris.**

- 17 4. **Person Most Knowledgeable**
18 **Laparoscopic Surgery of Nevada**
19 c/o Schuermg Zimmerman & Doyle, LLP
 400 University Avenue
 Sacramento, California 95825-6502

20 **Person Most Knowledgeable for Laparoscopic Surgery of Nevada is expected to**
21 **testify regarding the facts and circumstances of the claims alleged in the Complaint and**
22 **alleged damages.**

- 23 5. **Person Most Knowledgeable**
24 **St. Rose Dominican - San Martin Campus**
25 8280 West Warm Springs Road
 Las Vegas, Nevada 89113

26 **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**
27 **Las Vegas, NV 89129**

28 **Person Most Knowledgeable for Care Meridian is expected to testify regarding**
29 **his/her examination, treatment, diagnosis and overall health conditions of Plaintiff.**

30 **16. Gregg Ripplinger M.D.**
31 **10001 S Eastern Ave #201**
32 **Henderson, NV 89052**
33 **(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.**

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4 **2400 S Cimarron Rd Ste 100**
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15 **19. Ravishankar Konchada M.D.**
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17 **Las Vegas, NV, 89118**
18 **(702) 477-0772**

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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;

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43. Dr. Juell's supplemental expert report.

Defendants reserve the right to supplement this list of documents as discovery continues and to submit any exhibit of any other party. Said Defendants further reserve the right to amend this list of witnesses, documents and tangible items should, during the course of the discovery of this matter, additional witnesses and documentation become known to defendants or defendants' counsel. Defendants hereby incorporate all documents produced by the parties in their Early Case Conference Disclosures and supplements by reference.

Dated: September 12, 2019

SCHUERING ZIMMERMAN & DOYLE, LLP

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

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



James C. Nunley, M.D., F.R.C.S.
 Certified
 American Board
 of Surgery

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

Premiere Surgical Specialists

General, Vascular, Trauma & Laparoscopic Surgery

Thomas E. Rembetski, M.D.
 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

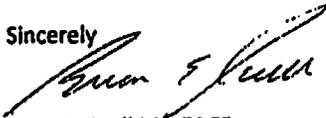


6554 South McCarran Boulevard, Suite 8 • Reno, Nevada 89509
 Phone (775) 324-0288 • Fax (775) 323-5504

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

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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
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

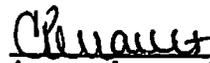

 An employee of Schuering Zimmerman
 & Doyle, LLP
 1737-10881

EXHIBIT G

1 **A. LIST OF WITNESSES**

- 2 1. **Titina Farris**
3 **c/o George F. Hand, Esq.**
4 **HAND & SULLIVAN, LLC**
 3442 North Buffalo Drive
 Las Vegas, NV 89129

5 **Ms. Farris is expected to testify regarding the facts and circumstances giving rise**
6 **to this action.**

- 7 2. **Patrick Farris**
8 **c/o George F. Hand, Esq.**
 HAND & SULLIVAN, LLC
 3442 North Buffalo Drive
9 **Las Vegas, NV 89129**

10 **Mr. Farris is expected to testify regarding the facts and circumstances giving rise**
11 **to this action.**

- 12 3. **Barry Rives, M.D.**
13 **c/o Thomas J. Doyle**
14 **Schuering Zimmerman & Doyle, LLP**
 400 University Avenue
 Sacramento, CA 95825

15 **Dr. Rives is expected to testify regarding the facts and circumstances surrounding**
16 **this matter, including his care and treatment of Plaintiff Titina Farris.**

- 17 4. **Person Most Knowledgeable**
18 **Laparoscopic Surgery of Nevada**
19 **c/o Schuermg Zimmerman & Doyle, LLP**
 400 University Avenue
 Sacramento, California 95825-6502

20 **Person Most Knowledgeable for Laparoscopic Surgery of Nevada is expected to**
21 **testify regarding the facts and circumstances of the claims alleged in the Complaint and**
22 **alleged damages.**

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24 **St. Rose Dominican - San Martin Campus**
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10 Mrs. Farris at St. Rose Dominican Hospital - San Martin Campus.

11 **B. DOCUMENTS**

12 1. Medical and billing records from Laparoscopic Surgery of Nevada
13 (BR000001-BR000049).

14 2. Medical records from St. Rose Dominican Hospital (previously produced by
15 plaintiffs.)

16 3. Medical records from Dr. Barry Rives (previously produced by plaintiffs.)

17 4. Medical records from Dr. Noami Change (previously produced by plaintiffs.)

18 5. Medical records from Dr. Elizabeth Hamilton (previously produced by
19 plaintiffs.)

20 6. Photographs of plaintiff Titina Farris (previously produced by plaintiffs.)

21 7. Medical and billing records from Desert Valley Therapy (previously produced
22 by plaintiffs.)

23 8. Medical and billing records from Dr. Hamilton (previously produced by
24 plaintiffs.)

25 9. Medical and billing records from St. Rose Dominican Hospital - San Martin
26 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;

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- 43. Dr. Juell's supplemental expert report;
- 44. Dr. Adornato's supplemental expert report;
- 45. Dr. Adornato's Stanford Profile;
- 46. Article: The Natural History of Chronic Painful Peripheral Neuropathy in a Community Diabetes Population;
- 47. Article: The Natural History of Painful Diabetic Neuropathy - a 4-year Study.

Defendants reserve the right to supplement this list of documents as discovery continues and to submit any exhibit of any other party. Said Defendants further reserve the right to amend this list of witnesses, documents and tangible items should, during the course of the discovery of this matter, additional witnesses and documentation become known to defendants or defendants' counsel. Defendants hereby incorporate all documents produced by the parties in their Early Case Conference Disclosures and supplements by reference.

Dated: September 23, 2019

SCHUERING ZIMMERMAN & DOYLE, LLP

By  _____
 CHAD C. COUCHOT
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 23rd 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 FIFTH 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.

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September 20, 2019

RE: FARRIS VERSUS RIVES

Dear Mr. Couchot:

Per your request, I have reviewed the four articles provided by plaintiff's counsel regarding critical illness myopathy and critical illness polyneuropathy. These papers in general support my opinion that a major portion of Ms. Farris's current painful neuropathy is due to her pre existent painful diabetic neuropathy. Three of the four papers do not discuss pain as an issue in critical illness neuropathy and one mentions and demonstrates that a minority have neuropathic pain as a component of their disability. This paper primarily authored by Koch, specifically excludes patients with preexisting neuropathy such as is the case with Ms. Farris, and therefore is not really addressing the issue that Ms. Farris has a pre existent painful narcotics and gabapentin treated neuropathy due to her diabetes mellitus for years prior to her surgery with Dr. Rives which would be expected to worsen with time. Updated records including referral to the Southern Nevada Pain Center as of June 2019 indicate increased pain in hands and legs, more consistent with underlying and ongoing diabetic neuropathy rather than a monophasic critical illness neuropathy.

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

A handwritten signature in black ink, appearing to read "Bruce T. Adornato", followed by a horizontal line extending to the right.

Bruce T. Adornato MD
Adjunct Clinical Professor of Neurology
Stanford School of Medicine
Palo Alto Neurology
San Mateo, California



Bruce T. Adornato

ADJUNCT CLINICAL PROFESSOR, NEUROLOGY & NEUROLOGICAL SCIENCES

[PRINT PROFILE](#) [EMAIL PROFILE](#)

Bio



Bio

Dr. Adornato joined the Department of Neurology as Voluntary Clinical Faculty in 1978, (subsequently Adjunct Clinical Faculty) and has served as Director of the Neuromuscular Laboratory from 1978 until 1983, performing and interpreting nerve and muscle biopsies as well as serving as attending physician directing residents and medical students in the diagnosis and care of his private patients admitted to Stanford Hospital. Since 1986, he has been attending physician at the Palo Alto VA Hospital, directing Stanford Neurology residents and medical students in the care of veterans. He has published 69 peer reviewed papers and a number of book chapters in the field of neurology. He is currently the medical officer of a silicon valley startup exploring mobility devices for the neurologically impaired.

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The natural history of chronic painful peripheral neuropathy in a community diabetes population

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Accepted 16 January 2006

Abstract

Aims To examine the natural history of chronic painful diabetic neuropathy (CPDN).

Methods A cross-sectional study of 350 people with diabetes was performed during 1998–1999 to assess the prevalence of CPDN in the community. Fifty-six patients with CPDN were identified and were followed up an average of 5 years later.

Results From the original cohort, 12 patients had died and 14 had moved away or were unable to participate in the follow-up study. Thus 30 patients with CPDN [21 male, mean (SD) age 68.6 years (9.4), mean (SD) duration of diabetes 15.4 years (8.7)] were re-assessed. Seven (23%) had been pain free for at least 12 months and 23 continued to report neuropathic pain of similar quality and severity [total McGill Pain Questionnaire Score median (interquartile range) at follow-up 22 (16–39) vs. 20 (16–33) at baseline, $P = 0.3$; mean (SD) visual analogue scale (VAS) score for pain over the preceding 24 h 5.3 cm (2.9) vs. 4.6 cm (2.5) at baseline, $P = 0.1$]. Only 65% had ever received treatment for CPDN despite 96% (22/23) reporting pain to their physician; 43.5% had received antidepressants, 17.4% anticonvulsants, 39% opiates and 30% had tried complementary therapies.

Conclusions The neuropathic pain of CPDN can resolve completely over time in a minority (23%). In those in whom painful neuropathic symptoms had persisted over 5 years, no significant improvement in pain intensity was observed. Despite the improvement in treatment modalities for chronic pain in recent years, patients with CPDN continue to be inadequately treated.

Diabet. Med. 23, 1021–1024 (2006)

Keywords chronic pain, diabetic neuropathy, natural history, treatment

Abbreviations BMI, body mass index; CPDN, chronic painful diabetic neuropathy; CPPN, chronic painful peripheral neuropathy; MPQ, McGill Pain Questionnaire; NDS, neuropathy disability score; NSS, neuropathy symptom score; VAS, visual analogue scale; VPT, vibration perception threshold

Introduction

Chronic painful diabetic neuropathy (CPDN) is common, often under-recognized and under-treated [1]. Limited literature is available on the natural history of CPDN, mainly because of methodological differences and biases of the few

prospective studies conducted so far [2–6]. We determined the natural history and impact of CPDN in a community-based cohort over a 5-year period, by reassessing these patients using similar methodology, definitions and diagnostic criteria.

Patients and methods

In a cross-sectional prevalence study of 350 people with diabetes performed during 1998–1999 in the community, 56 patients were identified as suffering from CPDN [1]. These patients

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were re-assessed using the same methodology an average of 5 years later [1]. Sensorimotor peripheral neuropathy was assessed by the Neuropathy Disability Score (NDS) and the Neuropathy Symptom Score (NSS) [7]. Typical lower limb neuropathic pain was ascertained with the McGill Pain Questionnaire (MPQ) [8] and the Pain Symptom Score (PSS) [9]. A diagnosis of CPDN was made on the basis of the following criteria: neuropathic pain symptoms in the legs present for at least 1 year; a PSS ≥ 3 ; moderate neurological signs (NDS score ≥ 6) or mild neurological signs with at least moderate symptoms (NDS score ≥ 3 and NSS score ≥ 5) also had to be present [7]. At baseline, patients with a serum creatinine $> 150 \mu\text{mol/l}$ were excluded. Peripheral vascular disease was defined if there were less than three palpable peripheral pulses. The impact of chronic pain on patients' functional status was assessed by the Pain Disability Index (PDI) [10]. HbA_{1c} values from the first study were converted to Diabetes Control and Complications Trial (DCCT)-aligned values by means of a conversion factor so that comparison with HbA_{1c} from the follow-up study was possible. The study was approved by the South Sefton Research Ethics Committee and all patients gave written informed consent.

Statistical methods

Differences between patients who had become pain free and those whose pain persisted were examined with the *t*-test for normally distributed continuous data and the Mann-Whitney test for non-normally distributed data.

Differences in terms of categorical variables were tested using the χ^2 test. Correlations between non-normally distributed variables were examined by Spearman's rank correlation coefficient (*r*). Statistical significance was defined as $P < 0.05$ (two-tailed). Visual analogue scale (VAS) pain scores, MPQ, NDS, NSS and PDI scores from baseline and after 5 years of follow-up were analysed with the Wilcoxon signed ranks test for matched pairs. Results were analysed using SPSS v10.0 for Windows (SPSS Inc., Chicago, IL, USA).

Results

From the original cohort, 12 patients had died and 14 had moved away or were unable to participate in the follow-up study for various reasons. A total of 30 patients with CPDN [21 male, mean (sd) age 68.6 years (9.4), mean (sd) duration of diabetes 15.4 years (8.7), three (10%) with Type 1 diabetes, mean body mass index (BMI) (sd) 30.7 kg/m^2 (4.6)] were reassessed after 5 years.

Seven (23.3%) had been pain free for at least 12 months (five male, mean (sd) age 75.6 years (9.4), mean (sd) duration of diabetes 13 years (5.3), all with Type 2 diabetes). The remaining 23 patients continued to report neuropathic pain.

Vitamin B12, renal profile, thyroid-stimulating hormone estimation and serum protein electrophoresis were undertaken in all subjects at follow-up to exclude other causes of neuropathy and no abnormalities were detected. Patients who had become pain free at follow-up were significantly older and the intensity of their pain at the time of initial assessment was significantly less compared with those who continued to

report neuropathic pain [at baseline mean (sd) VAS of pain over the preceding 24 h in patients with persistent symptoms 4.6 cm (2.5) vs. 1.5 cm (1.1) in patients who became pain free, $P = 0.005$]. These two patient groups also differed in their total MPQ scores at baseline [median (interquartile range (IQR)) 20 (16–33) in those with persistent pain vs. 13 (6–20) in those who became pain free; $P = 0.02$]. No differences were identified in terms of gender, type and duration of diabetes, smoking history, BMI, serum creatinine, presence of peripheral vascular disease, ischaemic heart disease, cerebrovascular events, hypertension, retinopathy or nephropathy. The severity of underlying neuropathy (assessed by the NDS score and vibration perception thresholds) was also similar in the two groups at baseline and follow-up (Table 1).

The majority (23/30, 76.6%) of patients continued to experience chronic neuropathic pain of similar quality and severity [total MPQ score median (IQR) at follow-up 22 (16–39) vs. 20 (16–33) at baseline, $P = 0.3$; mean (sd) VAS score for pain over the preceding 24 h 5.3 cm (2.9) vs. 4.6 cm (2.5) at baseline, $P = 0.1$].

The impact of chronic pain on the patients' daily activities did not change significantly over time [PDI median (IQR) 17.5 (7–37) at baseline vs. 30 (13–39) at follow up; $P = 0.1$].

A significant correlation was found between the degree of disability caused by chronic pain (as assessed by the PDI) and the intensity of the patients' painful symptoms at follow-up ($r = 0.75$, $P < 0.001$). No correlation was revealed between the severity of the underlying neuropathy as assessed by the NDS score and the severity of pain ($r = 0.38$, $P = 0.08$).

Although 96% (22/23) of patients with persistent pain at follow-up had reported this to their treating physician, only 65% (15/23) had ever received treatment for it. These included: tricyclic antidepressants 43.5% (10/23), anticonvulsants 17.4% (4/23), opiates 39.1% (9/23), non-steroidal anti-inflammatory agents 13% (3/23), quinine (one patient) and transcutaneous electrical nerve stimulation therapy (one patient). Seven patients (30.4%) had consulted at least once outside of mainstream medicine (reflexology, herbal remedies, acupuncture).

Discussion

This 5-year prospective study has shown that neuropathic symptoms of patients with CPDN can remit spontaneously over time, although the majority continue to experience troublesome painful symptoms with little change in their characteristics. Our previous study also demonstrated that complete resolution of pain with time is possible [2].

Although a substantial body of information is available on the long-term progression of sensorimotor peripheral neuropathy in patients with Type 1 [11,12] and Type 2 diabetes [13–16], less is known about the natural history of CPDN. Published studies so far have produced contrasting conclusions, mainly due to methodological differences. Some longitudinal studies have included patients with short duration of pain [3,4]

Table 1 Comparison of the characteristics of the patients who became pain free with those with persistent symptoms, at baseline and after 5 years' follow-up

Characteristic	Baseline			After 5 years follow-up		
	Patients with persistent pain (n = 23)	Patients who eventually became pain free (n = 7)	P-value	Patients with persistent pain (n = 23)	Patients who eventually became painfree (n = 7)	P-value
Age* (years)	61.7 (9.0)	70.0 (8.8)	0.04	66.4 (8.5)	75.6 (9.4)	0.02
Male† (%)	16/23 (69.6)	5/7 (71.5)	0.9	16/23 (69.6)	5/7 (71.5)	0.9
Duration of diabetes* (years)	11.5 (10.5)	8.0 (5.9)	0.4	16.3 (9.5)	13 (5.3)	0.4
Type 1 diabetes† (%)	3/23 (13)	0	1.0	3/23 (13)	0/7 (0)	1.0
Body mass index* (kg/m ²)	30.4 (4.4)	27.3 (7.0)	0.2	31.2 (4.0)	28.8 (6.6)	0.3
Smoking‡ (pack years)	14.5 (0–39.25)	27.5 (5.625–48.5)	0.9	23.5 (0–41.25)	24.125 (5.625–47)	0.9
Blood pressure (mmHg)						
Systolic*	155 (18.0)	159 (24.2)	0.6	153 (20.6)	148 (16.2)	0.5
Diastolic*	88 (12.1)	91 (16.2)	0.6	83 (11.5)	73 (14.4)	0.08
HbA _{1c} *	8.0 (1.5)	8.1 (1.3)	0.9	8.0 (1.36)	8.1 (0.9)	0.9
NDS‡	7 (6–9)	10 (5–10)	0.5	8 (6–10)	10 (6–10)	0.4
VPT* (Hz)	25.5 (22.7)	31.8 (22.6)	0.5	23.6 (11.3)	30.2 (13.3)	0.2
MPQ‡ (total)	20 (16–33)	13 (6–20)	0.02	22 (16–39)	9 (0–11)	0.002
PDI‡	17.5 (7–37)	10 (5–25)	0.2	30 (13–39)	5 (0–18)	0.02
VAS* (last 24 h)	4.6 (2.5)	1.5 (1.1)	0.005	5.3 (2.9)	0	< 0.0001
VAS* (current)	3.2 (2.4)	0.65 (0.8)	0.009	3.7 (2.7)	0	< 0.0001

*Values are expressed as mean (sd).

†Values are expressed as number (%).

‡Values are expressed as median (interquartile range).

NDS, Neuropathy Disability Score; VAS, visual analogue scale; VPT, vibration perception threshold; MPQ, McGill Pain Questionnaire; PDI, Pain Disability Index.

and varying neuropathic syndromes [5,6,17] known to have differing prognoses [18–20]. As a result, some studies report no change in painful symptomatology [5,6,21], whereas others have observed substantial improvement in pain [3,4,17] after a variable follow-up period.

Acute painful neuropathy associated with poor glycaemic control or rapid improvement of glucose control with initiation of insulin treatment has a generally favourable outcome [22–24]. Therefore, when studying the epidemiology and natural history of CPDN, symptoms should be present longer than 6 months. Only two previous studies have done this [2,21]. Boulton *et al.* [21] reported no significant change in the severity of pain in 36 patients after a mean of 4.7 years of follow-up. No patients from that cohort experienced complete resolution of pain. This contrasts with the findings of the present and our previous study [2], where a symptomatic improvement in the majority of the 33 patients with CPDN, followed up prospectively for a mean of 3.6 years, was noted. Complete remission of pain was observed in a total of seven (21%) patients from that cohort [2].

The management of CPDN is a challenge and our findings that chronic painful symptoms can resolve may help patients cope better with their pain and increase compliance with the pharmacological therapy prescribed for pain relief. In our present study some associations with the likelihood of becoming pain free over time were identified, e.g. older age and lower intensity of initial pain.

One of the strengths of the present study is that the patients studied were part of a community-based cohort of patients with CPDN. This is in contrast to patients included in the two previously published studies on the natural history of CPDN, who were identified from hospital out-patient diabetes clinics, not representative of the overall diabetes population [2,21]. One limitation, however, of the present study is the high drop-out rate (46%).

Compared with the treatments that had been offered to the patients when first assessed 5 years earlier, there was now a trend towards prescribing drugs whose efficacy in the relief of chronic neuropathic pain is supported by clinical trial evidence. Disappointingly, many patients remained without treatment for their symptoms, despite reporting these to their treating physician. A substantial proportion of the patients of this cohort were cared for solely in primary care. This emphasizes the need to raise awareness among healthcare professionals of the increased frequency with which CPDN is encountered in everyday clinical practice and of the negative impact on well-being if left untreated.

In conclusion, this 5-year follow-up study of community patients with chronic painful diabetic neuropathy has demonstrated that complete remission of neuropathic symptoms occurs over time, although most patients will continue to experience pain which does not appear to progress relentlessly. Further follow-up of these patients will enable us to ascertain whether relapses of painful symptomatology occur. Despite recent



advances in the management of chronic neuropathic pain, a substantial proportion of sufferers remain inadequately treated.

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The natural history of painful diabetic neuropathy—a 4-year study

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Summary

Thirty-nine patients with painful diabetic peripheral neuropathy were selected for a follow-up study to determine the natural history of this condition. Symptoms, motor conduction velocities (MCV) and ankle pressure indices were recorded at the initial assessment and after a mean study period of 4.7 years. Thirty-six patients completed the study and showed no significant changes in symptoms, but there was a significant fall in median nerve MCV. It is concluded that symptoms of established diabetic neuropathy persist for several years, and the changes in MCV may reflect continuing deterioration in nerve function.

KEY WORDS: diabetic neuropathy, diabetic complications.

Introduction

Although peripheral neuropathy is probably the commonest long-term complication of diabetes (Ellenberg, 1982), little is known of its natural history and prognosis. The few reported studies have produced conflicting results (Fry, Hardwich and Scott, 1962; Mayne, 1968; Bischoff, 1981) and, have usually involved all groups of neuropathy, including mononeuropathy and autonomic neuropathy. These different conditions may have a variable prognosis (Ellenberg, 1982; Thomas, Ward and Watkins, 1982; Ewing, Campbell and Clarke, 1976). Since the commonest manifestation is painful peripheral neuropathy of the lower limbs, we have identified and followed 39 patients with these symptoms in order to determine the natural history of this condition.

Materials and methods

Thirty-nine patients (29 males) with sensorimotor diabetic neuropathy were selected for study between

1976 and 1978. There were 12 insulin-dependent diabetics and 27 non-insulin-dependent diabetics, mean age 55.5 years (range 40-72 years) and duration of diabetes 10.9 years (range 1-34 years). All subjects were outpatients, were assessed independently by two investigators before their selection, and satisfied the following strict criteria for diagnosis of neuropathy:—

- (1) Painful symptoms in both legs for at least 6 months before the study. All patients experienced two or more of the following symptoms: paraesthesiae, numbness, burning pains with nocturnal exacerbation, hyperaesthesiae.
- (2) Motor conduction velocity in peroneal nerve less than 40 m/sec.
- (3) No symptoms or signs of peripheral vascular disease: ankle pressure index greater than 1.0 (Ward, Hobbs and Irvin, 1969).

In addition, none had a history of alcohol abuse (McCulloch *et al.*, 1980) and all had a haemoglobin greater than 12 g/dl. Other diabetic complications were present in 14 patients: 10 had background retinopathy and 4 had proliferative changes.

All subjects were asked to score their painful symptoms on a 10 cm horizontal graphic rating scale (no pain = 0; maximum pain = 10) (Scott and Huskinson, 1976). This scale consists of a 10 cm horizontal straight line, each end representing the extreme, either maximum symptoms or no symptoms. Subjects were asked to mark the scale at a point corresponding with their symptoms. The point was then measured, giving a score of between 0 and 10; the higher the score the more severe the symptoms. The same pain scale was used for the follow-up appointment, so that any change in symptoms could be indicated by the patient. Motor conduction velocities (MCV) were measured in the right median and peroneal nerves using the previously described (Ward *et al.*, 1971), and the ankle pressure index, the ratio of posterior tibial

systolic pressure to brachial systolic pressure was recorded using a Doppler ultrasound stethoscope (Yao *et al.*, 1969). The subjects were followed for a mean period of 4.7 years (range 2–5 years) during which they continued to attend the diabetic clinic. They received symptomatic treatment for their neuropathic symptoms, which generally consisted of simple analgesics, aspirin and dipyridamole or tricyclic antidepressants. A blood glucose level was recorded at most clinic visits (glucose oxidase technique) and the mean number of results available for each patient during the study was 22 (range 7–36).

There were no changes in diabetic management during the study, with the exception of 5 subjects who changed to insulin therapy because of poor diabetic control on maximum doses of sulphonylurea drugs. Two patients died within a year of the initial assessment, one following a cerebral infarct and the other of a myocardial infarction. A third patient emigrated, and the follow-up study therefore included 36 patients. All the initial investigations were repeated at the follow-up appointment, and the subjects were asked to score current neuropathic symptoms on their original 10 cm graphic rating scale. This enabled changes in the severity of symptoms during the study to be assessed.

Wilcoxon's signed rank test, the Chi squared test and the sign test were used for statistical analyses: all results are shown as mean \pm s.d.

Results

The results of the investigations are summarised in Table 1. No significant changes in symptom scores were found during the 4-year study and furthermore, no subject experienced complete resolution of symptoms, though some improvement was noted by 11 subjects (Fig. 1). There was no significant difference between the clinic blood glucose levels in the subjects who experienced improvement of symptoms during the study (9.7 mmol/litre \pm 2.6), when compared with those experiencing no changes in symptoms (9.8 mmol/litre \pm 2.4), or worsening of symptoms (10.2 mmol/litre \pm 2.3). Moreover, there was no significant

difference in blood glucose levels after starting insulin therapy in the 5 subjects whose treatment was changed during the study. One of these subjects experienced improvement in symptoms, 2 noted worsening and the other 2 experienced no change in symptoms. There was a small, though non-significant fall in ankle pressure index during the study period (Table 1). Five patients developed symptoms and signs of peripheral vascular disease with ankle pressure index less than 1.0 on review, and one required an above knee amputation for peripheral gangrene, despite easily palpable pulses on entry into the study. Motor conduction studies showed a significant decrease in the median nerve, though there was no significant change in peroneal nerve MCV.

Discussion

No significant changes in symptoms and few significant changes in objective tests were found during the 4-year study. This conclusion is in broad agreement with that of Bischoff, who followed 30 patients with symmetrical sensory neuropathy for an average of 5.6 years (Bischoff, 1981). In an earlier study, Fry *et al.* (1962) reported 39 patients with symmetrical neuropathy, and concluded that only one-third of patients showed a satisfactory improvement. Conversely, Mayne (1968), in his series of 73 patients followed for an average of 3 years, concluded that symptoms of neuropathy tended to improve. However, in these 3 earlier studies subjects with peripheral neuropathy were grouped with other patients suffering from mononeuropathy and autonomic dysfunction. A follow-up of such a broad group may well produce conflicting results, as the mononeuropathies have been shown to carry a good prognosis (Ellenberg, 1982; Thomas *et al.*, 1982), whereas Ewing *et al.* (1976) have demonstrated that established autonomic neuropathy carries a significant mortality. Furthermore, these earlier studies used questionnaires and interviews to assess the severity of symptoms. We chose to use the most reliable, semiquantitative method available to assess changes in symptoms (Scott and Huskisson, 1976).

TABLE 1. Results of investigations in 36 neuropathic patients

	Initial assessment	Follow-up assessment	P
Pain score (cm)	5.3 \pm 2.0	5.6 \pm 2.5	NS
Ankle pressure index	1.27 \pm 0.25	1.20 \pm 0.34	NS
Median nerve MCV (m/sec)	45.8 \pm 6.6	42.7 \pm 6.1	<0.025
Peroneal nerve MCV (m/sec)	36.2 \pm 5.2	36.0 \pm 4.8	NS

MCV = motor conduction velocity; NS = not significant.

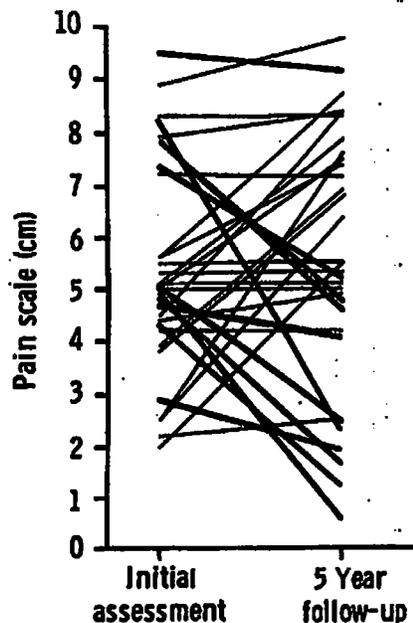


FIG. 1. Changes in symptom scores during the study. Subjects noting improvement in symptoms are represented by a thick line, those showing no change or deterioration of symptoms by a thin line.

A recent study of 8 patients with severe painful neuritis has suggested a very good prognosis (Archer *et al.*, 1982) but symptoms resolved within 10 months of onset and such patients would not have satisfied our strict criteria for established diabetic neuropathy. Moreover, each of these patients had severe and incapacitating pain associated with marked weight loss. Greene *et al.* (1981) have recently emphasised the importance of strict criteria in the selection of subjects with neuropathy for clinical studies. They also expressed major reservations concerning the relevance of nerve conduction studies to symptomatic changes in neuropathy. However, as many investigators still use changes in MCV as major determinants of success in clinical trials, we chose to assess symptoms together with measurement of MCV. It thus appears that, whereas symptoms of short duration may carry a good prognosis (Archer *et al.*, 1982) established neuropathic symptoms do not resolve spontaneously and may persist for many years. Although 11 of our subjects noted some improvement (Fig. 1), none experienced complete resolution of painful symptoms. Nerve conduction studies may reflect deterioration in nerve function during such time.

A study of the natural history of untreated diabetic neuropathy would be unethical: however, as neither the use of aspirin and dipyridamole, nor tricyclic antidepressants has been shown to influence neuro-

pathic symptoms significantly (Thomas *et al.*, 1982; Ward *et al.*, 1981), the present study probably reflects the natural history of this condition. Despite strict selection criteria, several patients developed symptoms and signs of peripheral vascular disease. The differentiation between neuropathic and vascular symptoms can be very difficult (Ward, 1982) and even an ankle pressure index of greater than unity does not necessarily exclude patients with early large vessel disease (Boulton *et al.*, 1981). Earlier studies have stressed the importance of diabetic control in the management of peripheral neuropathy (Goodman *et al.*, 1953; Fry *et al.*, 1962; Mayne, 1968), but methods of assessment of control in such studies are now known to be suspect (Molnar *et al.*, 1979). Thus, no conclusion as to the effect of diabetic control on the natural history of neuropathy can be made from the present study, as routine use of home blood glucose monitoring and glycosylated haemoglobin measurement was not available until 1980. A more accurate estimate of the degree of control can, however, be achieved by the analysis of multiple random blood sugar results, as has recently been demonstrated by Dornan, Mann and Turner (1982). From such results, it is apparent that, in the present study, there was no significant difference in control between groups that showed improvement, deterioration or no change in symptoms. Boulton *et al.* (1982a,b) have recently confirmed the importance of strict glycaemic control in the aetiology and management of neuropathy using more valid measurements of control. However, no group in the present study achieved near normalisation of blood glucose as reported by Boulton *et al.* (1982b). Thus, though we conclude that symptoms of diabetic neuropathy frequently persist for several years, recent studies suggest that glycaemic control may offer symptomatic relief to such patients. Further similar longitudinal studies with strict blood glucose control are now required.

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EXHIBIT H

EXPERT REPORT OF MICHAEL B. HURWITZ, M.D.
Re: Farris v. Rives, et al
Clark County District Court Case No. A-16-739464-C

I am a physician duly licensed to practice medicine in the State of California. I am Board Certified in Surgery and practice in Newport Beach, California. I am familiar with the standards of care applicable for the treatment rendered to Titina Farris. I am qualified on the basis of my training, background, knowledge and experience to offer an expert medical opinion regarding those accepted standards of medical care, the breaches thereof in this case, and any resulting injuries and damages arising therefrom. My opinions are to a reasonable degree of medical probability.

I have been retained as an expert on behalf of the Plaintiff in this matter. I have reviewed medical records and documents concerning the care and treatment provided to Titina Farris including:

1. St. Rose Dominican Records and billing;
2. Records of Dr. Rives;
3. Records of Dr. Chang;
4. Desert Valley Therapy;
5. Dr. Hamilton's Records;
6. St. Rose Dominican Records and billing;
7. Records and billing of Dr. Chaney;
8. Records and billing of Advanced Orthopedics and Sports Medicine;
9. Records and billing of Care Meridian;
10. Records and billing of Dr. Chinn.
11. Plaintiff's Complaint with Expert Affidavit of Vincent Pesiri, M.D.;

12. Dr. Rives Interrogatory Answers to Interrogatories;
13. Dr Chinn records and billing;
14. Care Meridian records and billing;
15. Deposition of Dr. Rives.

In the course of my career, I have performed many hernia repairs, including incisional hernia repairs, and am familiar with the standard of care in hernia repair and recognizing and treating infections, including sepsis.

Review of the records indicates that on July 3, 2015, Barry Rives, M.D. performed a laparoscopic reduction and repair of incarcerated incisional hernia on patient Titina Farris at St. Rose Dominican Hospital. Postoperatively, Titina Farris became septic as a result of a perforated colon.

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

Titina Farris was an obese type 2 diabetic female. On August 7, 2014, she underwent removal of an abdominal wall lipoma and mesh repair of a ventral hernia by Dr. Rives.

She developed an incisional hernia recurrence at the same surgical site, which was confirmed by Dr. Rives on CT in June 2015. He recommended laparoscopic ventral hernia repair with mesh.

On July 3, 2015, Dr. Rives returned Titina Farris, now 52 years old, to surgery for “1. Laparoscopic reduction and repair of incarcerated incisional hernia with mesh; and 2. Colonorrhaphy x2.”

The operative report of Dr. Rives states that “the transverse colon was severely stuck and adhered to the prior mesh repair.” The Ligasure (a bipolar thermal energy device) was used to “extract [the colon] from the mesh as the mesh would not come free from the skin.” This resulted in a colotomy (perforation of the colon), which was stapled closed using the Endo-GIA stapling device. A second colotomy was also noticeable and was repaired, again using the stapling device. Dr. Rives noted that after successive firings, the staple lines appeared to be intact. He noted no further serosal or full-thickness injuries to the colon. He then proceeded with intraperitoneal onlay mesh repair of the incisional hernia, placing polypropylene mesh within the abdominal cavity. The colon was noted to be healthy and viable with no further injuries or tears. The patient was extubated in the OR and was noted to be in stable condition.

On July 4, 2015, the first postoperative day, Titina Farris was tachycardic with a heart rate as high as 140 beats per minute, was noted by Dr. Rives to have a markedly elevated white blood cell count of 18.9, and her blood glucose was elevated to 517. She was transferred to the ICU that same day, and was seen that day in infectious disease consultation by Dr. Farooq Shaikh, who states:

"A 52-year-old female, status post reduction of incarcerated incisional hernia, operative nick to the colon and repair, now with postoperative abdominal pain, distention, sepsis, leukocytosis, and fever. This could represent fecal peritonitis."

Titina Farris continued to deteriorate and developed respiratory failure requiring intubation. CT on the second postoperative day showed fluid around the liver and in the pelvis. Over several days her white blood cell count elevation worsened despite broad spectrum antibiotic therapy. She continued to display evidence of sepsis and remained intubated on a ventilator. Despite this, Dr. Rives documented on July 6, 2015 that she was “progressing as

expected” and further stated that “pt has improved but still have not ruled out further surgery if condition does not improve or worsens.” On July 9, 2015 general surgeon Gregg Ripplinger M.D. evaluated Titina Farris in second opinion consultation. He suspected a bowel leak and stated there should be a fairly low threshold for reoperation.

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

Dr. Hamilton's operative report states: “Decision was made that she had evidence of perforation and likely perforation of the colon from the previous colon injuries. A decision was made that it would be in her best interest to take her to the operating room to evaluate this and try to get rid of the source of continued sepsis in this patient, who is failing.” Her operative findings included an approximately quarter-size or 2.5 to 3 cm hole in the transverse colon. “Around it, there was an active leak of green feculent material and free air.” Pus and stool were noted to be in contact with the mesh. Extensive chronic inflammatory change was identified.

Titina Farris remained in St. Rose Dominican Hospital until August 11, 2015. She was then transferred to Care Meridian Rehabilitation Facility. She was diagnosed with a bilateral foot drop.

As Dr. Hamilton had performed a colostomy, she returned Titina Farris to surgery in July 2016 for reversal of the colostomy. She noted at that time that the patient had also been diagnosed with neuropathy attributed to prolonged immobilization.

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

1. Intraoperative technique;
2. Failure to adequately repair iatrogenic bowel perforations during the July 3, 2015 operation.
3. Failure to timely diagnose and treat colon perforation with feculent peritonitis during the postoperative period.
4. Poor post-operative management of the patient's perforated bowel and resultant sepsis.

Dissection of the transverse colon from the previously placed mesh using a thermal energy source resulted in at least two colotomies. The stapled repairs of the colotomies were inadequate and did not hold, resulting in spillage of fecal contents into the abdominal cavity. Mesh was placed into the peritoneal cavity adjacent to the site of colon perforation. The patient was allowed to become septic and deteriorate to critical condition due to ongoing spillage of stool from the perforated colon.

The post-operative management of the perforated bowel and resultant sepsis was below the standard of care. It was known that there were at least two holes created during the July 3, 2015 surgery. This should have put Dr. Rives on notice of a potential problem and the source of the infectious process. Post operatively, Titina Farris developed signs of infection. She had abdominal pain, tachycardia and a persistently elevated white blood cell count. On the first

postoperative day of July 4, 2015, Dr. Shaikh, the infectious disease consultant, documented his concern that Titina Farris had fecal peritonitis. She was transferred to the ICU on July 4, 2015 and continued to deteriorate and developed ongoing signs of sepsis, including respiratory failure requiring intubation and later tracheostomy, atrial fibrillation, fever, leukocytosis, and ileus. The source of the infection was not timely diagnosed, and the patient was allowed to deteriorate.

It is my opinion to a reasonable degree of medical probability that the aforesaid breaches of the standard of care by Dr. Barry Rives caused damage to Titina Farris. I have reviewed the medical billing in this case. The medical expenses incurred were reasonable, necessary and customary for the treatment rendered to Titina Farris.

I reserve the right to supplement this report if more information becomes available.



MICHAEL B. HURWITZ, M.D.

November 13, 2018

EXHIBIT I

EXPERT REPORT OF ALAN J. STEIN, M.D.
Re: Farris v. Rives, et al
Clark County District Court Case No. A-16-739464-C

I am a physician duly licensed to practice medicine in the State of New York. I am Board Certified in Internal Medicine and Infectious Diseases and practice in the New York metropolitan area. I am familiar with the standards of care applicable for the treatment rendered to Titina Farris. I am qualified on the basis of my training, background, knowledge and experience to offer an expert medical opinion regarding those accepted standards of medical care, the breaches thereof in this case, and any resulting injuries and damages arising therefrom.

My opinions are to a reasonable degree of medical probability.

I have been retained as an expert on behalf of the Plaintiff in this matter. I have reviewed medical records and documents concerning the care and treatment provided to Titina Farris including:

1. Records of Dr. Rives;
2. Records of Dr. Chang;
3. Desert Valley Therapy;
4. Dr. Hamilton's Records;
5. St. Rose Dominican Records and billing;
6. Records and billing of Dr. Chaney;
7. Records and billing of Advanced Orthopedics and Sports Medicine;
8. Records and billing of Care Meridian;
9. Records and billing of Dr. Chinn.
10. Plaintiff's Complaint with Expert Affidavit of Vincent Pesiri, M.D.;
11. Dr. Rives Interrogatory Answers to Interrogatories.

I am conversant with the standard of care in recognizing and treating infections, including sepsis. On July 3, 2015, Barry Rives, M.D. performed a laparoscopic reduction and repair of an incarcerated incisional hernia on Titina Farris at St. Rose Dominican Hospital. Post-operatively Ms. Farris became septic as a result of a perforated colon.

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

Titina Farris was a type 2 diabetic, obese and had a history of c-sections. On August 7, 2014, Dr. Rives performed an excision of an abdominal wall lipoma and repaired an incarcerated ventral hernia with mesh on Titina Farris.

The abdominal wall hernia recurred.

The records indicate that on July 3, 2015, Dr. Rives performed 1. Laparoscopic reduction and repair of incarcerated incisional hernia with mesh; and 2. Colonorrhaphy x2.” on Titina Farris, a 52 year old female.

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

After the July 3, 2015 surgery, Titina Farris developed abdominal pain, fever of 100.76, glucose of 400-500, an elevated lactate level of 5, and WBC of 18,000. She was transferred to the ICU on July 4, 2015. She continued to deteriorate and developed respiratory failure requiring intubation, atrial fibrillation, fever, leukocytosis, ileus, and sepsis. An Infectious Diseases (ID) consultant who saw the patient on July 4 believed Ms. Farris had fecal peritonitis.

On July 16, 2015, Dr. Elizabeth Hamilton operated on Titina Farris. The procedure performed was: 1. Exploratory laparotomy; 2. Removal of prosthetic mesh and washout of abdomen; 3. Partial colectomy and right ascending colon end ileostomy; 4. Extensive lysis of adhesions over 30 minutes; 5. Retention suture placement; 6. Decompression of the stool from the right colon into the ostomy; The postoperative diagnosis was: 1. Perforated viscus with free intra-abdominal air; 2. Sepsis; 3. Respiratory failure; 4. Anasarca; 5. Fever; 6. Leukocytosis; 7. Fecal disimpaction of the rectum. The operative report also states: "Decision was made that she had evidence of perforation and likely perforation of the colon from the previous colon injuries. A decision was made that it would be in her best interest to take her to the operating room to evaluate this and try to get rid of the source of continued sepsis in this patient, who is failing". The transverse colon was visualized and there was an approximately quarter-size or 2.5 to 3 cm hole. Around it was an active leak of green feculent material and free air. Feculent material was noted on the mesh with 3 cm colotomy in the transverse colon at the staple line.

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

During the July 3, 2013 surgery, Dr. Rives nicked the bowel in two places. Within twenty four hours, Titina Farris had suspected fecal peritonitis (ID consultant note of 7/4/2015) before she was intubated.

A differential diagnosis was required to assess the cause of sepsis. The symptoms presented could have been bowel leak, pulmonary embolism, or aspiration pneumonia. A chest angio-CT ruled out pulmonary embolism and aspiration pneumonia. By July 6, Titina Farris' heart rate and glucose had come down and the patient was medically stable to undergo reoperation to determine the cause of her infection. Matthew Ripplinger, M.D. gave a second opinion on July 9, 2015. Dr. Ripplinger suspected a bowel leak and stated there should be a fairly low threshold for reoperation.

From 7/4 to 7/16, Titina Farris had a rapid heartbeat in the range of 92-169 and a high WBC in the range of 17-26.7k that did not come down even though she was on antibiotics to suppress the infection. CT scans of the abdomen and pelvis performed on 7/5 and 7/9/2015 were non-diagnostic. However, CT scans are not sensitive to determine sources of intra-abdominal infection early in the post-operative course. The persistent signs of sepsis (fever, elevated WBC, tachycardia, failure to extubate, negative blood and urine cultures), history of two known colonic perforations during recent surgery, an impression of fecal peritonitis from the ID consultant, and a second surgical opinion of a bowel leak, provided enough clinical justification for reoperation to determine and treat the source of infection. Finally, on 7/15/2015, a third CT of the abdomen and pelvis without contrast showed pneumoperitoneum with free fluid in the abdomen, free fluid in the right subphrenic space, and extra luminal gas. This meant that there was a bowel perforation with leakage of bowel contents (feces) into the abdomen. On July 15, 2015 Dr. Rives was concerned about a possible bowel leak or abscess and determined that surgical

intervention was necessary. However, prior to July 15, 2015, the patient was not improving. The patient's persistent rapid heartbeat, high WBC, and fever were not properly evaluated by Dr. Rives. Considering he was aware that he created two holes in the bowel, Dr. Rives should have immediately suspected a bowel perforation as the likely source of infection. He should have reoperated 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. His failure to do so allowed sepsis to progress, resulting in an abdominal catastrophe. Antibiotics merely suppressed the infection; only reoperation and repair of the bowel leak could cure it. Instead, he allowed Ms. Farris to linger with a bowel leak/perforation for eleven days before recommending surgery, at which point she was in critical condition.

The post-operative management of the perforated bowel and resultant sepsis was below the standard of care.

It is my opinion to a reasonable degree of medical probability that the aforesaid breaches of the standard of care by Dr. Barry Rives caused damage to Titina Farris. I reserve the right to supplement this report if more information becomes available.


ALAN J. STEIN, M.D.

November , 2018

EXHIBIT J

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

Expert Report Re: Farris v. Rives

Dear Mr. Couchot:

Per your request, I have reviewed materials in conjunction with a lawsuit filed by Titina Farris and Patrick Farris against Barry Rives M.D., and Laparoscopic Surgery of Nevada LLC. Based upon my review of those materials, as well as my education, training, and experience as a board-certified general surgeon, it is my opinion to a reasonable degree of medical probability that Dr. Rives complied with the standard of care in the care and treatment provided to Mrs. Farris.

QUALIFICATIONS AND BACKGROUND

I obtained my medical degree from the University of Arizona College of Medicine, located in Tucson, Arizona, in 1986. From 1986 to 1987, I completed my categorical surgical residency/internship at Phoenix Integrated Surgical Residency. I then completed my residency in general surgery at the same facility from 1987 to 1991, and was the Chief Resident from 1990 to 1991. I was also a Lieutenant Commander, Medical Corp., in the United States Navy Reserve from 1987 to 1992.

I first received my board certification from the American Board of Surgery in March 1992, and have been recertified in 1989 and 2009. I have received special training in Microvascular Techniques (1991), Operative Laparoscopy (1991), and Endogastric Solutions (2010). I have been in private practice since 1991 in Phoenix (1991–1996) and Safford, Arizona (1996 – present), and was a Trauma Surgeon at Good Samaritan Regional Medical Center in Phoenix, Arizona from 1992–1996. I have performed thousands of laparoscopic surgeries during my years of practice. A copy of my curriculum vitae and fee schedule are attached to this report.

I have reviewed the following documents in order to formulate my opinions in this case:

1. Laparoscopic Surgery of Nevada; and
2. St. Rose Dominican Hospital - San Martin Campus.

SUMMARY OF CARE

Dr. Rives first saw Mrs. Farris in July 2014, for evaluation of an abdominal mass/lipoma. In August 2014, Dr. Rives performed an excision of the abdominal wall lipoma/mass and repaired an incarcerated ventral hernia with mesh. Mrs. Farris tolerated the procedures well and there were no complications.

Mrs. Farris did not follow-up with Dr. Rives until April 2015, when another abdominal mass reported. On April 30, 2015, Mrs. Farris presented to Dr. Rives complaining of a suspected

hematoma on the abdomen. Mrs. Farris reported doing well after surgery in August 2014. However, over the prior few months the abdominal mass had been noticed and increased in size. On palpation of the abdomen, Dr. Rives noted what felt like a recurrent hernia. It was mostly reducible and had a non-reducible component that felt slightly solid. His assessment was a ventral hernia. The plan was to order a CT scan to consider surgical intervention.

On June 12, 2015, Dr. Kevin Chang reviewed a CT scan of the abdomen and pelvis. Dr. Chang's impressions were:

Weakening/hernia of the right paracentral anterior abdomen with opening measuring 5.7 cm in the hernia portion measuring 7.7 x 0.9 cm. Contains large bowel, no evidence of obstruction.

On June 23, 2015, Mrs. Farris presented to Dr. Rives for follow-up. Mrs. Farris noted her symptoms were "pretty much the same," aside from a slight increase in tenderness. Mrs. Farris felt the hernia was increasing in size and it made her "nervous regarding her activity level." Dr. Rives noted the CT scan demonstrated "a recurrent abdominal wall hernia that likely has slipped around the prior mesh repair." There was large bowel in the hernia. However, the bowel did not appear to be obstructed. Dr. Rives recommended a laparoscopic ventral hernia repair with mesh. He explained the risks, benefits, and alternatives in his customary fashion including possible open repair. Mrs. Farris elected to proceed with surgery.

On July 3, 2015, Dr. Rives performed a laparoscopic reduction and repair of an incarcerated incisional hernia with mesh. During the procedure, he repaired two injuries to the colon. The pertinent portion of the operative note read:

We began by reducing the hernia, taking down the omentum, the transverse colon was severely stuck and adhered to the prior mesh. Taking this down, we used a LigaSure device to extract it from the mesh as the mesh would not come free from the skin. In doing so, this created a small tear in the colon using an Endo-GIA blue load. We were able to staple across the small colotomy. There was a second small colotomy also noticeable, also repaired with an Endo-GIA 45 tissue load. After successful firings, the staple lines appeared to be intact. There were no further serosal or full thickness injuries to the colon.

Dr. Rives noted Mrs. Farris tolerated the procedure well.

On July 3, 2015, Dr. Tanveer Akbar, a hospitalist, saw Mrs. Farris. Mrs. Farris complained of pain which Dr. Akbar described as postsurgical. On examination, Dr. Akbar noted the abdomen was soft and distended, with no bowel sounds. The plan was to continue nothing by mouth, per Dr. Rives' postprocedure orders. Dr. Akbar ordered Dilaudid for pain.

On July 4, 2015, Dr. Rives saw Mrs. Farris. Mrs. Farris complained of shortness of breath, abdominal pain, and bloating while drinking a SoBe beverage. Mrs. Farris had been transferred

to the intensive care unit, for a glucose greater than 500, with a reference range of 74 to 106 mg/dL, and a heart rate greater than 130. Dr. Rives noted the abdomen was slightly firm, distended, and tympanic. The bowel sounds were hypoactive. The abdominal incisions were clean, dry, and intact. Dr. Rives noted the heart rate and glucose level were unstable. He described Mrs. Farris' condition as worsening. The plan was to place an NG tube to decompress the gastrointestinal tract. Dr. Rives advised Mrs. Farris she was strict NPO. He noted she could have a small amount of ice and water after the NG tube was placed.

On July 4, 2015, Dr. Akbar saw Mrs. Farris. Mrs. Farris reported worsening anxiety. The white blood cell count was elevated at 21,700. The glucose level was elevated at 517. The creatinine was slightly elevated at 1.27. The BUN was high at 26. Dr. Akbar's assessments were atrial flutter with a rapid ventricular rate, hyperkalemia, hyperglycemia, probable sepsis, and an acute kidney injury. He ordered broad-spectrum antibiotics and requested consultations by an infectious disease specialist and a nephrologist.

On July 4, 2015, Dr. Yann-Bor Lin, a pulmonology and critical care specialist, performed an emergent intubation for acute respiratory failure.

On July 4, 2015, Dr. Akbar authored an addendum to his earlier note. At some point that day, Mrs. Farris became tachypneic and tachycardic. She reported decreased anxiety after Dilaudid was administered. However, her heart rate remained in the 160s, despite intravenous Cardizem. Dr. Akbar noted Mrs. Farris might need intravenous insulin. The plan was for further management by a critical care specialist.

On July 5, 2015, Dr. Rives saw Mrs. Farris. Mrs. Farris was intubated and sedated. According to nursing staff, she had recently been placed on a heparin drip. She had recently undergone a CT scan of the chest, abdomen, and pelvis, however, the results were not yet available. On examination, Dr. Rives noted the abdomen was softer and less distended than it was during the previous day. The hernia sac had expected seroma. An NG tube was in place. Dr. Rives described the NG tube output as "> 100." Dr. Rives reviewed laboratory test results. He noted the glucose was not well-controlled. The plan was to review the CT scan of the chest, abdomen, and pelvis, to consider an exploratory laparotomy.

On July 5, 2015, Dr. Thomas Gebhard reviewed a CT scan of the chest, abdomen, and pelvis, with contrast. His impressions were:

1. No central pulmonary embolism. Respiratory motion limits evaluation of the segmental and subsegmental vessels.
2. Small right pleural effusion. Bilateral areas of consolidation in the lungs bilaterally likely represent atelectasis. Pneumonia is not excluded.
3. Recent repair of incisional hernia. A small hernia remains over the interior abdomen contains free air and free fluid.
4. Small amount of free fluid in the abdomen with no drainable fluid collection identified.

On July 5, 2015, Dr. Rives authored an addendum to his earlier report. He reviewed the CT scan of the chest, abdomen, and pelvis. He noted:

Trace free fluid around the liver, as expected, air fluid and hernia sac, no other free air no obstruction of bowel no pulmonary emboli.

The plan was to monitor Mrs. Farris. If she did not improve in the next 24 hours, Dr. Rives would consider surgical intervention.

On July 6, 2015, Dr. Rives saw Mrs. Farris. She remained intubated and sedated. On examination, Dr. Rives noted the abdomen was soft, distended, and developing anasarca. The bowel sounds were hypoactive. The white blood cell count was 25,800. The hemoglobin was 8.20. The hematocrit was 24.80%. The CO₂ was 16, with a reference range of 23 to 29 mEq/L. The calcium was 7.5, with a reference range of 8.5 to 10.2 mg/dL. Dr. Rives noted Mrs. Farris was more stable, with decreased bandemia, a decreased heart rate, and decreased urine output. The plan was to continue to consider surgical options.

On July 7, 2015, Dr. Rives saw Mrs. Farris. Mrs. Farris remained intubated and sedated. Dr. Rives noted the vital signs were stable and Mrs. Farris was stable. The white blood cell count was 26,700. The left shift was 7%. The glucose was 193. The lactic acid level was 1.11. The urine output continued to increase. There was no bowel activity. Dr. Rives noted anasarca at the abdominal incision sites. The plan was to consider performing a CT scan in 24 to 48 hours, to evaluate for any new changes and free air, abscesses, or fluid collections.

On July 8, 2015, Dr. Rives saw Mrs. Farris. Mrs. Farris remained intubated and sedated. Nursing staff advised Dr. Rives that CPAP trials were unsuccessful due to tachypnea, an elevated blood pressure, and low lung volumes. The white blood cell count had decreased to 22,600. The hemoglobin was 8.90. The hematocrit was 26.50. The glucose was 169. Dr. Rives described Mrs. Farris as slowly improving. He suspected there may be a bowel obstruction. The plan was to continue efforts to wean Mrs. Farris off the ventilator and to review an x-ray of the abdomen and pelvis to evaluate for a possible bowel obstruction. If there was no bowel obstruction seen on the x-ray, Dr. Rives would consider ordering a CT scan of the abdomen and pelvis with oral contrast.

On July 8, 2015, Dr. Rives authored the following addendum:

Discussed patient progress of events with husband again with nurse present, explained prognostic signs and symptoms we are looking for and goals trying to achieve and indications that she might need reexploration. Have discussed this with the husband over the last four days numerous times. Overall explained patient's situation continues to improve and now trying to get fluid off the patient and get her extubated.

On July 9, 2015, Dr. Gregg Ripplinger, a general surgeon, saw Mrs. Farris for a second opinion. Dr. Ripplinger noted Mrs. Farris underwent an incarcerated incisional hernia repair with

placement of mesh by Dr. Rives on July 3, 2015. During the procedure, two injuries to the colon were repaired using an Endo GIA stapler. After the procedure, Mrs. Farris did poorly. She was tachycardic. Her white blood cell count was greater than 20,000, and as high as 26,000 on a couple of occasions. She had been on a ventilator since the evening of July 4, 2015. On examination, Dr. Ripplinger described the abdomen as obese and quite distended. There was some fluctuance in the area of the incisional hernia, which Dr. Ripplinger suspected was fluid or air between the mesh and the skin. Dr. Ripplinger reviewed laboratory test results and the CT scan of the chest, abdomen, and pelvis from July 5, 2015. Dr. Ripplinger noted he was concerned for possible leak from one of the two colon repairs or an early aggressive infection of the mesh. He recommended a CT scan of the abdomen and pelvis with oral and rectal contrast to rule out a leak from the colon.

On July 9, 2015, Dr. Rives saw Mrs. Farris. Mrs. Farris remained intubated and sedated. On examination, Dr. Rives observed anasarca at the abdominal incisions. The bowel sounds were hypoactive. The white blood cell count was 22,900. The hemoglobin was 9.40. The hematocrit was 28.00. The glucose was 176. Dr. Rives reviewed an x-ray of the abdomen and pelvis. The study showed no free air or obstructive signs. Dr. Rives noted Mrs. Farris was stable with no signs or symptoms of SIRS. An order for a CT scan with oral and rectal contrast was pending.

On July 9, 2015, Dr. Matthew Treinin reviewed a CT scan of the abdomen and pelvis with oral, rectal, and intravenous contrast. His impressions were:

1. Small amount of abdominal ascites.
2. There is a right supra umbilical parasagittal ventral hernia. Hernia sac contains fluid and free air. Component of free air has decreased.
3. There is no extravasation of oral contrast from the bowel.
4. Small right and trace left pleural effusions with bibasilar atelectasis.
5. Anasarca.

On July 10, 2015, Dr. Rives saw Mrs. Farris. She remained intubated and sedated. Nursing staff advised Dr. Rives that propofol had recently been discontinued and fentanyl had been started. On examination, Dr. Rives noted anasarca on the abdomen. The white blood cell count was 25,400. The hemoglobin was 8.90. The hematocrit was 26.60. The glucose was 199. Dr. Rives reviewed the CT scan from July 9, 2015. He noted there were no signs of an abscess, or a leak. There was decreased paracolic fluid compared to the prior studies. Dr. Rives had a long discussion with Mrs. Farris' husband and brother regarding indications for and against an additional surgical procedure.

On July 11, 2015, Dr. Rives saw Mrs. Farris. She remained intubated and sedated. Nursing staff advised Dr. Rives a recent sedation vacation had resulted in increased agitation and severe tachypnea. Dr. Rives noted Mrs. Farris had a fever that morning, for the first time during the hospitalization. The temperature was 102.3°F. On examination, Dr. Rives noted decreased anasarca on the abdomen. The white blood cell count was 24,200. The hemoglobin was 8.60. The hematocrit was 26.20. The platelet count was 410. The glucose was 235. The BUN was 34. The

plan was to perform an x-ray of the abdomen and pelvis the following day. Dr. Rives noted Mrs. Farris would need an enema if she did not begin passing the contrast, to prevent the contrast from becoming inspissated.

On July 12, 2015, Dr. Rives saw Mrs. Farris. She remained intubated on decreased sedation. She had begun to spontaneously open her eyes. On examination, Dr. Rives noted slightly less anasarca on the abdomen. The white blood cell count was 23,200. The hemoglobin was 7.90. The hematocrit was 24.20. The platelet count was 137. The glucose was 364. The BUN was 36. Dr. Rives reviewed an x-ray of the abdomen and pelvis. He noted there were no signs of obstruction and the contrast in the colon remained unchanged. Dr. Rives described Mrs. Farris as progressing as expected. The plan was to administer a suppository to stimulate the colon, in an effort to clear out the contrast.

On July 13, 2015, Dr. Rives saw Mrs. Farris. She remained intubated. Earlier that day, she had tolerated a CPAP trial for four minutes. There was not yet any bowel activity. On physical examination, Dr. Rives noted the abdomen was improving. It was softer, with less anasarca and there was a decreasing seroma. The white blood cell count was 17,900. The hemoglobin was 7.40. The hematocrit was 23. The platelet count was 437. The glucose was 299. The BUN was 37. Dr. Rives described Mrs. Farris as progressing as expected. He noted Mrs. Farris would likely need a tracheostomy, due to failed CPAP trials.

On July 14, 2015, Dr. Rives saw Mrs. Farris. She remained intubated. Dr. Rives noted the sedation was mostly off. Mrs. Farris was responding by nodding her head. Dr. Rives described the abdomen as a bit worse. It was more firm and there was ongoing anasarca. Dr. Rives noted increased pressure in the hernia sac, but no discharge from the incisions. The temperature was 101.4°F. The white blood cell count had "trended back up" to 21,100. The hemoglobin was 10.50. The hematocrit was 32. The platelet count was 498. The CO₂ was 33. The glucose was 257. The BUN was 31. There was no bowel activity, despite Mrs. Farris receiving a Fleet enema. Mrs. Farris was scheduled for tracheotomy later that day. The plan was to perform a CT scan, to look for an increase in free fluid, an abscess, a bowel obstruction, or free air.

On July 14, 2015, Dr. Ashraf Osman, a cardiothoracic surgeon, placed a tracheostomy tube, performed a bronchoscopy and placed a gastrostomy tube.

On July 15, 2015, Dr. Rives saw Mrs. Farris. She remained intubated and lightly sedated. She tolerated the tracheostomy procedure well and was showing improved ventilatory compliance. Dr. Rives noted the urine output was good, but there was not yet any stool output. On examination, Dr. Rives noted the abdomen was slightly improved. The hernia sac was softer. The white blood cell count was 20,800. The hemoglobin was 10.30. The hematocrit was 32.20. The platelet count was 491. The glucose was 218. The BUN was 29. Dr. Rives noted the CT scan had not yet been performed.

On July 15, 2015, Dr. Ravishankar Konchada reviewed a CT scan of the abdomen and pelvis. His impressions were:

Pneumoperitoneum with free fluid in the abdomen predominately

in the right perihepatic and subphrenic space. Large air-fluid level in the supraumbilical mid-abdomen not entirely clear if this is a dilated loop of bowel versus a peritoneal collection of air fluid level. Ventral hernia containing large pocket of air due to gas-filled bowel loop versus extraluminal gas. Subcutaneous air/fluid along the right lateral abdominal wall.

On July 15, 2015, Dr. Rives saw Mrs. Farris. He noted the CT scan was concerning for a possible leak and/or abscess. He recommended an exploratory laparotomy with explantation of the mesh, an abdominal washout, and a thorough inspection of the entire small and large bowel. He discussed the risks, benefits, and alternatives of the proposed surgical procedures with Mrs. Farris' husband. Mr. Farris did not want to proceed with the surgery at that time. He wanted to see how Mrs. Farris fared overnight before making a decision.

On July 16, 2015, Dr. Rives had an hour-long conversation with Mrs. Farris' husband and sons regarding the urgent need for surgery. He described Mrs. Farris' hospital course including the acute changes in the prior 2 to 3 days and new findings on CT scan. Mrs. Farris' family indicated they were uncomfortable with Dr. Rives as Mrs. Farris' surgeon, and they requested a second surgical opinion. Shortly thereafter, Dr. Rives signed off the case.

On July 16, 2015, Dr. Elizabeth Hamilton performed an exploratory laparotomy, removal of prosthetic mesh and washout of abdomen, a partial colectomy and right ascending colon end ileostomy, extensive lysis of adhesions, retention suture placement, decompression of stool from the right colon into the ostomy, and fecal disimpaction of the rectum.

In the operative note, Dr. Hamilton stated the abdomen was incredibly taut to the point where it was tympanic. Dr. Hamilton opined there was likely a perforation of the colon from the previous intraoperative colon injuries— "I think I felt the second staple line described in the first operation more proximal to this area that had not healed and had led to the colotomy." Her findings included "Approximately, a quarter-size or 3 cm hole in the transverse colon anteriorly associated with staples in the colon wall."

Dr. Darren Wheeler performed a pathological analysis of the surgical samples. The pathology report described three perforations of the colon:

Three transmural defects identified along the length of the colon. The first defect is located roughly within the mid aspect, measures 2.0 x 1.6 cm. ... The second defect is located within a markedly thin area of wall with an overall measurement of 3.7 x 3.5 cm; the wall within this area measures less than 0.1 cm and the defect measures 0.9 x 0.5 cm. ... The third defect measures 1.0 x 0.4 cm.... This defect is contiguous with a 1.7 cm staple line which grossly appears to be a possible side-to-side anastomosis site.

Mrs. Farris' condition slowly improved after the laparotomy. Two abdominal drains were placed by an interventional radiologist, on July 29, 2015 and July 30, 2015. On August 11, 2015, she

was discharged to a rehabilitation facility.

EXPERT OPINIONS

All of my opinions expressed in this report are held to a reasonable degree of medical probability. At the outset and foremost, it is my opinion to a reasonable degree of medical probability that all of the care and treatment Dr. Rives provided to Mrs. Farris met the applicable standard of care, including his pre-operative care, his performance of the laparoscopic reduction and repair of an incarcerated incisional hernia with mesh and his post-operative care.

This is complicated case which was managed appropriately. Dr. Rives made the correct preoperative decision, to perform a repair of an incarcerated incisional hernia with mesh. The procedure was complicated by two perforations of the colon (colotomies), which are known risks of this type of procedure.

There was not a third colotomy during the hernia repair. The CT scan of the abdomen and pelvis performed on July 5, 2015, post-operative day two, showed "minimal free air, which continued to decrease on the subsequent CT scans performed on July 9, 2016. Increased air was not seen until July 15, 2015. If the perforation observed during the laparotomy on July 16, 2015 had been present since the hernia repair on July 3, 2015, Mrs. Farris' condition would be more rapidly deteriorating. Dr. Rives' decision making met the standard of care.

As noted above, the opinions have expressed in his report held to a reasonable degree of medical probability. I reserve the right to supplement my opinions is new and/or additional information is provided to me.

Sincerely,



Bart. J Carter, M.D., F.A.C.S.