

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.

No.: 80271

Appeal from the Eighth Judicial District
Court, the Honorable Joanna S. Kishner
Presiding

Electronically Filed
Feb 10 2021 06:13 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

vs.

TITINA FARRIS and PATRICK FARRIS,
Respondents.

No.: 81052

Appeal from the Eighth Judicial District
Court, the Honorable Joanna S. Kishner
Presiding

RESPONDENTS/CROSS-APPELLANTS' APPENDIX, VOLUME 12
(Nos. 1508–1558)

Micah S. Echols, Esq.
Nevada Bar No. 8437
CLAGGETT & SYKES LAW FIRM
4101 Meadows Lane, Suite 100
Las Vegas, Nevada 89107
Telephone: (702) 655-2346
Facsimile: (702) 655-3763
micah@claggettlaw.com

Kimball J. Jones, Esq.
Nevada Bar No. 12982
Jacob G. Leavitt, Esq.
Nevada Bar No. 12608
BIGHORN LAW
2225 East Flamingo Road, Suite 300
Las Vegas, Nevada 89119
Telephone: (702) 505-8387
Facsimile: (702) 710-0999
kimball@bighornlaw.com
jacob@bighornlaw.com

George F. Hand, Esq.
Nevada Bar No. 8483
HAND & SULLIVAN, LLC
3442 North Buffalo Drive
Las Vegas, Nevada 89129
Telephone: (702) 656-5814
ghand@handsullivan.com

Attorneys for Respondents/Cross-Appellants, Titina Farris and Patrick Farris

INDEX TO RESPONDENTS/CROSS-APPELLANTS'
ANSWERING APPENDIX

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Transcript of January 7, 2019 Telephonic Conference (filed 09/24/2019)		Vol. 1–17
Plaintiffs’ Motion to Strike Defendants’ Rebuttal Witnesses Sarah Larsen, R.N., Bruce Adornato, M.D., and Scott Kush, and to Limit the Testimony of Lance Stone, DO and Kim Erlich, M.D., for Giving Improper “Rebuttal” Opinions, on Order Shortening Time (filed 09/19/2019)		Vol. 1, 18–39
Exhibits to Plaintiffs’ Motion to Strike Defendants’ Rebuttal Witnesses		
Exhibit	Document Description	
1	Defendants Barry J. Rives, M.D. and Laparoscopic Surgery of Nevada, LLC’s Rebuttal Disclosure of Expert Witnesses and Reports (served 12/19/2018)	Vol. 1, 40–44
2	Sarah Larsen, R.N., M.S.N., F.N.P., C.L.C.P. Life Care Plan Report (dated 12/19/2018)	Vol. 1, 45–76
3	Scott J. Kush, M.D., JD, MPH Life Expectancy Report of (dated 12/19/2018)	Vol. 1, 77–109
4	Report of Bruce T. Adornato, M.D. (dated 12/18/2018)	Vol. 1, 110–128
5	Lance R. Stone, DO Report (dated 12/19/2018)	Vol. 1, 129–142
6	Kim S. Erlich M.D. Report (dated 11/26/2018)	Vol. 1, 143–158
7	Brian E. Juell M.D., F.A.C.S. Report (dated 12/16/2018)	Vol. 1, 159–162

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
8	Bart J. Carter, M.D., F.A.C.S. Report (dated 12/19/2018)	Vol. 1, 163–165
Minutes of September 26, 2019 Hearing on 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		Vol. 2, 166
Plaintiffs’ Opposition to Defendants’ Motion to Compel the Deposition of Gregg Ripplinger, M.D. and Extend the Close of Discovery (9th Request) on an Order Shortening Time (filed 09/27/2019)		Vol. 2, 167–173
Exhibit to Plaintiffs’ Opposition to Defendants’ Motion to Compel		
Exhibit	Document Description	
1	Notice Vacating the Deposition of Gregg Ripplinger, M.D.	Vol. 2, 174–177
Plaintiffs’ Trial Exhibits List		Vol. 2, 178–185
Plaintiffs’ Trial Exhibits		
Exhibit	Document Description	
1	St. Rose Dominican San Martin Hospital Medical Records and Billing	Vol. 3, 186–355 Vol. 4, 356–505 Vol. 5, 506–655 Vol. 6, 656–818
6	CareMeridian Medical Records and Billing	Vol. 7, 819–845

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
10	Video of Titina Farris taken by Lowell Pender on April 13, 2015 (<i>See</i> Supreme Court Order Granting Motions, dated 11/10/2020, allowing Trial Exhibit 10 to be filed.	
Court's Trial Exhibits List		Vol. 7, 846–848
Court's Trial Exhibits		
Exhibits	Document Description	
1	Statement to Jury from Counsel (dated 10/14/2019)	Vol. 7, 849
2	Proposed Instruction Not Given (dated 10/16/2019)	Vol. 7, 850
3	Juror [Fossile, Badge No. 444] Question (dated 10/17/2019)	Vol. 7, 851
4	Juror [Fossile, Badge No. 444] Question (dated 10/17/2019)	Vol. 7, 852–853
5	Juror Collins [Badge No. 450] Question (dated 10/17/2019)	Vol. 7, 854
6	Verification (dated 10/18/2019)	Vol. 7, 855
7	October 7, 2019 Transcript of Pending Motions	Vol. 7, 856–937
8	Juror [Collins, Badge No. 450] Question (dated 10/21/2019)	Vol. 7, 938
9	Juror No. 9 [Peacock] Question (dated 10/21/2019)	Vol. 7, 939

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
10	Juror [Crenshaw, Badge No. 455] Question (dated 10/21/2019)	Vol. 7, 940–941
11	Juror [Crenshaw, Badge No. 455] Question (dated 10/21/2019)	Vol. 7, 942
12	Juror [Crenshaw, Badge No. 455] Question (dated 10/21/2019)	Vol. 7, 943
13	Insurance Documents (dated 10/21/2019)	Vol. 7, 944–950
14	Juror [Crenshaw, Badge No. 455] Question (dated 10/21/2019)	Vol. 7, 951–952
15	Juror [Crenshaw, Badge No. 455] (dated 10/21/2019)	Vol. 7, 953–954
16	Juror No. 9 [Peacock] Question (dated 10/21/2019)	Vol. 7, 955–956
17	Juror [Root, Badge No. 361] Question (dated 10/21/2019)	Vol. 7, 957–958
18	Juror [Collins, Badge No. 450] Question (dated 10/21/2019)	Vol. 7, 959–960
19	Juror [Root, Badge No. 361] Question (dated 10/22/2019)	Vol. 7, 961
20	Juror [Fossile, Badge No. 444] Question (dated 10/22/2019)	Vol. 7, 962
21	Juror No. 9 [Peacock] Question (dated 10/22/2019)	Vol. 7, 963–964

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
23	Juror No. 9 [Peacock] Question (dated 10/23/2019)	Vol. 7, 965
24	Juror [Crenshaw, Badge No. 455] Question (dated 10/23/2019)	Vol. 7, 966
25	Juror [Crenshaw, Badge No. 455] Question (dated 10/23/2019)	Vol. 7, 967
26	Juror [Root, Badge No. 361] Question (dated 10/23/2019)	Vol. 7, 968
27	Juror [Barrios, Badge No. 366] Question (dated 10/23/2019)	Vol. 7, 969
28	Juror No. 9 [Peacock] Question (dated 10/23/2019)	Vol. 7, 970–971
29	Juror No. 9 [Peacock] Question (dated 10/23/2019)	Vol. 7, 972
30	Juror [Fossile, Badge No. 444] Question (dated 10/23/2019)	Vol. 7, 973
31	Juror No. 9 [Peacock] Question (dated 10/23/2019)	Vol. 7, 974
32	Juror No. 9 [Peacock] Question (dated 10/24/2019)	Vol. 7, 975
33	Juror No. 9 [Peacock] Question (dated 10/24/2019)	Vol. 7, 976

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
34	Juror [Fossile, Badge No. 444] Question (dated 10/24/2019)	Vol. 7, 977
35	Juror [Crenshaw, Badge No. 455] Question (dated 10/24/2019)	Vol. 7, 978
36	Juror [Barrios, Badge No. 366] Question (dated 10/28/2019)	Vol. 7, 979
37	Juror [Thomas, Badge 418] Question (dated 10/28/2019)	Vol. 7, 980
38	Juror No. 9 [Peacock] Question (dated 10/28/2019)	Vol. 7, 981
39	Juror [Collins, Badge No. 450] Question (dated 10/28/2019)	Vol. 7, 982
40	Juror No. 9 [Peacock] Question (dated 10/30/2019)	Vol. 7, 983
41	Juror [Collins, Badge No. 450] Question (dated 10/30/2019)	Vol. 7, 984
42	Juror [Crenshaw, Badge No. 455] Question (dated 10/30/2019)	Vol. 7, 985
43	Juror [Root, Badge No. 361] Question (dated 10/30/2019)	Vol. 7, 986
44	Juror [Crenshaw, Badge No. 455] Question (dated 10/31/2019)	Vol. 7, 987–988

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
45	Juror [Fossile, Badge No. 444] Question (dated 10/31/2019)	Vol. 7, 989
46	Juror No. 9 [Peacock] Question (dated 10/31/2019)	Vol. 7, 990
Minutes of October 7, 2019 Hearing on All Pending Motions; and also addressed the supplemental pleadings filed October 4, 2019 by defense, and non-compliance issues		Vol. 7, 991–992
Minutes of October 14, 2019 Jury Trial – Day 1		Vol. 7, 993–994
Minutes of October 15, 2019 Jury Trial – Day 2		Vol. 7, 995
Minutes of October 16, 2019 Jury Trial – Day 3		Vol. 7, 996–997
Minutes of October 17, 2019 Jury Trial – Day 4		Vol. 7, 998
Minutes of October 18, 2019 Jury Trial – Day 5		Vol. 7, 999
October 18, 2019 Partial Transcript of Jury Trial – Day 5 (Testimony of Michael Hurwitz, M.D.) [filed 11/14/2019]		Vol. 8, 1000–1093
Defendants Barry Rives, M.D.’s and Laparoscopic Surgery of Nevada, LLC’s Opposition to Plaintiffs’ Motion to Strike Defendants’ Trial Briefs on Order Shortening Time (filed 10/21/2019)		Vol. 8, 1094–1098
Minutes of October 21, 2019 Jury Trial – Day 6		Vol. 8, 1099–1100
Minutes of October 22, 2019 Jury Trial – Day 7		Vol. 8, 1101–1102
Minutes of October 22, 2019 Hearing on Plaintiffs’ Motion to Strike Defendants’ Trial Briefs on Order		Vol. 8, 1103
Minutes of October 23, 2019 Jury Trial – Day 8		Vol. 8, 1104–1105

<u>DOCUMENT DESCRIPTION</u>	<u>LOCATION</u>
October 23, 2019 Partial Transcript of Jury Trial – Day 8 (Testimony of Michael Hurwitz, M.D.) (filed 11/14/2019)	Vol. 8, 1106–1153
Notice of Entry of Order on Plaintiffs’ Motion to Strike Defendants’ Fourth and Fifth Supplements to NRCP 16.1 Disclosures (filed 10/23/2019)	Vol. 9, 1154–1158
Minutes of October 24, 2019 Jury Trial – Day 9	Vol. 9, 1159
Minutes of October 28, 2019 Jury Trial – Day 10	Vol. 9, 1160–1161
Minutes of October 29, 2019 Jury Trial – Day 11	Vol. 9, 1162–1163
Minutes of October 30, 2019 Jury Trial – Day 12	Vol. 9, 1164–1165
Minutes of October 31, 2019 Jury Trial – Day 13	Vol. 9, 1166–1167
Minutes of November 1, 2019 Jury Trial – Day 14	Vol. 9, 1168
Second Amended Jury List (filed 11/01/2019)	Vol. 9, 1169
Minutes of November 7, 2019 Hearing on All Pending Motions	Vol. 9, 1170–1171
Minutes of November 13, 2019 Show Cause Hearing	Vol. 9, 1172
Minutes of November 14, 2019 Hearing on Plaintiffs’ Renewed Motion to Strike	Vol. 9, 1173
Plaintiffs’ Verified Memorandum of Costs and Disbursements (filed 11/19/2019)	Vol. 10, 1174–1340 Vol. 11, 1341–1507
Minutes of November 20, 2019 Hearing on Plaintiffs’ Motion for Sanctions	Vol. 12, 1508
Defendants Barry J. Rives, M.D.’s and Laparoscopic Surgery of Nevada, LLC’s Motion to Re-Tax and Settle Plaintiffs’ Costs (filed 11/22/2019)	Vol. 12, 1509–1522

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Plaintiffs' Opposition to Defendants Barry J. Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Motion to Re-Tax and Settle Plaintiffs' Costs (filed 11/26/2019)		Vol. 12, 1523–1533
Exhibits to Plaintiffs' Opposition to Defendants' Motion to Re-Tax and Settle Plaintiffs' Costs		
Exhibit	Document Description	
1	Judgment on Verdict (filed 11/14/2019)	Vol. 12, 1534–1538
2	Plaintiffs' Verified Memorandum of Costs and Disbursements (filed 11/19/2019)	Vol. 12, 1539–1547
Defendants Barry J. Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Reply to Plaintiffs' Opposition to Motion to Re-Tax and Settle Plaintiffs' Costs (filed 11/27/2019)		Vol. 12, 1548–1557
Minutes of January 7, 2020 hearing on Plaintiffs' Motion for Fees and Costs		Vol. 12, 1558
Plaintiffs' Supplemental Verified Memorandum of Costs and Disbursements (filed 01/21/2020)		Vol. 13, 1559–1685 Vol. 14, 1686–1813 Vol. 15, 1814–1941
Plaintiffs' Supplemental Opposition to Defendants Barry J. Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Motion to Re-Tax and Settle Plaintiffs' Costs (filed 01/21/2020)		Vol. 16, 1942–1956

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
Exhibits to Plaintiffs' Supplemental Opposition to Defendants' Motion to Re-Tax and Settle Plaintiffs' Costs		
Exhibit	Document Description	
1(a)	Dr. Hurwitz's Report, Billing Rate and CV	Vol. 16, 1957–1969
1(b)	Proof of Payment Issued to Dr. Hurwitz Totaling \$11,000.00 for Fees	Vol. 16, 1970–1973
2(a)	Dr. Willer's Report, Billing Rate and CV	Vol. 16, 1974–1991
2(b)	Proof of Payment Issued to Dr. Willer Totaling 17,425.00 for Fees	Vol. 16, 1992–1995
3(a)	Dr. Barchuk's Report, Billing Rate and CV	Vol. 16, 1996–2063
3(b)	Proof of Payment Issued to Dr. Barchuk Totaling \$26,120.00 for Fees	Vol. 16, 2064–2068
4(a)	Dawn Cook's Life Care Plan Report, Billing Rate and CV	Vol. 16, 2069–2104 Vol. 17, 2105–2162
4(b)	Proof of Payment Issued to Dawn Cook Totaling \$17,957.03 for Fees	Vol. 17, 2163–2168
5(a)	Dr. Stein's Report, Billing Rate and CV	Vol. 17, 2169–2179
5(b)	Proof of Payment Issued to Dr. Stein Totaling \$19,710.00 for Fees	Vol. 17, 2180–2185
6	Proof of Payment Issued to Dr. Feingold Totaling \$2,000.00 for Fees	Vol. 17, 2186–2187

<u>DOCUMENT DESCRIPTION</u>		<u>LOCATION</u>
7(a)	Dr. Clauretie's Report, Billing Rate and CV	Vol. 17, 2188–2206
7(b)	Proof of Payment Issued to Dr. Clauretie Totaling \$1,575.00 for Fees	Vol. 17, 2207–2208
8	Plaintiffs' Supplemental Memorandum of Costs and Disbursements (filed 01/21/2020)	Vol. 17, 2209–2267 Vol. 18, 2268–2429 Vol. 19, 2430–2592
Defendants Barry J. Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Supplemental Reply to Plaintiffs' Supplemental Opposition to Motion to Re-Tax and Settle Plaintiffs' Costs (filed 02/03/2020)		Vol. 20, 2593–2603
Minutes of February 11, 2020 Hearing on Defendants Barry J. Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Motion to Re-Tax and Settle Plaintiffs' Costs		Vol. 20, 2604
District Court Docket Case No. A-16-739464-C		Vol. 20, 2605–2614

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

November 20, 2019 01:30 PM Plaintiffs' Motion for Sanctions

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Tapia, Michaela

RECORDER: Harrell, Sandra

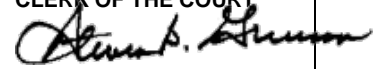
REPORTER:

PARTIES PRESENT:

George F. Hand	Attorney for Plaintiff
Jacob G Leavitt	Attorney for Plaintiff
Thomas J. Doyle	Attorney for Defendant

JOURNAL ENTRIES

Court indicated the hearing today was to address counsel submitting multiple inadmissible documents. Court gave a brief history of the case. Mr. Leavitt indicated he was willing to accept a sanction payable to the Law Library or Legal Aid. Mr. Doyle mirrored Mr. Leavitt's comments and did not wish to add anything. Colloquy regarding Court's previous trial order. Court indicated it was not inclined to issue sanctions to Plaintiff counsel. Mr. Leavitt advised he would prefer to give \$500.00 to the Law Library. Colloquy regarding Mr. Doyle continuing to submit impermissible filings. Colloquy regarding electronically signed document used at trial. Mr. Doyle indicated he did not know the specific acts or failures to act that Court is using for basis for sanctions. Court offered to continue the matter; however, Mr. Doyle declined. Upon Court's inquiry, Mr. Doyle indicated the filings were a clerical oversight and a mistake on part of his office. Colloquy regarding Mr. Doyle's readiness for the hearing. Mr. Doyle stated he did not want to look into the issues and wanted to hear the Court's ruling. Colloquy regarding possibly continuing the hearing. Upon Court's inquiry, Mr. Doyle declined to respond individually or globally. Upon Court's inquiry, Mr. Leavitt indicated Ms. Clark Newberry and Mr. Couchot's conduct was egregious in a number of aspects and requested heavy monetary sanctions. Court advised it is not taking this case back to discovery. Court stated its findings and advised it would issue the order at the time of the hearing on fees and costs. Parties to submit their proposals in Word to the Judicial Executive Assistant and CC opposing counsel.



[MRTX]
THOMAS J. DOYLE
Nevada Bar No. 1120
AIMEE CLARK NEWBERRY
Nevada Bar No. 11084
SCHUERING ZIMMERMAN & DOYLE, LLP
400 University Avenue
Sacramento, California 95825-6502
(916) 567-0400
Fax: 568-0400
Email: calendar@szs.com

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS and PATRICK FARRIS,	)	CASE NO. A-16-739464-C
	)	DEPT. NO. 31
Plaintiffs,)	
	)	DEFENDANTS BARRY J. RIVES, M.D.'S
vs.	)	AND LAPAROSCOPIC SURGERY OF
	)	NEVADA, LLC'S MOTION TO RE-TAX
BARRY RIVES, M.D.; LAPAROSCOPIC	)	AND SETTLE PLAINTIFFS' COSTS
SURGERY OF NEVADA, LLC, et al.,)	
	)	<u>HEARING REQUESTED</u>
Defendants.)	

Defendants BARRY J. RIVES, M.D. and LAPAROSCOPIC SURGERY OF NEVADA, LLC
("Defendants") hereby move this Court for an Order re-taxing and settling plaintiffs
PATRICK FARRIS' and TATINA FARRIS' ("Plaintiffs") claimed costs contained in their
Memorandum of Costs filed on November 19, 2019.

///

This Motion is based upon the papers, pleadings and documents on file herein, the Memorandum of Points and Authorities that follow hereafter, the Declaration of Thomas J. Doyle, Esq., and the documents attached thereto, the arguments of counsel, and any such other evidence as may be presented.

Dated: November 22, 2019

SCHUERING ZIMMERMAN & DOYLE, LLP

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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 in the law firm of Schuering Zimmerman & Doyle, LLP, attorneys of record for Defendants.

2. I am making this declaration in support of Defendants' Motion to Re-Tax and Settle Costs. I am making this declaration based upon my personal knowledge and if called to testify, I could and would do so competently.

3. Plaintiffs did not utilize the videotaped deposition of any witness at the time of trial.

4. Plaintiffs did not utilize a day in the life video of Titina Farris at the time of trial. The only video of Ms. Farris shown at the time of trial was the video made by her son on his telephone prior to the care at issue which I recall was Plaintiffs' Exhibit 11.

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 22nd day of November, 2019, at Sacramento, California.

/s/ Thomas J. Doyle
THOMAS J. DOYLE

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **FACTUAL BACKGROUND**

4 This medical malpractice action arose from the care and treatment Dr. Barry Rives,
5 a general surgeon, provided to Ms. Farris. Trial of this action commenced on October 14,
6 2019. On November 1, 2019, the jury returned a verdict finding Defendants at fault and
7 awarded Plaintiffs damages.

8 On November 19, 2019, Plaintiffs served their Memorandum of Costs. Plaintiffs'
9 Memorandum of Costs included incomplete and vague documentation for a number of
10 their claimed costs and sought recovery for a number of unreasonable expenses,
11 especially those relating to Plaintiffs' retention of a number of expert witnesses and
12 consultants. As described in more detail below, Defendants therefore are entitled to an
13 Order re-taxing and reducing Plaintiffs' costs.

14 **II.**

15 **LEGAL AUTHORITY**

16 NRS 18.005 enumerates the limited types of recoverable costs. The district courts
17 have discretion, but not unlimited discretion, in awarding costs to prevailing parties. *Cadle*
18 *Co. v. Woods & Erickson, LLP*, 345 P.3d 1049 (2015). The district court's discretion should
19 be sparingly exercised, however, and the district court should exercise restraint in
20 awarding costs. *Bergman v. Boyce*, 109 Nev. 670, 679 (1993). Costs awarded must be
21 reasonable, necessary and actually incurred. *Cadle Co. v. Woods & Erickson, LLP*,
22 345 P.3d 1049 (2015). The district court may not award costs without evidence sufficient
23 to determine whether a cost was reasonable and necessary. *Bobby Berosini, Ltd. v. PETA*,
24 114 Nev. 1348, 1352 (1998). The method for challenging a claim for costs is a motion to
25 re-tax under NRS 18.110(4).

26 ///

1 III.

2 ARGUMENT

3 A. **Plaintiffs' Claimed Costs for Fees for Depositions Must be Re-Taxed by**
4 **\$5,032.04.**

5 NRS 18.005(2) allows recovery for reporter's fees for depositions, including a
6 reporter's fee for one copy of each deposition. NRS 18.005(2) does not provide for the
7 fees associated with videotaping a deposition, the rental of conference rooms,
8 administrative travel fees for the court reporter or the cost of additional copies or services.
9 See, NRS 18.005(2).

10 Here, Plaintiffs sought the following impermissible costs associated with
11 depositions:

12 • **Dr. Bruce Adornato**

- 13 ○ \$563.39 - conference room fee by Planet Deposition
14 ○ \$90.00 - "attendance fee" by Planet Deposition
15 ○ \$1,005.00 - video fees for mobile video set up, a video technician and
16 "video upload/active" fees by Planet Deposition

17 • **Dr. Kim Erlich**

- 18 ○ \$90.00 - "attendance fee" by Planet Deposition
19 ○ \$830.000 - video fees by Planet Deposition

20 • **Dr. Lance Stone**

- 21 ○ \$775.00 - videoconference fee
22 ○ \$75.00 - "attendance fee" by Planet Deposition
23 ○ \$74.52 - conference room fee by Planet Deposition

24 • **Dr. Bart Carter**

- 25 ○ \$1,096.44 - video services and travel
26 ○ \$125.00 - attendance fee by Planet Deposition

1 ○ \$307.69 - travel fee by Planet Deposition
2 Exhibits 1 and 2 to Plaintiffs' Memorandum of Costs.

3 Not only are the fees associated with videotaping depositions not recoverable
4 under NRS 18.005(2), but there is no showing by Plaintiffs that it was reasonable and
5 necessary to videotape the depositions listed above. In fact, Plaintiffs did not utilize the
6 videotaped deposition of any witness at the time of trial. Declaration of Thomas J. Doyle,
7 ¶ 3. Additionally, there is no legal basis under NRS 18.005(2) for Plaintiffs' recovery of the
8 attendance or travel fees for the court reporters or videographers, or conference room
9 fees associated with the above-listed depositions. Accordingly, Plaintiffs' claimed costs
10 must be re-taxed by \$5,032.04 for their claimed deposition costs associated with
11 videotaping a deposition, the rental of conference rooms, administrative travel fees for
12 the court reporter and the cost of additional services beyond the reporter's fee for one
13 copy of each deposition.

14 **B. The Court Must Re-Tax Plaintiffs' Unreasonable and Unnecessary Requested**
15 **Expert Witness Fees.**

16 1. **Plaintiffs Impermissibly Seek Recovery for the Costs of at Least Eight**
17 **Expert Witnesses/Consultants.**

18 NRS 18.005(5) allows for the recovery of reasonable fees *of not more than five*
19 *expert witnesses* in an amount of not more than \$1,500.00 for each witness, unless the
20 court allows a larger fee after determining that the circumstances surrounding the expert's
21 *testimony* were of such necessity as to require the larger fee. *Emphasis Added.* While
22 NRS 18.005(5) allows for the court's discretion to exceed the presumptive maximum fee
23 of \$1,500 upon a showing that there was a necessity to require the larger fee, under the
24 clear reading of NRS 18.005(5), there is no statutory authority for exceeding the
25 presumptive maximum number of expert witnesses of five. Accordingly, Plaintiffs may
26 only recover for the reasonable fees associated with five expert witnesses.

///

1 Here, Plaintiffs' requested expert fees for at least 8 expert witnesses and
2 consultants:

- 3 (1) Dr. Alan Stein- \$24,710
- 4 (2) Dr. Michael Hurwitz- \$11,000
- 5 (3) Dr. Justin Willer- \$17,425
- 6 (4) Dr. Alex Barchuk- \$26,120
- 7 (5) Dawn Cook, RN- \$26,751.25
- 8 (6) Terrence Clauretie, Ph.D.- \$1,925
- 9 (7) Dr. Daniel Feingold- \$2,000
- 10 (8) Unnamed Consultant(s) Billed Under National Medical Consultants- \$2,100
11 (one check for \$1,200 and a second check for \$900.)

12 Plaintiffs cannot legally recover for three of their at least eight expert witnesses and
13 consultants under NRS 18.005(5). Accordingly, Plaintiffs' claimed costs must be re-taxed
14 to reduce the number of expert witnesses or consultants Plaintiffs seek recovery for to five
15 as required by NRS 18.005(5).

16 **2. Plaintiffs' Requested Expert Witness Fees for Dr. Stein, Dr. Hurwitz,**
17 **Dr. Willer, Dr. Barchuk, Ms. Cook, and Mr. Clauretie are Unreasonable**
and Unnecessary.

18 NRS 18.005(5) allows for the recovery of reasonable fees of not more than five
19 expert witnesses in an amount of not more than \$1,500 for each witness, unless the court
20 allows a larger fee after determining that the circumstances surrounding the expert's
21 testimony were of such necessity as to require the larger fee. Before any award of expert
22 witness fees as costs may be made under NRS 18.005(5), the court must have evidence
23 before it demonstrating that the costs were reasonable, necessary and actually incurred,
24 which goes beyond a mere memorandum of costs. *Frazier v. Drake*, 131 Nev. Adv. Rep.
25 64 (2015), citing, *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049 (2015). In evaluating
26 a party's request for such an excessive award, the district court should consider:

1 “The importance of the expert’s testimony to the party’s case; the degree to
2 which the expert’s opinion aided the trier of fact in deciding the case;
3 whether the expert’s reports or testimony were repetitive of other expert
4 witnesses; the extent and nature of the work performed by the expert;
5 whether the expert had to conduct independent investigations or testing;
6 the amount of time the expert spent in court, preparing a report, and
7 preparing for trial; the expert’s area of expertise; the expert’s education and
8 training; the fee actually charged to the party who retained the expert; the
9 fees traditionally charged by the expert on related matters; comparable
10 experts’ fees charged in similar cases; and if an expert is retained from
11 outside the area where the trial is held, the fees and costs that would have
12 been incurred to hire a comparable expert where the trial was held.”

13 *Frazier v. Drake*, 131 Nev. 632, 650-651 (2015).

14 Plaintiffs seek to recover \$24,710 for the expert fees paid to their infectious disease
15 expert witness Dr. Stein, \$11,000 for the expert fees paid to their general surgery expert
16 witness Dr. Hurwitz, \$17,425 for the expert fees paid to their neurology expert witness
17 Dr. Willer, \$26,120 for the expert fees paid to their physical medicine and rehabilitation
18 expert witness Dr. Barchuk, \$26,751.25 for the expert fees paid to their life care planner
19 Ms. Cook and \$1,925 for the expert fees paid to their economist Dr. Clauretie. In addition
20 to Plaintiffs’ claimed fees being re-taxed to include only five of the six above-listed expert
21 witnesses as required by NRS 18.005(5), Plaintiffs’ claimed expert fees must be re-taxed
22 because there is no showing by Plaintiffs that they are entitled to a fee of more than
23 \$1,500.00 for the work of Dr. Stein, Dr. Hurwitz, Dr. Willer, Dr. Barchuk, Ms. Cook, or
24 Dr. Clauretie on this case as required by *Frazier*. It is Plaintiffs’ burden to support their
25 request for an expert fee in excess of \$1,500.00. There is currently no evidence before this
26 court sufficient to demonstrate the *Frazier* factors and whether the excess fees for
Dr. Stein, Dr. Hurwitz, Dr. Willer, Dr. Barchuk, Ms. Cook or Dr. Clauretie were reasonable
and whether the circumstances surrounding their testimony were of such necessity as to
require larger fees.

In addition, it is unreasonable for Plaintiffs to obtain a fee for Dr. Stein in excess of
\$1,500, because he did not testify at trial. Additionally, it is unreasonable for Plaintiffs to

1 recover costs associated with Dr. Willer and Dr. Stein, to the extent those costs are
2 associated with travel to or from New York, where Dr. Willer and Dr. Stein practice, as
3 Plaintiffs could have retained a neurologist or infectious disease specialist closer to this
4 jurisdiction. Accordingly, Plaintiffs' recoverable fee for Dr. Stein, Dr. Hurwitz, Dr. Willer,
5 Dr. Barchuk, Ms. Cook and Mr. Clauretie, if any, must be reduced to five expert witnesses
6 at \$1,500.00 per expert witness.

7 3. Plaintiffs' Claimed Fees for Non-Testifying Expert Witnesses Dr. Feingold
8 and Un-Named Consultant(s).

9 NRS 18.005(5) allows for the recovery of reasonable fees of not more than five
10 expert witnesses in an amount of not more than \$1,500.00 for each witness, unless the
11 court allows a larger fee after determining that the circumstances surrounding the expert's
12 testimony were of such necessity as to require the larger fee. Before any award of expert
13 witness fees as costs may be made under NRS 18.005(5), the court must have evidence
14 before it demonstrating that the costs were reasonable, necessary and actually incurred,
15 which goes beyond a mere memorandum of costs. *Frazier v. Drake*, 131 Nev. Adv. Rep.
16 64 (2015), citing, *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049 (2015). Where an
17 expert witness or consultant does not testify, the recovering party may recover costs equal
18 to or under \$1,500.00, so long as the court finds that such costs constitute reasonable fees.
19 *Public Employees' Ret. Sys. v. Gitter*, 393 P.3d 673 (2017).

20 Here, Plaintiffs claim fees for at least two non-testifying expert witnesses
21 Dr. Feingold (\$2,000), and unnamed consultant(s) billed under National Medical
22 Consultants (\$1,200 and \$900.) Assuming Plaintiffs elected to seek these two experts' fees
23 in their statutory maximum of five expert witness fees under NRS 18.005(5), Plaintiffs must
24 meet their burden of establishing that the fee sought for each expert witness is
25 reasonable. Without an understanding of the proposed testimony of the non-testifying and
26 non-disclosed experts, and in the absence of any documentation beyond the invoices

1 associated with the non-testifying and non-disclosed expert witnesses, Defendants cannot
2 evaluate the reasonableness of the claimed charges. Accordingly, Plaintiffs' claimed costs
3 for expert witness fees must be re-taxed by \$4,100.

4 **C. The Court Must Re-Tax Plaintiffs' Unsubstantiated Costs of \$350 for "Copies,**
5 **Faxes, Runner Services and Phone Charges."**

6 The district court may not award costs without evidence sufficient to determine
7 whether a cost was reasonable and necessary. *Bobby Berosini, Ltd. v. PETA*, 114 Nev.
8 1348, 1352 (1998). Plaintiffs failed to provide supporting documentation for the claimed
9 costs itemized in the alleged costs from Battle Born Law Firm of \$350 for "copies, faxes,
10 runner services and phone charges." *See*, Plaintiffs' Memorandum of Costs and supporting
11 documentation. Plaintiffs' lack of documentation for this \$350 line item prevents
12 Defendant and this Court from evaluating whether the alleged costs are necessary or
13 reasonable.

14 Additionally, to the extent this line item includes photocopies, the Supreme Court
15 of Nevada held it is an abuse of discretion to award costs associated with photocopies
16 where the requesting party fails to submit any documentation other than an affidavit of
17 counsel stating the copies were reasonable and necessary. *Cadle Co. v. Woods &*
18 *Erickson, LLP*, 345 P.3d 1049 (2015); *See also, Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348,
19 1352 (1998). Documentation substantiating the reason for each copy is what is required
20 under Nevada law. *Village Builders 96, LP v. US Labs*, 121 Nev. 261, 277-278 (2005).
21 Accordingly, Plaintiffs' requested costs of \$350 must be re-taxed.

22 **D. The Court Should Re-Tax Plaintiffs' Costs for FedEx in the Amount of \$216.30.**

23 In *Brochu v. Foote Enterprises*, 2012 Nev. Unpub. LEXIS 1627 (2012), the Supreme
24 Court of Nevada held it was an abuse of discretion to award costs associated with UPS
25 services or postage where the requesting party did not provide supporting documentation
26 and therefore the reasonableness of the cost could not be determined. The reasonable

1 value of the cost required documentation beyond the memorandum of costs and the
2 accompanying affidavit of counsel. *Id.* Here, Plaintiffs claim \$216.30 in FedEx charges
3 without any facts upon which Defendants or the Court could conclude the use of an
4 expedited carrier was reasonable and necessary, or that the related postage was
5 reasonable or necessary. Accordingly, Plaintiffs' costs must be re-taxed by \$216.30.

6 **E. The Court Must Re-Tax Plaintiffs' Claimed Miscellaneous Costs by \$9,856.04 for**
7 **Unreasonable and Unnecessary Costs.**

8 Although NRS 18.005(17) authorizes the recovery of costs not specifically outlined
9 in the first sixteen subsections of NRS 18.005, such costs must be reasonable and
10 necessary to be recoverable. The district court may not award costs without evidence
11 sufficient to determine whether a cost was reasonable and necessary. *Bobby Berosini,*
12 *Ltd. v. PETA*, 114 Nev. 1348, 1352 (1998).

13 **1. LVLV Video Services - \$1,200.**

14 Plaintiffs seek to recover \$1,200 for video services associated with obtaining day
15 in the life footage of Ms. Farris in August and September 2018. Plaintiffs' costs for video
16 services in the amount of \$1,200 were not reasonable or necessary as Plaintiffs did not
17 utilize a day in the life video of Ms. Farris at the time of trial. Declaration of Thomas J.
18 Doyle, ¶ 4. The only video of Ms. Farris shown at the time of trial was the video made by
19 her son on his telephone prior to the care at issue. *Id.* Accordingly, the costs associated
20 with LVLV Video Services in the amount of \$1,200 should be re-taxed.

21 **2. Parking and Uber - \$478.56.**

22 It is not reasonable to charge Defendants for Plaintiffs' counsel's parking or Uber
23 service for trial or hearings. Accordingly, Plaintiffs' claimed costs should be re-taxed by
24 \$478.56.

25 ///

26 ///

1 **3. Dalos Legal Services - \$4,146.13.**

2 Plaintiffs seek to recover \$809.88 for the production of binders and \$3,336.25 for
3 PowerPoint design services charged by Dalos Legal Services. Not only does Plaintiffs'
4 Memorandum of Costs lack the requisite information *Village Builders 96, LP v. US Labs*,
5 121 Nev. 261, 277-278 (2005) requires regarding the photocopies contained in the binders,
6 but it also lacks information necessary to establish that the PowerPoint design services
7 were reasonable or necessary. Given the limited information provided to Defendants, it
8 is not possible to determine whether any portion of the PowerPoint design services
9 provided by Dalos resulted in material that was actually shown to the jury or used at the
10 time of trial. Accordingly, Plaintiffs' requested costs of \$4,146.13 should be re-taxed.

11 **4. Gregg Cochran Notary - \$50.**

12 Plaintiffs seek to recover \$50 for an apparent notary charge, without additional
13 information from which Defendants or this Court can determine whether the claimed cost
14 was reasonable or necessary. Accordingly, and in the absence of such supporting
15 evidence, Plaintiffs' claimed cost of \$50 for Gregg Cochran Notary should be re-taxed.

16 **5. Litigation Services - \$1,981.35.**

17 Plaintiffs seek to recover \$1,981.35 paid to Litigation Services, without any
18 additional information provided by Plaintiffs to identify the services at issue. Defendants
19 cannot determine from the documents produced by Plaintiffs whether the \$1,981.35
20 charge by Litigation Services falls within a category of recoverable costs under
21 NRS 18.005, or whether the alleged cost is reasonable or necessary. Accordingly, and in
22 the absence of such supporting evidence, Plaintiffs' claimed cost of \$1,981.35 should be
23 re-taxed.

24 **6. Illegible Charge - \$2,000.**

25 Plaintiffs seek to recover \$2,000 based upon a grainy copy of a check for the sum
26 of \$2,000. Defendants cannot determine what alleged costs the \$2,000 check seeks to

1 support. Defendants or this Court need additional information regarding this alleged cost
2 to determine whether the claimed cost was reasonable or necessary. Accordingly, and
3 in the absence of such supporting evidence, Plaintiffs' claimed cost of \$2,000 should be
4 re-taxed.

5 **IV.**

6 **CONCLUSION**

7 For the reasons stated in more detail above, Plaintiffs' Memorandum of Costs
8 includes unrecoverable costs. Accordingly, Defendants respectfully request this Court
9 re-tax and settle Plaintiffs' costs as outlined in this Motion.

10 Dated: November 22, 2019

11 **SCHUERING ZIMMERMAN & DOYLE, LLP**

12
13 By /s/ Thomas J. Doyle
14 THOMAS J. DOYLE
15 Nevada Bar No. 1120
16 400 University Avenue
17 Sacramento, CA 95825-6502
18 (916) 567-0400
19 Attorneys for Defendants BARRY RIVES,
20 M.D. and LAPAROSCOPIC SURGERY OF
21 NEVADA, LLC
22
23
24
25
26

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 22nd day of November , 2019, service of a true and correct copy of the foregoing:

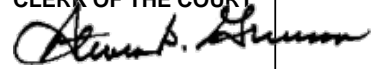
DEFENDANTS BARRY J. RIVES, M.D.'S AND LAPAROSCOPIC SURGERY OF NEVADA, LLC'S MOTION TO RE-TAX AND SETTLE PLAINTIFFS' COSTS

was served as indicated below:

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

Attorney	Representing	Phone/Fax/E-Mail
George F. Hand, Esq. HAND & SULLIVAN, LLC 3442 North Buffalo Drive Las Vegas, NV 89129	Plaintiffs	702/656-5814 Fax: 702/656-9820 hsadmin@handsullivan.com
Kimball Jones, Esq. Jacob G. Leavitt, Esq. BIGHORN LAW 716 S. Jones Boulevard Las Vegas, NV 89107	Plaintiffs	702/333-1111 Kimball@BighornLaw.com Jacob@BighornLaw.com

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



OPPM

KIMBALL JONES, ESQ.

Nevada Bar No.: 12982

JACOB G. LEAVITT, ESQ.

Nevada Bar No.: 12608

BIGHORN LAW

716 S. Jones Blvd.

Las Vegas, Nevada 89107

Phone: (702) 333-1111

Email: Kimball@BighornLaw.com

Jacob@BighornLaw.com

GEORGE F. HAND, ESQ.

Nevada Bar No.: 8483

HAND & SULLIVAN, LLC

3442 N. Buffalo Drive

Las Vegas, Nevada 89129

Phone: (702) 656-5814

Email: GHand@HandSullivan.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS and PATRICK FARRIS,

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-16-739464-C

DEPT. NO.: XXXI

**PLAINTIFFS' OPPOSITION TO DEFENDANTS BARRY J. RIVES, M.D.'S AND
LAPAROSCOPIC SURGERY OF NEVADA, LLC'S MOTION TO RE-TAX AND SETTLE
PLAINTIFFS' COSTS**

COMES NOW Plaintiffs PATRICK FARRIS and TITINA FARRIS, by and through their attorney of record, KIMBALL JONES, ESQ. and JACOB G. LEAVITT, ESQ., with the Law Offices of **BIGHORN LAW** and GEORGE F. HAND, ESQ., with the Law Offices of **HAND & SULLIVAN, LLC**, and hereby submit this Opposition to Defendants Barry J. Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Motion to Re-Tax and Settle Plaintiffs' Costs.

1 This Opposition is made and based upon all of the pleadings and papers on file herein and the
2 attached Memorandum of Points and Authorities.

3 DATED this 26th day of November, 2019.

4 **BIGHORN LAW**

5 By: /s/ Kimball Jones

6 **KIMBALL JONES, ESQ.**

Nevada Bar.: 12982

7 **JACOB G. LEAVITT, ESQ.**

Nevada Bar No.: 12608

8 716 S. Jones Blvd.

9 Las Vegas, Nevada 89107

10 **GEORGE F. HAND, ESQ.**

Nevada Bar No.: 8483

11 **HAND & SULLIVAN, LLC**

12 3442 N. Buffalo Drive

13 Las Vegas, Nevada 89129

14 *Attorneys for Plaintiffs*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF RELEVANT FACTS**

3 **Historical Background**

4 Plaintiff Titina Farris was a patient of Defendants. Defendant RIVES, while performing
5 surgery on Plaintiff, negligently cut, burned, or tore her colon. Thereafter, RIVES failed to adequately
6 repair the colon or sanitize the abdominal cavity. RIVES then failed to recommend any surgery to
7 repair the punctured colon or contaminated abdomen for twelve (12) days, during which time Titina
8 was on the verge of death due to the predictable sepsis that ensued as a result of RIVES initial
9 negligence. As a further result of RIVES negligence, Titina developed bilateral “dropped feet” and
10 now cannot walk without assistance.
11

12
13 As the Court is well aware, on November 4, 2019, the Court entered a Judgment on Verdict
14 which awarded Plaintiff **\$6,367,805.52**. See Exhibit “1.” Under NRS 18.020, Plaintiffs are entitled to
15 costs as they are the prevailing party. The award of taxable costs is not discretionary; proper and
16 reasonably incurred taxable costs **must** be awarded.

17 **II. LEGAL ARGUMENT AND ANALYSIS**

18 **A. Plaintiffs, as the prevailing parties, are entitled to an award of costs.**

19 NRS 18.020 states:
20

21 Costs must be allowed of course to the prevailing party against any adverse party against
22 whom judgment is rendered.

23 ...

24 3. In an action for the recovery of money or damages, where the plaintiff seeks to recover
25 more than \$2,500.

26 Plaintiffs are the prevailing parties and are therefore entitled to an award of allowable costs,
27 even costs incurred before Plaintiffs’ offer of judgment, or all costs incurred. NRCP 68 allows costs
28 “post offer” but NRS 18.020 allows all costs.

///

1 According to Plaintiffs' Verified Memorandum of Costs and the attendant documentation,
2 showing all the known costs incurred, Plaintiffs incurred costs in the amount of \$74,138.70 to Bighorn
3 Law, and \$78,979.56 to Hand and Sullivan, LLC, for a total of **\$153,118.26**. See Memorandum of
4 Costs attached hereto as **Exhibit "2."**

5 The costs will be addressed in the order outlined by Defendants in their motion to retax.

6 Videotaping of Depositions; Rental of Conference Rooms; Travel Fees of the Reporter:

7
8 The fees noted by Plaintiffs in their initial Memorandum are appropriate and approved by
9 statute. NRS 18.005(15) notes that "Reasonable costs for travel and lodging incurred taking
10 depositions and conducting discovery" are compensable. This necessarily includes the travel included
11 in taking depositions, as well as the use and rental of conference rooms.

12
13 Furthermore, NRS 18.005(2) allows for a fee for a reporter's fee for a copy of the deposition.
14 Statute is silent as to whether the deposition copy must be written or filmed. Plaintiffs are unaware of
15 any authority limiting videotaped deposition costs. Yet, the Court has noted that rental of audio and
16 visual equipment in deposition is appropriately taxed to the losing party, "Accordingly, we conclude
17 that the district court did not abuse its discretion in awarding costs for filing, e-filing, depositions of
18 opposing party experts, audio and visual equipment, court reporting services, mediation services, and
19 witness fees because Foote's memorandum and affidavit adequately supported the district court's
20 determination that Foote actually and reasonably incurred these costs." *Brochu v. Foote Enterprises,*
21 *Inc.*, 128 Nev. 884, 381 P.3d 596 (2012).

22
23 Furthermore, the "attendance fees" are included in report's fees and are properly taxed to
24 Defendants.

25
26 Defendants' argument that the videotaped deposition was not used at trial, and thus is not
27 compensable, is not meritorious. The Court has noted, "Relying on *Scott v. Smith*, 73 Nev. 158, 311
28 P.2d 731 (1957), and *Armstrong v. Onufrock*, 75 Nev. 342, 341 P.2d 105 (1959), appellants also

1 contend that the district court should not have taxed as costs the depositions not used at trial. We
2 disagree. NRS 18.005, adopted after our decisions in the above cited cases, defines “costs” as reporters’
3 fees for depositions, including a reporter’s fee for one copy of each deposition. To the extent that the
4 statute does not require that the deposition be utilized at trial to be a taxable cost, appellants’ contention
5 is without merit.” *Jones v. Viking Freight Sys. Inc.*, 101 Nev. 275, 277, 701 P.2d 745, 746–47 (1985).
6

7 Expert Witness Fees:

8 Defendants cite to NRS 18.005(5) in order to attempt to reduce Plaintiffs’ Expert Witness fees
9 to five expert witnesses. Defendants also claim that paying these witnesses more than \$1,500.00 is
10 unreasonable, and not warranted by their testimony. Furthermore, Defendants claim that Dr. Stein did
11 not testify at trial, and Dr. Stein and Dr. Willer’s travel from New York is not taxable because “Plaintiff
12 could have retained a neurologist or infectious disease specialist closer to this jurisdiction.”
13

14 Defendants fail to cite the full text of NRS 18.005, which notes, “Reasonable fees of not more
15 than five expert witnesses in an amount of not more than \$1,500 for each witness, **unless the court**
16 **allows a larger fee after determining that the circumstances surrounding the expert’s testimony**
17 **were of such necessity as to require the larger fee.”** (Emphasis added).
18

19 The Court has noted that it is appropriate to award more than the statutory amount when an
20 expert’s testimony was of a necessity to require a larger fee:

21 Regarding the award of costs, NRS 18.005(5) defines costs in relevant part as
22 “[r]easonable fees of not more than five expert witnesses in an amount of not more than
23 \$1,500 for each witness, unless the court allows a larger fee after determining that the
24 circumstances surrounding the expert’s testimony were of such necessity as to require
25 the larger fee.” Capanna argues that the district court’s decision to grant fees for Dr.
26 Yoo and Dr. Cash in excess of \$1,500 was not supported by an express and careful
analysis of the necessity for the statutory deviation. We disagree. The district court
found that both doctors were necessary to Orth’s case and that the requested fees were
justified and reasonable based upon the doctors’ roles in the litigation.

27 *Capanna v. Orth*, 134 Nev. 888, 896–97, 432 P.3d 726, 735 (2018).

28 The experts retained in this matter were absolutely necessary.

1 First, Plaintiffs required Dr. Michael Hurwitz and Dr. Daniel Feingold, general surgeons, to
2 prove their case regarding the standard of care. Although not a retained expert for trial, Dr. Feingold
3 reviewed the voluminous medical records and provided assistance in understanding the medical issues
4 in the case. Dr. Feingold's total charge was \$2,000.00. Dr. Hurwitz reviewed the file and outlined his
5 views in greater detail in his initial expert disclosures. Dr. Hurwitz's charges of \$11,000.00 are
6 abundantly reasonable given typical costs of a general surgeon. To put the total general surgeon
7 charges of \$13,000.00 into context, Defendants hired a similarly qualified general surgeon, Dr. Juell,
8 who entirely failed to provide his billing in this matter, but admitted on the stand that his total billing
9 likely exceeded \$34,000.00.
10

11 Second, Dr. Justin Willer, a neurologist, was necessary for Plaintiffs to prove their case
12 regarding medical causation. Dr. Willer opined that Plaintiffs' bilateral foot drop resulted from critical
13 illness polyneuropathy. Although others ultimately agreed with this conclusion, none held the requisite
14 qualifications to definitively establish this neurologic conclusion. Dr. Willer's \$17,425.00 is a bargain
15 compared to Defendants' experts, Dr. Juell and Dr. Adornato.
16

17 Third, Dr. Alex Barchuk, nurse Dawn Cook, and Dr. Terrence Clauretie were necessary for
18 Plaintiffs to establish their future damages in this matter. Dr. Barchuk's role as a rehabilitationist was
19 critical. He spent several hours with Plaintiffs to test Titina and fully evaluate the level of assistance
20 and care Titina will require for the rest of her life. Dawn Cook obtained that information, further spent
21 time with Plaintiffs to fully understand their future life, and developed a comprehensive life care plan,
22 which she further verified with Dr. Barchuk before finalizing. Dr. Clauretie's bill is exceedingly low,
23 which is consistent with his minimal role of providing a present value for the life care plan.
24

25 Fourth, Plaintiffs hired Dr. Stein and Defendants hired Dr. Erlich, infectious disease specialists,
26 to explain how the disease process of the punctured colon resulted in the sepsis that ultimately caused
27 bilateral foot drop. Dr. Stein was important to attack Defendants' argument that sepsis came from the
28

1 lungs, as was argued by Dr. Juell. Moreover, Dr. Erlich largely agreed that the sepsis resulted from
2 the punctured bowel—not from aspiration pneumonitis. As a result, at trial Defendants chose to take
3 both positions (aspiration pneumonitis and/or bacterial contamination from the punctured bowel). As
4 such, Plaintiffs determined it was strategically unnecessary to call Dr. Stein, though this decision was
5 not made until Dr. Stein arrived in Las Vegas. Moreover, due to the repeated delays caused by
6 Defendants’ misconduct, Plaintiffs were looking for any opportunity to reduce the length of trial and
7 the choice to not call Dr. Stein was, in part, due to this consideration.

9 As this Court is well aware, Defendants retained numerous experts in this matter—and it is a
10 certainty that their full fees would have been pursued by Defendants had they prevailed in this matter.
11 Furthermore, Defendants’ subterfuge in failing to comply with their discovery obligations, in failing
12 to produce photos taken of the procedure, and failing to disclose the Center vs. Rives matter, made
13 these expert witness’s testimony essential to overcome the prejudice of Defendants’ willful actions.

15 \$350 Charge for Copies, Faxes, Runner Services, and Phone Charges:

16 Defendants erroneously claim that this was merely a “line item” and that Defendants could not
17 confirm that these charges were actually incurred. Defendants spuriously call this charge a “line
18 item”—despite the numerous pages of evidence of the expended charges in this matter. See Exhibit 2.
19 Defendants’ argument is also defeated by the Court’s holding in Brochu:

21 Foote's memorandum and affidavit, although rather generic in nature, were adequate for
22 the district court to discern that the costs for deposing the plaintiffs' experts, court
23 reporting services, renting audio and visual equipment, and engaging the services of a
24 mediator were actual and reasonable. It is well known that a party deposes the opposing
25 party's expert witnesses and that experts charge for their time during deposition. Since
26 the Brochu had two expert witnesses testify at trial, the district court could deduce that
27 Foote actually incurred the costs for deposing them. These costs appeared reasonable
28 and necessary in a trial that required expert testimony. The district court thus correctly
determined that the costs related to court reporting services were reasonable. Similarly,
expenses for audio and visual equipment used during trial to present certain evidence
can readily be deemed reasonable with little other explanation. Finally, the record
reveals that the parties used mediation services, thereby actually incurring this cost. The
record suggests that the district court assessed and determined that the amounts for those

1 costs were reasonable. Hence, the court appropriately awarded these costs without
2 needing documentation beyond the memorandum and affidavit.

3 *Brochu v. Foote Enterprises, Inc.*, 128 Nev. 884, 381 P.3d 596 (2012).

4 Plaintiffs have provided far more than the parties in *Brochu*. Not only is there an affidavit and
5 memorandum, Plaintiffs have produced over 300 pages of records noting that these charges were
6 actually incurred. Defendants specious argument that Plaintiffs are required to “substantiat[e] the
7 reason for each copy” is ludicrous. Plaintiffs’ counsel’s memorandum, and the attached documentation
8 are more than sufficient under Nevada law to justify this expense.
9

10 Fed-Ex Expense:

11 Defendants claim that no substantiation for use of an “expedited carrier” has been presented.
12 Again, this is defeated by the documentation submitted by Plaintiffs in this matter. As noted above,
13 Plaintiffs’ Verified Memorandum, and the accompanying evidence, justify such a taxation.
14

15 LVLV Video Services:

16 Defendants claim that the “day in the life” video made by Plaintiffs was not reasonable. Here,
17 Plaintiffs created the day in the life video and intended to use the same at the time of creation.
18 However, Plaintiffs ultimately decided to go a different direction at trial for a number of reasons, both
19 time saving and strategic.

20 The Court has noted that use of audio and visual equipment is a compensable cost,
21 “Accordingly, we conclude that the district court did not abuse its discretion in awarding costs for
22 filing, e-filing, depositions of opposing party experts, audio and visual equipment, court reporting
23 services, mediation services, and witness fees because Foote's memorandum and affidavit adequately
24 supported the district court's determination that Foote actually and reasonably incurred these costs.”
25

26 *Brochu v. Foote Enterprises, Inc.*, 128 Nev. 884, 381 P.3d 596 (2012).

27 ///

28 ///

1 Parking and Uber:

2 The Court rejected paying for parking and rental car/taxi services in *Brochu*, but only because
3 documentation of the use was not presented to the Court: Hence, we conclude that the district court
4 abused its discretion in awarding costs for UPS services, outside reproduction, lodging, air travel,
5 parking, taxi services, and rental car expenses, and that it appropriately denied the costs for long
6 distance phone calls, postage, and photocopies, because the reasonable value of these costs required
7 documentation beyond the memorandum and accompanying affidavit.” *Brochu v. Foote Enterprises,*
8 *Inc.*, 128 Nev. 884, 381 P.3d 596 (2012). In the instant matter, documentation has been submitted to
9 the Court—over 300 pages of documentation—and thus these fees, which are approvable if
10 documented, should be taxed to Defendants.
11

12 Dalos Legal Services for Binders:

13 Defendants claim that there is insufficient documentation to support the charge for production
14 of binders. Plaintiffs have provided sufficient documentation to approve the photocopying provided
15 by DALOS—an expense specifically noted in NRS 18.005(12). Furthermore, as cited to above, the
16 “audio/visual” expense of a PowerPoint presentation is noted and approved by the Court in *Brochu*.
17

18 Notary Charge, Litigation Services Charge:

19 Plaintiffs have appropriately documented all costs expended in this matter. Defendants are
20 ignoring the clear guidance given by the Court as to the sufficiency of documentation. A verified
21 memorandum, as well as documentation that the costs transpired. Defendants’ Motion is a continual
22 plea to this Court to require more than is required by case law and statute.
23

24 Illegible Charge:

25 Defendants have failed to identify which “grainy copy of a check” they are referring to.
26 However, Plaintiffs have not made any irrelevant or unrelated charges in this matter. Should
27
28

1 Defendants identify which check they could not read, Plaintiffs will be able to verify the nature of the
2 expenditure.

3 Defendants' Motion is appropriately rejected in its entirety. Plaintiffs have provided evidence
4 of the "reasonableness and necessity" of the expenses brought in their Verified Memorandum of Costs.

5 Furthermore, Plaintiffs' experts' testimony was a necessity, not just because of the complicated
6 nature of this medical malpractice action, but because of Defendants' repeated, flagrant discovery
7 abuses, and the need to overcome the damage done by Defendants' withholding of information. The
8 expenses brought in Plaintiffs' Motion were appropriate, and no retaxing is necessary by the Court.
9

10 **III. CONCLUSION**

11 For the foregoing reasons, Plaintiffs respectfully requests that this Court DENY Defendants
12 Barry J. Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Motion to Re-Tax and Settle
13 Plaintiffs' Costs.
14

15 DATED this 26th day of November, 2019.

16 **BIGHORN LAW**

17 By: /s/ Kimball Jones
18 **KIMBALL JONES, ESQ.**
Nevada Bar.: 12982
19 **JACOB G. LEAVITT, ESQ.**
Nevada Bar No.: 12608
20 716 S. Jones Blvd.
Las Vegas, Nevada 89107

21 **GEORGE F. HAND, ESQ.**
22 Nevada Bar No.: 8483
23 **HAND & SULLIVAN, LLC**
3442 N. Buffalo Drive
24 Las Vegas, Nevada 89129

25 *Attorneys for Plaintiffs*
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of
3 **BIGHORN LAW**, and on the 26th day of November, 2019, I served the foregoing ***PLAINTIFFS'***
4 ***OPPOSITION TO DEFENDANTS BARRY J. RIVES, M.D.'S AND LAPAROSCOPIC SURGERY***
5 ***OF NEVADA, LLC'S MOTION TO RE-TAX AND SETTLE PLAINTIFFS' COSTS*** as follows:
6

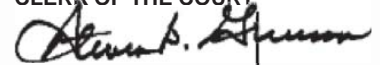
7 ☒ Electronic Service – By serving a copy thereof through the Court's electronic
8 service system; and/or

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

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

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

EXHIBIT “1”



JGJV

KIMBALL JONES, ESQ.

Nevada Bar No.: 12982

JACOB G. LEAVITT, ESQ.

Nevada Bar No. 12608

BIGHORN LAW

716 S. Jones Blvd.

Las Vegas, Nevada 89107

Phone: (702) 333-1111

Email: Kimball@BighornLaw.com

Jacob@BighornLaw.com

GEORGE F. HAND, ESQ.

Nevada Bar No. 8483

HAND & SULLIVAN, LLC

3442 North Buffalo Drive

Las Vegas, Nevada 89129

Phone: (702) 656-5814

ghand@handsullivan.com

Attorneys for Plaintiffs

TITINA FARRIS and PATRICK FARRIS

DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS and PATRICK FARRIS,

Plaintiffs,

vs.

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

Defendants.

Case No.: A-16-739464-C

Dept. No.: 31

JUDGMENT ON VERDICT

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

1 LLP.

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

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

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

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

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

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

27 ///

28 ///

- 1 2. \$4,663,473.00 for TITINA FARRIS' future medical and related expenses, plus post-
2 judgment interest accruing at \$958.25 per day (interest calculated at 5.50% prime
3 plus 2% for a total of 7.50%) pursuant to NRS 17.130 from the time of entry of the
4 judgment with daily post-judgment interest accruing at a rate equal to the prime rate
5 at the largest bank in Nevada as ascertained by the Commissioner of Financial
6 Institutions, plus 2 percent. The rate is to be adjusted accordingly on each January 1
7 and July 1 thereafter until the judgment is satisfied;
 - 8 3. \$43,225.00 for TITINA FARRIS' past physical and mental pain, suffering, anguish,
9 disability and loss of enjoyment of life, plus prejudgment interest in the amount of
10 \$10,505.04 (interest calculated at 5.50% prime plus 2% for a total of 7.50% from
11 date of service August 16, 2016 to November 12, 2019, for a total of 1,183 days =
12 \$8.88 per day) pursuant to NRS 17.130 for a total judgment of \$53,730.04; with daily
13 post-judgment interest accruing at a rate equal to the prime rate at the largest bank in
14 Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent.
15 The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until
16 the judgment is satisfied;
 - 17 4. \$131,775.00 for TITINA FARRIS' future physical and mental pain, suffering,
18 anguish, disability and loss of enjoyment of life, plus post-judgment interest accruing
19 at \$27.07 per day (interest calculated at 5.50% prime plus 2% for a total of 7.50%)
20 pursuant to NRS 17.130 from the time of entry of the judgment with daily post-
21 judgment interest accruing at a rate equal to the prime rate at the largest bank in
22 Nevada as ascertained by the Commissioner of Financial Institutions, plus 2 percent.
23 The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until
24 the judgment is satisfied;
 - 25 5. \$92,225.00 for PATRICK FARRIS' past loss of companionship, society, comfort and
26 consortium, plus prejudgment interest in the amount of \$22,417.85 (interest
27 calculated at 5.50% prime plus 2% for a total of 7.50% from date of service August
28 16, 2016 to November 12, 2019, for a total of 1,183 days = \$18.95 per day) pursuant
to NRS 17.130 for a total judgment of \$114,642.85; with daily post-judgment interest
accruing at a rate equal to the prime rate at the largest bank in Nevada as ascertained
by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be
adjusted accordingly on each January 1 and July 1 thereafter until the judgment is
satisfied; and
 6. \$82,775.00 for PATRICK FARRIS' future loss of companionship, society, comfort
and consortium, plus post-judgment interest accruing at \$17.00 per day (interest
calculated at 5.50% prime plus 2% for a total of 7.50%) pursuant to NRS 17.130
from the time of entry of the judgment with daily post-judgment interest accruing at a
rate equal to the prime rate at the largest bank in Nevada as ascertained by the
Commissioner of Financial Institutions, plus 2 percent. The rate is to be adjusted
accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.
- ///
- ///
- ///

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

4	Principal	\$	6,076,479.94
5	Pre-Judgment Interest	\$	291,325.58 (1,183 days @ 7.50%)
6	TOTAL JUDGMENT of:	\$	6,367,805.52

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

12 SO ORDERED this 12 day of November, 2019.

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

17 Respectfully Submitted by:


Approved as to form and content:

18 Dated this 11th day of November, 2019.

Dated this 11th day of November, 2019.

19 **BIGHORN LAW**

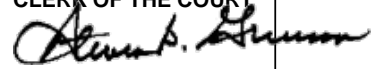
20 **SCHUERING ZIMMERMAN & DOYLE, LLP**

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

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

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

EXHIBIT “2”



1 **MEMO**

2 KIMBALL JONES, ESQ.

3 Nevada Bar No.: 12982

4 JACOB G. LEAVITT, ESQ.

5 Nevada Bar No.: 12608

6 **BIGHORN LAW**

7 716 S. Jones Blvd.

8 Las Vegas, Nevada 89107

9 Phone: (702) 333-1111

10 Email: Kimball@BighornLaw.com

11 Jacob@BighornLaw.com

12 GEORGE F. HAND, ESQ.

13 Nevada Bar No.: 8483

14 **HAND & SULLIVAN, LLC**

15 3442 N. Buffalo Drive

16 Las Vegas, Nevada 89129

17 Phone: (702) 656-5814

18 Email: GHand@HandSullivan.com

19 *Attorneys for Plaintiffs*

20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 TITINA FARRIS and PATRICK FARRIS,

23 Plaintiffs,

24 vs.

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

27 Defendants.

CASE NO.: A-16-739464-C

DEPT. NO.: XXXI

28 **PLAINTIFFS' VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS**

29 Pursuant to N.R.S. 18.005, 18.020, N.R.S. 18.110 and N.R.C.P. 68, Plaintiffs PATRICK
30 FARRIS and TITINA FARRIS, by and through their attorney of record, KIMBALL JONES, ESQ.
31 and JACOB G. LEAVITT, ESQ., with the Law Offices of **BIGHORN LAW** and GEORGE F.
32 HAND, ESQ., with the Law Offices of **HAND & SULLIVAN, LLC**, hereby move this Court to
33 recover their costs of suit. The costs were actually incurred and are reasonable in amount.

34 ///

Plaintiffs are entitled to recovery statutory interest on the above costs from date the cost was incurred through the date of Entry of Judgment pursuant to N.R.S. 17.130 and *Gibellini v. Klindt*, 110 Nev. 1201, 885 P.2d 540 (1994). For purposes of calculation of prejudgment interest, the actual date or latest date each reasonable cost was incurred is set forth. Further, Plaintiffs are entitled to post-judgment interest at the statutory rate from the date of Entry of Judgment.

BIGHORN LAW MEMORANDUM OF COSTS AND DISBURSEMENTS

Clark County Treasurer (<i>Video Recordings from Vickie Center v. Barry Rives</i>)	\$8.00
Bruce T. Adornato, MD (<i>Expert Deposition Fee</i>)	\$1,750.00
Kim S. Erlich, MD (<i>Invoice 190723 - Expert Deposition Fee</i>)	\$2,500.00
Copies, Facsimiles, Runner, Phone Charges, etc.	\$350.00
National Medical Consultants, P.C. (<i>Invoice No.: 27849 - Deposition Prep of Expert Alan Stein, M.D.</i>)	\$4,710.00
Planet Depos, LLC (<i>Invoice No.: 289944 - Deposition of Bruce Adornato, M.D., Video Portion</i>)	\$1,005.00
Planet Depos, LLC (<i>Invoice No.: 289932 - Deposition Transcript of Kim Steven Erlich, M.D.</i>)	\$828.80
Planet Depos, LLC (<i>Invoice No.: 289943 - Deposition of Kim Steven Erlich, M.D., Video Portion</i>)	\$830.00
National Medical Consultants, P.C. (<i>Invoice No.: 28475 - Deposition Prep of Expert Michael Hurwitz, M.D.</i>)	\$1,500.00
Planet Depos, LLC (<i>Invoice No.: 289927 - Deposition Transcript of Bruce Adornato, M.D.</i>)	\$1,390.99
National Medical Consultants, P.C. (<i>Invoice No.: 27498 - Deposition Prep of Expert Justin Willer, M.D.</i>)	\$3,250.00
Planet Depos, LLC (<i>Invoice No.: 290970 - Deposition of Lance Stone, D.O., Video Portion</i>)	\$775.00
Planet Depos, LLC (<i>Invoice No.: 290767 - Deposition Transcript of Lance Stone, D.O.</i>)	\$671.32

1	Legal Wings (Invoice No.: R-1908919.01 – E-Filing Motion on OST Charge)	\$10.00
2		
3	Litigation Services and Technologies of California, LLC (Invoice No.: 1337228 - Deposition Transcript of Michael B. Hurwitz, M.D.)	\$758.05
4		
5	Legal Wings (Invoice No.: R-1910077.01 - ROC of Motion to Strike on OST to Defense)	\$95.00
6		
7	DALOS Legal Services (Invoice No.: 250974 - Trial Exhibit Binders)	\$809.88
8		
9	Legal Wings (Invoice No.: R-1911808.01 - Runner Service - Filing and ROC of Plaintiffs' Motion to Strike Trial Briefs on OST)	\$80.00
10		
11	Legal Wings (Invoice No.: P-1911696.01 - Process Serve of Trial Subpoena on the COR for St. Rose Siena)	\$209.00
12		
13	Legal Wings (Invoice No.: P-1911097.01 - Process Serve of Trial Subpoena on Mary Jane Langan)	\$180.00
14		
15	Legal Wings (Invoice No.: P-1911694.01 - Process Serve of Trial Subpoena on the COR for Care Meridian)	\$204.00
16		
17	Dawn Cook Consulting, LLC (Invoice No.: 938 - Trial Testimony for Dawn Cook)	\$3,000.00
18		
19	Legal Wings (Invoice P-1911162.01 - Process Serve of Trial Subpoena on Bess Chang, M.D.)	\$134.00
20		
21	Legal Wings (Invoice No.: P-1911092.01 - Process Serve of Trial Subpoena on Naomi Chaney, MD.)	\$129.00
22		
23	Court Parking	\$18.00
24		
25	Legal Wings (Invoice No. R-1912062.01 - Run to Deliver Documents to Court)	\$59.04
26		
27	Legal Wings (Invoice No.: P-1911096.01 - Process Serve of Trial Subpoena on Lowell Pender)	\$134.00
28		
	National Medical Consultants, P.C. (Invoice No.: 28513 - Trial Appearance for Expert Alan Stein, MD)	\$9,000.00
	National Medical Consultants, P.C. (Invoice No.: 28712 - Trial Appearance for Expert Justin Willer, MD.)	\$10,000.00

1	Legal Wings (<i>Invoice P-1911094.01 - Process Serve of Trial Subpoena on Sky Prince, M.D.</i>)	\$129.00
2		
3	National Medical Consultants, P.C. (<i>Invoice No.: 28711 - Trial Appearance for Expert Michael Hurwitz, MD</i>)	\$8,000.00
4		
5	Legal Wings (<i>Invoice No.: P-1911095.01 - Process Serve of Trial Subpoena on Addison Durham</i>)	\$129.00
6		
7	Legal Wings (<i>Invoice No.: R-1911871.01 - Plaintiffs' Renewed Motion to Strike on OST</i>)	\$52.95
8		
9	Alex Barchuk, M.D. (<i>Invoice No.: 2443 - Deposition Prep</i>)	\$4,825.00
10		
11	Eighth Judicial District Court Portal (<i>Copies of Complaint and Answer from Vickie Center v Barry Rives</i>)	\$30.50
12		
13	Alex Barchuk, M.D. (<i>Invoice No.: 2495. Trial Testimony Retainer</i>)	\$6,000.00
14		
15	Domino's Pizza (<i>Pizza for Jury</i>)	\$85.80
16		
17	Greg Cochran (<i>Invoice No.: 2019-00101 - Notary Service for Dr. Hurwitz for Audiovisual Consent</i>)	\$50.00
18		
19	Legal Wings (<i>Invoice No.: P-1911091.01 - Process Serve of Trial Subpoena on Barry Rives, MD</i>)	\$129.00
20		
21	Legal Wings (<i>Invoice No.: P-1911090.01 - Process Serve of Trial Subpoena on Vickie Center</i>)	\$129.00
22		
23	Alex Barchuk, M.D. (<i>Invoice No.: 2511 - Trial Testimony (Total Invoice is for \$12,670.00, minus \$6,000.00 Trial Testimony Retainer)</i>)	\$6,670.00
24		
25	Legal Wings (<i>Invoice No. R-1912104.01 - Run to Deliver Documents to Court</i>)	\$61.56
26		
27	Uber Ride	\$23.78
28		
	Uber Ride	\$14.62
	Uber Ride	\$8.08
	Uber Ride	\$8.08
	DALOS Legal Services (<i>Invoice No.: 251033 - Video Editing and Powerpoint</i>)	\$3,336.25

E-Filing Charges	\$70.00
TOTAL	\$74,138.70

HAND & SULLIVAN, LLC MEMORANDUM OF COSTS AND DISBURSEMENTS

Filing Fees	\$331.50
Service of Process	\$70.00
Courier/Filing Fees	\$235.50
Copies of medical and other records	\$435.47
Deposition/Expert Witness Fees	\$58,112.03
Reporters Fees for Depositions (Transcripts)	\$12,653.30
Postage, FedEx	\$252.55
Travel, Food, Lodging (Depositions, Hearings and Trial)	\$6,466.21
Parking (Depositions, Hearings and Trial)	\$423.00
TOTAL	\$78,979.56

1 **DECLARATION OF KIMBALL JONES, ESQ., IN SUPPORT OF THE MEMORANDUM**
2 **OF COSTS AND DISBURSEMENTS**

3 KIMBALL JONES, ESQ., being duly sworn, states: that affiant is the attorney for Plaintiffs
4 TITINA FARRIS and PATRICK FARRIS, and has personal knowledge of the above costs and
5 disbursements expended; that the items contained in the above memorandum are true and correct to
6 the best of this affiant's knowledge and belief; and that the said disbursements have been necessarily
7 incurred in this action.

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

10 Dated this 19th day of November, 2019.

11 /s/ Kimball Jones
12 **KIMBALL JONES, ESQ.**
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **DECLARATION OF GEORGE F. HAND, ESQ., IN SUPPORT OF THE MEMORANDUM**
2 **OF COSTS AND DISBURSEMENTS**

3 GEORGE F. HAND, ESQ., being duly sworn, states: that affiant is the attorney for Plaintiffs
4 TITINA FARRIS and PATRICK FARRIS, and has personal knowledge of the above costs and
5 disbursements expended; that the items contained in the above memorandum are true and correct to
6 the best of this affiant's knowledge and belief; and that the said disbursements have been necessarily
7 incurred in this action.

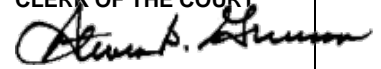
8 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is
9 true and correct.

10 Dated this 19th day of November, 2019.

11 /s/ George F. Hand
12 **GEORGE F. HAND, ESQ.**
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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



[ROPP]
THOMAS J. DOYLE
Nevada Bar No. 1120
AIMEE CLARK NEWBERRY
Nevada Bar No. 11084
SCHUERING ZIMMERMAN & DOYLE, LLP
400 University Avenue
Sacramento, California 95825-6502
(916) 567-0400
Fax: 568-0400
Email: calendar@szs.com

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS and PATRICK FARRIS,	)	CASE NO. A-16-739464-C
	)	DEPT. NO. 31
Plaintiffs,)	
	)	DEFENDANTS BARRY J. RIVES, M.D.'S
vs.	)	AND LAPAROSCOPIC SURGERY OF
	)	NEVADA, LLC'S REPLY TO
BARRY RIVES, M.D.; LAPAROSCOPIC	)	PLAINTIFFS' OPPOSITION TO
SURGERY OF NEVADA, LLC, et al.,	)	MOTION TO RE-TAX AND SETTLE
	)	PLAINTIFFS' COSTS
Defendants.)	

Defendants BARRY J. RIVES, M.D. and LAPAROSCOPIC SURGERY OF NEVADA, LLC
("Defendants") hereby reply to plaintiffs PATRICK FARRIS' and TITINA FARRIS' ("Plaintiffs")
Opposition to Defendants' Motion to Re-Tax and Settle Costs as follows:

///

///

I.

ARGUMENT

A. Plaintiffs are not Entitled to Their Claimed Costs for Deposition Fees Outside the Costs Allowed by NRS 18.005(2) and NRS 18.005(17).

Plaintiffs seek to recover \$5,032.04 in costs for cost items associated with various depositions that exceed the scope of what is recoverable under NRS 18.005(2). NRS 18.005(2) allows recovery for reporter's fees for depositions, including a reporter's fee for one copy of each deposition. NRS 18.005(2) does not provide for the fees associated with videotaping a deposition, the rental of conference rooms, administrative travel fees for the court reporter or the cost of additional copies or services. *See*, NRS 18.005(2).

While NRS 18.005(17) provides a catch-all for costs items not specifically enumerated in other sub-sections, such costs must be reasonable and necessary. The fact Plaintiffs did not use the videotaped depositions at the time of trial illustrates that the videotaped depositions were not necessary to the litigation. Accordingly, the costs associated with Plaintiffs' decision to videotape various depositions should not be recoverable.

B. Plaintiffs are not Entitled to Their Total Claimed Costs for Their Expert Witness Fees.

1. Plaintiffs Requested Expert Fees Must be Reduced to a Maximum of Five Experts.

There is no authority cited by Plaintiffs to support a request for the recovery of expert fees for more than five expert witness. In fact, the plain language of NRS 18.005(5) confirms that while the district court has discretion to award fees in excess of the presumptive maximum of \$1,500, the district court does not have the discretion to enlarge the total number of recoverable witnesses. NRS 18.005(5) allows for the recovery of reasonable fees *of not more than five expert witnesses* in an amount of not more than

1 \$1,500.00 for each witness, *unless the court allows a larger fee* after determining that the
2 circumstances surrounding the expert's testimony were of such necessity as to require
3 the larger fee. *Emphasis Added.* Accordingly, Plaintiffs may only recover for the
4 reasonable fees associated with five expert witnesses and their awarded costs for expert
5 fees must be limited to a maximum of five expert witnesses.

6 **2. Plaintiffs Have Not Met Their Burden Under *Frazier v. Drake*.**

7 NRS 18.005(5) allows for the recovery of reasonable fees of not more than five
8 expert witnesses in an amount of not more than \$1,500 for each witness, unless the court
9 allows a larger fee after determining that the circumstances surrounding the expert's
10 testimony were of such necessity as to require the larger fee. Before any award of expert
11 witness fees as costs may be made under NRS 18.005(5), the court must have evidence
12 before it demonstrating that the costs were reasonable, necessary and actually incurred,
13 which goes beyond a mere memorandum of costs. *Frazier v. Drake*, 131 Nev. Adv. Rep.
14 64 (2015), citing, *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049 (2015). In evaluating
15 a party's request for such an excessive award, the district court should consider the
16 importance of the expert's testimony to the party's case, the degree to which the expert's
17 opinion aided the trier of fact in deciding the case, whether the expert's reports or
18 testimony were repetitive of other expert witnesses, the extent and nature of the work
19 performed by the expert, whether the expert had to conduct independent investigations
20 or testing, the amount of time spent in court, preparing a report and preparing for trial, the
21 expert's area of expertise, the expert's education and training, the fee actually charged
22 to the party who retained the expert, the fees traditionally charged by the expert on
23 related matters, comparable experts' fees charged in similar cases, and if an expert
24 retained for outside the area where the trial is held, the fees and costs that would have
25 been incurred to hire a comparable expert where the trial was held. *Frazier v. Drake*, 131
26 Nev. Adv. Rep. 64 (2015).

1 Here, Plaintiffs, in their Opposition and their Memorandum of Costs, failed to
2 address the propriety of an enlarged expert fee for any of their expert witnesses under
3 *Frazier*. Plaintiffs' cursory arguments in their Opposition are inadequate to meet their
4 burden under *Frazier*.

5 a. **Daniel Feingold, M.D.**

6 Plaintiffs have not made an adequate showing as to a number of the *Frazier* factors
7 and therefore Plaintiffs are not entitled to recover an excess fee beyond the presumptive
8 \$1,500.00 expert fee for Dr. Feingold. Specifically, *Frazier* factors 1, 2, 3, 6, 8, and 12 weigh
9 against an award of an excess fee.

10 *Frazier* factor 1 asks the Court to evaluate the importance of the expert's testimony
11 to the party's case. Dr. Feingold was not an important witness to this case. He was not
12 disclosed as an expert witness.

13 *Frazier* factor 2 asks the Court to evaluate the degree the expert's opinions aided
14 the trier of fact. Dr. Feingold did not aide the trier of fact, because he did not testify at trial.

15 *Frazier* factor 3 asks the Court to determine whether the expert's reports or
16 testimony were repetitive of other expert witnesses. Here, Dr. Feingold, a general
17 surgeon, was a duplicative expert to Dr. Hurwitz, the general surgeon disclosed by
18 Plaintiffs.

19 *Frazier* factor 6 asks the Court to evaluate the time spent by the expert. Plaintiffs
20 however have not provided this court with an itemized list of Dr. Feingold's time and
21 therefore Defendants cannot determine the total time spent by Dr. Feingold reviewing
22 records in this case.

23 *Frazier* factor 8 asks the Court to evaluate whether an excess fee is warranted in
24 light of the expert's education and training. Plaintiffs have not provided Defendants or this
25 court with a copy of Dr. Feingold's curriculum vitae, and as such Defendants and this
26 Court cannot evaluate his education and training as contemplated by *Frazier*.

1 Finally, *Frazier* factor 12 examines whether the fees and costs of an
2 out-of-jurisdiction expert are comparable to those within the jurisdiction of the case.
3 Plaintiffs also fail to establish the jurisdiction equivalent *Frazier* factor in their Opposition.
4 Dr. Feingold appears to be based in New York. Plaintiffs have not met the burden of
5 showing entitlement to an excess fee under *Frazier*. Accordingly, and in the absence of
6 such evidence, Plaintiffs' recoverable fee for Dr. Feingold, if any, given the number of
7 expert witness fees requested in this case, must be reduced to \$1,500.00.

8 b. **Alan Stein, M.D.**

9 Plaintiffs have not made an adequate showing as to a number of the *Frazier* factors
10 and therefore Plaintiffs are not entitled to recover an excess fee beyond the presumptive
11 \$1,500.00 expert fee for Dr. Stein. Specifically, *Frazier* factors 1, 2, 11, and 12 weigh
12 against an award of an excess fee.

13 *Frazier* factor 1 asks the Court to evaluate the importance of the expert's testimony
14 to the party's case. Dr. Stein was not an important witness to this case as he was not
15 called to testify at the time of trial. Additionally, *Frazier* factor 2, which asks the Court to
16 evaluate the degree the expert's opinions aided the trier of fact, weighs against an award
17 of an excess fee for Dr. Stein. Dr. Stein did not aide the trier of fact, because he did not
18 testify at trial.

19 *Frazier* factor 11 looks to whether the expert's fees are comparable to experts' fees
20 charged in similar cases. Plaintiffs have put forward no evidence to support a finding that
21 Dr. Stein's fees are comparable to other expert fees in similar cases. Finally, *Frazier* factor
22 12 examines whether the fees and costs of an out-of-jurisdiction expert are comparable
23 to those within the jurisdiction of the case. Plaintiffs also fail to establish the jurisdiction
24 equivalent *Frazier* factor in their Opposition. Plaintiffs have not met the burden of
25 showing entitlement to an excess fee under *Frazier*. Accordingly, and in the absence of
26

1 such evidence, Plaintiffs' recoverable fee for Dr. Stein, if any, given the number of expert
2 witness fees requested in this case, must be reduced to \$1,500.00.

3 c. **Michael Hurwitz, M.D.**

4 Plaintiffs have not made an adequate showing as to the *Frazier* factors and
5 therefore Plaintiffs are not entitled to recover an excess fee beyond the presumptive
6 \$1,500.00 expert fee for Dr. Hurwitz. Specifically, *Frazier* factor 12 weighs against an
7 award of an excess fee. *Frazier* factor 12 examines whether the fees and costs of an
8 out-of-jurisdiction expert are comparable to those within the jurisdiction of the case.
9 Dr. Hurwitz practices medicine in Orange County, California. Plaintiffs failed to establish
10 the jurisdiction equivalent *Frazier* factor in their Opposition. Plaintiffs have not met the
11 burden of showing entitlement to an excess fee under *Frazier*. Accordingly, and in the
12 absence of such evidence, Plaintiffs' recoverable fee for Dr. Hurwitz, if any, given the
13 number of expert witness fees requested in this case, must be reduced to \$1,500.00.

14 d. **Justin Willer, M.D.**

15 Plaintiffs have not made an adequate showing as to a number of the *Frazier* factors
16 and therefore Plaintiffs are not entitled to recover an excess fee beyond the presumptive
17 \$1,500.00 expert fee for Dr. Willer, their retained neurologist from New York. Specifically,
18 *Frazier* factor 12 weighs against an award of an excess fee. Plaintiffs also fail to establish
19 the jurisdiction equivalent *Frazier* factor in their Opposition. Plaintiffs have not met the
20 burden of showing entitlement to an excess fee under *Frazier*. Accordingly, and in the
21 absence of such evidence, Plaintiffs' recoverable fee for Dr. Willer, if any, given the
22 number of expert witness fees requested in this case, must be reduced to \$1,500.00.

23 e. **Alex Barchuk, M.D., Dawn Cook, R.N. and Terrence**
24 **Clauretie, Ph.D.**

25 Plaintiffs have not made an adequate showing under *Frazier* as to their damages
26 experts Dr. Barchuk, Ms. Cook or Mr. Clauretie and Plaintiffs therefore are not entitled to

1 recover an excess fee beyond the presumptive \$1,500.00 expert fee for Dr. Barchuk,
2 Ms. Cook or Mr. Claudette. Plaintiffs merely argue that the damages experts were
3 necessary to evaluate Ms. Farris' future damages. Such an argument is inadequate under
4 *Frazier*. Accordingly, and in the absence of such evidence, Plaintiffs' recoverable fee for
5 Dr. Barchuk, Ms. Cook and Mr. Claudette, if any, given the number of expert witness fees
6 requested in this case, must be reduced to \$1,500.00.

7 f. **Plaintiffs' Unnamed Expert Consultant(s).**

8 Plaintiffs in their Memorandum of Costs claimed fees for unnamed consultant(s)
9 billed under National Medical Consultants (\$1,200 and \$900.) Plaintiffs did not address the
10 propriety of these costs in their Opposition. There is no showing under *Frazier* as to the
11 \$2,100 in expert fees charged by National Medical Consultants for the unknown
12 consultant(s). Accordingly, and in the absence of such evidence, Plaintiffs' recoverable
13 fee for the unidentified consultant(s) associated with National Medical Consultants, if any,
14 given the number of expert witness fees requested in this case, must be reduced to
15 \$1,500.00.

16 **C. The Court Must Re-Tax Plaintiffs' Unsubstantiated Costs of \$350 for "Copies,**
17 **Faxes, Runner Services and Phone Charges."**

18 Plaintiffs are not entitled to recover costs for copies. Documentation substantiating
19 the reason for each copy is what is required under Nevada law. *Village Builders 96, LP*
20 *v. US Labs*, 121 Nev. 261, 277-278 (2005). Accordingly, Plaintiffs' requested costs of \$350
21 must be re-taxed.

22 **D. The Court Should Re-Tax Plaintiffs' Costs for FedEx in the Amount of \$216.30.**

23 Plaintiffs claim \$216.30 in FedEx charges without any facts upon which Defendants
24 or the Court could conclude the use of an expedited carrier was reasonable and
25 necessary, or that the related postage was reasonable or necessary. Accordingly, Plaintiffs'
26 costs must be re-taxed by \$216.30.

1 **E. Plaintiffs' Other Costs Should be Re-Taxed as Such Costs Were not Reasonable**
2 **or Necessary.**

3 Plaintiffs seek to recover \$1,200 for video services associated with obtaining day
4 in the life footage of Ms. Farris in August and September 2018. The fact the video was not
5 used at the time of trial shows it was not a necessary cost and therefore it should be re-
6 taxed.

7 Plaintiffs seek to recover costs for parking and Uber. Defendants do not dispute that
8 such charges were supported by the documentation attached to the Memorandum of
9 Costs, but Defendants do take issue with the lack of justification for such charges. There
10 is no evidence as to why such charges were reasonable or necessary and therefore
11 Plaintiffs' claimed costs should be re-taxed by \$478.56.

12 Plaintiffs seek to recover \$809.88 for the production of binders and \$3,336.25 for
13 PowerPoint design services charged by Dalos Legal Services. The binders include copies
14 and Plaintiffs' documentation does not comply with *Village Builders 96, LP v. US Labs*,
15 121 Nev. 261, 277-278 (2005.) Given the limited information provided to Defendants, it is
16 not possible to determine whether any portion of the PowerPoint design services
17 provided by Dalos resulted in material that was actually shown to the jury or used at the
18 time of trial. Accordingly, Plaintiffs' requested costs of \$4,146.13 should be re-taxed.

19 Defendants withdraw their challenge to the \$50 notary charge.

20 Defendants challenged \$1,981.35 in costs paid to Litigation Services which
21 Defendants could not determine the basis for such charges given Plaintiffs'
22 documentation. Plaintiffs did not appear to address this issue in their Opposition.
23 Accordingly, and in the absence of such supporting evidence, Plaintiffs' claimed cost of
24 \$1,981.35 should be re-taxed.

25 Finally, Defendants moved to re-tax \$2,000 associated with a grainy check
26 produced in connection with Plaintiffs' Memorandum of Costs. In their Opposition,

1 Plaintiffs indicate confusion as to which check is at issue. Defendants' issue is with check
2 no. 3313, contained in Mr. Hand's documentation supporting costs. Defendants need
3 additional information regarding this alleged cost to determine whether the claimed cost
4 was reasonable or necessary. Accordingly, and in the absence of such supporting
5 evidence, Plaintiffs' claimed cost of \$2,000 should be re-taxed.

6 **II.**

7 **CONCLUSION**

8 For the reasons stated in more detail above, Plaintiffs' Memorandum of Costs
9 includes unrecoverable costs. Accordingly, Defendants respectfully request this Court
10 re-tax and settle Plaintiffs' costs as outlined above.

11 Dated: November 27, 2019

12 **SCHUERING ZIMMERMAN & DOYLE, LLP**

13
14 By /s/ Aimee Clark Newberry
15 AIMEE CLARK NEWBERRY
16 Nevada Bar No. 11084
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 27th day of November , 2019, service of a true and correct copy of the foregoing:

DEFENDANTS BARRY J. RIVES, M.D.'S AND LAPAROSCOPIC SURGERY OF NEVADA, LLC'S REPLY TO PLAINTIFFS' OPPOSITION TO MOTION TO RE-TAX AND SETTLE PLAINTIFFS' COSTS

was served as indicated below:

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

Attorney	Representing	Phone/Fax/E-Mail
George F. Hand, Esq. HAND & SULLIVAN, LLC 3442 North Buffalo Drive Las Vegas, NV 89129	Plaintiffs	702/656-5814 Fax: 702/656-9820 hsadmin@handsullivan.com
Kimball Jones, Esq. Jacob G. Leavitt, Esq. BIGHORN LAW 716 S. Jones Boulevard Las Vegas, NV 89107	Plaintiffs	702/333-1111 Kimball@BighornLaw.com Jacob@BighornLaw.com

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

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

January 07, 2020 10:00 AM All Pending Motions (1/07/2020)

HEARD BY: Kishner, Joanna S. COURTROOM: RJC Courtroom 12B

COURT CLERK: Botzenhart, Susan

RECORDER: Harrell, Sandra

REPORTER:

PARTIES PRESENT:

George F. Hand	Attorney for Plaintiff
Kimball Jones	Attorney for Plaintiff
Thomas J. Doyle	Attorney for Defendant

JOURNAL ENTRIES

PLAINTIFFS' MOTION FOR FEES AND COSTS

Arguments by Mr. Jones and Mr. Doyle. Discussion as to Capana case law and NRCP 68. Court stated findings; and provided analysis under Beattie, Brunzell, and NRS 7.095. Court also noted it will not impose additional sanctions. COURT ORDERED, attorney fees GRANTED in the amount of \$821,468.66.

DEFENDANTS BARRY J. RIVES, M.D.'S AND LAPAROSCOPIC SURGERY OF NEVADA, LLC'S MOTION TO RE-TAX AND SETTLE PLAINTIFFS' COSTS

Following arguments by counsel as to costs and Dr. Stein, COURT ORDERED, Motion CONTINUED to February 11, 2020 at 9:30 A.M., for supplemental pleadings to be filed. FURTHER, briefing schedule SET as follows: Plaintiffs' supplemental opposition due January 21, 2020, Defendants' supplemental reply due February 3, 2020.