

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants/Cross-Respondents,

vs.

TITINA FARRIS and PATRICK FARRIS,

Respondents/Cross-Appellants.

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

Appellants,

vs.

TITINA FARRIS and PATRICK FARRIS,

Respondents.

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APPELLANTS' APPENDIX
VOLUME 13

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

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	<u>Exhibit B</u> : Expert Report of Brian E. Juell, MD FACS	9/9/19	11	2269-2271
	<u>Exhibit C</u> : Transcript of Video Transcript of Brian E. Juell, M.D.	6/12/19	11	2272-2314
54.	Offer of Proof re Sarah Larsen	11/1/19	11	2315-2317
	<u>Exhibit A</u> : CV of Sarah Larsen, RN, MSN, FNP, LNC, CLCP		11	2318-2322
	<u>Exhibit B</u> : Expert Report of Sarah Larsen, R.N.. MSN, FNP, LNC, C.L.C.P.	12/19/18	11	2323-2325
	<u>Exhibit C</u> : Life Care Plan for Titina Farris by Sarah Larsen, R.N., M.S.N., F.N.P., L.N.C., C.L.C.P	12/19/18	11	2326-2346
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56.	Offer of Proof re Lance Stone, D.O.	11/1/19	11	2437-2439
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	<u>Exhibit B</u> : Expert Report of Lance R. Stone, DO	12/19/18	11	2447-2453
	<u>Exhibit C</u> : Life Care Plan for Titina Farris by Sarah Larsen, R.N., M.S.N., F.N.P., L.N.C., C.L.C.P	12/19/18	12	2454-2474
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93.	<i>Partial Transcript re:</i> Trial by Jury – Day 4 Testimony of Justin Willer, M.D. [Included in “Additional Documents” at the end of this Index]	10/17/19	30	6514-6618
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89.	<i>Jury Trial Transcript</i> — Day 14 (Friday)	11/1/19	29	6337-6493

ADDITIONAL DOCUMENTS¹

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

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

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96.	Notice of Cross-Appeal	12/30/19	30	6673-6675
	<u>Exhibit “1”</u> : Notice of Entry Judgment	11/19/19	30	6676-6682
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99.	Order on Plaintiffs’ Motion for Fees and Costs and Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs	3/30/20	31	6802-6815
100.	Notice of Entry Order on Plaintiffs’ Motion for Fees and Costs and Defendants’ Motion to Re-Tax and Settle Plaintiffs’ Costs	3/31/20	31	6816-6819
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EXHIBIT F

DEC 03 2018

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Northern Peninsula Infectious Diseases Medical Group
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November 26, 2018

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

Re: Farris, Titina v. Rives, Barry

Dear Mr. Couchot:

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

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

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

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

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

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

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

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

Respectively submitted,



Kim S. Erlich, M.D.

CURRICULUM VITAE

Kim Steven Erlich, M.D.

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

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

**Professional
Organizations:**

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

**Hospital
Appointments:**

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

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

EDUCATION

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

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

PROFESSIONAL CAREER

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

CURRENT RESEARCH INVESTIGATION

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

SCIENTIFIC AND CLINICAL PUBLICATIONS

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ABSTRACTS

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LECTURE SUBJECTS AND TOPICS

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

Revised 7/1/18

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

DEPOSITION AND TRIAL TESTIMONY OVER 4 YEAR PERIOD

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

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

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

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

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

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

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

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

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

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

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

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June 26, 2018


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

Dear Ms. Rice,

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

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

Sincerely,



Kim S. Erlich, M.D.

EXHIBIT G



Life Expectancy Group

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

Life Expectancy Report
Ms. Titina Farris
December 19, 2018

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

Mr. Couchot,

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

Information Reviewed

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

Medical records

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

Report

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

Depositions

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

Other

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

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

An Introduction to Life Expectancy

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

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

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

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

Ms. Titina Farris' Condition

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

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

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

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

Ms. Titina Farris
Page 3

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

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

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

Diabetes / Hypertension / Hyperlipidemia

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

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

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

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

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

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

Physical Impairments / Reduced Mobility / Chronic Pain

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

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

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

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

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

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

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

Additional Risk Factors

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

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

These factors were not quantified into my analyses.

My Opinion

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

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

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

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

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

Methodology

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

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

Ms. Titina Farris
Page 6

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

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

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

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

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

Academic and Professional Qualifications

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

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

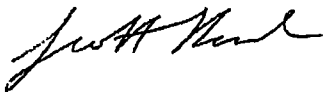
Ms. Titina Farris
Page 7

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

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

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

Sincerely Yours,

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

Scott Kush, MD JD MPH
Medical Researcher
Life Expectancy Group

Schedule of Mortality Rates & Excess Death Rates

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

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

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

Life Table for Ms. Titina Farris

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

Table Terminology:

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

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Exhibits

U.S. Life Expectancy

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

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Spinal Cord Injury Comparison

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

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

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

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

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

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https://www.nscisc.uab.edu/Public_Pages/LifeExp

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Education

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

Present Position

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

Employment

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

1997 - 2001, 1988 - 1992 Teaching Assistant

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

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

1992 - 1996 Instructor

Kaplan Educational Services

*San Diego, California***1992 Research Associate**

DepoTech Inc.

*San Diego, California***Publications**

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

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Presentations

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

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

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

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

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

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

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

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

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

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

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

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

Professional Organizations

Member of the American Medical Association

Member of the American Statistical Association

Fellow - American Academy for Cerebral Palsy & Developmental Medicine

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

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

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

April 26, 2011	Estate of Lalone et al. v. Riedstra Dairy Ltd. et al. No. 07-914-NH C. Zachary Vaughn (Patton & Ryan, LLC; St. Joseph, MI)
May 6, 2011	Carol Ropella et al. v. Red Cedar Medical Center et al. No. 10CV93 Carolyn J. Nearing (Geraghty O'Loughlin & Kenney, P.A.; Dunn County, WI)
June 20, 2011	Alison Skamangas v. Valley Care Health System, et al.; County of Alameda, CA No. VG09438029 David Lucchese (Galloway, Lucchese, Everson; Walnut Creek, CA)
June 21, 2011	Donald E. Koehne et al. v. American Multispecialty Group, Inc., et al.; St. Louis, MO No. 22052-08776 J. Thaddeus Eckenrode (Eckenrode Maupin; St. Louis, MO)
August 12, 2011	Nicholas Onofrio v. City of Riviera Beach; Palm Beach County, FL No. 50 2010 CA 019126 MB AJ Lonnell Olds (Olds, Stephens & Harper; West Palm Beach, FL)
August 27, 2011	L'Heureux v. Maine Medical Center, et al.; Cumberland, ME No. CV-008-191 Philip M. Coffin III (Lambert Coffin; Portland, ME)
December 8, 2011	Castro-Reyes v. United States of America; Southern District of California No. 10-cv-1559-IEG-JMA Stephen L. Waldman (Law Offices of Stephen L. Waldman; San Diego, CA)
April 17, 2012	Zechariah Bonner v. Woodland Women's Health et al.; Hartford, CT No. HHD CV 08 50211331S David A. Haught (Cooney, Scully and Dowling; Hartford, CT)
May 17, 2012	Robert Rodriguez v. JLG Industries, Inc., Oskosh Corp, et al.; U.S. District Ct, CA No. 2:11-cv-04586 Susan E. Foe (Dryden, Margoles, Schimaneck & Wertz, CA)
June 4, 2012	Bruce Beard, et al. v. Emad Mahmoud Hasan et al.; Boone County, MO No. 09BA-CV03578 R. Max Humphreys (Ford, Parshall & Baker, MS)
June 11, 2012	Pauline Gogol v. Mills Peninsula Health Services, et al.; San Mateo County, CA No. CIV 509469 Cyrus A. Tabari (Sheuerman, Martini, & Tabari; San Jose, CA)
July 9, 2012	Tucker v. Kaiser Foundation Hospitals et al.; Los Angeles, CA No. ARB Cyndi Douglass (La Follette, Johnson, De Haas, Fesler & Ames; CA)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

May 12, 2015	A. Sharma v. Dignity Health et al.; Superior Court of CA, County of Sacramento No. 34-2013-00138981 Patrick Lanius (Lanius & Associates)
May 19, 2015	A. Haywood v. Bethesda Memorial et al.; Circuit Court of FL, Palm Beach County No. 2012 CA 007494 AN Steven M. Lury (Sonneborn, Rutter & Cooney)
July 30, 2015	I. Hernandez v. Tenet California et al.; Superior Ct of CA, County of San Luis Obispo No. 14CVP0083 Stephanie Bowen (Hall, Hieatt & Connely)
August 18, 2015	Jacqueline Clinton v. Kaiser Foundation; Folsom, CA No. 12699 Mark Muro (Muro & Lampe)
August 27, 2015	Booker Page v. Mark Dawson, Desoto Cab, et al.; San Francisco, CA No. CGC-14-537297 Amy Maclear (Gordon & Rees)
September 2, 2015	Gawronski et al. v. Andrew Nelson MD, et al.; Sauk County, WI No. 13-CV-240 Michael Luebke (Gingras, Cates & Luebke)
September 3, 2015	Un Suk Guernsey v. Sammut Brothers Development, et al.; Monterey County, CA No. M126693 James D. Biernat (Biernat Law Group)
September 10, 2015	Reyes Flores v. New Mexico Dept of Trans., et al.; County of Santa Fe, NM No. D101-CV-2013-00632 John Anderson (Holland & Hart)
September 15, 2015	Carolyn Baker v. Mercy Hospital Anderson, et al.; Hamilton County, OH No. A1400720 Joel L. Peschke (Calderhead, Lockemeyer & Peschke)
September 22, 2015	Burton and Kincaid v. Florida Hospital Orlando, et al.; Orange County, FL No. 2011 CA 014421-O J. Charles Ingram (Estes, Ingram, Foels & Gibbs P.A.)
October 22, 2015	Powell v. Joel Kahn MD, et al.; County of Solano, CA No. FCS042540 Kevin Smith (Bradley, Curley, Asiano, Barrabee, Abel & Kowalski, P.C.)
December 15, 2015	Ruiz v. Willowglen Academy, et al.; Stephenson County, IL No. 12 L 5 Sheila N. Osei (Kopka Pinkus Dolan)
January 7, 2016	Reed v. UCLA Medical Center, et al.; County of Los Angeles, CA No. SC116173 Benjamin R. Minkow (Law Offices of David J. Weiss)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Trial and Arbitration Testimony

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

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

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

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

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

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



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Fee Schedule

January 2018

Initial Review \$600 per hour

This typically includes: A review of the records, research and analyses, and a discussion of the case. This initial review may require up to 8 hours for a review of records and up to an additional 5 to 8 hours for research and analyses. If the work is expected to take longer - we will call you ahead of time.

We welcome your continued updates as a case progresses. We do not charge for phone calls unless they last 20 minutes or longer.

Report \$600 per hour

If requested, we will prepare a formalized report. Please note that we never write a report without consulting you first. A full report typically requires between 4 and 8 hours.

Deposition & Trial Testimony \$600 per hour

Deposition preparation can require up to 8 hours. This includes reviewing the case and preparing for cross examination.

Trial preparation typically requires between 5 to 10 hours. This includes reviewing the case, producing helpful exhibits, and preparing for cross examination.

For travel we bill at \$600 per hour and all fees are capped at \$6,000/day.
We insist on flying coach.

We ask that you please notify us, as soon as possible, of any motions filed that address, in any way, our involvement as an expert in the case. This will enable us to respond to these motions appropriately (via affidavit).

Our FEIN # is 27-1587321

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EXHIBIT H

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December 19, 2018

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

Re: Farris v. Rives

Dear Mr. Couchot:

As Senior Managing Economist with Cohen | Volk Economic Consulting Group, I have been retained to value economic losses in the above captioned case. I have been asked to evaluate the future cost of care for Ms. Farris based on the opinions of Dr. Stone, Dr. Kush, and Sarah Larsen. I have also been asked to respond to economic loss analysis and/or testimony by damages experts for the plaintiff.

I have been provided with the following documents:

1. Plaintiff Patrick Farris Response to Defendant's First Demand for Production and Inspection of Documents;
2. Plaintiff Patrick Farris's Answers to Defendant's First Set of Interrogatories;
3. Plaintiff Titina Farris' Response to Defendants' First Set of Request for Production of Documents;
4. Plaintiff Titina Farris's Answers to Defendant's First Set of Interrogatories;
5. Deposition transcript of Patrick Farris taken on October 11, 2018;
6. Deposition transcript of Titina Farris taken on October 11, 2018;
7. "REPORT ON PRESENT VALUE OF A LIFE CARE PLAN FOR MS. TITINA FARRIS," dated October 9, 2018, Terrence Clauretie, Ph.D.;
8. "Life Expectancy Report Ms. Titina Farris," dated December 19, 2018, Scott Kush, M.D.;
9. "Life Care Plan for Titina Farris," dated December 19, 2018, Sarah Larsen, R.N.

My calculation report is enclosed with this letter, as are my CV, list of testimonies, and the company rate schedule. In order to complete my assignment, I have also considered information from the following sources:

Mr. Chad C. Couchot
December 19, 2018
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United States Bureau of Labor Statistics, United States Federal Reserve, the Social Security Administration, and the Centers for Medicare & Medicaid Services.

Response to Report of Terrence Clauretie, Ph.D.:

Dr. Clauretie's methodology for computing present value relies upon applying growth rates to the Dawn Cook life care plan, with two different growth rate categories: For home modifications, Dr. Clauretie assumes a future growth rate of 2.8%; for "medical and professional costs," Dr. Clauretie assumes a future growth rate of 3.5% per year. The "medical and professional costs" growth rate of 3.5% is applied to all of the items in the Cook life care plan, with the exception of home modifications.

Dr. Clauretie's report indicates two sources for the "medical and professional costs" growth rate. One source is the "Forecast of future growth rate in non-medical labor from the 2018 Annual Report of the Trustees of the OASDI (if applicable)." No specific citation is provided for the page or table number where the underlying data is contained within the Trustees of the OASDI report.

The other source is "Forecast of future medical costs by Trustees of the United States Hospital and Supplementary Insurance Funds, 2018," for which Dr. Clauretie provides a link to a 2015 report titled "2015 ANNUAL REPORT OF THE BOARDS OF TRUSTEES OF THE FEDERAL HOSPITAL INSURANCE AND FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUNDS." It is not clear why Dr. Clauretie would describe 2018 forecast data as being available in a 2015 publication. Furthermore, it is not clear exactly how the sources listed were used to arrive at the 3.5% growth rate assumption. Therefore, I cannot provide meaningful commentary at this time in response to Dr. Clauretie's methodology for concluding that costs for items placed in the "medical and professional costs" category will grow by 3.5% each and every year until 2047. If and when additional information is provided for this topic, I may augment or modify my comments as is appropriate.

Dr. Clauretie's report does not explain why he would place life care plan items such as a pool program, companion care, home maintenance and durable medical equipment into the "medical and professional costs" category. The Centers for Medicare and Medicaid Services publish price level projections for the years 2018-2026. For the category of Physician and Clinical Services, the Centers for Medicare and Medicaid Services estimates prices to increase an average of 2.2% per year through 2026. The average projected price level increases for 2018-2026 for other

Mr. Chad C. Couchot
December 19, 2018
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categories are as follows: Durable Medical Equipment: 0.9%; Home Health Care: 1.6%. If Dr. Clauretie's analysis of future care costs were to rely upon growth rates ranging from 0.9% per year to 2.2% per year instead of 3.5%, his present value calculations would be reduced accordingly.

Dr. Clauretie discounts future care costs based on recent yields for U.S. government bonds that mature each year until 2047. One of the problems inherent in using current rates is that they most likely will be different at the date of trial, at the date a potential award is paid, and at the time the recipient may choose to invest that award. While it is certainly the case that one can lock in today's near historically low rates, it is unreasonable to suggest that one cannot earn rates in excess of recent rates over the next 25-30 years. U.S. financial markets are still impacted by what Janet Yellen, former Chairman of the Federal Reserve, called the worst financial crisis since the Great Depression. Policies and financial conditions led to historically low interest rates starting around 2008, but interest rates have recently begun to climb. Furthermore, interest rate increases are widely forecast to continue. In my opinion, using recent low interest rates as the only basis for projecting future interest returns for the 25-30 years is not reasonable.

Furthermore, as noted above, the Trustees of the OASDI – a source utilized and cited in Dr. Clauretie's report, projects an average real interest rate of 2.7 percent, implying nominal returns of 5.3%. If Dr. Clauretie were to utilize a 5.3% interest assumption for the future care cost analysis, the present cash values would be reduced significantly.

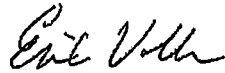
A method commonly used in the field of forensic economics for analyzing the present value of future cost of care involves examining long-run historical relationships for real interest returns (interest compared to general price inflation) and for real care cost growth rates (nominal growth compared to general price inflation). Such data is available from the Bureau of Labor Statistics and the Federal Reserve. My conclusions as to future cost of care are based on this type of analysis, and are contained in my calculation report, which is attached. My analysis results in higher net discount rates for future care than those implied by Dr. Clauretie's analysis.

Closing:

In conclusion, please note that all work is based on information provided to date. As additional information is provided to me, I may augment or change my opinions. If you have any questions, please do not hesitate to contact me.

Mr. Chad C. Couchot
December 19, 2018
Page 4 of 4

Sincerely,

A handwritten signature in black ink, appearing to read "Erik Volk". The signature is fluid and cursive, with the first name "Erik" and last name "Volk" clearly distinguishable.

Erik Volk, M.A.

Attachments

Cohen Volk
ERIK VOLK
LIST OF TESTIMONIES

Date	Name	Memo	Venue	Case No
3/08	Stoker v. Holdener	Deposition testimony.	San Joaquin	CV030509
5/08	Gilberston v. Cavanah	Deposition testimony.	Santa Cruz	CV156427
6/08	Walker v. Harf	Deposition testimony.	Sonoma	SCV238281
7/08	Gonzalez v. Coulter	Trial Testimony.	Tulare	821831/2006
8/08	Griffith v. Greenstein	Deposition testimony.	Contra Costa	C-07-01198
8/08	Love v. Maxwell	Deposition testimony.	Merced	370100
9/08	Jones v. Kaiser	Deposition testimony.	Kaiser Arbitration	8086
9/08	Walker v. Harf	Trial Testimony.	Sonoma	SCV238281
9/08	Thomas v. LCA Vision	Deposition testimony.	Contra Costa	C 07-02199
10/08	Johl v. CDCR	Deposition testimony.	Monterey	M85717
12/08	Jaworowski v. Mitchell Engineering	Trial Testimony.	San Francisco	CGC-07-469973
1/09	Johl v. CDCR	Trial Testimony.	Monterey	M85717
3/09	Boussina v. Kaiser	Deposition testimony.	Kaiser Arbitration	N/A
3/09	Simoni v. Williams	Deposition testimony.	Alameda	HG07312759
4/09	Lewis v. Mammoth	Deposition testimony.	USDC - Eastern District	07-CV-00497-OWW-GSA
5/09	Turel v. St. Francis	Deposition testimony.	San Francisco	CGC-07-460735
6/09	Lopez-Smela v. City of Emeryville	Deposition testimony.	Alameda	RG08388373
6/09	Trotter v. Regents of UC	Deposition testimony.	Sacramento	34-200800010695
6/09	Lum v. Williams Towing	Deposition testimony.	San Francisco	CGC-08-471056
6/09	Moran v. Rivas	Deposition testimony.	Alameda	G05217822
6/09	Stephens v. Safeco	Arbitration testimony.	UIM Arbitration	Unassigned
6/09	Elie v. Smith	Deposition testimony.	San Mateo	CIV 471364
7/09	Elie v. Smith	Trial Testimony.	San Mateo	CIV 471364
8/09	Woodthorp v. Allyne	Trial Testimony.	Santa Cruz	CV 158898
8/09	Alvarado v. USA	Deposition testimony.	USDC - Eastern District	1:06-cv-01381-OWW-DLB
10/09	Smith v. Stein	Deposition testimony.	Alameda	RG07-342763
11/09	Kruz v. ABM Janitorial	Deposition testimony.	Santa Clara	108CV116101
11/09	Jackson v. American Express	Deposition testimony.	American Arbitration Association	74 160 00362 09 JOG3
11/09	Humphrey v. Miller	Trial Testimony.	Alameda	HG07331865
11/09	Jackson v. American Express	Arbitration testimony.	American Arbitration Association	74 160 00362 09 JOG3
12/09	Boccaleoni v. Bramer	Deposition testimony.	Mendocino	CVPM 08-52505
1/10	Sturdevant v. Kaiser	Deposition testimony.	Kaiser Arbitration	9292
1/10	Young v. Simpson	Deposition testimony.	San Luis Obispo	CV 080989
2/10	Love v. Maxwell	Trial Testimony.	Merced	370100
2/10	Van Horn v. Hornbeak	Deposition testimony.	USDC - Eastern District	1:08-cv-01622 LJO-DLB
2/10	Smith v. Stein	Trial Testimony.	Alameda	RG07-342763
3/10	Richer v. Strand	Deposition testimony.	Los Angeles	PC 043 690
4/10	Ford v. Kaiser	Deposition testimony.	Kaiser Arbitration	9337
5/10	Ford v. Kaiser	Arbitration testimony.	Kaiser Arbitration	9337
5/10	Kim v. KDF	Deposition testimony.	San Diego	37-2008-00092250-CU-BT-CTL
7/10	Dong v. Roberts	Deposition testimony.	Contra Costa	C09-01358
7/10	Roberts v. Genworth	Arbitration testimony.	Arbitration	ADRS Case No. 09-6187-LDK
8/10	Sofranek v. County of Merced	Deposition testimony.	Merced	148246
8/10	Spath v. Finch	Deposition testimony.	Shasta	162208

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Date	Name	Memo	Venue	Case No
9/10	French v. Bernabe	Deposition testimony.	Kings	09C 0007
9/10	Spath v. Finch	Trial Testimony.	Shasta	162208
9/10	Smith v. Mercy San Juan	Trial Testimony.	Sacramento	07AS02499
9/10	Wehr v. Fleming Distributing	Deposition testimony.	Sacramento	SCV23305
10/10	Parker v. Poly Processing	Deposition testimony.	Napa	26-48307
10/10	Hall v. Kaiser	Arbitration testimony.	Kaiser Arbitration	9602
10/10	Parker v. Poly Processing	Trial Testimony.	Napa	26-48307
11/10	Wehr v. Fleming Distributing	Trial Testimony.	Sacramento	SCV23305
12/10	Coronado v. State of California	Deposition testimony.	Madera	MCV 043463
1/11	Coronado v. State of California	Trial Testimony.	Madera	MCV 043463
1/11	Wever v. County of Tuolumne	Deposition testimony.	Tuolumne	CV55216
2/11	Lopez v. Allied	Deposition testimony.	Alameda	RG 10-521325
3/11	Desmond v. Sutter	Deposition testimony.	Sonoma	SCV 244206
3/11	Evans v. UC Regents	Deposition testimony.	Alameda	RG08428757
4/11	Hanamaikai v. Vandenoever	Deposition testimony.	Monterey	M102285 and M105906
5/11	Miniello v. PG&E	Trial Testimony.	San Francisco	CGC 09-493302
5/11	Hanamaikai v. Vandenoever	Trial Testimony.	Monterey	M102285 and M105906
5/11	McCaslin v. Bobrik	Trial Testimony.	Sutter	CVCS07-0332
5/11	Jackson et al. v. Federal Express	Deposition testimony.	USDC, Central District, Western Division	CV10 1760 MMM (CWx)
6/11	Taylor v. Optisolar	Deposition testimony.	Alameda	RG 09456809
6/11	Engleman v. Watsonville	Deposition testimony.	Santa Cruz	CISCV158407
7/11	Schmieman v. Liongson	Trial Testimony.	San Francisco	CGC10499984
7/11	Jackson et al. v. Federal Express	Trial Testimony.	USDC, Central District, Western Division	CV10 1760 MMM (CWx)
7/11	John V.G. Doe v. Archdiocese of Los Angeles	Deposition testimony.	Los Angeles	JCCP 4286/BC412464
7/11	Engleman v. Watsonville	Trial Testimony.	Santa Cruz	CISCV158407
8/11	Corona v SD Deacon	Deposition testimony.	Sacramento	34-2009-00067147 6
8/11	Hornback v. Young	Deposition testimony.	Washoe County, Nevada	CV09-01990
9/11	Webb v. Kaiser	Deposition testimony.	Kaiser Arbitration	OIA 10594
9/11	Kissinger v. Epoca	Deposition testimony.	San Francisco	CGC-10-496996
10/11	Tuitasi v. Byal	Deposition testimony.	Alameda	HG10527875
10/11	Harmon v. Safeway	Deposition testimony.	Sonoma	SCV 248465
10/11	Gottlieb v. Equinox	Deposition testimony.	San Mateo	CIV487470
10/11	Gramata v. Sears	Deposition testimony.	Santa Clara	39-2009-00221730-CU-PA-STK
10/11	Hairston v. UC Regents	Trial Testimony.	Sacramento	34-2009-00032610
10/11	Harmon v. Safeway	Trial Testimony.	Sonoma	SCV 248465
11/11	Casey v. Kramer	Deposition testimony.	Alameda	RG 10530031
11/11	Cost v. Goldman	Deposition testimony.	Sonoma	244982
11/11	Vasquez v. Kaiser	Arbitration testimony.	Kaiser Arbitration	N/A
11/11	Garcia v. St. Luke's Hospital	Deposition testimony.	San Francisco	CGC-10-505673
11/11	Felicity v. Foster Farms	Deposition testimony.	Contra Costa	C-10-01576
12/11	John TZ Doe v. Doe 1	Deposition testimony.	San Joaquin	CV035092
12/11	Torres v. OC Communications	Deposition testimony.	Sacramento	34-2010-00078456
12/11	UIM Claim of Ann Giesecker	Arbitration testimony.	UIM Arbitration	N/A
01/12	Cisura v. Wong	Deposition testimony.	Alameda	RG-10-494572

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Date	Name	Memo	Venue	Case No
01/12	Torres v. OC Communications	Trial Testimony.	Sacramento	34-2010-00078456
02/12	Clisura v. Wong	Trial Testimony.	Alameda	RG-10-494572
02/12	Metzger v. Wells Fargo	Trial Testimony.	Marin	CIV1004997
03/12	Hammonds vs. Stanford	Deposition testimony.	Santa Clara	1-09-CV-142275
03/12	Hunting v. Xium	Deposition testimony.	USDC - Eastern District	1:10-CV-01844-OWW-JLT
03/12	Mariolle v. Volvo	Deposition testimony.	USDC - Northern District	C-09-4250 MMC
04/12	Burkett v. Ace Tile	Trial Testimony.	Fresno	09CECG01732 AMS
04/12	Murphy v. CRDC	Trial Testimony.	San Francisco	CGC-11-510541
05/12	Wong v. AAA	Arbitration testimony.	Arbitration	N/A
05/12	Mariolle v. Volvo	Trial Testimony.	USDC - Northern District	C09-01209
05/12	John TH Doe v. Roman Catholic Bishop of Orange	Deposition testimony.	Orange	30-2008-00046614
06/12	Wale v. Bristol Park Medical Group	Deposition testimony.	Orange	30-2010-00408309
07/12	Guajardo v. Federighi Design	Deposition testimony.	Contra Costa	C11-00584
08/12	Laverne v. Sutter Medical Group	Deposition testimony.	Sacramento	34-2010-00086267
08/12	Slarve v. Coufal	Deposition testimony.	Contra Costa	C09-02127
08/12	Cresser v. Isenhardt	Deposition testimony.	Del Norte	CVUJ08-1021
08/12	Khilnani v. Stevens Creek Toyota	Deposition testimony.	Santa Clara	1-10-CV-172612
09/12	Slarve v. Coufal	Trial Testimony.	Contra Costa	C09-02127
09/12	Fehrenbach v. Bodisco	Deposition testimony.	Alameda	RG 10-521325
10/12	Burnham v. Truckee Tahoe Medical Group	Deposition testimony.	Nevada County, CA	T10/4206C
10/12	Hirshberg v. The Cooper Companies	Deposition testimony.	Alameda	RG11574879
11/12	Kelly v. Safeway	Trial Testimony.	Alameda	RG 11597543
11/12	Wright v. Minix	Deposition testimony.	Sacramento	34-2010-00081328
12/12	Ruigomez v. PG&E	Deposition testimony.	San Mateo	4648 A
12/12	Davis v. Goodwill Industries	Deposition testimony.	Sonoma	SCV-251137
1/13	Pierce v. OB-GYN Associates of Santa Cruz	Deposition testimony.	Santa Cruz	CV 172334
1/13	Garabedian vs. BART and Contra Costa County	Deposition testimony.	Alameda	RG11575882
1/13	Kissinger v. Epoca	Trial Testimony.	San Francisco	CGC-10-496996
1/13	Guajardo v. Federighi Design	Trial Testimony.	Contra Costa	C11-00584
1/13	Carroll v. Figuerres	Trial Testimony.	Monterey	M113888
1/13	Hughes v. Dominican Hospital	Deposition testimony.	Santa Cruz	CV172782
2/13	Villagomez v. Postel	Deposition testimony.	San Mateo	CIV512004
2/13	Rodriguez v. St. Helena Hospital	Deposition testimony.	Solano	FCS035726
2/13	Botelho v. Memorial Hospital of Los Banos	Deposition testimony.	Merced	CU151886
2/13	Guterres v. Horodyski	Deposition testimony.	Solano	FCS032869
3/13	Emerson v. Alta Bates	Deposition testimony.	Alameda	RG09474670
4/13	Edwards v. Escrow of the West	Deposition testimony.	Los Angeles	BC 453397
4/13	Schmidig v. Castro, et al.	Deposition testimony.	Santa Cruz	CV168832
4/13	Edwards v. Escrow of the West	Trial Testimony.	Los Angeles	BC 453397
4/13	Dom v. Granlund	Deposition testimony.	Butte	152861
5/13	Goldberg v. Regents of UC	Deposition testimony.	San Francisco	CGC-10-502054
5/13	Dom v. Granlund	Trial Testimony.	Butte	152861
5/13	Ziolkowski v. OSL Projects	Deposition testimony.	San Francisco	11-515954
5/13	Coyle v. County of Del Norte	Deposition testimony.	Del Norte	CVPM07-1572

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Date	Name	Memo	Venue	Case No
6/13	Mesa v. United Road Towing	Deposition testimony.	Clark County, NV	A-10-630441-C
6/13	Melfort v. Checksmart	Deposition testimony.	San Francisco	RG12634817
6/13	Willis v. TNDC	Deposition testimony.	San Francisco	CGC-12-517558
6/13	Hawks v. Lee	Deposition testimony.	Madera	MCV054279
7/13	Davis v. Sorenson	Deposition testimony.	Merced	11 C 0407
7/13	Kalahele v. Kaiser	Deposition testimony.	Kaiser Arbitration	N/A
8/13	Caruso v. Community Medical Center	Deposition testimony.	Fresno	12 CE CG 01086
9/13	Aaron v. Wiebe	Deposition testimony.	Kern	S-1500-CV-275839, WDP
9/13	Medraza v. Honda of North Hollywood	Deposition testimony.	Los Angeles	BC 354744
9/13	Caruso v. Community Medical Center	Trial Testimony.	Fresno	12 CE CG 01086
9/13	Doe v. Redlands	Deposition testimony.	San Bernardino	CIVDS1106795
10/13	Pierce v. OB-GYN Associates of Santa Cruz	Trial Testimony.	Santa Cruz	CV 172334
10/13	Bamer v. Billeci	Deposition testimony.	San Mateo	CIV 510631
10/13	Harrison v. Southwest Traders Inc.	Deposition testimony.	Sonoma	SCV251218
10/13	Andrade v. Walker	Deposition testimony.	Contra Costa	MSC09-00632
10/13	Chaney v. NorthBay Health Group	Deposition testimony.	Solano	FCS033503
11/13	Harrison v. Southwest Traders Inc.	Trial Testimony.	Sonoma	SCV251218
11/13	Miller v. Kaiser	Deposition testimony.	Kaiser Arbitration	N/A
11/13	Chin v. CPMC	Trial Testimony.	San Francisco	CGC-11-516561
11/13	Miller v. Kaiser	Arbitration testimony.	Kaiser Arbitration	N/A
11/13	Doe v. The Roman Catholic Bishop of San Bernardino	Deposition testimony.	San Bernardino	CIVDS 1200820
12/13	Rincon-Gutierrez v. Heinzen Manufacturing	Deposition testimony.	Santa Clara	112CV222724
1/14	Reavis v. Kaiser	Deposition testimony.	Kaiser Arbitration	Arbitration No. 11782
1/14	Reavis v. Kaiser	Arbitration testimony.	Kaiser Arbitration	Arbitration No. 11782
1/14	Chan v. Prologis	Deposition testimony.	Alameda	RG11603512
1/14	Fulkerson-Collins v. Kaiser	Arbitration testimony.	Kaiser Arbitration	N/A
2/14	Allen v. Regents of UC	Deposition testimony.	Sacramento	34-2011-00104589
3/14	Wald v. Petrossian	Deposition testimony.	Contra Costa	MSC12-01549
3/14	Trulsson v. San Joaquin County	Trial Testimony.	USDC - Eastern District	2:11-CV-02986-KJM-DAD
4/14	Hughes v. Dominican Hospital	Trial Testimony.	Santa Cruz	CV172782
4/14	Flores v. Singh	Deposition testimony.	Alameda	RG10543161
4/14	Wald v. Petrossian	Trial Testimony.	Contra Costa	MSC12-01549
5/14	Bhadauria v. Luxor Cab Company	Deposition testimony.	San Francisco	CGC-11-514969
5/14	Qiu v. Ahrens	Deposition testimony.	San Francisco	CGC-12-524936
5/14	Bennett v. Rine	Trial Testimony.	San Joaquin	39-2011-00258291-CU-MM-STK
5/14	Topete v. Sutter	Deposition testimony.	Sacramento	34-2011-00099829
5/14	Portillo v. Gossman	Deposition testimony.	San Mateo	CIV 513490
6/14	Kyle-Elender v. Alameda County	Trial Testimony.	Alameda	HG12612812
6/14	Cortez v. Syfu	Deposition testimony.	Madera	MCV061942
7/14	Estigoy v. Kaiser	Deposition testimony.	Kaiser Arbitration	N/A
7/14	Gardner v. Farmers Insurance	Deposition testimony.	Underinsured Motorist Arbitration	1015480136-1-5
7/14	J.B. Development v. Brelle West	Deposition testimony.	Placer	S-CV-0027264
7/14	Cuevas vs. Contra Costa County	Deposition testimony.	Contra Costa	CIVMSC09-01786
7/14	Estigoy v. Kaiser	Arbitration testimony.	Kaiser Arbitration	N/A

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Date	Name	Memo	Venue	Case No
7/14	Walker v. Women's Healthcare of Redding	Deposition testimony.	Shasta	177425
7/14	Gardner v. Farmers Insurance	Arbitration testimony.	Underinsured Motorist Arbitration	1015480136-1-5
8/14	Martinez v. Rite Aid	Deposition testimony.	Los Angeles	BC 401746
8/14	O'Hearn v. Friedlander	Trial Testimony.	Placer	SCV0032000
8/14	Yeh v. Fung	Deposition testimony.	San Francisco	CGC-12-524157
9/14	Cuevas vs. Contra Costa County	Trial Testimony.	Contra Costa	CIVMSC09-01786
10/14	Regan v. Moulton-Barrett	Deposition testimony.	Alameda	RG12644025
10/14	Poole v. Sutter	Deposition testimony.	San Francisco	CGC-12-518002
10/14	A.M., a minor, et al. v. LAUSD (three plaintiffs)	Deposition testimony.	Los Angeles	BC484111
10/14	Gross v. Lucile Salter Packard Children's Hospital	Deposition testimony.	Santa Clara	1-11-CV-214925
10/14	Armstrong v. UC Regents	Deposition testimony.	San Francisco	CGC-13-533443
10/14	Regan v. Moulton-Barrett	Trial Testimony.	Alameda	RG12644025
11/14	DeOliveira vs. Kaiser	Arbitration testimony.	Kaiser Arbitration	N/A
12/14	Armstrong v. UC Regents	Trial Testimony.	San Francisco	CGC-13-533443
12/14	Palacio vs. U.S.	Deposition testimony.	USDC - Eastern District	2:13-CV-01012-JAM-CKD
1/15	Zagon v. Carmichael Care	Deposition testimony.	Sacramento	34-2012-118019
1/15	Poole v. Sutter	Trial testimony.	San Francisco	CGC-12-518002
2/15	Gordon v. East Bay Golden Cab	Deposition testimony.	Alameda	RG12625551
2/15	G.M. and McGrath v. LAUSD	Deposition testimony.	Los Angeles	BC493898
2/15	Jane CAJ Doe vs. Pathpoint	Deposition testimony.	Los Angeles	PC 052205
2/15	G.M. and McGrath v. LAUSD	Trial testimony.	Los Angeles	BC493898
3/15	Thakur v. Maduri	Deposition testimony.	Santa Clara	1-13-CV-241324
3/15	J.B. Development v. Brelle West	Trial Testimony.	Placer	S-CV-0027264
3/15	First Service Credit Union v. United Road Towing	Deposition testimony.	Clark County, NV	A-10-616806-C
3/15	Cortez v. Syfu	Trial Testimony.	Madera	MCV061942
3/15	Hernandez v. DirecTV	Deposition testimony.	Placer	SCV0033601
3/15	Valdez v. Salinas Valley Hospital	Deposition testimony.	Monterey	M 102561
3/15	First Service Credit Union v. United Road Towing	Trial Testimony.	Clark County, NV	A-10-616806-C
4/15	Gonzalez v. Metro Taxi Cab	Deposition testimony.	Alameda	RG 13688030
4/15	Navarro v. Pacific Basin Milling	Deposition testimony.	Yolo	PD10 - 1331
4/15	Valdez v. Salinas Valley Hospital	Trial Testimony.	Monterey	M 102561
5/15	Morales v. Parra	Deposition testimony.	Fresno	13 CE CG 00942
5/15	Mallen v. CPMC	Deposition testimony.	San Francisco	CGC13-534704
5/15	Sharma v. Methodist Hospital	Deposition testimony.	Sacramento	34-2013-00138981
5/15	Gonzalez v. Metro Taxi Cab	Trial Testimony.	Alameda	RG 13688030
5/15	Ajemian v. Cupertino Square Shopping Center	Deposition testimony.	Santa Clara	110CV178249
5/15	Sedano v. USA	Deposition testimony.	USDC - Eastern District	1:14-CV-00192-LJO-JLP
6/15	Sharma v. Methodist Hospital	Trial Testimony.	Sacramento	34-2013-00138981
6/15	Powell v. Fuentes	Deposition testimony.	Shasta	179557
7/15	John J.B. Doe vs. Aspen Education	Deposition testimony.	Arbitration	72-420-01086-11
7/15	Bianchi v. CSAA Insurance Exchange	Deposition testimony.	Arbitration	ARB - UIM
7/15	Bianchi v. CSAA Insurance Exchange	Arbitration testimony.	Arbitration	ARB - UIM
7/15	Kumar v. Kaiser	Arbitration testimony.	Arbitration	N/A
8/15	Herger v. Cammarosano	Deposition testimony.	Yolo	No. PO 11-2750

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Date	Name	Memo	Venue	Case No
8/15	Drake v. DeRose	Deposition testimony.	Washoe County, Nevada	CV 13 01103
9/15	Murphy v. Yu	Deposition testimony.	San Francisco	CGC-14-536963
9/15	John TDC Doe v. LAUSD	Deposition testimony.	Los Angeles	BC543015
9/15	Ficklin v. AAA	Deposition testimony.	Arbitration	N/A
9/15	Palacio vs. U.S.	Trial Testimony.	USDC - Eastern District	2:13-CV-01012-JAM-CKD
10/15	Baldacchino v. Kaiser	Arbitration testimony.	Arbitration	N/A
10/15	Eaglin v. Metzgar	Deposition testimony.	Alameda	RG14-710653
10/15	John TDC Doe v. LAUSD	Trial Testimony.	Los Angeles	BC543015
11/15	Engle v. Early	Deposition testimony.	Alameda	RG13702017
11/15	Ficklin v. AAA	Arbitration testimony.	Arbitration	N/A
11/15	Barulich v. Johnson	Deposition testimony.	San Mateo	CIV530635
12/15	McKenzie v. Coyle	Deposition testimony.	Sonoma	SCV-256463
12/15	Drew v. Siskiyou Medical Group	Deposition testimony.	Siskiyou	SCCV 11-1022
12/15	Herger v. Cammarosano	Trial Testimony.	Yolo	No. PO 11-2750
12/15	Lam v. City of San Jose	Trial Testimony.	USDC - Northern District	14-cv-00877 PSG
12/15	Blackman v. Kaiser	Deposition testimony.	Kaiser Arbitration	No. 13453
1/16	Skinner v. Country Builders Construction	Deposition testimony.	Alameda	RG14718031
1/16	Blackman v. Kaiser	Arbitration testimony.	Kaiser Arbitration	No. 13453
1/16	Gholson v. Wiebe	Deposition testimony.	Los Angeles	S-1500-CV-277699-1hb
1/16	Urbano v. International Surfacing Systems	Deposition testimony.	Contra Costa	C11-02131
3/16	Muniz v. Van Rein	Trial Testimony.	Sacramento	34-2012-00130385
3/16	Nersesyan v. Wilcoxon	Deposition testimony.	Sacramento	34-2013-00140432
4/16	Jeppson v. Romanowsky	Deposition testimony.	Santa Clara	113CV252113
4/16	Jane SM Doe v. Massage Green	Deposition testimony.	Riverside	MCC1400308
4/16	Stevens v. Jiffy Lube International, Inc.	Deposition testimony.	American Arbitration Association	No. 01-15-0005-2190
5/16	Portillo v. Gossman	Trial Testimony.	San Mateo	CIV 513490
5/16	Nersesyan v. Wilcoxon	Arbitration testimony.	Sacramento	34-2013-00140432
5/16	Waltrip v. Abidi	Deposition testimony.	Santa Cruz	CV 178574
5/16	Vogel v. St. Louise Regional Hospital	Deposition testimony.	Santa Clara	114CV265419
5/16	Stevens v. Jiffy Lube International, Inc.	Deposition testimony.	American Arbitration Association	No. 01-15-0005-2190
5/16	Stevens v. Jiffy Lube International, Inc.	Arbitration testimony.	American Arbitration Association	No. 01-15-0005-2190
6/16	Huoh v. Bentolila	Deposition testimony.	San Francisco	CUD-13-646863
6/16	Kelley v. Landeck	Deposition testimony.	Alameda	RG15757496
7/16	Sangervasi v. Kaiser	Deposition testimony.	Kaiser Arbitration	N/A
7/16	Sangervasi v. Kaiser	Arbitration testimony.	Kaiser Arbitration	N/A
8/16	Bamberg v. Westfield LLC	Deposition testimony.	Los Angeles	BC518215
8/16	Simpson v. Sutter Solano	Trial Testimony.	Solano	FCS042780
8/16	Barajas v. Erickson	Deposition testimony.	Monterey	GNM120928
8/16	Lopez v. Weiss, M.D.	Deposition testimony.	Sonoma	SCV 252729
8/16	Parnell v. Centennial	Deposition testimony.	Clark County, NV	A-14-710329-C
9/16	Andronico v. The Stinking Rose	Deposition testimony.	San Francisco	CGC15545899
9/16	John VZ Doe vs. Hesperia Unified School District	Deposition testimony.	San Bernardino	CIVDS1410904
9/16	Jaquez v. Rackley	Deposition testimony.	Santa Clara	115CV283531
9/16	Lopez v. Weiss, M.D.	Trial Testimony.	Sonoma	SCV 252729

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Date	Name	Memo	Venue	Case No
9/16	Ugur v. Garg, M.D.	Deposition testimony.	San Mateo	CIV 531517
10/16	Miller v. Sutter Amador	Deposition testimony.	Amador	13-CV-8253
10/16	Lo v. Greater Fresno	Trial Testimony.	Fresno	15CECG00854 MWS
11/16	Egbert v. Budman	Deposition testimony.	Sonoma	SVC 256303
11/16	John JS, John PB and John NC Doe vs. Fullerton	Deposition testimony.	Orange	30-2014-00763793-CU-PO-CJC
11/16	Jane SM Doe v. Massage Green	Trial Testimony.	Riverside	MCC1400308
12/16	Su v. Vavrinek	Deposition testimony.	San Francisco	CGC-15-548830
12/16	Barajas v. Erickson	Trial Testimony.	Monterey	GNM120928
12/16	Natvig v. Toy	Deposition testimony.	San Francisco	CGC-15-543719
12/16	Jackson v. Setzer	Deposition testimony.	Sacramento	34-2015-00173787
12/16	Walker v. Sunhill	Deposition testimony.	Sonoma	SCV - 256269
1/17	Diemandezi v. RLJ Lodging Trust	Deposition testimony.	Alameda	RG15759540
1/17	Baxter v. Dignity Health et al.	Deposition testimony.	Clark County, NV	A-13-687208-C
1/17	Doty v. Eden Medical Center et al.	Deposition testimony.	Alameda	RG14738936
1/17	Diemandezi v. RLJ Lodging Trust	Trial Testimony.	Alameda	RG15759540
1/17	Jendayi v. Leister	Deposition testimony.	Alameda	RG15781124
1/17	Chapman v. Hodhod	Deposition testimony.	Orange	30-2015-00771890-CU-PO-CJC
2/17	Favro v. State of California	Deposition testimony.	Contra Costa	MSCC13-01934
2/17	Doty v. Eden Medical Center et al.	Trial Testimony.	Alameda	RG14738936
2/17	Towey v. Longoria	Trial Testimony.	Sacramento	34-2014-00161165
2/17	Doe v. Marten	Trial Testimony.	San Francisco	CPF-11-511337
3/17	Cahill v. Wausau Insurance Company	Arbitration testimony.	JAMS Arbitration	1100084909
3/17	Malouf v. 24-Hour Fitness	Deposition testimony.	San Francisco	CGC-14-541025
3/17	Galvin v. Green Earth Development	Deposition testimony.	Contra Costa	MSC1300970
3/17	Phommachakr v. Regents of UC	Deposition testimony.	Sacramento	34-2016-00191498
3/17	Lara v. Sutter Davis	Trial Testimony.	USDC - Eastern District	2:14-cv-2053 KJN KJM
4/17	Kuster v. Sutti & Associates	Deposition testimony.	San Francisco	CGC-15-546169
4/17	Hagan v. Army and Navy Academy	Deposition testimony.	San Diego - North County	37-2014-00009527-CU-PO-NC
4/17	Abebe v. Kaiser	Deposition testimony.	Kaiser Arbitration	N/A
4/17	Dacosta v. Valleycare	Deposition testimony.	Alameda	RG15762040
4/17	Frias v. California Materials	Deposition testimony.	San Joaquin	39-2015-00329427-CU-PO-STK
5/17	Espana v. Alegre	Deposition testimony.	San Joaquin	39-2014-00312463-CU-PN-STK
5/17	Kuster v. Sutti & Associates	Trial testimony.	San Francisco	CGC-15-546169
6/17	Lewis v. Ecosmart	Deposition testimony.	Sonoma	SCV-256907
6/17	Hennager v. Salas	Deposition testimony.	San Benito	CU-15-00016
6/17	Frias v. California Materials	Trial Testimony.	San Joaquin	39-2015-00329427-CU-PO-STK
6/17	Danker v. Old Republic	Deposition testimony.	Unassigned	Unassigned
6/17	Molina v. Ensign	Deposition testimony.	Kern	S-1500-CV280995-LHB
6/17	Hagan v. Army and Navy Academy	Trial Testimony.	San Diego - North County	37-2014-00009527-CU-PO-NC
6/17	Bano v. Fluker	Deposition testimony.	Alameda	RG15792304
6/17	Egbert v. Budman	Trial Testimony.	Sonoma	SVC 256303
7/17	Nawabi v. State of California	Deposition testimony.	San Joaquin	39-2013-00304284-CU-PA-STK
7/17	Hofmann v. Board of Trustees of CSU	Deposition testimony.	San Francisco	CGC-16-549831
7/17	Evans v. AC Transit	Deposition testimony.	Alameda	RG16825093

**Cohen Volk
ERIK VOLK
LIST OF TESTIMONIES**

Date	Name	Memo	Venue	Case No
8/17	Rodriguez v. City and County of San Francisco	Deposition testimony.	San Francisco	CGC-14-543008
8/17	Bailey v. Regents of UC	Deposition testimony.	Sacramento	34-2013-00155132
8/17	Abebe v. Kaiser	Arbitration testimony.	Kaiser Arbitration	N/A
8/17	Guastucci v. Beebe	Deposition testimony.	San Francisco	CGC-15-543720
8/17	Danker v. Old Republic	Arbitration testimony.	Underinsured Motorist Arbitration	N/A
8/17	Bolden v. Verder-Bautista	Deposition testimony.	Yolo	PO15-543
9/17	Nisley v. Stanford	Deposition testimony.	Alameda	RG15796088
9/17	Guastucci v. Beebe	Trial Testimony.	San Francisco	CGC-15-543720
9/17	Barghahn v. Margolis	Trial Testimony.	San Mateo	CIV537912
9/17	Miller v. Sutter Amador	Trial Testimony.	Amador	13-CV-8253
10/17	John RS Doe v. Yucaipa-Calimesa School District	Deposition testimony.	San Bernardino	CIVDS1418836
10/17	Penner v. Multicare Health System	Deposition testimony.	King County, WA	No. 16-2-05076-0 KNT
10/17	Fisher v. Yip	Deposition testimony.	Santa Clara	114CV258924
10/17	Goodwin v. NHUSD	Deposition testimony.	Humboldt	DR140177
11/17	Perez v. Fresno Community Regional Medical Center	Deposition testimony.	Fresno	13CECG03906
11/17	Indugula v. Salesforce	Deposition testimony.	Alameda	AG16-811648
11/17	Ghezavat v. Town of Danville	Deposition testimony.	Contra Costa	CIVMSC13-00167
11/17	Zapotoczny v. Schindler Elevator	Trial Testimony.	Contra Costa	C14-01279
12/17	Guzman v. Perez	Deposition testimony.	Clark County, NV	A-16-748252-C
12/17	Mattes v. Perry and Sons	Deposition testimony.	San Joaquin	UPI-2013-0012146
1/18	Gagliardo v. Doblin	Deposition testimony.	San Diego	37-2015-00037520-CU-NP-CTL
1/18	Rossi v. Napa County	Deposition testimony.	Napa County	26-66881
1/18	Bryan v. Eichenlaub	Trial Testimony.	Clark County, NV	A-15-714369-C
1/18	Gagliardo v. Doblin	Trial Testimony.	San Diego	37-2015-00037520-CU-NP-CTL
1/18	Crawford v. Hilton Worldwide	Deposition testimony.	San Francisco	CGC-15-549645
1/18	Mahdavi v. Caston	Deposition testimony.	Contra Costa	C15-00333
1/18	Indugula v. Salesforce	Deposition testimony.	Alameda	AG16-811648
2/18	Ghezavat v. Town of Danville	Trial Testimony.	Contra Costa	CIVMSC13-00167
2/18	Garza v. Dole	Deposition testimony.	Santa Cruz	16CV03210
2/18	Rossi v. Napa County	Trial Testimony.	Napa County	26-66881
3/18	Perez v. Fresno Community Regional Medical Center	Trial Testimony.	Fresno	13CECG03906
3/18	Reynolds v. Pope	Trial Testimony.	San Mateo	CIV 536328
3/18	Nathan v. County of Merced	Deposition testimony.	Merced	16CV-02137
3/18	Hole v. Sutter Roseville Medical Center	Deposition testimony.	Placer	SCVOO34326
4/18	Stewart v. City and County of San Francisco	Deposition testimony.	USDC - Northern District	3:16-cv-6744 SK
4/18	Stetter v. Regents of UC	Deposition testimony.	San Francisco	CGC16554706
4/18	John AJ Doe et al. v. Torrance Unified School District et al.	Deposition testimony.	Los Angeles	BC 610421
5/18	Tran and Dyba v. County of Sacramento	Deposition testimony.	Sacramento	34-2014-00170698
5/18	Ali v. Kaiser	Arbitration testimony.	Kaiser Arbitration	N/A
5/18	Tran and Dyba v. County of Sacramento	Trial Testimony.	Sacramento	34-2014-00170698
5/18	Burch v. City of Antioch	Deposition testimony.	Contra Costa	C15-01484
5/18	Huff v. Royal Inn	Deposition testimony.	San Francisco	CGC-17-556945
6/18	Woodruff v. PG&E	Deposition testimony.	San Francisco	CGC-16-556125
6/18	Graham v. State of California	Deposition testimony.	Santa Clara	115CV282466

**Cohen Volk
ERIK VOLK
LIST OF TESTIMONIES**

Date	Name	Memo	Venue	Case No
7/18	Nava v. Doaba Enterprises	Deposition testimony.	Santa Clara	113CV244525
7/18	Woodruff v. PG&E	Trial Testimony.	San Francisco	CGC-16-556125
7/18	Kang v. Robertson	Deposition testimony.	Contra Costa	C16-01108
7/18	White v. Subramanyan	Trial Testimony.	San Francisco	CGC-14-541404
7/18	Ruel v. Kaiser	Deposition testimony.	Kaiser Arbitration	N/A
7/18	Yee v. Boucher	Deposition testimony.	Santa Clara	16CV298399
7/18	Yuan v. The Legends at Willow Creek, et al.	Deposition testimony.	Sacramento	34-2015-00186315
8/18	Zheng v. Lee	Deposition testimony.	San Francisco	CGC-17-558431
8/18	Ruel v. Kaiser	Deposition testimony.	Kaiser Arbitration	N/A
8/18	Gutierrez v. Santa Rosa Memorial Hospital	Deposition testimony.	USDC - Northern District	No. 3:16-CV-02645-SI
8/18	Ruel v. Kaiser	Arbitration testimony.	Kaiser Arbitration	N/A
9/18	Yuan v. The Legends at Willow Creek, et al.	Deposition testimony.	Sacramento	34-2015-00186315
9/18	Hole v. Sutter Roseville Medical Center	Trial Testimony.	Placer	SCVOO34326
9/18	Hardy v. Cardinale	Deposition testimony.	San Francisco	CGC 17-558413
9/18	Thunderbutte v. Deatsch	Deposition testimony.	El Dorado	PC 20160539
10/18	Malcolm v. Ralston	Deposition testimony.	San Francisco	CGC 17-568567
10/18	Trujillo v. McKinley Holdings	Deposition testimony.	Sacramento	34-2016-00197307
10/18	Borra v. Gnekow Family Winery	Deposition testimony.	Stanislaus	2023168
11/18	Velazquez v. Singh	Deposition testimony.	Sacramento	34-2016-00196290-CU-PA-GDS
12/18	Phillips v. State of California	Deposition testimony.	Madera	MCV 075805
12/18	Borra v. Gnekow Family Winery	Trial testimony.	Stanislaus	2023168
12/18	Brown v. CSAA	Arbitration testimony.	Uninsured Motorist Arbitration	N/A

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FUTURE CARE COST REPORT
Valuation of Life Care Plan Prepared by Sarah Larsen

Farris v. Rives

Major Assumptions:

Private Pay
Based on 21.5 Additional Years at Age 56.2, Per Dr. Kush

December 19, 2018

Table 1A**Summary of Future Cost to Care for Titina Farris****Private Pay**

Option I: Direct Hire (90%)

	<u>Present Value</u>
Table 3A: Home Care	\$ 409,338
Table 4: Future Medical Care	\$ 27,453
Table 5: Wheelchair Needs	\$ 4,790
Table 6: Durable Medical Equipment and Supplies	\$ 599
Table 7: Projected Therapeutic Modalities	\$ 10,789
Table 8: Orthotics	\$ 1,715
Table 9: Transportation	<u>\$ 52,626</u>
Total Future Care Costs:	<u>\$ 507,310</u>

Table 1B**Summary of Future Cost to Care for Titina Farris****Private Pay****Option II: Agency Hire**

	<u>Present Value</u>
Table 3B: Home Care	\$ 450,787
Table 4: Future Medical Care	\$ 27,453
Table 5: Wheelchair Needs	\$ 4,790
Table 6: Durable Medical Equipment and Supplies	\$ 599
Table 7: Projected Therapeutic Modalities	\$ 10,789
Table 8: Orthotics	\$ 1,715
Table 9: Transportation	<u>\$ 52,626</u>
Total Future Care Costs:	<u>\$ 548,759</u>

Table 2
Actuarial Data

Date of Birth:	10/24/1962	
Date of Valuation:	3/18/2019	
Age at Date of Valuation:	56.40	years
Life Expectancy at Date of Valuation (1):	21.30	years

1 - Based on 21.5 additional years at age 56.2, per Dr. Kush's Life Expectancy Report for Titina Farris, dated December 19, 2018.

Table 3A

Future Care Costs
Home Care
Option I: Direct Hire (90%)

Description (1):	Age	Dates	Period	Frequency	Unit Cost	Annual Cost	NDR	Present Cash Value
Direct Hire Attendant (90%)	56.40	3/18/2019 - 7/4/2040	21.30	2-4hr / day	\$ 16.52	\$ 16,292	2.25%	\$ 276,385
Agency Hire Attendant (10%)	56.40	3/18/2019 - 7/4/2040	21.30	2-4hr / day	\$ 21.50	\$ 2,356	2.25%	\$ 39,968
Payroll Service	56.40	3/18/2019 - N/A	N/A	1x	\$ 200.00	N/A	N/A	\$ 200
Payroll Service	56.40	3/18/2019 - 7/4/2040	21.30	1x / 2wk	\$ 56.00	\$ 1,456	2.25%	\$ 24,700
Advertising, etc.	56.40	3/18/2019 - 7/4/2040	21.30	1x / yr	\$ 1,000	\$ 1,000	2.25%	\$ 16,964
Housekeeping	56.40	3/18/2019 - 7/4/2040	21.30	2-4hr / mo	\$ 65.77	\$ 2,368	2.25%	\$ 40,172
Case Management	56.40	3/18/2019 - 7/4/2040	21.30	4-8hr / yr	\$ 105.00	\$ 630	2.00%	\$ 10,949
Total Care Costs:								<u>\$ 409,338</u>

1 - Future care costs per "Life Care Plan for Titina Farris," prepared by Olzack Healthcare Consulting, Inc., dated December 19, 2018.

Table 3B

Future Care Costs

Home Care

Option II: Agency Hire

Description (1):	Age	Dates	Period	Frequency	Unit Cost	Annual Cost	NDR	Present Cash Value
Agency Hire Attendant	56.40	3/18/2019 - 7/4/2040	21.30	2-4hr / day	\$ 21.50	\$ 23,559	2.25%	\$ 399,666
Housekeeping	56.40	3/18/2019 - 7/4/2040	21.30	2-4hr / mo	\$ 65.77	\$ 2,368	2.25%	\$ 40,172
Case Management	56.40	3/18/2019 - 7/4/2040	21.30	4-8hr / yr	\$ 105.00	\$ 630	2.00%	\$ 10,949
Total Care Costs:								<u>\$ 450,787</u>

1 - Future care costs per "Life Care Plan for Titina Farris," prepared by Olzack Healthcare Consulting, Inc., dated December 19, 2018.

Table 4

**Future Care Costs
Future Medical Care**

Description (1):	Age	Dates	Period	Frequency	Unit Cost	Annual Cost	NDR	Present Cash Value
PM&R - Evaluation	56.40	3/18/2019 - N/A	N/A	1x	\$ 377.00	N/A	N/A	\$ 377
PM&R - Follow-Up	56.40	3/18/2019 - 7/4/2040	21.30	4x / yr	\$ 127.00	\$ 508	1.50%	\$ 9,273
Podiatrist - Evaluation	56.40	3/18/2019 - N/A	N/A	1x	\$ 125.00	N/A	N/A	\$ 125
Podiatrist - Initial Yr	56.40	3/18/2019 - 3/17/2020	1.00	6-12x / yr	\$ 47.50	\$ 428	1.50%	\$ 425
Podiatrist - Thereafter	57.40	3/18/2020 - 7/4/2040	20.30	4-6x / yr	\$ 47.50	\$ 238	1.50%	\$ 4,108
Psychologist	56.40	3/18/2019 - 7/4/2040	21.30	10-20x / life	\$ 162.50	\$ 114	1.50%	\$ 2,081
Dietician - Evaluation	56.40	3/18/2019 - N/A	N/A	1x	\$ 102.50	N/A	N/A	\$ 103
Dietician - Follow-Up	56.40	3/18/2019 - 7/4/2040	21.30	1x / yr	\$ 67.50	\$ 68	1.50%	\$ 1,241
Wound Clinic	56.40	3/18/2019 - N/A	N/A	39x	\$ 249.24	N/A	N/A	\$ 9,720
Total Care Costs:								\$ 27,453

1 - Future care costs per "Life Care Plan for Titina Farris," prepared by Olzack Healthcare Consulting, Inc., dated December 19, 2018.

Table 5

**Future Care Costs
Wheelchair Needs**

Description (1):	Age	Dates	Period	Frequency	Unit Cost	Annual Cost	NDR	Present Cash Value
Power Scooter/Wheelchair	56.40	3/18/2019 - 7/4/2040	21.30	1x / 7yr	\$ 1,678	\$ 240	2.75%	\$ 3,883
Manual Wheelchair	56.40	3/18/2019 - 7/4/2040	21.30	1x / 7yr	\$ 179.75	\$ 26	2.75%	\$ 421
Wheelchair Cushion	56.40	3/18/2019 - 7/4/2040	21.30	1x / 2yr	\$ 31.29	\$ 16	2.75%	\$ 259
Portable Ramps	56.40	3/18/2019 - 7/4/2040	21.30	1x / 7yr	\$ 100.85	\$ 14	2.75%	\$ 227
Total Care Costs:								<u>\$ 4,790</u>

1 - Future care costs per "Life Care Plan for Titina Farris," prepared by Olzack Healthcare Consulting, Inc., dated December 19, 2018.

Table 6

**Future Care Costs
Durable Medical Equipment and Supplies**

Description (1):	Age	Dates	Period	Frequency	Unit Cost	Annual Cost	NDR	Present Cash Value
4-Wheeled Walker	56.40	3/18/2019 - 7/4/2040	21.30	1x / 5yr	\$ 65.83	\$ 13	2.75%	\$ 210
Reacher	56.40	3/18/2019 - 7/4/2040	21.30	1x / 5yr	\$ 11.56	\$ 2	2.75%	\$ 32
Handheld Shower Head	56.40	3/18/2019 - 7/4/2040	21.30	1x / 5yr	\$ 25.19	\$ 5	2.75%	\$ 81
Shower Bench	56.40	3/18/2019 - 7/4/2040	21.30	1x / 5yr	\$ 56.08	\$ 11	2.75%	\$ 178
Grab Bars	56.40	3/18/2019 - 7/4/2040	21.30	1x / 5yr	\$ 14.66	\$ 3	2.75%	\$ 49
Single Point Cane	56.40	3/18/2019 - 7/4/2040	21.30	1x / 5yr	\$ 14.81	\$ 3	2.75%	\$ 49
Total Care Costs:								<u>\$ 599</u>

1 - Future care costs per "Life Care Plan for Titina Farris," prepared by Olzack Healthcare Consulting, Inc., dated December 19, 2018.

Table 7

**Future Care Costs
Projected Therapeutic Modalities**

Description (1):	Age	Dates	Period	Frequency	Unit Cost	Annual Cost	NDR	Present Cash Value
Physical Therapy Eval.	56.40	3/18/2019 - 7/4/2040	21.30	1x / yr	\$ 102.50	\$ 103	2.00%	\$ 1,790
Occupational Therapy Eval.	56.40	3/18/2019 - 7/4/2040	21.30	1x / yr	\$ 102.50	\$ 103	2.00%	\$ 1,790
Gym - Enrollment Fee	56.40	3/18/2019 - N/A	N/A	1x	\$ 69.50	N/A	N/A	\$ 70
Gym - Annual Fee	56.40	3/18/2019 - 7/4/2040	21.30	1x / yr	\$ 22.50	\$ 23	2.50%	\$ 381
Gym - Monthly Fee	56.40	3/18/2019 - 7/4/2040	21.30	1x / mo	\$ 34.00	\$ 408	2.50%	\$ 6,758
Total Care Costs:								<u>\$ 10,789</u>

1 - Future care costs per "Life Care Plan for Titina Farris," prepared by Olzack Healthcare Consulting, Inc., dated December 19, 2018.

Table 8

**Future Care Costs
Orthotics**

Description (1):	Age	Dates	Period	Frequency	Unit Cost	Annual Cost	NDR	Present Cash Value
Bilateral Custom Fit AFO	56.40	3/18/2019 - 7/4/2040	21.30	2x / 3-4yr	\$ 66.30	\$ 38	2.75%	\$ 615
PRAFO	56.40	3/18/2019 - 7/4/2040	21.30	1x / 3-4yr	\$ 236.30	\$ 68	2.75%	<u>\$ 1,100</u>
Total Care Costs:								<u><u>\$ 1,715</u></u>

1 - Future care costs per "Life Care Plan for Titina Farris," prepared by Olzack Healthcare Consulting, Inc., dated December 19, 2018.

Table 9

**Future Care Costs
Transportation**

<u>Description (1):</u>	<u>Age</u>	<u>Dates</u>	<u>Period</u>	<u>Frequency</u>	<u>Unit Cost</u>	<u>Annual Cost</u>	<u>NDR</u>	<u>Present Cash Value</u>
Conversion Package	56.40	3/18/2019 - 7/4/2040	21.30	1x / 7yr	\$ 22,240	\$ 3,177	2.50%	<u>\$ 52,626</u>
Total Care Costs:								<u>\$ 52,626</u>

1 - Future care costs per "Life Care Plan for Titina Farris," prepared by Olzack Healthcare Consulting, Inc., dated December 19, 2018.

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KARL ERIK VOLK

CURRICULUM VITAE

FINANCIAL & STATISTICAL ECONOMIST

COHEN VOLK ECONOMIC CONSULTING GROUP, Walnut Creek, California, 3/2005 to Present.

Senior Managing Economist. Valuation of economic losses in business, personal injury, wrongful death and labor litigation. Preparation of statistical analyses, vocational, labor and job market consultation and studies. Development and placement of structured settlement alternatives.

THE UDINSKY GROUP, INC., Berkeley, California, 8/1987 – 2/2005.

Financial Economist. Valuation of economic losses in business, personal injury, wrongful death and labor litigation. Preparation of statistical analyses, vocational, labor and job market consultation and studies. Development and placement of structured settlement alternatives.

TEACHING EXPERIENCE

SAINT MARY'S COLLEGE OF CALIFORNIA, Moraga, CA, 2016.

Lecturer in School of Economics and Business Administration.

Teaching duties include Graduate Level Economics course in the M.S. in Management Program.

CALIFORNIA STATE UNIVERSITY, EAST BAY, Hayward, CA, 2009 – 2011.

Lecturer in College of Business and Economics.

Teaching duties include Undergraduate Level Money, Banking, and Financial Intermediaries, Managerial Economics and Business Strategy.

EDUCATION

UNIVERSITY OF SAN FRANCISCO. Masters of Arts, Economics, 2007. Emphasis in Financial Economics.

UNIVERSITY OF CALIFORNIA AT BERKELEY. Bachelors of Science, Business Administration, 1986. Emphasis in Finance and Accounting.

INVITED PRESENTATIONS:

MASTERS IN DEMONSTRATIVE EVIDENCE, May 28, 2009, San Francisco, CA, for the San Francisco Chapter of The American Board of Trial Advocates. Served as expert economist in mock trial setting to illustrate techniques for providing demonstrative evidence at trial.

LICENSES AND ASSOCIATIONS:

Western Economic Association.
National Association of Forensic Economics.
American Economics Association.

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RATE SCHEDULE

Effective 1/1/18

\$405 per hour for review, consultation, analysis and travel

\$610 per hour, one-hour minimum, for deposition and trial testimony

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 19th day of December, 2018, service of a true and correct copy of the foregoing:

DEFENDANTS BARRY J. RIVES, M.D. AND LAPAROSCOPIC SURGERY OF NEVADA, LLC'S REBUTTAL DISCLOSURE OF EXPERT WITNESSES AND REPORTS

was served as indicated below:

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

Attorney

Representing

Phone/Fax/E-Mail

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


Plaintiff

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hsadmin@handsullivan.com

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

EXHIBIT 3

Electronically Filed
10/14/2019 9:10 AM
Steven D. Grierson
CLERK OF THE COURT



1 RTRAN

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5

DISTRICT COURT

6

CLARK COUNTY, NEVADA

7

8 TITINA FARRIS and PATRICK
FARRIS,

CASE#: A-16-739464-C

9

Plaintiffs,

DEPT. XXXI

10

vs.

11

12 BARRY RIVES, M.D.;
LAPAROSCOPIC SURGERY OF
NEVADA, LLC., ET AL.,

13

Defendants.

14

BEFORE THE HONORABLE JOANNA S. KISHNER
DISTRICT COURT JUDGE
THURSDAY, OCTOBER 10, 2019

15

16

RECORDER'S TRANSCRIPT OF PENDING MOTIONS

17

18

APPEARANCES:

19

For the Plaintiffs:

KIMBALL JONES, ESQ.
JACOB G. LEAVITT, ESQ.

20

21

For the Defendants:

THOMAS J. DOYLE, ESQ.
CHAD C. COUCHOT, ESQ.
AIMEE LEA CLARK NEWBERRY, ESQ.

22

23

24

25

RECORDED BY: SANDRA HARRELL, COURT RECORDER

1 between the 26th and when the second hearing occurred, any additional
2 oral argument.

3 Now, I appreciate the fact that you all knew that this Court
4 was specifically setting other special settings, you know. So that's why I
5 asked you how much time you needed because you knew I was going
6 back to back with other hearings. So no one prior to that day ever
7 requested any additional time, knowing full well that this Court was
8 setting other hearings based on giving you first shot of how much time
9 you needed, and then was setting things right after back to back to get
10 everyone taken care of on that day.

11 And given the amount of time I gave you for oral argument
12 on the 26th, and since that hearing was supposed to be concluded on
13 that day but for the fact that the Court offered -- and it wasn't even
14 accepted that day -- the idea of an evidentiary hearing. Defense counsel
15 wanted to have a full opportunity -- well, defense counsel wanted to
16 check with the partner that was going to potentially be doing it. So the
17 Court once again gave full opportunity to check with any other counsel,
18 to check with the client to ensure that all conflicts of interest under the
19 RCP, et cetera, under *State Farm v. Hansen*, like I mentioned, 131 Nev.
20 Adv. Op. 74, 2015, got fully taken care of so that nobody had any issues
21 on going on the stand, et cetera, and anyone could call whatever
22 witnesses they wanted to. All fully taken into account, the Court finds
23 that that is the appropriate level of sanctions in addition to monetary
24 fees.

25 ~~Now, monetary fees. The Court -- on monetary fees, the~~

1 Court's going to find that the fee amount is -- I'm going to have Plaintiffs'
2 counsel submit what they feel is an appropriate reasonable fee broken
3 down. We'll have defense counsel look at that first. If defense counsel
4 agrees, then the Court would potentially sign off on it. If defense counsel
5 disagrees, then you all are going to be able to present it to the Court. I
6 will tell you that the Court's general inclination is the fee amount would
7 count for Monday's hearing, part of today's hearing, but not the part that
8 we had to do the motion to strike because that was independently
9 having to be done.

10 But part -- the continuation of the sanction hearing for today,
11 and part of the hearing -- and then the time for the hearing on the 26th is
12 really where the Court was inclined to go, the reasonable breaking down
13 of that. But not the time that we otherwise had to do for your motion to
14 strike, and not for the calendar call items obviously, because the
15 calendar call was separate and apart. Okay.

16 So I'm looking for reasonable attorney's fees, and not for
17 multiple attorneys. I mean, the fact that she chose to have three
18 attorneys at some point and multiple attorneys at other points. The
19 Court wasn't inclined to give -- I'm not saying that means one. Just
20 reasonable attorney's fees. Look at it, talk to defense counsel, evaluate
21 it. And then the Court's going to look at it. Okay.

22 MR. JONES: The preparation of the motion, Your Honor?

23 THE COURT: Including potentially the preparation of the
24 motion. Once again, I'm going to see what you have. Go to defense
25 counsel first. See what you object to. And then present it to the Court,

1 right

2 MR. JONES: Thank you, Your Honor.

3 THE COURT: With the Brunzell analysis, you know, in a
4 shortened version. And the reason why I'm saying shortened version is
5 because I'm not expecting you to spend 40 hours on a fee motion that's
6 going to create more fees. So I would talk to defense counsel first to see
7 if you all have "an agreed upon number", to see if you even need a full
8 on motion, right, because you might, "agree" on a number, save yourself
9 some additional costs and fees that may be heading towards defense
10 counsel anyways.

11 So sometimes people "agree" on a number, or sometimes
12 people defer on a number until the end of trial; however people want to
13 do it. So the Court's going to be fine with it, okay, but you've just got to
14 let me know if this number is going to be presented to me before trial if
15 people want for particular reasons, or if there's some agreement that it's
16 going to wait for the end of trial that people may want for particular
17 reasons. The Court's going to be fine with either. But you know, you've
18 got to let me know so we block appropriate time. Okay. That's it.

19 Any of the parties have any questions on that?

20 MR. DOYLE: No questions.

21 MR. JONES: No, Your Honor.

22 THE COURT: Okay. So that's the Court's ruling on that. So I
23 am going to defer you having to give me an order on this. Do you want
24 me to defer it to the end of the trial? That gives everyone the most
25 flexibility that they can focus on the trial. And then if Plaintiff wants it

1 Court's going to find that the fee amount is -- I'm going to have Plaintiffs'
2 counsel submit what they feel is an appropriate reasonable fee broken
3 down. We'll have defense counsel look at that first. If defense counsel
4 agrees, then the Court would potentially sign off on it. If defense counsel
5 disagrees, then you all are going to be able to present it to the Court. I
6 will tell you that the Court's general inclination is the fee amount would
7 count for Monday's hearing, part of today's hearing, but not the part that
8 we had to do the motion to strike because that was independently
9 having to be done.

10 But part -- the continuation of the sanction hearing for today,
11 and part of the hearing -- and then the time for the hearing on the 26th is
12 really where the Court was inclined to go, the reasonable breaking down
13 of that. But not the time that we otherwise had to do for your motion to
14 strike, and not for the calendar call items obviously, because the
15 calendar call was separate and apart. Okay.

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17 multiple attorneys. I mean, the fact that she chose to have three
18 attorneys at some point and multiple attorneys at other points. The
19 Court wasn't inclined to give -- I'm not saying that means one. Just
20 reasonable attorney's fees. Look at it, talk to defense counsel, evaluate
21 it. And then the Court's going to look at it. Okay.

22 MR. JONES: The preparation of the motion, Your Honor?

23 THE COURT: Including potentially the preparation of the
24 motion. Once again, I'm going to see what you have. Go to defense
25 counsel first. See what you object to. And then present it to the Court,

1 in, in those two days.

2 Plus I have my client and as I said --

3 THE COURT: Why are you all the way through Tuesday?

4 You're all the way through Tuesday for how many --

5 MR. LEAVITT: No, if we bled over, it would be Tuesday in the
6 morning.

7 MR. JONES: At the maximum.

8 MR. LEAVITT: We anticipate --

9 MR. JONES: We're trying to get it all done by Monday.

10 MR. LEAVITT: Yeah. We should be done by Monday.

11 THE COURT: Okay.

12 MR. DOYLE: Well, that's not what I have been told
13 repeatedly before this moment in time.

14 THE COURT: Okay. You all are really making me reconsider
15 -- I mean, you appreciate this is Thursday at 4:30 and you're now telling
16 me two extra days. And you do realize I've had two other trials on hold
17 with you all. Okay. Okay. This is incredibly concerning.

18 If you knew this at the calendar call, you could have told the
19 Court, right?

20 MR. DOYLE: Right.

21 THE COURT: If you knew it last week, you could have told
22 the Court. I mean, you all did your --

23 MR. LEAVITT: We haven't change, Your Honor, anything.

24 MR. JONES: Right. Like he said, at the 2.67 we told him, he
25 said, the Tuesday? We told him, that's -- if we bleed over, that's it.

1 terms of when Plaintiff finish their case in chief and number of days, it
2 may be 10 to 12 days rather than --

3 THE COURT: That would be concerning if it's 12 days,
4 because we've estimated it, and we've started our next trial based on
5 what you all told us. So let me see what you told us.

6 MR. JONES: Your Honor, we should be good.

7 THE COURT: You told us until Monday, the 28th. So we
8 have something else estimated to start, probably the 29th.

9 MR. JONES: Yes.

10 THE COURT: Are you thinking longer than that?

11 MR. DOYLE: Yes, Your Honor. Because --

12 THE COURT: I really would be very not happy if you all of a
13 sudden did that to the Court on the Thursday before trial we've asked
14 you multiple times.

15 Now you did tell us because Friday being Nevada day, that
16 you might need to go over to that Monday. So we did block that out.
17 But if you're now adding more days, two more days, you can appreciate
18 that that would cause a great concern to our trial schedule because we
19 run our trials based on what attorneys tell us and we run them back to
20 back because, of course, we ensure that everyone gets their full trial
21 time.

22 So why would you need two extra days? You're going to
23 pick a jury in a day, at most part of a little bit of Tuesday. We told you
24 what our trial schedule were and presumably you have all of your
25 witnesses lined up and there's no gap in time, because we move -- we

1 team again because you choose not to comply with any court orders and
2 just do what you want.

3 I'm going off the record.

4 [Proceedings concluded at 5:05 p.m.]

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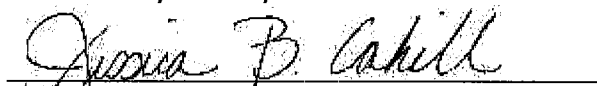
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ATTEST: I do hereby certify that I have truly and correctly transcribed the
audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

22

23



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Maukele Transcribers, LLC

Jessica B. Cahill, Transcriber, CER/CET-708

25

EXHIBIT 4

State of Nevada

**Statewide
Ballot Questions**

2004



**To Appear on the November 2, 2004
General Election Ballot**

**Issued by
Dean Heller
Secretary of State**

DEAN HELLER
Secretary of State

STATE OF NEVADA

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Securities Administrator

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*Deputy Secretary
for Commercial Recordings*

PAMELA A. RUCKEL
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Southern Nevada*

RONDA L. MOORE
*Deputy Secretary
for Elections*

**OFFICE OF THE
SECRETARY OF STATE**

Dear Fellow Nevadan:

You will soon be taking advantage of one of your most important rights as an American citizen: the right to vote! As Secretary of State and the state's Chief Election Officer, I take the job of informing the public about various statewide ballot questions very seriously. An informed and knowledgeable electorate is a cornerstone to fair and just elections.

With that in mind, the Secretary of State's office has prepared this booklet detailing the statewide questions that will appear on the 2004 General Election Ballot. The booklet contains "Notes to Voters," a complete listing of the exact wording of each question, along with a summary, arguments for and against each question's passage, and, where applicable, a fiscal note. Any fiscal note included in this booklet explains only adverse impacts and does not note any possible cost savings.

I encourage you to carefully and thoughtfully review the ballot questions listed in the booklet. As a voter, your actions on these ballot questions can create new laws, amend existing laws or amend the Nevada Constitution.

On the 2004 General Election Ballot, there are eight statewide questions. Ballot Question Numbers 7 and 8 appear on the ballot through the actions of the Nevada State Legislature. Ballot Question Numbers 1 through 6 qualified for this year's ballot through the initiative petition process.

You can also view these ballot questions on the Secretary of State's web site at www.secretaryofstate.biz. If you require further assistance or information, please feel free to contact my office at 775/684-5705.

Respectfully,

DEAN HELLER
Secretary of State

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2004 STATEWIDE BALLOT QUESTIONS SUMMARY

Question #	Title	Originated	If passed in 2004
1	Education First	Initiative Petition	Will Go Onto The 2006 General Election Ballot
2	Improve Nevada Public School Funding to the National Average	Initiative Petition	Will Go Onto The 2006 General Election Ballot
3	Keep Our Doctors in Nevada	Initiative Petition	Becomes Law
4	The Insurance Rate Reduction and Reform Act	Initiative Petition	Will Go Onto The 2006 General Election Ballot
5	Stop Frivolous Lawsuits and Protect Your Legal Rights Act	Initiative Petition	Will Go Onto The 2006 General Election Ballot
6	Raise the Minimum Wage for Working Nevadans	Initiative Petition	Will Go Onto The 2006 General Election Ballot
7	Repeals an Obsolete Provision Concerning Those Permitted to Vote	Legislature AJR #3 of the 71 st Session	Becomes Law
8	Sales and Use Tax of 1955	Legislature AB 514 of the 72 nd Session Including Note To Voters	Becomes effective January 1, 2006

NOTE TO VOTERS

NOTE TO VOTERS

Streamlined Sales Tax Project

Ballot Question No. 8 seeks to simplify the state and local tax base by making it uniform as required by the Streamlined Sales Tax Project. The Streamlined Sales Tax Project was created by state governments throughout the United States, with input from local governments and the private sector, to standardize and modernize sales and use tax collection. The goal of streamlining the tax base is to facilitate the collection of sales and use taxes for out-of-state sales and sales over the internet and to ensure that the tax revenues that support state and local governments are not reduced as a result of an increase in such sales.

Currently, certain exemptions from the portion of the Sales and Use Tax that is distributed to the State differ from the exemptions from the portion of the tax that is distributed at the local level. If Ballot Question No. 8 is approved, the exemptions from the portion of the Sales and Use Tax that is distributed to the State will be amended so that they are identical to the exemptions from the portion of the tax that is distributed at the local level. If the question is not approved, the exemptions from the portion of the Sales and Use Tax that is distributed at the local level will be amended so that they are identical to the portion of the tax that is distributed to the State. Regardless of whether the question is approved or not approved, the exemptions for all portions of the Sales and Use Tax will become identical as required by the Streamlined Sales Tax Project.

Sales and Use Tax

Nevada's statewide sales tax consists of three separate parts levied at different rates on the sale and use of tangible personal property in the State. The current combined rate that applies to each county within the State is 6.50 percent. In addition to these three parts, each county also may impose additional taxes subject to the approval of the voters or governing body in that county. These additional taxes have, in nine counties, increased the rate of the sales tax above the 6.50 percent rate imposed statewide.

The tax includes:

<u>Tax</u>	<u>Rate</u>
1. The State Sales and Use Tax.....	2.00 percent
2. The Local School Support Tax (LSST)	2.25 percent
3. The City-County Relief Tax (CCRT)	2.25 percent
4. Optional local taxes—currently not more than	1.00 percent

The State Sales and Use Tax may be amended or repealed only with the approval of the voters. The Local School Support Tax (LSST) and the City-County Relief Tax (CCRT) may be amended or repealed by the Legislature without the approval of the voters.

QUESTION NO. 1

Amendment to the Nevada Constitution

CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to require the Nevada Legislature to fund the operation of the public schools for kindergarten through grade 12 before funding any other part of the state budget for the next biennium?

Yes.....☒ 446,965
No.....☐ 342,173

EXPLANATION (Ballot Question)

The proposed amendment, if passed, would create five new sections to Section 6 of Article 11 of the Nevada Constitution. The amendment would provide that during a regular session of the Legislature, before any appropriation is enacted to fund a portion of the state budget, the Legislature must appropriate sufficient funds for the operation of Nevada's public schools for kindergarten through grade 12 for the next biennium, and that any appropriation in violation of this requirement is void. The appropriation requirement also applies to certain special sessions of the Legislature.

The following arguments for and against and rebuttals for Question No. 1 were prepared by a committee as required by Nevada Revised Statutes (NRS) 293.252.

ARGUMENT IN SUPPORT OF QUESTION NO. 1

Question One seeks a constitutional amendment changing the process by which public school education is funded at the state Legislature.

Education first ensures our state's public school system will be funded, before any other program for the next fiscal biennium, during each legislative session, by an appropriation the Legislature deems to be sufficient to fund the operation of our public schools for the student population reasonably estimated for that biennium.

Education First preserves the Legislature's ability to first fund the cost of the legislative session or an emergency measure demanding immediate action. Education First does not determine the level or source of funding public school education receives, so there is no fiscal impact to the state.

Education First will substantially enhance Nevada's credibility as a stable environment for students and teachers. As the fastest growing state in the nation, that is critical if Nevada is to keep pace with its growing student population.

For example, for the 2002-03 school year, Nevada hired over 2300 new teachers. Most new teachers are hired from out-of-state because Nevada's University and Community College System cannot meet our state's demand for teachers. Teachers make a serious commitment

when they choose to move and teach here. Education First will help ensure Nevada is equally committed.

The budget deadlock we experienced during the 2003 legislative sessions must never be repeated. The consequences for our schools, our teachers and our children were significant. Schools opened late, new teachers could not be hired, and special programs were jeopardized as those teachers were designated for reassignment to the general classroom. School administrators could not adequately plan for the coming school year, a process that typically begins each January. Education First prevents that from ever happening again.

As long as public school education is allowed to be the last major budget bill considered, special sessions and court intervention could easily become the norm in the legislative process. When education is first, that won't happen, as it did in 2003. Education First will ensure that the funding of education in Nevada will be given the status intended by the framers of our Constitution and will help prevent another Supreme Court ruling that negates the Gibbons tax restraint portion of our Constitution.

Take the politics out of funding Nevada's public schools. A YES vote on Question One will put education and Nevada's children first in line at budget time.

REBUTTAL TO ARGUMENT IN SUPPORT OF QUESTION NO. 1

The Education Funding Crisis of the 2003 Legislative session is the first in 73 regular sessions of the Nevada legislature. It was generated for political reasons to push a huge tax increase. Voters have an opportunity in this election to punish those guilty without changing the constitution. One failure in 73 sessions is insufficient reason to change the constitution.

A "NO" vote on Question 1 will force legislators to do the job we elect them to do. A "YES" vote will NOT correct the grave disregard for the Nevada Constitution by the Nevada Supreme Court during 2003. The Court showed blatant disregard for the people's will of the original Gibbons' petition and there is no reason to believe this will improve their attention to their oath of office. Make Representative government work by voting "NO" on Question 1.

ARGUMENT AGAINST QUESTION NO. 1

The last legislative session showed that education funding can become a political football and few would agree that scenario should ever be repeated; however, a single event should not be a reason to compromise the public health and safety of Nevadans by detrimentally removing the Legislature's and our Governor's ability to determine our state's priorities.

1. The education budget is such a large portion of the budget that it cannot be determined until after the final meeting of the Economic Forum. The Economic Forum is a panel of experts appointed by Nevada elected officials to formulate detailed projections regarding our state's revenue. The Economic Forum's projections would not be done until just prior to April 30th.
2. In the normal 120 day legislative process, the small budgets with little or no changes are processed starting weeks before the end of the legislative session. This allows the

legislative workload to remain reasonable and matters to be handled in a logical manner. Holding all those budgets until the education budget can be decided may actually impede the process of closing budgets and make special sessions more likely, adding unnecessarily to taxpayer expense. Thus, this measure is likely to cause an adverse fiscal impact.

3. Under the current system the smaller budgets come through early providing lawmakers that do not sit on the Assembly Ways and Means or Senate Finance Committees with the time to review these budgets and ask questions. If those budgets are held until the education budget is decided, then the review by other legislators will be lost in the rush to close the session. Public health, safety and the protection of our environment will necessarily be compromised because of the limited time to review non-education budget matters that are equally important to our state's welfare.
4. Further it might be much easier for a lawmaker on the money committees to add "pork" to some budgets without the check and balance time and review process to stop potential wasteful spending.
5. While we agree that the entire budgeting and funding process in Nevada needs to be reviewed to encourage fiscal responsibility and accountability by the legislators and all with budgets within the executive branch, this measure seems to complicate the matter rather than actually improve and simplify the process.

We urge voters not to make the budget process more difficult by passing this measure.

REBUTTAL TO ARGUMENT IN OPPOSITION TO QUESTION NO. 1

1. Public education is one of five major budget bills. According to the Legislative Counsel Bureau, no budget can be closed prior to release of the Economic Forum's final report. This does not change. When budget bills are enrolled, education will be first.
2. The way the state budget is crafted does not change. The legislative workload is unaffected. The process becomes more logical when such a large component is dealt with first. The Legislature is responsible for managing its workload and adhering to a 120-day session. The status quo is more likely to result in special sessions.
3. Lawmakers not on money committees still participate. Issues are engaged in the same manner as now. Any impact should the Legislature not do its job as required by the state Constitution is its responsibility. Public health, safety, welfare and the environment are not compromised by Education First.
4. Adding pork will always be tempting. Education First does not make it easier. If checks and balances aren't done, regardless of where in the process, legislators would be derelict in their duties.
5. When public education is no longer the budget's sacrificial lamb, the process is brought into check, improving accountability and simplicity.

FISCAL NOTE

Financial Impact – No.

Approval of the proposal to amend the *Nevada Constitution* would have no adverse fiscal impact

FULL TEXT OF THE MEASURE

Education First Initiative Petition - State of Nevada

Explanation - Matter in *bolded italics* is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to the funding of public education; amending the Constitution of the State of Nevada to require the Legislature to fund the operation of the public schools for kindergarten through grade 12 before any other part of the state budget for the next biennium is funded; providing that any appropriation enacted in violation of that requirement is void; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Section 6 of Article 11 of the Constitution of the State of Nevada is hereby amended to read as follows:

1. In addition to other means provided for the support and maintenance of said university and common schools, the legislature shall provide for their support and maintenance by direct legislative appropriation from the general fund, upon the presentation of budgets in the manner required by law.

2. *During a regular session of the Legislature, before any other appropriation is enacted to fund a portion of the state budget for the next ensuing biennium, the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the next ensuing biennium for the population reasonably estimated for that biennium.*

3. *During a special session of the Legislature that is held between the end of a regular session in which the Legislature has not enacted the appropriation or appropriations required by subsection 2 to fund education for the next ensuing biennium and the first day of that next ensuing biennium, before any other appropriation is enacted other than appropriations required to pay the cost of that special session, the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the next ensuing biennium for the population reasonably estimated for that biennium.*

4. *During a special session of the Legislature that is held in a biennium for which the Legislature has not enacted the appropriation or appropriations required by subsection 2 to fund education for the biennium in which the special session is being held, before any other appropriation is enacted other than appropriations required to pay the cost of that special session, the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient,*

when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the population reasonably estimated for the biennium in which the special session is held.

5. Any appropriation of money enacted in violation of subsection 2, 3 or 4 is void.

6. As used in this section, "biennium" means a period of two fiscal years beginning on July 1 of an odd-numbered year and ending on June 30 of the next ensuing odd-numbered year.

QUESTION NO. 2

Amendment to the Nevada Constitution

CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to require that the annual per-pupil expenditure for Nevada's public elementary and secondary schools equals or exceeds the national average?

EXPLANATION

Yes	381,045
No	✓ 404,173

The proposed amendment, if passed, would create four new sections to Section 2 of Article 11 of the Nevada Constitution. The amendment would require the Legislature, commencing July 1, 2012, to ensure that in each fiscal year the annual per-pupil expenditure for public elementary and secondary schools equals or exceeds the national average.

The following arguments for and against and rebuttals for Question No. 2 were prepared by a committee as required by Nevada Revised Statutes (NRS) 293.252.

ARGUMENT IN SUPPORT OF QUESTION NO. 2

Question 2 asks the voters to amend the Nevada Constitution to require the Nevada Legislature to bring per pupil expenditures for K-12 education in Nevada to or above the national average beginning in 2012.

Nevada's ranking in the level of per pupil funding has fallen from 35th in 1993 to 45th in the nation today and there is no indication that this trend will reverse without passage of this petition.

Nevada's per pupil expenditures have declined, creating a negative impact on the ability to support class-size reduction, the number of available textbooks and classroom materials, as well as providing remediation and tutoring and the expansion of kindergarten programs. In addition, teacher's salaries are insufficient to keep or recruit the best educators. This has led to a critical teacher shortage in Nevada.

By supporting Question 2, Nevada's citizens will be making the importance of funding education to the national average a clear priority for the Nevada Legislature. The proponents of this petition believe that 8 years is a fair and reasonable length of time to implement this policy.

We ask the voters of Nevada to send a strong message to the Nevada Legislature in support of education funding. It is no longer acceptable for Nevada's children to so significantly lag behind the national average on this measure of educational expenditures per student.

REBUTTAL TO ARGUMENT IN SUPPORT OF QUESTION NO. 2

Already Nevada taxpayers fund our schools very near the national average. Yet money spent per pupil is not what produces superior educational results.

Consider New York, New Jersey and the District of Columbia. They all spend huge amounts. But their results—according to national measures of educational progress—are far inferior to low-spending states like Utah, which rank at the bottom of per-pupil spending.

Class-size reduction programs are no answer. They sound good, but research has shown them to make little difference. Twenty *times* more effective is providing students with skilled teachers who know their subjects. Blocking this in Nevada are current collective-bargaining agreements that ignore teacher performance and reward mere longevity.

State lawmakers have repeatedly approved funds specifically for books and classroom materials—only to find that school officials, in collective bargaining, have diverted these funds into salaries.

Nevada hires over 2,000 teachers per year, so our problem is *not* attracting teachers. Average teacher pay here is *above* the national average. It's Nevada schools' performance that is near the bottom.

Send a message to Nevada's educational establishment: Tell them you want *systematic reform* before you authorize another big increase in Nevada taxes.

Vote "NO" on this constitutional amendment.

ARGUMENT AGAINST QUESTION NO. 2

This amendment would increase per-pupil spending in Nevada *far above* the national average.

It would also require a tax increase of about \$1,100 per year for a Nevada family of four. Otherwise, huge cuts in other important state programs—prisons, human services, mental health, etc.—will have to be made. A bill in the 2003 Legislature to meet the "national average" now would have cost taxpayers \$1.135 billion biennially, so costs in 2012 would be much higher.

This amendment prevents the billions of dollars that Nevada taxpayers pay for school construction and bond debt service from being counted in "annual per-pupil expenditures." This is unfair to Nevada taxpayers, who spend more for new schools than taxpayers in almost any other state in the nation—about twice the national average for both construction and debt service.

Approval of this measure would actually delay needed reforms to Nevada K-12 education. It would pour huge new taxpayer resources into the current wasteful

system without requiring any new levels of performance, productivity or accountability. It would strengthen the hold on the system of the bureaucrats and unions who continually block the reforms that parents and teachers desire.

This proposal will damage the ability of Nevada citizens to direct the education of their children. It does this by writing into the state constitution a blank-check commitment to whatever set of accounting definitions happen to be selected by federal government bureaucrats in Washington, D.C. Nevada voters will have to *amend* the state constitution to adjust these funding formulas. The proposal would also take even more of school funding decisions out of local hands.

A “national average” approach is an extremely poor basis upon which to make important public policy decisions. The whole reason that Nevada has local school boards is because *local* needs are critically important and differ significantly.

This measure would create a treadmill with no “off” switch for taxpayers. Yet it promises no improvement for Nevada students.

Vote *NO* on this proposed constitutional amendment.

REBUTTAL TO ARGUMENT AGAINST QUESTION NO. 2

Revenue from tourism and businesses operating in the state generate the majority of tax dollars. Residents of Nevada contribute to education funding primarily through sales tax. Nevadans may well be called upon to pay more taxes if this amendment is approved, although it is misleading to suggest that this cost will be borne entirely or primarily by Nevada families.

Through the No Child Left Behind law and other legislation, the federal government and the Nevada Legislature have imposed strict accountability requirements on the public schools. But they have *not* provided the money needed to meet those standards, and this amendment will help fill that gap.

Nevada taxpayers spend more for new schools because we build more new schools than almost any other state in the nation. Unfortunately, we are failing to provide basic needs such as textbooks and technology.

There is no proof that the current system in Nevada is wasteful and if the public is paying for these increased costs, than the public will have a say in how the money is spent by communicating their priorities to their legislators. Additional funds can only improve a currently underfunded system.

FISCAL NOTE

Financial Impact – Yes.

Because the average annual per-pupil expenditure of Nevada is currently lower than the national average annual per-pupil expenditure, it is likely the proposal would result in significant increases in the expenditures necessary to support public elementary and secondary schools in Nevada.

Using the latest projections of the national average per-pupil expenditures provided by the National Center for Education Statistics and projections of the average annual per-pupil expenditure of Nevada, it is possible to estimate the cost the proposal would have had for the current fiscal year if the proposal had been in effect. If the proposal were in effect for this fiscal year (Fiscal Year 2004-2005), the difference in the national average and the Nevada average per-pupil expenditures could be approximately \$1,700 per pupil. Based on this projected difference, the cost to increase Nevada's average per-pupil expenditures to the national average in Fiscal Year 2004-2005 would have been approximately \$681 million, which would have been an increase of approximately 25 percent from the projected Fiscal Year 2004-2005 expenditures for public elementary and secondary schools in Nevada.

It is important to note that the proposal does not require Nevada average per-pupil expenditures to be equal to or greater than the national average per-pupil expenditures until the fiscal year that begins on July 1, 2012 (Fiscal Year 2012-2013). The impact the proposal would have in Fiscal Year 2012-2013 depends on the extent to which Nevada's average per-pupil expenditures are below the national average at that time and, if Nevada's average per-pupil expenditures are below the national average at that time, the number of students enrolled in Nevada public schools at that time. Due to these variables, the financial impact of the proposal in Fiscal Year 2012-2013 cannot be determined with any level of certainty.

FULL TEXT OF THE MEASURE

Initiative PetitionState of Nevada**IMPROVE NEVADA PUBLIC SCHOOL FUNDING TO THE NATIONAL AVERAGE****EXPLANATION**

Matter in *boldface italics* is new; matter between brackets [deleted material] is material to be deleted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Section 2 of Article 11 of the Constitution of the State of Nevada is hereby amended to read as follows:

[Section 2.] *Sec. 2. 1.* The legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year, and any school district which shall allow instruction of a sectarian character therein may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

2. The legislature shall support and maintain a system of public education which helps ensure that every child becomes a productive and responsible adult. In performing this obligation, the legislature shall provide sufficiently for the financial support and maintenance of the public elementary and secondary schools. Commencing with the fiscal year beginning on July 1, 2012, the appropriations made by the legislature for this purpose, when combined with the projected revenue from all other federal, state and local sources, must be in such amounts as the legislature determines are sufficient to ensure in each fiscal year that the annual per-pupil expenditure of Nevada equals or exceeds the national average.

3. In complying with the requirements of subsection 2, the legislature shall, as nearly as practicable in view of available information about projected revenue and enrollment, calculate the annual per-pupil expenditure of Nevada in the same manner as the National Center for Education Statistics calculates current expenditures per pupil in fall enrollment for each state.

4. Nothing in this section shall be deemed to require the legislature to make a supplemental appropriation in the interim between legislative sessions.

5. As used in this section:

(a) "Annual per-pupil expenditure of Nevada" means, for any fiscal year, current expenditures per pupil in fall enrollment for public elementary and secondary schools in Nevada, calculated in the manner provided in subsection 3.

(b) "National average" means current expenditures per pupil in fall enrollment for public elementary and secondary schools in the United States, as most recently determined by the National Center for Education Statistics.

(c) "National Center for Education Statistics" means the National Center for Education Statistics of the United States Department of Education or its successor agency.

QUESTION NO. 3

Amendment to Titles 1 and 3 of the Nevada Revised Statutes

CONDENSATION (ballot question)

Shall Title 1 of the Nevada Revised Statutes governing attorneys, and Title 3 of the Nevada Revised Statutes governing actions for medical or dental malpractice and damage awards, be amended to limit the fees an attorney could charge a person seeking damages against a negligent provider of health care in medical malpractice actions, limit the amount of noneconomic damages a person may recover from a negligent provider of health care in medical malpractice actions, eliminate joint liability of providers of health care in medical malpractice actions, shorten the statute of limitations in medical malpractice actions, prohibit third parties who provided benefits as a result of medical malpractice from recovering such benefits from a negligent provider of health care, and allow negligent providers of health care to make periodic payments of future damages?

Yes.....☒ 468,059
No.....☐ 320,129

EXPLANATION

If passed, the proposal would limit the fees an attorney could charge a person seeking damages against a negligent provider of health care in a medical malpractice action. Professional negligence means a negligent act, or omission to act, by a provider of health care that is the proximate cause of a personal injury or wrongful death. A provider of health care means a physician licensed under Chapters 630 and 633 of the Nevada Revised Statutes, a dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital and its employees.

The law currently provides that a person seeking damages in a medical malpractice action is limited to recovering \$350,000 in noneconomic damages from each defendant, with two exceptions. Noneconomic damages is money paid to the injured person to compensate for pain, suffering, inconvenience, physical impairment, and disfigurement, while economic damages is money paid to compensate for the injured person's medical treatment, care or custody, loss of earning and loss of earning capacity. The two current exceptions to the \$350,000 cap on noneconomic damages allow an injured person to receive more than \$350,000 if: (1) the wrongdoer committed gross malpractice, or (2) exceptional circumstances justify an award in excess of the cap. The proposal, if passed, would remove the two statutory exceptions to the existing \$350,000 cap, and limit the recovery of noneconomic damages to \$350,000 per action.

Currently, damages that an injured person is allowed to recover in a medical malpractice action may be reduced by benefits the person received from a third party, such as Medicaid, private insurance, or workers' compensation. If passed, the proposal would not change the reduction of the injured person's damages, but the third parties would no longer be permitted to recover from the wrongdoer the expenses they have paid on behalf of a medical malpractice victim. One

effect of this provision could be an increased burden on the state Medicaid fund, which consists of taxpayer dollars.

Current law provides that each one of multiple defendants in medical malpractice actions is severally, but not jointly liable for noneconomic damages. This means that a single defendant among multiple defendants in a medical malpractice action is required to pay the injured person only the share of noneconomic damages attributable to that defendant's wrongful conduct and would not have to pay the share attributable to the wrongful conduct of another defendant. However, the current law treats economic damages differently, and provides that each defendant is not only severally liable, but also jointly liable for payment of economic damages; a defendant that is jointly liable could be required to pay the injured person for not only his wrongful conduct, but also for the wrongful conduct of all other defendants. The proposal, if passed, would change the current law by repealing joint and several liability for economic damages and treat liability for recovery of economic damages in medical malpractice cases the same as for noneconomic damages, such that defendants are only severally, but not jointly liable. This imposes the risk of nonpayment to the injured party if a defendant is not able to pay his percentage of damages, such as when that defendant has insufficient insurance or assets to pay his share.

The proposal also revises the statute of limitations for the filing of actions. The current law that requires an injured person to file a medical malpractice lawsuit within 3 years of the date of injury remains unchanged. The current law also provides that if the injury was not immediately apparent, the injured person has 2 years from the time the person discovers or should have discovered the injury to file the lawsuit. The proposal would reduce this time from 2 years to 1 year.

Finally, the proposal would make changes to how certain damages are paid by health care providers who have been found negligent, and provides for other matters properly related thereto. It requires that when an award equals or exceeds \$50,000 in future damages, the court must allow the same to be paid in periodic payments instead of a lump sum, if requested by either party.

The following arguments for and against and rebuttals for Question No. 3 were prepared by a committee as required by Nevada Revised Statutes (NRS) 293.252.

ARGUMENT IN SUPPORT OF QUESTION NO. 3

Physicians continue to leave Nevada, and medical malpractice insurers continue to pull out of the Nevada market, at an alarming rate despite the medical malpractice litigation reforms passed by the Nevada legislature in 2002. Why? Because the 2002 legislation does not provide enough specific protection for doctors and their insurers from astronomical jury verdicts, making it impossible to plan for the challenges associated with practicing medicine. As a result, some Nevada doctors pay more than double for liability insurance compared to doctors in Los Angeles. (AMA press release, March 17, 2004). What does this mean to your doctors? They are having difficulty keeping their practices open. What does this mean to you? When you need a doctor, you may have difficulty finding one.

The Keep Our Doctors In Nevada (KODIN) initiative provides several protections to doctors, patients, and their insurers, while still allowing people who have genuinely been injured as a result of physician negligence to recover economic losses. First, KODIN ensures that a higher percentage of an award in a medical malpractice case goes to the injured person, not to attorneys. Second, KODIN provides that, if multiple health care providers are found at fault in a malpractice case, each provider is only responsible for payment of her own share of liability and can't be forced to pay anyone else's share. Third, KODIN stops "double-dipping" by informing juries if plaintiffs are receiving money from other sources for the same injury. Fourth, KODIN allows a health care provider who has been found negligent to make payments to the injured plaintiff over a scheduled period of time instead of all at once. Finally, KODIN sets a \$350,000 limit on the amount a medical malpractice plaintiff can recover for noneconomic damages, like "pain and suffering." KODIN will help stabilize medical malpractice premiums—and help your doctor stay in Nevada.

According to the AMA, Nevada is among a dozen states facing a "full-blown medical liability crisis." KODIN will stabilize Nevada's health care crisis and provide protection for both doctors and patients.

If passed, this initiative will have no impact on the environment. The committee has not identified any fiscal impact on the state budget. The health, safety, and welfare of the public will be improved because physicians of all specialties will be more likely to stay in Nevada to practice medicine.

REBUTTAL TO ARGUMENT IN SUPPORT OF QUESTION NO. 3

The Truth:

1. Doctors are not leaving Nevada. In the last 3 years, the State of Nevada has licensed 1,112 new doctors and 355 of those were licensed in the last 8 months! The number of doctors actively practicing in Nevada actually *increased* each year, including the number of OB/GYNs.
2. Reform of insurance laws is the only way to reduce doctors' insurance rates.
3. The initiative is unfair to patients and victims of malpractice:
 - \$350,000 is not fair compensation for being paralyzed, brain damaged, or killed by medical negligence.
 - It is not fair to make the patient, or taxpayers through Medicaid, pay the cost of medical care for injuries caused by medical malpractice.
 - It is not fair for insurance companies and negligent healthcare providers to make a patient wait years for money they are owed.
 - It is not fair to tell the jury about the patient's insurance coverage, but not about the doctor's malpractice insurance. Current law already prevents "double-dipping."
 - It is not fair to limit the fees for lawyers representing patients/victims of malpractice while allowing unlimited fees for lawyers representing doctors and insurance companies.

Protect your rights from being sacrificed for insurance companies and negligent doctors!
Vote NO!!

ARGUMENT AGAINST QUESTION NO. 3

If you or a family member are injured by medical malpractice, are you ready to limit your legal rights and access to the courts?

Are you ready to give insurance companies and negligent healthcare providers broad, new and unfair legal protections that would allow them to escape responsibility for injuries to you and your family?

As a taxpayer, are you ready to pay the costs of treating patients who are the victims of medical malpractice, while letting negligent healthcare providers and their insurance companies walk away from their responsibilities?

If your answer to these questions is NO, then you should vote NO on Question 3 – because Question 3 substantially limits your current rights if you or a family member are injured by medical malpractice.

It's time to look at the facts:

Question 3 does nothing to solve the problem of high insurance rates.

Insurance rate reduction and reform of insurance laws are the only way to control the cost of insurance to doctors and patients.

Two years ago, the Nevada Legislature passed tort reform laws to put limitations on medical malpractice lawsuits, including a cap of \$350,000 for pain and suffering awards, yet insurance companies have still not reduced doctors' insurance rates.

The insurance industry admits that tort reform measures have not resulted in lower premiums. While doctors have threatened to leave the state in order to persuade consumers to give up their legal rights, there are actually more doctors in Nevada than ever before. There were 335 new doctors licensed in Nevada between 1999 and 2002. A 2004 report by the U.S. Congressional Budget Office found that many reported reductions in the supply of doctors around the country could not be proven.

This initiative shifts the costs of treating injuries caused by medical malpractice to the taxpayers and away from insurance companies and negligent healthcare providers. Healthcare consumers who suffer serious injuries and cannot work or afford to pay their medical bills will have to resort to Medicaid to pay for their care which is funded by taxpayer dollars.

Negligent healthcare providers and their insurance companies should pay for their mistakes, not taxpayers.

Don't give away your legal rights! Vote NO on Question 3.

REBUTTAL TO ARGUMENT AGAINST QUESTION NO. 3

KODIN's opponents are incorrect in arguing that KODIN "shifts the cost of treating injuries caused by medical malpractice to the taxpayers." You don't give up the legal right to be compensated for your injuries if you vote YES on KODIN. Nothing in KODIN changes the rights of injured people to be compensated by negligent healthcare providers for their *economic* damages—their past and future medical bills, their time off work, their expected reduction in future income. KODIN only limits *noneconomic* damages, like those for "pain and suffering," to \$350,000. KODIN also provides that, if a malpractice plaintiff has already undergone medical treatment paid for by a third party (like a health insurer), the jury can be told about those payments and use that information in deciding what to award to the plaintiff. Currently, Nevada law forbids attorneys from mentioning this information to the jury. This is unfair to defendants when a jury uses the plaintiff's medical expenses as a factor in determining the damages it awards, but the plaintiff may not have paid some or all of the bills. In conclusion, KODIN is a common-sense measure that protects injured people and their doctors, too.

FISCAL NOTE

Financial Impact – Cannot be determined.

Although the portion of the proposal that would eliminate joint and several liability for providers of health care could potentially impact the State of Nevada's ability to recoup Medicaid costs, the amount of the reduction in recouped costs cannot be determined. Although the amount of the reduction cannot be determined with any level of certainty, it would appear that the reduction would not be a significant portion of the State's Medicaid budget, which is approximately \$1.1 billion annually.

FULL TEXT OF MEASURE

KEEP OUR DOCTORS IN NEVADA INITIATIVE

Explanation—Matter in ***bolded italics*** is new, matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to medical malpractice; limiting attorney's fees in actions against providers of health care; eliminating the exceptions pertaining to noneconomic damages; making changes concerning the payment of damages; revising the statute of limitations for the filing of actions; eliminating joint and several liability; making various other changes concerning such actions; and providing for other matters properly relating thereto.

WHEREAS, There exists a major health care crisis in this state attributable to the skyrocketing cost of medical malpractice insurance; and

WHEREAS, Such skyrocketing medical malpractice insurance costs have resulted in a potential breakdown in the delivery of health care in this state, severe hardships concerning the availability of health care for the medically indigent, a denial of access to health care for the economically marginal, and the depletion of physicians such as to substantially worsen the quality of health care available to the residents of this state; and

WHEREAS, It is necessary to provide an adequate and reasonable remedy to address this health care crisis and to protect the health, welfare and safety of the residents of this state; now, therefore,

The People of the State of Nevada do enact as follows:

Section. 1. Chapter 7 of NRS is hereby amended by adding thereto a new section to read as follows:

1. An attorney shall not contract for or collect a fee contingent on the amount of recovery for representing a person seeking damages in connection with an action for injury or death against a provider of health care based upon professional negligence in excess of:

- (a) Forty percent of the first \$50,000 recovered;*
- (b) Thirty-three and one-third percent of the next \$50,000 recovered;*
- (c) Twenty-five percent of the next \$500,000 recovered; and*
- (d) Fifteen percent of the amount of recovery that exceeds \$600,000.*

2. The limitations set forth in subsection 1 apply to all forms of recovery, including, without limitation, settlement, arbitration and judgment.

3. For the purposes of this section, "recovered" means the net sum recovered by the plaintiff after deducting any disbursements or costs incurred in connection with the prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and general and administrative expenses incurred by the office of the attorney are not deductible disbursements or costs.

4. As used in this section:

(a) "Professional negligence" means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.

(b) "Provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, registered nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital and its employees.

Sec. 2. Chapter 41A of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 6, inclusive, of this act.

Sec. 3. *"Professional negligence" means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.*

Sec. 4. *"Provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital and its employees.*

Sec. 5. *In an action for injury or death against a provider of health care based upon professional negligence, the injured plaintiff may recover noneconomic damages, but the amount of noneconomic damages awarded in such an action must not exceed \$350,000.*

Sec. 6. 1. *In an action for injury or death against a provider of health care based upon professional negligence, each defendant is liable to the plaintiff for economic damages and noneconomic damages severally only, and not jointly, for that portion of the judgment which represents the percentage of negligence attributable to the defendant.*

2. This section is intended to abrogate joint and several liability of a provider of health care in an action for injury or death against the provider of health care based upon professional negligence.

Sec. 7. NRS 41A.003 is hereby amended to read as follows:

41A.003 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 41A.004 to 41A.013, inclusive, *and sections 3 and 4 of this act* have the meanings ascribed to them in those sections.

Sec. 8. NRS 41A.097 is hereby amended to read as follows:

41A.097 1. Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 4 years after the date of injury or 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:

(a) Injury to or the wrongful death of a person occurring before October 1, 2002, based upon alleged professional negligence of the provider of health care;

(b) Injury to or the wrongful death of a person occurring before October 1, 2002, from professional services rendered without consent; or

(c) Injury to or the wrongful death of a person occurring before October 1, 2002, from error or omission in practice by the provider of health care.

2. Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or [2 years] **1 year** after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:

(a) Injury to or the wrongful death of a person occurring on or after October 1, 2002, based upon alleged professional negligence of the provider of health care;

(b) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from professional services rendered without consent; or

(c) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from error or omission in practice by the provider of health care.

3. This time limitation is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action is based and which is known or through the use of reasonable diligence should have been known to him.

4. For the purposes of this section, the parent, guardian or legal custodian of any minor child is responsible for exercising reasonable judgment in determining whether to prosecute any cause of action limited by subsection 1 or 2. If the parent, guardian or custodian fails to commence an action on behalf of that child within the prescribed period of limitations, the child may not bring an action based on the same alleged injury against any provider of health care upon the removal of his disability, except that in the case of:

(a) Brain damage or birth defect, the period of limitation is extended until the child attains 10 years of age.

(b) Sterility, the period of limitation is extended until 2 years after the child discovers the injury.

[5. As used in this section, "provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, registered nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital as the employer of any such person.]

Sec. 9. Chapter 42 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In an action for injury or death against a provider of health care based upon professional negligence, if the defendant so elects, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the injury or death pursuant to the United States Social Security Act, any state or federal income disability or worker's compensation act, any health, sickness or income-disability insurance, accident insurance that provides health benefits or income-disability coverage, and any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services. If the defendant elects to introduce such evidence, the plaintiff may introduce evidence of any amount that the plaintiff has paid or contributed to secure his right to any insurance benefits concerning which the defendant has introduced evidence.

2. A source of collateral benefits introduced pursuant to subsection 1 may not:

(a) Recover any amount against the plaintiff; or

(b) Be subrogated to the rights of the plaintiff against a defendant.

3. In an action for injury or death against a provider of health care based upon professional negligence, a district court shall, at the request of either party, enter a judgment ordering that money damages or its equivalent for future damages of the judgment creditor be paid in whole or in part by periodic payments rather than by a lump-sum payment if the award equals or exceeds \$50,000 in future damages.

4. *In entering a judgment ordering the payment of future damages by periodic payments pursuant to subsection 3, the court shall make a specific finding as to the dollar amount of periodic payments that will compensate the judgment creditor for such future damages. As a condition to authorizing periodic payments of future damages, the court shall require a judgment debtor who is not adequately insured to post security adequate to assure full payment of such damages awarded by the judgment. Upon termination of periodic payments of future damages, the court shall order the return of this security, or so much as remains, to the judgment debtor.*

5. *A judgment ordering the payment of future damages by periodic payments entered pursuant to subsection 3 must specify the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments will be made. Such payments must only be subject to modification in the event of the death of the judgment creditor. Money damages awarded for loss of future earnings must not be reduced or payments terminated by reason of the death of the judgment creditor, but must be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before his death. In such cases, the court that rendered the original judgment may, upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this subsection*

6. *If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make the periodic payments as specified pursuant to subsection 5, the court shall find the judgment debtor in contempt of court and, in addition to the required periodic payments, shall order the judgment debtor to pay the judgment creditor all damages caused by the failure to make such periodic payments, including, but not limited to, court costs and attorney's fees.*

7. *Following the occurrence or expiration of all obligations specified in the periodic payment judgment, any obligation of the judgment debtor to make further payments ceases and any security given pursuant to subsection 4 reverts to the judgment debtor.*

8. *As used in this section:*

(a) *"Future damages" includes damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering of the judgment creditor.*

(b) *"Periodic payments" means the payment of money or delivery of other property to the judgment creditor at regular intervals.*

(c) *"Professional negligence" means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.*

(d) *"Provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital and its employees.*

Sec. 10. NRS 41A.031, 41A.041 and 42.020 are hereby repealed.

Sec. 11. If any provision of this act, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 12. The amendatory provisions of sections 5, 6, and 8 of this act apply only to a cause of action that accrues on or after the effective date of this act.

LEADLINES OF REPEALED SECTIONS

41A.031 Limitations on liability for noneconomic damages; exceptions.

41A.041 Medical malpractice: Several liability for noneconomic damages.

42.020 Actions for damages for medical malpractice: Reduction of damages by amount previously paid or reimbursed; payment of future economic damages.

EXHIBIT 5

Carrie A. Perrault

From: naomi chaney <docnaomilchaney@yahoo.com>
Sent: Monday, September 16, 2019 12:16 PM
To: Carrie A. Perrault
Subject: Re: Farris v. Rives

Have a good day.

Sent from my iPhone

On Sep 16, 2019, at 10:01 AM, Carrie A. Perrault <CAP@szs.com> wrote:

Dr. Chaney:

Here is the trial subpoena.

Thank you.

Carrie A. Perrault

From: Carrie A. Perrault
Sent: Monday, September 16, 2019 9:43 AM
To: 'naomi chaney' <docnaomilchaney@yahoo.com>
Subject: RE: Farris v. Rives

Thank you Dr. Chaney. Yes, you are correct.

Carrie A. Perrault

From: naomi chaney [<mailto:docnaomilchaney@yahoo.com>]
Sent: Monday, September 16, 2019 9:41 AM
To: Carrie A. Perrault <CAP@szs.com>
Subject: Re: Farris v. Rives

Yes. That works. So what I think you are saying is that I will receive notification of trial that begins October 14 at 10 but that may not be the day I will testify?
Dr. Chaney

On Monday, September 16, 2019, 09:28:11 AM PDT, Carrie A. Perrault <CAP@szs.com> wrote:

Good Morning Dr. Chaney:

Would you accept service of a trial subpoena via email? At this time the trial subpoena would be for the first day of trial, October 14, 2019 at 10 a.m. We would then be able to coordinate the date/time of your actual trial testimony.

Thank you.

Carrie A. Perrault

From: naomi chaney [mailto:docnaomilchaney@yahoo.com]
Sent: Friday, September 13, 2019 4:15 PM
To: Carrie A. Perrault <CAP@szs.com>
Subject: Re: Farris v. Rives

I'm not sure what you would need.

You would let me know and I would carve that time out.

Sent from Yahoo Mail for iPhone

On Friday, September 13, 2019, 10:28 AM, Carrie A. Perrault <CAP@szs.com> wrote:

Good Morning Dr. Chaney:

This matter is scheduled to proceed to trial on October 14, 2019. We expect to call you as a witness to testify the second week of trial. Can you please advise of your availability?

Thank you.

Carrie A. Perrault

Carrie A. Perrault

Legal Secretary to Chad C. Couchot, Esq.

SCHUERER ZIMMERMAN & DOYLE, LLP

400 University Avenue

Sacramento, CA 95825-6502

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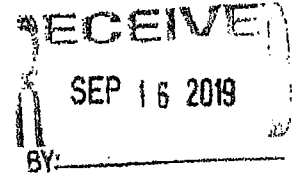
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23 SURGERY OF NEVADA, LLC

9/16/19 BY *DL*
CALENDARED
ENTRY *cal*
Trial on cal
9/30 *objec*

DISTRICT COURT

CLARK COUNTY, NEVADA

15	TITINA FARRIS and PATRICK FARRIS,	)	CASE NO. A-16-739464-C
16		)	DEPT. NO. 31
17	Plaintiffs,)	
18	vs.	)	TRIAL SUBPOENA - CIVIL REGULAR
19	BARRY RIVES, M.D.; LAPAROSCOPIC)	
20	SURGERY OF NEVADA, LLC, et al.,)	
21	Defendants.)	

THE STATE OF NEVADA SENDS GREETINGS TO:

DR. NAOMI CHANEY
5380 S. Rainbow Boulevard, #218
Las Vegas, NV 891 18
(702) 319-5900

YOU ARE HEREBY COMMANDED, that all and singular, business and excuses set

1 aside, you appear and attend on Monday, October 14, 2019, at the hour of 10:00 a.m., and
2 thereafter from day to day until completed, in Department 31 of the Eighth Judicial District
3 Court, Clark County, Las Vegas, Nevada. The address where you are required to appear
4 is the Regional Justice Center, 200 Lewis Avenue, Courtroom 12B, Las Vegas, Nevada.
5 Your attendance is required to give testimony and/or produce and permit inspection and
6 copy of designated books, documents or tangible things in your possession, custody or
7 control, or to permit inspection of premises. If you fail to attend, you may be deemed
8 guilty of contempt of Court and liable to pay all losses and damages caused by your failure
9 to appear.

10 Please see Exhibit A attached hereto for information regarding the rights of the
11 person subject to this subpoena.

12 **ITEMS TO BE PRODUCED:**

13 Your entire medical chart of TITINA FARRIS.

14 Dated: September 16, 2019

15 **SCHUERING ZIMMERMAN & DOYLE, LLP**

16
17 By



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

EXHIBIT "A"

NEVADA RULES OF CIVIL PROCEDURE

RULE 45

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

1 (ii) requires disclosure of an unretained expert's opinion or
2 information not describing specific events or occurrences in
3 dispute and resulting from the expert's study made not at the
4 request of any party, the court may, to protect a person
5 subject to or affected by the subpoena, quash or modify the
6 subpoena or, if the party in whose behalf the subpoena is
7 issued shows a substantial need for the testimony or material
8 that cannot be otherwise met without undue hardship and
9 assures that the person to whom the subpoena is addressed
10 will be reasonably compensated, the court may order
11 appearance or production only upon specified conditions.

12 (d) **Duties in Responding to Subpoena.**

13 (1) A person responding to a subpoena to produce documents shall produce
14 them as they are kept in the usual course of business or shall organize and label them to
15 correspond with the categories in the demand.

16 (2) When information subject to a subpoena is withheld on a claim that it is
17 privileged or subject to protection as trial preparation materials, the claim shall be made
18 expressly and shall be supported by a description of the nature of the documents,
19 communications, or things not produced that is sufficient to enable the demanding party
20 to contest the claim.
21
22
23
24
25
26

CERTIFICATE OF SERVICE

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

TRIAL SUBPOENA - CIVIL REGULAR

was served as indicated below:

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

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

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

Plaintiffs

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

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

Plaintiffs

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

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

RECEIVED

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

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

Sep 21 2019 BY PAP

CALENDARED

ENTRY

N/E

OBJ
KIMBALL JONES, ESQ.
Nevada Bar No.: 12982
JACOB G. LEAVITT, ESQ.
Nevada Bar No.: 12608
BIGHORN LAW
716 S. Jones Blvd.
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' OBJECTION TO DEFENDANTS' TRIAL SUBPOENA OF NAOMI
CHANEY, M.D.**

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

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

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

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

10 DATED this 20th day of September, 2019.

11 **BIGHORN LAW**

12 By: /s/ Kimball Jones

13 **KIMBALL JONES, ESQ.**

14 Nevada Bar.: 12982

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

16 Nevada Bar No.: 12608

17 716 S. Jones Blvd.

18 Las Vegas, Nevada 89107

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

20 Nevada Bar No.: 8483

21 **HAND & SULLIVAN, LLC**

22 3442 N. Buffalo Drive

23 Las Vegas, Nevada 89129

24 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

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

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

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

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

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

EXHIBIT 6

Riesa R. Rice

From: Riesa R. Rice
Sent: Tuesday, October 15, 2019 12:21 PM
To: 'naomi chaney'
Subject: RE: Farris v. Rives
Attachments: TRIAL SUBPOENA TO DR. NAOMI CHANEY (01216692x9C8C9)

Hello Dr. Chaney

Attached is a new trial subpoena for October 22, 2019.
Thank you.



Schuering
Zimmerman
& Doyle, LLP
ATTORNEYS AT LAW

Riesa R. Rice

Legal Secretary to Thomas J. Doyle
SCHUERING ZIMMERMAN & DOYLE
400 University Avenue
Sacramento, CA 95825
(916) 567-0400

From: naomi chaney [mailto:docnaomilchaney@yahoo.com]
Sent: Friday, October 11, 2019 2:17 PM
To: Riesa R. Rice <RRR@szs.com>
Subject: Re: Farris v. Rives

Your welcome!

Sent from my iPhone

On Oct 11, 2019, at 2:12 PM, Riesa R. Rice <RRR@szs.com> wrote:

Thank you.

Riesa R. Rice

From: Riesa R. Rice
Sent: Friday, October 11, 2019 2:12 PM
To: 'naomi chaney'
Subject: RE: Farris v. Rives

Thank you.

From: naomi chaney [mailto:docnaomilchaney@yahoo.com]
Sent: Friday, October 11, 2019 2:12 PM
To: Riesa R. Rice <RRR@szs.com>
Subject: Re: Farris v. Rives

702 278 8026

Sent from Yahoo Mail for iPhone

On Friday, October 11, 2019, 1:39 PM, Riesa R. Rice <RRR@szs.com> wrote:

Hello again

May we also have you cell #?

Thank you.

Riesa

From: Riesa R. Rice
Sent: Friday, October 11, 2019 1:35 PM
To: 'naomi chaney' <docnaomilchaney@yahoo.com>
Subject: RE: Farris v. Rives

Hello Dr. Chaney

You should be there at 1:30 p.m. on 10/22.

It is 200 Lewis Avenue, 12th Floor, Courtroom B (Dept. 31).

Thank you.

Riesa

From: naomi chaney [<mailto:docnaomilchaney@yahoo.com>]
Sent: Friday, October 11, 2019 11:32 AM
To: Riesa R. Rice <RRR@szs.com>
Subject: Re: Farris v. Rives

I'll just wait till you give me direction so you don't feel you have to go back and forth.

Please give me very specific instructions.

I appreciate you!

Thank you.

Dr. Chaney

On Friday, October 11, 2019, 11:30:12 AM PDT, naomi chaney <docnaomilchaney@yahoo.com> wrote:

So I should be at the courthouse by noon?

On Friday, October 11, 2019, 11:26:00 AM PDT, Riesa R. Rice <RRR@szs.com> wrote:

Thank you Dr. Chaney – Tom Doyle said the afternoon of 10/22.



Riesa R. Rice

Legal Secretary to Thomas J. Doyle

SCHUERING ZIMMERMAN & DOYLE

400 University Avenue

Sacramento, CA 95825

(916) 567-0400

NOTICE TO RECIPIENT: THIS E-MAIL IS MEANT FOR ONLY THE INTENDED RECIPIENT OF THE TRANSMISSION, AND MAY BE A COMMUNICATION PRIVILEGED BY LAW. IF YOU RECEIVED THIS E-MAIL IN ERROR, ANY REVIEW, USE, DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS E-MAIL IS STRICTLY PROHIBITED. PLEASE NOTIFY US IMMEDIATELY OF THE ERROR BY RETURN E-MAIL AND PLEASE DELETE THIS MESSAGE FROM YOUR SYSTEM. THANK YOU IN ADVANCE FOR YOUR COOPERATION.

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

1 aside, you appear and attend on Monday, October 22, 2019, at the hour of 1:30 p.m., and
2 thereafter from day to day until completed, in Department 31 of the Eighth Judicial District
3 Court, Clark County, Las Vegas, Nevada. The address where you are required to appear
4 is the Regional Justice Center, 200 Lewis Avenue, Courtroom 12B, Las Vegas, Nevada.
5 Your attendance is required to give testimony and/or produce and permit inspection and
6 copy of designated books, documents or tangible things in your possession, custody or
7 control, or to permit inspection of premises. If you fail to attend, you may be deemed
8 guilty of contempt of Court and liable to pay all losses and damages caused by your failure
9 to appear.

10 Please see Exhibit A attached hereto for information regarding the rights of the
11 person subject to this subpoena.

12 **ITEMS TO BE PRODUCED:**

13 Your entire medical chart of TITINA FARRIS.

14 Dated: October 15, 2019

15 **SCHUERING ZIMMERMAN & DOYLE, LLP**

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

EXHIBIT "A"

NEVADA RULES OF CIVIL PROCEDURE

RULE 45

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(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
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- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

1 (ii) requires disclosure of an unretained expert's opinion or
2 information not describing specific events or occurrences in
3 dispute and resulting from the expert's study made not at the
4 request of any party, the court may, to protect a person
5 subject to or affected by the subpoena, quash or modify the
6 subpoena or, if the party in whose behalf the subpoena is
issued shows a substantial need for the testimony or material
that cannot be otherwise met without undue hardship and
assures that the person to whom the subpoena is addressed
will be reasonably compensated, the court may order
appearance or production only upon specified conditions.

7 (d) **Duties in Responding to Subpoena.**

8 (1) A person responding to a subpoena to produce documents shall produce
9 them as they are kept in the usual course of business or shall organize and label them to
correspond with the categories in the demand.

10 (2) When information subject to a subpoena is withheld on a claim that it is
11 privileged or subject to protection as trial preparation materials, the claim shall be made
12 expressly and shall be supported by a description of the nature of the documents,
communications, or things not produced that is sufficient to enable the demanding party
to contest the claim.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 15th day of October, 2019, service of
a true and correct copy of the foregoing:

TRIAL SUBPOENA - CIVIL REGULAR

was served as indicated below:

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

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

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


Plaintiffs

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

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

Plaintiffs

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


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

[TSUB]

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

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS and PATRICK FARRIS,

Plaintiffs,

VS.

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

Defendants.

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

TRIAL SUBPOENA - CIVIL REGULAR

THE STATE OF NEVADA SENDS GREETINGS TO:

DR. NAOMI CHANEY
5380 S. Rainbow Boulevard, #218
Las Vegas, NV 891 18
(702) 319-5900

YOU ARE HEREBY COMMANDED, that all and singular, business and excuses set

1 aside, you appear and attend on Monday, October 22, 2019, at the hour of 1:30 p.m., and
2 thereafter from day to day until completed, in Department 31 of the Eighth Judicial District
3 Court, Clark County, Las Vegas, Nevada. The address where you are required to appear
4 is the Regional Justice Center, 200 Lewis Avenue, Courtroom 12B, Las Vegas, Nevada.
5 Your attendance is required to give testimony and/or produce and permit inspection and
6 copy of designated books, documents or tangible things in your possession, custody or
7 control, or to permit inspection of premises. If you fail to attend, you may be deemed
8 guilty of contempt of Court and liable to pay all losses and damages caused by your failure
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11 person subject to this subpoena.

12 **ITEMS TO BE PRODUCED:**

13 Your entire medical chart of TITINA FARRIS.

14 Dated: October 15, 2019

15 **SCHUERING ZIMMERMAN & DOYLE, LLP**

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

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- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

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- 1 (ii) requires disclosure of an unretained expert's opinion or
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communications, or things not produced that is sufficient to enable the demanding party
to contest the claim.

CERTIFICATE OF SERVICE

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a true and correct copy of the foregoing:

TRIAL SUBPOENA - CIVIL REGULAR

was served as indicated below:

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

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

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

Plaintiffs

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

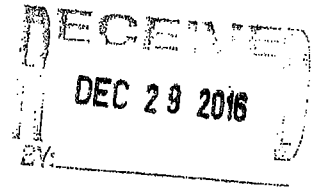
Kimball Jones, Esq.
Jacob G. Leavitt, Esq.
BIGHORN LAW
716 S. Jones Boulevard
Las Vegas, NV 89107

Plaintiffs

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


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

EXHIBIT 7



1 **ANS**
George F. Hand, Esq.
2 Nevada State Bar No. 8483
ghand@handsullivan.com
3 Nelson L. Cohen, Esq.
Nevada State Bar No. 7657
4 ncohen@handsullivan.com
HAND & SULLIVAN, LLC
5 hsadmin@handsullivan.com
3442 North Buffalo Drive
6 Las Vegas, Nevada 89129
Telephone: (702) 656-5814
7 Facsimile: (702) 656-9820
8 Attorneys for Plaintiffs
TITINA FARRIS and PATRICK FARRIS

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

12 TITINA FARRIS and PATRICK FARRIS,
13 Plaintiffs,
14
15 vs.
16 BARRY RIVES, M.D., LAPAROSCOPIC
17 SURGERY OF NEVADA LLC; DOES I-V,
inclusive; and ROE CORPORATIONS I-V,
inclusive,
18 Defendants.

Case No.: A-16-739464-C

Dept No.: XXII

PLAINTIFF TITINA FARRIS's
ANSWERS TO DEFENDANT'S FIRST
SET OF INTERROGATORIES

20 COMES NOW, Plaintiff Titina Farris, by and through his attorneys of record George F.
21 Hand, Esq. and Nelson L. Cohen, Esq. of Hand & Sullivan, LLC, and hereby responds to
22 Defendant's First Set of Interrogatories as follows:

23 **PRELIMINARY STATEMENT & GENERAL OBJECTIONS**

24 These objections are applicable to each and every interrogatory, except where otherwise
25 stated. Further, these objections are incorporated into each response as though fully set forth
26 therein. Each response is given subject to appropriate objections (including, but not limited to,
27 objections concerning competency, relevancy, materiality, propriety, and admissibility) which
28 would require the exclusion of any statement contained herein if the interrogatories were asked of,

1 or any statement contained herein were made by, a witness present and testifying in a court. All
2 such objections and grounds therefore are reserved and may be interposed at the time of trial.
3 These responses are made solely for the purpose of, and in relation to, this action. This Responding
4 Party has not completed its investigation of the facts relating to this action, has not yet completed
5 preparation for trial. The following answers are, therefore, given without prejudice to this party's
6 rights to allege and/or produce additional evidence of subsequently discovered or revealed facts and
7 circumstances.

8 Except for facts explicitly admitted herein, no admission is to be implied or inferred. The
9 fact that an interrogatory herein has been answered should not be taken as an admission,
10 stipulation, or confession of the existence of any facts set forth within, implied by, or assumed
11 under such interrogatory. Nor does such response constitute evidence of any fact thus set forth,
12 implied, or assumed. All responses shall be construed as having been given on the basis of this
13 Responding Party's best recollection.

14 Plaintiff objects to the entirety of the interrogatories, and to each and every interrogatory to
15 which it hereunder responds, on grounds of undue burden, oppression, argumentative, needless
16 expense, and calculation to harass, in violation of NRCP 26(g).

17 Plaintiff further objects to each interrogatory to the extent it requires Plaintiff to summarize,
18 digest, characterize, and identify documents and other evidence in the possession of Plaintiff or
19 his/her legal counsel.

20 Plaintiff objects to each interrogatory to the extent it seeks information protected under
21 privilege, work product, immunity, or otherwise. Plaintiff's undersigning attorneys join in this
22 objection to the extent such privileges are held by them.

23 Plaintiff objects to these interrogatories as unduly burdensome and oppressive in that they
24 are duplicative, cumulative, and overlapping, overbroad, and are not reasonably calculated to lead
25 to the discovery of admissible evidence, and/or fail to identify the information sought with
26 reasonable or adequate particularity.

27 Plaintiff objects to each interrogatory under NRCP 33(c) to the extent such interrogatory or
28 request requires Plaintiff to compile, extract, abstract, audit, and/or summarize, where such

1 compilations, extracts, abstracts, audits, and/or summaries did not exist independent from such
2 interrogatory.

3 Without waiver of the foregoing, and further reserving the right to object on any ground
4 whatsoever to the admission into evidence or other use of the following responses at trial or in any
5 other proceeding, under reservation of its right to object on any ground at any time to a demand for
6 further responses to the interrogatories or other discovery procedures involving or relating to the
7 subject matter of the interrogatories; and further reserving the right to revise, amend, extend,
8 clarify, and/or correct any of the answers set forth below, Plaintiff answers as follows:

9 Interrogatory No. 1:

10 If you contend Defendant BARRY RIVES, M.D.'s care was below the standard of care,
11 what did he do or fail to do that was below the standard of care?

12 Answer to Interrogatory No. 1:

13 This Interrogatory is objected to on the grounds that it calls for an expert opinion and
14 Plaintiff is not an expert. This Interrogatory is further objected to on the ground that it requires a
15 legal/medical determination by this Plaintiff. Notwithstanding said objection and without waiving
16 the same, Plaintiff responds as follows: See the expert reports provided with the Complaint.
17 Discovery is continuing and this Interrogatory will be supplemented as additional information
18 becomes available.

19 Interrogatory No. 2:

20 If you contend Defendant BARRY RIVES, M.D. or LAPAROSCOPIC SURGERY OF
21 NEVADA, LLC's records are false, forged, altered or modified, describe why.

22 Answer to Interrogatory No. 2:

23 At the present time, I have no knowledge as to this subject. Discovery is continuing and
24 this Interrogatory will be supplemented as additional information becomes available.

25 Interrogatory No. 3:

26 State your name and every name you have used in the past.

27 Answer to Interrogatory No. 3:

28 Titina Durham; Titina Farris.

1 Interrogatory No. 4:

2 State the date and place of your birth.

3 Answer to Interrogatory No. 4:

4 October 24, 1962, Harrisburg, PA.

5 Interrogatory No. 5:

6 State your Social Security number.

7 Answer to Interrogatory No. 5:

8 562-33-XXXX

9 Interrogatory No. 6:

10 Are you, or have you ever been a Medicare beneficiary?

11 Answer to Interrogatory No. 6:

12 No.

13 Interrogatory No. 7:

14 If you are, or have ever been a Medicare beneficiary, state: the dates you have been eligible
15 for Medicare Benefits; all names under which you obtained Medicare benefits; and your Medicare
16 Health Insurance Claim Number (HICN).

17 Answer to Interrogatory No. 7:

18 N/A.

19 Interrogatory No. 8:

20 State in reverse chronological order your residence addresses for the past ten (10) years.

21 Answer to Interrogatory No. 8:

22 6450 Crystal Dew Drive, Las Vegas, Nevada 89118

23 Interrogatory No. 9:

24 State in reverse chronological order the names and addresses of your employers or places of
25 self-employment for the past ten (10) years.

26 Answer to Interrogatory No. 9:

27 Self-employed. 6450 Crystal Dew Drive, Las Vegas, Nevada 89118.

28 //

1 Interrogatory No. 10:

2 State the names and addresses of the schools or other academic or vocational institutions
3 you have attended beginning with high school and the degrees you received.

4 Answer to Interrogatory No. 10:

5 High School graduate. Yucaipa High School, Yucaipa, CA. 1981.

6 Interrogatory No. 11:

7 If you have been convicted of a felony, state for each conviction, the offense, the city and
8 state where you were convicted, the date of the conviction and the case number.

9 Answer to Interrogatory No. 11:

10 N/A.

11 Interrogatory No. 12:

12 If as a result of the injuries or damages you describe in this lawsuit, you have received or
13 are receiving any benefits from the U.S. Government (for example, the Social Security
14 Administration, the Veterans Administration or Medicare), the State of Nevada (for example,
15 disability benefits or Medicaid), another state, s school district, a private health or disability insurer,
16 a worker's compensation insurer or a private or quasi-private organization (for example, the
17 Shriners or the Elks), state the names and addresses of the sources of the benefits, the types of
18 benefits and the amounts of the benefits.

19 Answer to Interrogatory No. 12:

20 N/A.

21 Interrogatory No. 13:

22 Describe the past, current or future physical, mental or emotional injuries you are claiming
23 in this lawsuit.

24 Answer to Interrogatory No. 13:

25 I am in chronic pain and mental upset. I cannot take care of myself, my husband, my
26 daughter or my home. I was confined to a wheelchair for approximately one year after the surgery
27 by Dr. Rives in July 2015. I had to wear a colostomy bag for several months. I am unable to walk
28 or stand on my own. I also have constant pain in my feet and calves.

1 Interrogatory No. 14:

2 If you have received or are receiving care or services for any of the physical, mental or
3 emotional injuries you are claiming in this lawsuit, state the names, addresses and telephone
4 numbers of the individuals and facilities that provided the care or services.

5 Answer to Interrogatory No. 14:

6 Naomi Chaney, M.D.

7 Interrogatory No. 15:

8 If you took or are taking any medications, prescribed or not, for the physical, mental or
9 emotional injuries you are claiming in this lawsuit, identify the medications by name and the
10 persons who prescribed or furnished them.

11 Answer to Interrogatory No. 15:

12 I was prescribed Percocet by Dr. Chaney. I was also prescribed anxiety medication.

13 Interrogatory No. 16:

14 If health care providers told you that you may require future or additional care or services
15 for the physical, mental or emotional injuries you are claiming in this lawsuit, state the names and
16 addresses of the health care providers and what they said.

17 Answer to Interrogatory No. 16:

18 I am currently unable to walk, stand or perform many tasks of daily living. I will need
19 continued therapies and medical treatment.

20 Interrogatory No. 17:

21 State the names, addresses and telephone numbers of the health care providers you have
22 seen in the past ten (10) years for any reason.

23 Answer to Interrogatory No. 17:

24 See Plaintiffs' Early Case Conference Production of Documents and List of Witnesses.
25 Discovery is continuing and this Request will be supplemented should additional documents
26 become available.

27 ///

28 ///

1 Interrogatory No. 18:

2 State the names, addresses and telephone numbers of the health care institutions you have
3 visited in the past ten (10) years for any reason.

4 Answer to Interrogatory No. 18:

5 See Plaintiffs' Early Case Conference Production of Documents and List of Witnesses.
6 Discovery is continuing and this Request will be supplemented should additional documents
7 become available.

8 Interrogatory No. 19:

9 Do you claim a loss of income or a diminished earning capacity?

10 Answer to Interrogatory No. 19:

11 Not applicable.

12 Interrogatory No. 20:

13 State your gross monthly income at the time of the incident described in the complaint.

14 Answer to Interrogatory No. 20:

15 I am not claiming lost income.

16 Interrogatory No. 21:

17 State the dates you did not work following the incident described in the complaint and the
18 total income you have lost to date.

19 Answer to Interrogatory No. 21:

20 Not applicable.

21 Interrogatory No. 22:

22 If you believe you will lose income in the future because of the incident described in the
23 complaint, state an estimate of the amount of income you will lose.

24 Answer to Interrogatory No. 22:

25 Not applicable.

26 Interrogatory No. 23:

27 If there are any other damages you attribute to the incident described in the complaint,
28 describe those damages.

1 Answer to Interrogatory No. 23:

2 See Answer to Interrogatory No. 13.

3 Interrogatory No. 24:

4 State all the physical, mental or emotional disabilities you had immediately before the
5 incident described in the complaint.

6 Answer to Interrogatory No. 24:

7 I had no significant issues other than the reoccurrence of a hernia which led to the surgery
8 by Dr. Rives on July 3, 2015.

9 Interrogatory No. 25:

10 If since the incident described in the complaint you sustained any new or different injuries,
11 list the injuries.

12 Answer to Interrogatory No. 25:

13 Not applicable.

14 Interrogatory No. 26:

15 If in the past ten (10) years you filed actions or made claims or demands for compensation
16 for any injuries, state the dates, times and places of the incidents giving rise to the actions, claims
17 or demands and whether the actions, claims or demands have been resolved or are pending.

18 Answer to Interrogatory No. 26:

19 Not applicable.

20 Interrogatory No. 27:

21 If in the past ten (10) years you made claims or demands for worker's compensation
22 benefits, state the dates, times, and places of the incidents giving rise to the claims or demands and
23 the names and addresses of the worker's compensation insurers and the claim numbers for the
24 claims or demands.

25 Answer to Interrogatory No. 27:

26 N/A.

27 ///

28 ///

1 Interrogatory No. 28:

2 If you or anyone acting on your behalf interviewed percipient witnesses concerning the
3 incident described in the complaint, state the names, addresses and telephone numbers of the
4 persons interviewed and the dates of the interviews.

5 Answer to Interrogatory No. 28:

6 I am not aware of interviews of percipient witnesses.

7 Interrogatory No. 29:

8 If you or anyone acting on your behalf obtained written or recorded statements from
9 percipient witnesses, state the names, addresses and telephone numbers of the persons from whom
10 the statements were obtained, the names, addresses and telephone numbers of the persons who
11 obtained the statements and the dates the statements were obtained.

12 Answer to Interrogatory No. 29:

13 I am not aware of interviews of written or recorded statements from percipient witnesses.

14 Interrogatory No. 30:

15 If health care providers said something to you about Defendant BARRY RIVES, M.D.'s
16 care that you understood to be a criticism of the care, state the names, addresses and telephone
17 numbers of the health care providers and what they said.

18 Answer to Interrogatory No. 30:

19 No.

20 Interrogatory No. 31:

21 If you filed for bankruptcy in the last three (3) years, list the court where the bankruptcy
22 was filed and the case number.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Answer to Interrogatory No. 31:

2 N/A.

3 Dated: December 29, 2016

HAND & SULLIVAN, LLC

4
5 By: 

6 George F. Hand, Esq.
7 Nevada State Bar No. 8483
8 Nelson L. Cohen, Esq.
9 Nevada State Bar No. 7657
10 3442 North Buffalo Drive
11 Las Vegas, Nevada 89129
12 Attorneys for Plaintiffs
13 TITINA FARRIS and PATRICK
14 FARRIS
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VERIFICATION

STATE OF NEVADA }
COUNTY OF CLARK } ss.

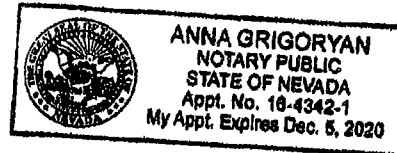
TITINA FARRIS being duly sworn, states that she has read the foregoing **ANSWERS TO DEFENDANT'S FIRST SET OF INTERROGATORIES TO PLAINTIFF** and that the same are true to the best of her knowledge and belief.

DATED this 29th day of December, 2016

Titina Farris
TITINA FARRIS

SUBSCRIBED AND SWORN to before me
this 29th day of December, 2016

[Signature]
NOTARY PUBLIC in and for said
County and State



CERTIFICATE OF SERVICE

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

On December 29, 2016, I served the within document(s) described as:

PLAINTIFF TITINA FARRIS's ANSWERS TO DEFENDANT'S FIRST SET OF INTERROGATORIES

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

- ☐ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed to Defendant's last-known address. I placed such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Las Vegas, Nevada. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☒ (BY ELECTRONIC SERVICE) By e-serving through Wiznet, pursuant to Administrative Order 14-2 mandatory electronic service, a true file stamped copy of the foregoing document(s) to the last known email address listed below of each Defendant which Plaintiff knows to be a valid email address for each Defendant.

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

Amber S. Brown
Amber S. Brown

(Signature)

Farris v. Rives, et al.
Court Case No.: A-16-739464-C

SERVICE LIST

Thomas J. Doyle, Esq. calendar@szs.com Schuering Zimmerman & Doyle, LLP 400 University Avenue Sacramento, California 95825-6502 (916) 567-0400 (916) 568-0400 <i>Attorneys for Defendants</i>	Kim Mandelbaum, Esq. filing@memlaw.net Mandelbaum Ellerton & Associates 2012 Hamilton Lane Las Vegas, Nevada 98106 (702) 367-1234 <i>Attorneys for Defendants</i>
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EXHIBIT 8

CERTIFICATE OF CUSTODIAN OF RECORDS

State of Nevada }
 } ss.
County of Clark }

NOW COMES, who after first being duly sworn deposes and says:

1. That the undersigned is the..... (position or title) of **BARRY RIVES, M.D.**
and in his/her capacity as..... (position or title) is a custodian of the
records of **BARRY RIVES, M.D.**

2. That on the day of the month of of the year, the undersigned received a written
request along with an authorization to release health care information in compliance with HIPAA ,
requesting the production of records pertaining to **Titina Farris**.

3. That the undersigned has examined the original of those records and has made or caused to be made
a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

4. That the original of those records was made at or near the time of the act, event, condition, opinion
or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course
of a regularly conducted activity of the undersigned and/or **BARRY RIVES, M.D.**

Signature

Print Name:

(Signature)
I AM THE CUSTODIAN OF
MY RECORDS

Subscribed and sworn to before me, a Notary Public,
on this day of the month of of the year

.....
Notary Public for Clark County,
State of Nevada

My appointment expires:.....

PLTF008649

A-000001

PLTF008650

A-000002

Summary View for Farris, Titina M

Page 1 of 2

Progress Notes

Patient: Farris, Titina M
Account Number: [REDACTED]
DOB: [REDACTED] **Age:** 51 Y **Sex:** Female
Phone: [REDACTED]
Address: [REDACTED]

Provider: Barry Rives, MD
Date: 07/31/2014

Subjective:**Chief Complaints:**

1. Ref. by Dr. Chaney for lipoma removal.

HPI:Constitutional:

Pt has been referred by Dr. Chaney for either swelling or a mass in her upper abdomen. Pt says it has been getting larger for years and is occasionally uncomfortable but not to the point it interferes with her daily activities of living. Pt denies N/V, bloating or distension or other s/s of obstruction, pt with normal bowel habits and no prior surgeries, pt denies any prior trauma to the abdominal wall, pt says there are no changes to the overlying skin and has shown no ulceration or discharge nor any s/s of infection.

ROS:CONSTITUTIONAL:

Negative for fever, weakness, fatigue, loss of appetite.

ENDOCRINOLOGY:

Negative for polydipsia, polyuria, sleep disturbance.

HEMATOLOGY/LYMPH:

Negative for easy bruising.

DERMATOLOGY:

Negative for rash, dry or sensitive skin, skin cancer.

MUSCULOSKELETAL:

Negative for joint stiffness, joint pain, joint swelling.

NEUROLOGY:

Negative for headache, seizures, gait abnormality.

RESPIRATORY:

Negative for cough, chest pain, chest congestion.

CARDIOLOGY:

Negative for dizziness, chest pain, palpitations.

GASTROENTEROLOGY:

Negative for nausea, vomiting, heartburn, abdominal pain, constipation, diarrhea, blood in stool.

FEMALE REPRODUCTIVE:

Negative for pelvic pain, heavy periods.

UROLOGY:

Negative for difficulty urinating, hematuria, recurrent UTI.

Medical History: Hyperlipidemia, Hypertension, Diabetes, Anxiety/depression NOS.

Family History:

Diabetes.

Social History: no Recreational drug use. Exercise: yes. no Tobacco use. Smoking Patient is a: never smoker. no Alcohol. Occupation: Homemaker.

Medications: Taking Cymbalta 60 mg delayed release capsule 1 cap(s) once a day, Taking Lisinopril 2.5 mg tablet 1 tab(s) once a day, Taking metformin 1000 mg tablet 1 tab(s) 2 times a day, Taking Coreg 12.5 mg tablet 1 tab(s) 2 times a day, Medication List reviewed and reconciled with the patient

Allergies: N.K.D.A.

Objective:

Vitals: Wt 157, Ht 62, PO2 99, Temp 97.2, BP 132/75, RR 18, HR 95, BMI 28.71.

Summary View for Farris, Titina M

Page 2 of 2

Examination:**General Examination:**

General Appearance: WD, WN, in NAD, pleasant. HEENT: unremarkable. Oral cavity: mucosa moist. Neck, Thyroid : supple. Chest: normal shape and expansion, no tenderness on chest wall. Breasts : deferred. Heart: normal. Lungs: good air entry bilaterally. Abdomen: soft, NT/ND, BS present, no guarding or rigidity, no hepatosplenomegalypt with a large midline lipomatous mass, it is nontender and mobile, no appreciable hernia with exertion, no changes of the skin. Neurologic Exam: no focal signs. Skin: normal, no rash. Peripheral pulses: normal (2+) bilaterally. Back: normal ROM of spine. Extremities: normal ROM, no clubbing, no edema. Genitalia: deferred.

Assessment:**Assessment:**

1. Lipoma of skin and subcutaneous tissue - 214.1 (Primary)

Plan:**1. Lipoma of skin and subcutaneous tissue**

Notes: Explained to pt the nature of lipomas that they tend to increase in size especially with weight gain, that they are rarely malignant, and can occasionally become uncomfortable with increasing size but do not pose a risk to her activities. Recommend excision of lipoma, explained to pt the risks, benefits, and alternatives in my customary fashion to the procedure and pt wishes to proceed, pts questions were answered to her satisfaction will schedule in coming weeks. Pt to call with further questions and/or concerns.

Preventive:

pt has no dietary nor physical restrictions at this time.

Follow Up: prn (Reason: surgery)

Provider: Barry Rives, MD

Electronically signed by Barry Rives MD on 06/09/2016 at 02:50 PM PDT
Sign off status: Pending

Summary View for Farris, Titina M

Page 1 of 1



Farris, Titina M

Provider: Rives, Barry J, MD

**Telephone
Encounter**

Answered by Rives, Barry J

Date: 08/01/2014

Time: 09:59 AM

Action Taken

Rives, Barry J, MD 8/1/2014 9:59:50 AM > please schedule pt for Thursday August 7th at sna martin case is excision of abdominal wall lipoma cpt 22905 diagnosis is lipomatous mass of abdominal wall icd 214.1 Aragon, Reanne (SAM) 8/1/2014 10:52:57 AM > W04311907 pending auth

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Summary View for Farris, Titina M

Page 1 of 2

Progress Notes

Patient: Farris, Titina M
Account Number: [REDACTED]
DOB: [REDACTED] **Age:** 52 Y **Sex:** Female
Phone: [REDACTED]
Address: [REDACTED]

Provider: Barry Rives, MD
Date: 04/30/2015

Subjective:**Chief Complaints:**

1. PCP told pt she had hematoma.

HPI:post-op:

pt says she was doing well after surgery and di not feel the need to come in post-op from surgery in August. Over last few months pt says her lipoma has returned and as it increased in size she went to see Dr. Chaney who referred her back to me for evaluation of hematoma/lipoma. Pt says this feels different than prior to her surgery. It is more uncomfortable and occasionally tender to touch. Pt syas she has no N/V, no diarrhea or constipation no s/s of obstruction. Pt has had no F/C, pt says it is altering her daily activites fo living.

ROS:CONSTITUTIONAL:

Negative for loss of appetite, fever, weakness, fatigue. Positive for weight gain.

ENDOCRINOLOGY:

Negative for polydipsia, polyuria.

HEMATOLOGY/LYMPH:

Negative for easy bruising.

DERMATOLOGY:

Negative for rash, dry or sensitive skin, skin cancer.

MUSCULOSKELETAL:

Negative for joint stiffness, joint swelling, leg cramps.

NEUROLOGY:

Negative for tingling, numbness, seizures, gait abnormality.

RESPIRATORY:

Negative for cough, chest congestion, shortness of breath.

CARDIOLOGY:

Negative for dizziness, chest pain, palpitations.

GASTROENTEROLOGY:

Negative for nausea, vomiting, heartburn, constipation, diarrhea, blood in stool. Positive for abdominal pain.

FEMALE REPRODUCTIVE:

Negative for pelvic pain, abnormal vaginal discharge.

UROLOGY:

Negative for recurrent UTI, hematuria.

Medical History: Hyperlipidemia, Hypertension, Diabetes, Anxiety/depression NOS, Lipoma abdominal wall with hernia of falciform ligament.

Surgical History: Excision of abdominal wall lipoma with repair of ventral hernia with mesh 08/07/2014.

Social History: no Recreational drug use. Exercise: yes. no Tobacco use . Smoking Patient is a: never smoker. no Alcohol. Occupation: Homemaker.

Medications: Taking Cymbalta 60 mg delayed release capsule 1 cap(s) once a day, Taking lisinopril 2.5 mg tablet 1 tab(s) once a day, Taking metformin 1000 mg tablet 1 tab(s) 2 times a day, Taking Coreg 12.5 mg tablet 1 tab(s) 2 times a day, Medication List reviewed and reconciled with the patient

Allergies: N.K.D.A.

Objective:

Vitals: Wt 158, Ht 62, PO2 96, Temp 98.1, BP 120/60, RR 16, HR 103, BMI 28.90.

Summary View for Farris, Titina M

Page 2 of 2

Examination:General Examination:

General Appearance: WD, WN, in NAD, pleasant. HEENT: unremarkable. Oral cavity: mucosa moist. Neck, Thyroid : supple. Chest: no tenderness on chest wall. Breasts : deferred. Heart: normal. Lungs: normal. Abdomen: soft, NT/ND, BS present, no guarding or rigidity, no masses palpatedpt with what feels like a recurrent hernia and is mostly reducible, has a norreducible component that feels slightly solid ?lipoma recurrenceIncision: C/D/I no s/s of infection. Neurologic Exam: no focal signs. Skin: normal, no rash. Peripheral pulses: normal (2+) bilaterally. Back: normal ROM of spines. Extremities: no clubbing, no edema, normal ROM. Genitalia: deferred.

Assessment:**Assessment:**

1. Ventral hernia NOS - 553.20 (Primary)

Plan:**1. Ventral hernia NOS**

Imaging: CT SCAN : ABDOMEN & PELVIS (with IVY & oral contrast)

Please schedule patient STAT!

Notes: Pt with what feels like a recurrence of her abdominal hernia. Explained to pt the findings from her first surgery including herniation of falciiform ligament and the lipoma and how it was removed and repaired with mesh. Explained to pt while this is very likely a hernia due to solid feel to some of the hernia I want to get CT scan and eval for any recurrence of lipoma as well and/or incarceration though she has no s/s of obstruction. Will get CT and call pt with results to discuss further surgery options.

Follow Up: prn (Reason: possible surgery)

Provider: Barry Rives, MD



Electronically signed by Barry Rives MD on 06/09/2016 at 02:51 PM PDT

Sign off status: Pending

Summary View for Farris, Titina M

Page 1 of 1



Farris, Titina M

Provider: Rives, Barry J, MD

Telephone
Encounter

Answered by Lee, Azaria

Date: 05/28/2015

Time: 09:14 AM

Message Patient called and said that you were going to order an MRI for her so she can have surgery?

Action Taken Rives, Barry J, MD 5/28/2015 1:57:34 PM > ct ordered

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Summary View for Farris, Titina M

Page 1 of 1

**Farris, Titina M**

Provider: Rives, Barry J, MD

**Telephone
Encounter****Answered by** Rives, Barry J

Date: 05/28/2015

Time: 01:18 PM

Action Taken Rives, Barry J, MD 5/28/2015 1:19:22 PM > order CT scan of abdomen and pelvis with PO and IV contrast diagnosis ventral hernia Lee, Azaria 5/29/2015 8:18:56 AM > sent referral to SDMI and lm for patient to call them and make appt

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Summary View for Farris, Titina M

Page 1 of 1

**Farris, Titina M**

Provider: Rives, Barry J, MD

**Telephone
Encounter****Answered by** Rives, Barry J

Date: 06/13/2015

Time: 02:15 PM

Action Taken Rives, Barry J, MD 6/13/2015 2:15:52 PM > Reviewed CT scan results and pt needs to come in for evaluation and possible surgery. Lee, Azaria 6/15/2015 2:01:59 PM > Im Lee, Azaria 6/16/2015 11:04:44 AM > pt made appt

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

Summary View for Farris, Titina M

Page 1 of 2

Progress Notes

Patient: Farris, Titina M
Account Number: [REDACTED]
DOB: [REDACTED] **Age:** 52 Y **Sex:** Female
Phone: [REDACTED]
Address: [REDACTED]

Provider: Barry Rives, MD
Date: 06/23/2015

Subjective:**Chief Complaints:**

1. f/u on CT results.

HPI:hernia:

pt returns for follow up on her CT scan and discussion of surgical options, pt says her symptoms are "pretty much the same" pt has noticed some slight increase in tenderness and feels it is getting bigger, pt still with no F/C and no s/s of obstruction, pt says it makes her "nervous regarding her activity level."

ROS:CONSTITUTIONAL:

Negative for loss of appetite, fever, weakness, fatigue.

HEMATOLOGY/LYMPH:

Negative for easy bruising.

RESPIRATORY:

Negative for shortness of breath, cough.

CARDIOLOGY:

Negative for chest pain, palpitations.

UROLOGY:

Negative for recurrent UTI.

Medical History: Hyperlipidemia, Hypertension, Diabetes, Anxiety/depression NOS, Lipoma abdominal wall with hernia of falciform ligament.

Surgical History: Excision of abdominal wall lipoma with repair of ventral hernia with mesh 08/07/2014.

Social History: no Recreational drug use. Exercise: yes. no Tobacco use. Smoking Patient is a: never smoker. no Alcohol. Occupation: Homemaker.

Medications: Taking Cymbalta 60 mg delayed release capsule 1 cap(s) once a day, Taking lisinopril 2.5 mg tablet 1 tab(s) once a day, Taking metformin 1000 mg tablet 1 tab(s) 2 times a day, Taking Coreg 12.5 mg tablet 1 tab(s) 2 times a day, Medication List reviewed and reconciled with the patient

Allergies: N.K.D.A.

Objective:

Vitals: Wt 160, Ht 62, PO2 96, Temp 97.9, BP 130/82, RR 16, HR 91, BMI 29.26.

Examination:General Examination:

General Appearance: WD, WN, in NAD, pleasant. HEENT: no change from prior exam. Oral cavity: mucosa moist. Neck, Thyroid: no changes. Chest: no tenderness on chest wall. Breasts: deferred. Heart: normal. Lungs: good air entry bilaterally. Abdomen: no significant changes from prior exam. Neurologic Exam: no focal signs. Skin: normal, no rash. Peripheral pulses: normal. Back: normal ROM of spine. Extremities: normal ROM. Genitalia: deferred.

Assessment:**Assessment:**

1. Incarcerated incisional hernia - 552.21 (Primary)

Plan:

1. Incarcerated incisional hernia

Summary View for Farris, Titina M

Page 2 of 2

Notes: Reviewed CT finding with pt that she has a recurrent abdominal wall hernia that likely has slipped around the prior mesh repair and that large bowel is in the hernia but does not appear to be obstructed and shows no ischemic changes, also there is no recurrence of lipoma. Recommend to pt laparoscopic ventral hernia repair with mesh, explained to pt the risks, benefits, and alternatives in my customary fashion including possible open repair. Pt wishes to proceed, all her questions were answered to her satisfaction, will schedule pt for surgery, no cardiac eval pt tolerated last surgery well with no sequelae of anesthesia and meds unchanged.

Preventive:

pt to avoid heavy lifting until time of repair if pt develops s/s of obstruction she needs to call office for urgent care.

Follow Up: prn (Reason: surgery)

Provider: Barry Rives, MD



Electronically signed by Barry Rives MD on 06/09/2016 at 02:52 PM PDT
Sign off status: Pending

Summary View for Farris, Titina M

Page 1 of 1

**Farris, Titina M****Provider: Rives, Barry J, MD****Telephone
Encounter****Answered by** Rives, Barry J**Date:** 06/23/2015**Time:** 10:11 AM

Action Taken Rives, Barry J, MD 6/23/2015 10:11:49 AM > please schedule pt for surgery at san martin on friday july 3 case is laparoscopic repair of incisional hernia with mesh cpt 49655 diagnosis is incarcerated incisional hernia icd-9 552.21 Lee, Azaria 6/25/2015 10:15:41 AM > pending auth #151760249. confirmed surgery with pt yesterday

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

IMPORTANT! THIS IS A PATIENT REFERRAL - THIS IS NOT AN ADVERTISEMENT



HIPAA Compliant

NEW PATIENT REFERRAL

TO: Barry Rives, MD
Surgery (General), Multiple Locations

FROM: Naomi Chaney, MD
Internal Medicine, Multiple Locations

ACCEPT/DECLINE THIS REFERRAL

Ways to accept or decline this referral:

1. Call 1-855-377-2786. You will need the referral code.
2. Use the referral code at www.par8o.com/fax
3. Send an email to Referrals@par8o.com containing the referral code and the word "Accept" or "Decline"

ONCE YOU HAVE ACCEPTED THIS REFERRAL WE WILL
PROVIDE YOU WITH FULL PATIENT CONTACT INFORMATION

REFERRAL DETAILS:

PATIENT NAME: Due to HIPAA restrictions, we cannot reveal the patient's name in this fax.

GENDER: female Titina Favis

DOB: [REDACTED]

REASON FOR REFERRAL: lipoma removal

INSURANCE: (MGM) Direct

ELIGIBILITY PERIOD: 07/23/14 - 01/18/15 (Patient is authorized for unlimited visits within this time frame)

Powered by **par8o**

Barry J. Rives, M.D.
Laparoscopic Surgery of Nevada
 8285 W. Arby Ave., Ste.165
 Las Vegas, NV 89113
 (P) 702-263-9644 (F) 702-270-4062

Date 7-31-14
 Patient Name Titina Farris () Male (X) Female Date of Birth [REDACTED]
 Address [REDACTED]
 Street / (Apt. #) City / State Zip
 Emergency Contact Patrick Farris Relationship Husband Phone [REDACTED]
 Patient's Employer Mirage Hotel Do you have insurance through your employer? (X) Yes () No
 Responsible Party Name and Phone Number PATRICK FARRIS [REDACTED]
 Do you work? (X) Full time () Part time
 If you are married, is your spouse employed? (X) Yes () No
 If the patient is a student, is he/she a () Full time student () Part time student
 How did you hear about our office? If Referred by whom? _____ Yellow Pages _____ Newspaper _____ Friend
 _____ Provider Book (X) Referral _____ Other _____
 Pharmacy Name _____ Address _____ Phone Number _____

Coordination of Benefits

Please list below your current primary insurance. IF YOU ARE COVERED BY A MEDICAID PROGRAM, YOU MUST GIVE THIS OFFICE ANY INSURANCE INFORMATION YOU MAY HAVE THROUGH YOUR EMPLOYER.

Primary Insurance <u>DIRECT CARE</u>	Secondary Insurance <u>NA</u>
Insurance Phone # _____	Insurance Phone # _____
Insurance Co. Address _____	Insurance Co. Address _____
Name of Insured <u>PATRICK FARRIS</u>	Name of Insured _____
Relationship to patient <u>HUSBAND</u>	Relationship to Patient _____
Insured DOB [REDACTED] SS# [REDACTED]	Insured DOB _____ SS# _____
ID#/SS# [REDACTED]	ID#/SS# _____
Group # [REDACTED]	Group # _____
Insured Employer [REDACTED]	Insured Employer <u>NA</u>
Insured Work Phone [REDACTED]	Insured Work Phone _____
Employer Address _____	Employer Address _____
City <u>LAS VEGAS</u> ST <u>NV</u> Zip _____	City _____ ST _____ Zip _____

Barry J. Rives, M.D

Laparoscopic Surgery of Nevada

8285 W. Arby Ave., Ste.165

Las Vegas, NV 89113

Phone (702)263-9644 Fax (702)270-4062

Patient's Name

~~Barry J. Rives~~ T. J. Rives

Today's Date

7-31-14

Please Check Any Medical Problems/Diagnoses That You Have

- | | | |
|---|--|---|
| <input type="checkbox"/> Heart Disease | <input type="checkbox"/> Sinus Problems | <input type="checkbox"/> Depression/Anxiety |
| <input checked="" type="checkbox"/> High Cholesterol | <input type="checkbox"/> Seasonal Allergies | <input type="checkbox"/> Psychiatric Care |
| <input checked="" type="checkbox"/> High Blood Pressure | <input type="checkbox"/> Tonsillitis | <input checked="" type="checkbox"/> Diabetes |
| <input type="checkbox"/> Low Blood Pressure | <input type="checkbox"/> Ear Problems | <input type="checkbox"/> Kidney/Bladder Problems |
| <input type="checkbox"/> Heartburn (reflux) | <input type="checkbox"/> Eye Disorder/Glaucoma | <input type="checkbox"/> Liver Problems/Hepatitis |
| <input type="checkbox"/> Anemia | <input type="checkbox"/> Seizures | <input type="checkbox"/> Arthritis |
| <input type="checkbox"/> Swollen Ankles | <input type="checkbox"/> Stroke | <input type="checkbox"/> Cancer |
| <input type="checkbox"/> Shortness of Breath | <input type="checkbox"/> Headache/Migraines | <input type="checkbox"/> Ulcer/Colitis |
| <input type="checkbox"/> Asthma | <input type="checkbox"/> Neurological Problems | <input type="checkbox"/> Thyroid Problem |
| <input type="checkbox"/> Lung Problems/Cough | | |

Please describe any current or past medical problem not listed above:

1. _____
2. _____
3. _____

AllergiesAre you allergic to Penicillin or any other drugs? Yes or No

Please List: _____

Medications

Please list any medications that you are currently taking:

Medication	Dose	Number of times taken
Diagn		
metformin		
levemir		

Please list your past surgeries and the dates you had them:

1. _____
2. _____
3. _____
4. _____

Patient's Name

TITINA

Date

7-31**Social and preventive history:**

Are you Married/Single/Divorced?

MARRIED

What is your occupation?

HOUSEWIFE

Do you currently smoke/if so how much and for how long?

NO

Do you drink/if so how much?

NO

Do you use drugs?

NO

Do you exercise daily/weekly?

SOMETIMES**Family History:**

Please list Paternal/Maternal family medical history. (include immediate family i.e., grandparents, parents, siblings, etc.)

1. Diabetes

2. _____

3. _____

4. _____

5. _____

By signing below, I hereby certify that to the best of my knowledge all the information written on this form is complete, true and accurate.

Patient/Legal Guardian Signature

Titina Harris

Date

7/31/14

Barry J. Rives, M.D.
Laparoscopic Surgery of Nevada
8285 W. Arby Ave., Ste.165
Las Vegas, NV 89113
(P) 702-263-9644 (F) 702-270-4062

Consent for General Care

I hereby grant permission to Laparoscopic Surgery of Nevada to employ such established treatments and therapy as may be deemed professionally necessary and advisable in the diagnosis and treatment of:

Name of Patient: TITINA FARRIS

Authorization for Release of Medical Records

I hereby authorize Laparoscopic Surgery of Nevada to give any and all information contained in my medical record to any physician that the patient is referred to and/or to insurance companies or other agencies to which claim is made for payment of medical services.

TF

Initial

Financial Agreement

I hereby acknowledge that the portion due by the patient will be paid at the time of service on all accepted insurance plans. On insurance plans Laparoscopic Surgery of Nevada does not participate in, payment will be expected in full at the time of service. In the event action should become necessary to collect any unpaid balance due for medical services rendered I agree to pay reasonable collection agency fees, attorney fees or other such costs.

TF

Initial

I understand that the diagnostic tests ordered by the physician are deemed medically necessary; however my insurance carrier may deny these tests. Therefore, it is ultimately my responsibility as the patient for charges incurred. I understand that I may receive a separate bill from an outside laboratory for any lab test ordered by Laparoscopic Surgery of Nevada and sent to the outside laboratory.

TF

Initial

Record of Disclosures

I hereby grant permission to Laparoscopic Surgery of Nevada to disclose information to a family member, other relative, or close personal friend regarding appointments, test results, location and general condition.

TF

Initial

Compliance of medical Treatment

I understand to follow the treatment plan agreed upon by my healthcare provider and myself. I hereby acknowledge if I do not comply with the agreed plan this may result in termination of the patient/physician relationship. I understand that two or more no call/no show appointments may result in discharge from Laparoscopic Surgery of Nevada.

TF

Initial

Signature

Titina Farris

Date:

7/31/14

Barry J. Rives, M.D.
Laparoscopic Surgery of Nevada
8285 W. Arby Ave., Ste.165
Las Vegas, NV 89113
(P) 702-263-9644 (F) 702-270-4062

I hereby authorize Naomi Chaney MD
Primary Physician

5380 S. Rainbow Blvd Ste 218
Address LAS VEGAS NEVADA

702-312-5900
Phone

to release relevant information contained in the medical record of

TITINA FARRIS
Patient Name

to Laparoscopic surgery of Nevada.

I fully understand the terms of this authorization to release my protected health information (PHI)

Titina Farris
Signature of patient

10-24-62
Patient DOB

TITINA FARRIS
Printed name of patient

7-31
Date

7/5/2015 12:16 AM FROM: Fax MModal Services, Ltd. TO: 9,702-270-4062 PAGE: 001 OF 004

MModal Services, Ltd.

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fax



St. Rose Dominican - San Martin
A Dignity Health Member

To: Barry Rives, M.D.
Fax Number: 9,702-270-4062

From: Tiffany Fann, Operations Manager
Fax Number: 602-294-5002
Voice Number: 702-492-8776

Pages: 4
Date/Time: 7/5/2015 12:16:12 AM
Subject: Confidential Document

Document(s) for: Barry Rives, M.D.
[1]FARRIS, TITINA M; Job# 122603

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A-000027

13A.App.2862

7/5/2015 12:16 AM FROM: Fax MMedal Services, Ltd. TO: 9,702-270-4062 PAGE: 002 OF 004

**ST ROSE DOMINICAN HOSPITALS
SAN MARTIN CAMPUS**

DATE OF CONSULTATION: 07/03/2015

PRESENTING COMPLAINT: Brought in electively by Dr. Rives for laparoscopic reduction and repair of incarcerated incisional hernia with mesh due to incarcerated incisional hernia.

HISTORY OF PRESENT ILLNESS: This is a pleasant 52-year-old Caucasian female with:

1. Diabetes mellitus type 2.
2. Hypertension.
3. Depression.
4. Anxiety.

The patient previously had history of C-section. The patient previously had: Excision of lipomatous mass and repair of incarcerated ventral hernia with mesh done by Dr. Rives in August of last year. As outlined above, the patient was brought in by Dr. Rives for laparoscopic reduction and repair of incarcerated incisional hernia with mesh. The patient also required colonoscopy x2. The patient tolerated the procedure well and currently is being admitted to hospital for postprocedure care.

PAST MEDICAL HISTORY: As outlined above.

PAST SURGICAL HISTORY: As outlined above.


ALLERGIES: LISTED AS ASPIRIN, NATURE OF HER DISEASE NOT CLEAR.

FAMILY HISTORY: Noncontributory.

SOCIAL HISTORY: No active smoking, drinking, or drug use history. Married, lives with husband. Husband and son are at bedside.

MEDICATIONS AT HOME:

1. Metformin 1000 mg p.o. b.i.d.
2. Lisinopril 2.5 mg p.o. daily.
3. Coreg 12.5 mg p.o. b.i.d.
4. Insulin glargine 40 units subcutaneously b.i.d.

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7/5/2015 12:16 AM FROM: Fax HModal Services, Ltd. TO: 9,702-270-4062 PAGE: 003 OF 004

ST ROSE DOMINICAN HOSPITALS
SAN MARTIN CAMPUS

5. Oxycodone 7.5 mg p.o. q.4 hours p.r.n. pain.
6. Cymbalta 60 mg p.o. daily.

REVIEW OF SYSTEMS: Total of 12-point of systems was performed. The patient's main complaint is pain which is postsurgical. Otherwise, total of 12-point review of systems was performed, found to be negative. Otherwise, as per history of present illness. Otherwise, noncontributory.

PHYSICAL EXAMINATION:

GENERAL: Middle-aged female, pleasant, lying comfortably in bed.

HEENT: Pupils are equal, reactive to light and accommodation. Extraocular muscles are intact.

NECK: Supple. No jugular venous distention. No thyromegaly.

LUNGS: Scattered basilar crackles bilaterally.

HEART: S1, S2. Regular rate and rhythm.

ABDOMEN: Soft, distended. No bowel sounds.

EXTREMITIES: No cyanosis, clubbing, or edema.

NEUROLOGIC: No gross motor or sensory deficits. Cranial nerves 2-12 intact.

LABORATORY DATA: CBC: Chem 7 ordered per General Surgery Service by tomorrow.

ASSESSMENT AND PLAN:

1. Laparoscopic reduction and repair of incarcerated incisional hernia with mesh and colonorrhaphy x2 per Dr. Rives.
2. Previous excision of lipomatous mass and repair of incarcerated ventral hernia with mesh.
3. Hypertension.
4. Diabetes mellitus type 2.
5. Depression.

PLAN: Currently, the patient is postprocedure n.p.o. continue postprocedure orders. The patient is on cefazolin, SCD boots and IV fluids, ringer lactate 100 mL/h, p.r.n. Dilaudid for pain. Check labs in the morning. Discussed with the patient and the patient's family at bedside at length. Disease pathophysiology, differential diagnosis, risks, benefits, alternatives of

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A-000029

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7/5/2015 12:16 AM FROM: Fax MModal Services, Ltd. TO: 9,702-270-4062 PAGE: 004 OF 004


ST ROSE DOMINICAN HOSPITALS
SAN MARTIN CAMPUS


different treatment modalities were discussed with them. They verbalized understanding and currently are in agreement to treatment plan.

Tanveer Akbar, M.D.

TA / MedQ
D: 07/04/2015 21:05:09
T: 07/04/2015 22:08:20
Job #: 122603

CC: BARRY RIVES, M.D.

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Dignity Health



PLTF008685

A-000030

13A.App.2865

8/8/2014 2:49 AM FROM: Fax MModal Services, Ltd. TO: 9,702-270-4062 PAGE: 001 OF 003

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To: Barry Rives, M.D.
Fax Number: 9,702-270-4062

From: Tiffany Fann, Operations Manager
Fax Number: 602-294-5002
Voice Number: 702-492-8776

Pages: 3
Date/Time: 8/8/2014 2:49:35 AM
Subject: Confidential Document

Document(s) for: Barry Rives, M.D.
[1]FARRIS, TITINA M; Job# 685221

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A-000031

13A.App.2866

8/8/2014 2:49 AM FROM: Fax Modal Services, Ltd. TO: 9,702-270-4062 PAGE: 002 OF 003

ST ROSE DOMINICAN HOSPITALS
SAN MARTIN CAMPUS

DATE OF OPERATION: 08/07/2014

SURGEON: Barry Rives, M.D.

PREOPERATIVE DIAGNOSIS: Abdominal wall mass.

POSTOPERATIVE DIAGNOSIS:

1. Abdominal wall lipoma.
2. Incarcerated ventral hernia.

PROCEDURE:

1. Excision of abdominal wall lipoma/mass.
2. Repair of incarcerated ventral hernia with mesh.

ANESTHESIA: General endotracheal.

ANESTHESIOLOGIST: John Ares, M.D.


COMPLICATIONS: None.


ESTIMATED BLOOD LOSS: 10 mL.

FINDINGS:

1. Abdominal wall mass consistent with a large mature lipoma.
2. Incarcerated ventral hernia with omentum.

TECHNIQUE: After getting informed consent, the patient was brought to the OR, placed in supine position. After adequate general anesthesia was obtained, the patient's abdomen was prepped and draped in the standard surgical fashion. We made an elliptical incision, large enough to encompass the size of the lipoma. This was taken down with sharp dissection into the subcutaneous tissue, carried open with electrocautery circumferentially. We began to take down the lipoma from the fascia using electrocautery. However, as we were coming through the lipoma there was an area that was distinctly different from the lipoma itself and appeared to be a incarcerated ventral hernia. As such, we continued taking the lipoma down off the fascia circumferentially and then dissecting it away from the incarcerated ventral hernia. The lipoma with attached skin was sent separately to pathology. Now, we are looking at a ventral hernia.

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8/8/2014 2:49 AM FROM: Fax Modal Services, Ltd. TO: 9,702-270-4062 PAGE: 003 OF 003

ST ROSE DOMINICAN HOSPITALS
SAN MARTIN CAMPUS

The sac contained omentum. This was excised and cleared from the fascia circumferentially. The hernia sac was excised circumferentially as well. The omentum reduced. This was also sent to pathology. The ventral hernia was slightly odd in nature and that had originated from the midline, however tailed off laterally to the right. Due to the size, it was decided to place a piece of Sepramesh into the preperitoneal space, sutured the Sepramesh except for mesh to the fascia with 0 Prolene sutures in an interrupted fashion and then over sewed the fascia together using 0 Ethibond sutures in interrupted fashion. This allowed us to close the defect completely and still give it a mesh underlying support system. At this point, the wound was thoroughly irrigated. The skin flaps were raised, however, due to the lipoma being removed there was a significant defect also with a hernia being split slightly laterally caused a slight deformity of the abdominal wall. We closed the subcutaneous layer with 2-0 Vicryl sutures, numerous sutures were not able to hold despite there being very little tension as the tissue was very friable and had been compressed and stretched from the lipoma and from the hernia. However, we eventually to get the subcutaneous layer closed. Marcaine 0.5% with epinephrine was used as a local infiltrate and then the skin was closed with 4-0 Monocryl in a subcuticular fashion. Skin incisions were then dressed clean dry and sterile and a compression dressing was applied. The patient tolerated the procedure well and was extubated in the OR and transferred to PACU in stable condition.

Barry Rives, M.D.


BR / MedQ

D: 08/07/2014 10:45:27

T: 08/08/2014 00:32:45

Job #: 685221

CC: NAOMI CHANEY, MD

 St. Rose
Dominican Hospitals
Dignity Health

PLTF008688

A-000033

13A.App.2868

6/12/2015 21:00 SDMI- FP1 SDMI-FP1-1

D 1/2

STEINBERG DIAGNOSTIC MEDICAL IMAGING CENTERSPhone: (702) 732-6000 www.sdmi-lv.com Fax: (702) 732-6071

Patient Name: Titina Farris

Patient: **Titina Farris**

SDMI #: [REDACTED]

Pt. DOB: [REDACTED]

Pt. Sex: **Female**

Referral ICD 9: [REDACTED]

SDMI Location: **SW**Date of Service: **06/12/15**Physician: **Barry Rives MD**Dr. Fax: **(702) 270-4062**Dr. Phone: **(702) 263-9644**Dr. Addr.: **8285 W Arby Ave Ste 390 Las Vegas, NV 89113**

Cc:

Cc:

CT ABDOMEN**CLINICAL HISTORY:**

52-year-old female with ventral hernia, surgery 9 months ago.

TECHNIQUE:

Enhanced CT images of the abdomen were obtained with 75 cc of Isovue-300. Coronal reconstructions were provided.

COMPARISON:

None

FINDINGS:

There is weakening/hernia of the right paracentral anterior abdominal wall superior which contains large bowel. The opening measures 5.7 cm. The herniated portion measures 7.7 x 0.9 cm. There is no evidence of obstruction. There is a large amount of stool noted throughout the colon.

The liver is within normal limits.

The gallbladder is unremarkable.

The spleen is within normal limits.

The adrenal glands are unremarkable.

The kidneys are within normal limits.

The pancreas is unremarkable.

The abdominal aorta and inferior vena cava are within normal limits.

There is no evidence of lymphadenopathy.

The lung bases are clear.

The osseous structures are within normal limits.

IMPRESSION:

Weakening/hernia of the right paracentral anterior abdomen with the opening measuring 5.7 cm in the herniated portion measuring 7.7 x 0.9 cm. Contains large bowel, no evidence of obstruction.

CT PELVIS

Physician Access To Images and Reports Is Available Online at www.sdmi-lv.com

2767 N. Tenaya Way, Las Vegas, NV 89128
4 Sunset Way, Building D, Henderson, NV 89014

2950 S. Maryland Pkwy, Las Vegas, NV 89109
6925 N Durango Dr, Las Vegas, NV 89149

2850 Sienna Heights, Henderson, NV 89052
9070 W. Post Road, Las Vegas, NV 89148

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PLTF008689

A-000034

6/12/2015 21:00 SDMI- FP1 SDMI-FP1-1

2/2

STEINBERG DIAGNOSTIC MEDICAL IMAGING CENTERSPhone: (702) 732-6000 www.sdmi-lv.com Fax: (702) 732-6071

Patient Name: Titina Farris

CLINICAL HISTORY:

52-year-old female with ventral hernia, surgery 9 months ago.

TECHNIQUE:

Enhanced CT images of the abdomen were obtained with 75 cc of Isovue-300. Coronal reconstructions were provided.

COMPARISON:

None

FINDINGS:

The uterus is unremarkable. There is a left ovarian cyst measuring 3.0 x 1.5 cm which is likely benign and does not require followup imaging. The left ovary is unremarkable.

The bladder is distended and unremarkable.

There is no evidence of lymphadenopathy.

IMPRESSION:

Unremarkable pelvic CT.

Interpreted by: Kevin Chang MD 06/12/2015 4:28 PM

Electronically approved by: Kevin Chang M.D. Date: 06/12/15 16:52

Physician Access To Images and Reports Is Available Online at www.sdmi-lv.com2767 N. Tenaya Way, Las Vegas, NV 89128
4 Sunset Way, Building D, Henderson, NV 890142950 S. Maryland Pkwy, Las Vegas, NV 89109
6925 N Durango Dr, Las Vegas, NV 891492850 Sienna Heights, Henderson, NV 89052
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A-000035

7/4/2015 12:51 AM FROM: Fax MModal Services, Ltd. TO: 9,702-270-4062 PAGE: 001 OF 003

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A Dignity Health Member

To: Barry Rives, M.D.
Fax Number: 9,702-270-4062

From: Tiffany Fann, Operations Manager
Fax Number: 602-294-5002
Voice Number: 702-492-8776

Pages: 3
Date/Time: 7/4/2015 12:51:11 AM
Subject: Confidential Document

Document(s) for: Barry Rives, M.D.
[1]FARRIS, TITINA M; Job# 120708

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PLTF008691

A-000036

7/4/2015 12:51 AM FROM: Fax HModal Services, Ltd. TO: 9,702-270-4062 PAGE: 002 OF 003

ST ROSE DOMINICAN HOSPITALS
SAN MARTIN CAMPUS

DATE OF OPERATION: 07/03/2015

SURGEON: Barry Rives, M.D.

PREOPERATIVE DIAGNOSIS: Incarcerated incisional hernia.

POSTOPERATIVE DIAGNOSIS: Incarcerated incisional hernia.

PROCEDURE:

1. Laparoscopic reduction and repair of incarcerated incisional hernia with mesh.
2. Colonoscopy x2.

ANESTHESIA: General endotracheal.


ANESTHESIOLOGIST: Georgeanne Raftopoulos, DO.

COMPLICATIONS: None.

EBL: 30.

FINDINGS: Incarcerated incisional hernia with transverse colon.

TECHNIQUE: After getting informed consent, the patient was brought to the OR, placed in supine position. After adequate general anesthesia was obtained, the patient's abdomen was prepped and draped in standard surgical fashion. A small incision was made in the right middle quadrant. A Veress needle was inserted and the abdomen insufflated to 15 mm of pressure. At that point, a 5 mm trocar was inserted. Visualization of the abdomen revealed an incarcerated incisional hernia with the transverse colon, inside the hernia sac. Another 5 mm trocar was placed in the right upper quadrant, eventually changed to a 12 mm trocar. Another 5 mm trocar was placed under direct visualization atraumatically in the right lower quadrant, eventually changed to a 12 mm trocar and another 5 mm trocar was placed in the left middle quadrant under direct visualization atraumatically. We began by reducing the hernia, taking down the omentum, the transverse colon was severely stuck and adhered to the prior mesh repair. Taking this down, we had used the LigaSure device to extract it from the mesh as the mesh would not come free from the skin. In doing so, this created a small tear in the colon using a Endo-GIA blue load. We were able to staple across the small colotomy. There was a 2nd small colotomy also

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Dignity Health

PLTF008692

A-000037

13A.App.2872

7/4/2015 12:51 AM FROM: Fax HModal Services, Ltd. TO: 9,702-270-4062 PAGE: 003 OF 003

ST ROSE DOMINICAN HOSPITALS
SAN MARTIN CAMPUS

noticeable, also repaired with an Endo-GIA 45 tissue load. After successive firings, the staple lines appeared to be intact. There were no further serosal or full-thickness injuries to the colon. We then turned our attention towards repair of the incisional hernia, a 7 x 9 Venture light with echo. Piece of mesh was placed into the intraabdominal cavity. A small incision was made in the midline grasping the insufflation tubing. It was exteriorized from the abdomen. The insufflation device was deployed and held against the abdominal wall with a hemostat clamp. Using the SecureStrap device, we approximated the mesh circumferentially around the hernia defect. Once we had a single row of outer approximation, the insufflation device was excised at the level of the skin and removed from the 12 mm trocar site. Returning to the abdomen, we continued with further approximation of the SecureStrap device, making sure that we had inner circumferential layer near the hernia defect in extreme outer circumferential row and then inner circumferential rows. Once it was adequately approximated covering the hernia defect by at least 3-5 cm in all directions, we visualized the omentum. There was no further evidence of bleeding. The colon appeared to be healthy, viable, no further injuries or tears. There was no foreign body material noted. At this point, the trocars were removed. The abdomen allowed to return its normal pressure. The 12 mm trocar sites were closed at the fascia level with an 0 Vicryl stitch in a figure-of-eight fashion. Marcaine 0.5% with epinephrine was used to locally infiltrate. The skin incisions were closed with 4-0 Monocryl in subcuticular fashion. The skin incisions were dressed, clean, dry, and sterile. The patient was extubated in the OR and transferred to the PACU in stable condition.

She tolerated the procedure well without complications.

Barry Rives, M.D.

BR / MedQ
D: 07/03/2015 12:43:44
T: 07/03/2015 22:41:51
Job #: 120708

CC: NAOMI CHANEY, MD

St. Rose
Dominican Hospitals
Dignity Health



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Page 1 of 4

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PATHOLOGY REPORT - Facsimile Copy

**Report Status: Final
FARRIS, TITINA M**

Patient Information	Specimen Information	Client Information
FARRIS, TITINA M DOB: [REDACTED] Age: 52Y Gender: F Patient ID: [REDACTED]	Specimen: T15-041298 Accession: 65169474 Collected: 07/16/2015 Received: 07/16/2015 Reported: 07/18/2015	Report To: UHS-BARRY J RIVES MD (51068) 8285 W ARBY STREET STE 390 LAS VEGAS, NV, 89113 Received From: ST ROSE SAN MARTIN (29180) DR TANVEER AKBAR (HOSP) (9999) SN SURGERY SPECIALISTS-GV (22380) DR ELIZABETH HAMILTON (9999)

PATHOLOGY REPORT STATUS: Final

CLINICAL INFORMATION:

SPECIMEN : A-old prosthetic abdominal mesh
 B-transverse colon
PRE-OP : Perforated viscus
REMARKS : MRN: 10016420; Admit Diagnosis: 552.21; Procedure:
 Exploratory laparotomy and possible bowel resection, likely
 removal of old prosthetic mesh and placement of new biologic
 or absorbable mesh, likely ostomy and drain placement, any
 other indicated procedures

DIAGNOSIS:

A-PROSTHETIC ABDOMINAL MESH:
MESH (ABDOMEN); (BY GROSS EXAMINATION ONLY)

B-TRANSVERSE COLON AND OMENTUM, 9.5 CM RESECTION:
THREE FOCI OF COLONIC ULCERATION WITH TRANSMURAL ACUTE INFLAMMATION AND PERFORATION. SEE COMMENT.
ASSOCIATED ACUTE SEROSITIS AND OMENTUM WITH ACUTE INFLAMMATORY EXUDATE AND REACTIVE CHANGES.
PROXIMAL AND DISTAL SURGICAL MARGINS VISIBLE WITH NO SIGNIFICANT INFLAMMATION.
BACKGROUND COLON WITH RARE DIVERTICULA.
NEGATIVE FOR MALIGNANCY.
SEE COMMENT.

PATHOLOGIST: Darren T Wheeler, M.D.
 Electronic Signature
 For questions contact APC Support Services at 702-733-3785

COMMENT:

B-The histologic features of the ulcerations are not specific for an etiology. The colonic mucosa away from the ulceration shows no significant pathologic change. The differential diagnosis includes ischemia, ruptured diverticulitis and/or prior procedure/surgery. Clinical correlation is recommended.

GROSS:

A-Received in formalin labeled "Farris, Titina M, DOB 10/24/1962" and "old prosthetic abdominal mesh" is a tan, smooth, flat, ovoid 22.0 x 17.5 x 0.2 cm piece of mesh material with focal associated blue sutures. The mesh material has focal areas of associated gray soft tissue, and the largest tissue measures 4.0 x 2.5 x 0.1 cm. The portion of mesh material displays an ovoid 0.6 x 0.5 cm defect. No sections submitted. Gross only. (JP)

B-Received in formalin labeled "Farris, Titina M, DOB 10/24/1962" and "transverse colon" is a segment of colon, an irregular intestinal tissue, and a portion of omental adipose tissue.

APC Support Services: 702-733-3785

Collected: 07/16/2015

Printed on 7/19/2015 at 9:53:17AM

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PATHOLOGY REPORT - Facsimile Copy

Report Status: Final

FARRIS, TITINA M

Patient Information	Specimen Information	Client Information
FARRIS, TITINA M DOB: [REDACTED] Age: 52Y Gender: F Patient ID: [REDACTED]	Specimen: T15-041298 Accession: 65169474 Collected: 07/16/2015 Received: 07/16/2015 Reported: 07/16/2015	Report To: UHS-BARRY J RIVES MD (51088) 8285 W ARBY STREET STE 390 LAS VEGAS, NV, 89113 Received From: ST ROSE SAN MARTIN (28180) DR TANVEER AKBAR (HOSP) (9999) SN SURGERY SPECIALISTS-GV (22380) DR ELIZABETH HAMILTON (9999)

GROSS Continued

Colon: 9.5 cm segment of colon. The unoriented margins are secured by metallic staples and inked as follows: One-green (diameter-4.0 cm) and opposite-black (diameter-4.2 cm). The colon has an overall diameter ranging from 2.0 cm to 4.2 cm. The margins are irregular.

Serosa: Purple to tan-red, smooth, and displays multiple gray-white areas of exudate which extends to within 1.2 cm of the green inked margin and 2.4 cm of the black inked margin. Three transmural defects are identified along the length of the colon. The first defect is located roughly within the mid aspect, measures 2.0 x 1.6 cm, and the borders are inked orange. This defect is located 2.9 cm from the green inked margin and 2.8 cm from the black inked margin.

The second defect is located within a markedly thinned area of wall with an overall measurement of 3.7 x 3.5 cm; the wall within this area measures less than 0.1 cm and the defect measures 0.9 x 0.5 cm. The borders are inked yellow. This defect is located 2.8 cm from the black inked margin, 5.3 cm from the green inked margin, and 1.6 cm from the orange inked defect.

The third defect measures 1.0 x 0.4 cm, is located 0.6 cm from the orange inked defect and 2.2 cm from the yellow inked defect, and the borders of this defect are inked violet. This defect is located 1.9 cm from the green inked margin and 3.4 cm from the black inked margin. This defect is contiguous with a 1.7 cm staple line which grossly appears to be a possible side-to-side anastomosis site. The staple line (possible anastomosis site) is located 0.9 cm from the nearest green inked margin.

Adipose tissue: Moderate, soft yellow adipose tissue.

Mucosa: Contiguous with the green inked margin and involving a 4.0 cm segment the mucosa is tan-red, smooth, displays a slight decrease in the usual folds, and is focally slightly edematous. The remainder of the mucosa contiguous with the black inked margin is tan, smooth, displays the usual folds and is demarcated from the aforementioned mucosa.

A mass is not grossly identified.

Wall: Less than 0.1 cm to 1.0 cm in thickness. Located 1.5 cm from the black inked margin a 0.7 cm diverticulum is identified.

Lymph nodes: Distinct lymph nodes are not identified.

Annular intestinal tissue: 2.5 x 2.4 x 2.2 cm. The annular intestinal tissue has a moderate amount of associated yellow adipose tissue. The tissue is partially surfaced by tan, smooth mucosa which displays the usual folds. The wall measures 0.2 cm thick. Lymph nodes are not identified within the adipose tissue.

Omentum: 16.0 x 9.5 x 3.8 cm. The omental adipose tissue is yellow to dark red, focally hemorrhagic, and displays focal gray-white irregular areas of exudate; the largest area of exudate measures 7.2 x 7.0 cm. The cut surface is yellow, lobulated, and soft.

Representative sections are submitted as follows: B1- resection margins; B2- first defect; B3- second defect; B4- third defect; B5- colon adjacent to possible side-to-side anastomosis site; B6- colon towards green inked margin with focal slightly edematous areas; B7- colon towards black inked margin; B8- diverticulum; B9- annular intestinal tissue; B10-B11- omental adipose tissue. Number of cassettes: 11. (JP)

APC Support Services: 702-733-3785

Collected: 07/16/2015

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PATHOLOGY REPORT - Facsimile Copy

Report Status: Final

FARRIS, TITINA M

Patient Information	Specimen Information	Client Information
FARRIS, TITINA M DOB: [REDACTED] Age: 52Y Gender: F Patient ID: [REDACTED]	Specimen: T15-041298 Accession: 65169474 Collected: 07/16/2015 Received: 07/16/2015 Reported: 07/18/2015	Report To: LHS-BARRY J RIVES MD (51088) 8285 W ARBY STREET STE 390 LAS VEGAS, NV, 89113 Received From: ST ROSE SAN MARTIN (29180) DR TANVEER AKBAR (HOSP) (9999) SN SURGERY SPECIALISTS-GV (22380) DR ELIZABETH HAMILTON (9999)

GROSS Continued

The gross examination was performed at the Quest Diagnostics laboratory located at 4230 Burnham Ave, Las Vegas, NV 89119

MICROSCOPIC:

A,B-Microscopic examination performed and description incorporated into the final diagnosis.

PERFORMING SITE:

Diagnosis was performed at Associated Pathologists, Chartered at St. Rose Siena Campus
 3001 St. Rose Parkway, Henderson, NV 89052
 Lab Director: Christine Rummles-Gamble, M.D.
 Associated Pathologists, Chartered, in affiliation with Quest Diagnostics
 4230 Burnham Ave, Las Vegas, NV 89119
 Medical Director: Elizabeth D. Iola, M.D.

APC Support Services: 702-733-3785

Collected: 07/16/2015

Printed on 7/19/2015 at 9:53:17AM

Associated Pathologists, Chartered (APC), in affiliation with Quest Diagnostics
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PATHOLOGY REPORT - Facsimile Copy

4230 Burnham Avenue Las Vegas, NV 89119

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**RPLY**

KIMBALL JONES, ESQ.

Nevada Bar No.: 12982

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3442 N. Buffalo Drive

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Phone: (702) 656-5814

Email: GHand@HandSullivan.com*Attorneys for Plaintiffs***DISTRICT COURT****CLARK COUNTY, NEVADA**

TITINA FARRIS and PATRICK FARRIS,

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-16-739464-C

DEPT. NO.: XXXI

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR FEES AND 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 Reply in Support of their Motion for Fees and Costs.

///

///

1 This Reply 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 31st day of December, 2019.

4 **BIGHORN LAW**

5 By: /s/ Kimball Jones

6 **KIMBALL JONES, ESQ.**

7 Nevada Bar.: 12982

8 **JACOB G. LEAVITT, ESQ.**

9 Nevada Bar No.: 12608

10 716 S. Jones Blvd.

11 Las Vegas, Nevada 89107

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 *Attorneys for Plaintiffs*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 As the Court is aware, this case arose out of the negligent surgical treatment of Plaintiff
5 TITINA FARRIS by Defendant BARRY RIVES, M.D., acting in his capacity as the principal of
6 Defendant LAPAROSCOPIC SURGERY OF NEVADA, LLC. During a July 3, 2015 surgery,
7 Defendant RIVES cut/burned/tore holes in Plaintiff TITINA FARRIS' colon by using a
8 contraindicated LigaSure device. Thereafter, Defendant RIVES failed to adequately repair the holes
9 he caused, leaving a contaminated abdominal cavity.
10

11 Further, Defendant RIVES failed to repair the contaminated abdominal cavity he caused for
12 twelve (12) days, during which time Plaintiff TITINA FARRIS was on the verge of death due to the
13 predictable sepsis that ensued as a result of RIVES' initial negligence. As a further result of RIVES'
14 negligence, Plaintiff TITINA FARRIS developed bilateral drop foot. TITINA FARRIS cannot walk
15 unassisted and requires extensive assistance with her activities of daily living.
16

17 On November 1, 2019, after a lengthy trial, the jury returned a verdict of \$13,640,479.94.
18

19 At issue in this motion is the statutory consequences of Defendants' rejection of Plaintiffs'
20 pretrial Offer of Judgment of \$1,000,000.00 made on June 5, 2019.

21 Defendants' Opposition to this Motion is three-fold: 1) Defendants claim that their rejection
22 of the \$1,000,000 Offer of Judgment was reasonable—despite the fact that their own expert felt that
23 Defendants' use of the LigaSure was at least somewhat “contraindicated.” Yet, despite having little
24 support from their own expert on liability, Defendants still rejected an offer that was over **\$12 million**
25 **dollars less** than the jury award. 2) Defendants claim that they should not be subject to sanctions.
26 Defense Counsel's affidavit on this subject is four (4) pages of attempts to minimize the great
27 misconduct committed by Defendant RIVES and Defense Counsel in this matter. Defendants conclude
28

1 Plaintiffs' concerns are "much ado about nothing." It is painfully apparent that Defense Counsel has
2 learned nothing from this Court's repeated sanctions of Defendants' conduct during the proceedings.
3 For Defendants to continue to justify their actions based upon them being righteous in their own eyes,
4 despite this Court's frequent excoriations of Defendants' conduct is baffling. 3) Defendants finally
5 claim that NRS 7.095 is controlling in this matter, and although this Court has repeatedly noted that
6 other fee caps are overridden by client consent—NRS 7.095 is not because it is a medical malpractice
7 statute which, for unexplained reasons, is of more force than other statutory caps.
8

9 None of these arguments are meritorious.

10 Although this Court is well aware of these facts, it bears repeating that on June 5, 2019,
11 Plaintiffs made an Offer of Judgment to Defendants offering to settle this matter for \$1,000,000.00
12 inclusive of fees, costs, and pre-judgment interest, in accordance with NRCP 68. See Exhibit "1."
13 Defendants rejected this offer.
14

15 The jury awarded Plaintiffs \$13,640,479.94. This Court, noting the damages cap in NRS
16 41A.035 entered Judgment on Verdict in the amount of **\$6,367,805.52** on November 14, 2019. See
17 **Exhibit "2."** The jury awarded Plaintiffs an amount 1364% GREATER than the amount than the
18 Defendants rejected. The Court, limited by statute, entered a judgment 637% GREATER than the
19 amount Defendants rejected.
20

21 Defendants rejection of the Offer of Judgment was not reasonable. An analysis of the
22 *Beattie/Yamaha* factors dictate that attorney's fees are properly granted in this matter. Furthermore,
23 Defendants' and Counsel's conduct at trial merit sanction. Likewise, Defendants have not made a
24 compelling argument against case law, which shows that informed waiver of a cap negates the
25 statutory cap. Finally, Defendants have not made any argument that Plaintiffs' Counsel's
26 qualifications are lacking in any respect and/or that the outcome received fails to satisfy the *Brunzell*
27 factors. As such, Plaintiffs' Motion for fees and costs is properly granted.
28

II.

LEGAL ARGUMENT AND ANALYSIS**A. NRCP 68 MANDATES PENALTIES WHEN THE OFFEREE
REJECTS AN OFFER AND FAILS TO OBTAIN A MORE
FAVORABLE JUDGMENT.**

The underlying policy of NRCP 68 provides for the imposition of attorney's fees and costs upon the unsuccessful party. The purpose of NRCP 68 is to encourage the settlement of lawsuits before trial. It also places the risk of loss on the non-accepting offeree, with no risk to the offeror, thus encouraging both offers and acceptance of offers. *Matthews v. Collman*, 110 Nev. 940, 950, 878 P.2d 971, 978 (1994) (citing *Morgan v. Demille*, 106 Nev. 671, 674, 799 P.2d 561, 563 (1990) *superseded on other grounds by* NRS 17.115 and NRCP 68).

"In Nevada, 'the method upon which a reasonable fee is determined is subject to the discretion of the court,' which 'is tempered only by reason and fairness. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 124 P.3d 530 (2005), quoting *University of Nevada v. Tarkanian*, 110 Nev. 586, 781 P. 2d 762 (1989). Accordingly, in determining the amount of fees to award, the court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a "lodestar" amount or a contingency fee.

Plaintiffs request an award of attorney's fees in the instant action under NRCP 68. In this case, Plaintiffs served an Offer of Judgment on June 5, 2019 in the amount of \$1,000,000.00. At that time, it was well known by Defendants the permanent and serious nature of injuries of Plaintiff TITINA FARRIS. In fact, before Plaintiffs served this Offer of Judgment, expert disclosures were served by both sides, including Plaintiff's Life Care Plan and economic expert reports. Further, Defendants deposed Plaintiffs Titina Farris and Patrick Farris on October 11, 2018. Witnesses Addison Durham (brother of Titina Farris), Sky Prince (daughter of Titina Farris) and Lowell Pender (son of Titina Farris) were deposed on May 8, 2019. Treating physician Naomi Chaney, M.D. was deposed by

1 Defendants on May 9, 2019. Plaintiff economist Terence Clauretie, Ph.D. was deposed by Defendants
2 on May 22, 2019. Plaintiff expert life care planner Dawn Cook, R.N. was deposed by Defendants on
3 June 7, 2019.

4 As such, though only an approximate twenty percent (20%) of the total legal work had been
5 completed in this case, Defendants were well aware at the time of the service of the Plaintiffs' Offer
6 of Judgment of both the strong liability case against the Defendants outlined in Plaintiffs' expert
7 reports as well as the catastrophic damages of the Plaintiffs. Defendants ignored the Offer of Judgment
8 and proceeded to continue to litigate the case.

9
10 Thereafter, in September of 2019, this Court facilitated a 41A Settlement Conference on an
11 expedited basis, which took place on October 2, 2019 before Judge Bixler. At that time, Plaintiffs
12 again reiterated their willingness to accept \$1,000,000.00 as full settlement of the case. Incredibly,
13 there was literally no offer from Defendants, despite the representation that Dr. Rives consented and
14 authorized the settlement of his case.

15
16 Therefore, the case proceeded to trial commencing on October 14, 2019 until the jury returned
17 a verdict of \$13,640,479.94 on November 1, 2019. The jury verdict was \$12,640,479.94 more than
18 Plaintiffs' Offer of Judgment. The Judgment on Verdict filed on November 14, 2019 of \$6,367,805.52
19 was \$5,367,805.52 more than Plaintiffs' Offer of Judgment.

20
21 Plaintiffs undisputedly received a more favorable judgment than the Offer of Judgment of
22 \$1,000,000.00. It is abundantly clear from the conduct of Defendants during the course of the litigation
23 that they disregarded Plaintiffs' good faith attempts to settle this case and chose to go to trial. Having
24 been soundly defeated at trial, Defendants now attempt to avoid the statutory consequences of NRCP
25 68, which provides for attorney's fees and costs to the prevailing party. Defendants are attempting to
26 evade the purpose of NRCP 68, which is to encourage the settlement of lawsuits before trial, as
27 discussed in *Morgan v. Demille*, supra.
28

1 Nevertheless, Defendants' current posture is duplicitous. It should be noted that on September
2 20, 2019, Defendants served "Defendants' Offer Pursuant to NRCP 68." The terms of the Offer were
3 as follows: "a mutual waiver of attorneys' fees incurred to date in the amount of \$70,539.00 and costs
4 incurred to date in the amount of \$103,353.05, in exchange for a dismissal with prejudice of this/these
5 Defendants from the above-entitled action" See Defendants' Offer of Judgment, attached hereto as
6 **Exhibit "3."** By serving such an Offer, Defendants' concede that attorneys' fees as well as costs are
7 appropriate to the prevailing party. It is beyond dispute that if the Defendants were the prevailing
8 party, they would be making an application for attorneys' fees and costs on the basis that Plaintiffs'
9 rejected their offer of judgment, which literally offers nothing beyond a waiver of such fees/costs.
10

11 In opposition to this motion, Defendants state: "On June 5, 2019, Plaintiffs served an Offer of
12 Judgment in the amount of \$1,000,000. Defendants did not accept the Offer of Judgment in light of
13 their expert support."
14

15 In essence, Defendants are claiming that because they had experts who disputed Plaintiffs'
16 case, they are free to reject Offers of Judgment and proceed to trial without any consequence for their
17 decision, in violation of the purpose and intent of NRCP 68. Contrary to Defendants' assertion, having
18 an expert dispute Plaintiffs' case is not the applicable standard in determining the penalties for a
19 Rejection of an Offer of Judgment under NRCP 68. If that was the case, there would never be an award
20 of attorney's fees in any medical malpractice case that goes to trial, as any malpractice trial necessarily
21 involves expert opinions, which can be expected to be divergent from the Plaintiffs' expert opinions.
22

23 In Defendants' view, to avoid the penalty under NRCP 68 for rejecting the Offer of Judgment,
24 it is sufficient to obtain an expert opinion that disputes Plaintiffs' expert opinions. This is apparently
25 the Defendants' position, no matter how reasonable the Plaintiffs' Offer of Judgment was. In fact, as
26 discussed in detail below, the Plaintiffs' Offer of Judgment was eminently reasonable, and it was the
27 Defendants who persisted in taking the case to trial and verdict. Therefore, Defendants are left to
28

1 accept the consequences of the verdict, which include the NRCP 68 penalties for rejecting the June 5,
2 2019 Offer of Judgment.

3 **B. THE *BEATTIE/YAMAHA* FACTORS DICTATE THAT**
4 **PLAINTIFFS' BE AWARDED ATTORNEY'S FEES.**

5 A consideration of the factors set forth in *Beattie v. Thomas*, 99 Nev. 579, P.2d 268, 274 (1983)
6 and *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 955 P.2d 661 (1998) is required in an award
7 of attorney's fees based upon an Offer of Judgment.

8 The factors to be considered are as follows:

- 9
- 10 1. Whether or not the plaintiff's claim was brought in good faith;
 - 11 2. Whether the [offeror's] offer of judgment was reasonable and in good faith in
 - 12 both its timing and amount;
 - 13 3. Whether the [offeror's] decision to reject the offer and proceed to trial was
 - 14 grossly unreasonable or in bad faith; and
 - 15 4. Whether the fees sought by the offeror are reasonable and justified in amount.

16 Plaintiffs clearly satisfy the *Beattie/Yamaha* factors, justifying an award of attorney's fees and
17 costs. There is no dispute that the Plaintiffs' claims were brought in good faith. Plaintiffs obtained a
18 verdict of \$13,640,479.94, which was \$12,640,479.94 more than Plaintiffs' \$1,000,000 Offer of
19 Judgment. As the Plaintiffs were the prevailing party, the first factor to be considered is whether or
20 not the Defendants' defenses were litigated in good faith. *Yamaha Motor Co., U.S.A. v. Arnoult*, 114
21 Nev. 233, 252, 955 P.2d 661, 673 (1998).

22 **i) Defendants' Defenses Were Not Brought in Good Faith.**

23 Defendants' defenses, and refusal to pay the Offer of Judgment, were not brought in good faith
24 based on the facts of this case. It is respectfully submitted that the Defendants' defense were not
25 litigated in good faith. It was known by Defendants before the trial commenced and at the time of the
26 41A settlement conference that there were serious issues with the credibility of counsel and Defendant
27 RIVES concerning the *Center v. Rives* case. In fact, before the trial commenced, there were pending
28 NRCP 37 motions before this Court. Despite the demonstrated misconduct by Defendants in discovery

1 and depositions, Defendants still elected to risk going to trial. In fact, it was a possibility that
2 terminating sanctions may issue, based on the aforementioned conduct by Defendants. Moreover,
3 given Defendants' (and Counsel's) knowledge of this misconduct, they were also obliged to consider
4 and calculate the impact of the discovery and likely consequences of their misconduct.
5

6 Further, there were serious problems with Defendants' expert opinions. The defense liability
7 expert, Dr. Brian Juell, opined at trial that the use of a LigaSure was relatively contraindicated and
8 that it should not be used in the setting of the subject surgery if there was any other alternative, such
9 as cold scissors. Then, it was established that Defendant RIVES actually had cold scissors, but used
10 the LigaSure anyway. Certainly, the defense should have been aware of this weakness in their own
11 case when they rejected Plaintiffs' offer.
12

13 Defendants also tried to put forth a defense that the sepsis of Plaintiff TITINA FARRIS
14 originated from "pulmonary aspiration syndrome." This defense was put forward despite no other
15 physician, treating TITINA FARRIS during her hospitalization, ever diagnosing her with this
16 condition.
17

18 This spurious defense was clearly attempted to misdirect attention from Defendant RIVES'
19 failure to treat the sepsis originating from the holes in the bowel that he caused and failed to adequately
20 repair. Dr. Juell still tried to put forth this theory before the jury even though it was shown at trial that
21 he opined in his expert reports that TITINA FARRIS had pulmonary aspiration syndrome without first
22 reviewing the relevant films.
23

24 Defendants also claim that there was no inkling that the Center case would become part of the
25 Farris case. However, they certainly knew that there were outright misrepresentations in deposition
26 testimony and discovery responses. The misconduct was certainly apparent at the 41A conference on
27 October 2, 2019. Moreover, Defendants cannot claim the rejection of the offer was reasonable due to
28

1 their lack of knowledge that Center could be an issue at trial, when it was Defendants' own misconduct
2 that ultimately required Center to become an issue at trial.

3 The jury rejected Defendants purported defenses and returned a sizable verdict against
4 Defendants. Defendants had multiple opportunities to settle this case for a reasonable amount but
5 chose to expose themselves to the risk of trial with no reasonable basis for doing so. Defendants were
6 unreasonable throughout the process and it is respectfully submitted that this warrants an award of
7 attorney's fees.
8

9 **ii) Plaintiffs' Offer of Judgment Was Reasonable and Was in Good**
10 **Faith in Time and Amount, and Defendants' Rejection of the Offer**
11 **Was Grossly Unreasonable.**

12 As to the second and third factors, Plaintiffs' Offer of Judgment was reasonable and was in
13 good faith in time and amount, and Defendants' decision to reject the offer was grossly unreasonable.
14 Plaintiffs served their offer of judgment on June 5, 2019. As stated above, expert reports were
15 exchanged, key witnesses were deposed and medical records were exchanged, all supporting the
16 proposition that Defendants were well aware that the offer was fair, reasonable and supported by the
17 injuries, related medical specials and pain and suffering.

18 The amount of Plaintiffs' Offer of Judgment, which was less than Plaintiffs' disclosed past
19 medical expenses, was also reasonable and in good faith. Defendants could have settled this case,
20 prevented the prolonged litigation, and prevented being subject to a large jury verdict. Defendants
21 cannot demonstrate a reasonable basis for rejecting the Offer of Judgment, particularly with the
22 amount of the verdict.
23

24 **iii) The Amount of Attorney's Fees Requested Are Reasonable and**
25 **Justified.**

26 The amount of attorney's fees requested by Plaintiffs are reasonable and justified in amount
27 based on the outcome at trial. Plaintiff contracted to pay an attorney's fees in the amount of 40% of
28

1 the gross recovery. That amount totals \$2,547,122.21 (40% of \$6,367,805.52). Even if attorney's fees
2 are calculated under NRS 7.095 on \$6,367,805.52, that amount is \$1,026,835.83.

3 As Plaintiffs noted in their initial Motion, in *O'Connell*, the Court noted the propriety of
4 awarding attorney's fees even on contingency-contracted attorney/clients:

5 Contingency Fees are Properly Awarded
6

7 The Nevada Supreme Court has engaged in an extensive analysis recommending the merits of
8 awarding contingency fees:

9 Courts have recognized an additional reason that supports awarding
10 attorney fees—the risks attorneys take by offering or
11 accepting contingency fee agreements. *See King v. Fox*, 7 N.Y.3d 181, 818
12 N.Y.S.2d 833, 851 N.E.2d 1184, 1191-92 (2006) (“In entering
13 into contingent fee agreements, attorneys risk their time and resources in
14 endeavors that may ultimately be fruitless. Moreover, it is well settled that
15 the client may terminate [the contingency fee agreement] at any time,
16 leaving the lawyer no cause of action for breach of contract[,] only quantum
17 meruit,” (first alteration in original) (citation and internal quotation marks
18 omitted)); *see also Schefke v. Reliable Collection Agency, Ltd.*, 96 Hawai'i
19 408, 32 P.3d 52, 96-97 (2001) (concluding that fee awards can be justified
20 based on the risks associated with accepting a case on
21 a contingency fee basis). Courts should also account for the greater risk of
22 nonpayment for attorneys who take contingency fee cases, in comparison to
23 attorneys who bill and are paid on an hourly basis, as they normally obtain
24 assurances they will receive payment. *See Rendine v. Pantzer*, 141 N.J.
25 292, 661 A.2d 1202, 1228 (1995) (recognizing that rewarding a lawyer for
26 taking a case for which compensation is contingent on the outcome is based
27 in part on providing a monetary incentive for taking such cases because an
28 hourly fee is more attractive unless such an extra incentive exists).

22 Additionally, contingency fees allow those who cannot afford an attorney
23 who bills at an hourly rate to secure legal representation. *See King*, 818
24 N.Y.S.2d 833, 851 N.E.2d at 1191 (“Contingent fee agreements between
25 attorneys and their clients ... generally allow a client without financial
26 means to obtain legal access to the civil justice system.”). Relatedly,
27 attorney fees are permissible in pro bono cases, where there are likewise no
28 billing statements. *See Miller v. Wilfong*, 121 Nev. 619, 622-23, 119 P.3d
727, 729-30 (2005) (discussing the public policy rationale in support of
awarding attorney fees to pro bono counsel and concluding that such awards
are proper); *672 *Black v. Brooks*, 285 Neb. 440, 827 N.W.2d 256, 265
(2013) (concluding that if organizations are not awarded for recovery of
statutory fees, they may decline to represent pro bono cases); *see, e.g., New
Jerseyans for a Death Penalty Moratorium v. N.J. Dep't of Corr.*, 370

1 N.J.Super. 11, 850 A.2d 530, 532 (2004) (explaining that when determining
2 a reasonable fee to award in a pro bono case, courts should consider whether
3 to increase the “fee to reflect the risk of nonpayment in all cases in which
4 the attorney’s compensation entirely or substantially is contingent on a
successful outcome”) (internal quotation marks omitted), *aff’d as modified*
by 185 N.J. 137, 883 A.2d 329 (2005).

5 *O’Connell v. Wynn Las Vegas, LLC*, 134 Nev. Adv. Op. 7, 429 P.3d 664,
6 671–72 (Nev. App. 2018).

7 The Court retains the right to determine a reasonable amount of attorney’s fees. *Shuette v.*
8 *Beazer Homes Holdings Corp.*, 121 Nev. 837, 864–865, 124 P.3d 530, 548–549 (2005), citing *Brunzell*
9 *v. Golden Gate Nat’l Bank*, 85 Nev. 345, 350, 455 P.2d 31, 33 (1969). In determining the reasonable
10 amount, the Court is to consider and weigh the *Brunzell* factors, which include the advocate’s
11 professional qualities, the nature of the litigation, the work performed and the result. See *Brunzell*,
12 *supra*.

13 **C. DEFENDANTS’ MISCONDUCT MERITS SANCTION.**

14
15 Defense Counsel spends four (4) pages of their Affidavit attempting to minimize their
16 sanctionable conduct during discovery and trial. Counsel has demonstrated no remorse or even
17 recognition of their repeated violations of statute and this Court’s order in both discovery, and again
18 in trial.

19
20 Defendants argue that this Court is limited by NRS 7.095 and cannot order sanctions for the
21 time and costs expended by Plaintiffs’ Counsel in fighting against Defendants’ wanton and
22 sanctionable conduct. Yet, should this Court consider NRS 7.095 as controlling in this matter, despite
23 the demonstrated waiver, this statute clearly only refers to awards in connection with a medical
24 malpractice practitioner’s professional negligence. The fee amount sought, in connection with Defense
25 Counsel and Defendants’ repeated violations of this Court’s rules and Orders is disconnected from
26 Defendants’ professional negligence.

27
28 ///

1 If the cap applied to willful misconduct by parties—there is literally no sanction that the Court
2 could level against a party. If Defendants’ erroneous interpretation applied, there would be no sanction
3 to deter an obviously-negligent healthcare practitioner from participating in the most egregious forms
4 of discovery abuse, spoliation, perjury, and any other unfair and improper trial conduct, as the Court
5 cannot sanction the party any more than the capped amount. And, perhaps this erroneous
6 understanding of the law best explains Defendants’ abuses in this case.

8 As stated in *Hawkins v. Eighth Judicial Dist. Court of Nev.*, 407 P.3d 766 (Nev., 2017), the
9 district court has authority to impose sanctions through NRCP 37 and its inherent equitable powers,
10 including “sanctions for discovery and other litigation abuses not specifically proscribed by statute.”
11 *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). Discovery sanctions
12 can include an order to pay “reasonable expenses incurred ... including reasonable attorney’s fees.”
13 NRCP 37(c)(2). Based upon the conduct which this Court witnessed personally, it is respectfully
14 submitted that sanctions are merited. Plaintiffs request that this Court award a separate sanction of
15 \$109,500 (\$96,000 + \$13,500) for Defendants repeated violations in this matter, which prolonged this
16 case unnecessarily. This sanction is separate and aside from the damages award previously ordered in
17 this matter and is unfettered by NRS 7.095. In the alternative, Plaintiffs request that this Court simply
18 grant the appropriate attorney’s fee based on the contingency fee agreement under Rule 68, but find
19 that this full and fair attorney’s fee would have been independently granted, in the alternative, due to
20 Defendants’ misconduct.

23 **D. INTELLIGENT WAIVER WAIVES ALL STATUTORY CAPS—**
24 **EVEN NRS 7.095.**

25 Defendants’ sole argument as to why intelligent waiver does not abolish the caps in this case
26 are that the cases cited by Plaintiffs abolished caps in other “types” of cases. Defendants have failed
27 to demonstrate any example to support their position that a Medical Malpractice cap deserves more
28 protection than the caps overridden and analyzed in *Udevco Inc v. Wagner*, 100 Nev. 185 (1984);

1 *McKeeman v. General Am. Life Ins. Co.*, 111 Nev. 1042 (1995); *Mubarek v. State*, 2017 Nev.App.
2 Unpub. LEXIS 834 (2017); *Building & Constr. Trades v. Public Works*, 108 21 Nev. 605 (1992); and
3 *Mahban v. MGM Grand Hotels*, 100 Nev. 593 (1984).

4 As noted in Plaintiffs' initial Motion, Plaintiffs were apprised of the limits of NRS 7.095 and
5 they knowingly waived their right to such limitations and agreed to a 40% contingency fee. Plaintiffs
6 were not pressured into accepting the condition, as they were told that they could obtain other counsel
7 who may not have the same contractual contingency agreement. Yet, Plaintiffs still signed with
8 Plaintiffs' Counsel. As such, NRS 7.095 was "knowingly, voluntarily, and intelligently" waived.

9
10 As NRS 7.095 was explicitly waived by Plaintiffs in this matter, Plaintiffs' agreement with
11 Counsel to pay a 40% contingency fee is properly applied. Thus, Plaintiffs are properly awarded
12 \$2,547,122.21 in attorney's fees in this matter (40% of \$6,367,805.52).

13
14 **E. PURSUANT TO NRS 18.020, THE AWARDING OF COSTS IS**
15 **MANDATORY TO THE PREVAILING PARTY.**

16 NRS 18.005(5) defines costs in relevant part as "[r]easonable fees of not more than five expert
17 witnesses in an amount of not more than \$1,500 for each witness, unless the court allows a larger fee
18 after determining that the circumstances surrounding the expert's testimony were of such necessity as
19 to require the larger fee." In this case, the experts called by the Plaintiffs were required to prove the
20 elements of Plaintiffs' case. The requested fees are justified and reasonable based upon the experts'
21 roles in the litigation. It was required to prove deviation from the standard of care and proximate cause
22 (Dr. Hurwitz and Dr. Stein). Plaintiffs proved damages as well as necessity of future and past treatment
23 (Drs. Hurwitz, Dr. Barchuk). Plaintiffs also proved the costs of the necessary treatment (Dawn Cook,
24 R.N.) as well as the present value of the costs (Terence Clauretie, Ph.D.).

25
26 These experts were necessary to prove liability and damages in this complex medical
27 malpractice case and it is requested that this Court grant expert fees in excess of the statutory amount
28

1 as these experts were required and essential to proving Plaintiffs' case. *See, Capanna v. Orth*, 432
2 P.3d 726 (Nev. 2018).

3
4 **III.**

5 **CONCLUSION**

6 For the foregoing reasons, Plaintiffs respectfully requests that this Court GRANT Plaintiffs'
7 Motion for Fees and Costs.

8 DATED this 31st day of December, 2019.

9 **BIGHORN LAW**

10 By: /s/ Kimball Jones

11 **KIMBALL JONES, ESQ.**

12 Nevada Bar.: 12982

13 **JACOB G. LEAVITT, ESQ.**

14 Nevada Bar No.: 12608

15 716 S. Jones Blvd.

16 Las Vegas, Nevada 89107

17 **GEORGE F. HAND, ESQ.**

18 Nevada Bar No.: 8483

19 **HAND & SULLIVAN, LLC**

20 3442 N. Buffalo Drive

21 Las Vegas, Nevada 89129

22 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of **BIGHORN LAW**, and on the 31st day of December, 2019, I served the foregoing **REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR FEES AND COSTS** as follows:

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

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

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

EXHIBIT “1”

OFFER

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Facsimile: (702) 656-9820

Attorneys for Plaintiff
TITINA FARRIS and PATRICK FARRIS

DISTRICT COURT

CLARK COUNTY, STATE OF 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

**PLAINTIFFS' JOINT UNAPPORTIONED OFFER OF JUDGMENT TO DEFENDANT
BARRY RIVES, M.D. and DEFENDANT LAPAROSCOPIC SURGERY OF NEVADA LLC**

TO: BARRY RIVES, M.D., Defendant
LAPAROSCOPIC SURGERY OF NEVADA LLC, Defendant

TO: SCHUERING ZIMMERMAN & DOYLE, LLP, Attorneys for Defendants
MANDELBAUM ELLERTON & ASSOCIATES, Attorneys for Defendants

PLEASE TAKE NOTICE that pursuant to the provisions of N.R.C.P. 68, Plaintiffs TITINA FARRIS and PATRICK FARRIS, hereby offer to accept judgment against Defendant, BARRY RIVES, M.D. and Defendant LAPAROSCOPIC SURGERY OF NEVADA LLC, jointly, in this action in the total sum of ONE MILLION DOLLARS (\$1,000,000.00), inclusive of fees, costs and pre-judgment interest.

///

///

1 This offer is available for acceptance for the time period provided in NRCP 68. This offer
2 is made for the purposes specified in N.R.C.P. 68 as a compromise offer of settlement only as
3 against Defendant, BARRY RIVES, M.D. and Defendant LAPAROSCOPIC SURGERY OF
4 NEVADA LLC, jointly, and shall not be deemed an admission or introduced into evidence at the
5 time of trial of this action. This offer is made in accordance with the provisions of N.R.C.P 68 as
6 (A) there is a single common theory of liability against all the offeree defendants, such as where the
7 liability of some is entirely derivative of the others or where the liability of all is derivative of
8 common acts by another; and (B) the same entity, person, or group is authorized to decide whether
9 to settle the claims against the offerees.

10
11 DATED: June 5, 2019.

HAND & SULLIVAN, LLC

12
13 By: 

14 George F. Hand, Esq.
15 Nevada State Bar No. 8483
16 3442 North Buffalo Drive
17 Las Vegas, Nevada 89129
18 Attorney for Plaintiffs
19 TITINA FARRIS and PATRICK FARRIS
20
21
22
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CERTIFICATE OF SERVICE

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

On June 5, 2019, I served the within document(s) described as:

**PLAINTIFFS' JOINT UNAPPORTIONED OFFER OF JUDGMENT TO
DEFENDANT BARRY RIVES, M.D. and DEFENDANT LAPAROSCOPIC
SURGERY OF NEVADA LLC**

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

- ☐ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed to Defendant's last-known address. I placed such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Las Vegas, Nevada. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☒ (BY ELECTRONIC SERVICE) By e-serving through Odyssey, pursuant to Administrative Order 14-2 mandatory electronic service, a true file stamped copy of the foregoing document(s) to the last known email address listed below of each Defendant which Plaintiff knows to be a valid email address for each Defendant.

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

Anna Grigoryan
(Type or print name)

(Signature)

1 **TITINA FARRIS and PATRICK FARRIS**

2 v.

3 **BARRY RIVES, M.D., LAPAROSCOPIC SURGERY OF NEVADA LLC**

4 Case No: A-16-739464-C

5 **SERVICE LIST**

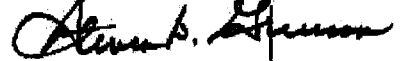
6 Thomas J. Doyle
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26 *ATTORNEYS FOR*
27 *BARRY RIVES, M.D., LAPAROSCOPIC*
28 *SURGERY OF NEVADA LLC*

EXHIBIT “2”



JGJV

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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
November 12, 2019, for a total of 1,183 days = \$218.43 per day) pursuant to NRS
25 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
26 by the Commissioner of Financial Institutions, plus 2 percent. The rate is to be
adjusted accordingly on each January 1 and July 1 thereafter until the judgment is
satisfied;

27 ///

28 ///

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

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

4 Principal \$ 6,076,479.94

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

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

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

12 SO ORDERED this 12 day of November, 2019.

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

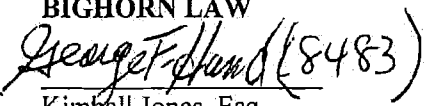
17 Respectfully Submitted by:

Approved as to form and content:

18 Dated this 11th day of November, 2019.

Dated this 11th day of November, 2019.

19
 20 **BIGHORN LAW**

21 By:  (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

SCHUERING ZIMMERMAN & DOYLE, LLP

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

EXHIBIT “3”

1 **[OOJ]**

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18 Email: filing@memlaw.net

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

22 DISTRICT COURT

23 CLARK COUNTY, NEVADA

24	TITINA FARRIS and PATRICK FARRIS,	)	CASE NO. A-16-739464-C
25		)	DEPT. NO. 31
26	Plaintiffs,)	
		)	DEFENDANTS' OFFER PURSUANT TO
	vs.	)	NRCP 68
)	
	BARRY RIVES, M.D.; LAPAROSCOPIC)	
	SURGERY OF NEVADA, LLC, et al.,)	
)	
	Defendants.)	

27
28 PLEASE TAKE NOTICE that, pursuant to NRCP 68, Defendants, BARRY RIVES, M.D.
29 and LAPAROSCOPIC SURGERY OF NEVADA, LLC ("Defendants"), hereby offer to Plaintiffs,
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1 action. (*See, Busick v. Trainor*, No. 72966, 2019 Nev. Unpub. LEXIS 378, at *6-7 (Mar. 28,
2 2019).)

3 This Offer is made for the purposes specified in NRCP 68 and is not to be construed
4 either as an admission that the Defendants are liable in this action, or that the Plaintiffs
5 have suffered any damages. Further, Defendants waive no defense by virtue of this Offer.

6 This Offer shall remain open for ten (10) days from the date of service of this
7 document and is conditioned on dismissal with prejudice as opposed to entry of
8 judgment, if accepted.

9 Dated: September 20, 2019

10 **SCHUERING ZIMMERMAN & DOYLE, LLP**

11
12 By _____

13 CHAD C. COUCHOT

14 Nevada Bar No. 12946

15 400 University Avenue

16 Sacramento, CA 95825-6502

17 (916) 567-0400

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

Pursuant to NRCP 5(b), I certify that on the 20th day of September, 2019, service of a true and correct copy of the foregoing:

DEFENDANTS' OFFER PURSUANT TO NRCP 68

was served as indicated below:

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

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

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


Plaintiffs

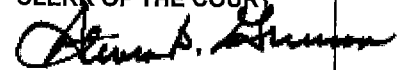
702/656-5814
Fax: 702/656-9820
hsadmin@handsullivan.com

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

Plaintiffs

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


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



1 [ANOA]
THOMAS J. DOYLE
2 Nevada Bar No. 1120
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7 TARA CLARK NEWBERRY
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10 Email: tnewberry@cnlawlv.com

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

DISTRICT COURT

CLARK COUNTY, NEVADA

16	TITINA FARRIS and PATRICK FARRIS,	)	CASE NO. A-16-739464-C
	Plaintiffs,	)	DEPT. NO. 31
17)	
18	vs.	)	SUPPLEMENTAL AND/OR AMENDED
		)	NOTICE OF APPEAL
19	BARRY RIVES, M.D.; LAPAROSCOPIC)	
	SURGERY OF NEVADA, LLC, et al.,)	
20	Defendants.)	
21)	

22
23 NOTICE IS HEREBY GIVEN that Defendants Barry J. Rives, M.D. and Laparoscopic
24 Surgery of Nevada, LLC appeal to the Nevada Supreme Court from the Judgment on
25 Verdict, entered on November 14, 2019 (Exhibit 1), from the Order on Plaintiffs' Motion
26 for Fees and Costs and Defendants' Motion to Retax and Settle Plaintiffs' Costs, entered

1 on March 30, 2020 (Exhibit 2), and from all other orders made final and appealable by the
2 foregoing.

3 This notice is intended to supplement and/or amend the appeal already on file in
4 this case, presently docketed in the Nevada Supreme Court as No. 80271.

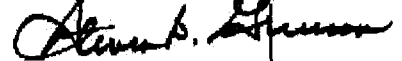
5 Dated: April 13, 2020

6 **SCHUERING ZIMMERMAN & DOYLE, LLP**

7
8 By /s/ Thomas J. Doyle

9 THOMAS J. DOYLE
10 Nevada Bar No. 1120
11 400 University Avenue
12 Sacramento, CA 95825-6502
13 (916) 567-0400
14 Attorneys for Defendants BARRY RIVES,
15 M.D. and LAPAROSCOPIC SURGERY OF
16 NEVADA, LLC
17
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EXHIBIT 1


JGJV

KIMBALL JONES, ESQ.

Nevada Bar No.: 12982

JACOB G. LEAVITT, ESQ.

Nevada Bar No. 12608

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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;

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

///

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

4 Principal \$ 6,076,479.94

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

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

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

12 SO ORDERED this 12 day of November, 2019.

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

17 Respectfully Submitted by:

Approved as to form and content:

18 Dated this 11th day of November, 2019.

Dated this 11th day of November, 2019.

19
 20 BIGHORN LAW

SCHUERER ZIMMERMAN & DOYLE, LLP

21 By:  (8483)

By:

22 Kimball Jones, Esq.
 23 Nevada Bar No. 12982
 716 S. Jones Blvd
 Las Vegas, NV 89107

/s/ Thomas J. Doyle, Esq.

24 Thomas J. Doyle, Esq.
 25 Nevada Bar No. 1120
 26 Aimee Clark Newberry, Esq.
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 Attorneys for Defendants
 Barry J. Rives, M.D.;
 Laparoscopic Surgery of Nevada, LLC

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

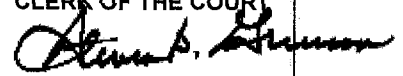
EXHIBIT 2

Electronically Filed

3/30/2020 7:45 AM

Steven D. Grierson

CLERK OF THE COURT



1 **ORDR**
 2 KIMBALL JONES, ESQ.
 3 Nevada Bar No. 12982
 4 JACOB G. LEAVITT, ESQ.
 5 Nevada Bar No. 12608
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 18 Phone: (702) 656-5814
 19 Email: Ghand@HandSullivan.com

20 *Attorneys for Plaintiffs*

21
 22 **DISTRICT COURT**

23 **CLARK COUNTY, NEVADA**

24
 25 TITINA FARRIS and PATRICK FARRIS,
 26
 27 Plaintiffs,
 28
 29 vs.

Case No.: A-16-739464-C

Dept. No.: 31

30 BARRY RIVES, M.D.; LAPAROSCOPIC
 31 SURGERY OF NEVADA LLC; DOES I-V,
 32 inclusive; and ROE CORPORATIONS I-V,
 33 inclusive,
 34
 35 Defendants.

**ORDER ON PLAINTIFFS' MOTION
 FOR FEES AND COSTS AND
 DEFENDANTS' MOTION TO RE-
 TAX AND SETTLE PLAINTIFFS'
 COSTS**

36 Plaintiffs' Motion for Fees and Costs having come on for hearing on the 7th day of January,
 37 2020, at 10:00 a.m., KIMBALL JONES, ESQ., with the Law Offices of **BIGHORN LAW**, and
 38 GEORGE F. HAND, ESQ. with the Law Offices of **HAND & SULLIVAN, LLC**, appearing on
 39 behalf of Plaintiffs, and THOMAS J. DOYLE, ESQ., with the Law Offices of **SCHUERING**
 40 **ZIMMERMAN & DOYLE, LLP**, appearing on behalf of Defendants, and Defendants' Motion to

Farris v. Rives, A-16-739464-C

Re-Tax and Settle Plaintiffs' Costs having come on for hearing on the 7th day of January, 2020, at 10:00 a.m. and February 11, 2020 at 9:30 a.m. with the Honorable Court having reviewed the pleadings and papers on file herein and with hearing the arguments of counsel:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs' Request for Attorneys' Fees

The Court finds that attorneys' fees are properly awarded to Plaintiffs in this matter for the reasons outlined in Plaintiffs' Motion, Reply, and supporting affidavits.

Under *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983), *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 955 P.2d 661 (1998), and *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969), the Court considers the following factors in making an award of attorney fees to Plaintiffs based upon an offer of judgment: According to *Beattie*, the Court is required to consider: (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount. *Id.*, 99 Nev. at 588–589, 668 P.2d at 274.

Since Plaintiffs are the prevailing offerors, however, the analysis of the *Beattie* factors is reversed, such that the Court considers: (1) whether the defendant's claim or defense was brought in good faith; (2) whether the plaintiff's offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the defendant's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount. See *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252, 955 P.2d 661, 673 (1998).

With regard to the reasonableness of requested attorneys' fees, the Court considers the *Brunzell* factors: (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and

Farris v. Rives, A-16-739464-C

character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer; the skill, time and attention given to the work; and (4) the result: whether the attorney was successful and what benefits were derived. *See Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). If the record reflects that the court properly considered these factors, there is no abuse of discretion. *See Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428-429 (2001); *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983). Further, the Court retains the right to determine a reasonable amount of attorneys' fees. *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864-865, 124 P.3d 530, 548-549 (2005).

Beattie/Yahama Factors**1. Whether the Defendants' Defenses Were Brought in Good Faith.**

Defendants' defenses, and refusal to pay the Offer of Judgment, were not brought in good faith based on the facts of this case. It was known by Defendants before the trial commenced and at the time of the NRS 41A.081 settlement conference that there were serious issues with the credibility of counsel and Defendant Rives concerning the *Center v. Rives* case. In fact, before the trial commenced, there were pending NRCP 37 motions before this Court. Despite the demonstrated misconduct by Defendants in discovery and depositions, Defendants still elected to risk going to trial. In fact, ^{including} ~~it was a possibility that~~ ^{there was a pending issue of} terminating sanctions ~~may issue~~ ^{positions taken in court and the issue} based on the aforementioned conduct by Defendants. Moreover, given Defendants' (and Counsel's) knowledge of this misconduct, ^{as provided through evidence to the court, Defendants could} ~~they were also obliged to~~ consider and calculate the impact of the discovery and likely consequences of their misconduct.

Further, there were serious problems with Defendants' expert opinions. The defense liability expert, Dr. Brian Juell, opined at trial that the use of a LigaSure was relatively contraindicated and that it should not be used in the setting of the subject surgery if there was any other alternative, such as cold scissors. Then, it was established that Defendant Rives actually had cold scissors, but used the LigaSure anyway. The defense should have been aware of this weakness in their own case when they rejected Plaintiffs' offer.

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Defendants also tried to put forth a defense that the sepsis of Plaintiff Titina Farris originated from "pulmonary aspiration syndrome." This defense was put forward, despite no other physician, treating Titina Farris during her hospitalization, ever diagnosing her with this condition. This ~~specific~~ defense was clearly attempted to misdirect attention from Defendant Rives' failure to treat the sepsis originating from the holes in the bowel that he caused and failed to adequately repair. Dr. Juell still tried to put forth this theory before the jury, even though it was shown at trial that he opined in his expert reports ^{differently including} that Titina Farris had pulmonary aspiration syndrome without first reviewing the relevant films. Thus, this first *Beattie* factor weighs in Plaintiffs' favor.

2. Whether the Plaintiffs' Offer of Judgment Was Reasonable and in Good Faith in Both Its Timing and Amount.

Plaintiffs' Offer of Judgment was reasonable and was in good faith in timing and amount, and Defendants' decision to reject the offer was grossly unreasonable. Plaintiffs served their offer of judgment for \$1,000,000 on June 5, 2019. At the time, expert reports had been exchanged, key witnesses were deposed, and medical records had been exchanged. Thus, Defendants were aware of all the supporting information for Plaintiffs' Offer of Judgment, including Plaintiffs' injuries, related medical specials, and pain and suffering. The amount of Plaintiffs' Offer of Judgment was less than Plaintiffs' disclosed past medical expenses ^{which was an additional factor showing} and was, therefore, reasonable and in good faith. This second *Beattie* factor weighs in Plaintiffs' favor.

3. Whether the Defendants' Decision to Reject the Offer and Proceed to Trial Was Grossly Unreasonable or in Bad Faith.

In light of the severity of Plaintiffs' injuries and damages, as well as a very strong case of liability, presented at the time of their Offer of Judgment, it was grossly unreasonable and in bad faith for Defendants to reject the \$1,000,000 offer and proceed to trial. At the time of Plaintiffs' Offer of Judgment, they had already disclosed over \$4,000,000 in special damages. Defendants ~~simply undervalued this case, as evidenced by their zero offer of judgment.~~ The Court weighs this third *Beattie* factor in favor of Plaintiffs, despite Defendants' argument that its experts had differing opinions.

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4. Whether the Fees Sought by the Offeror are Reasonable and Justified in Amount.

The amount of attorney's fees requested by Plaintiffs are reasonable and justified in amount based on the outcome at trial. Plaintiffs contracted to pay an attorney's fees in the amount of 40% of the gross recovery. That amount totals \$2,547,122.21 (40% of \$6,367,805.52). Even if attorneys' fees are calculated under NRS 7.095 on \$6,367,805.52, that amount is \$1,026,835.83. Although the Court of Appeals has approved a determination of attorney fees based upon a contingency fee agreement, this Court determines that *Give the Agent provided, the* NRS 7.095 is controlling in this matter. See *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. Adv. Op. 7, 429 P.3d 664, 671-672 (Nev. App. 2018). Thus, the Court awards Plaintiffs the sum of \$821,468.66 in attorney fees, as further elaborated based upon the *Brunzell* factors.

***Brunzell* Factors**

1. Qualities of the Advocates.

Mr. Jones is a managing partner with the Law Offices of BIGHORN LAW. He graduated Magna Cum Laude from Brigham Young University-Idaho in 2005 and graduated as the top student in economics that year. He graduated from Brigham Young University in 2008 and was awarded a Dean's Scholarship for academic merit all three years of law school. Mr. Jones was first admitted to practice law in Nevada in 2013, scoring in the 98th percentile nationally on the MBE. He has also passed the Idaho Bar Exam. Mr. Jones has prevailed in more than 95 percent of the arbitrations and trials he has litigated. Further, he has recovered more than \$30,000,000 for clients through judgments and settlements in the last six years. *while fees were provided pursuant to NRS 7.095* Mr. Jones' usual and customary fee on an hourly basis is \$500.00 an hour, which is at or below average for attorneys of his skill and experience who handle similar matters in Clark County, Nevada. *He asserted that his rate is below*

Likewise, Mr. Leavitt is a partner with Bighorn Law. He has been licensed to practice law since 2012. *He asserted that his rate is below* and has a billing rate of \$500.00 per hour, a rate at or below average for attorneys of his skill and experience who handle similar matters in Clark County, Nevada. Mr. Leavitt graduated Cum Laude from the University of Las Vegas, Nevada in 2004. He attended Cooley Law School

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1
2 on scholarship and graduated in the top 13% of his class. Mr. Leavitt completed an externship
3 under retired Nevada Supreme Court Justice Michael Cherry and is admitted to practice in the
4 Ninth Circuit Court of Appeals. Mr. Leavitt has conducted numerous trials and administrative
5 proceedings.

6 Mr. Hand is a partner of Hand & Sullivan, LLC. He is licensed to practice law in Nevada
7 and New York. He has been licensed to practice law in Nevada for sixteen years. Prior to that, he
8 was licensed as an attorney in New York where he practiced in areas of personal injury, medical
9 malpractice, and insurance defense litigation. He has conducted more than 125 jury and bench
10 trials. Mr. Hand also served as a Deputy County Attorney for Nassau County, New York. Mr.
11 Hand's billing rate ^{is} of \$500.00 per hour ^{and he too asserted that it is} is at or below average for attorneys of his skill and
12 experience who handle similar matters in Clark County, Nevada.

13 Additionally, the Court found this factor to be considered by the Court and was not
14 contested by Defendants in written opposition or in argument.

15 Therefore, the qualities of the advocates who performed work in this matter are proven.
16 Further, ^{give the was no objection to the rate and the award was pointed} the market rate of \$500.00 per hour ^{could be} is appropriate under *Marrocco v. Hill*, 291 F.R.D. 586
17 (D. Nev. 2013), for this type of case. NAS 71055

18 **2. Character of the Work to be Done.**

19 Plaintiffs' Counsel was engaged in proving a complicated and complex Professional
20 Negligence matter of medical malpractice, an area of law few practitioners of law engage in due to
21 the complexity and stringent laws. In this case the legal work required retaining and questioning
22 numerous experts and dealing with nuanced medical topics which not only increased the actual cost
23 of litigating, but also consumed many hours of research and preparation. The nature of the work
24 was time-consuming, complicated and difficult due to the nature of the area of law and medicine
25 combined.

26 **3. Work Actually Performed by the Lawyer.**

27 Plaintiffs' Counsel engaged in multitudinous depositions, written discovery, and this work
28 culminated in a three-week trial on the matter. Plaintiffs' Counsel worked extensively for the

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entirety of trial and demonstrated substantial skill in the work performed. Coupled with the second factor, the character of the work, the work performed included long hours of trial and the long hours of preparation during the hours of the day while not in trial. Not only did the work require preparation for the substance of the trial, yet the numerous issues Defendants raised requiring many hearings outside the presence of the jury.

Albeit there are three attorneys on this matter, the substantive matter of the trial coupled with the many collateral issues required the presence and work of all in order to effectively try the case.

4. Result—whether the Attorney was Successful and what Benefits were Derived.

Plaintiffs were successful in their attempts before this Court. The jury returned a verdict of more than \$13 million, and the Court Awarded a Judgment on the Verdict in favor of Plaintiffs and against Defendants in the amount of \$6,367,805.52. Plaintiffs' Counsel was able to procure a highly favorable outcome for their clients.

Therefore, the Court found Attorneys' Fees in the amount of \$821,468.66 are properly granted to Plaintiffs in this matter, pursuant to *Brunzell, Beattie, O'Connell*, NRCP 68, and NRS 7.095.

It is undisputed that Plaintiffs served an offer of judgment for \$1,000,000 under NRCP 68 and that Defendants chose to let that offer expire. The offer was made several months after expert witness disclosures. It is undisputed that at the time of the offer Plaintiffs had already disclosed more than \$4,000,000 in special damages. Moreover, Plaintiffs' experts had already outlined the breaches in the standard of care that the jury ultimately agreed were committed by Defendants. Ultimately, the Court finds that Defendants' decision to reject the offer was unreasonable. Under NRCP 68, attorney fees are properly awarded for Plaintiffs and against Defendants.

NRCP 68 (f) states: Penalties for Rejection of Offer

(1) In General. If the offeree rejects an offer and fails to obtain a more favorable judgment:

(A) the offeree cannot recover any costs, expenses, or attorney fees and may not recover interest for the period after the service of the offer and before the judgment; and

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(B) the offeree must pay the offeror's post-offer costs and expenses, including a reasonable sum to cover any expenses incurred by the offeror for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney fees, if any be allowed, actually incurred by the offeror from the time of the offer.

Plaintiffs served an Offer of Judgment on June 5, 2019. Judgment in the amount of \$6,367,805.52 was entered on November 14, 2019. Pursuant to NRCF 68(f)(1)(B) Defendants must pay applicable interest on the judgment from the time of the offer to the time of entry of the judgment in the amount of \$202,269.96 (interest calculated at 5.50% prime plus 2% for a total of 7.5% from the date of the Offer of Judgment, June 5, 2019 to Entry of Judgment on November 14, 2019, for a total of 162 days = \$1,248.58 per day) pursuant to NRS 17.130.

The Court then needs to analyze the attorney fees to be awarded. *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. Adv. Op. 7, 429 P. 3d 664 (Nev. App. 2018) demonstrates that attorney fees are appropriately awarded based on contingency fee agreements, which is the nature of the agreement between Plaintiffs and Counsel in this matter. Given the \$6,565,830.84 judgment in this matter, Plaintiffs' attorney fees would be approximately \$1,026,835.82 under the sliding scale of NRS 7.095. However, at the time of the offer of judgment in this matter, approximately twenty percent (20%) of the total attorney work had already been performed. As a result, the Court determined that the fee should be reduced by an additional 20% and that eighty percent (80%) of the projected contingent fee under the NRS 7.095 sliding scale, or \$821,468.66, should be awarded. The Court further analyzed whether this number was unreasonable, given the hours likely expended by Plaintiffs' attorneys in this case multiplied by their reasonable billing rates. The Court determined that \$821,468.66 was not unreasonable and was likely comparable to the amount that would be awarded had Plaintiffs' attorneys billed their time on an hourly basis. As NRS 7.095 already has a built-in reduction, and given the Court's decision to further reduce the fee to only the percentage of work done after the offer, no further reduction is warranted. Plaintiffs are awarded \$821,468.66 in attorney fees.

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Plaintiffs' Request for Additional Attorneys' Fees as a Sanction

The Court did find there was significant inappropriate conducted by Defendants and Defense Counsel. This misconduct was the basis of numerous hearings and was an ongoing problem during discovery and through the end of trial. The Court found this to be a substantive and compelling reason to consider striking Defendants' Answer and that the misconduct was certainly a proper basis to award substantial attorney fees to Plaintiffs and against Defendants. Sanctionable conduct in this case included, but is not limited to the following: (1) Defendants and their Counsel intentionally withholding evidence during discovery; (2) Defendants omitting relevant evidence that had been asked for regarding his medical malpractice history; (3) Defendant blurring out that Plaintiff's bills were paid through medical insurance to the jury; (4) Defendants' Counsel signing affidavits containing verifiably false information for procedural reasons prior to trial; (5) Defendants improperly filing numerous "offers of proof" after the close of evidence and without leave of the Court; and (6) Defendants violating Court orders during the course of trial on numerous occasions, including during the cross-examination of Dr. Michael Hurwitz. *See* NRCP 37; *Emerson v. Eighth Judicial Dist. Court*, 127 Nev. 672, 263 P.3d 224 (2011).

Nevertheless, the Court did not find it appropriate to award additional attorneys' fees above the \$821,468.66 already awarded. However, the Court did find that independent of *Brunzell, Beattie, O'Connell*, NRCP 68 and NRS 7.095, \$821,468.66 in attorney fees would be properly awarded to Plaintiffs as a sanction for inappropriate conduct by Defendants and Defense Counsel in this matter. Thus, the total award of \$821,468.66 in Attorneys' Fees is granted, with these two independent grounds supporting the Court's finding for this award: (1) the analysis under *Brunzell, Beattie, O'Connell*, NRCP 68 and NRS 7.095 and (2) the misconduct of Defendants and their counsel.

THEREFORE, IT IS ORDERED that Plaintiffs' Request for Attorneys' Fees is GRANTED in the amount of Eight Hundred Twenty-One Thousand Four Hundred Sixty-Eight Dollars and Sixty-Six Cents (\$821,468.66).

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IT IS FURTHER ORDERED that Plaintiffs' Request for Costs and Defendants' Motion to Re-Tax such Costs is CONTINUED to February 11, 2020 at 9:30 a.m., for Supplemental Pleadings to be filed.

IT IS FURTHER ORDERED that the Supplemental Briefing Schedule SET as follows: Plaintiffs' Supplemental Opposition due January 21, 2020 and Defendants' Supplemental Reply due February 3, 2020.

Plaintiffs' Costs and Defendants' Motion to Re-Tax and Settle Plaintiffs' Costs

On November 19, 2019, Plaintiffs filed a Verified Memorandum of Costs and Disbursements in the total amount of \$153,118.26. On November 22, 2019, Defendants filed a Motion to Re-Tax and Settle Plaintiffs' Costs. On January 21, 2020 Plaintiffs filed a Supplemental Verified Memorandum of Costs and Disbursements in the total amount of \$153,118.26. On January 21, 2020, Plaintiffs filed a Supplemental Opposition to Defendants' Motion to Re-Tax and Settle Plaintiffs' Costs. On February 3, 2020 Defendants filed a Supplemental Reply to Plaintiffs' Opposition to Defendants' Motion to Re-Tax and Settle Plaintiffs' Costs. The matter having come on for hearing on February 11, 2020 at 9:30 a.m., the Court makes the following Findings of Facts and Conclusions of Law:

NRS 18.005(5) states, "Reasonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee."

Plaintiffs' have submitted fees paid to experts as follows:

- | | |
|---|--------------|
| 1. Michael Hurwitz, M.D. (surgeon) | \$ 11,000.00 |
| 2. Justin Willer, M.D. (neurologist) | \$ 17,245.00 |
| 3. Alex Barchuck, M.D. (physical medicine
and rehabilitaton) | \$ 26,120.00 |
| 4. Dawn Cook, R.N. (life care planning) | \$ 23,960.03 |
| 5. Alan Stein, M.D. (infectious diseases) | \$ 19,710.00 |

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6. Daniel Feingold, M.D. (surgeon) \$ 2,000.00

7. Terence Clauretje, Ph.D. (economist) \$ 3,500.00

The Court has analyzed the factors in *Frazier v Drake*, 131 Nev. 632 (2015) and has determined that the circumstances surrounding certain of the expert's testimony were necessary to require larger fees than \$1,500.00 per expert. The Court is only considering the fees of experts Hurwitz, Willer, Barchuk, Cook, and Stein as NRS 18.005(5) limits recoverable expert fees to five experts. This was a medical malpractice case that took approximately three weeks to try. There were complex medical issues as to both the standard of care, proximate cause and damages that required medical expert review and testimony. Plaintiffs' experts Hurwitz, Willer, Barchuk, and Cook testified at trial. Plaintiffs' infectious disease expert Alan Stein, M.D. from New York was present in Las Vegas prepared to testify. Dr. Stein did not testify at the trial. The opinions of Plaintiffs' experts Hurwitz, Willer, Barchuk, Cook, and Stein aided the jury in deciding the case as each area of medical specialty in that each area of medical specialty was at issue during the trial. Plaintiffs' experts Hurwitz, Willer, Barchuk, Cook, and Stein were not repetitive of each other as they each addressed different medical issues and were of different specialties. The extent and nature of the work performed by the experts was of high quality. The various experts' education and training was significant and extensive. Experts Hurwitz, Willer, Barchuk, and Cook spent time preparing and testifying at trial. Experts Hurwitz, Willer, Barchuk, Cook, and Stein were also deposed in the case and prepared expert reports. The fees charged by these experts are similar to the experts in other malpractice cases in this venue. Dawn Cook was a local expert. Dr. Barchuk traveled from the Bay area. Dr. Willer and Dr. Stein traveled from the New York City area. Dr. Hurwitz traveled from Orange County, California. The fees charged by these experts are comparable to what a local expert would charge.

Pursuant to the factors in *Frazier v. Drake*, 131 Nev. 632, 650–51, 357 P.3d 365, 377–78 (Nev. App. 2015) the Court therefore awards the following expert fees:

Dr. Hurwitz: \$ 11,000.00

Dr. Willer: \$ 17,245.00

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Dr. Barchuk: \$ 26,120.00

Dawn Cook: \$ 13,960.03

Dr. Stein: \$ 1,500.00

Pursuant to the same *Frazier* factors, this Court does not find \$19,710.00 for Plaintiffs' Expert Dr. Alan J. Stein is warranted, as Dr. Stein did not testify at trial in this matter and reduces the amount for Dr. Stein to \$1,500.00. This Court further does not find that \$23,960.03 for Plaintiffs' Expert Dawn Cook is warranted, as Ms. Cook billed for items that can be utilized in other life care plans and incorporated other number from other experts which Plaintiff was already charged for and, thus, not approving the double charging and reduces the amount for Ms. Cook to \$13,960.03.

Pursuant to NRCP 68, Plaintiffs' request in the amount of \$1,200.00 for the "Day In The Life Video," is not warranted, as Plaintiffs did not utilize this video during the trial in this matter.

As to Plaintiffs' request for costs for deposition testimony, the Court finds the video charge portion of these costs is not warranted, as the video portion of the deposition testimony was not utilized during the trial in this matter and, therefore, reduces said deposition testimony costs by \$5,032.02.

Pursuant to *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049 (2015) and *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352 (1998), Plaintiffs' remaining costs are warranted.

THEREFORE, IT IS ORDERED that Plaintiffs' Request for Attorneys' Fees is GRANTED in the amount of Eight Hundred Twenty-One Thousand Four Hundred Sixty-Eight Dollars and Sixty-Six Cents (\$821,468.66).

IT IS FURTHER ORDERED that pursuant to NRCP 68(f)(1)(B), Defendants are to pay the applicable interest on the Judgment in the amount of \$6,367,805.52 from the date of the Offer of Judgment on June 5, 2019 to entry of the Judgment on November 14, 2019 in the amount of \$202,269.96;

IT IS FURTHER ORDERED that Plaintiffs' Request for Costs and Defendants' Motion to Retax Costs are each GRANTED IN PART AND DENIED IN PART.

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2 IT IS FURTHER ORDERED that Plaintiffs' Costs request for Experts Dr. Michael
3 Hurwitz, Dr. Justin Willer, Dr. Alex Barchuk, Dawn Cook, R.N. and Dr. Alan Stein are
4 GRANTED in the total amount of \$69,825.03.

5 IT IS FURTHER ORDERED that Plaintiffs' Costs request for Expert Dr. Alan J. Stein is
6 reduced to \$1,500.00.

7 IT IS FURTHER ORDERED that Plaintiffs' Costs request for Expert Dawn Cook is
8 reduced to \$13,960.03.

9 IT IS FURTHER ORDERED that Plaintiffs' Costs request for the "Day In The Life Video,"
10 in the amount of \$1,200.00 is DENIED.

11 IT IS FURTHER ORDERED that Plaintiffs' Costs request for deposition testimony is
12 reduced by \$5,032.02.

13 IT IS FURTHER ORDERED that Plaintiffs' remaining Costs request in the amount of
14 \$44,851.21 is GRANTED.

15 IT IS FURTHER ORDERED that the total amount of Plaintiffs' Cost Award in this matter
16 is \$113,186.24.

17 THEREFORE, IT IS ORDERED that Plaintiffs' Costs are Re-Taxed in the amount of
18 \$113,186.24.

19 IT IS FURTHER ORDERED that interest on Plaintiffs' costs of \$113,186.24 will accrue
20 from November 14, 2019 (the date of entry of judgment) at a rate equal to the prime rate at the
21 largest bank in Nevada as ascertained by the Commissioner of Financial Institutions, plus 2
22 percent. The rate is to be adjusted accordingly on each January 1 and July 1 thereafter until the
23 judgment is satisfied.

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IT IS FURTHER ORDERED that interest on Plaintiffs' award of attorneys' fees of \$821,468.66 will accrue from the date of entry of this order 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.

DATED this 23 day of March, 2020.


 JOANNA S. KISHNER
 DISTRICT COURT JUDGE

Respectfully Submitted By:

Approved as to Form and Content:

BIGHORN LAW

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Attorneys for Defendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on the 13th day of April, 2020, service of a true and correct copy of the foregoing:

SUPPLEMENTAL AND/OR AMENDED NOTICE OF APPEAL

was served as indicated below:

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

Attorney	Representing	Phone/Fax/E-Mail
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/s/ Riesa R. Rice
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& Doyle
1737-10881