

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN PAUL DEBIPARSHAD,
M.D., an individual KEVIN P.
DEBIPARSHAD PLLC, d/b/a
SYNERGY SPINE AND
ORTHOPEDICS; DEBIPARSHAD
PROFESSIONAL SERVICES, LLC;
ALLEGIANT INSTITUTE INC., a
Nevada domestic professional
corporation doing business as
ALLEGIANT SPINE INSTITUTE;
JASWINDER S. GROVER, M.D.,
an individual; JASWINDER S.
GROVER, M.D., Ltd., d/b/a
NEVADA SPINE CLINIC,

Petitioners,

vs.

THE EIGHTH JUDICIAL
DISTRICT COURT OF THE
STATE OF NEVADA, COUNT OF
CLARK AND THE HONORABLE
JUDGE KERRY EARLY,

Respondents,

and

JASON GEORGE LANDESS a.k.a
KAY GEORGE LANDESS

Real Party in Interest.

Electronically Filed
Oct 14 2020 01:38 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No.: 81596

District Court Case No.: A-18-776896-C

**APPENDIX
VOLUME 1**

HOWARD & HOWARD ATTORNEYS PLLC

Martin A. Little., Nevada Bar No. 7067
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169
Telephone: (702) 257-1483
Facsimile: (702) 567-1568

*Attorneys for Real Party in Interest Jason George Landess
a/k/a Kay George Landess*

Appendix Table of Contents

Vol.	Date	Document	Pages
1	8/14/19	Exhibits 1-4 to Plaintiff's Supplement to Motion for Mistrial and Fees/Costs	RP.APP 1-77
1	8/14/19	Exhibits 5-13 to Plaintiff's Supplement to Motion for Mistrial and Fees/Costs	RP.APP 78-143
1	1977	Legislative History	RP.APP 144-194
1	8/19/19	Comparison of Findings of Facts and Conclusions of Law to Mistrial Decision	RP.APP 195-246

DATED this 14th day of October, 2020.

HOWARD & HOWARD ATTORNEYS PLLC

By: /s/ Martin A. Little

Martin A. Little
Nevada Bar No. 7067
Alexander Villamar
Nevada Bar No. 9927

3800 Howard Hughes Parkway, Suite 1000
Las Vegas, NV 89169
702-257-1483
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mal@h2law.com
av@h2law.com

ATTORNEYS FOR REAL PARTY IN INTEREST

Electronically Filed
8/13/2019 6:37 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson


EXHIBIT 1

Jonathan Dariyanani
President and CEO
Cognotion, Inc.
244 5th Avenue, Suite C254
New York, NY 10001

SWORN DECLARATION OF JONATHAN DARIYANANI

1. I, Jonathan Dariyanani, do swear and affirm under penalty of perjury that I am personally knowledgeable and competent to testify to the matters contained in this declaration and that the statements I make within this declaration are true to the best of my knowledge and belief. This Declaration is submitted in support of Jason Landess' Supplemental Brief for Fees and Costs relating to a mistrial.
2. I am the duly appointed President and CEO of Cognotion, Inc., a corporation formed in August, 2013, together with its subsidiaries and affiliates ("Cognotion"). Cognotion is a software company that builds workplace training solutions in health care, hospitality training and customer service.
3. I received a subpoena from John Orr, defense counsel in a medical malpractice lawsuit brought by Jason Landess on April 4, 2019. In response to the subpoena, I produced documents to documents directly to Mr. Orr and the other attorneys on April 22, 2019 by email. The documents I supplied Mr. Orr with directly included a letter from Mr. Landess to me dated November 15, 2016, which was improperly used by the defense at trial.

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

By: 
Jonathan Dariyanani, Declarant

8/7/19
Date

Declaration of Jonathan Dariyanani

EXHIBIT 2

E **[REDACTED]**

----- Forwarded message -----

From: **Jonathan Dariyanani** <jonathan@cognotion.com>

Date: Mon, Apr 22, 2019 at 2:14 PM

Subject: Re: [EXT] Re: Landess Matter

To: Orr, John <John.Orr@lewisbrisbois.com>

CC: Jonathan Dariyanani <jonathan@cognotion.com>, James J. Jimmerson, Esq.

<jjj@jimmersonlawfirm.com>, mal@h2law.com <mal@h2law.com>, mshannon@hpslaw.com

<mshannon@hpslaw.com>, mkratsas@hpslaw.com <mkratsas@hpslaw.com>, netienne@hpslaw.com

<netienne@hpslaw.com>, Harris, Adrina <Adrina.Harris@lewisbrisbois.com>

Dear Mr. Orr,

Thank you for your reply. I will hold 4/30 tentatively until I hear back from you. Regarding the document production you requested, I went through the books and records of Cognotion and have prepared the document production which I believe to be responsive to your request that you made to me via telephone on Thursday, April 11, 2019. Cognotion is specifically invoking attorney-client privilege with respect to the legal advice Mr. Landess rendered to us under his engagement. We have attempted to provide you with the broadest possible response without waving our privilege.

You indicated in our conversation that you would keep the materials that we are supplying to you confidential and that they would not appear in any public record or public exhibit or otherwise be accessible to the public. I expect that you will abide by this representation. The materials that you are being supplied with are of a highly confidential nature and could do significant damage to Cognotion if they were improperly disclosed. If there is material in this production that you would like to make public, I expect to be notified in advance and to have the opportunity to seek a protective order from such disclosure, as many of these documents are governed by applicable confidentiality agreements.

You will find below a link where you can download the document production. By accessing the link, you agree to abide by your representations regarding confidentiality given to me on our call of April 11, 2019.

I have included in the production a video asset where Mr. Landess appears as faculty in our Certified Nurse Assistant course. He appears at the 1:30 mark in the video entitled S01.A01.L01 Close Up_Meet Your Faculty.mp4. I am not sure if this material is something that you are interested in, but it is clearly not privileged. If you'd like to review all of the video footage where Mr. Landess appears in the course, I could arrange that, but the footage is not organized by instructor, so someone would have to go through the course and pull Mr. Landess's footage, which I am willing to do if you'd like.

It has taken significant Cognotion resources to supply you with the requested production. Thank you for amending your subpoena to narrow down to the materials which you requested. While we have every desire to cooperate in good-faith with your efforts to represent your client and evaluate Mr. Landess's claims fairly, our cooperation is predicated upon your good faith attempt to seek information only reasonably relevant to your inquiry and should not be considered a waiver of objections to this production.

Please let me know when you can confirm 4/30 for the deposition, who will be attending live and via telephone and what time you'd like to get started and I can supply you with the address and if you will need a speakerphone available, which I can supply.

Best regards,

Jonathan Dariyanani
President and CEO
Cognotion, Inc.

 [Jason Landess Discovery.zip](#)

On Mon, Apr 22, 2019 at 3:04 PM Orr, John <John.Orr@lewisbrisbois.com> wrote:
Jonathan

Thank you for reaching out. We could do April 30. I just need to confirm that this works with all other counsel. We also need to make sure we have all of the records before we proceed with the deposition. Let's tentatively plan for 4/30. I will confirm with everyone if that works. When do you anticipate disclosing the records ? Thank you.

Thank you.

Sent from my iPhone



John M. Orr
Attorney
John.Orr@lewisbrisbois.com

T: 702.693.4352 F: 702.893.3789

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

Representing clients from coast to coast. View our locations nationwide.

This e-mail may contain or attach privileged, confidential or protected information intended only for the use of the intended recipient. If you are not the intended recipient, any review or use of it is strictly prohibited. If you have received this e-mail in error, you are required to notify the sender, then delete this email and any attachment from your computer and any of your electronic devices where the message is stored.

On Apr 22, 2019, at 10:43 AM, Jonathan Dariyanani <jonathan@cognotion.com> wrote:

External Email

Dear Mr. Orr:
I haven't received a response to the email that I sent below on Wednesday, April 17, 2019. Please reply as I have kept these dates open for you.
Thank you,
Jonathan

On Wed, Apr 17, 2019 at 1:20 PM Jonathan Dariyanani <jonathan@cognotion.com> wrote:
Dear Mr. Orr:

I am writing to follow-up on our conversation of Thursday of last week. You requested some documents from me for the malpractice case involving Jason Landess. I will provide our document response to you on Monday, as I have been out of the office on business this week. My intention is to upload those documents to Dropbox and send you a link that you can use to download them.

As to scheduling my deposition, I have the following dates available. You offered to take the deposition at my house, if that would be more convenient for me. I think it would as I have been traveling a lot lately and I'd rather be at home. Here are the dates I can offer:

April 29 or April 30
May 10.

Please let me know if any of these dates work for you. We live in Virginia, approximately 50 miles from Washington DC. Reagan National Airport (Washington National) is the best airport to fly into.

If this isn't convenient for you, I can New York City on May 6, as I have to be in town for

a business dinner that night.

Best regards,

--

Jonathan Dariyanani
President
Cognotion, Inc.
Tel USA +1 540-841-0226
Fax USA +1 415-358-5548
Email: jonathan@cobnotation.com

--

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--

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Fax USA +1 415-358-5548
Email: jonathan@cobnotation.com

--

Sent from Gmail Mobile...please excuse errors.
Jonathan Dariyanani
President and CEO
Cognotion, Inc.
540-841-0226

EXHIBIT 3

Howard & Howard Attorneys PLLC

1 **HOWARD & HOWARD ATTORNEYS PLLC**
2 Martin A. Little, Esq.
3 Nevada Bar No. 7067
4 E-mail: mal@h2law.com
5 Alexander Villamar, Esq.
6 Nevada Bar No. 9927
7 E-mail: av@h2law.com
8 3800 Howard Hughes Parkway, Suite 1000
9 Las Vegas, Nevada 89169
10 Tel: 702 257-1483
11 Fax: 702 567-1568
12 *Attorneys for Plaintiff*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

10 JASON GEORGE LANDESS a.k.a. KAY
11 GEORGE LANDESS, an individual,
12
13 Plaintiff,

CASE NO.: A-18-776896-C
DEPT. NO.: 32

12 vs.

13 KEVIN PAUL DEBIPARSHAD, MD, an
14 individual; KEVIN P DEBIPARSHAD PLLC,
15 a Nevada professional limited liability
16 company doing business as "SYNERGY
17 SPINE AND ORTHOPEDICS";
18 DEBIPARSHAD PROFESSIONAL
19 SERVICES LLC, a Nevada professional
20 limited liability company doing business as
21 "SYNERGY SPINE AND ORTHOPEDICS";
22 ALLEGIANT INSTITUTE INC., a Nevada
23 domestic professional corporation doing
24 business as "ALLEGIANT SPINE
25 INSTITUTE"; JASWINDER S. GROVER,
26 MD, an individual; JASWINDER S.
27 GROVER, M.D., Ltd doing business as
28 "NEVADA SPINE CLINIC"; VALLEY
HEALTH SYSTEM LLC, a Delaware limited
liability company doing business as
"CENTENNIAL HILLS HOSPITAL"; UHS
OF DELAWARE, INC., a Delaware
corporation also doing business as
"CENTENNIAL HILLS HOSPITAL";
DOES 1-X, inclusive; and ROE
CORPORATIONS I-X, inclusive,

**TWELFTH SUPPLEMENT TO
PLAINTIFF'S INITIAL EARLY CASE
CONFERENCE DISCLOSURE OF
DOCUMENTS AND WITNESSES**

Defendants.

I. **DOCUMENTS:** (Bolded items are being supplemented/amended)

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EARLY CASE CONFERENCE DISCLOSURE OF DOCUMENTS AND WITNESSES:	
1.	MedicWest Ambulance/AMR medical and billing records, Bates labeled MAI 00001-MAI 00012.
2.	Mercy Ambulance c/o American Medical Response medical and billing records, Bates labeled MACAMR 00001- MACAMR 00013.
3.	Centennial Hills Hospital Medical Center medical and billing records, Bates labeled CHHMCMR 00001- CHHMCMR 00347; CHHM CB 00001-CHHM CB 00006.
4.	John Herr, M.D. medical and billing records, Bates labeled JEHM 00001- JEHM 00022.
5.	St. Rose Dominican Hospital-Rose de Lima medical and billing records, Bates labeled SRDRDMR 00001-SRDRDLMR 000352; RDRDLB 00001- SRDRDLB 00009.
6.	University Medical Center Spring Valley Quick Care medical and billing records, Bates labeled UMCOSNVMR 00001 – UMCOSNVMR 00015; UMCOSNSVQCB 00001- UMCOSNSVQCB 00003.
7.	Nevada Spine Clinic medical records, Bates labeled NSCMR 00001- NSCMR 00019.
8.	Desert Orthopedic Center/Roger Fontes, M.D. medical and billing records, Bates labeled DOCL 00001-DOCL 00050; updated medical and billing records, Bates labeled DOCL 00051-DOCL 00077.
9.	COGNOTION employment and payroll records, Bates labeled CI 00001- CI 00006; P 00001 – P 00002.
10.	Plaintiff's U.S. Individual Income Tax Returns for the years 2012 through 2017, Bates labeled P 00003 – P 00082.
11.	Fax dated 6/4/18 from Kevin Debiparshad, M.D./Synergy Spine and Orthopedics, Bates labeled P 000083 – P 00086.
12.	Photographs of x-rays taken 10/25/17, 11/22/17 and 12/20/17, Bates labeled P 000087-P 000088.

1		FIRST SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURE OF DOCUMENTS AND WITNESSES:
2		
3	13.	<i>Curriculum Vitae</i> and Fee Schedule for Roger Fontes, M.D., Bates labeled P00089-P00093.
4		
5		SECOND SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURE OF DOCUMENTS AND WITNESSES:
6		
7	14.	Sheth, U; Blomberg, J; Szatkowski, J. <i>Tibial Shaft Fractures</i> , Ortho Bullets (10/30/2018), Bates labeled P000094-P000103.
8		
9	15.	St. Rose Dominican Hospital-Siena Campus medical and billing records Bates labeled SRDSMR 00001- SRDSMR 00471; and SRDSB 00001- SRDSB 00009.
10		
11	16.	Fyzical Therapy and Balance Centers medical and billing records, Bates labeled FTBC 0001- FTABC 00040.
12		
13	17.	Verizon Phone bill for September & October 2017, Bates labeled P000104-P00105.
14		
15	18.	Forte Family Practice medical and billing records to be produced upon receipt.
16		
17	19.	Synergy Spine & Orthopedics medical records to be produced upon receipt.
18		
19	20.	Nevada Spine Clinic billing records, Bates labeled NSCB 00001-NSCB 00005.
20		
21		THIRD SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURE OF DOCUMENTS AND WITNESSES:
22		
23	21.	Copies of Plaintiff's Medicare and AARP cards, Bates labeled P00106.
24		
25	22.	Cognition correspondence to Plaintiff, Bates labeled CI 00002-CI 00006.
26		
27	23.	Cognition 1099s, Bates labeled P00107-P00110.
28		
	24.	Account Summary for Plaintiff's checking account with Bank of America for January, March and May 2018, Bates labeled P00111-P00113.
	25.	Plaintiff's correspondence to Dr. Debiparshad dated May 8, 2018, Bates labeled P00114.
	26.	Plaintiff's emails to Denis Harris, MD, Bates labeled P00115-P00122.
	27.	Printout of Paiute Golf Rounds from May 15-October 15, 2017, Bates labeled P00123.

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3	28. Plaintiff's emails to and from Mark Mills, J.D., M.D., Bates labeled P00124-P00128.
4	29. Declaration of Michael Arrigo in Support of Opposition to Motion to Dismiss, Bates labeled P00129-P00160.
5	
6	30. Case Information form for Smith Economic Group, Bates labeled P00161-P00164.
7	
8	31. Cognotion offer of employment dated December 18, 2015, Bates labeled P00165-P00166.
9	32. Cognotion letter regarding pay in 2017 and 2018 dated July 18, 2018, Bates labeled CI0001-CI0002.
10	
11	33. Cognotion termination letter dated January 3, 2019, Bates labeled P00167-P00168.
12	34. Plaintiff's Sworn Declaration re Cognotion records, Bates labeled P00169.
13	
14	35. Retainer Agreement (2017), Bates labeled P00170-P00174.
15	36. Retainer Agreement (2018), Bates labeled P00175-P00179.
16	37. Photographs of x-rays in 2017 and 2018, and of Plaintiff's leg after surgery in 2017 and 2018, Bates labeled P00180-P00193.
17	
18	38. Post-accident video of the scene of the October 9, 2017 accident at Paiute Golf Course, Bates labeled P00194.
19	
20	39. A recording of a voicemail message from Dr. Debiparshad's assistant, "Ron," which was left on Plaintiff's phone on February 26, 2018, Bates labeled P00195.
21	
22	FOURTH SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURE OF DOCUMENTS AND WITNESSES:
23	
24	40. Lundy, Douglas W., et al., Pearls and pitfalls with proximal third tibial fractures, <i>AAOSNow</i> , 2007 October, Bates labeled P00196-P00200.
25	
26	FIFTH SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURE OF DOCUMENTS AND WITNESSES:
27	
28	Please see supplements to #6 and #20 above.

1		SIXTH SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURE OF DOCUMENTS AND WITNESSES:
2		
3	41.	Color photograph of Plaintiff's leg taken on March 26, 2018, prior to April 3, 2018 surgery by Roger Fontes, M.D., Bates labeled P00201.
4		
5		SEVENTH SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURE OF DOCUMENTS AND WITNESSES:
6		
7	42.	<i>Curriculum Vitae</i> and Fee Schedule for John Herr, M.D., Bates labeled P00202-P00202-P00206.
8		
9	43.	Minnesota Multiphasic Personality Inventory-2 Restructured Form – <i>Interpretive Report: Clinical Settings</i> dated January 21, 2019, for Jason G. Landess, Bates labeled P00207-P002018.
10		
11		EIGHTH SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURE OF DOCUMENTS AND WITNESSES:
12		
13	44.	Binder containing prints of radiology studies from the following healthcare providers:
14		
15		Centennial Hills Hospital/Kevin Debiparshad, MD (10/9-10/17)
16		UMC Quick Care (10/14/17)
17		Newport MRI (Nevada Spine)/Kevin Debiparshad, MD (10/25/17; 11/22/17; 12/20/17; 1/31/18)
18		Nevada Spine Clinic/Kevin Debiparshad, MD (1/31/18)
19		John Herr, M.D. (2/12/18)
20		Desert Orthopedic Center/Roger Fontes, MD (2/15/18; 4/18/18; 5/30/18; 6/27/18; 8/8/18; 10/5/18)
21		Advanced Urgent Care (3/1/18)
22		Desert Orthopedic Center/Roger Fontes, MD (4/3/19)
23		
24		Bates labeled P00219.
25		
26		NINTH SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURE OF DOCUMENTS AND WITNESSES:
27		
28	45.	ACH Payment to Jason Landess on March 18, 2019, Chase for Business account, Bates labeled P00220.

1	46.	Wire activity for payments to Jason Landess between March 21, 2018 and January 23, 2019, Chase for Business account, Bates labeled P00221.
2		
3	47.	2018 1099 from Cognotion, Inc. for Jason Landess, Bates labeled P00222.
4	48.	Jason Landess Payment Activity 2017-2018, Bates labeled P00223-P00225.
5		
6		TENTH SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURE OF DOCUMENTS AND WITNESSES:
7	49.	Stryker/Osteosynthesis – T2 – Tibial Nailing System – Operative Technique – T2 Tibial Nailing System, Bates labeled P00226-P00265.
8		
9		ELEVENTH SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURE OF DOCUMENTS AND WITNESSES:
10		
11		No documents identified or produced.
12		
13		TWELFTH SUPPLEMENT TO EARLY CASE CONFERENCE DISCLOSURE OF DOCUMENTS AND WITNESSES:
14	50.	Cinematic Health Education executed documents, Bylaws, Certificate of Incorporation, Stock Ledger, Bates labeled P00266-P00387.
15		
16	51.	CNA Skills Guideline, Bates labeled P00388-P00389.
17	52.	Cognotion letters to Jason Landess, Bates labeled P00390-P00393.
18		
19	53.	Excel spreadsheet (ContinuEdSpreadsheet), Bates labeled P00394-P00436.
20	54.	Cover Memorandum for Spreadsheet Regarding CNA CEU in Nevada, Bates labeled P00437-P00439.
21		
22	55.	Emails to and from Jason Landess, Bates labeled P00440-P00453; P00479-P00513.
23		
24	56.	Exhibit 1 (2017 1099), Exhibit 2 (2016 1099), Exhibit 3 (redacted Bank of America statement showing 3/21/18 wire from Cognotion), Exhibit 4 (redacted Bank of America statement showing 1/12/18 wire from Cognotion), Exhibit 5 (redacted Bank of America statement showing 5/3/18 wire from Cognotion), Bates labeled P000454-P00478.
25		
26		
27	57.	Accounting summary, letter and email between Jason Landess and John Truehart regarding income and salary and attachments (Cognotion letter dated July 12, 2018, regarding salary paid to Jason Landess in 2017 and 2018;
28		

1		ProDox request for Cognotion employment and payroll records regarding Jason Landess), Bates labeled P00514-P00539.
2		
3	58.	SME Lawyer questions for CNA, Bates labeled P00540.
4	59.	Video – “Close Up – Meet Your Faculty,” Bates labeled P00541.
5		
6		

7 Pursuant to NRCP 16.1(a)(1)(B), Plaintiff hereby provides notice to Defendants that the
8 following tangible items are in Plaintiff’s possession, and will be produced with Plaintiff’s
9 responses to Defendants’ discovery requests:

- 10 1. Photographs of Plaintiff’s left leg after his surgery on October 10, 2017, and April 3,
11 2018;
- 12 2. A post-accident video of the scene of the October 9, 2017 accident at Paiute Golf Course;
- 13 3. A recording of a voicemail message from Dr. Debiparshad’s assistant, “Ron,” which was
14 left on Plaintiff’s phone on February 26, 2018;
- 15 4. A Cognotion, Inc. termination-of-Plaintiff letter dated January 3, 2019.

16 Plaintiff may also use any and all of the following books, articles, treatises, anatomical
17 models, anatomical illustrations, anatomical diagrams, demonstrative exhibits at the time of trial
18 of this matter:

- 19 1. *Gray’s Anatomy, The Anatomical Basis of Clinical Practice, 41st Edition.* (Elsevier Saunders, 2016).
- 20 2. *Dorland’s Medical Dictionary, 32nd Edition.* (Elsevier Saunders, 2012).
- 21 3. *Illustrations of radiology studies.*
- 22 4. *Anatomical models of the tibia and fibula.*
- 23 5. *Anatomical illustrations of the tibia and fibula.*
- 24 6. *Illustrations of the surgical hardware and instruments used during*
25 *Plaintiff’s surgery on October 11, 2017 by Dr. Debiparshad.*
- 26 7. *Exemplars of surgical hardware similar to the surgical hardware used during*
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Plaintiff's surgery on October 11, 2017 by Dr. Debiparshad.

- 8. *Anatomical diagrams of the tibia and fibula.*
- 9. *Demonstrative exhibits, including but not limited to a timeline*

Plaintiff reserves the right to supplement this list with any and all other relevant documents and records which come into his possession during discovery. Plaintiff further reserves the right to use any document identified by any other party to this litigation.

II. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION: (Bolded items are being supplemented/amended)

- 1. Jason George Landess aka Kay George Landess
c/o Howard & Howard Attorneys, PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, NV 89169
Telephone: (702) 257-1483
Facsimile: (702) 567-1568

Mr. Landess is the Plaintiff in this action and is expected to have discoverable information regarding his knowledge of the facts and circumstances, causation, findings, injuries, wage loss, loss of earning capacity and other damages surrounding his claim.

- 2. Steven Landess
4662 Hoeker Way
Las Vegas, NV 89147
702-245-4477

Mr. Landess is the Plaintiff's son and is expected to have discoverable information regarding his knowledge of the facts and circumstances, causation, findings, injuries, Plaintiff's condition before and after the incident, and other damages surrounding Plaintiff's claim.

- 3. Justin Landess
7054 Big Springs Court
Las Vegas, NV 89113

1 Mr. Landess is the Plaintiff's son and is expected to have discoverable information
2 regarding his knowledge of the facts and circumstances, causation, findings, injuries, Plaintiff's
3 condition before and after the incident, and other damages surrounding Plaintiff's claim.
4

5 4. Barbara Christine Lambson
6 2144 West 7380 South
7 West Jordan, UT 84084
8 801-574-0458

9 Ms. Lambson is the Plaintiff's daughter and is expected to have discoverable information
10 regarding her knowledge of the facts and circumstances, causation, findings, injuries,
11 Plaintiff's condition before and after the incident, and other damages surrounding Plaintiff's
12 claim.

13 5. Carolyn Landess
14 5432 Morning Swim Lane
15 Las Vegas, NV 89113
16 702-253-6788

17 Ms. Landess is Plaintiff's ex-wife and is expected to have discoverable information
18 regarding her knowledge of the facts and circumstances, causation, findings, injuries,
19 Plaintiff's condition before and after the incident, and other damages surrounding Plaintiff's
20 claim.

21 6. Robert Brigham
22 3416 N. Tenaya Way
23 Las Vegas, NV 89129
24 702-533-5658

25 Mr. Brigham is the Plaintiff's brother and is expected to have discoverable information
26 regarding his knowledge of the facts and circumstances, causation, findings, injuries, Plaintiff's
27 condition before and after the incident, and other damages surrounding Plaintiff's claim.

28 7. Mark J. Mills, J.D., M.D.

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8300 Wisconsin Avenue, Suite 349
Bethesda, MD 20814
301-310-2335

Dr. Mills is an attorney, medical doctor, and Plaintiff's friend, and is expected to have discoverable information regarding his knowledge of the facts and circumstances, causation, findings, injuries, Plaintiff's condition before and after the incident, and other damages surrounding Plaintiff's claim.

8. Neil Simmons
3397 Oasis Drive
Lake Havasu City, AZ 86404

Mr. Simmons is Plaintiff's minister and friend and is expected to have discoverable information regarding his knowledge of the facts and circumstances, causation, findings, injuries, Plaintiff's condition before and after the incident, and other damages surrounding Plaintiff's claim.

9. Sally Simmons
3397 Oasis Drive
Lake Havasu City, AZ 86404

Ms. Simmons is Plaintiff's friend and is expected to have discoverable information regarding her knowledge of the facts and circumstances, causation, findings, injuries, Plaintiff's condition before and after the incident, and other damages surrounding Plaintiff's claim.

10. Tom Fischer
10325 Nu-Way Kaiv Blvd.
Las Vegas, NV 89124
702-658-1400

Mr. Fischer is the head in-house golf professional at the Paiute Golf Course, and is expected to have discoverable information regarding his knowledge of the facts and

1 circumstances, Plaintiff's condition before the incident, and other damages surrounding
2 Plaintiff's claim.

3 The following witnesses are expected to testify regarding their knowledge and
4 understanding of facts and circumstances of this case, medical treatment rendered to Plaintiff,
5 causation, investigation, policies and procedures, findings, injuries, and/or any other matters
6 surrounding the subject incident and/or Plaintiff's damages. The Custodians of Record are
7 expected to testify regarding authentication of any and all records produced on behalf of said
8

9 Defendants:

- 10
- 11 1. Person with Knowledge and Custodian of Records for
12 Defendants Kevin Paul Debiparshad, M.D.; Kevin P. Debiparshad PLLC d/b/a
13 Synergy Spine and Orthopedics; and Debiparshad Professional Servuces d/b/a
14 Synergy Spine and Orthopedics
15 c/o Lewis Brisbois Bisgaard & Smith LLP
16 6385 S. Rainbow Boulevard, Suite 600
17 Las Vegas, NV 89118
18 Telephone: 702-893-3383
19 Facsimile: 702-893-3789
 - 20 2. Person with Knowledge and Custodian of Records for
21 Defendant Valley Health System, LLC dba Centennial Hills Hospital
22 c/o Hall Prangle & Schoonveld, LLC
23 1160 N. Town Center Drive, Suite 200
24 Las Vegas, NV 89144
25 Telephone: 702-889-6400
26 Facsimile: 702-384-6025
 - 27 3. Person With Knowledge and Custodian of Records for
28 Defendants Jaswinder S. Grover, M.D.; Jaswinder S. Grover, M.D., Ltd. dba
Nevada Spine Clinic
c/o Cotton & Associates
7900 W. Sahara Avenue, Suite 200
Las Vegas, NV 89117
Telephone: 702-832-5909
Facsimile: 702-832-5910
 4. Person With Knowledge/Custodian of Records
Defendant Centennial Hills Hospital Medical Center
Stuart J. Meyers, M.D.

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David K. McCleve, PA-C
Kevin Hyer, M.D.
Ahmed Fawad, M.D.
Stephanie Latta, R.N.
Jennifer Townsend, R.N.
Karen Buettner, R.N.
Elizabeth Keleman, R.N.
Earl R. Ang, M.D.
Brendon Bicol, N.P.
Gregory L. Goetz, D.O.
Winter Guesman, R.N.
Jennifer M. Rivera, Student Nurse (NSC)
Jeff Japalucci, Radiology Technician
"Director Jayme"
Jayme Morrisette, R.N.
"Clin Sup Andrea"
Tammy Robinson, R.N.
Kathleen Olbur, R.N.
Dr. Arora
Brian Anderson, P.T.
Jacqueline Urban
c/o Hall Prangle & Schoonveld, LLC
1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144

- 5. Person With Knowledge/Custodian of Records
MedicWest Ambulance, Inc./American Medical Response
Penny Pukall, AMR Paramedic
Jacob Nielsen, AMR Advanced EMT
PO Box 745774
Los Angeles, CA 90074
- 6. Ron Tricoli
Address to be supplemented

This witness may also give opinions regarding the authenticity of medical and billing records, the cost of medical care, and whether those medical costs fall within ordinary and customary charges in the community, for similar medical care and treatment.

- 7. Person With Knowledge/Custodian of Records
UMC QuickCare
4180 S. Rainbow Boulevard, Suite 810
Las Vegas, NV 89103
702-383-3645
-and-
University Medical Center of Southern Nevada

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1800 W. Charleston Boulevard
Las Vegas, NV 89102

This witness may also give opinions regarding the authenticity of medical and billing records, the cost of medical care, and whether those medical costs fall within ordinary and customary charges in the community, for similar medical care and treatment.

8. Person With Knowledge/Custodian of Records
St. Rose Dominican Hospital-de Lima Campus
102 E. Lake Mead Parkway
Henderson, NV 89015

This witness may also give opinions regarding the authenticity of medical and billing records, the cost of medical care, and whether those medical costs fall within ordinary and customary charges in the community, for similar medical care and treatment.

9. Person With Knowledge/Custodian of Records
St. Rose Dominican Hospital-Siena Campus
3001 St. Rose Parkway
Henderson, NV 89052

This witness may also give opinions regarding the authenticity of medical and billing records, the cost of medical care, and whether those medical costs fall within ordinary and customary charges in the community, for similar medical care and treatment.

10. Person With Knowledge/Custodian of Records
Steinberg Diagnostic Medical Imaging
9070 W. Post Road
Las Vegas, NV 89148
702-732-6000

This witness may also give opinions regarding the authenticity of medical and billing records, the cost of medical care, and whether those medical costs fall within ordinary and customary charges in the community, for similar medical care and treatment.

11. Person With Knowledge/Custodian of Records
Kate Duggan
Bioventus
4721 Emperor Blvd., Suite 100
Durham, NC 27703
412-585-0386

This witness may also give opinions regarding the authenticity of medical and billing records, the cost of medical equipment, and whether those medical costs fall within ordinary and customary charges in the community, for similar medical equipment.

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12. Meneleo Jaojoco, M.D.
UMC QuickCare
4180 S. Rainbow Boulevard, Suite 810
Las Vegas, NV 89103
702-383-3645

This provider may give expert opinions in written reports and/or testimony regarding the mechanism and/or causation of Plaintiff Jason Landess' injuries, his/her diagnosis, treatment, and prognosis; the effects of Plaintiff's permanent disability, pain, suffering, anxiety, loss of enjoyment of life and physical and mental restrictions resulting therefrom. This provider is also expected to testify consistent with his/her examination of Plaintiff, the medical records related to the treatment of the Plaintiff for the subject incident, and any medical history and records for other incidents, before or after the subject incident having relevance to this action. The facts and opinions to which this provider is expected to testify include any and all facts and opinions in the said medical records and medical history of Plaintiff and that the medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident set forth in the Complaint; that the Plaintiff may require future treatment that is also caused by the subject incident, and is expected to consist of *emergency medical treatment*. This provider is expected to give expert opinions regarding any facts and opinions that would respond to or rebut the opinions, testimony and evidence offered by Defendants and their respective lay and expert witnesses disclosed by any party in this action, whether in a written report or other documentary evidence, or provided as testimony. This provider is also expected to give expert opinions regarding Plaintiff's diminished work life expectancy, work capacity, and/or life expectancy which are the result of the subject incident. This expert is expected to give expert opinions regarding the appropriateness and value of any treatment rendered to Plaintiff by any of her other healthcare providers; the appropriateness and value of any diagnostic testing, including psychological and neuropsychological testing, performed on the Plaintiff, as well as the findings and assessments made by other healthcare providers, as well as his/her own opinion regarding any test and the findings/diagnosis; future treatment which Plaintiff may need; and any other opinion that may be based on the healthcare provider's experience and/or recommendations made by any other healthcare provider, and/or based upon any diagnostic test, and/or his/her review of any of Plaintiff's medical records from Plaintiff's date of birth to present, that was made during Plaintiff's course of treatment; Plaintiff's damages; any other healthcare provider's report or testimony; any expert's report or testimony. This provider's testimony and opinions will consist of the reasonableness and necessity of the past, present and future medical treatment rendered or to be rendered by any healthcare provider; the causation of the necessity for past, present and future medical treatment caused by the subject incident; the reasonableness of the costs associated with such past, present and future medical treatment; and that they were and are related to the subject incident; the authenticity of medical records, the cost of medical care, and whether those medical costs fall within ordinary and customary charges in the community, for similar medical care and treatment. This provider is hereby designated as a non-retained treating physician/healthcare provider expert witness. Additionally, as a treating physician,

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Plaintiff reserves the right to supplement this designation in the event Plaintiff's treatment is continuing and ongoing beyond the date of this designation.

- 13. Person With Knowledge/Custodian of Records
John Herr, M.D.
4425 South Pecos Road, Suite 1
Las Vegas, NV 89121

This provider may give expert opinions in written reports and/or testimony regarding the mechanism and/or causation of Plaintiff Jason Landess' injuries, his/her diagnosis, treatment, and prognosis; the effects of Plaintiff's permanent disability, pain, suffering, anxiety, loss of enjoyment of life and physical and mental restrictions resulting therefrom. This provider is also expected to testify consistent with his/her examination of Plaintiff, the medical records related to the treatment of the Plaintiff for the subject incident, and any medical history and records for other incidents, before or after the subject incident having relevance to this action. The facts and opinions to which this provider is expected to testify include any and all facts and opinions in the said medical records and medical history of Plaintiff and that the medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident set forth in the Complaint; that the Plaintiff may require future treatment that is also caused by the subject incident, and is expected to consist of *orthopedic treatment*. This provider is expected to give expert opinions regarding any facts and opinions that would respond to or rebut the opinions, testimony and evidence offered by Defendants and their respective lay and expert witnesses disclosed by any party in this action, whether in a written report or other documentary evidence, or provided as testimony. This provider is also expected to give expert opinions regarding Plaintiff's diminished work life expectancy, work capacity, and/or life expectancy which are the result of the subject incident. This expert is expected to give expert opinions regarding the appropriateness and value of any treatment rendered to Plaintiff by any of her other healthcare providers; the appropriateness and value of any diagnostic testing, including psychological and neuropsychological testing, performed on the Plaintiff, as well as the findings and assessments made by other healthcare providers, as well as his/her own opinion regarding any test and the findings/diagnosis; future treatment which Plaintiff may need; and any other opinion that may be based on the healthcare provider's experience and/or recommendations made by any other healthcare provider, and/or based upon any diagnostic test, and/or his/her review of any of Plaintiff's medical records from Plaintiff's date of birth to present, that was made during Plaintiff's course of treatment; Plaintiff's damages; any other healthcare provider's report or testimony; any expert's report or testimony. This provider's testimony and opinions will consist of the reasonableness and necessity of the past, present and future medical treatment rendered or to be rendered by any healthcare provider; the causation of the necessity for past, present and future medical treatment caused by the subject incident; the reasonableness of the costs associated with such past, present and future medical treatment; and that they were and are related to the subject incident; the authenticity of medical records, the cost of medical care, and whether those medical costs fall within ordinary and customary charges in the community, for similar medical care and treatment. This provider is hereby designated as a non-retained treating physician/healthcare provider expert witness. Additionally, as a treating physician, Plaintiff reserves the right to

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supplement this designation in the event Plaintiff's treatment is continuing and ongoing beyond the date of this designation.

- 14. Person With Knowledge/Custodian of Records
Roger Fontes, M.D.
Laura Rodriguez, PA-C
Desert Orthopedic Center
82-5 W. Warm Springs Road, Suite 250
Las Vegas, NV 89113
702-731-1616

This provider may give expert opinions in written reports and/or testimony regarding the mechanism and/or causation of Plaintiff Jason Landess' injuries, his/her diagnosis, treatment, and prognosis; the effects of Plaintiff's permanent disability, pain, suffering, anxiety, loss of enjoyment of life and physical and mental restrictions resulting therefrom. This provider is also expected to testify consistent with his/her examination of Plaintiff, the medical records related to the treatment of the Plaintiff for the subject incident, and any medical history and records for other incidents, before or after the subject incident having relevance to this action. The facts and opinions to which this provider is expected to testify include any and all facts and opinions in the said medical records and medical history of Plaintiff and that the medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident set forth in the Complaint; that the Plaintiff may require future treatment that is also caused by the subject incident, and is expected to consist of *orthopedic surgery and treatment*. This provider is expected to give expert opinions regarding any facts and opinions that would respond to or rebut the opinions, testimony and evidence offered by Defendants and their respective lay and expert witnesses disclosed by any party in this action, whether in a written report or other documentary evidence, or provided as testimony. This provider is also expected to give expert opinions regarding Plaintiff's diminished work life expectancy, work capacity, and/or life expectancy which are the result of the subject incident. This expert is expected to give expert opinions regarding the appropriateness and value of any treatment rendered to Plaintiff by any of her other healthcare providers; the appropriateness and value of any diagnostic testing, including psychological and neuropsychological testing, performed on the Plaintiff, as well as the findings and assessments made by other healthcare providers, as well as his/her own opinion regarding any test and the findings/diagnosis; future treatment which Plaintiff may need; and any other opinion that may be based on the healthcare provider's experience and/or recommendations made by any other healthcare provider, and/or based upon any diagnostic test, and/or his/her review of any of Plaintiff's medical records from Plaintiff's date of birth to present, that was made during Plaintiff's course of treatment; Plaintiff's damages; any other healthcare provider's report or testimony; any expert's report or testimony. This provider's testimony and opinions will consist of the reasonableness and necessity of the past, present and future medical treatment rendered or to be rendered by any healthcare provider; the causation of the necessity for past, present and future medical treatment caused by the subject incident; the reasonableness of the costs associated with such past, present and future medical treatment; and that they were and are related to the subject incident; the authenticity of medical records, the cost of medical care,

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and whether those medical costs fall within ordinary and customary charges in the community, for similar medical care and treatment. This provider is hereby designated as a non-retained treating physician/healthcare provider expert witness. Additionally, as a treating physician, Plaintiff reserves the right to supplement this designation in the event Plaintiff's treatment is continuing and ongoing beyond the date of this designation.

- 15. Person With Knowledge/Custodian of Records
Fyzical Therapy & Balance Center Jones
3820 S. Jones Boulevard
Las Vegas, NV 89103
702-818-5000

This provider may give expert opinions in written reports and/or testimony regarding the mechanism and/or causation of Plaintiff Jason Landess' injuries, his/her diagnosis, treatment, and prognosis; the effects of Plaintiff's permanent disability, pain, suffering, anxiety, loss of enjoyment of life and physical and mental restrictions resulting therefrom. This provider is also expected to testify consistent with his/her examination of Plaintiff, the medical records related to the treatment of the Plaintiff for the subject incident, and any medical history and records for other incidents, before or after the subject incident having relevance to this action. The facts and opinions to which this provider is expected to testify include any and all facts and opinions in the said medical records and medical history of Plaintiff and that the medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident set forth in the Complaint; that the Plaintiff will require future treatment that is also caused by the subject incident, and is expected to consist of *physical therapy*. This provider is expected to give expert opinions regarding any facts and opinions that would respond to or rebut the opinions, testimony and evidence offered by Defendants and their respective lay and expert witnesses disclosed by any party in this action, whether in a written report or other documentary evidence, or provided as testimony. This provider is also expected to give expert opinions regarding Plaintiff's diminished work life expectancy, work capacity, and/or life expectancy which are the result of the subject incident. This expert is expected to give expert opinions regarding the appropriateness and value of any treatment rendered to Plaintiff by any of her other healthcare providers; the appropriateness and value of any diagnostic testing, including psychological and neuropsychological testing, performed on the Plaintiff, as well as the findings and assessments made by other healthcare providers, as well as his/her own opinion regarding any test and the findings/diagnosis; future treatment which Plaintiff may need; and any other opinion that may be based on the healthcare provider's experience and/or recommendations made by any other healthcare provider, and/or based upon any diagnostic test, and/or his/her review of any of Plaintiff's medical records from Plaintiff's date of birth to present, that was made during Plaintiff's course of treatment; Plaintiff's damages; any other healthcare provider's report or testimony; any expert's report or testimony. This provider's testimony and opinions will consist of the reasonableness and necessity of the past, present and future medical treatment rendered or to be rendered by any healthcare provider; the causation of the necessity for past, present and future medical treatment caused by the subject incident; the reasonableness of the costs associated with such past, present and future medical treatment; and that they were and are related to the subject incident; the

1 authenticity of medical records, the cost of medical care, and whether those medical costs fall
2 within ordinary and customary charges in the community, for similar medical care and
3 treatment. This provider is hereby designated as a non-retained treating physician/healthcare
4 provider expert witness. Additionally, as a treating physician, Plaintiff reserves the right to
supplement this designation in the event Plaintiff's treatment is continuing and ongoing
beyond the date of this designation.

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6 16. Person With Knowledge/Custodian of Records
7 Robert Bien, M.D.
8 7050 Smoke Ranch Road, Suite 130
9 Las Vegas, NV 89128
10 702-233-9911

11 This provider may give expert opinions in written reports and/or testimony regarding
12 the mechanism and/or causation of Plaintiff Jason Landess' injuries, his/her diagnosis,
13 treatment, and prognosis; the effects of Plaintiff's permanent disability, pain, suffering,
14 anxiety, loss of enjoyment of life and physical and mental restrictions resulting
15 therefrom. This provider is also expected to testify consistent with his/her examination of
16 Plaintiff, the medical records related to the treatment of the Plaintiff for the subject incident,
17 and any medical history and records for other incidents, before or after the subject incident
18 having relevance to this action. The facts and opinions to which this provider is expected to
19 testify include any and all facts and opinions in the said medical records and medical history
20 of Plaintiff and that the medical treatment the Plaintiff received was reasonable, necessary,
21 and caused by the incident set forth in the Complaint; that the Plaintiff will require future
22 treatment that is also caused by the subject incident, and is expected to consist of *pain*
23 *management*. This provider is expected to give expert opinions regarding any facts and
24 opinions that would respond to or rebut the opinions, testimony and evidence offered by
25 Defendants and their respective lay and expert witnesses disclosed by any party in this action,
26 whether in a written report or other documentary evidence, or provided as testimony. This
27 provider is also expected to give expert opinions regarding Plaintiff's diminished work life
28 expectancy, work capacity, and/or life expectancy which are the result of the subject
incident. This expert is expected to give expert opinions regarding the appropriateness and
value of any treatment rendered to Plaintiff by any of her other healthcare providers; the
appropriateness and value of any diagnostic testing, including psychological and
neuropsychological testing, performed on the Plaintiff, as well as the findings and assessments
made by other healthcare providers, as well as his/her own opinion regarding any test and the
findings/diagnosis; future treatment which Plaintiff may need; and any other opinion that may
be based on the healthcare provider's experience and/or recommendations made by any other
healthcare provider, and/or based upon any diagnostic test, and/or his/her review of any of
Plaintiff's medical records from Plaintiff's date of birth to present, that was made during
Plaintiff's course of treatment; Plaintiff's damages; any other healthcare provider's report or
testimony; any expert's report or testimony. This provider's testimony and opinions will
consist of the reasonableness and necessity of the past, present and future medical treatment
rendered or to be rendered by any healthcare provider; the causation of the necessity for past,
present and future medical treatment caused by the subject incident; the reasonableness of the
costs associated with such past, present and future medical treatment; and that they were and

1 are related to the subject incident; the authenticity of medical records, the cost of medical care,
2 and whether those medical costs fall within ordinary and customary charges in the community,
3 for similar medical care and treatment. This provider is hereby designated as a non-retained
4 treating physician/healthcare provider expert witness. Additionally, as a treating physician,
5 Plaintiff reserves the right to supplement this designation in the event Plaintiff's treatment is
6 continuing and ongoing beyond the date of this designation.

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17. Person With Knowledge/Custodian of Records
Dana Forte, M.D.
Forte Family Practice
4845 South Rainbow Boulevard
Las Vegas, NV 89103

This provider may give expert opinions in written reports and/or testimony regarding the mechanism and/or causation of Plaintiff Jason Landess' injuries, his/her diagnosis, treatment, and prognosis; the effects of Plaintiff's permanent disability, pain, suffering, anxiety, loss of enjoyment of life and physical and mental restrictions resulting therefrom. This provider is also expected to testify consistent with his/her examination of Plaintiff, the medical records related to the treatment of the Plaintiff for the subject incident, and any medical history and records for other incidents, before or after the subject incident having relevance to this action. The facts and opinions to which this provider is expected to testify include any and all facts and opinions in the said medical records and medical history of Plaintiff and that the medical treatment the Plaintiff received was reasonable, necessary, and caused by the incident set forth in the Complaint; that the Plaintiff will require future treatment that is also caused by the subject incident, and is expected to consist of *medical care and treatment*. This provider is expected to give expert opinions regarding any facts and opinions that would respond to or rebut the opinions, testimony and evidence offered by Defendants and their respective lay and expert witnesses disclosed by any party in this action, whether in a written report or other documentary evidence, or provided as testimony. This provider is also expected to give expert opinions regarding Plaintiff's diminished work life expectancy, work capacity, and/or life expectancy which are the result of the subject incident. This expert is expected to give expert opinions regarding the appropriateness and value of any treatment rendered to Plaintiff by any of her other healthcare providers; the appropriateness and value of any diagnostic testing, including psychological and neuropsychological testing, performed on the Plaintiff, as well as the findings and assessments made by other healthcare providers, as well as his/her own opinion regarding any test and the findings/diagnosis; future treatment which Plaintiff may need; and any other opinion that may be based on the healthcare provider's experience and/or recommendations made by any other healthcare provider, and/or based upon any diagnostic test, and/or his/her review of any of Plaintiff's medical records from Plaintiff's date of birth to present, that was made during Plaintiff's course of treatment; Plaintiff's damages; any other healthcare provider's report or testimony; any expert's report or testimony. This provider's testimony and opinions will consist of the reasonableness and necessity of the past, present and future medical treatment rendered or to be rendered by any healthcare provider; the causation of the necessity for past, present and future medical treatment caused by the subject incident; the reasonableness of the costs associated with such past, present and future medical treatment; and that they were and

1 are related to the subject incident; the authenticity of medical records, the cost of medical care,
2 and whether those medical costs fall within ordinary and customary charges in the community,
3 for similar medical care and treatment. This provider is hereby designated as a non-retained
4 treating physician/healthcare provider expert witness. Additionally, as a treating physician,
5 Plaintiff reserves the right to supplement this designation in the event Plaintiff's treatment is
6 continuing and ongoing beyond the date of this designation.

7 The following witnesses are expected to testify as to his/her knowledge and facts of
8 Plaintiff's employment, time off, sick leave, annual wages, benefit package, and any other
9 pertinent information relating to Plaintiff's past and future lost wages, loss of earning capacity
10 claims, 1099s and income tax returns.

- 11 1. Person with Knowledge/Custodian of Records
12 Jonathan Dariyanani, Esq.
13 COGNOTION
14 150 East 57th Street, Suite 19E
15 New York, NY 10022
16 541-841-0226
- 17 2. Person with Knowledge/Custodian of Records
18 Internal Revenue Service
19 Fresno, CA

20 Plaintiff has retained the following expert witness, whose affidavit is attached to the
21 Complaint on file herein.

- 22 1. Denis R. Harris, M.D.
23 3301 New Mexico Ave. Northwest, Suite 346
24 Washington, D.C. 20016

25 Plaintiff will identify additional experts in accordance with the Scheduling Order.

- 26 1. **Mark J. Mills, J.D., M.D.**
27 **8300 Wisconsin Avenue, Suite 349**
28 **Bethesda, MD 20814**
(301) 310-2335
2. **Stan Smith, Ph.D.**
Smith Economics Group, Ltd.

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**1165 N. Clark Street, Suite 600
Chicago, IL 60610
(312) 943-1551**

3. **Eleanor Kenney, RN, Ph.D.
12616 Crystal Ranch Road
Moorpark, CA 93021
(805) 529-6930**

4. **Non-retained treating physician expert:
Roger Fontes, M.D.
Desert Orthopedic Center
2800 East Desert Inn Road
Las Vegas, NV 89121
702-731-1616**

5. **Non-retained treating physician expert:
John Herr, M.D.
4425 South Pecos Road, Suite 100
Las Vegas, NV 89121
702-435-3535**

Plaintiff anticipates that he may require testimony from any and all custodian of records, which are necessary to authenticate documents which cannot be stipulated to regarding admissibility by the parties herein.

Plaintiff reserves the right to call any and all expert witnesses that Plaintiff may hereafter select as the need arises during the course of this litigation. Plaintiff further reserves the right to supplement this witness list if any other witnesses become known to Plaintiff as this litigation progresses and as other witnesses are discovered or located.

Plaintiff also reserves the right to call any and all of the remaining Plaintiff's and the Defendants' proposed witnesses, any witnesses who have been deposed, or any other witnesses who become known to Plaintiff and/or Defendants as this litigation progresses and as other witnesses are discovered or located.

1 Finally, Plaintiff reserves the right to call rebuttal and/or impeachment witnesses; to call
 2 the records custodian for any person(s) or institution(s) to which there is an objection concerning
 3 authenticity; and to call any and all witnesses of any other party in this matter.

4 **III. COMPUTATION OF DAMAGES**

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 6 A computation of damages will become more ascertainable as discovery proceeds. Plaintiff
 7 reserves the right to seek and recover all damages as may be proven at the arbitration and to
 8 supplement this statement.
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10 **PAST MEDICAL EXPENSES**

Initial Date of Service	Name of Provider	Total Charges
	Ambulance to Centennial Hills not included	
	Centennial Hills Hospital not included	
	Fyzical Therapy not included	
1/31/18; 2/2/18	Kevin Debiparshad, M.D.	515.00
2/12/18	John Herr, MD <ul style="list-style-type: none"> • Evaluation of left leg for 2nd opinion re step-off deformity anteriorly at level of fracture site along with increased bowing of left lower extremity (after 10/11/17 surgery IM nailing of left tibia) and weight-bearing pain in proximal portion of left tibia • X-rays of left tibia/fibula – <i>persistent angular deformity of left leg at fracture site at junction of proximal and middle 1/3 of left tibia w/delayed healing</i> • Recommend evaluation by Roger Fontes, MD 	335.00
2/15/18- 10/5/18	Roger Fontes, MD/Laura Rodriguez, PA-C/ Desert Orthopedic Center <ul style="list-style-type: none"> • Evaluation of left leg – Fracture of upper end of left tibia; subsequent encounter for closed fracture with non-union • Surgery: Left proximal tibia nonunion nail revision with autograft on 4/3/18 	18,529.06

Initial Date of Service	Name of Provider	Total Charges
	<ul style="list-style-type: none"> 5/30/18 – c/o persistent aching pain over lateral region of hip and requests an x-ray of hip for further evaluation Ordered Exogen Bone Stimulator for left lower extremity tibia non-union X-rays of left leg X-rays of right hip – pain is SI joint pain in origin and likely due to compensation 	10,606.03
2/20/18	Quest Diagnostics	224.54
3/1/18	Humberto Rodriguez/Kevin Debiparshad, MD	640.00
3/22/18	St. Rose Dominican Hospital-de Lima Campus	1,916.00
4/2/18	Del Gardner, MD	150.01
4/3/18	St. Rose Dominican Hospital-de Lima Campus <ul style="list-style-type: none"> Treatment of left tibia nonunion, broken hardware, left tibia Treatment with autograft, intramedullary rod fixation, left tibia, removal deep hardware multiple 4-hour “high risk” surgery (Dr. Roger Fontes) 	160,128.00
4/3/18	Daniel Blake, M.D.	980.00
4/3/18	Mark Crawford, MD	4,172.00
5/9/18	Bioventus, LLC	4,950.00
6/6/18; 6/12/18; 6/21/18	Robert Bien, MD/George Momii, MD <ul style="list-style-type: none"> Pain Management 	4,058.00
6/27/18; 8/8/18	Roger Fontes, MD/Desert Orthopedic Center <ul style="list-style-type: none"> Post-op follow up 	198.00
9/25/18- 9/26/18	St. Rose Dominican Hospital-Siena Campus <ul style="list-style-type: none"> Surgery – right anterior total hip arthroscopy (Roger Fontes, MD/Laura Rodriguez, PA-C) 	122,878.04
	Subtotal	\$330,279.68

Initial Date of Service	Name of Provider	Total Charges
		To be supplemented

In addition to the foregoing past and future medical expenses, Plaintiff seeks damages for his wage and other economic losses, loss of earning capacity, and for pain and suffering, past and future.

A. **Past Medical Expenses:** Unknown at this time/to be supplemented.

B. **Future Medical Expenses:** Unknown at this time/to be supplemented.

C. **Past and Future Wage Loss:** Unknown at this time/to be supplemented. Please see expert Stan Smith, PhD's report dated January 23, 2019, regarding Plaintiff's Loss of Wages and Stock Purchase Options. The wage loss ranges from \$1,685,820 to \$2,686,138, depending on life expectancy or work life expectancy.

D. **Offset to Wages:** Please see expert Stan Smith, PhD's report dated January 23, 2019, regarding Plaintiff's Loss of Wages and Stock Purchase Options. The offset to wages ranges from \$143,271 to \$564,826 depending on life expectancy or work life expectancy.

E. **Loss of Stock Purchase Options:** Please see expert Stan Smith, PhD's report dated January 23, 2019, regarding Plaintiff's Loss of Wages and Stock Purchase Options. The loss of stock purchase options ranges from \$440,000 to \$1,700,000.

F. **Future Loss of Earning Capacity:** Unknown at this time/to be supplemented.

G. **Loss of Household Services:** Unknown at this time/to be supplemented.

Please see expert Stan Smith, PhD's report dated January 23, 2019, regarding Plaintiff's

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Loss of Wages and Stock Purchase Options. Dr. Smith calculated the loss of the value of housekeeping and household management services is \$32,096.

H. **Reduction in Value of Life:** Please see expert Stan Smith, PhD’s report dated January 23, 2019, regarding Plaintiff’s Loss of Wages and Stock Purchase Options. Dr. Smith calculated the reduction in the value of Plaintiff’s life ranges from \$1,100,024 to \$1,283,361.

. I. **General Damages:** In an amount to be determined at trial.

1. Mental anguish: to be determined by the Trier of Fact;
2. Loss of enjoyment of life: to be determined by the Trier of Fact;
3. Pain and suffering: to be determined by the Trier of Fact;

J. **Interest:** to be calculated at the statutory rate.

K. For such other and further relief as the Court may deem appropriate.

All documents to support the above computation of damages are included in Plaintiff’s Rule 16.1 Disclosure and all future supplements thereto. Further, Plaintiff reserves the right to amend his computation of damages as discovery continues and after further investigation.

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IV. INSURANCE AGREEMENT

Not applicable.

Dated this 16th day of May, 2019.

HOWARD & HOWARD ATTORNEYS PLLC

By: /s/ Martin A. Little
Martin A. Little, Esq.
Alexander Villamar, Esq.
3800 Howard Hughes Pkwy, Suite 1000
Las Vegas, Nevada 89169
Telephone No. (702) 257-1483
Facsimile No. (702) 567-1568
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, NV 89169.

On this 16th day of May, 2019, I served the **ELEVENTH SUPPLEMENT TO PLAINTIFF’S INITIAL EARLY CASE CONFERENCE DISCLOSURE OF DOCUMENTS AND WITNESSES** on all parties in this action or proceeding electronically with the Clerk of the Court via the Odyssey E-File and Serve system, which will cause this document to be served upon the following counsel of record. The CD containing exhibits 50-59 will be mailed to the following counsel of record:

Kenneth M. Webster, Esq. – <u>kwebster@hpslaw.com</u> <i>Attorneys for Defendants Valley Health System, LLC d/b/a Centennial Hills Hospital</i>	Kenneth M. Webster, Esq. Michael Shannon, Esq. Marjorie E. Kratsas, Esq. HALL PRANGLE SCHOONVELD, LLC 1160 N. Town Center Drive, Suite 200 Las Vegas, NV 89144
S. Brent Vogel, Esq. – <u>brent.vogel@lewisbrisbois.com</u> <i>Attorneys for Defendants Kevin Paul Debiparshad, M.D.; Kevin P. Debiparshad PLLC d/b/a Synergy Spine and Orthopedics; and Debiparshad Professional Services d/b/a Synergy Spine and Orthopedics; Jaswinder S. Grover, M.D., and Jaswinder S. Grover, M.D., Ltd. dba Nevada Spine Clinic</i>	S. Brent Vogel, Esq. Katherine J. Gordon, Esq. LEWIS BRISBOIS BISGAARD & SMITH 6385 South Rainbow Blvd., Suite 600 Las Vegas, NV 89118

I certify under penalty of perjury that the foregoing is true and correct, and that I executed this Certificate of Service on May 16, 2019, at Las Vegas, Nevada.

s/ Karen R. Gomez
An Employee of Howard & Howard Attorneys PLLC
4812-8952-4631.1

EXHIBIT 4

1 S. BRENT VOGEL
Nevada Bar No. 6858
2 Brent.Vogel@lewisbrisbois.com
JOHN M. ORR
3 Nevada Bar No. 14251
John.Orr@lewisbrisbois.com
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
5 Las Vegas, Nevada 89118
TEL: 702.893.3383
6 FAX: 702.893.3789

7 *Attorneys for Defendants Kevin Paul Debiparshad, MD,*
Kevin Paul Debiparshad, PLLC, d/b/a Synergy Spine
8 *and Orthopedics and Debiparshad Professional Services*
LLC d/b/a Synergy Spine and Orthopedics.
9

DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 JASON GEORGE LANDESS a.k.a. KAY
12 GEORGE LANDESS, as an individual,

13 Plaintiff,

14 vs.

15 KEVIN PAUL DEBIPARSHAD, MD, an
individual; KEVIN P. DEBIPARSHAD PLLC,
16 a Nevada professional limited liability company
doing business as "SYNERGY SPINE AND
17 ORTHOPEDICS", DEBIPARSHAD
PROFESSIONAL SERVICES LLC, a Nevada
18 professional limited liability company doing
business as "SYNERGY SPINE AND
19 ORTHOPEDICS", ALLEGIANT
INSTITUTE INC. a Nevada domestic
20 professional corporation doing business as
"ALLEGIANT SPINE INSTITUTE";
21 JASWINDER S. GROVER, MD an individual;
JASWINDER S. GROVER, MD Ltd doing
22 business as "NEVADA SPINE CLINIC";
VALLEY HEALTH SYSTEM LLC, a Delaware
23 limited liability company doing business as
"CENTENNIAL HILLS HOSPITAL", UHS
24 OF DELAWARE, INC. a Delaware
corporation also doing business as
25 "CENTINNIAL HILLS HOSPITAL", DOES
1-X, inclusive; and ROE CORPORATIONS I-
26 X, inclusive,

Defendants.

CASE NO. A-18-776896-C
Dept. No.: 24

**DEFENDANTS KEVIN PAUL
DEBIPARSHAD, MD, KEVIN PAUL
DEBIPARSHAD, PLLC DBA SYNERGY
SPINE AND ORTHOPEDICS, AND
DEBIPARSHAD PROFESSIONAL
SERVICES LLC DBA SYNERGY SPINE
AND ORTHOPEDICS' SEVENTH
SUPPLEMENTAL DISCLOSURE OF
WITNESSES AND DOCUMENTS
PURSUANT TO NRCP 16.1**

1 COME NOW, Defendants, KEVIN PAUL DEBIPARSHAD, MD, KEVIN PAUL
2 DEBIPARSHAD, PLLC dba SYNERGY SPINE AND ORTHOPEDICS, AND DEBIPARSHAD
3 PROFESSIONAL SERVICES LLC dba SYNERGY SPINE AND ORTHOPEDICS
4 (“Defendants”), by and through their counsel of record, S. Brent Vogel, and Katherine J. Gordon, of
5 the Law Firm LEWIS BRISBOIS BISGAARD & SMITH, and supplement their Initial Disclosure of
6 Witnesses and Documents Pursuant to NRCP 16.1 as follows: *(Supplemental information appears*
7 *in bold, italicized type.)*

8 I.

9 WITNESSES

10 1. JASON GEORGE LANDESS aka
11 GEORGE LANDESS
12 c/o Martin A. Little, Esq.
13 HOWARD & HOWARD ATTORNEYS PLLC
14 3800 Howard Hughes Parkway, Suite 1000
15 Las Vegas, NV 89169

16 GEORGE LANDESS, is the Plaintiff in this matter, and is expected to testify regarding the
17 facts and circumstances surrounding the events alleged in the Complaint now at issue in this litigation,
18 including, but not limited to, the care and treatment he received from Defendants, his interactions
19 with Defendants, Defendants’ staff and with any other care providers. Plaintiff, GEORGE
20 LANDESS’ testimony shall also include testimony in support of the damages he allegedly sustained as
21 a result of the Incident alleged in his Complaint.

22 2. Denis R. Harris, MD
23 3301 New Mexico Ave. Northwest, Ste 346
24 Washington, D.C. 20016

25 Denis Harris, MD, is Plaintiffs’ Expert Witness, and is expected to testify regarding the facts
26 and circumstances surrounding the events alleged in Plaintiffs’ Complaint, including without
27 limitation, the care and treatment Decedent, ELISENDA AMARANTO, received from Defendant
28 which is at issue in this litigation. Dr. Maynard is also expected to testify as to the damages allegedly
sustained as a result of the incident alleged in the Plaintiffs’ Complaint.

1 3. JASWINDER S. GROVER, MD
2 c/o Stuart J. Taylor, Esq.
3 COTTON & ASSOCIATES
4 7900 West Sahara Avenue, Suite 200
5 Las Vegas, NV 89117

6 JASWINDER GROVER, MD, is a Defendant in this matter, and is expected to testify
7 regarding the facts and circumstances surrounding the events alleged in Plaintiff's Complaint,
8 including, but not limited to, the care and treatment he provided to Plaintiff, his interactions with
9 Plaintiff and/or his staff regarding Plaintiff, and/or his interactions with any of Plaintiff's other care
10 providers. Dr. Grover is also expected to testify as to the damages Plaintiff allegedly sustained as a
11 result of the Incident alleged in Plaintiff's Complaint.

12 4. Employees and Representatives of
13 VALLEY HEALTH SYSTEM, LLC dba CENTENNIAL HILLS HOSPITAL
14 c/o Kenneth M. Webster, Esq.
15 Marjorie Kratsas, Esq.
16 HALL, PRANGLE & SCHOONHVELD, LLC
17 11600 N. Town Center Drive, Ste 200
18 Las Vegas, NV 89144

19 These witnesses include but are not limited to, treating physicians, nursing personnel and/or
20 other ancillary personnel who provided care and treatment to Plaintiff, and will offer testimony as to
21 their respective roles in the care of and/or interactions with Plaintiff and/or his family members.
22 Each respective witness shall testify, within the scope of their individual knowledge, as to facts and
23 circumstances surrounding the events alleged in Plaintiff's Complaint, and may testify as to the
24 damages allegedly sustained as a result of the Incident alleged in the Plaintiff's Complaint. These
25 witnesses may also include persons most knowledgeable to testify regarding policies, procedures,
26 protocol, and medical staffing issues, and also custodians of medical records as necessary to
27 authenticate the medical records

28 5. KEVIN PAUL DEBIPARSHAD, MD
 c/o Brent Vogel, Esq. / Katherine J. Gordon, Esq.
 LEWIS BRISBOIS BISGAARD & SMITH LLP
 6385 S. Rainbow, Ste. 600
 Las Vegas, Nevada 89118

1 KEVIN PAUL DEBIPARSHAD, MD, is a Defendant in this matter, and is expected to
2 testify regarding the facts and circumstances surrounding the events alleged in Plaintiff's Complaint,
3 including, but not limited to, the care and treatment he provided to Plaintiff, his interactions with
4 Plaintiff and/or his staff with regard to Plaintiff, and/or his interactions with any of Plaintiff's other
5 care providers. Dr. Debiparshad is also expected to testify as to the damages Plaintiff allegedly
6 sustained, as a result of the Incident alleged in Plaintiff's Complaint.

7 6. Employees and Representatives of
8 KEVIN PAUL DEBIPARSHAD, MD dba
9 SYNERGY SPINE AND ORTHOPEDICSS
10 c/o Brent Vogel, Esq. / Katherine J. Gordon, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow, Ste. 600
Las Vegas, Nevada 89118

11 These witnesses include but are not limited to, treating physicians, nursing personnel and/or
12 other ancillary personnel who provided care and treatment to Plaintiff, and will offer testimony as to
13 their respective roles in the care of and/or interactions with Plaintiff and/or his family members.
14 Each respective witness shall testify, within the scope of their individual knowledge, as to facts and
15 circumstances surrounding the events alleged in Plaintiff's Complaint, and may testify as to the
16 damages allegedly sustained as a result of the incident alleged in the Plaintiff's Complaint. These
17 witnesses may also include persons most knowledgeable to testify regarding policies, procedures,
18 protocol, and medical staffing issues, and also custodians of medical records as necessary to
19 authenticate the medical records.

20 7. Employees and Representatives of
21 ALLEGIANT INSTITUTE INC dba ALLEGIANT SPINE INSTITUTE
22 7140 Smoke Ranch Rd A
Las Vegas, NV 89128

23 These witnesses include but are not limited to, treating physicians, nursing personnel and/or
24 other ancillary personnel who provided care and treatment to Plaintiff, and will offer testimony as to
25 their respective roles in the care of and/or interactions with Plaintiff and/or his family members.
26 Each respective witness shall testify, within the scope of their individual knowledge, as to facts and
27 circumstances surrounding the events alleged in Plaintiff's Complaint, and may testify as to the
28 damages allegedly sustained as a result of the incident alleged in the Plaintiff's Complaint. These

1 witnesses may also include persons most knowledgeable to testify regarding policies, procedures,
2 protocol, and medical staffing issues, and also custodians of medical records as necessary to
3 authenticate the medical records.

4 8. Employees and Representatives of
5 VALLEY HEALTH SYSTEM LLC dba CENTENNIAL HILLS HOSPITAL
6 6900 N. Durango Dr.
7 Las Vegas, NV 89149

8 These witnesses include but are not limited to, treating physicians, nursing personnel and/or
9 other ancillary personnel who provided care and treatment to Plaintiff, and will offer testimony as to
10 their respective roles in the care of and/or interactions with Plaintiff and/or his family members.
11 Each respective witness shall testify, within the scope of their individual knowledge, as to facts and
12 circumstances surrounding the events alleged in Plaintiff's Complaint, and may testify as to the
13 damages allegedly sustained as a result of the incident alleged in the Plaintiff's Complaint. These
14 witnesses may also include persons most knowledgeable to testify regarding policies, procedures,
15 protocol, and medical staffing issues, and also custodians of medical records as necessary to
16 authenticate the medical records.

17 9. Employees and Representatives of
18 UNIVERSITY MEDICAL CENTER-QUICK CARE
19 2031 N. Buffalo Dr.
20 Las Vegas, NV 89128

21 These witnesses include but are not limited to, treating physicians, nursing personnel and/or
22 other ancillary personnel who provided care and treatment to Plaintiff, and will offer testimony as to
23 their respective roles in the care of and/or interactions with Plaintiff and/or his family members.
24 Each respective witness shall testify, within the scope of their individual knowledge, as to facts and
25 circumstances surrounding the events alleged in Plaintiff's Complaint, and may testify as to the
26 damages allegedly sustained as a result of the incident alleged in the Plaintiff's Complaint. These
27 witnesses may also include persons most knowledgeable to testify regarding policies, procedures,
28 protocol, and medical staffing issues, and also custodians of medical records as necessary to
authenticate the medical records.

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10. Employees and Representatives of
UNIVERSITY MEDICAL CENTER-QUICK CARE NELLIS
5330 N. Nellis Blvd. Suite 61
Las Vegas, NV 89110

These witnesses include but are not limited to, treating physicians, nursing personnel and/or other ancillary personnel who provided care and treatment to Plaintiff, and will offer testimony as to their respective roles in the care of and/or interactions with Plaintiff and/or his family members. Each respective witness shall testify, within the scope of their individual knowledge, as to facts and circumstances surrounding the events alleged in Plaintiff's Complaint, and may testify as to the damages allegedly sustained as a result of the incident alleged in the Plaintiff's Complaint. These witnesses may also include persons most knowledgeable to testify regarding policies, procedures, protocol, and medical staffing issues, and also custodians of medical records as necessary to authenticate the medical records.

11. Employees and Representatives of
UNIVERSITY MEDICAL CENTER-QUICK CARE PECCOLE RANCH
9320 W. Sahara Ave
Las Vegas, NV 89117

These witnesses include but are not limited to, treating physicians, nursing personnel and/or other ancillary personnel who provided care and treatment to Plaintiff, and will offer testimony as to their respective roles in the care of and/or interactions with Plaintiff and/or his family members. Each respective witness shall testify, within the scope of their individual knowledge, as to facts and circumstances surrounding the events alleged in Plaintiff's Complaint, and may testify as to the damages allegedly sustained as a result of the incident alleged in the Plaintiff's Complaint. These witnesses may also include persons most knowledgeable to testify regarding policies, procedures, protocol, and medical staffing issues, and also custodians of medical records as necessary to authenticate the medical records.

12. Employees and Representatives of
UNIVERSITY MEDICAL CENTER-QUICK CARE RANCHO
4231 N. Rancho Dr.
Las Vegas, NV 89130

1 These witnesses include but are not limited to, treating physicians, nursing personnel and/or
2 other ancillary personnel who provided care and treatment to Plaintiff, and will offer testimony as to
3 their respective roles in the care of and/or interactions with Plaintiff and/or his family members.
4 Each respective witness shall testify, within the scope of their individual knowledge, as to facts and
5 circumstances surrounding the events alleged in Plaintiff's Complaint, and may testify as to the
6 damages allegedly sustained as a result of the incident alleged in the Plaintiff's Complaint. These
7 witnesses may also include persons most knowledgeable to testify regarding policies, procedures,
8 protocol, and medical staffing issues, and also custodians of medical records as necessary to
9 authenticate the medical records.

10 13. Employees and Representatives of
11 UNIVERSITY MEDICAL CENTER-QUICK CARE ENTERPRISE
12 1700 Wheeler Peak Dr.
 Las Vegas, NV 89106

13 These witnesses include but are not limited to, treating physicians, nursing personnel and/or
14 other ancillary personnel who provided care and treatment to Plaintiff, and will offer testimony as to
15 their respective roles in the care of and/or interactions with Plaintiff and/or his family members.
16 Each respective witness shall testify, within the scope of their individual knowledge, as to facts and
17 circumstances surrounding the events alleged in Plaintiff's Complaint, and may testify as to the
18 damages allegedly sustained as a result of the incident alleged in the Plaintiff's Complaint. These
19 witnesses may also include persons most knowledgeable to testify regarding policies, procedures,
20 protocol, and medical staffing issues, and also custodians of medical records as necessary to
21 authenticate the medical records.

22 14. Employees and Representatives of
23 MARIE GEMPIS, DO
24 204 McCollum Street, Ste 102
 Laramie, WY 82070

25 Marie Gempis, DO, is expected to offer testimony as to the care and treatment she provided
26 to Plaintiff and as to her interactions with Plaintiff and/or his family members, and may offer
27 testimony as to the damages allegedly sustained as a result of the Incident alleged in the Plaintiff's
28 Complaint.

1 15. JOSEPH CANDELA, MD
2 7500 Smoke Ranch Rd. Ste 200
3 Las Vegas, NV 89128

4 Joseph Candela, MD, is expected to offer testimony as to the care and treatment he provided
5 to Plaintiff and as to his interactions with Plaintiff and/or his family members, and may offer
6 testimony as to the damages allegedly sustained as a result of the Incident alleged in the Plaintiff's
7 Complaint.

8 16. JOHN HERR, MD
9 4425 S. Pecos Rd. #1
10 Las Vegas, NV 89121

11 John Herr, MD is expected to offer testimony as to the care and treatment he provided to
12 Plaintiff and as to his interactions with Plaintiff and/or his family members, and may offer testimony
13 as to the damages allegedly sustained as a result of the Incident alleged in the Plaintiff's Complaint.

14 17. ROGER PONTES, MD
15 2930 W. Horizon Ridge Pkwy, #100
16 Henderson, NV 89052

17 Roger Pontes, MD, is expected to offer testimony as to the care and treatment he provided to
18 Plaintiff, and as to his interactions with Plaintiff and/or his family members, and may offer testimony
19 as to the damages allegedly sustained as a result of the Incident alleged in the Plaintiff's Complaint.

20 18. Employees and Representatives of
21 AMR AMBULANCE
22 7201 W. Post Rd.
23 Las Vegas, NV 89113

24 These witnesses include but are not limited to, treating physicians, nursing personnel and/or
25 other ancillary personnel who provided care and treatment to Plaintiff, and will offer testimony as to
26 their respective roles in the care of and/or interactions with Plaintiff and/or his family members.
27 Each respective witness shall testify, within the scope of their individual knowledge, as to facts and
28 circumstances surrounding the events alleged in Plaintiff's Complaint, and may testify as to the
damages allegedly sustained as a result of the incident alleged in the Plaintiff's Complaint. These
witnesses may also include persons most knowledgeable to testify regarding policies, procedures,
protocol, and medical staffing issues, and also custodians of medical records as necessary to
authenticate the medical records.

1 19. MARK J. MILLS, JD, MD
2 5308 Mac Arthur Blvd. NW
3 Washington, D.C. 20016

4 Mark J. Mills, JD, MD, is expected to offer testimony as to the care and treatment he provided
5 to Plaintiff, as to his interactions with Plaintiff and/or his family members, and may offer testimony
6 as to the damages allegedly sustained as a result of the Incident alleged in the Plaintiff's Complaint.

7 FIRST SUPPLEMENT

8 20. Steven Landess
9 4662 Hocker Way
10 Las Vegas, NV 89147
11 702.245.4477

12 Steven Landess will be called to testify as disclosed by Plaintiff in his Initial Early Case
13 Conference Disclosure of Documents and Witnesses (hereinafter "Plaintiff's Initial Disclosure").

14 21. Justin Landess
15 7054 Big Springs Court
16 Las Vegas, NV 89113

17 Justin Landess will be called to testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

18 22. Barbara Christine Lambson
19 2144 West 7380 South
20 West Jordan, UT 84084
21 801.574.0458

22 Barbara Christine Lambson will be called to testify as disclosed by Plaintiff in Plaintiff's Initial
23 Disclosure.

24 23. Carolyn Landess
25 5432 Morning Swim Lane
26 Las Vegas, NV 89113
27 702.253.6788

28 Carolyn Landess will be called to testify as disclosed by Plaintiff in Plaintiff's Initial
Disclosure.

29 24. Robert Brigham
30 3416 N. Tenaya Way
31 Las Vegas, NV 89129
32 702.533.5658

1 Robert Brigham will be called to testify as disclosed by Plaintiff in Plaintiff's Initial
2 Disclosure.

3 25. Neil Simmons
4 3397 Oasis Drive
5 Lake Havasu City, AZ 89404

6 Neil Simmons will be called to testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

7 26. Sally Simmons
8 3397 Oasis Drive
9 Lake Havasu City, AZ 86404

10 Sally Simmons will be called to testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

11 27. Tom Fischer
12 10325 Nu-Way Kaiv Blvd.
13 Las Vegas, NV 89124
14 702.658.1400

15 Tom Fischer will be called to testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

16 28. Person With Knowledge and Custodian of Records for
17 Defendants Jaswinder S. Grover, MD; Jaswinder S. Grover, MD Ltd,
18 dba Nevada Spine Clinic
19 c/o Cotton & Associates
20 7900 W. Sahara Avenue, Suite 200
21 Las Vegas, NV 89117

22 Person With Knowledge and Custodian of Records for Defendants Jaswinder S. Grover, MD,
23 and Jaswinder S. Grover, MD Ltd. dba Nevada Spine Clinic will be called to testify as disclosed by
24 Plaintiff in Plaintiff's Initial Disclosure.

25 29. Person With Knowledge/Custodian of Records
26 Defendant Centennial Hills Hospital Medical Center
27 c/o Hall Prangle & Schoonveld, LLD
28 1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144

Person With Knowledge/Custodian of Records of Defendant Centennial Hills Hospital
Medical Center will be called to testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

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30. Stuart J. Meyers, MD
Centennial Hills Hospital Medical Center
c/o Hall Prangle & Schoonveld, LLD
1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144

Stuart J. Meyers, M.D will be called to testify as disclosed by Plaintiff in Plaintiff's Initial

Disclosure.

31. David K. McCleve, PA-C
Centennial Hills Hospital Medical Center
c/o Hall Prangle & Schoonveld, LLD
1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144

David K. McCleve, PA-C will be called to testify as disclosed by Plaintiff in Plaintiff's Initial

Disclosure.

32. Kevin Hyer, MD
Centennial Hills Hospital Medical Center
c/o Hall Prangle & Schoonveld, LLD
1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144

Kevin Hyer, M.D will be called to testify as disclosed by Plaintiff in Plaintiff's Initial

Disclosure.

33. Ahmed Fawad, MD
Centennial Hills Hospital Medical Center
c/o Hall Prangle & Schoonveld, LLD
1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144

Ahmed Fawad, MD will be called to testify as disclosed by Plaintiff in Plaintiff's Initial

Disclosure.

34. Stephanie Latta, RN
Centennial Hills Hospital Medical Center
c/o Hall Prangle & Schoonveld, LLD
1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144

Stephanie Latta, RN will be called to testify as disclosed by Plaintiff in Plaintiff's Initial

Disclosure.

....

1 35. Jennifer Townsend, RN
2 Centennial Hills Hospital Medical Center
3 c/o Hall Prangle & Schoonveld, LLD
4 1160 N. Town Center Drive, Suite 200
5 Las Vegas, NV 89144

6 Jennifer Townsend, RN will be called to testify as disclosed by Plaintiff in Plaintiff's Initial
7 Disclosure.

8 36. Karen Buettner, RN
9 Centennial Hills Hospital Medical Center
10 c/o Hall Prangle & Schoonveld, LLD
11 1160 N. Town Center Drive, Suite 200
12 Las Vegas, NV 89144

13 Karen Buettner, RN will be called to testify as disclosed by Plaintiff in Plaintiff's Initial
14 Disclosure.

15 37. Elizabeth Keleman, RN
16 Centennial Hills Hospital Medical Center
17 c/o Hall Prangle & Schoonveld, LLD
18 1160 N. Town Center Drive, Suite 200
19 Las Vegas, NV 89144

20 Elizabeth Keleman, RN will be called to testify as disclosed by Plaintiff in Plaintiff's Initial
21 Disclosure.

22 38. Earl R. Ang, MD
23 Centennial Hills Hospital Medical Center
24 c/o Hall Prangle & Schoonveld, LLD
25 1160 N. Town Center Drive, Suite 200
26 Las Vegas, NV 89144

27 Earl R. Ang, MD will be called to testify as disclosed by Plaintiff in Plaintiff's Initial
28 Disclosure.

 39. Brendon Bicol, NP
 Centennial Hills Hospital Medical Center
 c/o Hall Prangle & Schoonveld, LLD
 1160 N. Town Center Drive, Suite 200
 Las Vegas, NV 89144

 Brendon Bicol, NP will be called to testify as disclosed by Plaintiff in Plaintiff's Initial
Disclosure.

1 40. Gregory L. Goetz, DO
2 Centennial Hills Hospital Medical Center
3 c/o Hall Prangle & Schoonveld, LLD
4 1160 N. Town Center Drive, Suite 200
5 Las Vegas, NV 89144

6 Gregory L. Goetz, DO will be called to testify as disclosed by Plaintiff in Plaintiff's Initial
7 Disclosure.

8 41. Winter Guesman, RN
9 Centennial Hills Hospital Medical Center
10 c/o Hall Prangle & Schoonveld, LLD
11 1160 N. Town Center Drive, Suite 200
12 Las Vegas, NV 89144

13 Winter Guesman, RN will be called to testify as disclosed by Plaintiff in Plaintiff's Initial
14 Disclosure.

15 42. Jennifer M. Rivera, Student Nurse (NSC)
16 Centennial Hills Hospital Medical Center
17 c/o Hall Prangle & Schoonveld, LLD
18 1160 N. Town Center Drive, Suite 200
19 Las Vegas, NV 89144

20 Jennifer M. Rivera, Student Nurse (NSC) will be called to testify as disclosed by Plaintiff in
21 Plaintiff's Initial Disclosure.

22 43. Jeff Japalucci, Radiology Technician
23 Centennial Hills Hospital Medical Center
24 c/o Hall Prangle & Schoonveld, LLD
25 1160 N. Town Center Drive, Suite 200
26 Las Vegas, NV 89144

27 Jeff Japalucci will be called to testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

28 44. "Director Jayme"
 Centennial Hills Hospital Medical Center
 c/o Hall Prangle & Schoonveld, LLD
 1160 N. Town Center Drive, Suite 200
 Las Vegas, NV 89144

 "Director Jayme" will be called to testify as disclosed by Plaintiff in Plaintiff's Initial
Disclosure.

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45. "Clin Sup Andrea"
Centennial Hills Hospital Medical Center
c/o Hall Prangle & Schoonveld, LLD
1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144

"Clin Sup Andrea" will be called to testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

46. Tammy Robinson, RN
Centennial Hills Hospital Medical Center
c/o Hall Prangle & Schoonveld, LLD
1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144

Tammy Robinson, RN will be called to testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

47. Kathleen Olbur, RN
Centennial Hills Hospital Medical Center
c/o Hall Prangle & Schoonveld, LLD
1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144

Kathleen Olbur, RN will be called to testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

48. Dr. Arora
Centennial Hills Hospital Medical Center
c/o Hall Prangle & Schoonveld, LLD
1160 N. Town Center Drive, Suite 200
Las Vegas, NV 89144

Dr. Arora will be called to testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

49. Person With Knowledge/Custodian of Records
Medic West Ambulance, Inc./American Medical Response
P.O. Box 745774
Los Angeles, CA 90074

Person With Knowledge/Custodian of Records Medic West Ambulance, Inc./ American Medical Response will be called to testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

1 50. Penny Pukall, AMR Paramedic
2 Medic West Ambulance, Inc./American Medical Response
3 P.O. Box 745774
4 Los Angeles, CA 90074

5 Penny Pukall, AMR Paramedic will be called to testify as disclosed by Plaintiff in Plaintiff's
6 Initial Disclosure.

7 51. Jacob Nielsen, AMR Advanced EMT
8 Medic West Ambulance, Inc./American Medical Response
9 P.O. Box 745774
10 Los Angeles, CA 90074

11 Jacob Nielsen, AMR Advanced EMT will be called to testify as disclosed by Plaintiff in
12 Plaintiff's Initial Disclosure.

13 52. Person With Knowledge/Custodian of Records
14 UMC Quick Care
15 4180 S. Rainbow Boulevard, Suite 810
16 Las Vegas, NV 89103
17 702.383.3645

18 Person with Knowledge/Custodian of Records UMC Quick Care will be called to testify as
19 disclosed by Plaintiff in Plaintiff's Initial Disclosure.

20 53. Person With Knowledge/Custodian of Records
21 University Medical Center of Southern Nevada
22 1800 W. Charleston Boulevard
23 Las Vegas, NV 89102

24 Person With Knowledge/Custodian of Records University Medical Center of Southern
25 Nevada will be called to testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

26 54. Person With Knowledge/Custodian of Records
27 St. Rose Dominican Hospital-de Lima Campus
28 102 E. Lake Mead Parkway
Henderson, NV 89015

Person With Knowledge/Custodian of Records St. Rose Dominican Hospital-de Lima
Campus will be called to testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

55. Person With Knowledge/Custodian of Records
St. Rose Dominican Hospital-Siena Campus
3001 St. Rose Parkway
Henderson, NV 89052

1 Person With Knowledge/Custodian of Records St. Rose Dominican Hospital-de Lima
2 Campus will be called to testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

3 56. Person With Knowledge/Custodian of Records
4 Steinberg Diagnostic Medical Imaging
5 9070 W. Post Road
6 Las Vegas, NV 89148
7 702.732.6000

8 Person With Knowledge/Custodian of Records Steinberg Diagnostic Medical Imaging will be
9 called to testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

10 57. Person With Knowledge/Custodian of Records
11 Bioventus
12 4721 Emperor Blvd. Suite 100
13 Durham, NC 27703
14 412.585.0386

15 Person With Knowledge/Custodian of Records Bioventus will be called to testify as disclosed
16 by Plaintiff in Plaintiff's Initial Disclosure.

17 58. Kate Dugan
18 Bioventus
19 4721 Emperor Blvd. Suite 100
20 Durham, NC 27703
21 412.585.0386

22 Kate Dugan will be called to testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

23 59. Meneleo Jaajoco, MD
24 UMC QuickCare
25 4180 S. Rainbow Blvd. Suite 810
26 Las Vegas, NV 89103
27 702.383.3645

28 Meneleo Jaajoco, MD will be called to testify as disclosed by Plaintiff in Plaintiff's Initial
Disclosure.

60. Laura Rodriguez, PA-C
Desert Orthopedic Center
82-5 W. Warm Springs Road, Suite 250
Las Vegas, NV 89113
702.731.1616

Laura Rodriguez, PA-C will be called to testify as disclosed by Plaintiff in Plaintiff's Initial
Disclosure.

1 61. Person With Knowledge/Custodian of Records
2 Fyzical Therapy & Balance Center Jones
3 3820 S. Jones Boulevard
4 Las Vegas, NV 89103
5 702.818.5000

6 Person With Knowledge/Custodian of Records Fyzical Therapy & Balance Center Jones will
7 be called to testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

8 62. Person With Knowledge/Custodian of Records
9 Robert Bien, MD
10 7050 Smoke Ranch Road, Suite 130
11 Las Vegas, NV 89128
12 702.233.9911

13 Person With Knowledge/Custodian of Records Robert Bien, MD will be called to testify as
14 disclosed by Plaintiff in Plaintiff's Initial Disclosure.

15 63. Robert Bien, MD
16 7050 Smoke Ranch Road, Suite 130
17 Las Vegas, NV 89128
18 702.233.9911

19 Robert Bien, MD will be called to testify as disclosed by Plaintiff in Plaintiff's Initial
20 Disclosure.

21 64. Person With Knowledge/Custodian of Records
22 Jonathan Dariyanani, Esq.
23 COGNOTION
24 150 East 57th Street, Suite 19E
25 New York, NY 10022
26 541.841.0226

27 Person With Knowledge/Custodian of Records Jonathan Dariyanani, Esq. will be called to
28 testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

29 65. Person With Knowledge/Custodian of Records
30 Internal Revenue Service
31 Fresno, CA

32 Person With Knowledge/Custodian of Records Internal Revenue Service will be called to
33 testify as disclosed by Plaintiff in Plaintiff's Initial Disclosure.

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1 66. Jayme Morrisette, RN
2 c/o HALL PRANGLE & SCHOONVELD, LLC
3 1160 N. Town Center Dr. Ste. 200
 Las Vegas, NV 89144

4 Jayme Morrisette, RN will be called to testify as disclosed by Defendant, Valley Health
5 System, LLC dba Centennial Hills Hospital in Defendant Valley Health System, LLC dba Centennial
6 Hills Hospital's Initial List of Witnesses and Documents Pursuant to NRC 16.1 [hereinafter
7 "Centennial's Initial Disclosure"].

8 67. Henry Presha
9 c/o HALL PRANGLE & SCHOONVELD, LLC
 1160 N. Town Center Dr. Ste. 200
10 Las Vegas, NV 89144

11 Henry Presha will be called to testify as disclosed by Defendant, Valley Health System, LLC
12 dba Centennial Hills Hospital in Centennial's Initial Disclosure.

13 68. Erlinda Ramos, RN
14 c/o HALL PRANGLE & SCHOONVELD, LLC
 1160 N. Town Center Dr. Ste. 200
15 Las Vegas, NV 89144

16 Erlinda Ramos, RN will be called to testify as disclosed by Defendant, Valley Health System,
17 LLC dba Centennial Hills Hospital in Centennial's Initial Disclosure.

18 69. Karen Buttner, RN
19 c/o HALL PRANGLE & SCHOONVELD, LLC
 1160 N. Town Center Dr. Ste. 200
20 Las Vegas, NV 89144

21 Karen Buttner, RN will be called to testify as disclosed by Defendant, Valley Health System,
22 LLC dba Centennial Hills Hospital in Centennial's Initial Disclosure.

23 70. Andrea Reed, RN
24 c/o HALL PRANGLE & SCHOONVELD, LLC
 1160 N. Town Center Dr. Ste. 200
25 Las Vegas, NV 89144

26 Andrea Reed, RN will be called to testify as disclosed by Defendant, Valley Health System,
27 LLC dba Centennial Hills Hospital in Centennial's Initial Disclosure.

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1 71. Brian Anderson, PT
2 c/o HALL PRANGLE & SCHOONVELD, LLC
3 1160 N. Town Center Dr. Ste. 200
4 Las Vegas, NV 89144

5 Brian Anderson, PT will be called to testify as disclosed by Defendant, Valley Health System,
6 LLC dba Centennial Hills Hospital in Centennial's Initial Disclosure.

7 72. Person Most Knowledgeable/Custodian of Records and
8 Valley Health System, LLC dba Centennial Hills Hospital
9 c/o HALL PRANGLE & SCHOONVELD, LLC
10 1160 N. Town Center Dr. Ste. 200
11 Las Vegas, NV 89144

12 Person Most Knowledgeable/Custodian of Records and Valley Health System, LLC dba
13 Centennial Hills Hospital will be called to testify as disclosed by Defendant, Valley Health System,
14 LLC dba Centennial Hills Hospital in Centennial's Initial Disclosure.

15 73. Erica Wong, PT Student
16 [Contact Information to be Provided by Defendant, Valley Health
17 System, LLC dba Centennial Hills Hospital]

18 Erica Wong, PT Student will be called to testify as disclosed by Defendant, Valley Health
19 System, LLC dba Centennial Hills Hospital in Centennial's Initial Disclosure.

20 74. Person Most Knowledgeable/Custodian of Records and
21 Same Retke, Stryker Representative
22 [Contact Information to be Provided by Defendant, Valley Health
23 System, LLC dba Centennial Hills Hospital]

24 Person Most Knowledgeable/Custodian of Records and Same Retke, Stryker Representative,
25 will be called to testify as disclosed by Defendant, Valley Health System, LLC dba Centennial Hills
26 Hospital in Centennial's Initial Disclosure.

27 75. Person Most Knowledgeable/Custodian of Records
28 Medicare
29 P.O. Box 6722
30 Fargo, NC 58108

31 The Person Most Knowledgeable/Custodian of Records Medicare will be called to testify as
32 disclosed by Defendant, Valley Health System, LLC dba Centennial Hills Hospital in Centennial's
33 Initial Disclosure.

1 76. Person Most Knowledgeable/Custodian of Records
2 AARP Healthcare
3 P.O. Box 740819
4 Atlanta, GA 30374-0819
5 800.227.7789
6 Policy # 3272434436-11

7 Person Most Knowledgeable/Custodian of Records AARP Healthcare will be called to testify
8 as disclosed by Defendant, Valley Health System, LLC dba Centennial Hills Hospital in Centennial's
9 Initial Disclosure.

10 77. Person Most Knowledgeable/Custodian of Records
11 OK Care Pharmacy
12 4845 S. Rainbow Blvd. #403
13 Las Vegas, NV 89103

14 Person Most Knowledgeable/Custodian of Records OK Care Pharmacy will be called to
15 testify as disclosed by Defendant, Valley Health System, LLC dba Centennial Hills Hospital in
16 Centennial's Initial Disclosure.

17 78. Person Most Knowledgeable/Custodian of Records
18 Keith Kleven Institute
19 3820 S. Jones Blvd.
20 Las Vegas, NV 89103

21 Person Most Knowledgeable/Custodian of Records Keith Kleven Institute will be called to
22 testify as disclosed by Defendant, Valley Health System, LLC dba Centennial Hills Hospital in
23 Centennial's Initial Disclosure.

24 79. Person Most Knowledgeable/Custodian of Records
25 Forte Family Practice
26 9010 West Cheyenne Avenue
27 Las Vegas, NV 89129

28 Person Most Knowledgeable/Custodian of Records Forte Family Practice [Cheyenne
location] will be called to testify as disclosed by Defendant, Valley Health System, LLC dba
Centennial Hills Hospital in Centennial's Initial Disclosure.

 80. Person Most Knowledgeable/Custodian of Records
 Forte Family Practice
 4845 S. Rainbow Blvd
 Las Vegas, NV 89103

1 Person Most Knowledgeable/Custodian of Records Forte Family Practice [Rainbow
2 Boulevard location] will be called to testify as disclosed by Defendant, Valley Health System, LLC dba
3 Centennial Hills Hospital in Centennial's Initial Disclosure.

4 81. Person Most Knowledgeable/Custodian of Records
5 Nevada Heart & Vascular
6 4275 S. Burnham Ave. Suite 100
7 Las Vegas, NV 89119

8 Person Most Knowledgeable/Custodian of Records Nevada Heart Vascular [Burnham
9 Avenue location] will be called to testify as disclosed by Defendant, Valley Health System, LLC dba
10 Centennial Hills Hospital in Centennial's Initial Disclosure.

11 82. Person Most Knowledgeable/Custodian of Records
12 Nevada Heart & Vascular
13 5795 Arville St. Suite 200
14 Las Vegas, NV 89118

15 Person Most Knowledgeable/Custodian of Records Nevada Heart Vascular [Arville Street
16 location] will be called to testify as disclosed by Defendant, Valley Health System, LLC dba
17 Centennial Hills Hospital in Centennial's Initial Disclosure.

18 83. Person Most Knowledgeable/Custodian of Records
19 Nevada Heart & Vascular
20 38 Water Street, Ste 310
21 Henderson, NV 89015

22 Person Most Knowledgeable/Custodian of Records Nevada Heart Vascular [Water Street
23 location] will be called to testify as disclosed by Defendant, Valley Health System, LLC dba
24 Centennial Hills Hospital in Centennial's Initial Disclosure.

25 84. Person Most Knowledgeable/Custodian of Records
26 Nevada Heart & Vascular
27 3150 N. Tenaya Way, #320
28 Las Vegas, NV 89128

Person Most Knowledgeable/Custodian of Records Nevada Heart Vascular [Tenaya Way
location] will be called to testify as disclosed by Defendant, Valley Health System, LLC dba
Centennial Hills Hospital in Centennial's Initial Disclosure.

1 85. Dr. Mark Mills
2 8300 Wisconsin Ave. #349
3 Bethesda, MD 20814

4 Dr. Mark Mills will be called to testify as disclosed by Defendant, Valley Health System, LLC
5 dba Centennial Hills Hospital in Centennial's Initial Disclosure.

6 86. Person Most Knowledgeable/Custodian of Records
7 Las Vegas Urology
8 7500 SmokeRanch Road, Suite #200
9 Las Vegas, NV 89128

10 Person Most Knowledgeable/Custodian of Records Las Vegas Urology will be called to testify
11 as disclosed by Defendant, Valley Health System, LLC dba Centennial Hills Hospital in Centennial's
12 Initial Disclosure.

13 87. Person Most Knowledgeable/Custodian of Records
14 United Healthcare Insurance Company
15 2720 N. Tenaya Way
16 Las Vegas, NV 89128

17 Person Most Knowledgeable/Custodian of Records United Healthcare Insurance Company
18 will be called to testify as disclosed by Defendant, Valley Health System, LLC dba Centennial Hills
19 Hospital in Centennial's Initial Disclosure.

20 SECOND SUPPLEMENT

21 No additional witnesses are being disclosed by these Defendants at this time.

22 THIRD SUPPLEMENT

23 88. Person Most Knowledgeable/Custodian of Records
24 Dana Forte, MD / Forte Family Practice
25 4845 South Rainbow Boulevard
26 Las Vegas, NV 89103

27 Person Most Knowledgeable/Custodian of Records Dana Forte, MD / Forte Family Practice
28 will be called to testify as disclosed by Plaintiff in Plaintiff's Second Supplement to Plaintiff's Initial
Early Case Conference Disclosure of Documents and Witnesses.

89. Amber Hopkins
2817 Cool Water Drive
Henderson, NV 89074

1 Amber Hopkins shall be called to testify as disclosed by Plaintiff in Plaintiff's Fifth
2 Supplement to Initial Early Case Conference Disclosure of Documents and Witnesses.

3 FOURTH SUPPLEMENT

4 90. Jacqueline Urban
5 c/o Hall Prangle & Schoonveld, LLC
6 1160 N. Town Center Drive, Suite 200
7 Las Vegas, NV 89144

8 Jacqueline Urban is expected to testify as disclosed by Plaintiff in his Seventh *Supplement to*
9 *Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses.*

10 FIFTH SUPPLEMENT

11 Defendants disclose no additional witnesses at this time.

12 SIXTH SUPPLEMENT

13 91. Stan Smith, Ph.D.
14 Smith Economics Group, Ltd.
15 1165 N. Clark Street, Suite 600
16 Chicago, IL 60610
17 312.943.1551

18 Stan Smith is expected to testify as disclosed by Plaintiff in his Eleventh Supplement to
19 Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses.

20 92 Eleanor Kenney, RN, Ph.D.
21 12616 Crystal Ranch Road
22 Moorpark, CA 93021
23 805.529.6930

24 Eleanor Kenney is expected to testify as disclosed by Plaintiff in his Eleventh Supplement to
25 Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses.

26 SEVENTH SUPPLEMENT

27 93. Person Most Knowledgeable/Custodian of Records
28 **BIOVENTUS, LLC**
701 S. Carson Street, Ste 200
Carson City, NV 89701

Person Most Knowledgeable/Custodian of Records of Bioventus, LLC, will be called to
testify as disclosed by Plaintiff in Plaintiff's Second Supplement to Plaintiff's Initial Early Case
Conference Disclosure of Documents and Witnesses.

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94. Person Most Knowledgeable/Custodian of Records
ST. ROSE DOMINICAN, SIENA CAMPUS
3001 St. Rose Pkwy
Henderson, NV 89052
Ph: 702.616.5000

Person Most Knowledgeable/Custodian of Records of St. Rose Dominican, Siena Campus, will be called to testify as disclosed by Plaintiff in Plaintiff's Second Supplement to Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses.

95. Person Most Knowledgeable/Custodian of Records
QUEST DIAGNOSTICS
2595 S. Maryland Pkwy, Ste 103
Las Vegas, NV 89109
Ph: 866.697.8378

Person Most Knowledgeable/Custodian of Records of Quest Diagnostics, will be called to testify as disclosed by Plaintiff in Plaintiff's Second Supplement to Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses.

96. **HUMBERTO RODRIGUEZ, MD**
9975 S. Eastern Ave., Ste 110
Las Vegas, NV 89183
Ph: 702.361.2273

Dr. Rodriguez, is expected to offer testimony as to the care and treatment he provided to Plaintiff, and as to his interactions with Plaintiff and/or his family members, and may offer testimony as to the damages allegedly sustained as a result of the Incident alleged in the Plaintiff's Complaint.

97. **ROBERT BIEN, MD**
7050 Smoke Ranch Rd, Ste 130
Las Vegas, NV 89128
Ph: 702.233.9911

Dr. Bien, is expected to offer testimony as to the care and treatment he provided to Plaintiff, and as to his interactions with Plaintiff and/or his family members, and may offer testimony as to the damages allegedly sustained as a result of the Incident alleged in the Plaintiff's Complaint.

98. **DANIEL BLAKE, MD**
9127 W. Russell Rd., Ste 110
Las Vegas, NV 89148
Ph: 702.878.0070

Dr. Blake, is expected to offer testimony as to the care and treatment he provided to Plaintiff,

1 and as to his interactions with Plaintiff and/or his family members, and may offer testimony as to the
2 damages allegedly sustained as a result of the Incident alleged in the Plaintiff's Complaint.

3 99. DEL R. GARDNER, MD
4 9010 W. Cheyenne Ave
5 Las Vegas, NV 89129
6 Ph: 702.240.8646

7 Dr. Gardner, is expected to offer testimony as to the care and treatment he provided to
8 Plaintiff, and as to his interactions with Plaintiff and/or his family members, and may offer testimony
9 as to the damages allegedly sustained as a result of the Incident alleged in the Plaintiff's Complaint.

10 Defendants reserve the right to supplement its witness list as additional witnesses and
11 information is obtained or made available by other parties.

12 **II.**

13 **DOCUMENTS & TANGIBLE EVIDENCE**

14 Defendants identify the following documents and records currently in counsel's possession,
15 which contain information relevant to the allegations at issue in the litigation, and on which it may
16 rely at the time of trial.

17 1. Medical records from Desert Orthopaedic Center, Bates Nos.: DOC-00001-DOC-
18 00129;

19 2. Radiology films and/or reports from Desert Orthopaedic Center, Bates Nos.: DOC-
20 00130-DOC-00160;

21 3. The Curriculum Vitae of Dr. Kevin Debiparshad, FRCS(C), MDC.M. N.Sc. B.Sc,
22 Bates Nos.: CV-00001-CV-00005;

23 4. Medical records from John E. Herr, MD, Bates Nos.: HERR-00001-HERR-00018;

24 5. Radiology films and/or reports from John E. Herr, MD, Bates Nos.: HERR-00019-
25 HERR-00020; and

26 6. Medical records from the University Medical Center of Southern Nevada, Bates Nos.:
27 UMC-SV-00001-UMC-SV-00048.
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FIRST SUPPLEMENT

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7. MedicWest Ambulance/AMR medical and billing records, as disclosed in Plaintiff's Initial Disclosure, Bates Nos. MAI-00001-MAI-00012;

8. Mercy Ambulance c/o American Medical Response medical and billing records, as disclosed in Plaintiff's Initial Disclosures, Bates Nos. MACAMR 00001-MACAMR 00013;

9. Centennial Hills Hospital Medical Center medical and billing records, as disclosed in Plaintiff's Initial Disclosures, Bates Nos. CHHMCMR 00001-CHHMCMR 00347, CHHMCB 00001-CHHMCB 00006;

10. John Herr, MD, medical and billing records, as disclosed in Plaintiff's Initial Disclosures, Bates Nos. JEHM 00001-JEHM 00022;

11. St. Rose Dominican Hospital – Rose de Lima, medical and billing records, as disclosed in Plaintiff's Initial Disclosures, Bates Nos. SRDRDMR 00001-SRDRDLMR 000352, RDRDLB 00001-RDRDLB 00009;

12. University Medical Center, medical and billing records, as disclosed in Plaintiff's Initial Disclosures, Bates Nos. UMCOSNVMR 00001-UMCOSNVMR 00015;

13. Nevada Spine Clinic, medical and billing records, as disclosed by Plaintiff in his Initial Disclosures, Bates Nos. NSCMR 00001-NSCMR 00019;

14. Desert Orthopedic Center/Roger Fontes, MD, medical and billing records, as disclosed in Plaintiff's Initial Disclosures, Bates Nos. DOCL 00001-DOCL 00050;

15. COGNOTION, employment and payroll records, as disclosed in Plaintiff's Initial Disclosures, Bates Nos. CI 00001-CI 00006; P 00001-P00002;

16. Plaintiff's U.S. Individual Income Tax Returns for the years 2012 through 2017, as disclosed in Plaintiff's Initial Disclosures, Bates Nos. P 00003-P 00082;

17. Fax dated 6/4/18 from Kevin Debiparshad, MD/Synergy Spine and Orthopedics, as disclosed in Plaintiff's Initial Disclosures, Bates Nos. P 000083-P 00086;

18. Photographs of x-rays from Nevada Spine Care, taken 10/25/17, 11/22/17 and 12/20/17, as disclosed in Plaintiff's Initial Disclosures, Bates Nos. P 000087-P 000088;

1 31. Curriculum Vitae and Fee Schedule of Roger Fontes, MD, as disclosed in Plaintiff's
2 First Supplement to Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses,
3 Bates Nos. P00089-P00093,

4 32. Ortho Bullets, as disclosed in Plaintiff's Second Supplement to Plaintiff's Initial Early
5 Case Conference Disclosure of Documents and Witnesses, Bates Nos. P000094-P000103;

6 33. St. Rose Dominican Hospital-Siena Campus medical and billing records, as disclosed
7 in Plaintiff's Second Supplement to Plaintiff's Initial Early Case Conference Disclosure of Documents
8 and Witnesses, Bates Nos. SDRSMR 00001-SRDSMR 00471; and SRDSB 00001-SRDSB 00009;

9 34. Fyzical Therapy and Balance Centers medical and billing records, as disclosed in
10 Plaintiff's Second Supplement to Plaintiff's Initial Early Case Conference Disclosure of Documents
11 and Witnesses, Bates Nos. FTBC 0001-FTABC 00040;

12 35. Verizon Phone Bill for September and October 2017, as disclosed in Plaintiff's Second
13 Supplement to Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses,
14 Bates Nos. P000104-P00105;

15 36. Copies of Plaintiff's Medicare and AARP cards, as disclosed in Plaintiff's Third
16 Supplement to Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses,
17 Bates Nos. P00106;

18 37. Cognition correspondence to Plaintiff, as disclosed in Plaintiff's Third Supplement to
19 Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses, Bates Nos. CI
20 00002-CI 00006

21 38. Cognition 1099s, as disclosed in Plaintiff's Third Supplement to Plaintiff's Initial
22 Early Case Conference Disclosure of Documents and Witnesses, Bates Nos. P00107-P00110;

23 39. Account Summary, as disclosed in Plaintiff's Third Supplement to Plaintiff's Initial
24 Early Case Conference Disclosure of Documents and Witnesses, Bates Nos. P00111-P00113;

25 40. Plaintiff's May 8, 2018 correspondence to Dr. Debiparshad, as disclosed in Plaintiff's
26 Third Supplement to Plaintiff's Initial Early Case Conference Disclosure of Documents and
27 Witnesses, Bates Nos. P00114;

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1 41. Plaintiff's emails to Dr. Denis Harris, MD, as disclosed in Plaintiff's Third Supplement
2 to Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses, Bates Nos.
3 P00115-P00122;

4 42. Printout of Paiute Golf Rounds, as disclosed in Plaintiff's Third Supplement to
5 Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses, Bates Nos. P00123;

6 43. Plaintiff's emails to and from Mark Mills, J.D., M.D., as disclosed in Plaintiff's Third
7 Supplement to Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses,
8 Bates Nos. P00124-P00128;

9 44. Declaration of Michael Arrigo, as disclosed in Plaintiff's Third Supplement to
10 Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses, Bates Nos. P00129-
11 P00160;

12 45. Case Information form, as disclosed in Plaintiff's Third Supplement to Plaintiff's
13 Initial Early Case Conference Disclosure of Documents and Witnesses, Bates Nos. P00161-P00164;

14 46. Cognition Offer of Employment, as disclosed in Plaintiff's Third Supplement to
15 Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses, Bates Nos. P00165-
16 P00166;

17 47. Cognition letter, as disclosed in Plaintiff's Third Supplement to Plaintiff's Initial Early
18 Case Conference Disclosure of Documents and Witnesses, Bates Nos. CI0001-CI0002;

19 48. Cognition termination letter, as disclosed in Plaintiff's Third Supplement to Plaintiff's
20 Initial Early Case Conference Disclosure of Documents and Witnesses, Bates Nos. P00167-P00168;

21 49. Plaintiff's Sworn Declaration re Cognition records, as disclosed in Plaintiff's Third
22 Supplement to Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses,
23 Bates Nos. P00169;

24 50. Retainer Agreement (2017), as disclosed in Plaintiff's Third Supplement to Plaintiff's
25 Initial Early Case Conference Disclosure of Documents and Witnesses, Bates Nos. P00170-P00174;

26 51. Retainer Agreement (2018), as disclosed in Plaintiff's Third Supplement to Plaintiff's
27 Initial Early Case Conference Disclosure of Documents and Witnesses, Bates Nos. P00175-P00179;

28

1 52. Photographs of x-rays in 2017 and 2018, as disclosed in Plaintiff's Third Supplement
2 to Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses, Bates Nos.
3 P00180-P00193;

4 53. Post-accident video, as disclosed in Plaintiff's Third Supplement to Plaintiff's Initial
5 Early Case Conference Disclosure of Documents and Witnesses, Bates Nos. P00194;

6 54. Recording of voicemail message from Dr. Debiparshad's assistant, as disclosed in
7 Plaintiff's Third Supplement to Plaintiff's Initial Early Case Conference Disclosure of Documents and
8 Witnesses, Bates Nos. P00195;

9 55. Centennial Hills Hospital XR Tibia-Fibula left, as disclosed in Defendant Valley
10 Health System, LLC D/B/A Centennial Hills Hospital First Supplement To List of Witnesses and
11 Documents Pursuant to NRCP 16.1;

12 56. Centennial Hills Hospital Operative Fluoroscopy Imaging, as disclosed in Defendant
13 Valley Health System, LLC D/B/A Centennial Hills Hospital First Supplement To List of Witnesses
14 and Documents Pursuant to NRCP 16.1;

15 57. XR Chest 1 View, as disclosed in Defendant Valley Health System, LLC D/B/A
16 Centennial Hills Hospital First Supplement To List of Witnesses and Documents Pursuant to NRCP
17 16.1;

18 58. Premier Physicians Schedule A, as disclosed in Defendant Jaswinder S. Grover, M.D.
19 and Jaswinder Grover, M.D., Ltd, D/B/A Nevada Spine Clinic's First Supplement To NRCP 16.1
20 Early Case Conference Disclosure of Witnesses and Documentary Evidence;

21 59. Pearls and Pitfalls, as disclosed in Plaintiff's Fourth Supplement to Plaintiff's Initial
22 Early Case Conference Disclosure of Documents and Witnesses, Bates Nos. P00196-P00200;

23 60. Vista Family Health Billing Records, Bates Nos. VFH-B-00001-VFH-B-00027;

24 61. Medicare, CMS San Francisco Regional Office, Bates Nos. MEDICARE SF-00001-
25 MEDICARE SF-00032;

26 62. Medicare Part B, Bates Nos. MEDICARE-B-00001-MEDICARE-B-00031;

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FOURTH SUPPLEMENT

63. Color photograph of Plaintiff's leg, Bates No. P00201, as disclosed in Plaintiff's Sixth Supplement to Early Case Conference Disclosure of Documents and Witnesses;

64. Curriculum Vitae and Fee Schedule of John Herr, MD, Bates Nos. P00202-P00202-P00206, as disclosed in Plaintiff's Seventh Supplement to Early Case Conference Disclosure of Documents and Witnesses; and

65. Minnesota Multiphasic Personality Inventory-2 Restructured Form – Interpretive Report: Clinical Settings, Bates Nos. P00207-P002018, as disclosed in Plaintiff's Seventh Supplement to Early Case Conference Disclosure of Documents and Witnesses.

FIFTH SUPPLEMENT

66. Forte Family Practice medical and billing records, Bates Nos. FORTE-00085-FORTE-00098;

67. Byers v. The Home Depot, Nevada 8th Judicial District Court, Clark County Case No.: A-13-682404-C, Order Granting Motion in Limine No. 3 to Exclude Reports and Testimony of Plaintiff's Retained Expert Economist Dr. Stan Smith, Bates Nos. BYERS v. HOME DEPOT-00001-BYERS v. HOME DEPOT-00003;

68. Smith v. Jenkins, 732.F3d 51 (2013), Key U.S. Court of Appeals Decision excluding Stan Smith on majority of cases, Bates Nos. SMITH v. JENKINS-00001-SMITH v. JENKINS-00009;

69. The Families Advocate, LLC v. Sanford Clinic North dba Sanford Clinic Jamestown, USDC North Dakota Case No.: 3:16-cv-114, Report and Recommendation excluding testimony of Stan V. Smith, PhD, Bates Nos. FAMILIES ADVOCATE v. SANFORD-00001- FAMILIES ADVOCATE v. SANFORD-00026;

70. Price v. Folks, Nevada 8th Judicial District Court , Clark County Case No.: A-13-680895-C, Decision and Order excluding expert Stan Smith, Bates Nos. PRICE v. FOLKS-00001-PRICE v. FOLKS-00014;

1 71. Lor v. Ballard, Minnesota 2nd Judicial District Court, County of Ramsey Case No.: 62-
2 CV-09-12658, Order granting motion to exclude evidence of, reference to, or testimony by Dr. Stan
3 Smith, Bates Nos. LOR v. BALLARD-00001-LOR v. BALLARD-00003;

4 72. Wimmer v. Pandita, Utah 3rd Judicial District Court, Salt Lake County Case No.:
5 050910577, Memorandum Decision excluding testimony of Dr. Smith, Bates Nos. WIMMER v.
6 PANDITA-00001-WIMMER v. PANDITA-00006; and

7 73. Binder containing radiology studies from Centennial Hills Hospital/Kevin
8 Debiparshad, MD, UMC Quick Care, Newport MRI (Nevada Spine)/Kevin Debiparshad, MD,
9 Nevada Spine Clinic/Kevin Debiparshad, MD, John Herr, MD, Desert Orthopedic Center/Roger
10 Fontes, MD, Advanced Urgent Care. And Desert Orthopedic Center/Roger Fontes, as disclosed by
11 Plaintiff in his Eighth Supplement to Plaintiff's Initial Early Case Conference Disclosure of
12 Documents and Witnesses.

13 SIXTH SUPPLEMENT

14 74. ACH Payment to Jason Landess on March 18, 2019, Chase for Business account,
15 Bates labeled P00220, as disclosed by Plaintiff in his Ninth Supplement to Plaintiff's Initial Early Case
16 Conference Disclosure of Documents and Witnesses;

17 75. Wire activity for payments to Jason Landess between March 21, 2018 and January 23,
18 2019, Chase for Business account, Bates labeled P00221, as disclosed by Plaintiff in his Ninth
19 Supplement to Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses;

20 76. 2018 1099 from Cognotion, Inc. for Jason Landess, Bates labeled P00222, as disclosed
21 by Plaintiff in his Ninth Supplement to Plaintiff's Initial Early Case Conference Disclosure of
22 Documents and Witnesses;

23 77. Jason Landess Payment Activity 2017-2018, Bates labeled P00223-P00225, as
24 disclosed by Plaintiff in his Ninth Supplement to Plaintiff's Initial Early Case Conference Disclosure
25 of Documents and Witnesses;

26 78. Stryker/Osteosynthesis – T2 – Tibial Nailing System – Operative Technique – T2
27 Tibial Nailing System, Bates labeled P00226-P00265, as disclosed by Plaintiff in his Tenth Supplement
28 to Plaintiff's Initial Early Case Conference Disclosure of Documents and Witnesses;

1 SEVENTH SUPPLEMENT

2 79. *Cinematic Health Education executed documents, Bylaws, Certificate of*
3 *Incorporation, Stock Ledger, Bates labeled P00266-P00387, as disclosed by Plaintiff in his*
4 *Twelfth Supplement to Plaintiff's Initial Early Case Conference Disclosure of Documents and*
5 *Witnesses;*

6 80. *CNA Skills Guidelines, Bates labeled P00388-P00389, as disclosed by Plaintiff*
7 *in his Twelfth Supplement to Plaintiff's Initial Early Case Conference Disclosure of*
8 *Documents and Witnesses;*

9 81. *Cognition letters to Jason Landess, Bates labeled P00390-P00393, as disclosed*
10 *by Plaintiff in his Twelfth Supplement to Plaintiff's Initial Early Case Conference Disclosure*
11 *of Documents and Witnesses;*

12 82. *Excel spreadsheet (ContinuEdSpreadsheet), Bates labeled P00394-P00436, as*
13 *disclosed by Plaintiff in his Twelfth Supplement to Plaintiff's Initial Early Case Conference*
14 *Disclosure of Documents and Witnesses;*

15 83. *Cover Memorandum for Spreadsheet Regarding CAN CEU in Nevada, Bates*
16 *labeled P00437-P00439, as disclosed by Plaintiff in his Twelfth Supplement to Plaintiff's*
17 *Initial Early Case Conference Disclosure of Documents and Witnesses;*

18 84. *Emails to and from Jason Landess, Bates labeled P00440-P00453; P00479-*
19 *P00513, as disclosed by Plaintiff in his Twelfth Supplement to Plaintiff's Initial Early Case*
20 *Conference Disclosure of Documents and Witnesses;*

21 85. *Exhibit 1 (2017 1099), Exhibit 2 (2016 1099), Exhibit 3 (redacted Bank of*
22 *America statement showing 3/21/18 wire from Cognition), Exhibit 4 (redacted Bank of*
23 *America statement showing 1/12/18 wire from Cognition), Exhibit 5 (redacted Bank of*
24 *America statement showing 5/3/18 wire from Cognition), Bates labeled P000454-P00478, as*
25 *disclosed by Plaintiff in his Twelfth Supplement to Plaintiff's Initial Early Case Conference*
26 *Disclosure of Documents and Witnesses;*

27 86. *Accounting summary, letter and email between Jason Landess and John*
28 *Truehart regarding income and salary and attachments (Cognition letter dated July 12, 2018,*

1 *regarding salary paid to Jason Landess in 2017 and 2018; ProDox request for Cognotion*
2 *employment and payroll records regarding Jason Landess), Bates labeled P00514-P00539 as*
3 *disclosed by Plaintiff in his Twelfth Supplement to Plaintiff's Initial Early Case Conference*
4 *Disclosure of Documents and Witnesses;*

5 87. *SME Lawyer questions for CAN, Bates labeled P00540, as disclosed by Plaintiff*
6 *in his Twelfth Supplement to Plaintiff's Initial Early Case Conference Disclosure of*
7 *Documents and Witnesses; and*

8 88. *Video – “Close Up – Meet Your Faculty,” Bates labeled P00541, as disclosed by*
9 *Plaintiff in his Twelfth Supplement to Plaintiff's Initial Early Case Conference Disclosure of*
10 *Documents and Witnesses;*

11 *The following are attached as Exhibit “A” hereto:*

12 89. *Jason Landess Chase for Business Payment Activity Statement, Bates No.*
13 *LANDESS CHASE PYMT ACTIVITY-00001;*

14 90. *Jason Landess Chase for Business Payment Wire Activity Statement, Bates No.*
15 *LANDESS CHASE WIRE ACTIVITY-00001;*

16 91. *2018 1099 issued by Cognotion to Jason Landess, for gross proceeds of*
17 *\$90,000.000, Bates No. LANDESS COGNOTION 2018 1099-1;*

18 92. *Jason Landess Payment Activity Ledger from 2017 to 2018, Bates Nos,*
19 *LANDESS PYMT ACTIVITY 2017 to 2018-00001-LANDESS PYMT ACTIVITY 2017 to 2018-*
20 *00002; and*

21 93. *Stan Smith Notes, Bates Nos. P00668-P00684, as disclosed by Plaintiff in his*
22 *Fifteenth Supplemental NRCP 16.1 Disclosure of Witnesses and Documents.*

23 Discovery is ongoing and Defendants reserve the right to identify additional items of evidence
24 as they become known, which may include but are not limited to:

25 1. Any of the Plaintiff's medical records, including radiographs, to the extent that they
26 demonstrate physical and/or emotional conditions prior, during, or subsequent to the events at issue
27 in the Complaint, whether they have already been or are yet to be disclosed, including but not limited

28 . . .

1 to the records of those medical care providers identified as witnesses above, or additional care
2 providers who may become known through the course of discovery.

3 2. Any evidence of collateral benefits or other insurance benefits provided to Plaintiff for
4 the purpose of determining the amount of any offset to damages pursuant to NRS 42.021.

5 3. Business records, tax returns, and other information demonstrating to Plaintiff's pre-
6 and post-injury income levels.

7 4. Depositions and/or statements of any witness and any exhibit attached to any
8 deposition and/or statement;

9 5. All records produced by Plaintiff in response to requests for production;

10 6. Any party's experts' files, curricula vitae, billing statements, models, charts, diagrams,
11 literature, or other items utilized by or relied upon by the expert;

12 7. All medical literature listed on the curricula vitae of all parties' experts;

13 8. Any previous deposition testimony by any party's experts;

14 9. General medical treatises and texts, including but not limited to:

15 a. Dorland's Illustrated Medical Dictionary, 32nd Ed. W.B. Saunders Co.
16 Philadelphia (2012);

17 b. Taber's Cyclopedic Medical Dictionary, 23rd Ed. F.A. Davis Co.;

18 c. The American Medical Association Encyclopedia of Medicine, Cayman, C.B.
19 MD Random House New York (1989);

20 d. Gray's Anatomy, 41st Ed. Elsevier.

21 e. Bakerman's ABC's of Interpretive Laboratory Data, 5th Ed. Bakerman S.
22 Interpretive Laboratory Data, Inc. (2014);

23 f. Basic Pathophysiology, 3rd Ed. Groër, RN PhD, Shekleton, M. RN C.V.
24 Mosby Co. (1989);

25 g. Textbook of Medical Physiology, 11th Ed. Guyton, A. MD Hall, J. PhD,
26 W.B. Saunders Co. (2005)

27 h. Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), 5th Ed.
28 American Psychiatric Association (2014);

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i. Physicians' Desk Reference, 2017 Edition, Thomson PDR;

10. Any and all exhibits listed by any other party regardless of whether that party attempts to withdraw or de-list the exhibit or fails to use it at the time of trial.

III.

INSURANCE INFORMATION

1. ProAssurance Policy No. MP108519, Bates Nos.: INS1-00001-INS100038.

DATED this 22nd day of May, 2019.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ John M. Orr

S. BRENT VOGEL

Nevada Bar No. 6858

JOHN M. ORR

Nevada Bar No. 14251

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Tel. 702.893.3383

*Attorneys for Defendants Kevin Paul Debiparshad, MD,
Kevin Paul Debiparshad, PLLC, d/b/a Synergy Spine and
Orthopedics and Debiparshad Professional Services LLC
d/b/a Synergy Spine and Orthopedics*

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May, 2019, a true and correct copy of DEFENDANTS, KEVIN PAUL DEBIPARSHAD, MD, KEVIN PAUL DEBIPARSHAD, PLLC dba SYNERGY SPINE AND ORTHOPEDICS, AND DEBIPARSHAD PROFESSIONAL SERVICES LLC dba SYNERGY SPINE AND ORTHOPEDICS' SEVENTH SUPPLEMENTAL DISCLOSURE OF WITNESSES AND DOCUMENTS PURSUANT TO NRCP 16.1 was served by electronically filing with the Clerk of the Court using the Odyssey File and Serve system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action.

HOWARD & HOWARD, ATTORNEYS, PLLC
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*Attorneys for Defendants,
Valley Health System, LLC dba
Centennial Hills Hospital
**CD VIA U.S. MAIL*

By /s/ Adrina Harris
an Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

Exhibit A

5/3/2019

Payment Activity - chase.com

CHASE *for* BUSINESS

Printed from Chase for Business

[Schedule payment >](#)

Filtered by

Pay to Jason Personal BofA

[Clear filter >](#)

Pay to	Pay from	Status	Send on	Deliver by	Amount	
Jason Personal BofA (...3731) VENDOR	PLAT BUS CHECKING (...3865)	Paid	Mar 18, 2019	Mar 19, 2019	\$509.36	Request info >

The terms of the [ACH Payments Services Agreement](#) apply to these payments.

You've reached the end of the activity.

JPMorgan Chase Bank, N.A. Member FDIC

©2019 JPMorgan Chase & Co.

Equal Opportunity Lender 

https://secure01b.chase.com/web/auth/dashboard#/dashboard/payBills/achPaymentsActivity/manageActivity;filterType=DEPOSIT_TO_ACCOUNT;payeeId=228769... 1/1

LANDESS CHASE PYMT ACTIVITY-00001

RP.APP74

5/3/2019

Wire activity - chase.com

CHASE *for* BUSINESS

Printed from Chase for Business

Wire date	Status	Wire to	Transaction number	Debit amount	Amount
Jan 23, 2019	Completed	Jason Personal	5210486641	\$12,050.00	\$12,050.00 USD
Jan 3, 2019	Completed	Jason Personal	5046864923	\$2,790.21	\$2,790.21 USD
Nov 30, 2018	Completed	Jason Personal	5046495340	\$5,000.00	\$5,000.00 USD
Mar 21, 2018	Completed	Jason Personal	5035201302	\$100,000.00	\$100,000.00 USD

JPMorgan Chase Bank, N.A. Member FDIC

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CORRECTED (if checked)

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no. Cognotion, Inc. 244 Fifth Avenue C254 New York, NY 10001-7604 US		1 Rents \$	OMB No. 1545-0116 2018 Form 1099-MISC	Miscellaneous Income
PAYER'S TIN 6-3464526		2 Royalties \$	3 Other Income \$	
RECIPIENT'S TIN [REDACTED]		4 Federal income tax withheld \$	5 Fishing boat proceeds \$	Copy B For Recipient This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.
RECIPIENT'S name, street address (including apt. no.) city or town, state or province, country, and ZIP or foreign postal code Jason Landess 7054 Big Springs Ct. Las Vegas, NV 89113		6 Medical and health care payments \$	7 Nonemployee compensation \$	
Account number (see instructions) FATCA filing requirement <input type="checkbox"/>		8 Substitute payments in lieu of dividends or interest \$	9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	
15a Section 409A deferrals \$		10 Crop insurance proceeds \$	11 \$	
15b Section 409A Income \$		12 \$	13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$ 90000.00
		16 State tax withheld \$	17 State/Payer's state no. \$	18 State income \$

Form 1099-MISC

(keep for your records)

www.irs.gov/Form1099MISC

Department of the Treasury - Internal Revenue Service

08/01/2017	Bill	Jason Landess	Legal & Professional Fees	10,000.00
05/01/2017	Bill	Jason Landess	Legal & Professional Fees	10,000.00
04/14/2017	Expense	Jason Landess	Jason Landess Loan	10,000.00
04/01/2017	Bill	Jason Landess	Legal & Professional Fees	10,000.00
03/23/2017	Deposit	Jason Landess		35,000.00
03/02/2017	Bill Payment (Check)	Jason Landess		-10,000.00
03/01/2017	Bill	Jason Landess	Legal & Professional Fees	10,000.00
02/01/2017	Bill	Jason Landess	Legal & Professional Fees	10,000.00
01/27/2017	Bill Payment (Check)	Jason Landess		-10,000.00
01/01/2017	Bill	Jason Landess	Legal & Professional Fees	10,000.00

LANDESS PYMT ACTIVITY 2017 to 2018-00002

Electronically Filed
8/13/2019 6:37 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

EXHIBIT 5

ELECTRONICALLY SERVED
7/1/2019 11:11 AM
PLAINTIFFS' TRIAL EXHIBIT LIST

PLAINTIFF: Jason George Landess aka
Kay George Landess
DEFENDANT: Kevin Paul Debiparshad, MD
DEFENDANT: Jaswinder Grover, MD, et al
DEFENDANT: Valley Health System, et al

PLAINTIFFS' ATTORNEY: Martin A. Little
DEFENDANT'S ATTORNEY: S. Brent Vogel
DEFENDANTS' ATTORNEY: S. Brent Vogel
DEFENDANTS' ATTORNEY: Kenneth M. Webster

CASE NO.: A-18-776896-C
DEPT. 32

EX NO	DESCRIPTION	BATES NUMBER	DATE OFFERED	OBJECTION	DATE ADMITTED
1.	MedicWest Ambulance/AMR medical and billing records	MAI 00001-MAI 00012			
2.	Mercy Ambulance c/o American Medical Response medical and billing records	MACAMR 00001-MACAMR 00013.			
3.	Centennial Hills Hospital Medical Center medical and billing records; Radiology studies on CD (not Bates numbered)	CHHMCMR 00001-CHHMCMR 00347; CHHM CB 00001-CHHM CB 00006			
4.	Nevada Spine Clinic medical records; Radiology studies on CD (not Bates numbered)	NSCMR 00001-NSCMR 00019; NSCB 00001-NSCB 00005			
5.	Nevada Spine Clinic Radiology c/o Newport MRI Radiology studies on CD (not Bates numbered)	NSCMR 00001-NSCMR 00019;			
6.	University Medical Center Spring Valley Quick Care medical and billing records; Radiology studies on CD (not Bates numbered)	UMCOSNVMR 00001 – UMCOSNVMR 00015; UMCOSNSVQCB 00001-UMCOSNSVQCB 00003			
7.	John Herr, M.D. medical and billing records; Radiology studies on CD (not Bates numbered)	JEHM 00001-JEHM 00022;			
8.	Desert Orthopedic Center/Roger Fontes, M.D. medical and billing records; Radiology studies on CD (not Bates numbered)	DOCL 00051-DOCL 00077			
9.	Synergy Spine & Orthopedics	SYNERGY-00001-SYNERGY-00026 (produced by Def in 8 th Supplement)			
10.	Advanced Urgent Care medical and billing records; Radiology studies on CD (not Bates numbered)				
11.	St. Rose Dominican Hospital-Rose de Lima medical and billing records; Radiology studies on CD (not Bates numbered)	SRDRDMR 00001-SRDRDLMR 000352; RDRDLB 00001- SRDRDLB 00009			

PLAINTIFF'S TRIAL EXHIBIT LIST

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 DEFENDANT: Valley Health System, et al

PLAINTIFFS' ATTORNEY: Martin A. Little
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CASE NO.: A-18-776896-C
 DEPT. 32

EX NO	DESCRIPTION	BATES NUMBER	DATE OFFERED	OBJECTION	DATE ADMITTED
12.	St. Rose Dominican Hospital-Siena Campus medical and billing records; Radiology studies on CD (not Bates numbered)	SRDSMR 00001-SRDSMR 00471; and SRDSB 00001-SRDSB 00009			
13.	Fyzical Therapy and Balance Centers medical and billing records	FTBC 0001-FTABC 00040			
14.	Forte Family Practice medical and billing records	FFP 00001-FFP 00355; FFP 00356-FFP 003572561			
15.	Robert N. Bien, MD medical and billing records	RNBM00001-RNBM000098			
16.	Bates labeled prints of Radiology Studies: Centennial Hills Hospital/Kevin Debiparshad, MD (10/9-10/17) UMC Quick Care (10/14/17) Newport MRI (Nevada Spine)/Kevin Debiparshad, MD, (10/25/17; 11/22/17; 12/20/17; 1/31/18) Nevada Spine Clinic/Kevin Debiparshad, MD (1/31/18) John Herr, M.D. (2/12/18) Five (5) prints of radiology studies from John Herr, M.D. (5/16/19) Desert Orthopedic Center/Roger Fontes, MD (2/15/18; 4/18/18; 5/30/18; 6/27/18; 8/8/18; 10/5/18) Advanced Urgent Care (3/1/18) Desert Orthopedic Center/Roger Fontes, MD (4/3/19)	P002626-P002703			
17.	Photographs of x-rays taken 10/25/17, 11/22/17 and 12/20/17. Radiology studies on CD (not Bates numbered)	P000087-P 000088			
18.	Photographs of x-rays in 2017 and 2018, and of Plaintiff's leg after surgery in 2017	P00180-P00193			

PLAINTIFF'S TRIAL EXHIBIT LIST

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CASE NO.: A-18-776896-C
 DEPT. 32

EX NO	DESCRIPTION	BATES NUMBER	DATE OFFERED	OBJECTION	DATE ADMITTED
	and 2018; Radiology studies on CD (not Bates numbered)				
19.	Color photograph of Plaintiff's leg taken on March 26, 2018, prior to April 3, 2018 surgery by Roger Fontes, M.D.	P00201			
20.	Melanie Connolly's Resume	P001211			
21.	Animations: Two anatomically-correct, color 3-D animations of Plaintiff's left tibia post-op, done by Melanie Connolly. Paste the URL into your browser, then enter the Password: repair https://vimeo.com/338605945 https://vimeo.com/339019342 Password: repair				
22.	Illustrations: Three (3) anatomically-correct, color illustrations of Plaintiff's left tibia, done by Melanie Connolly. Three are post-op from Dr. Debiparshad's surgery (disclosed), and two (2) are post-op from Dr. Fontes' surgery.	P00685-P00687, P001751-P001752			
23.	Illustration: One (1) anatomically-correct, color illustration of Plaintiff's left tibia fracture angle, done by Melanie Connolly.	P002561			
24.	Curriculum Vitae and Fee Schedule for Roger Fontes, M.D.	P00089-P00093.			
25.	Curriculum Vitae and Fee Schedule for John Herr, M.D.	P00202-P00206			
26.	Manual: Stryker/Osteosynthesis – T2 – Tibial Nailing System – Operative Technique – T2 Tibial Nailing System	P00226-P00265			
26A	Stryker/Osteosynthesis – T2 – Tibial Nailing System hardware and equipment				
27.	Article: Sheth, U; Blomberg, J; Szatkowski, J. <i>Tibial Shaft Fractures</i> , Ortho Bullets (10/30/2018)	P000094-P000103			
28.	Article: Lundy, Douglas W., et al., Pearls and pitfalls with proximal third tibial fractures, <i>AAOSNow</i> , 2007 October	P00196-P00200			
29.	Denis R. Harris, MD Sworn Declaration Regarding Case Review of Jason G. Landess, aka Kay George Landess	P00645-P00650			
30.	Plaintiff's emails to Denis Harris, MD	P00115-P00122			
31.	Denis Harris, MD's expert reports				

PLAINTIFF'S TRIAL EXHIBIT LIST

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 DEFENDANTS' ATTORNEY: Kenneth M. Webster

CASE NO.: A-18-776896-C
 DEPT. 32

EX NO	DESCRIPTION	BATES NUMBER	DATE OFFERED	OBJECTION	DATE ADMITTED
32.	Denis Harris MD's <i>Curriculum Vitae</i>				
33.	Exhibits to Deposition of Denis Harris, MD	Ex 1 - Notice of Taking Deposition Ex 2 – Dr Harris' file contents			
34.	Post-accident video of the scene of the October 9, 2017 accident at Paiute Golf Course	P00194			
35.	Printout of Paiute Golf Rounds from May 15-October 15, 2017	P00123			
36.	Dr. Debiparsha's Physician Agreement with Jaswinder Grover, MD, Inc/Nevada Spine Center dated 9/1/2005	NSC0027-NSC0047			
37.	On Call Agreement	PSA 1-14			
38.	A recording of a voicemail message from Dr. Debiparshad's assistant, "Ron," which was left on Plaintiff's phone on February 26, 2018	P00195			
39.	Plaintiff's correspondence to Dr. Debiparshad dated May 8, 2018	P00114			
40.	Fax dated 6/4/18 from Kevin Debiparshad, M.D./Synergy Spine and Orthopedics	P 000083 – P 000086			
41.	Minnesota Multiphasic Personality Inventory-2 Restructured Form – <i>Interpretive Report: Clinical Settings</i> dated January 21, 2019, for Jason G. Landess	P00207-P002018			
42.	Declaration of Michael Arrigo in Support of Opposition to Motion to Dismiss	P00129-P00160			
43.	Retainer Agreement – Michael Arrigo (\$7500 retainer)	P002720-P002728			
44.	COGNOTION employment and payroll records	CI 00001- CI 00006; P 00001 – P 00002			
45.	Cognotion correspondence to Plaintiff	CI 00002-CI 00006			
46.	Cognotion offer of employment dated December 18, 2015	P00165-P00166.			
47.	Cognotion 1099s	P00107-P00110; P00222			
48.	Cognotion termination letter dated January 3, 2019	P00167-P00168			
49.	Plaintiff's Sworn Declaration re Cognotion records	P00169			
50.	CONFIDENTIAL – Cognotion Overview	P00652-P00653			

PLAINTIFF'S TRIAL EXHIBIT LIST

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CASE NO.: A-18-776896-C
 DEPT. 32

EX NO	DESCRIPTION	BATES NUMBER	DATE OFFERED	OBJECTION	DATE ADMITTED
51.	Cinematic Health Education executed documents, Bylaws, Certificate of Incorporation, Stock Ledger	P00266-P00387			
52.	CNA Skills Guideline	P00388-P00389			
53.	Cognition letters to Jason Landess	P00390-P00393			
54.	Excel spreadsheet (ContinuEdSpreadsheet)	P00394-P00436			
55.	Cover Memorandum for Spreadsheet Regarding CNA CEU in Nevada	P00437-P00439			
56.	Emails to and from Jason Landess	P00440-P00453; P00479-P00513			
57.	Cinematic Health Education, Inc. Action by Written Consent of the Board of Directors in Lieu of Organizational Meeting dated March 15, 2018	P00226-P00284			
58.	Cognition - Series Pre-Seed Preferred Stock Investment Agreement dated March 20, 2018	P00309-P00332			
59.	<i>Exhibit 1</i> (2017 1099), <i>Exhibit 2</i> (2016 1099), <i>Exhibit 3</i> (redacted Bank of America statement showing 3/21/18 wire from Cognition), <i>Exhibit 4</i> (redacted Bank of America statement showing 1/12/18 wire from Cognition), <i>Exhibit 5</i> (redacted Bank of America statement showing 5/3/18 wire from Cognition)	P000454-P00478			
60.	Accounting summary, letter and email between Jason Landess and John Truehart regarding income and salary and attachments (Cognition letter dated July 12, 2018, regarding salary paid to Jason Landess in 2017 and 2018; ProDox request for Cognition employment and payroll records regarding Jason Landess)	P00514-P00539.			
61.	SME Lawyer questions for CNA	P00540			
62.	Video – “Close Up – Meet Your Faculty”	P00541			
63.	Email from Jonathan Dariyanani to John Orr, Esq. dated 6/1/19, Bates labeled	P001751-P001753			
64.	ACH Payment to Jason Landess on March 18, 2019, Chase for Business account	P00220			
65.	Wire activity for payments to Jason Landess between March 21, 2018 and	P00221			

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CASE NO.: A-18-776896-C
 DEPT. 32

EX NO	DESCRIPTION	BATES NUMBER	DATE OFFERED	OBJECTION	DATE ADMITTED
	January 23, 2019, Chase for Business account				
66.	Jason Landess Payment Activity 2017-2018, Bates labeled.	P00223-P00225			
67.	Retainer Agreement (2017)	P00170-P00174			
68.	Retainer Agreement (2018)	P00175-P00179			
69.	Account Summary for Plaintiff's checking account with Bank of America for January, March and May 2018	P00111-P00113			
70.	Plaintiff's U.S. Individual Income Tax Returns for the years 2012 through 2017	P 00003 – P00082			
71.	Plaintiff's 1099 from Cognition for the year 2018	P00222			
72.	Stan Smith, PhD's expert reports				
73.	Stan Smith, PhD's <i>Curriculum Vitae</i>				
74.	Exhibits to Deposition of Stan Smith, PhD	<p>Ex 1- CV of Stan Smith</p> <p>Ex 2- List of Exhibits to Depo using 5-24-19</p> <p>Ex 3- Stan Smith Fee Schedule</p> <p>Ex 4- Engagement Letter- Stan Smith 11/14/18</p> <p>Ex 5- Expert Report of Stan Smith</p> <p>Ex 6- Cover Page, SS Disclosure Page and Ex 5/6 Cover Sheets for Disclosure of Smith Report/CV/Cases (to show when they were disclosed)</p> <p>Ex 7- Case Information form for Smith Economic Group (ss-14)</p>			

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CASE NO.: A-18-776896-C
 DEPT. 32

EX NO	DESCRIPTION	BATES NUMBER	DATE OFFERED	OBJECTION	DATE ADMITTED
		<p>Ex 10- Email Exchanges re Deposition of Stan Smith</p> <p>Ex 11- Chart of Documents Produced to Stan Smith</p> <p>Ex 12- 14th Supplemental Disclosure w/Damage Calculation</p> <p>Ex 13- Information Sheet for JGL (SS-1)</p> <p>Ex 14- Declaration of Jason G. Landess 8/13/18</p> <p>Ex 15- Denis R. Harris, MD Sworn Declaration Regarding Case Review of Jason G. Landess, aka Kay George Landess</p> <p>Ex 18- Cognition Overview</p> <p>Ex 19- Cognition offer of engagement dated December 18, 2015</p> <p>Ex 20- Excerpt of Deposition Tr of Jason Landess 2/8/19</p>			

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CASE NO.: A-18-776896-C
 DEPT. 32

EX NO	DESCRIPTION	BATES NUMBER	DATE OFFERED	OBJECTION	DATE ADMITTED
		<u>Ex 21</u> - JGL 2012 Tax Return (copy to Smith not bates)			
		<u>Ex 22</u> - JGL 2013 Tax Return (not bates)			
		<u>Ex 23</u> - JGL 2014 Tax Return (not bates)			
		<u>Ex 24</u> - JGL 2015 Tax Return (not bates)			
		<u>Ex 25</u> - JGL 2016 Tax Return (not bates)			
		<u>Ex 26</u> - JGL 2017 Tax Return (not bates)			
		<u>Ex 27</u> - Cognotion 2016 1099			
		<u>Ex 28</u> - Cognotion 2017 1099			
		<u>Ex 29</u> - Cognotion 2018 1099			
		<u>Ex 30</u> - Documents from Jonathan Dariyanani re payments to Landess			
		<u>Ex 31</u> - Letter from John Truehart			
		<u>Ex 32</u> - Exhibit 3 (redacted Bank of America statement showing 3/21/18			

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CASE NO.: A-18-776896-C
 DEPT. 32

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		wire from Cognotion), Exhibit 4 (redacted Bank of America statement showing 1/12/18 wire from Cognotion), Exhibit 5 (redacted Bank of America statement showing 5/3/18 wire from Cognotion) <u>Ex 33-</u> JGL Cognotion Income for 2016-2017 <u>Ex 34-</u> Cinematic Congnotion Contribution Agreement <u>Ex 35-</u> Cinematic Pre-Seed Investment Agreement (re Think Education) <u>Ex 36-</u> Cognotion Termination Letter 1/3/18 <u>Ex 37-</u> Retainer Agreement (2017) <u>Ex 38-</u> Retainer Agreement (2018) <u>Ex 39-</u> Miglin Article <u>Ex 40-</u> Printout of Paiute Golf Rounds from May 15- October 15, 2017			

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CASE NO.: A-18-776896-C
 DEPT. 32

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		<p><u>Ex 41-</u> Hospital AMA Form [JL signature only)- Copy with JL and witness signature in CHH records as CHHMCMR 00114</p> <p><u>Ex 42-</u> Photo xray 10/25/17 Nevada Spine Clinic</p> <p><u>Ex 43-</u> 2nd Surgery Post-Op X-Rays</p> <p><u>Ex 44-</u> Kirkendall Report</p> <p><u>Ex 45-</u>Reserved</p> <p><u>Ex 46-</u> 2 binders of Medical Records which include records produced in Initial Disclosure, and Second Supplement</p> <p><u>Ex 47-</u>no description</p> <p><u>Ex 48-</u>Expert-Loss of Stock Purchase Options</p> <p><u>Ex 49-</u>Value of Statistical Life Summary Table</p> <p><u>Ex 50-65</u> – Smith Tables 1-16</p> <p><u>Exhibit 66</u> – Transcript of Judge Bell's ruling – <i>Terra v.</i></p>			

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CASE NO.: A-18-776896-C
 DEPT. 32

EX NO	DESCRIPTION	BATES NUMBER	DATE OFFERED	OBJECTION	DATE ADMITTED
75.	Stan Smith, Ph.D's List: Trial Testimony on Intangible Damages by Stan V. Smith Allowed in the Following Cases as of July 21, 2017	P001067-P001097			
76.	Transcripts of Proceedings/Trials, Orders, and correspondence regarding Testimony of Stan V. Smith, Ph.D. regarding hedonic and/or loss of life damages (Nevada cases)	P001098-P001139			
77.	Transcript of Audio Recording of an Excerpt of Proceedings of the trial of <i>Tramon Finner v. Parker Hurlless, et. al</i> , District Court, Clark County, Nevada Case No. A-13-685392-C (regarding permission for Stan Smith, Ph.D. to testify regarding hedonic damages) on April 1, 2016, before Judge Susan Johnson	P001140-P001189			
78.	Session Report of Civil Bench Trial of <i>Hector Lopez v. Terra Contracting</i> regarding Stan Smith's testimony regarding hedonic damages before Judge Linda Bell on January 1, 2017	P001190-P001210			
79.	Peer-Reviewed Articles and journal papers written by other economists which support admissibility of economic testimony	P001212-P001527			
80.	<i>New York Times</i> article by B. Applebaum, "As US Agencies Put More Value on a Life, Businesses Fret"	P001528-P001535			
81.	<i>The Globalist</i> article by F. Partnoy, "The Cost of a Human Life, Statistically Speaking"	P001536-P001538			
82.	Viscusi, W. Kip and Aldy, Joseph E., "The Value of a Statistical Life: A Critical Review of Market Estimates Throughout the World" (2002). <i>Harvard Law School John M. Olin Center for Law, Economics and Business Discussion Paper Series</i> . Paper 392. http://lsr.nellco.org/harvard_olin/392	P001539-P001666			
83.	U.S Department of Transportation Memorandum dated 2/5/2008 from Office of the Secretary of Transportation to Secretarial Officers, Modal Administrators regarding "Treatment of the Economical	P001667-P001676			

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CASE NO.: A-18-776896-C
 DEPT. 32

EX NO	DESCRIPTION	BATES NUMBER	DATE OFFERED	OBJECTION	DATE ADMITTED
	Value of a Statistical Life in Departmental Analyses"				
84.	Governmental Studies on the Value of Life	P1677-P001750			
85.	Declaration of Jason G. Landess, 8/13/18	P00656-P00658			
86.	Case Information form for Smith Economic Group	P00161-P00164			
87.	Information Sheet for Jason G. Landess 10/19/18	P00659-P00662			
88.	Chart of Documents Provided to Stan Smith, Ph.D	P00659- P00667			
89.	Elizabeth Arias, Ph.D., Melonie Heron, Ph.D., and Jiaquan Xu, M.D., Division of Vital Statistics, "United States Life Tables, 2014, <i>National Vital Statistics Reports</i> , Volunt 66, Number 4 (August 14, 2017)	P002562-P002625			
90.	Copies of Plaintiff's Medicare and AARP cards	P00106			
91.	Verizon Phone bill for September & October 2017	P000104-P00105			
92A	Pages from <i>Nevada Legal News</i> – telephone numbers for Howard & Howard, and Nevada State Bar	P002708-P002710			
92.	Transcript of Deposition of Erika Margaret Schwelnus, DNP, taken on September 15, 2011, in the matter entitled, <i>Anne Leashen Fuller, Special Administrator of the Estate of Lillie Teague, deceased v. Holy Cross Hospital, et al.</i> , Case No. 09 L 4045 in the Circuit Court of Illinois, Cook County, further identified as 2011 Depo. Trans. LEXIS 3872	P00688-P00767			
93.	Transcript of Deposition of Erika Margaret Schwelnus, DNP, on August 24, 2001, in the matter entitled, <i>Ruben Galvan, as Special Administrator of the Estate of Benita Galvan v. Norwegian American Hospital, et al.</i> , Case No. 95 L 3889 in the Circuit Court of Illinois, Cook County, further identified as 2001 Depo. Trans. LEXIS 12520	P00768-P00894			
94.	Transcript of Deposition of Erika Margaret Schwelnus, DNP, on November 28, 2006, in the matter entitled, <i>Lona J. Vaughn v. Gottlieb Memorial Hospital, et al.</i> , Case No. 03 L 001568 in the Circuit Court of Illinois,	P00895-P00968			

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CASE NO.: A-18-776896-C
 DEPT. 32

EX NO	DESCRIPTION	BATES NUMBER	DATE OFFERED	OBJECTION	DATE ADMITTED
	Cook County, further identified as 2006 Depo. Trans. LEXIS 3206				
95.	Transcript of Deposition of Erika Margaret Schwelnus, DNP, on May 28, 1999, in the matter entitled, <i>Richard Smith v. Bethany Hospital</i> , Case No. 96 L 9487 in the Circuit Court of Illinois, Cook County, further identified as 1999 Depo. Trans. LEXIS 12456	P00969-P001051			
96.	Letter/expert report dated February 23, 2006, written by Kevin Bruce Kirkendall, MBA, CPA, to James J. Lee, Esq., regarding <i>Guerin adv. Smart City</i> , U.S. District Court for the District of Nevada, Case No. 2:05-cv-0587, further identified as 2006 Misc. Filings, LEXIS 5728	P001052-P001055			
97.	Letter/expert report dated February 12, 2014, written by Kevin Bruce Kirkendall, MBA, CPA, to Douglas B. Marcello, Esq., regarding <i>Calvert v. Ellis</i> , U.S. District Court for the District of Nevada, Case No. 2:13-cv-0464, further identified as 2014 Misc. Filings, LEXIS 9228	P001056-P001066			
98.	CHH Policies & Procedures – Against Medical Advice Release of Responsibility				
99.	CHH Policies & Procedures - CHH Discharge Against Medical Advice				
100.	Hospital AMA Form - Copy with JL and witness' signatures in CHH records	CHHMCMR 00114			
101.	Hospital AMA Form with Jason Landess' signature only (CHH records as CHHMCMR 00114)	P00651			
102.	Plaintiff's emails to and from Mark Mills, J.D., M.D.	P00124-P00128			
103.	Mark Mills, JD, MD's expert reports				
104.	Mark Mills, JD, MD's Curriculum Vitae				
105.	Exhibits to Deposition of Mark Mills, JD, MD	<u>Ex A</u> -List of Cases <u>Ex B</u> -Curriculum Vitae <u>Ex C</u> -Updated Curriculum Vitae			

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CASE NO.: A-18-776896-C
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EX NO	DESCRIPTION	BATES NUMBER	DATE OFFERED	OBJECTION	DATE ADMITTED
		<u>Ex D</u> -Expert Report <u>Ex E</u> -Ethical Principles of Psychologists <u>Ex F</u> -Ethics Guidelines <u>Ex G</u> -Interpretive Report <u>Ex H</u> -Witness Files			
106.	Eleanor Kenney, RN, PhD's expert reports				
107.	Eleanor Kenney, RN, PhD's <i>Curriculum Vitae</i>				
108.	Exhibits to Deposition of Eleanor Kenney, PhD.	<u>Ex A</u> -Invoice dated 2/25/19 <u>Ex B</u> -Depo & Trial Testimony <u>Ex C</u> -Curriculum Vitae <u>Ex D</u> -Records reviewed <u>Ex E</u> -Notes on Landess case <u>Ex F</u> -Rough draft of Declaration of Dr. Eleanor Kenney <u>Ex G</u> -Email correspondence <u>Ex H</u> -Declaration of Dr. Eleanor Kenney dated 2/22/19 <u>Ex I</u> -Supplemental Report			
109.	First Amended Complaint filed 07/02/08	P00542-P00570			

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 DEPT. 32

EX NO	DESCRIPTION	BATES NUMBER	DATE OFFERED	OBJECTION	DATE ADMITTED
110.	Defendant Kevin Paul Debiparshad's responses to all of Plaintiff's interrogatories and all of Plaintiff's requests for production of documents				
111.	Defendant Valley Health System dba Centennial Hills Hospital's responses to all of Plaintiff's interrogatories and and all of Plaintiff's requests for production of documents				
112.	Defendant Jaswinder Grover, MD and Jaswinder Grover, MD, Inc. dba Nevada Spine Clinic's responses to all of Plaintiff's interrogatories and and all of Plaintiff's requests for production of documents				
113.	Plaintiff's Motion for Preferential Trial Setting filed 07/13/18	P00571-P00625			
114.	Universal Health Services, Inc.'s Forms 10-Q and 10-K filed with the U.S. Securities and Exchange Commission for the 1 st , 2 nd , 3 rd and 4 th quarters of 2017 and 2018.	P001754-P002445			
115.	Universal Health Services, Inc.'s Summary Report regarding Net Worth/Equity (Total Assets – Total Liabilities) and Net Income for four (4) quarters of 2017 and 2018, and the first quarter of 2019.	P002446			
116.	Universal Health Services, Inc.'s Balance Sheets from the Department of Health & Human Services for four (4) quarters of 2017 and 2018, and first quarter of 2019.	P002447- P002475			
117.	Universal Health Services, Inc.'s Form 10-Q filed with the U.S. Securities and Exchange Commission for the 1 st quarter of 2019.	P002476-P002560			
118.	Exhibits to Deposition of Jason Landess – Vol. 1	Ex A			
119.	Exhibits to Deposition of Jason Landess – Vol. 2	Ex B - Offer letter dated 12/18/15, P00165-166 Ex C - Termination letter dated 1/3/18, P00107-108			

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CASE NO.: A-18-776896-C
 DEPT. 32

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		<p>Ex D- ProDox COR Certificate - tax returns 2012-2017; 2018</p> <p>Ex E- Bank statements, P00111-113</p> <p>Ex F- MMPI-2 Report (Dr Mills) dated 1/21/19, P00209-218</p> <p>Ex G- Conditions of Admission-Registration Treatment Authorization & Financial Responsibility, CHH 109-112</p>			
120.	Exhibits to Deposition of Roger Fontes, MD	<p>Ex A- CV</p> <p>Ex B – x-rays</p>			
121.	Exhibits to Deposition of Brian Anderson, PT	<p>Ex 1–Physical Therapy Forms, CHHMCMR00268-272</p> <p>Ex 2–Rehabilitation Services, CHHMCMR00342-343</p>			
122.	Exhibits to Deposition of Karen Buettner, RN	<p>Ex 1–Nursing Notes, CHHMC MR00262</p> <p>Ex 2–General Event Data, EVENTRPRT00001</p>			

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CASE NO.: A-18-776896-C
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		<p>Ex 3-Patient Education Notes, CHHMCMR 00034</p> <p>Ex 4-Plan of Care, CHHMCMR00275-283</p> <p>Ex 5-Assessments & Treatments, CHHMCMR00304-334</p> <p>Ex 6-Refusing Treatment Against Medical Advice, 10/11/17 at 15:02, CHHMCMR00114</p> <p>Ex 7- Refusing Treatment Against Medical Advice, 10/11/17 at 15:02, no Bates number, patient signature only</p> <p>Ex 8-Policy: Discharge Against Medical Advice (AMA), DISCHARGE AMA 0001-0002</p> <p>Ex 9-Policy: Against Medical Advice (AMA)- Release of Responsibility, AMA RELEASE 0001-0002</p> <p>Ex 10-Policy: Rights and Responsibilities-</p>			

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CASE NO.: A-18-776896-C
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		Patients, no Bates numbers (6 pages) <u>Ex 11</u> - Rights and Responsibilities - Patients			
123.	Exhibits to Deposition of Centennial Hills 30b6: Melanie Thompson	<u>Ex 1</u> – Nursing Notes dated 10/11/17, CHHMC MR 00258-262 <u>Ex 2</u> – Patient Safety Event Report, EVENTRPT00001			
124.	Exhibits to Deposition of Kevin Paul Debiparshad, MD	<u>Ex 1</u> – <i>Curriculum Vitae</i> <u>Ex 2</u> -Letter from NV State Board of Medical Examiners dated 7/17/18 <u>Ex 3</u> –Health Care Professional Liability Policy, INS1-00001-38 <u>Ex 4</u> - Premier Physicians Insurance Co., Inc. (79 pages) <u>Ex 5</u> –Physician Agreement dated 9/1/15 – NSC0027-47 <u>Ex 6</u> –Centennial Hills Hospital Emergency Dept Record – CCHCMR 00046			

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CASE NO.: A-18-776896-C
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		<p>Ex 7—Consent to Surgery and Orther Invasive Procedures dated 10/10/17, CHH MCMR104-105</p> <p>Ex 8 - Final Operative Report (printed 10/18/17) (2 pages)</p> <p>Ex 9-Centennial Hills Hospital Operative Record – CHHMCMR 0079</p> <p>Ex 10- Centennial Hills Hospital Physical Therapy Forms – CHHMCMR00271-272</p> <p>Ex 11-Ortho Bullets Article – “Tibial Shaft Fractures” (10 pages)</p> <p>Ex 12-AAOS NOW article “Pearls and Pitfalls with proximal third tibial fractures” (Lundy, et al.) (3 pages)</p> <p>Ex 13 – Nevada Spine Clinic Medical Record dated 10/25/17, NSCMR0005</p> <p>Ex 14 - Nevada Spine Clinic Medical Record</p>			

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CASE NO.: A-18-776896-C
 DEPT. 32

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		dated 10/25/17, NSCMR0006 <u>Ex 15</u> – Black & white x-ray dated 10/25/17, DOC00158-160 <u>Ex 16</u> -Nevada Spine Clinic Progress Note dated 11/22/17, NSCMR00004 <u>Ex 17</u> - Color photographs of x-ray dated 12/20/17, P00181 <u>Ex 18</u> – Nevada Spine Clinic Progress Note dated 12/20/17, NSCMR00003 <u>Ex 19</u> – Medical report by Dr. Herr dated 2/12/18, JEHM 00008 <u>Ex 20</u> -x-ray black & white copy dated 2/12/18 <u>Ex 21</u> - Desert Orthopaedic Medical Record dated 2/15/18, beginning with DOCL0026-56 (30 pages) <u>Ex 22</u> - color photograph of x-ray dated 2/15/18, P00185			

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 DEPT. 32

EX NO	DESCRIPTION	BATES NUMBER	DATE OFFERED	OBJECTION	DATE ADMITTED
		<p><u>Ex 23</u>—Synergy Spine & Orthopedics Medical Note dated 6/4/18, P0084-85</p> <p><u>Ex 24</u>—St. Rose Dominican Operation Note by Dr Fontes, DOCL0048-50</p> <p><u>Ex 25</u>—Photocopy black & white x-ray dated 4/18/18, DOC 0189</p> <p><u>Ex 26</u>—Photocopy black & white x-ray dated 4/18/18, DOC 0144</p> <p><u>Ex 27</u>—Synergy Spine & Orthopedics, fax transmission of Medical Records dated 6/4/18 (4 pages)</p>			
125.	Exhibits to Deposition of Effie Farnsworth	<p><u>Ex 1</u> – Second Amended Notice of Depo of NRCP 30b6 for Valley Health System</p> <p><u>Ex 2</u> – Professional Services On-Call Agreement, PSA 001-12</p>			
126.	Exhibits to Deposition of Stuart M. Gold, MD	<u>Ex 1</u> —Handwritten notes			

PLAINTIFF'S TRIAL EXHIBIT LIST

PLAINTIFF: Jason George Landess aka
 Kay George Landess
 DEFENDANT: Kevin Paul Debiparshad, MD
 DEFENDANT: Jaswinder Grover, MD, et al
 DEFENDANT: Valley Health System, et al

PLAINTIFFS' ATTORNEY: Martin A. Little
 DEFENDANT'S ATTORNEY: S. Brent Vogel
 DEFENDANTS' ATTORNEY: S. Brent Vogel
 DEFENDANTS' ATTORNEY: Kenneth M. Webster

CASE NO.: A-18-776896-C
 DEPT. 32

EX NO	DESCRIPTION	BATES NUMBER	DATE OFFERED	OBJECTION	DATE ADMITTED
		<u>Ex 2</u> -Curriculum Vitae and Fee Schedule <u>Ex 3</u> -List of cases <u>Ex 4</u> -Invoice <u>Ex 5</u> -CDs <u>Ex 6</u> -P180, 181, 186 <u>Ex 7</u> -Films from Dr. Herr taken Feb 2018 <u>Ex 8</u> -C-arm images <u>Ex 9</u> -Material provided at Dr. Harris' deposition <u>Ex 10</u> -X-rays Dr Fontes took, P190, 187, 188			
127.	Stuart M. Gold, M.D.'s Notes	P002704-P002707			
128.	Subpoena Duces Tecum to Dr. Gold for depositions and reports in other plaintiff cases				
129.	Exhibits to Deposition of Jayme Morrisette, RN	<u>Ex 1</u> – 2 nd Amended Notice of Depo of NRCPC 30b6 witness for Valley Health System			
130.	Notice of Taking Deposition: Centennial Hospital's 30b6				
131.	Notice of taking Deposition: Jaswinder Grover, MD, Inc.'s 30b6				
132.	Discovery Commissioner's Report and Recommendations on Motion to Compel Production of Documents and Responses	P002711-P002719			

PLAINTIFF'S TRIAL EXHIBIT LIST

PLAINTIFF: Jason George Landess aka
Kay George Landess
DEFENDANT: Kevin Paul Debiparshad, MD
DEFENDANT: Jaswinder Grover, MD, et al
DEFENDANT: Valley Health System, et al

PLAINTIFFS' ATTORNEY: Martin A. Little
DEFENDANT'S ATTORNEY: S. Brent Vogel
DEFENDANTS' ATTORNEY: S. Brent Vogel
DEFENDANTS' ATTORNEY: Kenneth M. Webster

CASE NO.: A-18-776896-C
DEPT. 32

EX NO	DESCRIPTION	BATES NUMBER	DATE OFFERED	OBJECTION	DATE ADMITTED
	to Plaintiff's Interrogatories regarding Plaintiff's punitive damage claim				

EXHIBIT 6

DEFENDANTS' FIFTH AMENDED TRIAL EXHIBITS

CASE NO. A-18-776896-C

TRIAL DATE: July 22, 2019

DEPT. NO. 32

JUDGE: Rob Bare

CLERK:

REPORTER:

JASON GEORGE LANDESS a.k.a. KAY GEORGE
LANDESS, as an individual;

Plaintiff,

vs.

KEVIN PAUL DEBIPARSHAD, M.D., an individual;
KEVIN P. DEBIPARSHAD PLLC, a Nevada
professional limited liability company doing business as
"SYNERGY SPINE AND ORTHOPEDICS";
DEBIPARSHAD PROFESSIONAL SERVICES LLC, a
Nevada professional limited liability company doing
business as "SYNERGY SPINE AND
ORTHOPEDICS"; ALLEGIANT INSTITUTE INC., a
Nevada domestic professional corporation doing business
as "ALLEGIANT SPINE INSTITUTE"; JASWINDER
S. GROVER, M.D., an individual; JASWINDER S.
GROVER, M.D. Ltd. doing business as "NEVADA
SPINE CLINIC"; VALLEY HEALTH SYSTEM LLC, a
Delaware limited liability company doing business as
"CENTENNIAL HILLS HOSPITAL"; UHS OF
DELAWARE, INC., a Delaware corporation also doing
business as "CENTINNIAL HILLS HOSPITAL"; DOES
1-X, inclusive; and ROE CORPORATIONS I-X,
inclusive,

Defendants.

Martin A. Little, Esq.
Alexander Villamar, Esq.
James J. Jimmerson, Esq.
Attorneys for Plaintiff

S. Brent Vogel, Esq.
Katherine Gordon, Esq.
John M. Orr, Esq.
*Attorneys for Defendants Kevin Paul
Debiparshad, M.D., Kevin P.
Debiparshad, PLLC d/b/a Synergy Spine
and Orthopedics, Debiparshad
Professional Services, LLC d/b/a
Synergy Spine and Orthopedics, and
Jaswinder S. Grover, M.D., Ltd. d/b/a
"Nevada Spine Clinic"*

Michael Shannon, Esq.
Marjorie E. Kratsas, Esq.
*Attorneys for Defendant
Valley Health System, LLC d/b/a
Centennial Hills Hospital*

DEFENDANTS' FIFTH AMENDED TRIAL EXHIBITS

CASE NO. A-18-776896-C

TRIAL DATE: July 22, 2019

DEPT. NO. 32

JUDGE: Rob Bare

CLERK:

REPORTER:

Exhibit No.	Document	Date Offered	Obj.	Date Admitted
400.	The Curriculum Vitae of Dr. Kevin Debiparshad, FRCSC, M.D.C.M. N.Sc., B.Sc., Bates Nos. CV-00001-00005			
401.	MedicWest Ambulance/AMR medical and billing records, Bates Nos. MAI-00001-00012			
402.	Mercy Ambulance c/o American Medical Response medical and billing records, Bates Nos. MACAMR 00001-00013			
403.	Centennial Hills Hospital Medical Center medical and billing records, Bates Nos. CHHMCMR 00001-00347			
404.	Centennial Hills Hospital Medical Center medical and billing records, Bates Nos. CHHM CB 00001-CHHM CB 00006			
405.	John Herr, M.D., medical and billing records, Bates Nos. JEHM 00001-00022			
406.	St. Rose Dominican Hospital – Rose de Lima Campus, medical records, Bates Nos. SRDRDLMR 00001-00352			
407.	Nevada Spine Clinic, medical and billing records, Bates Nos. NSCMR 00001-00019			
408.	Desert Orthopedic Center/Roger Fontes, M.D., medical and billing records, Bates Nos. DOCL 00001-00050 and DOCL 00078-00085			
409.	Forte Family Practice medical records, Bates Nos. FORTE-00001-00098			
410.	OK Care Pharmacy records, Bates Nos. OK CARE-00001-00031			
411.	Medical records from Synergy Spine and Orthopedics, Bates Nos. SYNERGY-00001-00026			
412.	Email from Jonathan Dariyanani to John Orr, Esq. dated 06/01/2019, Bates P001751-P001753			
413.	10/09/2017 - Centennial Hills Hospital XR Left Tibia-Fibula Series 1, 2, 3 and 4 Pt: Landess, Jason Bates Nos. CHH FILMS-00001-00004			
414.	10/10/2017 - Centennial Hills Hospital XR Left Tibia-Fibula [Hardware views] Series 4, 5, 6, 7, 8, and 9 Pt: Landess, Jason Bates Nos. CHH FILMS-00005-00010			

DEFENDANTS' FIFTH AMENDED TRIAL EXHIBITS

CASE NO. A-18-776896-C

TRIAL DATE: July 22, 2019

DEPT. NO. 32

JUDGE: Rob Bare

CLERK:

REPORTER:

Exhibit No.	Document	Date Offered	Obj.	Date Admitted
415.	10/25/2017 - Newport MRI (NV Spine)/Kevin Debiparshad XR Left Tib/Fib Series 1, 2, 3 Pt: Landess, Kay George Bates Nos. NEWPORT MRI/NV SPINE FILMS-00001-00003			
416.	11/22/2017 - Newport MRI (NV Spine)/Kevin Debiparshad XR Left Tibia Series 1, 2, 3 Pt: Landess, Kay George Bates Nos. NEWPORT MRI/NV SPINE FILMS-00004-00006			
417.	12/20/2017 - Newport MRI (NV Spine)/Kevin Debiparshad XR Left Tib Fib Series 1, 2, 3 Pt: Landess, Kay George Bates Nos. NEWPORT MRI/NV SPINE FILMS-00007-00009			
418.	01/31/2018 - Newport MRI (NV Spine)/Kevin Debiparshad XR Left Tib/Fib Series 1, 2, 3 Pt: Landess, Kay George Bates Nos. NEWPORT MRI/NV SPINE FILMS-00010-00012			
419.	10/25/2017 – Desert Orthopedic Center/Roger Fontes, M.D. XR L AP, XR L LAT, SR L OBL Pt: Landess, Kay, George Bates Nos. DOC-00158-00160			
420.	02/15/2018 – Desert Orthopedic Center/Roger Fontes, M.D. CR Lt Lower Leg: AP and Lat Series 2 and 3 Pt: Landess, Kay George Bates Nos. DOC 00161-00162			
421.	04/18/2018 – Desert Orthopedic Center/Roger Fontes, M.D. CR Lt Lower Leg: AP and Lat Series 1 and 2 Pt: Landess, Kay George Bates Nos. DOC 00163-00164			

DEFENDANTS' FIFTH AMENDED TRIAL EXHIBITS

CASE NO. A-18-776896-C

TRIAL DATE: July 22, 2019

DEPT. NO. 32

JUDGE: Rob Bare

CLERK:

REPORTER:

Exhibit No.	Document	Date Offered	Obj.	Date Admitted
422.	05/30/2018– Desert Orthopedic Center/Roger Fontes, M.D. CR Lt Lower Leg: AP and Lat Series 1 and 2 Pt: Landess, Kay George Bates Nos. DOC 00165-00166			
423.	06/27/2018 – Desert Orthopedic Center/Roger Fontes, M.D. CR Lt Lower Leg: AP and Lat Series 1 and 2 Pt: Landess, Kay George Bates Nos. DOC 00170-00171			
424.	08/08/2018 – Desert Orthopedic Center/Roger Fontes, M.D. CR Lt Lower Leg: AP and Lat Series 1 and 2 Pt: Landess, Kay George Bates Nos. DOC 00172-00173			
425.	04/03/2019 – Desert Orthopedic Center/Roger Fontes, M.D. CR Left Lower Leg: AP and Lat Series 1 and 3 Pt: Landess, Kay George Bates Nos. DOC 00178-00179			
426.	Report of Orthopaedic Surgery Expert, Stuart Gold, M.D., C.M.			
427.	Report of Economist Expert, Kevin Kirkendall			
428.	Report of Forensic Psychiatrist Expert, Michael Arambula, M.D., Pharm.D.			
429.	Plaintiff's Responses to Defendant Kevin Paul Debiparshad's First Set of Interrogatories			
430.	Plaintiff's Responses to Defendant Kevin Paul Debiparshad's First Set of Requests for Production of Documents			
431.	Plaintiff's Responses to Defendant, Valley Health d/b/a Centennial Hills' First Set of Requests for Production of Documents			
432.	CV of Stuart Miles Gold, M.D., C.M.			
433.	CV of Kevin Kirkendall, MBA, CPA-CGMA, CFE			
434.	CV of Michael Arambula, M.D., Pharm.D.			

DEFENDANTS' FIFTH AMENDED TRIAL EXHIBITS

CASE NO. A-18-776896-C

TRIAL DATE: July 22, 2019

DEPT. NO. 32

JUDGE: Rob Bare

CLERK:

REPORTER:

Exhibit No.	Document	Date Offered	Obj.	Date Admitted
435.	Certified copy of Justin Landess' Judgment of Conviction and Guilty Plea Agreement re: Attempt Possession of Stolen Vehicle, filed on December 12, 2005, as disclosed by Defendant Valley Health System, LLC d/b/a Centennial Hills Hospital (collectively referred to as "CHH") as JUSTIN000001-000011			
436.	Certified copy of Justin Landess' Amended Judgment of Conviction, Guilty Plea Agreement, Notice of Intent to Forfeit, and Transcript of Proceedings re: Attempt Unauthorized Absence Constituting Escape from Prison, filed on June 25, 2018, as disclosed by CHH as JUSTIN000012-000035			
437.	Certified copy of Justin Landess' Petition, Guilty Plea Agreement, and Judgment of Conviction re: Attempt Grand Larceny, filed on October 27, 2004, as disclosed by CHH as JUSTIN000036-000049			
438.	Certified copy of Justin Landess' Judgment of Conviction and Guilty Plea Agreement re: Forgery, filed on November 30, 2015, as disclosed by CHH as JUSTIN000050-000061			
439.	Certified copy of Justin Landess' Guilty Plea Agreement and Second Amended Judgment of Conviction re: Possession of Stolen Vehicle, filed on May 7, 2003, as disclosed by CHH as JUSTIN000062-000073			
440.	Certified copy of Justin Landess' Guilty Plea Agreement and Judgment of Conviction re: Transport of Controlled Substance, filed on July 9, 2015, as disclosed by CHH as JUSTIN000074-000086			
441.	Case Research Orders excluding or striking trial testimony of plaintiff's expert Stan Smith, Bates SMITH EXCLUSIONS-00001-00344			
442.	E-mail from James J. Jimmerson, Esq. to Jonathan Dariyanani, Bates JIMMERSON-04-08			
443.	Las Vegas Review Journal Article "Lawyer's judgment at issue," Bates LANDESS ARTICLE-00001-00008			
444.	Las Vegas Review Journal Article "Judicial candidate accused," Bates LANDESS ARTICLE-00009-00011			
445.	Article "Harmful Error, Candidate Landess named in Securities & Exchange complaint," Bates LANDESS ARTICLE-00012			

DEFENDANTS' FIFTH AMENDED TRIAL EXHIBITS

CASE NO. A-18-776896-C

TRIAL DATE: July 22, 2019

DEPT. NO. 32

JUDGE: Rob Bare

CLERK:

REPORTER:

Exhibit No.	Document	Date Offered	Obj.	Date Admitted
446.	Article re "MSNBC's Egalitarian Krystal Ball, and Her Husband Jonathan Dariyanani, Star of Numerous International Pump and Dumps, Bates DARIYANANI-00001-00011			
447.	Securities & Exchange Complaint, Bates SEC COMPLAINT-00001-00027			
448.	Quest Diagnostic's billing record regarding Jason George Landess, Bates Nos. DEBIPARSHAD-QDB 00001-00002			
449.	Report of Mark J. Mills, J.D., M.D. in the matter of <i>Ortiz v. University Medical Center of Nevada, et al.</i> , Case No. A-16-734958-C, dated November 27, 2018, MILLS-ORTIZ 00001-00005			
450.	Stuart M. Gold, M.D., C.M.'s supplemental report dated July 9, 2019			
451.	MP Investigations Surveillance Report dated June 17, 2019 Re Jason George Landess, Bates Nos. DEBIPARSHAD-SUBROSA 00001-00045			
452.	MP Investigations Surveillance Video Re Jason George Landess, provided via CD, Bates No. DEBIPARSHAD-SUBROSA 00046			
453.	MP Investigations Surveillance Report dated July 16, 2019 Re Jason George Landess, Bates Nos. DEBIPARSHAD-SUBROSA 00047-00051			
454.	Cognition, Inc. – Stock Ledger – Options as of May 18, 2018 Re Jason George Landess, Bates No. DEBIPARSHAD-COGNOTION 00001			
455.	Cognition, Inc. Board Minutes from May 31, 2016, Bates Nos. DEBIPARSHAD-COGNOTION 00002-00005			
456.	Cognition, Inc. Board Minutes from May 30, 2018, Bates Nos. DEBIPARSHAD-COGNOTION 00006-00009			
457.	Cognition, Inc. Profit and Loss Sheet from January 2016 to December 2017, Bates Nos. DEBIPARSHAD-COGNOTION 00010-00011			
458.	Cognition, Inc. Profit and Loss Sheet from January 2018 to December 2018, Bates Nos. DEBIPARSHAD-COGNOTION 00012-00013			
459.	Cognition, Inc. Balance Sheet as of December 31 2017, Bates Nos. DEBIPARSHAD-COGNOTION 00014-00015			

DEFENDANTS' FIFTH AMENDED TRIAL EXHIBITS

CASE NO. A-18-776896-C

TRIAL DATE: July 22, 2019

DEPT. NO. 32

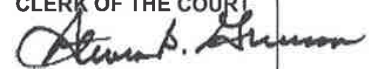
JUDGE: Rob Bare

CLERK:

REPORTER:

Exhibit No.	Document	Date Offered	Obj.	Date Admitted
460.	Cognition, Inc. Balance Sheet as of December 31 2018, Bates Nos. DEBIPARSHAD-COGNOTION 00016-00017			
461.	Cinematic Health Education GAAP Profit and Loss Trend in \$USD 000's, Bates Nos. DEBIPARSHAD-COGNOTION 00018-00023			
462.	Emails from Jonathan Dariyanani at Cognition regarding Jason Landess, Bates Nos. DEBIPARSHAD-CI EMAIL 00001-00005			
463.	Email from John Truehart to Jason Landess on July 18, 2018, Bates Nos. DEBIPARSHAD-CI EMAIL 00006-00013			
464.	Email from Jason Landess to Jonathan Dariyanani on July 24, 2018, Bates No. DEBIPARSHAD-CI EMAIL 00014			
465.	Supplemental Report of Economist Expert, Kevin Kirkendall			

EXHIBIT 7



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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

JASON LANDESS,
Plaintiff(s),

vs.

KEVIN DEBIPARSHAD, M.D.,
Defendant(s).

CASE#: A-18-776896-C
DEPT. XXXII

BEFORE THE HONORABLE ROB BARE
DISTRICT COURT JUDGE
FRIDAY, AUGUST 2, 2019

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 10

APPEARANCES:

For the Plaintiff:	MARTIN A. LITTLE, ESQ. JAMES J. JIMMERSON, ESQ.
For Defendant Jaswinder S. Grover, MD Ltd:	STEPHEN B. VOGEL, ESQ. KATHERINE J. GORDON, ESQ.

RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

1 unable at that time to fulfill his job duties as an attorney for Cognotion; is
2 that right?

3 A Well, as an attorney, and the other different functions --

4 Q Okay.

5 A -- that he did for us. That's right.

6 Q I'm going to show you an email from Plaintiff's -- I think it's
7 admitted, but it might still just be --

8 A Uh-huh.

9 Q -- Plaintiff's Proposed Exhibit 56.

10 So you know what? Let me --

11 THE COURT: All right. Is 56 in those?

12 THE CLERK: 56 is not in the book.

13 THE COURT: All right. Not admitted.

14 MS. GORDON: I don't think it's admitted yet. I'm not 100
15 percent sure.

16 THE COURT: Yeah. It's -- I'm sorry. I just want --

17 MR. JIMMERSON: The answer; I would have no objection to
18 that email. I'd just know the date, if I could?

19 MS. GORDON: And I have a view from 56, so --

20 MR. JIMMERSON: All right. I have the exhibit.

21 MS. GORDON: Can I --

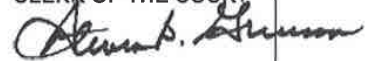
22 MR. JIMMERSON: Sorry.

23 MS. GORDON: Can I move to admit Plaintiff's Proposed
24 Exhibit 56?

25 MR. JIMMERSON: No objection, Judge.

1 THE COURT: All right. 56 is admitted.
2 [Plaintiff's Proposed Exhibit 56 admitted into evidence]
3 BY MS. GORDON:
4 Q This is an email dated August 18th, 2018, between -- it looks
5 like from Mr. Landess to Tim -- is that Tim Murray at Cinematic Health?
6 A Yes.
7 Q And copied you on it. And this is after the time period that
8 Mr. Landess was on unpaid leave, correct?
9 A Yes.
10 Q And he's forwarding information about CNA. I'm assuming
11 he's referring to the ReadyCNA product?
12 Q Sending it to Tim so he can take a look at it to see what the
13 status of that product is, and in particular, he's talking about the status of
14 the product as it might be approved in Nevada, correct?
15 A Yes.
16 Q So in August of 2018, Mr. Landess was at least able to
17 perform functions such as this, correct?
18 A He's writing that email, yes.
19 Q Thanks. And you sent the termination letter to Mr. Landess
20 on January 3rd, 2019, right?
21 A Yes.
22 Q And I think you actually attached it. This is Plaintiff's
23 admitted -- I think it's admitted separately. This is from Exhibit 56. You
24 sent him the termination letter as an attachment to an email, correct?
25 A Yes.

EXHIBIT 8



1 RTRAN

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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JASON LANDESS,

CASE#: A-18-776896-C

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Plaintiff(s),

DEPT. XXXII

9

vs.

10

KEVIN DEBIPARSHAD, M.D.,

11

Defendant(s).

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BEFORE THE HONORABLE ROB BARE
DISTRICT COURT JUDGE
FRIDAY, AUGUST 2, 2019

14

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RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 10

16

17

APPEARANCES:

18

For the Plaintiff:

MARTIN A. LITTLE, ESQ.
JAMES J. JIMMERSON, ESQ.

19

20

For Defendant Jaswinder S.
Grover, MD Ltd:

STEPHEN B. VOGEL, ESQ.
KATHERINE J. GORDON, ESQ.

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RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

1 et cetera, to what the numbers he gave were.

2 A No.

3 Q Mr. Dariyanani, you testified earlier that Mr. Landess is a
4 beautiful person in your mind.

5 A We're all beautiful and flawed. He's beautiful and flawed.

6 Q And you respect him a great deal?

7 A I do.

8 Q And this was, that portion any way is consistent with your
9 impression of Mr. Landess for at least the past five years, I believe you
10 said?

11 A Yeah, and he's had -- he's had tough periods as, you know,
12 as everybody has had. You know, as I've had tough periods.

13 Q And that was before five years ago, correct?

14 A I think so.

15 Q This is -- I'm going to try to blow it up, but this is an email
16 that Mr. Landess sent to you and it's part of admitted Exhibit 56, dated
17 November 15th, 2016. It's quite long, but the part I'm interested in is Mr.
18 Landess appears to be giving a summary of his prior work experience
19 and some experiences that he has gone through in his life.

20 A Uh-huh.

21 Q And the highlighted portion starts, "So I got a job working in
22 a pool hall on weekends." And I'll represent to you, Mr. Landess testified
23 earlier about working in a pool hall.

24 A Uh-huh.

25 Q "To supplement my regular job of working in a sweat factory

1 with a lot of Mexicans, and taught myself how to play Snooker. I
2 became so good at it, that I developed a route in East L.A. hustling
3 Mexicans, blacks, and rednecks on Fridays, which was usually payday.
4 From that lesson, I learned how to use my skill to make money by taking
5 risk, serious risk." When you read this, did that change your impression
6 of Mr. Landess at all?

7 A Not at all. He had told me. I knew -- I knew about Jason's
8 life. I knew that he dropped out of high school. You know, I have people
9 that work at my company that are convicted felons. Look, I believe that
10 everybody is worthy. Mr. Landess was very honest with me about every
11 aspect of his life and I leave my children -- I left my daughter with him.
12 So that's the answer to your question.

13 Q Did he sound apologetic in this email about hustling people
14 before?

15 A I think when you're 70 years old, you reflect on your life, and
16 not all of it's beautiful. Not all of it's beautiful. He doesn't feel like his
17 divorce was beautiful. I think, you know, he doesn't feel like his -- I don't
18 think Mr. Landess would sit here and tell you every moment of his life
19 was great. You know, but I know him to be a person who loves people
20 and cares for them and I feel like I know his heart and that didn't bother
21 me because I -- I know him and I saw that it's reflected back on, you
22 know, what a provincial fool he was at the time, and he was.

23 Q Does it sound to you at all from this email that he's bragging
24 about his past as a hustler, and particularly hustling Mexicans, blacks,
25 and rednecks on payday?

1 A Not at all. I think he feels -- I think he's very circumspect
2 about that whole period of his life. And if you're asking me, like, did I
3 read this as Mr. Landess being a racist and a bragger, I absolutely did
4 not and I don't read it that way now, and I wouldn't have such a person
5 in my employ.

6 Q He talks about a time when he bought a truck stop here in
7 Las Vegas when the Mexican laborer stole everything that wasn't welded
8 to the ground. You still don't take that as being at all a racist comment?

9 A I look at that as him reflecting back on his life and the way
10 that he saw things then, growing up in L.A. the way that he did. I don't
11 think that that -- I don't think it's representative of how -- I think he
12 channeled himself then. I don't think it's representative of who he is
13 now, and it's not who -- it's not the person that I've seen and know.

14 Q Thank you, Mr. Dariyanani. I appreciate it.

15 THE COURT: Thank you, Ms. Gordon.

16 MR. JIMMERSON: Is she done? Okay.

17 THE COURT: Any redirect, Mr. Jimmerson?

18 MR. JIMMERSON: Yeah, very briefly.

19 REDIRECT EXAMINATION

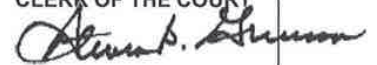
20 BY MR. JIMMERSON:

21 Q The -- this past was Mr. Landess 54 years ago when he was
22 19 years old; is that right?

23 A Yes.

24 Q In your observation, do people change over the course of 54
25 years?

EXHIBIT 9



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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

JASON LANDESS,
Plaintiff(s),

vs.

KEVIN DEBIPARSHAD, M.D.,
Defendant(s).

CASE#: A-18-776896-C
DEPT. XXXII

BEFORE THE HONORABLE ROB BARE
DISTRICT COURT JUDGE
MONDAY, AUGUST 5, 2019

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 11

APPEARANCES:

For the Plaintiff:

MARTIN A. LITTLE, ESQ.
JAMES J. JIMMERSON, ESQ.

For Defendant Jaswinder S.
Grover, MD Ltd:

STEPHEN B. VOGEL, ESQ.
KATHERINE J. GORDON, ESQ.

RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

1 motion in limine, I'll share with you that the proper way to do this would
2 be to say, look, to the extent the Defense might want to use this to show
3 Mr. Landess isn't a beautiful person or otherwise in the event character
4 comes up, you want to use it to rebut character, you could say things
5 like, I got a job working at a pool hall on weekends to supplement my
6 regular job of working in a factory, redacting the word "sweat". Then
7 delete or redact, "with a lot of Mexicans".

8 And then continue with non-redactions. "Taught myself how
9 to play Snooker. I became so good at it I developed a route in East L.A.
10 hustling --", redact "Mexicans, blacks, and rednecks" -- "-- on Fridays,
11 which was usually payday." And then probably redact, "The truck stop
12 Mexican laborers stole everything." And now what you have is you have
13 usable evidence that he was a hustler. He taught himself to play pool,
14 and he hustled people playing pool. Is that an indication of a beautiful
15 person? Usable, admissible, but not overly prejudicial.

16 So that's the something I wanted to at least share with you
17 that I did put down in my notes here -- these are some of my notes over
18 the weekend. I put a note in here asking, what about a sidebar, what
19 about redacting, you know, prejudicial parts of the usable item of
20 evidence. So go ahead, if you want --

21 MS. GORDON: I appreciate that, Your Honor. I think that
22 what that does is it certainly shifts the burden to Defendant, and what, I
23 believe, you're saying is that it's admissible evidence, Your Honor. And
24 as you've stated in this case and I believe in other trials you've had,
25 admissible evidence is used for any purpose, can be used for any

1 purpose, and I don't think that the burden for how prejudicial a piece of
2 evidence that Plaintiff disclosed and stipulated into evidence, the
3 prejudicial nature of it should not be -- have to be addressed by the
4 Defense, and out of curiosity or out of doing their job for them, I don't
5 know, but I know that admissible evidence, it can be used for any
6 purpose.

7 And I know that Plaintiff initially elicited and had
8 impermissible and unethical character evidence. What the Defense is
9 allowed to do in response to that, and what I actually have an ethical
10 duty to my client, a person of color to do, is to use that evidence in
11 impeachment. I'm allowed to do it, I should do it, and I did do it, and
12 they did nothing about it.

13 THE COURT: So you think that the jury is allowed to
14 consider whether Mr. Landess is a racist?

15 MS. GORDON: I think that I am allowed to use impeachment
16 evidence that has not been objected to, and has been admitted into
17 evidence by stipulation. I absolutely think I'm allowed to use it. I should
18 use it on behalf of my client, and the burden should not be shifted to me
19 to assist with eliminating or reducing the prejudicial value of that piece
20 of evidence.

21 Dr. Debiparshad was asked about his race during his
22 deposition. Mr. Daryanani went on for the first 15, 20 minutes of his
23 testimony about his race. It's not new. Motive is always relevant in
24 terms of Mr. Landess' reason for setting up our, you know, view on this
25 case --

1 THE COURT: Um-hum.

2 MS. GORDON: -- setting up Dr. Debiparshad. I don't think
3 it's completely irrelevant, and you know, it hurts. It hurts. I don't care.
4 That's our job, and I'm sorry that it hurts and it's damaging, but it's not
5 so prejudicial that it shouldn't be considered at all. They opened the
6 door, and we're allowed to use it. I have an ethical obligation to use it.
7 We're here, Your Honor, because of a cumulative effect of Plaintiff's
8 errors. They disclosed it, they redisclosed it, they stipulated to its
9 admission, they didn't object to it, they didn't ask for a sidebar at any
10 point.

11 We're here because of their error. Trying to shift the burden
12 for that error to us now, it's absurd. It just is, and trying to make it look
13 like an ethical issue on the Defense side for using this piece of evidence
14 is absurd, as well.

15 THE COURT: All right. Just to be sure, it sounds like what
16 you're saying to me is that, in your view, under all of the circumstances
17 that you've already described or that you otherwise know, that whether
18 Mr. Landess is a racist is something the jury should weigh and it's
19 admissible, and it's evidence that they should consider.

20 MS. GORDON: I think that the entirety of the passages from
21 that email is impeachment testimony to the character evidence that was
22 improperly and unethically elicited by Plaintiff, and I don't know that it's
23 so much exactly what that bad character evidence consists of --

24 THE COURT: Um-hum.

25 MS. GORDON: -- it's bad character evidence that we're

1 allowed to use as impeachment.

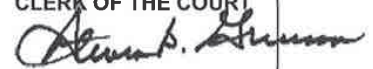
2 I don't know, Your Honor, and perhaps you found cases that I
3 did not, but I don't know that there is a subsection under impeachment,
4 and what evidence we can use as impeachment that says, oh you can
5 use impeachment evidence, but you can't if it has to do with race. You
6 can use impeachment evidence, but you can't, if it has to do with -- I
7 don't know. There's no, you know, subsection --

8 THE COURT: Okay, let me take it from a different perspective
9 then. Let's assume you never put that item up in the questioning of Mr.
10 Daryanani. However, it's admitted as Exhibit 56, page 44. Let's further
11 assume that then, the first time you ever use it, is in your closing
12 argument, and you put it up just the same way you did with Mr.
13 Daryanani. I take it you're going to tell me that that's not -- essentially,
14 it's already misconduct under the *Lioce* standard. In other words, you
15 can tell me that, at least in part, you could make a closing argument that
16 Mr. Landess is a racist and the jury ought to consider that.

17 MS. GORDON: I'm saying that respectfully, I don't know that
18 that has anything to do with what we're talking about now, because we
19 were talking about impeachment evidence for someone who improperly
20 gave character evidence, and I was impeaching him.

21 THE COURT: Well, let me explain that. Let me explain. If
22 you're telling me it's impeachment evidence, that means it is evidence,
23 and that means you could argue the evidence. I just think this is a good
24 illustration of the concern. I mean, you and your wisdom used it for
25 impeachment. I get that, but it's evidence. And so I'm just trying to see

EXHIBIT 10



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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

JASON LANDESS,
Plaintiff(s),

vs.

KEVIN DEBIPARSHAD, M.D.,
Defendant(s).

CASE#: A-18-776896-C
DEPT. XXXII

BEFORE THE HONORABLE ROB BARE
DISTRICT COURT JUDGE
MONDAY, AUGUST 5, 2019

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 11

APPEARANCES:

For the Plaintiff:

MARTIN A. LITTLE, ESQ.
JAMES J. JIMMERSON, ESQ.

For Defendant Jaswinder S.
Grover, MD Ltd:

STEPHEN B. VOGEL, ESQ.
KATHERINE J. GORDON, ESQ.

RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

1 certain, slam dunk easy, I would've granted a motion to preclude the
2 hustling Mexicans, blacks, and rednecks, where the Mexican labor stole
3 everything that wasn't welt to the ground. I would've precluded that.
4 And though not so relevant to this, but since we're having a meaningful
5 discussion, I can tell you that I handed this to Mark Dunn, and the level of
6 shock on his face was palpable. And I handed it to him only asking him
7 one thing, would you preclude this in a motion in limine.

8 That's how I started it, because I didn't want him to know the
9 full extent of anything else I might have to deal with, and he told me, in
10 no uncertain terms, what I was really already thinking, and that is that
11 you absolutely have to preclude this because the issue of whether or not
12 Mr. Landess is a racist or not is not relevant. And even if it relevant, if
13 character is an issue, that's really -- that's the issue. I mean, race --
14 whether he's a racist or not is not relevant and is prejudicial. It's, I think,
15 clearly what I would have to tell you, and that's the reason I would grant
16 the pretrial motion.

17 So I think it's fair to say, okay, why not ask for a sidebar. I
18 mean, certainly you have the witness in the witness box, Daryanani, and
19 you have the item ready to go up on the ELMO. You could ask for a
20 sidebar to discuss --

21 MS. GORDON: Us?

22 THE COURT: Yes. Us. You could ask for a sidebar to now
23 indicate, I'm going to put this up, or for that matter, consideration
24 could've been given to -- I mean, this is my question. I want to see if you
25 want to answer this, to potentially redacting portions of it, because in a

EXHIBIT 11

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1 **FFCO**
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3 Nevada Bar No. 395
4 JORDAN P. SCHNITZER, ESQ.
5 Nevada Bar No. 10744
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13 Email: jschnitzer@ksjattorneys.com
14 *Attorneys for Plaintiff,*
15 *Dillon Mathew Barnes*

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

DILLON MATHEW BARNES,

Plaintiff,

vs.

SOUTHERN HILLS MEDICAL CENTER,
LLC, a Nevada Limited Liability Company d/b/a
SOUTHERN HILLS HOSPITAL AND
MEDICAL CENTER; REN YU ZHANG, M.D.;
NEVADA SURGERY AND CANCER CARE,
LLP, a Nevada Limited Partnership; ANN
NASH; RORY GRADNEY; RODOLFO
ESPINOSA; AIDA TERGALSTIAN; LISA
BILALYAN; DOE NURSES 1 THROUGH 10;
DOE PHARMACISTS 13 THROUGH 20; ROE
CORPORATIONS 1 THROUGH 20,

Defendants.

Case No. A-12-661869-C
Dept. No. XXIV

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER DENYING
DEFENDANTS' MOTION FOR
JUDGMENT AS A MATTER OF LAW
AND MOTION FOR NEW TRIAL AND
GRANTING IN PART AND DENYING IN
PART DEFENDANTS MOTION TO
AMEND THE JUDGMENT**

The above-captioned matter, having come on for hearing pursuant to Defendant
NEVADA SURGERY AND CANCER CARE, LLP's Motion For Judgment as a Matter of Law,
Motion for New Trial and Motion to Amend the Judgment on the 10th Day of December, 2014,
Gary Schnitzer, Esq. and Jordan Schnitzer, Esq., of the Law Firm KRAVITZ SCHNITZER &
JOHNSON, appearing on behalf of Plaintiff, S. Brent Vogel, Esq. and Amanda J. Brookhyser,

1 Esq., of the Law Firm LEWIS BRISBOIS BISGAARD & SMITH, appearing on behalf of
2 Defendants REN YU ZHANG, M.D., and NEVADA SURGERY AND CANCER CARE
3 (“NSCC”), the Court having considered the papers and pleadings on file herein, the Court being
4 fully advised in the premises and good cause appearing therefore, makes the following Findings
5 of Fact, Conclusions of Law and Order:
6

7 **I. Findings of Fact**

8 1. During the trial, competent testimony was elicited concerning Dr. Zhang’s
9 deficiencies during his residency, causing him to be placed on probation.
10

11 2. NSCC was unaware of these deficiencies and the probation because it never
12 inquired about whether Dr. Zhang was ever on probation during the hiring process.
13

14 3. It was logical and reasonable for the jury to conclude or infer that the same
15 deficiencies contributed to or caused Plaintiff’s injuries and, therefore, NSCC negligently hired,
16 trained and supervised the activities of Dr. Zhang, an employee of NSCC.
17

18 4. Defendant moved for a new trial based upon NRCP 59(a)(1) Irregularity in the
19 proceedings preventing a fair trial; NRCP 59(a)(3) accident or surprise which ordinary prudence
20 could not have guarded against; and NRCP 59(a)(6) excessive damages appearing to have been
21 given under the influence of passion or prejudice.
22

23 5. While there was evidence that a document containing the declaration page of
24 Defendants’ insurance policy was submitted to the jury, Dr. Wishnev was the first to mention
25 medical malpractice insurance during the trial. She was the managing agent for NSCC and
26 mentioned medical malpractice insurance twice. The Court is also aware Dr. McBride
27 mentioned medical malpractice insurance twice. The Court is also aware Dr. McBride
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mentioned insurance during testimony after Dr. Wishnev.

6. The document containing the declaration page was part of Dr. Zhang's credentialing file. Although Plaintiff stipulated to its admission, the credentialing file was one of Defendants' documents that they used and relied upon during trial.

7. The declaration page showed a policy limit of \$1,000,000. Although Defendants' argue they were prejudiced, it was possible that the document was prejudicial to Plaintiff because the jury could have considered that only the first million dollars of their verdict would be paid by insurance. As a result, they may have reduced their verdict so as reduce the financial harm to Defendants.

8. Plaintiff did not ask for a new trial.

9. Plaintiff offered a limiting instruction regarding the mention of insurance, but Defendants objected to such a jury instruction.

10. Defendants received a fair trial.

11. There was no accident or surprise which ordinary prudence could not have guarded against. Both parties were given the opportunity to review the evidence binders that were given to the jury.

12. The damages were not excessive.

13. Plaintiff previously entered into a settlement with Southern Hills Medical Center.

14. This Court previously determined the settlement to be in good faith pursuant to NRS 17.245.

1 15. The jury found Dr. Zhang 60% liable for Plaintiff's total damages and all others
2 40% liable.

3
4 **II. Conclusions of Law**

5 **A. Judgment as a Matter of Law**

6
7 1. A motion for judgment as a matter of law may be granted only if the opposing
8 party fails to prove a sufficient issue for the jury so that the claim cannot be maintained under the
9 controlling law. *FGA, Inc. v. Giglio*, 128 Nev. Adv. Op. No. 26 278 P.3d 490 (2012).

10
11 2. If facts are disputed or reasonable men could draw different inferences from the
12 facts, the question is one for the jury and not one of law for the court. *Gordan v. Hurtado*, 91
13 Nev. 461, 541 P.2d 533 (1975); *Kline v. Robinson*, 83 Nev. 244, 428 P.2d 190 (1967),
14 overruled on other grounds; *Pease v. Taylor*, 88 Nev. 287, 496 P.2d 757 (1972).

15
16 3. When a motion for directed verdict is presented, the trial court must view the
17 evidence and all inferences most favorable to the party against whom the motion is made. *Bliss*,
18 81 Nev. 599, 407 P.2d 726 (1965).

19
20 4. A case where an employer utterly fails to inquire about a potential employee's
21 background, including recent probation during school, can be evaluated by a lay jury under
22 ordinary negligence standards and does not require expert testimony

23
24 5. NSCC is not entitled to judgment as a matter of law on the negligent hiring,
25 training and supervision claims.

26
27 ///

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1 **B. New Trial**

2 6. The trial court's decision to grant or deny a motion for new trial is within the
3 sound discretion of the trial court judge. *Southern Pac. Trans. Co. v. Fitzgerald*, 94 Nev. 241,
4 244, 577 P.2d 1234,1236 (1978).

5 7. Additionally, the general rule is that a new trial can be granted only where an
6 injustice has been done. *See University and Community College Systems v. Farmer*, 113 Nev.
7 90, 930 P.2d 730 (1997).

8 8. Every irregularity does not authorize the verdict to be set aside, unless the party
9 complaining shows at least by a reasonable presumption that he has been injured thereby.
10 *Richardson v. Jones*, 1 Nev. 405 (1865) (decision under former similar provision).

11 9. Defendants are not entitled to a new trial.

12 **C. Motion to Amend the Verdict**

13 10. NSCC is not a hospital and, therefore, the claim for negligent hiring, training and
14 supervision are not governed by the medical malpractice tort reforms. *Egan v. Chambers*, 299
15 P.3d 364, 366 fn. 3 (2013).

16 11. Similarly, Plaintiff's claim for respondeat superior is not governed by the medical
17 malpractice tort reforms because it is not a medical malpractice claim, even if it is based upon
18 Dr. Zhang's actions. *Id.* *See also McQuade v. Ghazal Mt. Dental Group*, 2014 Unpub. Lexis
19 1558, *2-3 unpublished (September 24, 2014)("We have determined that NRS 41A.071 'only
20 applies to medical malpractice or dental malpractice actions, not professional negligence
21 22 23 24 25 26 27 28

1 actions.’ In the action against MDG, McQuade did not have to comply with NRS 41A.071
2 because the action was based on respondeat superior and negligent hiring, not medical or dental
3 malpractice.”)(citation to Egan omitted).
4

5 12. NSCC is entitled to a set-off for the prior settlements. NRS 17.245.

6 13. NSCC is entitled to a set-off of the entire amount of the prior settlement. The
7 reasons set forth by counsel for Southern Hills Hospital did not provide a basis to reduce the
8 settlement off-set.
9

10 14. NSCC’s liability for damages is \$1,243,988.00 after the settlement credit/setoff.

11 15. Dr. Zhang is severally liable. NRS 41A.045.

12 16. Dr. Zhang is not entitled to a set-off for the prior settlement because a non-settling
13 defendant is not entitled to a set-off of a prior settlement for damages where its responsibility is
14 several as opposed to joint. NRS 17.245; *Doctors Co. v. Vincent*, 120 Nev. 644, 656 (2004);
15 *Regan Roofing Co. v. Superior Court*, 21 Cal. App. 4th 1685, 1706 (1992) citing *Espinoza v.*
16 *Machonga*, 9 Cal.App.4th 268, 272-273; see also *Flowers v. Southwest Airlines Co.*, 2007 U.S.
17 Dist. Lexis 2061, 2007 WL 118874 *22-23 (S.D.Ind. 2007) (Finding a settlement agreement
18 does not affect a severally liable defendant, “who can be held liable only for damage up to their
19 degree of fault.”); *Goldenberg v. Woodard*, 2014 Nev. Unpub. Lexis 1008, 2014 WL 2882560,
20 *16 (2014) (unpublished).
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23 17. Dr. Zhang’s is liable for 60% of the judgment.

24 18. Dr. Zhang’s liability for non-economic damages exceeds \$350,000 and must be
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capped pursuant to NRS 41A.035.

19. Dr. Zhang is liable for economic damages for 60% of the economic damages verdict. Therefore, Dr. Zhang's liability for economic damages after reduction pursuant to NRS 41A.045 is \$146,392.89.

20. Dr. Zhang is also entitled to a reduction of economic damages pursuant to NRS 42.021(1) in the amount of \$84,813.80

21. Dr. Zhang's total liability for damages is \$411,579.09 representing \$350,000 in non-economic damages and \$61,579.09 in economic damages.

22. Defendants' are entitled to have the judgment amended to conform to the conclusions of law set forth above.

V. Order

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants' Motion for Judgment as a Matter of Law is Denied.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants' Motion for New Trial is Denied.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants' Motion to Amend the Judgment is granted in part and denied in part. Total Judgment in favor of Plaintiff for damages shall be entered in the amount of \$1,655,567.09 separately designated as judgment for damages against NSCC in the amount of \$1,243,988.00 and judgment for damages against Dr. Zhang in the amount of \$411,579.09. NSCC is also liable for this amount pursuant to

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respondeat superior liability.

IT IS SO ORDERED

DATED this 18TH day of ^{DEC} ~~November~~, 2014.

DISTRICT COURT JUDGE
(MS)

Respectfully Submitted By:

KRAVITZ, SCHNITZER
& JOHNSON, CHTD.

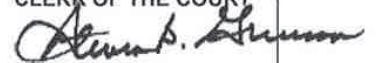
By:

GARY E. SCHNITZER, ESQ.
Nevada Bar No. 395
JORDAN P. SCHNITZER, ESQ.
Nevada Bar No. 10744
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Nevada Bar No. 11526
6385 S. Rainbow Blvd., Suite 600
Las Vegas, Nevada 89118
Counsel for Defendants

EXHIBIT 12



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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

JASON LANDESS,
Plaintiff(s),

vs.

KEVIN DEBIPARSHAD, M.D.,
Defendant(s).

CASE#: A-18-776896-C
DEPT. XXXII

BEFORE THE HONORABLE ROB BARE
DISTRICT COURT JUDGE
MONDAY, AUGUST 5, 2019

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 11

APPEARANCES:

For the Plaintiff:

MARTIN A. LITTLE, ESQ.
JAMES J. JIMMERSON, ESQ.

For Defendant Jaswinder S.
Grover, MD Ltd:

STEPHEN B. VOGEL, ESQ.
KATHERINE J. GORDON, ESQ.

RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

1 purpose, and I don't think that the burden for how prejudicial a piece of
2 evidence that Plaintiff disclosed and stipulated into evidence, the
3 prejudicial nature of it should not be -- have to be addressed by the
4 Defense, and out of curiosity or out of doing their job for them, I don't
5 know, but I know that admissible evidence, it can be used for any
6 purpose.

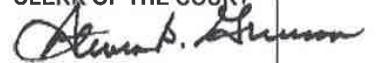
7 And I know that Plaintiff initially elicited and had
8 impermissible and unethical character evidence. What the Defense is
9 allowed to do in response to that, and what I actually have an ethical
10 duty to my client, a person of color to do, is to use that evidence in
11 impeachment. I'm allowed to do it, I should do it, and I did do it, and
12 they did nothing about it.

13 THE COURT: So you think that the jury is allowed to
14 consider whether Mr. Landess is a racist?

15 MS. GORDON: I think that I am allowed to use impeachment
16 evidence that has not been objected to, and has been admitted into
17 evidence by stipulation. I absolutely think I'm allowed to use it. I should
18 use it on behalf of my client, and the burden should not be shifted to me
19 to assist with eliminating or reducing the prejudicial value of that piece
20 of evidence.

21 Dr. Debiparshad was asked about his race during his
22 deposition. Mr. Daryanani went on for the first 15, 20 minutes of his
23 testimony about his race. It's not new. Motive is always relevant in
24 terms of Mr. Landess' reason for setting up our, you know, view on this
25 case --

EXHIBIT 13



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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

JASON LANDESS,
Plaintiff(s),
vs.
KEVIN DEBIPARSHAD, M.D.,
Defendant(s).

CASE#: A-18-776896-C
DEPT. XXXII

BEFORE THE HONORABLE ROB BARE
DISTRICT COURT JUDGE
FRIDAY, AUGUST 2, 2019

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 10

APPEARANCES:

For the Plaintiff:	MARTIN A. LITTLE, ESQ. JAMES J. JIMMERSON, ESQ.
For Defendant Jaswinder S. Grover, MD Ltd:	STEPHEN B. VOGEL, ESQ. KATHERINE J. GORDON, ESQ.

RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

1 THE WITNESS: Sure. Jonathan J-O-N-A-T-H-A-N, Ram R-A-
2 M; last name, Dariyanani D-A-R-I-Y-A-N-A-N-I.

3 THE COURT: All right, Mr. Jimmerson.

4 DIRECT EXAMINATION

5 BY MR. JIMMERSON:

6 Q Good morning, Mr. Dariyanani, how are you sir?

7 A Good.

8 Q Thank you for coming to Court this morning. Would you tell
9 us your position with Cognotion, and maybe why you're here, please?

10 A Sure. So I'm the founder and president and CEO.

11 Q Please keep your voice up.

12 A Sure. I'm the founder, president, and CEO of Cognotion, and
13 I'm here to talk about, I think, Mr. Landess' employment and his
14 termination.

15 Q Okay. Thank you. Tell us what is Cognotion, please?

16 A Sure. So Cognotion is a software company, kind of like
17 Netflix for careers. So we make movies that train people to do new jobs,
18 and they watch them, and that trains them in the job, rather than sitting
19 there with a textbook. And employers pay us, per student, sort of like a
20 digital textbook. But they buy a subscription, people watch the movies,
21 and we train them. And so we have clients, like, the American Red
22 Cross, and Panera, and Firestone, the tire shop, and we love it because it
23 takes somebody from minimum wage to 12, 15, \$20 an hour. It really
24 changes their life. So I find it very satisfying work.

25 Q All right. Thank you. And first, before you move to that, just

1 give us a bit about your background, including your years here in Las
2 Vegas.

3 A Sure. So I'm originally from Detroit. My dad is a
4 Indian/Indo-Pakistani/Hindu who, like, basically dropped out of school in
5 the 5th grade, and my mom is a, like, Russian/Romanian/German/Jew
6 who grew up in the Detroit suburbs. So I'm, like, a Indo-
7 Pakistani/HinJew. And --

8 Q Is that a mutt?

9 A It's a mutt, yeah. I mean, my poor -- and my kids, my wife is
10 from West Virginia, half Methodist; half Catholic, German, Irish. So my
11 kids are, like, everything. But, yeah, I grew up in Detroit. My mom was a
12 Kindergarten teacher, like, inside Detroit. And my parents lived together
13 until they got divorced when I was about 12, because my dad had, what
14 you would kind of call, like, a schizophrenic episode, and he took out a
15 second mortgage on the house and basically stood on the street corner
16 and gave the money away, to people, in cash. And so, we lost the
17 house, my parents got divorced, and at that time my mom -- Detroit was,
18 like, imploding. There's no jobs anywhere. So, she though, oh, well
19 we'll move to Las Vegas and I'll get a job teaching there, because they're
20 hiring. So my sister and I and my mum, got on a Greyhound bus in
21 1981, and came out to Las Vegas.

22 And, you know, I'll never forget, we were on this bus, and
23 there was woman, named Ruth -- she was about my mum's age at this
24 time, I'd say about maybe 40. And her husband of 20 years got gastric
25 bypass surgery and went from, like, 400 pounds to 200 pounds and got a

S. B. 263—Raggio, Feb. 24.

Summary—Revises procedures relating to recovery of costs and attorney's fees in civil actions. (BDR 2-758) Fiscal Note: Local Government Impact: No. State or Industrial Insurance Impact: No.

Feb. 24—Read first time. Referred to Committee on Judiciary. To printer.

Feb. 25—From printer. To committee. 3/15; 3/23; 3/25; 4/5; 4/6

Apr. 14—From committee: Amend, and do pass as amended.

✓Apr. 15—Read second time. Amended. To printer.

Apr. 16—From printer. To engrossment. Engrossed. First reprint.✓

✓Apr. 18—Read third time. Passed, as amended. Title approved, as amended. To Assembly.

Apr. 19—In Assembly. Read first time. Referred to Committee on Judiciary. To committee. 4/21; 4/28

✓Apr. 29—From committee: Amend, and do pass as amended. Placed on Second Reading File. Read second time. Amended. To printer.

✓Apr. 30—From printer. To re-engrossment. Re-engrossed. Second reprint.✓
Placed on General File. Read third time. Passed, as amended. Title approved. To Senate. 5/2

May 2—In Senate. Assembly amendment concurred in. To enrollment.

May 4—Enrolled and delivered to Governor.

May 7—Approved by the Governor. Chapter 401.

Effective July 1, 1977.

SENATE BILL NO. 263—SENATOR RAGGIO

FEBRUARY 24, 1977

Referred to Committee on Judiciary

SUMMARY—Revises procedures relating to recovery of costs and attorney's fees in civil actions. (BDR 2-758)

FISCAL NOTE: Local Government Impact: No.
State or Industrial Insurance Impact: No.



EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to recovery of costs and attorney's fees in civil actions; providing liens in favor of attorneys against judgments for payment of fees; providing procedures for dismissed attorneys to return property of clients; providing for payment of witnesses' fees without demand; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. Chapter 18 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 4, inclusive, of this act.
3 SEC. 2. *For the purposes of NRS 18.010 to 18.150, inclusive, the*
4 *term "costs" means:*
- 5 1. *Clerks' fees.*
 - 6 2. *Reporters' fees for discovery depositions, including a reporter's fee*
7 *for one copy of each deposition, whether or not the original deposition*
8 *was used at trial, unless the court finds that the deposition was taken at*
9 *the instance of the prevailing party without reason or necessity.*
 - 10 3. *Jurors' fees and expenses, together with reasonable compensation*
11 *of an officer appointed to act in accordance with NRS 16.120.*
 - 12 4. *Fees for witnesses at trial, pretrial hearings and deposing witnesses,*
13 *unless the court finds that the witness was called at the instance of the*
14 *prevailing party without reason or necessity.*
 - 15 5. *Reasonable fees of not more than three expert witnesses in an*
16 *amount of not more than \$300 for each witness.*
 - 17 6. *Reasonable fees of necessary interpreters.*
 - 18 7. *The fee of any sheriff or licensed process server for the delivery*
19 *or service of any summons or subpoena used in the action, unless the*
20 *court determines that the service was not necessary.*
 - 21 8. *The fees of the official reporter or reporter pro tempore.*
 - 22 9. *Reasonable costs for any bond or undertaking required as part of*
23 *the action.*

1 SEC. 3. 1. Unless fees are precluded by N.R.C.P. 68, a court may
2 make an allowance of attorney's fees to the prevailing party and against
3 an adverse party in any civil action or special proceeding in the nature of
4 an action.

5 2. This section does not apply to any action arising out of a written
6 instrument or agreement which entitles the prevailing party to an award
7 of reasonable attorney's fees. Where there is such an instrument or agree-
8 ment, the trier of fact shall determine the amount of attorney's fees to be
9 awarded as an issue of fact.

10 3. In making an award of an attorney's fee pursuant to the authority
11 granted in subsection 1 of this section, the court:

12 (a) May require the presentation of evidence of the reasonable value
13 of the fees requested.

14 (b) If the action or special proceeding has been tried before a jury,
15 shall require the prevailing party to serve and file a written motion for
16 attorney's fees.

17 (c) If the action or special proceeding has been tried before the court,
18 may pronounce its decision on an award of attorney's fees at the conclu-
19 sion of the trial without written motion.

20 4. No oral application or written motion for attorney's fees alters the
21 effect of a final judgment previously entered in the action or the time
22 permitted for an appeal therefrom.

23 SEC. 4. Attorney's fees shall not be allowed in any action for the
24 recovery of money or damages if the recovery is less than \$300, nor in
25 any action to recover the possession of personal property the value of
26 which is less than \$300.

27 SEC. 5. NRS 18.010 is hereby amended to read as follows:

28 18.010 1. The compensation of an attorney and counselor for his
29 services is governed by agreement, express or implied, which is not
30 restrained by law. [From the commencement of an action, or the service
31 of an answer containing a counterclaim, the attorney who appears for a
32 party has a lien upon his client's cause of action or counterclaim which
33 attaches to a verdict, report, decision or judgment in his client's favor
34 and the proceeds thereof in whosoever hands they may come, and
35 cannot be affected by any settlement between the parties before or after
36 judgment. There shall be allowed to the prevailing party in any action, or
37 special proceeding in the nature of an action, in the supreme court and
38 district courts, his costs and necessary disbursements in the action or
39 special proceeding, including:

40 (a) Clerk's fees.

41 (b) Costs of depositions obtained by the prevailing party and used by
42 him at the trial.

43 (c) Jury fees as provided in NRS 6.150.

44 (d) Witness fees as provided in NRS 50.225, and a reasonable fee of
45 an interpreter not to exceed \$250.

46 2. The court may allow to the prevailing party the fees of not more
47 than three expert witnesses in an amount not to exceed \$250 for each
48 witness.

49 3. The court may make an allowance of attorney's fees to:

1 (a) The plaintiff as prevailing party when the plaintiff has not recov-
2 ered more than \$10,000; or

3 (b) The counterclaimant as prevailing party when he has not recovered
4 more than \$10,000; or

5 (c) The defendant as prevailing party when the plaintiff has not sought
6 recovery in excess of \$10,000.]

7 2. *An attorney at law shall have a lien upon any claim, demand or*
8 *cause of action, including any claim for unliquidated damages, which has*
9 *been placed in his hands by a client for suit or collection, or upon which a*
10 *suit or other action has been instituted. The lien is for the amount of any*
11 *fee which has been agreed upon by the attorney and client. In the absence*
12 *of an agreement, the lien is for a reasonable fee for the services which the*
13 *attorney has rendered for the client on account of the suit, claim, demand*
14 *or action.*

15 3. *An attorney perfects his lien by serving notice in writing, in per-*
16 *son or by certified mail, return receipt requested, upon his client and upon*
17 *the party against whom his client has a cause of action, claiming the lien*
18 *and stating the interest which he has in any cause of action.*

19 4. *The lien attaches to any verdict, judgment or decree entered and*
20 *to any money or property which is recovered on account of the suit or*
21 *other action, from the time of service of the notices required by this*
22 *section.*

23 5. *On motion filed by an attorney having a lien under this section, his*
24 *client or any party who has been served with notice of the lien, the court*
25 *shall, after 5 days' notice to all interested parties, adjudicate the rights of*
26 *the attorney, client or other parties and enforce the lien.*

27 6. *Collection of attorney's fees by a lien under this section may be*
28 *utilized with, after or independently of any other method of collection.*

29 7. *This section does not apply to an action for divorce, separate*
30 *maintenance or annulment of a marriage.*

31 SEC. 6. NRS 18.020 is hereby amended to read as follows:

32 18.020 Costs shall be allowed of course to the [plaintiff upon a
33 judgment in his favor, from any defendant] *prevailing party against any*
34 *adverse party against whom judgment is rendered, in the following cases:*

35 1. *In an action for the recovery of real property.*

36 2. *In an action to recover the possession of personal property, where*
37 *the value of the property amounts to \$300 or over; [such] the value*
38 *shall be determined by the jury, court or master by whom the action is*
39 *tried.*

40 3. *In an action for the recovery of money or damages, where the*
41 *plaintiff recovers \$300 or over.*

42 4. *In a special proceeding.*

43 5. *In an action which involves the title or possession of real estate,*
44 *or the legality of any tax, impost, assessment, toll or municipal fine,*
45 *including the costs accrued in [such] the action if originally commenced*
46 *in a justice court.*

47 6. *In an appeal, action, hearing on a writ or any special proceeding*
48 *where the decision of a lower court is brought before a higher court for*
49 *review.*

50 SEC. 7. NRS 18.050 is hereby amended to read as follows:

1 18.050 In other actions than those mentioned in NRS 18.020, costs
2 may be allowed or not, and if allowed may be apportioned between the
3 parties, or on the same or adverse sides, in the discretion of the court,
4 but no costs shall be allowed in any action for the recovery of money
5 or damages when the plaintiff recovers less than \$300, nor in any action
6 to recover the possession of personal property when the value of the
7 property is less than \$300; provided, that if, in the judgment of the court,
8 the plaintiff believes he was justified in bringing the action in the dis-
9 trict court, and he recovers at least \$150 in money or damages, or
10 personal property of that value, the court may, in its discretion, allow
11 the plaintiff part or all of his costs. [When there are several defendants
12 in the actions mentioned in NRS 18.020, not united in interest, and
13 making separate defenses by separate answers, and the plaintiff fails
14 to recover judgment against all, the court shall award costs to such of
15 the defendants as have judgment in their favor.]

16 SEC. 8. NRS 18.070 is hereby amended to read as follows:

17 18.070 1. When an application is made to a court or master to
18 postpone a *motion, pretrial hearing or trial*, the payment of costs,
19 *together with reasonable attorney's fees*, occasioned by the postpone-
20 ment may be imposed, in the discretion of the court or master, as a
21 condition of granting the [same.] *postponement*.

22 2. *A court may impose costs and reasonable attorney's fees against*
23 *a party or an attorney who, in the judgment of the court, purposely*
24 *caused a mistrial to occur.*

25 SEC. 9. NRS 18.080 is hereby amended to read as follows:

26 18.080 When, in an action for the recovery of money only, the
27 defendant alleges in his answer that before the commencement of the
28 action he tendered to the plaintiff the full amount to which he was
29 entitled, and thereupon deposits in court, for the plaintiff, the amount
30 so tendered, and the allegations [be] are found to be true, the plaintiff
31 [shall] may not recover costs [,] or attorney's fees, but shall pay costs
32 to the defendant.

33 SEC. 10. NRS 18.110 is hereby amended to read as follows:

34 18.110 1. The party in whose favor judgment is rendered, and
35 who claims his costs, must [deliver to] *file with* the clerk, and serve
36 a copy upon the adverse party, within 5 days after [the verdict or
37 notice of] the entry of judgment, [of the court or master,] or such
38 further time as the court or judge may grant, a memorandum of the
39 items of his costs [and necessary disbursements] in the action or pro-
40 ceeding, which memorandum must be verified by the oath of the party,
41 or his attorney or agent, or by the clerk of his attorney, stating that to
42 the best of his knowledge and belief the items are correct, and that the
43 [disbursements] costs have been necessarily incurred in the action or
44 proceeding.

45 2. He shall be entitled to recover the witness fees, although at the
46 time he may not actually have paid them. [Issuance or service of subpoena
47 shall not be necessary to entitle a prevailing party to tax, as costs,
48 witness fees and mileage, provided that such witnesses be sworn and
49 testify in the cause.

50 3. It shall not be necessary to embody in the memorandum the fees

1 of the clerk, but the clerk shall add the same according to his fees fixed
2 by statute.

3 4.] 3. Within 3 days after service of a copy of the memorandum,
4 the adverse party may move the court, upon 2 days' notice, to retax and
5 settle the costs, notice of which motion shall be filed and served on the
6 prevailing party claiming costs. Upon the hearing of the motion the court
7 or judge [in chambers] shall settle the costs.

8 SEC. 11. NRS 18.130 is hereby amended to read as follows:

9 18.130 1. When a [plaintiff] party in an action resides out of the
10 state, or is a foreign corporation, security for the costs and [charges]
11 attorney's fees which may be awarded against [such plaintiff] the party
12 may be required by [the defendant,] any adverse party by the filing and
13 service [on plaintiff] of a written demand therefor [within the time
14 limited for answering the complaint.] at any time more than 30 days
15 before trial. When so required, all proceedings in the action shall be
16 stayed until an undertaking, executed by two or more persons, [be] is
17 filed with the clerk, to the effect that they will pay [such] costs and
18 [charges as may be awarded against the plaintiff] attorney's fees awarded
19 by judgment, or in the progress of the action, not exceeding the sum of
20 [\$500;] \$1,000, or in lieu of [such] an undertaking, the [plaintiff]
21 party may deposit [\$500, lawful money,] \$1,000 with the clerk of the
22 court, subject to the same conditions as required for the undertaking.
23 [The] If the demand was made by a defendant before answer, the
24 plaintiff, upon filing the undertaking or depositing the security, shall
25 notify the defendant of [such] the filing or deposit, and the defendant,
26 after receipt of [such notice, shall have] the notice, has 10 days or the
27 period allowed under N.R.C.P. 12(a), whichever is longer, in which to
28 answer or otherwise plead to the complaint.

29 2. A new or an additional undertaking may be ordered by the court
30 or judge upon proof that the original undertaking is insufficient security,
31 and proceedings in the action stayed until [such] a new or additional
32 undertaking [be] is executed and filed.

33 3. Each of the sureties on the undertaking mentioned in subsection 1
34 shall annex to [the same] it an affidavit that he is a resident and house-
35 holder, or freeholder, within the county and is worth double the amount
36 specified in the undertaking, over and above all his just debts and liabili-
37 ties, exclusive of property exempt from execution.

38 4. After the lapse of 30 days from the service of notice that security
39 is required, or of an order for new or additional security, upon proof
40 thereof, and that no undertaking as required has been filed, the court
41 or judge may [order the action to be dismissed.] dismiss the action.

42 SEC. 12. NRS 18.150 is hereby amended to read as follows:

43 18.150 1. When the state is a party, and costs or attorney's fees are
44 awarded against it, they must be paid out of the state treasury.

45 2. When a county is a party, and costs or attorney's fees are awarded
46 against it, they must be paid out of the county treasury.

47 SEC. 13. Chapter 7 of NRS is hereby amended by adding thereto a
48 new section which shall read as follows:

49 1. An attorney who has been discharged by his client shall, upon
50 demand, immediately deliver to the client all papers, documents, pleadings

1 *and items of tangible personal property which belong to or were pre-*
2 *pared for that client.*

3 2. *A client who, after demand therefor, does not receive from his*
4 *discharged attorney all papers, documents, pleadings and items of*
5 *tangible personal property may, by a motion filed after at least 3 days'*
6 *notice to the attorney, obtain an order for the production of his papers,*
7 *documents, pleadings and other property. If the court finds that an*
8 *attorney has, without just cause, refused or neglected to obey its order*
9 *given under this section, the court may, after notice and hearing, adjudge*
10 *the attorney guilty of contempt and may fine or imprison him until the*
11 *contempt is purged.*

12 3. *An attorney who is in doubt as to the ownership of papers,*
13 *documents, pleadings or other property may deposit the materials with*
14 *the clerk of the court. The clerk shall immediately seal the materials to*
15 *protect the privacy and privilege of the clients and interested persons*
16 *and notify each interested person of the deposit. Upon a petition filed*
17 *by a client or other interested person, any court shall, after giving at*
18 *least 5 days' notice to all other interested persons, adjudicate the rights*
19 *of persons claiming an interest in the materials and make necessary*
20 *orders under the circumstances of the case.*

21 SEC. 14. NRS 50.225 is hereby amended to read as follows:

22 50.225 Witnesses required to attend in the courts of this state
23 **[shall]** *are entitled to receive the following compensation:*

24 1. For attending in any criminal case, or civil suit or proceeding
25 before a court of record, master, commissioner, justice of the peace, or
26 before the grand jury, in obedience to a subpoena, \$15 for each day's
27 attendance, which shall include Sundays and holidays.

28 2. Mileage shall be allowed and paid at the rate of 15 cents a mile,
29 one way only, for each mile necessarily and actually traveled from the
30 place of residence by the shortest and most practical route, **[provided:]**
31 *but:*

32 (a) **[That no]** *A person shall not be obliged to testify in a civil*
33 *action or proceeding unless his mileage and at least 1 day's fees have*
34 *been paid him [if he demanded the same.]; and*

35 (b) **[That any]** *Any person [being] in attendance at the trial and*
36 *sworn as a witness [shall be] is entitled to witness fees irrespective of*
37 *service of subpoena.*

38 3. Witness fees in civil cases shall be taxed as disbursement costs
39 against the defeated party upon proof by affidavit that they have been
40 actually incurred. Costs shall not be allowed for more than two witnesses
41 to the same fact or series of facts, nor shall a party plaintiff or defendant
42 be allowed any fees or mileage for attendance as a witness in his own
43 behalf.

44 SEC. 15. NRS 18.040, 18.045 and 18.100 are hereby repealed.

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MARCH 15, 1977

The meeting was called to order at 8:00 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
 Senator Bryan
 Senator Dodge
 Senator Foote
 Senator Sheerin
 Senator Gojack
 Senator Ashworth

ABSENT:

SB 116 Establishes the Department of Prisons.

Eugene A. Coughlin, Training Officer, Nevada State Prison appeared at the request of A. A. Campos, Chief Parole and Probation Officer, in support of this measure.

Following a brief discussion, Senator Gojack requested that Mr. Coughlin furnish the Committee with a copy of the memorandum submitted to the Human Resources and Facilities Committee which outlines in detail exactly what this bill accomplishes.

Mr. Coughlin will return with that information at a later date. No action was taken at this time.

SB 162 Revises law on compensation for victims of crime.

Maynard R. Yasmer, Chief of Staff Services, Rehabilitation Division of Human Resources testified in support of this bill. He stated that the Nevada Rehabilitation Division provides services to disabled persons towards the achievement of vocational goals. Victims of crime are only eligible for rehabilitation services under federal regulations if vocational goal objectives are possible or practicable. Their concern was for persons who did not fall in this category such as the very young, who cannot wait until they are in high school and be picked up under another federal program; the elderly; and the housewife who wishes to continue as a housewife. He also expressed concern over the inequities in services granted to the offender vs. the victim. He cited the Governor's proposed budget which grants over \$30 million to services for the offender and practically nothing to their victims, as an example.

SB 260 would be invalid because this is an economic area; not something like free speech or the right to vote where the equal protection clause requires a compelling state interest. This is a question of economic benefit and there, the United States Supreme Court has said that the rational classification is enough. There is a rational basis between the position of a public officer acting within the scope of his employment and in good faith and an ordinary person going about his own concern. There is a public interest in limiting the liability in the former case simply in order to secure the unintimidated performance by the officer of his duty. Therefore, he felt that the courts might well sustain that classification.

In further discussion of the bill, Senator Close suggested that "public officer" be broadened to include a part or full-time board or commission or similar body of the state or political subdivision.

Senator Ashworth moved to amend and do pass and rerefer to this Committee.

Seconded by Senator Bryan.

Motion carried unanimously.

SB 262 Allows additional peremptory challenges in certain cases.

Senator William J. Raggio testified in support of this measure. He stated that on occasion there are multiple parties involved and this will give each side as many peremptory challenges as there are parties. At the present time, the parties have to join in a challenge unless the court otherwise directs. He further stated that this bill was at the request of Clark County District Judge J. Charles Thompson.

Senator Dodge moved a do pass.

Seconded by Senator Gojack.

Motion carried unanimously.

SB 263 Revises procedures relating to recovery of costs and attorney's fees in civil actions.

William Raymond, Deputy Attorney General, Department of Highways testified in opposition to this bill. He stated that the Highway Department is the biggest single purchaser of real estate in the state and as a general rule, they settle or negotiate for approximately 95% of the property they acquire for highways. The remaining 5% goes to court. Should there be an award of attorney's fees in eminent domain actions, this will be paid

SB 263 entirely out of state funds as the federal government will not participate in any award for attorney's fees. Therefore, the cost to the state would be astronomical and on that basis they oppose the bill.

Grant Bastian, State Highway Engineer, Highway Department concurred with Mr. Raymond's remarks and further stated that should attorney's fees be awarded, it would remove the incentive for individuals to settle out-of-court.

Al Osborn, attorney from Reno testified in support of this measure. He stated that the bill sets forth some things in the law that have not been before. It defines what an attorney's lien is and more accurately defines what allowable costs are in an action. In response to Mr. Raymond's concern about the cost to the state, he felt that if the state was being fair in its offer they could file an offer of judgment and no court costs or attorney's fees would be awarded. If the state isn't being fair and is out of line, the court will take that into consideration. The present rule is that the courts do not have to award costs and fees. They can specify reasons wherein such costs are not appropriate.

Darryl Cappuro, Nevada Motor Transit Association stated that they were in opposition to this bill. He felt that this measure greatly expands the current fees provided in the law. Subsection 2, line 6 would legitimatize what would amount to fishing expeditions in that depositions would be paid for even if they were not used during the trial. He stated that this was quite a departure from the present practice where the cost of depositions obtained by the prevailing party and used by him at the trial could be recovered.

In regard to Section 4, he stated that Oregon had enacted a similar law and the number of cases that eventually went to court increased considerably; there is no encouragement to settle out of court because you don't lose anything if you do.

He further commented that because of the situation involving the use of federal funds and the rules and regulations under which the highway department has to operate, their appraisals and offers with regard to right-of-way acquisitions have been pretty fair.

Jack McAuliffe, attorney from Reno stated that he felt this bill imposes responsibility where it should be; it is characterized in terms of leaving it to the discretion of the court. It has been his experience in the past that the court tends to impose fees insofar as how legitimate the action was when it was brought or how legitimate the defense was. There were two aspects of the bill with which he did not agree:

SB 263 Section 11 which requires a foreign party to post a bond. As proposed, this makes it a party that resides out of state or is a foreign corporation. He felt that the present statute has been a workable solution to this problem. The other concern is the requirement that an attorney who has been discharged by his client must deliver his files upon demand. This is a particular problem in the area of personal injury cases where there is a contingency fee; there is not a fee until the conclusion of the litigation. It also does not provide any guidelines for the court in determining under what circumstances the attorney is required to deliver his files.

In response to a question from Senator Close as to what changes in the present law are being made, Mr. McAuliffe stated that Section 2, subsection 2 is a substantial change in that at the present time a reporter's fee for discovery is recoverable only if the original deposition is used at trial. He felt that this was an improvement because this is a real expenditure as far as parties to an action are concerned. Subsection 3 would add the cost of the bailiff in charge of the jury rather than it being born by the county. Subsection 4 is a change in that you will now be entitled to witness fees for pretrial hearings and deposing witnesses. Subsection 7 is a change in that it will allow for recovery of fees paid to a licensed process server as well as to the sheriff. Section 3 is a new addition and a good one. More often than not, the judge makes his own decision as to what the allowable fee should be in a case. This clarifies that procedure. The court in its discretion can establish that amount or it may require a presentation of evidence.

In answer to a question from Senator Gojack regarding the Highway Department's observation as to the cost of this bill to the state, Mr. McAuliffe stated that the Constitution requires that a property owner receive just compensation for his property. If the Highway Department offers just compensation, they won't become involved in litigation. It has been his experience that there is generally a very broad spread between the staff appraisals of the Highway Department and what the property owner and independent fee appraiser think it is worth. His firm's standard fee is in the range of 1/3 of what they are able to get beyond the offer of the state and they have found this to be a profitable source of litigation. He felt that this suggests that judges and juries are not persuaded that the Highway Department is really offering just compensation. He further stated that it was his feeling that if a property owner is truly going to be compensated as he is required to be by the Constitution, then the Highway Department should be required to pay the cost of that litigation.

SB 263 In response to a question from Senator Dodge as to the expansion of recovery of attorney's fees and costs into other areas, Mr. McAuliffe stated that the courts presently feel that if there is a legitimate legal and factual dispute between the parties, they do not allow fees. But if the court feels that it is a case that either never should have been filed because there is no merit and there never was any merit or the defense that was interposed has no merit, then they will award fees.

Senator Bryan expressed concern that Section 4 would preclude the award of attorney's fees in justice court proceedings. Mr. McAuliffe replied that in district court if you have a recovery under \$300 you don't get attorney's fees but that he did not think that pertained to justice court. He further stated that this was part of the Civil Practice Act and that it would be applicable in justice court.

Charles D. Glattly, attorney from Reno stated that he used this statute on a daily basis. He felt that the ability to impose attorney's fees was often times the only club he had to settle disputes out of court in that the imposition of fees makes the opposing attorney think twice.

George L. Ciapusci, Property Claim Superintendent, State Farm Insurance Co. testified against this measure. He stated that since the advent of no-fault insurance the percentage of liability law suits has doubled and with that, the costs related to the defense of lawsuits has increased by 328%. This bill has an add-on of fees and costs which will be awarded upon judgment and in his mind this does nothing to help the consumer; these costs will have to be passed back on to the policy-holder. He felt that the only beneficiary of this bill would be the Plaintiff's Bar.

Fred Patzke, Manager, Brown Brothers Adjusters concurred with Mr. Ciapusci's remarks.

Senator William J. Raggio informed the Committee that this bill had been requested by Clark County District Judge J. Charles Thompson because in sitting on the bench, he has had an opportunity to see the problems that come up in these types of situations.

In response to the Committee's question on the \$300 figure in Section 4, Senator Raggio stated that this was to bring it in line with existing law that establishes costs recoverable where the recovery is \$300 or over.

Virgil Anderson, AAA Insurance concurred with Mr. Ciapusci's remarks concerning the impact on the cost of insurance. He also expressed concern over Section 3 in that he felt it was completely open-ended with respect to attorney's fees.

SB 263 Richard R. Garrod, Special Representative, Farmer's Insurance Group responded to a question regarding witness fees granted in California. He stated that the only fees that are allowed by law are those reimbursements to a state or local agency where a police officer or some technical person with a state, county or city agency is subpoenaed to appear before the court in an action.

Following a discussion by the Committee, Senator Ashworth moved to indefinitely postpone.

Seconded by Senator Sheerin.

Motion did not carry. The vote was as follows:

VOTING AYE:	Senator Dodge	VOTING NAY:	Senator Close
	Senator Sheerin		Senator Bryan
	Senator Ashworth		Senator Foote
			Senator Gojack

SB 264 Provides alternative method of selecting jurors in civil cases.

Al Osborn, attorney from Reno stated that this bill would implement the so-called "Arizona System" to make it mandatory in the district courts that peremptory challenges be made outside the hearing of the jury. He stated that as a practical matter, this is being done already. It is a much quicker process.

Senator William J. Raggio testified in support of this measure and concurred with Mr. Osborn's remarks.

Following a brief discussion, Senator Gojack moved a do pass. The motion was seconded and carried unanimously.

SB 272 Restricts persons who may have access to another person's safe-deposit box and establishes procedure for removal of any contents

Bill Isaeff, Deputy Attorney General testified in support of this bill. He stated that this grew out of a lengthy investigation by the Churchill County Grand Jury into the handling of the estate of Virgil Coleman Cox who died in 1974. A part of the testimony received by the Grand Jury pointed out that after Mr. Cox died, the bank allowed entrance to his safe-deposit box by the county coroner who, in the opinion of the Grand Jury, had no legal right or proper responsibility for going into that safe-deposit box.

At the present time Nevada has no statutory provisions on this subject, primarily because we do not have the sort of death taxes that other states have which result in the immediate sealing of the box upon notification of death.

Senator Close expressed concern over several portions of the bill. He felt that the situation where a husband and wife

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MARCH 23, 1977

The meeting was called to order at 10:10 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
 Senator Bryan
 Senator Dodge
 Senator Foote
 Senator Sheerin
 Senator Gojack
 Senator Ashworth

ABSENT:

SB 23 Extends testamentary capacity to certain minors.

Senator Sheerin stated that he felt this was very limited legislation in that very few children have an estate that is large enough to be involved with estate planning. He suggested that the bill should provide that the will be approved by the district court.

Senator Bryan further suggested that upon application to the court, notice should go to the parent if the natural party is not the petitioning party.

Senator Sheerin moved to amend and do pass.
Seconded by Senator Ashworth.
Motion carried unanimously.

SB 167 Subjects grand jurors to civil liability for publication of prohibited report.

Senator Close read to the Committee the amendments proposed by Senator Dodge.

Senator Foote moved to indefinitely postpone.
Seconded by Senator Ashworth.
Motion carried. The vote was as follows:

VOTING AYE: Senator Close
 Senator Bryan
 Senator Sheerin
 Senator Foote
 Senator Ashworth

VOTING NAY: Senator Dodge
 Senator Gojack

SB 134 Amends procedure concerning persons incompetent to stand trial.

Senator Close informed the Committee that he had discussed this measure with Washoe County District Judge Roy L. Torvinen and he indicated that he did not see a need for this legislation at this time as the procedures outlined were already being done.

Senator Ashworth moved to indefinitely postpone.
Seconded by Senator Sheerin.
Motion did not carry. The vote was as follows:

VOTING AYE: Senator Close VOTING NAY: Senator Gojack
 Senator Sheerin
 Senator Ashworth

ABSENT FROM THE VOTE: Senator Dodge
 Senator Bryan

ABSTAINING FROM THE VOTE: Senator Foote

SB 272 Restricts persons who may have access to another persons' safe-deposit box and establishes procedure for removal of any contents.

Senator Ashworth stated that he was opposed to the attorney or adult child being able to gain entrance to the safe-deposit box. It was his feeling that no one should be able to get into a safe-deposit box without a court order. Senator Sheerin concurred with that and further commented that it was his feeling that the safe-deposit box procedure should be kept as simple as possible.

Senator Ashworth moved to indefinitely postpone.
Seconded by Senator Sheerin.
Motion carried unanimously. Senators Bryan and Dodge were absent from the vote.

SB 263 Revises procedures relating to recovery of costs and attorney's fees in civil actions.

Senator Close stated that he had talked to several people and they had all agreed that the attorney's fees section of this bill should be deleted. He also talked to Clark County District Judge J. Charles Thompson and he felt that the first section should be retained as it further indicates exactly what costs are. On section 2, Senator Close stated that the increase of witness fees by \$50 would have to be a policy decision of the Committee

SB 263 however, he felt that the inclusion of the licensed process server was appropriate. Many times the sheriff is so busy that he doesn't have time to serve papers and the usual procedure is to hire a process server.

It was the decision of the Committee to delete Section 3. In further discussion of this section, Senator Sheerin suggested that the procedure for establishing attorney's fees should be as follows:

- 1) The attorney should file an affidavit indicating the number of hours he has on the case; and
- 2) The judge should take into consideration the affidavit, the complexity of the case and the result and let him make the decision on the amount of fees to be awarded.

No action was taken at this time.

There being no further business, the meeting was adjourned.

Respectfully submitted,



Cheri Kinsley, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MARCH 25, 1977

The meeting was called to order at 8:00 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
 Senator Bryan
 Senator Dodge
 Senator Foote
 Senator Sheerin
 Senator Gojack
 Senator Ashworth

ABSENT:

AJR 21 Proposes to amend Nevada Constitution to expand classification of crimes for which bail may be denied.

Assemblyman Tom Hickey testified on behalf of this measure. It calls for imprisonment without possibility of parole when the proof is evident or the presumption is great. This was in the law until the recent U. S. Supreme Court rulings regarding capital punishment. If the new death penalty bills presently before the legislature should pass, there would be no need for this amendment to the Constitution.

In response to a question from the Committee regarding the constitutionality of this, Frank Daykin, Legislative Council Bureau stated that the only question of constitutionality would arise under the federal constitution and that has never said that there is any rigid or limited category of offenses in which bail must either be given or denied. Our constitution and those of a number of other states have provided that there will be no bail with respect to a capital offense. This amendment was proposed in light of the possibility that capital offenses would be very narrowly limited. The fact that the punishment is changed does not make the underlying offense any less serious. Therefore, it would seem to be permissible under the federal constitution now, if it had been in the past, to deny bail for the same offenses. This denies bail for a more limited class of offenses than before and that change should not run counter to the 8th Amendment.

Senator Dodge moved a do pass.
Seconded by Senator Sheerin.
Motion carried. The vote was as follows:

SB 44 Senator Dodge moved to amend and do pass.
Seconded by Senator Ashworth.
Motion carried unanimously.

SB 263 Revises procedures relating to recovery of costs and attorney's fees in civil actions.

For further discussion of this measure, see minutes of meetings for March 15 and March 23, 1977.

Senator Close expressed concern over the unlimited use of depositions.

Senator Bryan suggested that they could limit the recovery of cost for depositions to those used at the trial or for a motion.

Senator Close suggested that they delete lines 1-4 on page 2, which modifies the fee schedule, but retain the procedure as to how fees are to be determined.

Senator Sheerin stated that he was opposed to the attorney's lien on lines 7-30, page 3.

Senator Ashworth concurred and moved to delete those lines.
Seconded by Senator Sheerin.

Motion did not carry. The vote was as follows:

VOTING AYE:	Senator Sheerin	VOTING NAY:	Senator Close
	Senator Ashworth		Senator Bryan
			Senator Foote
			Senator Gojack

ABSENT FROM THE VOTE: Senator Dodge

Senator Bryan stated that he felt this was a necessary procedure for the protection of the client. At the present time, if a client discharges his attorney and that attorney does not release his files to the client, it could delay the trial and trial dates are difficult enough to get.

Senator Gojack moved to retain lines 7-30, page 3.
Seconded by Senator Foote.

Motion carried. The vote was as follows:

VOTING AYE:	Senator Close	VOTING NAY:	Senator Sheerin
	Senator Bryan		Senator Ashworth
	Senator Foote	ABSENT FROM	
	Senator Gojack	THE VOTE:	Senator Dodge

Minutes of Meeting
March 25, 1977
Page Eight

SB 263 In further discussion, it was the decision of the Committee to delete subsection 7 of section 5 in that this is already covered by Chapter 125 of the NRS.

No action was taken at this time.

There being no further business, the meeting was adjourned.

Respectfully submitted,


Cheri Kinsley, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

APRIL 5, 1977

The meeting was called to order at 8:11 a.m. Senator Close was in the chair.

PRESENT: Senator Close
Senator Bryan
Senator Ashworth
Senator Dodge
Senator Gojack
Senator Foote
Senator Sheerin

ABSENT: None

SB 286 Senator Close stated that he needed a motion to kill this as they need a new bill.

Senator Dodge moved "do kill."
Seconded by Senator Gojack.
Motion passed unanimously. Senators Ashworth and Foote were absent from vote.

SB 412 REPLACES RAPE AND OTHER SEX-RELATED CRIMES WITH OFFENSE OF SEXUAL ASSULT.

Florence McClure, Director of Community Action Against Rape, serving the metropolitan area of Clark County submitted her testimony in writing (see Attachment A), as well as a paper on rape by A. Nicholas Groth and Ann Wolbert Burgess (see Attachment B). She wanted to bring out a recent case that was not in the testimony.

She said that she got a call from Karen Good asking her to meet a woman at the hospital. This woman was the mother of 8 children and made her livelihood working in an apartment building and cleaning rooms for new tenants. A man had gotten into the room where she was cleaning and had raped her. She was very traumatic and there was no way she could have paid that bill. Now they feel bad when they can't pay the bill. I would like to see us keep this one victim's assistance bill that was brought out in the last session. She would like the language changed where it states "if the county has an ordinance providing for the payment of such costs." She would like this language to be made mandatory in the bill. That is the only problem she has with this bill.

SENATE JUDICIARY COMMITTEE
MINUTES OF MEETING
APRIL 5, 1977

PAGE TEN

Senator Close requested a motion to pass it.

Senator Gojack moved "do pass."
Senator Bryan seconded the motion.
Motion carried with Senators Close, Bryan, Sheerin and
Gojack voting "aye" and Senators Ashworth, Dodge and Foote
voting "nay."

SB 263

Senator Close stated we have worked on this considerably
and modified it several times (see minutes of March 25).

Senator Ashworth moved "indefinite postponement."
Senator Dodge seconded the motion.
Motion did not carry because of a tie vote with
Senators Ashworth, Dodge and Sheerin voting "aye" and
Senators Close, Bryan and Foote voting "nay." Senator
Gojack was absent from vote.

Amendments to SB 263 were gone over by the Committee.
as follows:

1. Page 1, line 16--striking \$300 and putting it
at \$250.
2. Page 2--take out lines 1 through 4.
3. Page 2, section 4, line 48--put a bracket after
witness, and by so doing will leave in existing
laws provisions regarding attorney fees.
4. Page 3, line 6--take out the bracket.
5. Page 3--delete lines 29 and 30.
6. Page 3--delete section 9.
7. Page 5, Section 11--delete section 11 in its entirety.
8. There was some discussion on Section 13, as to the
liens and who actually is entitled to the papers, etc.
The Committee decided to leave this section in but
add on line 2 "after payment of the fees."

Senator Gojack moved "amend and do pass."
Senator Foote seconded the motion.
Motion carried with Senators Gojack, Foote, Close, and
Bryan voting "aye" and Senators Sheerin and Ashworth
voting "nay". Senator Dodge was absent from vote.

SENATE JUDICIARY COMMITTEE
MINUTES OF MEETING
APRIL 5, 1977

PAGE ELEVEN

Because time permitted no further testimony, the meeting was adjourned.

Respectfully submitted,

Virginia L. Letts
Virginia Letts, Secretary

APPROVED BY:

Senator Melvin D. Close, Chairman

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

APRIL 6, 1977

The meeting was called to order at 8:00 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
 Senator Bryan
 Senator Dodge
 Senator Foote
 Senator Sheerin
 Senator Gojack
 Senator Ashworth

ABSENT:

AB 441 Deletes requirement that foreign corporations file annual business statements with county assessors.

William Swackhammer, Secretary of State requested the following amendment on page 1, line 5 after the word "business", insert ", 3 consecutive issues." This would be consistent with action taken on an earlier Senate bill (SB 2 which changes certain filing and publication requirements for corporations)

Senator Gojack moved to amend and do pass.
Seconded by Senator Ashworth.

Motion carried unanimously. Senator Sheerin was absent from the vote.

SB 419 Provides additional penalty for certain crimes against blind and aged persons.

Larry Hicks, Washoe County District Attorney and President of Nevada District Attorney's Association stated that the present penalties in the law for aggravated cases are adequate. If the victims are elderly or suffer from some sort of disability, these are considerations that go into longer sentences. He did not see a need for this as the maximum penalties are adequate.

Senator Ashworth moved to indefinitely postpone.
Seconded by Senator Gojack.

Motion carried unanimously. Senator Sheerin was absent from the vote.

AB 466 Permits deliberating juries to depart for home or be sequestered overnight at discretion of court.

- SB 368 Revises provisions relating to alimony and disposition of community property in divorce actions.

Senator Dodge stated that on line 40, someone had indicated that those changed circumstances might involve personal conduct. He disagreed with that and stated that he felt it meant a change in financial status but that that should be clarified.

Senator Bryan concurred but didn't feel that a change of circumstances should be limited to one fact pattern. He suggested language such as "including but not limited to."

Senator Close stated that he would get some amendatory language and report back to the Committee.

No action was taken at this time.

- SB 416 Prohibits certain acts involving personal property from which identification number is removed.

Senator Ashworth moved to indefinitely postpone.

Seconded by Senator Dodge.

Motion carried. The vote was as follows:

VOTING AYE:	Senator Close	VOTING NAY:	Senator Bryan
	Senator Dodge		Senator Foote
	Senator Gojack		
	Senator Ashworth		

ABSENT FROM THE VOTE: Senator Sheerin.

- SB 431 Prohibits under certain circumstances acceptance of incorporation documents for filing where name of corporation contains specified terms relating to engineering.

Senator Dodge moved to rerefer to Commerce and Labor.

Seconded by Senator Bryan.

Motion carried unanimously. Senator Sheerin was absent from the vote.

- SB 263 Revises procedures relating to recovery of costs and attorney's fees in civil actions.

For testimony on this measure, see minutes of meetings for March 15, March 23 and March 25, 1977.

It was the consensus of the Committee to amend, on page 2, lines 10-19, to permit the judge to make an award of attorney's fees in appropriate cases and allow him to require evidence but

SB 263 not mandate him to do so.

No action was taken at this time.

AB 383 Allows court to sentence certain habitual criminals to life imprisonment with or without possibility of parole.

For testimony on this measure, see minutes of meeting for March 31, 1977.

Senator Bryan moved a do pass.

Seconded by Senator Dodge.

Motion carried unanimously. Senator Ashworth was absent from the vote.

AB 366 Extends governmental immunity to fire districts.

Assemblyman Joe Dini testified in support of this measure and requested that the Committee amend the bill to further define political subdivisions to include other agencies.

Senator Gojack moved to amend and do pass.

Seconded by Senator Bryan.

Motion carried unanimously. Senators Ashworth and Dodge were absent from the vote.

SB 413 Makes substantial changes in procedure for disciplining physicians.

For testimony on this measure, see minutes of meeting for April 4, 1977.

Senator Close informed the Committee that he had received the amendments on this and suggested that the bill should be put out on the floor now and they could review the amendments then.

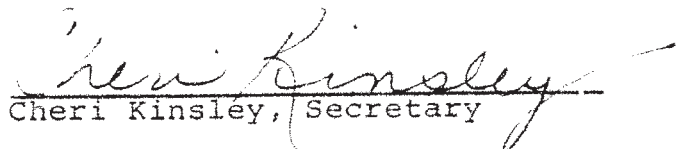
Senator Bryan moved to amend and do pass.

Seconded by Senator Gojack.

Motion carried unanimously. Senators Ashworth and Dodge were absent from the vote.

There being no further business, the meeting was adjourned.

Respectfully submitted,


Cheri Kinsley, Secretary

APPROVED:

Senate Bill No. 263.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

1977 Amendment No. 821A.

Amend section 1, page 1, line 2, by deleting "to 4, inclusive," and inserting "and 3".

Amend sec. 2, page 1, by deleting lines 7 and 8 and inserting: "*for one copy of each deposition, if used at trial or at a hearing upon a motion, unless the court finds that the deposition was taken at*".

Amend sec. 2, page 1, line 16, by deleting "\$300" and inserting "\$250".

Amend sec. 3, page 2, by deleting lines 1 through 22 and inserting:
 "Sec. 3. 1. *An attorney at law shall have a lien upon any claim, demand or cause of action, including any claim for unliquidated damages, which has been placed in his hands by a client for suit or collection, or upon which a suit or other action has been instituted. The lien is for the amount of any fee which has been agreed upon by the attorney and client. In the absence of an agreement, the lien is for a reasonable fee for the services which the attorney has rendered for the client on account of the suit, claim, demand or action.*

2. *An attorney perfects his lien by serving notice in writing, in person or by certified mail, return receipt requested, upon his client and upon the party against whom his client has a cause of action, claiming the lien and stating the interest which he has in any cause of action.*

3. *The lien attaches to any verdict, judgment or decree entered and to any money or property which is recovered on account of the suit or other action, from the time of service of the notices required by this section.*

4. *On motion filed by an attorney having a lien under this section, his client or any party who has been served with notice of the lien, the court shall, after 5 days' notice to all interested parties, adjudicate the rights of the attorney, client or other parties and enforce the lien.*

5. *Collection of attorney's fees by a lien under this section may be utilized with, after or independently of any other method of collection."*

Amend the bill as a whole by deleting section 4 and renumbering sections 5 through 8 as sections 4 through 7.

Amend sec. 5, page 2, by deleting line 48 and inserting: "witness.]"

Amend sec. 5, page 2, line 49, by deleting "3." and inserting "[3.] 2."

Amend sec. 5, page 3, line 6, by deleting closed bracket.

Amend sec. 5, page 3, by deleting lines 7 through 30 and inserting:
 "3. *In awarding attorney's fees the court may pronounce its decision on such fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.*

4. *No oral application or written motion for attorney's fees alters the effect of a final judgment entered in the action or the time permitted for an appeal therefrom.*

5. *Subsections 2 to 4, inclusive, do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees."*

Amend sec. 6, page 3, by deleting lines 47 through 49.

Amend sec. 8, page 4, line 18, by deleting "*motion, pretrial hearing or*".

Amend sec. 8, page 4, by deleting line 19 and inserting: "occasioned by the postpone-".

Amend the bill as a whole by deleting section 9 and renumbering section 10 as section 8.

Amend sec. 10, page 4, line 46, by deleting open bracket.

Amend sec. 10, page 5, line 3, by deleting "4.] 3." and inserting "4."

Amend the bill as a whole by deleting section 11 and renumbering sections 12 through 15 as sections 9 through 12.

Amend sec. 13, page 5, line 50, by deleting "*demand,*" and inserting: "*demand and payment of the fee due from the client,*".

Amend sec. 13, page 6, line 3, by deleting "*therefor,*" and inserting "*therefor and payment of the fee due from him,*".

Amend sec. 13, page 6, line 5, by deleting "3" and inserting "5".

Amend sec. 13, page 6, line 11, after the period by inserting: "*If the court finds that the attorney has, without just cause, withheld the client's papers, documents, pleadings or other property, the attorney is liable for costs and attorney's fees.*"

Amend the title of the bill to read: "An Act relating to civil actions; revising certain provisions for the recovery of costs and attorney's fees and for the payment of witnesses' fees; and providing other matters properly relating thereto."

Senator Close moved the adoption of the amendment.

Remarks by Senator Close.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 359.

Bill read second time.

The following amendment was proposed by the Committee on Finance: 1977 Amendment No. 648A.

Amend the bill as a whole by inserting new sections, to be designated as sections 1 and 2, preceding section 1, to read:

"Section 1. Chapter 232 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. *The division of historic preservation and archeology consists of the administrator, the advisory board for historic preservation and archeology and any other necessary personnel.*

2. *The administrator of the division shall be appointed by and be responsible to the director and shall be in the unclassified service of the state.*

Sec. 2. NRS 232.090 is hereby amended to read as follows:

232.090 The department [shall consist] *consists of:*

1. The division of water resources.
2. The division of state lands.
3. The division of forestry.
4. The division of oil and gas conservation.
5. The division of state parks.
6. The division of conservation districts.
7. The state environmental commission division.

SENATE BILL NO. 263—SENATOR RAGGIO

FEBRUARY 24, 1977

Referred to Committee on Judiciary

SUMMARY—Revises procedures relating to recovery of costs and attorney's fees in civil actions. (BDR 2-758)

FISCAL NOTE: Local Government Impact: No.
State or Industrial Insurance Impact: No.



EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to civil actions; revising certain provisions for the recovery of costs and attorney's fees and for the payment of witnesses' fees; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. Chapter 18 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 and 3 of this act.
3 SEC. 2. *For the purposes of NRS 18.010 to 18.150, inclusive, the*
4 *term "costs" means:*
- 5 1. *Clerks' fees.*
 - 6 2. *Reporters' fees for discovery depositions, including a reporter's fee*
7 *for one copy of each deposition, if used at trial or at a hearing upon a*
8 *motion, unless the court finds that the deposition was taken at the*
9 *instance of the prevailing party without reason or necessity.*
 - 10 3. *Jurors' fees and expenses, together with reasonable compensation*
11 *of an officer appointed to act in accordance with NRS 16.120.*
 - 12 4. *Fees for witnesses at trial, pretrial hearings and deposing witnesses,*
13 *unless the court finds that the witness was called at the instance of the*
14 *prevailing party without reason or necessity.*
 - 15 5. *Reasonable fees of not more than three expert witnesses in an*
16 *amount of not more than \$250 for each witness.*
 - 17 6. *Reasonable fees of necessary interpreters.*
 - 18 7. *The fee of any sheriff or licensed process server for the delivery*
19 *or service of any summons or subpoena used in the action, unless the*
20 *court determines that the service was not necessary.*
 - 21 8. *The fees of the official reporter or reporter pro tempore.*
 - 22 9. *Reasonable costs for any bond or undertaking required as part of*
23 *the action.*

1 SEC. 3. 1. *An attorney at law shall have a lien upon any claim,*
2 *demand or cause of action, including any claim for unliquidated dam-*
3 *ages, which has been placed in his hands by a client for suit or collection,*
4 *or upon which a suit or other action has been instituted. The lien is for*
5 *the amount of any fee which has been agreed upon by the attorney and*
6 *client. In the absence of an agreement, the lien is for a reasonable fee*
7 *for the services which the attorney has rendered for the client on account*
8 *of the suit, claim, demand or action.*

9 2. *An attorney perfects his lien by serving notice in writing, in per-*
10 *son or by certified mail, return receipt requested, upon his client and*
11 *upon the party against whom his client has a cause of action, claiming*
12 *the lien and stating the interest which he has in any cause of action.*

13 3. *The lien attaches to any verdict, judgment or decree entered and*
14 *to any money or property which is recovered on account of the suit or*
15 *other action, from the time of service of the notices required by this*
16 *section.*

17 4. *On motion filed by an attorney having a lien under this section,*
18 *his client or any party who has been served with notice of the lien, the*
19 *court shall, after 5 days' notice to all interested parties, adjudicate the*
20 *rights of the attorney, client or other parties and enforce the lien.*

21 5. *Collection of attorney's fees by a lien under this section may be*
22 *utilized with, after or independently of any other method of collection.*

23 SEC. 4. NRS 18.010 is hereby amended to read as follows:

24 18.010 1. The compensation of an attorney and counselor for his
25 services is governed by agreement, express or implied, which is not
26 restrained by law. [From the commencement of an action, or the service
27 of an answer containing a counterclaim, the attorney who appears for a
28 party has a lien upon his client's cause of action or counterclaim which
29 attaches to a verdict, report, decision or judgment in his client's favor
30 and the proceeds thereof in whosoever hands they may come, and
31 cannot be affected by any settlement between the parties before or after
32 judgment. There shall be allowed to the prevailing party in any action, or
33 special proceeding in the nature of an action, in the supreme court and
34 district courts, his costs and necessary disbursements in the action or
35 special proceeding, including:

36 (a) Clerk's fees.

37 (b) Costs of depositions obtained by the prevailing party and used by
38 him at the trial.

39 (c) Jury fees as provided in NRS 6.150.

40 (d) Witness fees as provided in NRS 50.225, and a reasonable fee of
41 an interpreter not to exceed \$250.

42 2. The court may allow to the prevailing party the fees of not more
43 than three expert witnesses in an amount not to exceed \$250 for each
44 witness.]

45 [3.] 2. The court may make an allowance of attorney's fees to:

46 (a) The plaintiff as prevailing party when the plaintiff has not recov-
47 ered more than \$10,000; or

48 (b) The counterclaimant as prevailing party when he has not recovered
49 more than \$10,000; or

1 (c) The defendant as prevailing party when the plaintiff has not sought
2 recovery in excess of \$10,000.

3 3. *In awarding attorney's fees the court may pronounce its decision on*
4 *such fees at the conclusion of the trial or special proceeding without writ-*
5 *ten motion and with or without presentation of additional evidence.*

6 4. *No oral application or written motion for attorney's fees alters the*
7 *effect of a final judgment entered in the action or the time permitted for*
8 *an appeal therefrom.*

9 5. *Subsections 2 to 4, inclusive, do not apply to any action arising out*
10 *of a written instrument or agreement which entitles the prevailing party to*
11 *an award of reasonable attorney's fees.*

12 SEC. 5. NRS 18.020 is hereby amended to read as follows:

13 18.020 Costs shall be allowed of course to the [plaintiff upon a
14 judgment in his favor, from any defendant] *prevailing party against any*
15 *adverse party* against whom judgment is rendered, in the following cases:

16 1. In an action for the recovery of real property.

17 2. In an action to recover the possession of personal property, where
18 the value of the property amounts to \$300 or over; [such] *the* value
19 shall be determined by the jury, court or master by whom the action is
20 tried.

21 3. In an action for the recovery of money or damages, where *the*
22 plaintiff recovers \$300 or over.

23 4. In a special proceeding.

24 5. In an action which involves the title or possession of real estate,
25 or the legality of any tax, impost, assessment, toll or municipal fine,
26 including the costs accrued in [such] *the* action if originally commenced
27 in a justice court.

28 SEC. 6. NRS 18.050 is hereby amended to read as follows:

29 18.050 In other actions than those mentioned in NRS 18.020, costs
30 may be allowed or not, and if allowed may be apportioned between the
31 parties, or on the same or adverse sides, in the discretion of the court,
32 but no costs shall be allowed in any action for the recovery of money
33 or damages when the plaintiff recovers less than \$300, nor in any action
34 to recover the possession of personal property when the value of the
35 property is less than \$300; provided, that if, in the judgment of the court,
36 the plaintiff believes he was justified in bringing the action in the dis-
37 trict court, and he recovers at least \$150 in money or damages, or
38 personal property of that value, the court may, in its discretion, allow
39 the plaintiff part or all of his costs. [When there are several defendants
40 in the actions mentioned in NRS 18.020, not united in interest, and
41 making separate defenses by separate answers, and the plaintiff fails
42 to recover judgment against all, the court shall award costs to such of
43 the defendants as have judgment in their favor.]

44 SEC. 7. NRS 18.070 is hereby amended to read as follows:

45 18.070 1. When an application is made to a court or master to
46 postpone a trial, the payment of costs, occasioned by the postponement
47 may be imposed, in the discretion of the court or master, as a condition
48 of granting the [same.] *postponement.*

49 2. *A court may impose costs and reasonable attorney's fees against*

1 a party or an attorney who, in the judgment of the court, purposely
2 caused a mistrial to occur.

3 SEC. 8. NRS 18.110 is hereby amended to read as follows:

4 18.110 1. The party in whose favor judgment is rendered, and
5 who claims his costs, must [deliver to] file with the clerk, and serve
6 a copy upon the adverse party, within 5 days after [the verdict or
7 notice of] the entry of judgment, [of the court or master,] or such
8 further time as the court or judge may grant, a memorandum of the
9 items of his costs [and necessary disbursements] in the action or pro-
10 ceeding, which memorandum must be verified by the oath of the party,
11 or his attorney or agent, or by the clerk of his attorney, stating that to
12 the best of his knowledge and belief the items are correct, and that the
13 [disbursements] costs have been necessarily incurred in the action or
14 proceeding.

15 2. He shall be entitled to recover the witness fees, although at the
16 time he may not actually have paid them. Issuance or service of subpoena
17 shall not be necessary to entitle a prevailing party to tax, as costs,
18 witness fees and mileage, provided that such witnesses be sworn and
19 testify in the cause.

20 3. It shall not be necessary to embody in the memorandum the fees
21 of the clerk, but the clerk shall add the same according to his fees fixed
22 by statute.

23 4. Within 3 days after service of a copy of the memorandum, the
24 adverse party may move the court, upon 2 days' notice, to retax and
25 settle the costs, notice of which motion shall be filed and served on the
26 prevailing party claiming costs. Upon the hearing of the motion the court
27 or judge [in chambers] shall settle the costs.

28 SEC. 9. NRS 18.150 is hereby amended to read as follows:

29 18.150 1. When the state is a party, and costs or attorney's fees are
30 awarded against it, they must be paid out of the state treasury.

31 2. When a county is a party, and costs or attorney's fees are awarded
32 against it, they must be paid out of the county treasury.

33 SEC. 10. Chapter 7 of NRS is hereby amended by adding thereto a
34 new section which shall read as follows:

35 1. An attorney who has been discharged by his client shall, upon
36 demand and payment of the fee due from the client, immediately deliver
37 to the client all papers, documents, pleadings and items of tangible per-
38 sonal property which belong to or were prepared for that client.

39 2. A client who, after demand therefor and payment of the fee due
40 from him, does not receive from his discharged attorney all papers, docu-
41 ments, pleadings and items of tangible personal property may, by a motion
42 filed after at least 5 days' notice to the attorney, obtain an order for the
43 production of his papers, documents, pleadings and other property. If the
44 court finds that an attorney has, without just cause, refused or neglected to
45 obey its order given under this section, the court may, after notice and
46 hearing, adjudge the attorney guilty of contempt and may fine or imprison
47 him until the contempt is purged. If the court finds that the attorney has,
48 without just cause, withheld the client's papers, documents, pleadings or
49 other property, the attorney is liable for costs and attorney's fees.

50 3. An attorney who is in doubt as to the ownership of papers,

1 documents, pleadings or other property may deposit the materials with
2 the clerk of the court. The clerk shall immediately seal the materials to
3 protect the privacy and privilege of the clients and interested persons
4 and notify each interested person of the deposit. Upon a petition filed
5 by a client or other interested person, any court shall, after giving at
6 least 5 days' notice to all other interested persons, adjudicate the rights
7 of persons claiming an interest in the materials and make necessary
8 orders under the circumstances of the case.

9 SEC. 11. NRS 50.225 is hereby amended to read as follows:

10 50.225 Witnesses required to attend in the courts of this state
11 **[shall]** are entitled to receive the following compensation:

12 1. For attending in any criminal case, or civil suit or proceeding
13 before a court of record, master, commissioner, justice of the peace, or
14 before the grand jury, in obedience to a subpoena, \$15 for each day's
15 attendance, which shall include Sundays and holidays.

16 2. Mileage shall be allowed and paid at the rate of 15 cents a mile,
17 one way only, for each mile necessarily and actually traveled from the
18 place of residence by the shortest and most practical route, **[provided:]**
19 *but:*

20 (a) **[That no]** A person shall *not* be obliged to testify in a civil
21 action or proceeding unless his mileage and at least 1 day's fees have
22 been paid him **[if he demanded the same.]** ; *and*

23 (b) **[That any]** Any person **[being]** in attendance at the trial and
24 sworn as a witness **[shall be]** is entitled to witness fees irrespective of
25 service of subpoena.

26 3. Witness fees in civil cases shall be taxed as disbursement costs
27 against the defeated party upon proof by affidavit that they have been
28 actually incurred. Costs shall not be allowed for more than two witnesses
29 to the same fact or series of facts, nor shall a party plaintiff or defendant
30 be allowed any fees or mileage for attendance as a witness in his own
31 behalf.

32 SEC. 12. NRS 18.040, 18.045 and 18.100 are hereby repealed.

Senate Bill No. 139 having received a constitutional majority, Mr. President declared it passed, as amended.
Bill ordered transmitted to the Assembly.

Senate Bill No. 263.

Bill read third time.

Remarks by Senator Close.

Roll call on Senate Bill No. 263:

YEAS—20.

NAYS—None.

Senate Bill No. 263 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 359.

Bill read third time.

Remarks by Senators Bryan and Wilson.

Roll call on Senate Bill No. 359:

YEAS—20.

NAYS—None.

Senate Bill No. 359 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 458.

Bill read third time.

Remarks by Senators Neal and Gibson.

Roll call on Senate Bill No. 458:

YEAS—19.

NAYS—Neal.

Senate Bill No. 458 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 21.

Bill read third time.

Roll call on Assembly Bill No. 21:

YEAS—18.

NAYS—Echols.

Not voting—Foote.

Assembly Bill No. 21 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 147.

Bill read third time.

Remarks by Senators Wilson, Dodge and Schofield.

Roll call on Assembly Bill No. 147:

YEAS—20.

NAYS—None.

Assembly Bill No. 147 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

MINUTES

ASSEMBLY JUDICIARY COMMITTEE
April 21, 1977

Members Present: Chairman Barengo
Assemblyman Hayes
Assemblyman Banner
Assemblyman Coulter
Assemblyman Polish
Assemblyman Price
Assemblyman Sena
Assemblyman Ross
Assemblyman Wagner

Chairman Barengo called the meeting to order at 7:20 a.m.
Those wishing to testify were sworn before giving testimony.

AB 744: Tom Moore, representing Clark County, was first to testify on this bill and he stated this bill was directed to the clarification of language in regard to the fees for appointed attorneys who represent indigents. He said this stems from a series of cases taken to the Supreme court of Nevada by Clark County and trying to comply with the federal statutes in this area. He stated that this would change the language from "unusual" to extraordinary circumstances so that it could be referenced in case law. He then explained the bill and some of the minor changes to it. He pointed out that they wished to have an amendment to subsection three so that it would read: "shall be paid a fee which shall not..." which they felt would eliminate any possibility of state impact.

In answer to a question from Mrs. Wagner, Mr. Moore stated that under common law a lawyer does not have a right to a fee for representing an indigent because it is an incident of his license to practice law and therefore those fees must be granted and set out statutorially by the legislature. He stated that between 1969 and 1975 there was a maximum on those fees of \$1,000 and then in 1975 that was raised to \$2,500, and above that a right to exceed that amount in unusual circumstances. Discussion followed on the different fees provided in the bill and Mr. Moore stated that they are not revising the fee schedule they are simply clarifying when those fees are to be paid and for what purposes. He stated that they recently had a case in Clark County where two attorneys were assigned to a very difficult case and the total fee came to approximately \$25,000 therefore, they are currently providing for payment in these kinds of difficult cases and they are not trying to change that with anything in this bill.

Mr. Moore stated that in subsection 4 the term extraordinary circumstances is defined to mean financial burdens and hardships far in excess of those normally found in the defense of an indigent person and comes from case law. He also pointed out that the new language in 4(b), page two is the codification of past case law. This subsection would also provide for the next judge of seniority would have the responsibility if the chief judge were the trial judge.

ASSEMBLY JUDICIARY COMMITTEE

April 21, 1977

Page Three

AB 160 and read it to the committee. The amendment is attached and marked Exhibit C. He stated that the amendment was agreed to by all the parties involved and they had stated that if it did not work they would come back in two years and change it. No direct action was taken on the amendment during the meeting.

AB 355: Chairman Barengo also introduced to the committee an amendment to this bill which is attached and marked Exhibit D. Mr. Bob Faiss also addressed the committee on this change and his remarks are attached and marked Exhibit E.

Chairman Barengo stated that he would have Bud Hicks come to the committee to comment on the amendment at the first available time.

SB 263: Senator Close testified first on this bill and stated that section one was basically the same as existing law. He stated that it has been changed to include reimbursement for the deposition, even if it is not used in the trial itself and this is on line seven of the bill. He also stated that they have included payment for interpreters. He also stated that they have expanded, on line 18, the current law to pay for service by a licensed process server.

He stated that Judge Thompson had suggested this bill because of problems which they were experiencing in that area and this bill would help clarify what was and was not covered as far as costs were concerned.

He pointed out that this bill provide a means by which an attorney could enforce a lien on a clients file by placing that lien on the judgement from the trial.

Senator Close then explained to the committee the portion of the bill which provides for proration of fees in the case an attorney takes the trial to the point which approximate the ceiling on fees and then deliberately causes a mistrial so that he can end the trial. He stated to the committee that this bill is not an attorney fee bill. He also pointed out that they really had not significantly changed existing law in this bill, but had, indeed, clarified it.

SB 506: Senator Close stated that this bill would provide that mobile homes would be included in the homestead provisions where they were not included at this time.

Mrs. Wagner pointed out that due to the scarcity of housing available, mobile homes are now beginning to appreciate as regular homes do, yet they are still taxed as personal property.

Senator Close also pointed out that this bill would provide that a single person could get a homestead filed on the property, and this was covered on lines 1 and 2 of page 2, if they are responsible for minor children.

ASSEMBLY JUDICIARY COMMITTEE

April 28, 1977

Members Present: Chairman Barengo
Assemblyman Hayes
Assemblyman Banner
Assemblyman Coulter
Assemblyman Polish
Assemblyman Price
Assemblyman Ross
Assemblyman Sena
Assemblyman Wagner

The meeting was called to order at 8:10 a.m. by Chairman Barengo. All witnesses wishing to testify were sworn before testifying.

SB 455: Justice of the Peace, Robert Miller of Clark County testified on this bill stating that it was very important to their office to increase the number of justices in their area because of the increasing case load. And, he stated, though he was in favor of the bill as it was originally introduced, stipulating 2 new justices, he felt this bill would be a move in the right direction. He presented to the committee a package of statistics concerning his area and their case load and that is attached and marked Exhibit A.

Mr. Tom Moore stated that both the District Attorney's office and the Clark County commissioners were in favor of the bill.

COMMITTEE ACTION:

SB 268: Mr. Ross introduced an amendment to the bill which would delete section 6 and also make conspiracy to sell marijuana a gross misdemeanor. Mr. Ross moved for a Do Pass as Amended. Mrs. Hayes seconded the motion and it carried.

AB 387: Mr. Ross made a motion to reconsider this bill. Mr. Sena seconded the motion and it carried. Mr. Ross read to the committee amendment 1078A which he proposed to the bill. Mr. Ross moved for a Do Pass as Amended. Mr. Sena seconded the motion and it carried.

AB 160: Chairman Barengo introduced to the committee and amendment on this bill and the committee concurred with the amendment and it will be added to the bill which is on the Chief Clerk's Desk.

SB 455: Mrs. Hayes moved for a Do Pass. Mr. Sena seconded the motion and it carried.

AB 355: Chairman Barengo stated to the committee that he felt the committee should include the amendment which would make this effective on passage and let the Senate side decide on the other amendments which had been proposed, the committee concurred. Mr. Ross moved for a Do Pass as Amended. Mr. Sena seconded the motion and it carried.

AB 10: This bill was merged with SB 220 and therefore no action was taken.

ASSEMBLY JUDICIARY COMMITTEE

April 28, 1977

Page Three

SB 394: Mr. Ross moved a Do Pass. Mrs. Wagner seconded the motion and it carried.

SB 386: Mr. Ross moved for a Do Pass as Amended. Mr. Sena seconded the motion and it carried. Mrs. Hayes did not vote.

SB 263: Mr. Ross proposed an amendment which would insert a period after the word deposition and deleting the balance of the section. Mrs. Hayes moved for Do Pass as Amended. Mr. Ross seconded the motion and it carried.

Chairman Barengo gave out to the committee copies of a letter from Stephen Boland, Deputy AG, concerning SB 152 and a copy of is attached and marked Exhibit B.

For the record the following votes were redone:

AB 24: Mr. Banner moved for a Do Pass. Mr. Sena seconded the motion and it carried. (Originally voted out on 3/29/77.)

AB 517: Mr. Sena moved for a Do Pass. Mr. Coulter seconded the motion and it carried. (Originally voted out on 4/12/77.)

SB 89: Mr. Sena moved for a Do Pass as Amended. Mr. Polish seconded the motion and it carried. (Originally voted out on 4/22/77.)

There being no further business, the meeting was adjourned at 10:30 a.m.

Respectfully submitted,



Linda Chandler, Secretary

boards; permitting the members of the district board to exercise certain powers;”.

Assemblyman Murphy moved the adoption of the amendment.

Remarks by Assemblyman Weise.

Amendment lost.

Bill ordered to third reading.

Senate Bill No. 263.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 1190A.

Amend sec. 2, page 1, line 6, by deleting “*discovery*”.

Amend sec. 2, page 1, by deleting lines 7 through 9 and inserting: “*for one copy of each deposition.*”

Assemblyman Barengo moved the adoption of the amendment.

Remarks by Assemblyman Barengo.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Senate Bill No. 273.

Bill read second time and ordered to third reading.

Senate Bill No. 366.

Bill read second time and ordered to third reading.

Senate Bill No. 413.

Bill read second time.

The following amendment was proposed by the Committee on Commerce:

Amendment No. 1091A.

Amend sec. 14, page 6, lines 46 and 47, by deleting “*examination,*” and inserting “*investigation,*”.

Assemblyman Demers moved the adoption of the amendment.

Remarks by Assemblyman Demers.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Senate Bill No. 437.

Bill read second time and ordered to third reading.

Senate Bill No. 439.

Bill read second time and ordered to third reading.

Senate Bill No. 447.

Bill read second time and ordered to third reading.

Senate Bill No. 467.

Bill read second time and ordered to third reading.

Senate Bill No. 480.

Bill read second time and ordered to third reading.

Senate Bill No. 511.

Bill read second time.

SENATE BILL NO. 263—SENATOR RAGGIO

FEBRUARY 24, 1977

Referred to Committee on Judiciary

SUMMARY—Revises procedures relating to recovery of costs and attorney's fees in civil actions. (BDR 2-758)

FISCAL NOTE: Local Government Impact: No.
State or Industrial Insurance Impact: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to civil actions; revising certain provisions for the recovery of costs and attorney's fees and for the payment of witnesses' fees; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. Chapter 18 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 and 3 of this act.
3 SEC. 2. *For the purposes of NRS 18.010 to 18.150, inclusive, the*
4 *term "costs" means:*
5 1. *Clerks' fees.*
6 2. *Reporters' fees for depositions, including a reporter's fee for one*
7 *copy of each deposition.*
8 3. *Jurors' fees and expenses, together with reasonable compensation*
9 *of an officer appointed to act in accordance with NRS 16.120.*
10 4. *Fees for witnesses at trial, pretrial hearings and deposing witnesses,*
11 *unless the court finds that the witness was called at the instance of the*
12 *prevailing party without reason or necessity.*
13 5. *Reasonable fees of not more than three expert witnesses in an*
14 *amount of not more than \$250 for each witness.*
15 6. *Reasonable fees of necessary interpreters.*
16 7. *The fee of any sheriff or licensed process server for the delivery*
17 *or service of any summons or subpoena used in the action, unless the*
18 *court determines that the service was not necessary.*
19 8. *The fees of the official reporter or reporter pro tempore.*
20 9. *Reasonable costs for any bond or undertaking required as part of*
21 *the action.*
22 SEC. 3. 1. *An attorney at law shall have a lien upon any claim,*
23 *demand or cause of action, including any claim for unliquidated dam-*
24 *ages, which has been placed in his hands by a client for suit or collection,*

1 or upon which a suit or other action has been instituted. The lien is for
2 the amount of any fee which has been agreed upon by the attorney and
3 client. In the absence of an agreement, the lien is for a reasonable fee
4 for the services which the attorney has rendered for the client on account
5 of the suit, claim, demand or action.

6 2. An attorney perfects his lien by serving notice in writing, in per-
7 son or by certified mail, return receipt requested, upon his client and
8 upon the party against whom his client has a cause of action, claiming
9 the lien and stating the interest which he has in any cause of action.

10 3. The lien attaches to any verdict, judgment or decree entered and
11 to any money or property which is recovered on account of the suit or
12 other action, from the time of service of the notices required by this
13 section.

14 4. On motion filed by an attorney having a lien under this section,
15 his client or any party who has been served with notice of the lien, the
16 court shall, after 5 days' notice to all interested parties, adjudicate the
17 rights of the attorney, client or other parties and enforce the lien.

18 5. Collection of attorney's fees by a lien under this section may be
19 utilized with, after or independently of any other method of collection.

20 SEC. 4. NRS 18.010 is hereby amended to read as follows:

21 18.010 1. The compensation of an attorney and counselor for his
22 services is governed by agreement, express or implied, which is not
23 restrained by law. [From the commencement of an action, or the service
24 of an answer containing a counterclaim, the attorney who appears for a
25 party has a lien upon his client's cause of action or counterclaim which
26 attaches to a verdict, report, decision or judgment in his client's favor
27 and the proceeds thereof in whosoever hands they may come, and
28 cannot be affected by any settlement between the parties before or after
29 judgment. There shall be allowed to the prevailing party in any action, or
30 special proceeding in the nature of an action, in the supreme court and
31 district courts, his costs and necessary disbursements in the action or
32 special proceeding, including:

33 (a) Clerk's fees.

34 (b) Costs of depositions obtained by the prevailing party and used by
35 him at the trial.

36 (c) Jury fees as provided in NRS 6.150.

37 (d) Witness fees as provided in NRS 50.225, and a reasonable fee of
38 an interpreter not to exceed \$250.

39 2. The court may allow to the prevailing party the fees of not more
40 than three expert witnesses in an amount not to exceed \$250 for each
41 witness.]

42 [3.] 2. The court may make an allowance of attorney's fees to:

43 (a) The plaintiff as prevailing party when the plaintiff has not recov-
44 ered more than \$10,000; or

45 (b) The counterclaimant as prevailing party when he has not recovered
46 more than \$10,000; or

47 (c) The defendant as prevailing party when the plaintiff has not sought
48 recovery in excess of \$10,000.

49 3. In awarding attorney's fees the court may pronounce its decision on

1 *such fees at the conclusion of the trial or special proceeding without writ-*
2 *ten motion and with or without presentation of additional evidence.*

3 4. *No oral application or written motion for attorney's fees alters the*
4 *effect of a final judgment entered in the action or the time permitted for*
5 *an appeal therefrom.*

6 5. *Subsections 2 to 4, inclusive, do not apply to any action arising out*
7 *of a written instrument or agreement which entitles the prevailing party to*
8 *an award of reasonable attorney's fees.*

9 SEC. 5. NRS 18.020 is hereby amended to read as follows:

10 18.020 Costs shall be allowed of course to the [plaintiff upon a
11 judgment in his favor, from any defendant] *prevailing party against any*
12 *adverse party* against whom judgment is rendered, in the following cases:

13 1. In an action for the recovery of real property.

14 2. In an action to recover the possession of personal property, where
15 the value of the property amounts to \$300 or over; [such] *the* value
16 shall be determined by the jury, court or master by whom the action is
17 tried.

18 3. In an action for the recovery of money or damages, where *the*
19 plaintiff recovers \$300 or over.

20 4. In a special proceeding.

21 5. In an action which involves the title or possession of real estate,
22 or the legality of any tax, impost, assessment, toll or municipal fine,
23 including the costs accrued in [such] *the* action if originally commenced
24 in a justice court.

25 SEC. 6. NRS 18.050 is hereby amended to read as follows:

26 18.050 In other actions than those mentioned in NRS 18.020, costs
27 may be allowed or not, and if allowed may be apportioned between the
28 parties, or on the same or adverse sides, in the discretion of the court,
29 but no costs shall be allowed in any action for the recovery of money
30 or damages when the plaintiff recovers less than \$300, nor in any action
31 to recover the possession of personal property when the value of the
32 property is less than \$300; provided, that if, in the judgment of the court,
33 the plaintiff believes he was justified in bringing the action in the dis-
34 trict court, and he recovers at least \$150 in money or damages, or
35 personal property of that value, the court may, in its discretion, allow
36 the plaintiff part or all of his costs. [When there are several defendants
37 in the actions mentioned in NRS 18.020, not united in interest, and
38 making separate defenses by separate answers, and the plaintiff fails
39 to recover judgment against all, the court shall award costs to such of
40 the defendants as have judgment in their favor.]

41 SEC. 7. NRS 18.070 is hereby amended to read as follows:

42 18.070 1. When an application is made to a court or master to
43 postpone a trial, the payment of costs, occasioned by the postponement
44 may be imposed, in the discretion of the court or master, as a condition
45 of granting the [same.] *postponement.*

46 2. *A court may impose costs and reasonable attorney's fees against*
47 *a party or an attorney who, in the judgment of the court, purposely*
48 *caused a mistrial to occur.*

49 SEC. 8. NRS 18.110 is hereby amended to read as follows:

50 18.110 1. The party in whose favor judgment is rendered, and

1 who claims his costs, must [deliver to] *file with* the clerk, and serve
2 a copy upon the adverse party, within 5 days after [the verdict or
3 notice of] the entry of judgment, [of the court or master,] or such
4 further time as the court or judge may grant, a memorandum of the
5 items of his costs [and necessary disbursements] in the action or pro-
6 ceeding, which memorandum must be verified by the oath of the party,
7 or his attorney or agent, or by the clerk of his attorney, stating that to
8 the best of his knowledge and belief the items are correct, and that the
9 [disbursements] costs have been necessarily incurred in the action or
10 proceeding.

11 2. He shall be entitled to recover the witness fees, although at the
12 time he may not actually have paid them. Issuance or service of subpoena
13 shall not be necessary to entitle a prevailing party to tax, as costs,
14 witness fees and mileage, provided that such witnesses be sworn and
15 testify in the cause.

16 3. It shall not be necessary to embody in the memorandum the fees
17 of the clerk, but the clerk shall add the same according to his fees fixed
18 by statute.

19 4. Within 3 days after service of a copy of the memorandum, the
20 adverse party may move the court, upon 2 days' notice, to retax and
21 settle the costs, notice of which motion shall be filed and served on the
22 prevailing party claiming costs. Upon the hearing of the motion the court
23 or judge [in chambers] shall settle the costs.

24 SEC. 9. NRS 18.150 is hereby amended to read as follows:

25 18.150 1. When the state is a party, and costs or attorney's fees are
26 awarded against it, they must be paid out of the state treasury.

27 2. When a county is a party, and costs or attorney's fees are awarded
28 against it, they must be paid out of the county treasury.

29 SEC. 10. Chapter 7 of NRS is hereby amended by adding thereto a
30 new section which shall read as follows:

31 1. *An attorney who has been discharged by his client shall, upon*
32 *demand and payment of the fee due from the client, immediately deliver*
33 *to the client all papers, documents, pleadings and items of tangible per-*
34 *sonal property which belong to or were prepared for that client.*

35 2. *A client who, after demand therefor and payment of the fee due*
36 *from him, does not receive from his discharged attorney all papers, docu-*
37 *ments, pleadings and items of tangible personal property may, by a motion*
38 *filed after at least 5 days' notice to the attorney, obtain an order for the*
39 *production of his papers, documents, pleadings and other property. If the*
40 *court finds that an attorney has, without just cause, refused or neglected to*
41 *obey its order given under this section, the court may, after notice and*
42 *hearing, adjudge the attorney guilty of contempt and may fine or imprison*
43 *him until the contempt is purged. If the court finds that the attorney has,*
44 *without just cause, withheld the client's papers, documents, pleadings or*
45 *other property, the attorney is liable for costs and attorney's fees.*

46 3. *An attorney who is in doubt as to the ownership of papers,*
47 *documents, pleadings or other property may deposit the materials with*
48 *the clerk of the court. The clerk shall immediately seal the materials to*
49 *protect the privacy and privilege of the clients and interested persons*
50 *and notify each interested person of the deposit. Upon a petition filed*

1 *by a client or other interested person, any court shall, after giving at*
2 *least 5 days' notice to all other interested persons, adjudicate the rights*
3 *of persons claiming an interest in the materials and make necessary*
4 *orders under the circumstances of the case.*

5 SEC. 11. NRS 50.225 is hereby amended to read as follows:

6 50.225 Witnesses required to attend in the courts of this state
7 **[shall]** *are entitled to* receive the following compensation:

8 1. For attending in any criminal case, or civil suit or proceeding
9 before a court of record, master, commissioner, justice of the peace, or
10 before the grand jury, in obedience to a subpoena, \$15 for each day's
11 attendance, which shall include Sundays and holidays.

12 2. Mileage shall be allowed and paid at the rate of 15 cents a mile,
13 one way only, for each mile necessarily and actually traveled from the
14 place of residence by the shortest and most practical route, **[provided:]**
15 *but:*

16 (a) **[That no]** *A person shall not be obliged to testify in a civil*
17 *action or proceeding unless his mileage and at least 1 day's fees have*
18 *been paid him [if he demanded the same.] ; and*

19 (b) **[That any]** *Any person [being] in attendance at the trial and*
20 *sworn as a witness [shall be] is entitled to witness fees irrespective of*
21 *service of subpoena.*

22 3. Witness fees in civil cases shall be taxed as disbursement costs
23 against the defeated party upon proof by affidavit that they have been
24 actually incurred. Costs shall not be allowed for more than two witnesses
25 to the same fact or series of facts, nor shall a party plaintiff or defendant
26 be allowed any fees or mileage for attendance as a witness in his own
27 behalf.

28 SEC. 12. NRS 18.040, 18.045 and 18.100 are hereby repealed.

Senate Bill No. 185.
 Bill read third time.
 Remarks by Assemblyman Sena.
 Roll call on Senate Bill No. 185:
 YEAS—35.
 NAYS—Goodman.
 Absent—Bennett, Brookman—2.
 Not voting—Robinson.
 Vacancy—1.

Senate Bill No. 185 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
 Bill ordered transmitted to the Senate.

Senate Bill No. 263.
 Bill read third time.
 Remarks by Assemblyman Barengo.
 Roll call on Senate Bill No. 263:
 YEAS—37.
 NAYS—None
 Absent—Bennett, Brookman—2.
 Vacancy—1.

Senate Bill No. 263 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
 Bill ordered transmitted to the Senate.

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman May moved that Senate Bill No. 326 be taken from the General File and placed on the Chief Clerk's desk.
 Remarks by Assemblyman May.
 Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 386.
 Bill read third time.
 Remarks by Assemblyman Wagner.
 Roll call on Senate Bill No. 386:
 YEAS—36.
 NAYS—None
 Absent—Bennett, Brookman—2.
 Not voting—Hayes.
 Vacancy—1.

Senate Bill No. 386 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
 Bill ordered transmitted to the Senate.

Senate Bill No. 413.
 Bill read third time.
 Remarks by Assemblyman Barengo.
 Roll call on Senate Bill No. 413:
 YEAS—37.
 NAYS—None.
 Absent—Bennett, Brookman—2.
 Vacancy—1.

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MAY 2, 1977

Meeting was called to order at 8:07 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Bryan
Senator Ashworth
Senator Dodge
Senator Foote
Senator Sheerin

ABSENT: Senator Gojack

AB 621 Changes qualifications of certain judicial officers.

Dave Frank stated that this amends the qualifications for District Court Judges and Supreme Court Justices. To bar anyone removed from judicial office from either being elected or appointed to either one of those offices. It is also in response to Constitutional amendments passed on the November ballot. It is directed at the question of what effect removal from judicial office should have, if any.

Senator Close questioned why we should do this, if the people elect him again even though he had been removed from office.

Mr. Frank stated there is the possibility that a bad judge can run a very good campaign. Also there is the possibility of the revolving door problem, where he is elected and finds himself running right into the same problems that got him removed in the first place.

Senator Sheerin stated the whole reason for the judicial review system is that the people don't know what a good judge is, or what a bad judge is. So if you want to put this back in, let's do away with the whole system.

Senator Dodge stated the people passed a Constitutional amendment and it seems to him the judgment and validity to that process, and the judgment of the discipline commission should justify this provision.

Mr. Frank stated it is a policy question. The amendment does not address as to what effect removal has and should it disqualify him from holding judicial office.

Senator Sheerin moved do pass.
Seconded by Senator Dodge.
Motion carried unanimously.

MINUTES OF MEETING

~~APRIL~~ 2, 1977

PAGE TEN

As they had to go into session Senator Close stated they would continue this as soon as they recessed. He had some amendments he wanted to go over quickly with the Committee.

SB 386 Prohibits judges who are removed from office from exercising judicial duties.

Page 2 line 6, delete "death". Committee concurred unanimously with amendment #1117.

SB 263 Revises procedures relating to recovery of costs and attorney's fees in civil actions.

Page 1 line 17 delete "discovery". Lines 7 thru 9 delete and insert "for one copy of each deposition". Committee concurred unanimously with amendment #1190.

SB 54 Authorizes payment of lodging allowances to jurors under certain circumstances.

Page 1 line 17 delete "75 miles" and insert "50 miles". Page 1 delete line 19 and insert "to receive a reasonable room rate in addition to daily requirements". The Committee stated that the second amendment was not their intent and they refused to concur with amendment #1187.

SB 185 Provides for retention of and access to certain medical records.

Page 2 lines 5 and 6, insert under section B "any authorized representative". The Committee felt this broadend their intent and refused to concur with amendment #396-A.

The meeting was adjourned at 10:00 a.m.

Respectfully submitted,

APPROVED:


Virginia C. Letts, Secretary

MELVIN D. CLOSE, JR. CHAIRMAN

Senate Bill No. 263—Senator Raggio

CHAPTER 401

AN ACT relating to civil actions; revising certain provisions for the recovery of costs and attorney's fees and for the payment of witnesses' fees; and providing other matters properly relating thereto.

[Approved May 7, 1977]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 18 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

SEC. 2. *For the purposes of NRS 18.010 to 18.150, inclusive, the term "costs" means:*

1. *Clerks' fees.*
2. *Reporters' fees for depositions, including a reporter's fee for one copy of each deposition.*
3. *Jurors' fees and expenses, together with reasonable compensation of an officer appointed to act in accordance with NRS 16.120.*
4. *Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless the court finds that the witness was called at the instance of the prevailing party without reason or necessity.*
5. *Reasonable fees of not more than three expert witnesses in an amount of not more than \$250 for each witness.*
6. *Reasonable fees of necessary interpreters.*
7. *The fee of any sheriff or licensed process server for the delivery or service of any summons or subpoena used in the action, unless the court determines that the service was not necessary.*
8. *The fees of the official reporter or reporter pro tempore.*
9. *Reasonable costs for any bond or undertaking required as part of the action.*

SEC. 3. 1. *An attorney at law shall have a lien upon any claim, demand or cause of action, including any claim for unliquidated damages, which has been placed in his hands by a client for suit or collection, or upon which a suit or other action has been instituted. The lien is for the amount of any fee which has been agreed upon by the attorney and client. In the absence of an agreement, the lien is for a reasonable fee for the services which the attorney has rendered for the client on account of the suit, claim, demand or action.*

2. *An attorney perfects his lien by serving notice in writing, in person or by certified mail, return receipt requested, upon his client and upon the party against whom his client has a cause of action, claiming the lien and stating the interest which he has in any cause of action.*

3. *The lien attaches to any verdict, judgment or decree entered and to any money or property which is recovered on account of the suit or other action, from the time of service of the notices required by this section.*

4. *On motion filed by an attorney having a lien under this section, his client or any party who has been served with notice of the lien, the*

court shall, after 5 days' notice to all interested parties, adjudicate the rights of the attorney, client or other parties and enforce the lien.

5. Collection of attorney's fees by a lien under this section may be utilized with, after or independently of any other method of collection.

SEC. 4. NRS 18.010 is hereby amended to read as follows:

18.010 1. The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law. [From the commencement of an action, or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action or counterclaim which attaches to a verdict, report, decision or judgment in his client's favor and the proceeds thereof in whosoever hands they may come, and cannot be affected by any settlement between the parties before or after judgment. There shall be allowed to the prevailing party in any action, or special proceeding in the nature of an action, in the supreme court and district courts, his costs and necessary disbursements in the action or special proceeding, including:

(a) Clerk's fees.

(b) Costs of depositions obtained by the prevailing party and used by him at the trial.

(c) Jury fees as provided in NRS 6.150.

(d) Witness fees as provided in NRS 50.225, and a reasonable fee of an interpreter not to exceed \$250.

2. The court may allow to the prevailing party the fees of not more than three expert witnesses in an amount not to exceed \$250 for each witness.]

[3.] 2. The court may make an allowance of attorney's fees to:

(a) The plaintiff as prevailing party when the plaintiff has not recovered more than \$10,000; or

(b) The counterclaimant as prevailing party when he has not recovered more than \$10,000; or

(c) The defendant as prevailing party when the plaintiff has not sought recovery in excess of \$10,000.

3. *In awarding attorney's fees the court may pronounce its decision on such fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.*

4. *No oral application or written motion for attorney's fees alters the effect of a final judgment entered in the action or the time permitted for an appeal therefrom.*

5. *Subsections 2 to 4, inclusive, do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.*

SEC. 5. NRS 18.020 is hereby amended to read as follows:

18.020 Costs shall be allowed of course to the [plaintiff upon a judgment in his favor, from any defendant] *prevailing party against any adverse party* against whom judgment is rendered, in the following cases:

1. In an action for the recovery of real property.

2. In an action to recover the possession of personal property, where the value of the property amounts to \$300 or over; [such] *the* value shall be determined by the jury, court or master by whom the action is tried.

3. In an action for the recovery of money or damages, where *the* plaintiff recovers \$300 or over.

4. In a special proceeding.

5. In an action which involves the title or possession of real estate, or the legality of any tax, impost, assessment, toll or municipal fine, including the costs accrued in [such] *the* action if originally commenced in a justice court.

SEC. 6. NRS 18.050 is hereby amended to read as follows:

18.050 In other actions than those mentioned in NRS 18.020, costs may be allowed or not, and if allowed may be apportioned between the parties, or on the same or adverse sides, in the discretion of the court, but no costs shall be allowed in any action for the recovery of money or damages when the plaintiff recovers less than \$300, nor in any action to recover the possession of personal property when the value of the property is less than \$300; provided, that if, in the judgment of the court, the plaintiff believes he was justified in bringing the action in the district court, and he recovers at least \$150 in money or damages, or personal property of that value, the court may, in its discretion, allow the plaintiff part or all of his costs. [When there are several defendants in the actions mentioned in NRS 18.020, not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court shall award costs to such of the defendants as have judgment in their favor.]

SEC. 7. NRS 18.070 is hereby amended to read as follows:

18.070 1. When an application is made to a court or master to postpone a trial, the payment of costs, occasioned by the postponement may be imposed, in the discretion of the court or master, as a condition of granting the [same.] *postponement*.

2. *A court may impose costs and reasonable attorney's fees against a party or an attorney who, in the judgment of the court, purposely caused a mistrial to occur.*

SEC. 8. NRS 18.110 is hereby amended to read as follows:

18.110 1. The party in whose favor judgment is rendered, and who claims his costs, must [deliver to] *file with* the clerk, and serve a copy upon the adverse party, within 5 days after [the verdict or notice of] the entry of judgment, [of the court or master,] or such further time as the court or judge may grant, a memorandum of the items of his costs [and necessary disbursements] in the action or proceeding, which memorandum must be verified by the oath of the party, or his attorney or agent, or by the clerk of his attorney, stating that to the best of his knowledge and belief the items are correct, and that the [disbursements] *costs* have been necessarily incurred in the action or proceeding.

2. He shall be entitled to recover the witness fees, although at the time he may not actually have paid them. Issuance or service of subpoena shall not be necessary to entitle a prevailing party to tax, as costs, witness fees and mileage, provided that such witnesses be sworn and testify in the cause.

3. It shall not be necessary to embody in the memorandum the fees of the clerk, but the clerk shall add the same according to his fees fixed by statute.

4. Within 3 days after service of a copy of the memorandum, the adverse party may move the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing party claiming costs. Upon the hearing of the motion the court or judge **[in chambers]** shall settle the costs.

SEC. 9. NRS 18.150 is hereby amended to read as follows:

18.150 1. When the state is a party, and costs *or attorney's fees* are awarded against it, they must be paid out of the state treasury.

2. When a county is a party, and costs *or attorney's fees* are awarded against it, they must be paid out of the county treasury.

SEC. 10. Chapter 7 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. *An attorney who has been discharged by his client shall, upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client.*

2. *A client who, after demand therefor and payment of the fee due from him, does not receive from his discharged attorney all papers, documents, pleadings and items of tangible personal property may, by a motion filed after at least 5 days' notice to the attorney, obtain an order for the production of his papers, documents, pleadings and other property. If the court finds that an attorney has, without just cause, refused or neglected to obey its order given under this section, the court may, after notice and hearing, adjudge the attorney guilty of contempt and may fine or imprison him until the contempt is purged. If the court finds that the attorney has, without just cause, withheld the client's papers, documents, pleadings or other property, the attorney is liable for costs and attorney's fees.*

3. *An attorney who is in doubt as to the ownership of papers, documents, pleadings or other property may deposit the materials with the clerk of the court. The clerk shall immediately seal the materials to protect the privacy and privilege of the clients and interested persons and notify each interested person of the deposit. Upon a petition filed by a client or other interested person, any court shall, after giving at least 5 days' notice to all other interested persons, adjudicate the rights of persons claiming an interest in the materials and make necessary orders under the circumstances of the case.*

SEC. 11. NRS 50.225 is hereby amended to read as follows:

50.225 Witnesses required to attend in the courts of this state **[shall]** *are entitled to receive the following compensation:*

1. For attending in any criminal case, or civil suit or proceeding before a court of record, master, commissioner, justice of the peace, or before the grand jury, in obedience to a subpoena, \$15 for each day's attendance, which shall include Sundays and holidays.

2. Mileage shall be allowed and paid at the rate of 15 cents a mile, one way only, for each mile necessarily and actually traveled from the place of residence by the shortest and most practical route, **[provided:]** *but:*

(a) **[That no]** *A person shall not be obliged to testify in a civil action or proceeding unless his mileage and at least 1 day's fees have been paid him [if he demanded the same.] ; and*

(b) **[That any]** Any person **[being]** in attendance at the trial and sworn as a witness **[shall be]** is entitled to witness fees irrespective of service of subpena.

3. Witness fees in civil cases shall be taxed as disbursement costs against the defeated party upon proof by affidavit that they have been actually incurred. Costs shall not be allowed for more than two witnesses to the same fact or series of facts, nor shall a party plaintiff or defendant be allowed any fees or mileage for attendance as a witness in his own behalf.

SEC. 12. NRS 18.040, 18.045 and 18.100 are hereby repealed.

Senate Bill No. 401—Senator Glaser

CHAPTER 402

AN ACT relating to animals running at large; authorizing the capture of wild horses and burros by means of aircraft and motor vehicles; and providing other matters properly relating thereto.

[Approved May 7, 1977]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 569.420 is hereby amended to read as follows:

569.420 **[1. It shall be]** It is unlawful for any person, under the provisions of NRS 569.360 to 569.430, inclusive, **[**:

(a) To hunt wild horses, mares, colts or burros by means of airborne vehicles of any kind or motor-driven vehicles of any kind.

(b) **To]** to pollute watering holes in order to trap, kill, wound or maim **[such animals.**

2. The provisions of NRS 569.360 to 569.430, inclusive, shall not be construed to conflict with the provisions of any federal law or regulation governing the hunting or driving of horses, mares, colts or burros by means of airborne or motor-driven vehicles.] *any wild horses, mares, colts or burros.*

Senate Bill No. 420—Committee on Government Affairs

CHAPTER 403

AN ACT relating to county hospitals and districts; adding to the kinds of bonds which may be issued for hospital purposes; and providing other matters properly relating thereto.

[Approved May 7, 1977]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 450.290 is hereby amended to read as follows:

450.290 1. Subject to the provisions of NRS 450.010 to 450.510,

1 as "NEVADA SPINE CLINIC";
2 VALLEY HEALTH SYSTEM, LLC,
3 a Delaware limited liability company
4 doing business as "CENTENNIAL
5 HILLS HOSPITAL"; UHS OF
6 DELAWARE, INC., a Delaware
7 corporation also doing business as
8 "CENTENNIAL HILLS
9 HOSPITAL"; DOES 1-X, inclusive;
10 and ROE CORPORATIONS I-X,
11 inclusive,

Defendant.

11 This matter having come for before the Court on August 5, 2019, on
12 *Plaintiff's Motion for Mistrial*; Plaintiff Jason George Landess, appeared by
13 and through his counsel of record, Martin A. Little, Esq. of Howard & Howard
14 Attorneys PLLC, and James J. Jimmerson, Esq. of Jimmerson Law Firm, P.C.
15 Defendants Kevin Paul Debiparshad, M.D., Kevin P. Debiparshad PLLC d/b/a
16 Synergy Spine and Orthopedics, and Debiparshad Professional Services d/b/a
17 Synergy Spine and Orthopedics, Jaswinder S. Grover, M.D., Ltd. d/b/a Nevada
18 Spine Clinic, appeared by and through their counsel of record, S. Brent Vogel,
19 Esq. and Katherine J. Gordon, Esq. of Lewis Brisbois Bisgaard & Smith LLP.

20 The Court having reviewed the papers and pleadings on file, having heard
21 oral argument, and being fully advised in the premises, and good cause
22 appearing, hereby Finds, Concludes, and Orders as follows:

FINDINGS OF FACT

23
24 1. On Friday, August 2, 2019, during the cross-examination of
25 Plaintiff's witness, Jonathan Dariyanani, counsel for Defendant, Ms. Gordon
26 moved to admit Plaintiff's Exhibit 56, emails produced to Defendant by
27 Jonathan Dariyanani. After Plaintiff made no objection, Ms. Gordon read a
28 highlighted portion from a November 2016 email, at Exhibit 56, page 44.

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2. Specifically, the following questions were asked at Tr. 161:3-162:8:

Q Mr. Dariyanani, you testified earlier that Mr. Landess is a beautiful person in your mind.

Q And you respect him a great deal?

Q And this was, that portion anyway, is consistent with your impression of Mr. Landess for at least the past five years, I believe you said?

Q This is -- I'm going to try to blow it up, but this is an email that Mr. Landess sent to you and it's part of admitted Exhibit 56, dated November 15th, 2016. It's quite long, but the part I'm interested in is Mr. Landess appears to be giving a summary of his prior work experience and some experiences that he has gone through in his life.

Q And the highlighted portion starts, "So I got a job working in a pool hall on weekends." And I'll represent to you, Mr. Landess testified earlier about working in a pool hall.

Q "To supplement my regular job of working in a sweat factory with a lot of Mexicans, and taught myself how to play Snooker. I became so good at it, that I developed a route in East L.A. hustling Mexicans, blacks, and rednecks on Fridays, which was usually payday. From that lesson, I learned how to use my skill to make money by taking risk, serious risk." When you read this, did that change your impression of Mr. Landess at all?

Q Did he sound apologetic in this email about hustling people before?

Q Does it sound to you at all from this email that he's bragging about his past as a hustler, and particularly hustling Mexicans, blacks, and rednecks on payday?

Q He talks about a time when he bought a truck stop here in Las Vegas when the Mexican laborer stole everything that wasn't welded to the ground. You still don't take that as being at all a racist comment?

1 3. Immediately following the testimony, outside the presence of the
2 jury, Plaintiff's counsel moved to strike the email and testimony, and placed on
3 the record its concerns that Plaintiff would no longer be able to obtain a fair and
4 unbiased verdict. The Motion to strike was denied, and the Court indicated that
5 counsel could file a trial brief on the issue, but the Court remained concerned
6 that with what the jury had heard, the Court could not be confident in justice
7 being served.

8 4. After this exchange sank in with the Court, the Court knew it had
9 to deal with this issue. The Court realized that there was an African-American
10 woman on the jury named Adleen Stidhum to whom the parties gave a birthday
11 card during the trial, celebrating her birthday with cupcakes. The Court
12 immediately imagined how she would feel, as well as the other jurors of
13 African-American and/or Hispanic descent.

14 5. The Court noted that if there had been a motion in limine to
15 preclude the email, the Court would have precluded it as prejudicial. Even
16 under a legal relevancy balancing test, though it might have some relevance as
17 to Plaintiff's character, it would be excluded as prejudicial even if probative or
18 relevant.

19 6. The Court was concerned regarding how to resolve the situation
20 when Plaintiff, in good faith, did not know that email was in the exhibit that
21 was stipulated to, and Defendants knew and used the email. The Court does
22 not believe Ms. Gordon used the email with an intent to be unethical, but the
23 effect of the same remained a problem that must be resolved.

24 7. It was enough of an issue that the Court had an off the record
25 meeting with counsel on Friday evening, discussing the same with the parties
26 and exploring whether there was any possibility of settling the case, with a
27 serious specter of a potential mistrial in the air, particularly after two weeks of
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1 substantial effort and cost. The Court offered its comments and thoughts with
2 respect to the case and offered to assist with settlement discussions if the parties
3 desired to pursue the same. The Court offered its belief that Plaintiff had proved
4 its case as to negligence, but that Plaintiff likely would not be awarded all of
5 the damages he was seeking, particularly relating to stock options. The Court
6 noted the costs that were associated with the Trial, and that in the event of a
7 mistrial, those costs, including experts, would need to be incurred again.

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9 8. Plaintiff filed a formal Motion for Mistrial and for Attorneys' Fees
10 and Costs on August 4, 2019, and the Court heard argument from both sides on
11 August 5, 2019 before issuing these Findings.

12 9. Neither of the parties was present at Friday's conference, and
13 ultimately, Defendant declined to entertain settlement.

14 10. Factually, prior to trial during the discovery process, it was
15 relevant and necessary to cause Cognotion, the company, through its CEO,
16 Jonathan Dariyanani, to disclose employment-based evidence, whether it was
17 the employment contract or information having to do with the stock options or
18 things that may have led to the employment itself or contemporaneous with the
19 employment itself. It is evident to the Court that that discovery effort on
20 Cognotion's/Mr. Dariyanani's part was taken seriously, because a number of
21 items were disclosed, including emails and the item in question, which was
22 apparently in that batch of items disclosed.

23 11. It is readily apparent and admitted to, and specifically a finding of
24 fact of this Court, that though the Plaintiff endeavored in the discovery process
25 to disclose to the Defendants the Cognotion documents, and did so, it is fair to
26 conclude that due to the shortness of the discovery timeline and the last minute
27 effort having to do with this damage item, which did take place closer in time
28 to Trial, as well as the extent of the volume of the paperwork disclosed, that

1 Plaintiff did not see or know about the content of that email at page 44 of Exhibit
2 56. This is also likely due to the fact that the represented party, and Mr.
3 Dariyanani, are both also lawyers, and it would be reasonable for Plaintiff's
4 counsel to presume that they had reviewed the documents. Either way, it is
5 clear to the Court that there was a mistake made in failing to notice the
6 document and inadvertently disclosing it and not objecting to it.

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8 12. It is further clear to the Court that the admission of the document
9 was inadvertent because Plaintiff did bring pretrial motions to preclude Mr.
10 Landess' bankruptcies, gambling debt, and litigations as other character
11 evidence. It is clear to the Court that if Plaintiff would have seen this email, he
12 would likewise have brought a pretrial Motion to exclude it.

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14 13. Upon reflection, the Court would have, one hundred percent,
15 absolutely certain, granted a motion in limine to preclude the email referencing
16 "hustling Mexicans, blacks, and rednecks," and where "the Mexican labor stole
17 everything that wasn't welt to the ground." The issue of whether or not Mr.
18 Landess is a racist or not is not relevant, and even if it relevant, if character is
19 an issue, whether he is a racist or not, is more prejudicial than probative. NRS
20 48.035.

21
22 14. When Trial commenced, however, Exhibit 56 was marked and put
23 into one of the many volumes of binders as Plaintiff's Trial Exhibit 56, including
24 page 56-00044, which was part of thousands of pages of potential exhibits
25 submitted by Plaintiff. That exhibit was then offered not by the Plaintiff, but
26 rather by the Defendants, without objection by the Plaintiff to the admission of
27 the entire Exhibit 56, including pages 44-45, on day 10 of the Trial, Friday,
28 August 2, 2019. The Court finds that while Defendant offered a disclosed
document that was marked as a Plaintiff's exhibit, 79 pages of emails produced

1 by Jonathan Dariyanani directly to Defendant, at the time of the admission,
2 Plaintiff still did not know that email was actually in the exhibit.

3 15. When Mr. Dariyanani testified, he did testify that Plaintiff was a
4 "beautiful but flawed" person, and that he was trustworthy. The Court finds
5 that did open the door to character evidence, as the issue of character was put
6 into the trial by the Plaintiff. Thus, the Defendants had the ability to offer their
7 own character evidence to try to impeach Mr. Daryanani. The issue, however,
8 was the extent to which that was done and the prejudice Defendant's actions
9 caused.

10 16. By the email itself, a reasonable person could conclude only one
11 thing, which is that is that the author is racist. The Court is not drawing a
12 conclusion that Mr. Landess is racist, but based upon the words of the email
13 read to the jury, a reasonable conclusion would be drawn that the author of these
14 two paragraphs is racist.

15 17. The question for the Court, as a matter of law, is whether in this
16 case, which is not an employment discrimination case or anything where the
17 issue of race is clearly an element of the case, can the jury in this civil case
18 consider the issue, even with the opening of the door as to character, of whether
19 Mr. Landess is a racist? The Court finds that the clear answer to that is no, that
20 that is not a basis upon which this jury should or can decide the verdict.

21 18. The Court finds that it is evident that Defendants had to know that
22 the Plaintiff made a mistake and did not realize this item was in Exhibit 56,
23 particularly because of the motions in limine that were filed by Plaintiff to
24 preclude other character evidence, in conjunction with the aggressiveness and
25 zealotness of counsel throughout the trial. The email was one of the many
26 pages of Exhibit 56 and the Plaintiff did not know about it.
27

28

1 19. Defendants took advantage of that mistake. Plaintiff confirms that
2 he did not know the email at page 44 was in the group of 79 pages of emails in
3 Exhibit 56, which otherwise all related to Cognotion, and that the same was
4 inadvertently admitted. Once the email was admitted and before the jury,
5 Plaintiff could not object in front of the jury without further calling attention to
6 the email, and because it had been admitted. Once the highlighted language was
7 put before the jury, there was no contemporaneous objection from Plaintiff, nor
8 *sua sponte* interjection from the Court, that could remedy it, as in a matter of
9 seconds, the words were there for the jury to see.

10 20. Indeed, during the off the record discussion on August 2, 2019,
11 when Mr. Jimmerson initially moved to strike the email, Ms. Gordon stated that
12 she "kept waiting" for the Plaintiff to object to her use of Exhibit 56, page 44,
13 and "when the Plaintiff did not object," the Defendant then went forward to use
14 the email. Mr. Vogel echoed that sentiment on Monday, August 5, 2019, stating
15 "We gave them every opportunity to object to it. Ms. Gordon asked repeated
16 questions before coming to that union. And, yet, I guess it -- it comes down to,
17 you're asking could we have done something to try to remove that. I suppose in
18 hindsight I guess we could have. But I don't think we had to." *Tr.* 42:5-9. The
19 Defendants' statements have led the Court to believe that the Defendants knew
20 that their use of the Exhibit was objectionable, and would be objectionable to
21 the Plaintiff, and possibly to the Court, and nevertheless the Defendants
22 continued to use and inject the email before the jury in the fashion that
23 precluded Plaintiff from being able to effectively respond. In arguing to the
24 Court that they "waited for Plaintiff to object" and that Plaintiff "did nothing
25 about it," Defendants evidence a consciousness of guilt and of wrongdoing.
26 That consciousness of wrongdoing suggests that Defendants and their counsel
27 were the legal cause of the mistrial.
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1 21. The Court finds that because of the prejudicial nature of the
2 document, Defendants could have asked for a sidebar to discuss the email
3 before showing it to the jury, or redacted the inflammatory words, which may
4 have resulted in usable, admissible, but not overly prejudicial, evidence.

5 22. When asked whether Defendants believe that the jury could
6 consider whether Mr. Landess is a racist, Ms. Gordon replied that she believes
7 she is "allowed to use impeachment evidence that has not been objected to, and
8 has been admitted into evidence by stipulation," that the "burden should not be
9 shifted" to Defendant "to assist with eliminating or reducing the prejudicial
10 value of that piece of evidence," and that "motive is always relevant in terms of
11 Mr. Landess' reason for setting up" Defendants in Defendants' view of the case.
12 **The Defendant confirms that whether Mr. Landess is a racist is something the**
13 **jury should weigh, that it is admissible, and it is evidence that they should**
14 **consider. Defendants' counsel made it clear to the Court Defendants' knowing**
15 **and intentional use of Exhibit 56, page 44.** (2)

16 23. The Court finds that if the document, admitted as Exhibit 56, page
17 44, where not used with Mr. Dariyanani, but instead was used in closing
18 argument and put before the jury, it would clearly be considered misconduct
19 under the *Lioce* standard. The Court express concerns that using this admitted
20 piece of evidence, Defendant has now interjected a racial issue into the trial.

21 24. In the Court's view, even if well-intended by the Defendants to
22 cross-examine when character is now an issue, the Defendants made a mistake
23 in now interjecting the issue of racism into the trial. Even now, it appears to the
24 Court that the Defendants' position is that the jury can consider the issue of
25 whether Mr. Landess is a racist or not. With that, the Court disagrees with the
26 Defendants to the fiber of its existence as a person and a judge. Ms. Brazil is an
27 African-American. Ms. Stidhum is an African-American. Upon information
28

1 and belief, Mr. Cardoza and Ms. Asuncion are Hispanic. Since we have two
2 African-American jurors and potentially two Hispanic jurors, Defendants'
3 interjecting the issue of Mr. Landess allegedly being a racist into the case was
4 improper.

5 25. The Court makes a specific finding that under all the
6 circumstances that described hereinabove, they do amount to such an
7 overwhelming nature that reaching a fair result is impossible.

8 26. The Court further specifically finds that this error prevents the jury
9 from reaching a verdict that is fair and just under any circumstance.

10 27. The Court further specifically finds that there is no curable
11 instruction which could un-ring the bell that has been rung, especially as to
12 those four jurors, but really with all ten jurors.

13 28. The Court finds that this decision was, as a result, "manifestly
14 necessary" under the meaning of the law.

15 29. The Court finds that the fact that the jury has now sat with these
16 comments for the weekend, and particularly in light of the events of this past
17 weekend, with news reports of an individual who drove nine hours across Texas
18 to go to El Paso to kill Mexicans, followed by a shooting in Dayton, Ohio where
19 African Americans were killed, only heightens the need for a mistrial. While
20 these recent events do not focus upon the Court's ruling, the similarity of race
21 and its prejudicial effect cannot be underestimated. It is the Court's strong view
22 that racial discrimination cannot be a basis upon which this civil jury can give
23 their decision regardless, but certainly the events of the weekend aggravated the
24 situation.

25 30. The Court does not reasonably think that under the circumstances,
26 the jury can give a fair verdict and not base the decision, at least in part, on the
27 issue of whether Mr. Landess is a racist.
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1 31. While mistakes were made on both sides, the Court must
2 separately determine which side is legally responsible for causing a mistrial, for
3 purposes of considering Plaintiff's request for attorneys' fees and costs. That
4 issue must be separately briefed, with a separate hearing held. Plaintiff made a
5 mistake in not catching the item and stopping its use, but the Defendants made
6 a mistake in using it.

7 32. If any if these Findings of Fact are more appropriately a
8 Conclusion of Law, so shall they be deemed.

9 **CONCLUSIONS OF LAW**

10 33. The decision to grant a mistrial is within the sound discretion of
11 the trial court and will not be overturned absent an abuse of that discretion.
12 *Khoury v. Seastrand*, 132 Nev. Adv. Op. 52, 377 P.3d 81, 86 (2016).

13 34. "A defendant's request for a mistrial may be granted for any
14 number of reasons where some prejudice occurs that prevents the defendant
15 from receiving a fair trial." *Rudin v. State*, 120 Nev. 121, 144, 86 P.3d 572, 587
16 (2004).

17 35. A district court may also declare a mistrial sua sponte where
18 inherently prejudicial conduct occurs during the proceedings. See *Baker v.*
19 *State*, 89 Nev. 87, 88, 506 P.2d 1261, 1261 (1973).

20 36. The Nevada Supreme Court has held that "[g]reat deference is due
21 a trial judge's decision to declare a mistrial based on his assessment of the
22 prejudicial impact of improper argument on the jury." *Glover v. Eighth Judicial*
23 *Dist. Court of State ex rel. County of Clark*, 125 Nev. 691, 703, 220 P.3d 684,
24 693 (2009), as corrected on denial of reh'g (Feb. 17, 2010).

25 37. This is so "[b]ecause the trial judge is in the advantageous position
26 of listening to the tone and tenor of the arguments and observes the trial
27 presentation firsthand, the trial judge is in the best position to assess the impact
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1 on the jury.” *Moore v. State*, 67281, 2015 WL 4503341, at *2 (Nev. App. July
2 17, 2015) (citing *Glover*, 165 Nev. at 703, 220 P.3d at 693); see also *Payne v.*
3 *Fiesta Corp.*, 543 S.W.3d 109, 123 (Mo. Ct. App. 2018) (“We recognize that
4 the trial court is better positioned to assess the prejudicial effect that improper
5 evidence has on the jury.”).

6 38. The Nevada Supreme Court in *Hylton v. Eighth Judicial District*
7 *Court*, 103 Nev 418, 423, 743 P. 2d 622, 626 (1970) said that a “manifest
8 necessity” to declare a mistrial may arise in situations which there is
9 interference with the administration of honest, fair, even-handed justice to
10 either both, or any of the parties to receive.

11 39. Only relevant evidence is admissible. “Relevant evidence means
12 evidence which has any tendency to make the existence of any fact that is of
13 consequence to the determination of the action more or less probable than it
14 would be without the evidence.” *NRS 48.015*. Here, Defendant’s suggestion that
15 Landess is a racist has absolutely no bearing on any fact of consequence in this
16 medical malpractice case. Even if this suggestion had some conceivable
17 relevance, its probative value would be far outweighed by the unfair prejudice
18 that it presents. *See NRS 48.035(1)*.

19 40. Moreover, “character evidence is generally inadmissible in civil
20 cases.” *In re Janac*, 407 B.R. 540, 548 (Bankr. S.D.N.Y. 2009). A party may
21 open the door to character evidence when he chooses to place his own good
22 character at issue. *See Newman v. State*, 129 Nev. 222, 235, 298 P.3d 1171,
23 1180 (2013). However, “[a]n inadvertent or nonresponsive answer by a witness
24 that invokes the [party’s] good character . . . does not automatically put his
25 character at issue so as to open the door to character evidence.” *Montgomery v.*
26 *State*, 828 S.E.2d 620, 624 (Ga. Ct. App. 2019) (citing Christopher B. Mueller
27 et al., *FEDERAL EVIDENCE* § 4:43 (4th ed. updated July 2018) (“It seems
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1 that if a . . . witness gives a nonresponsive answer that contains an endorsement
2 of the good character of the defendant . . . the [opposing party] should not be
3 allowed to exploit this situation by cross-examining on bad acts or offering
4 other negative character evidence.”).

5 41. Mr. Dariyanani’s statement that he believed Landess to be a
6 “beautiful person” was a non-response response to the preceding question, and
7 was a gratuitous addition to his testimony. If Defendants wanted the jury to
8 disregard this statement, their remedy was a simple motion to strike. See
9 *Wiggins v. State*, 778 S.W.2d 877, 892 (Tex. App. 1989) (holding that motion
10 to strike—and not introduction of rebuttal evidence—was proper non-
11 responsive statement from witness attesting to party’s good character).

12 42. Evidence which is admitted may generally be considered for any
13 legal purpose for which it is admissible[.]” *Westland Nursing Home, Inc. v.*
14 *Benson*, 517 P.2d 862, 866 (Colo App. 1974); see also *Morse Boulger*
15 *Destructor Co. v. Arnoni*, 376 Pa. 57, 65 (1954) (“[E]vidence may be
16 considered for any purpose for which it is competent.”). Evidence may not,
17 however, be considered for an inadmissible purpose, nor may it be used for an
18 improper purpose. Irrelevant evidence is never admissible, and using irrelevant
19 evidence for the sole purpose of causing unfair prejudice is improper.

20 43. “Waiver requires the intentional relinquishment of a known right.”
21 *Nevada Yellow Cab Corp. v. District Court*, 123 Nev. 44, 49, 152 P.3d 737, 740
22 (2007). “[T]o be effective, a waiver must occur with full knowledge of all
23 material facts.” *State, Univ. & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 987,
24 103 P.3d 8, 18 (2004).

25 44. In *State v. White*, 678 S.E.2d 33, 37 (W. Va. 2009), the Court
26 concluded that “counsel’s failure to object to the introduction of R.C.’s
27 statement cannot be characterized as a knowing and intentional waiver. The
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1 Appellant's counsel contends that he was unaware of the existence of the final
2 page upon which the reference was contained. In his brief to this Court,
3 Appellant's counsel theorized that the inadvertent admission was likely caused
4 by a clerical error and contends that the copy of the victim statement in
5 Appellant's counsel's file did not include a final page. For purposes of this
6 discussion and based upon the record before this Court, we accept the
7 declaration of Appellant's counsel regarding his lack of knowledge of the
8 existence of the reference to Appellant's status as a sex offender. Assuming such
9 veracity of Appellant's counsel, we must acknowledge that one cannot
10 knowingly and intentionally waive something of which one has no knowledge.
11 *Id.*, citing *State v. Layton*, 189 W.Va. 470, 432 S.E.2d 740 (1993)(with regard
12 to waiver of a right to be present at trial, "the defendant could not waive what
13 he did not know had occurred." 189 W.Va. at 500, 432 S.E.2d at 770).

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15 45. A mistrial is necessary where unfair prejudice is so drastic that a
16 curative instruction cannot correct the damage. *Pope v. Babick*, 178 Cal. Rptr.
17 3d 42, 50 (2014). In particular, misconduct and inflammatory statements from
18 opposing counsel are sufficient basis for granting a new trial where the district
19 court concludes that they create substantial bias in the jury. See, e.g., *Lioce v.*
20 *Cohen*, 124 Nev. 1, 17, 174 P.3d 970, 980 (2008); *Commil USA, LLC v. Cisco*
21 *Sys., Inc.*, 720 F.3d 1361, 1370 (Fed. Cir. 2013), vacated in part on other
22 grounds, 135 S. Ct. 1920 (2015).

23 46. The appellate court additionally reasoned that it would not
24 substitute its judgment for that of the district court, "whose on-the-scene
25 assessment of the prejudicial effect, if any, carries considerable weight." *Id.* at
26 1371 (citing *United States v. Munoz*, 150 F.3d 401, 415 (5th Cir.1998)).

27 47. Raising irrelevant and improper character evidence at issue taints
28 the entire trial. *Coastal Oil & Gas Corp. v. Garza Energy Tr.*, 268 S.W.3d 1,

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1 26 (Tex. 2008) (affirming grant of new trial where a memorandum referencing
2 “illiterate Mexicans” was “never used . . . in any relevant way [except] to create
3 unfair prejudice.”).

4 48. *State vs. Wilson*, 404 So.2d 968, 970, La. 1981, holds that where a
5 party’s reference to race raises such a sensitive matter that a single appeal to
6 racial prejudice furnishes grounds for a mistrial, a mere admonition to the jury
7 to disregard the remark is insufficient.

8 49. The caselaw is repetitive with that notion of “manifest necessity,”
9 defined in cases that talk about the concept of mistrial or even new trial, as “a
10 circumstance, which is of such an overwhelming nature that reaching a fair
11 verdict is impossible. It is a circumstance where an error occurs, which prevents
12 a jury from reaching a verdict.” *See, e.g. Glover v. Eighth Judicial Dist. Court*
13 *of State ex rel. Cty. of Clark*, 125 Nev. 691, 220 P.3d 684 (2009), as corrected
14 on denial of reh’g (Feb. 17, 2010). That case stands mostly for the proposition
15 that the trial judge has to have the power to declare a mistrial in appropriate
16 cases. The Court finds that this is the appropriate case, which is an easy decision
17 for this Court on the merits, though the decision itself was difficult.

18 50. The Court finds that *Lioce v. Cohen*, 124 Nev. 1, 174 P.3d 970
19 (2008) further provides guidance to the Court with respect to evidence that was
20 not objected to.

21 51. The Court provided the example that if Exhibit 56, which was in
22 evidence, was put up in closing, that under the definition given by the Supreme
23 Court of misconduct in the *Lioce* case, that likely that that would be seen as
24 misconduct. Whether it is with Mr. Dariyanani or whether it is in closing
25 argument, or both, it is clear that Defendants are urging the jury to at least in
26 part, render the verdict based upon race, based upon Mr. Landess allegedly
27 being a racist, based upon something that is emotional in nature. The idea,
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1 fairly, was to ask the jury to give the Defendants the verdict, whether it is the
2 whole verdict or reducing damages, because Mr. Landess is allegedly a racist.
3 That is impermissible.

4 52. Even if true, the law does not allow for that in this context. It is not
5 a fair verdict, not a fair trial, not a fair result to decide the case because the jury
6 believes someone is racist, rather than on the merits of the case, particularly
7 since this case is not about race.

8 53. The *Lioce* case is instructive regarding the concept of unobjected
9 to evidence, in this case being the admitted exhibit. There, the Nevada Supreme
10 Court said "When a party's objection to an improper argument is sustained and
11 the jury is admonished regarding the argument, that party bears the burden of
12 demonstrating that the objection and admonishment could not cure the
13 misconduct's effect." The Court continues, "The non-offending attorney,"
14 which in this case would be the Plaintiff's side, "is placed in a difficult position
15 of having to make objections before the trier of fact, which might cast a negative
16 impression on the attorney and the party the attorney represents emphasizing
17 the improper point." This is consistent with Mr. Jimmerson's explanation about
18 why the document was not objected to after it was put up before the jury.

19 54. While this is a request for a mistrial and not a new trial, the *Lioce*
20 case provides guidance as to unobjected to evidence. The Nevada Supreme
21 Court said "The proper standard for the district court to use when deciding in
22 this context a motion for new trial based upon unobjected to attorney
23 misconduct, is as follows: 1) the district court shall first conclude that the failure
24 to object is critical and the district court must treat the attorney misconduct issue
25 as have been waived unless plain error exists." In this case, though the Plaintiff
26 acquiesced in the admittance of Exhibit 56, and though the Plaintiff did not
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1 contemporaneously object when Ms. Gordon put the item up, a plain error
2 review still has to be held.

3 **55. *Lioce* states: "In deciding whether there is plain error, the district**
4 **court must then determine whether the complaining party met its burden of**
5 **demonstrating that its case is a rare circumstance in which the attorney**
6 **misconduct amounted to irreparable and fundamental error." Here, it is the**
7 **Court's specific finding that this did result in irreparable and fundamental error.**

8 **56. The Supreme Court continued that irreparable and fundamental**
9 **error is, "Error that results in a substantial impairment of justice or denial of**
10 **fundamental rights such that but for the misconduct, the verdict would have**
11 **been different." The Court finds that this provides guidance, and that this bell**
12 **is one that cannot be unring. Even if the Court had granted a motion to strike,**
13 **there is no curative instruction which would cause the jury, particularly the four**
14 **members earlier referenced, to now disregard the author's racial discriminatory**
15 **comments.**

16 **57. With *Lioce* as guidance, which discusses arguments that should**
17 **not be made as "attorney misconduct," you do not have to have bad intent to**
18 **make an argument that amounts to attorney misconduct. It could be a mistake**
19 **where counsel says something in a closing argument that by definition under**
20 **the law is misconduct, for purposes of an improper closing argument, without**
21 **it being ethical misconduct. Here, the impact of putting up evidence that implies**
22 **that Mr. Landess is a racist in front of a jury in a medical malpractice case makes**
23 **it impossible now, after all the effort, to have a fair trial.**

24 **58. "A claim of misconduct cannot be defended with an argument that**
25 **the misconduct was unintentional. Either deliberate or unintentional**
26 **misconduct can require that a party receive a new trial. The relevant inquiry is**
27 **what impact the misconduct had on the trial, not whether the attorney intended**
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the misconduct.” *Lioce v. Cohen*, 124 Nev. 1, 25, 174 P.3d 970, 985, 2008 Nev. LEXIS 1, *44 (2008).

59. In *Lioce*, Mr. Emerson was referred to the bar, and in *Lioce*, as well as *Emerson v. Eighth Judicial District Court*, 127 Nev. 672, 263 P.3d 224 (2011), the Supreme Court noted that argument could be given without any bad intent, but yet be seen as “misconduct” if it makes a fair verdict impossible. The Court does not believe that Defendant’s counsel, here, had bad intent, but did not fully realize the impact their actions could have on the fair disposition of the case.

60. If any if these Conclusions of Law are more appropriately a Finding of Fact, so shall they be deemed.

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ORDER

NOW, THEREFORE:

IT IS HEREBY ORDERED that *Plaintiff's Motion for Mistrial* is hereby GRANTED. The jury is dismissed, and a new Trial shall be scheduled.


IT IS FURTHER ORDERED that Plaintiff's Motion for Attorneys' Fees and Costs is hereby deferred until hearing on September 10, 2019 at 1:30 p.m. Defendants shall have until August 19, 2019 to file an Opposition to Plaintiff's request for attorneys' fees and costs, and Plaintiff shall have until September 3, 2019 to file a Reply.

Dated this 9 day of ^{Sept} August, 2019.



DISTRICT COURT JUDGE
ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32
Approved as to form and content:
LEWIS BRISBOIS BISGAARD & SMITH LLP

Submitted by:
JIMMERSON LAW FIRM, P.C.


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1 maybe five to ten minutes between Defendant's request for admissibility
2 of Exhibit 56, the Plaintiff's granting the same through counsel,
3 specifically myself, and the use of the offensive email, the Plaintiff and
4 counsel was not aware of the content of this one specific email.

5 But more importantly as to the legal principle, the use of
6 inadmissible evidence, even though admitted through inadvertence,
7 mistake, or accident for an improper purpose is clearly improper, wrong,
8 and should not occur. And the case law from the Nevada Supreme
9 Court, as well as several other courts we've cited is very clear. The
10 Court's own research revealed the same.

11 The other part of it is is that the -- both the Nevada Supreme
12 Court and other cases have held that information, or evidence, or
13 comments about race, in particular, are very much explosive, very much
14 bomb-like, and are not capable of being reversed by curative instruction.
15 And that I think is very clear from several cases in several courts
16 throughout the United States. And that is exactly what was done here.

17 Respectfully, the Defense had in mind specifically this
18 examination. They sought the admission of Exhibit 56. They had this
19 particular email at their fingerprints. They prepared to read it. And they
20 placed it onto the ELMO with highlighted language, with the intent of
21 exposing that language to the jury. You know, it's almost as if in cross-
22 examination the question is more important than the answer, because
23 the question is what creates the prejudice that cannot be undone, and
24 which it was effective here.

25 Furthermore, the question is truly a non sequitur. It was truly

1 purpose, and I don't think that the burden for how prejudicial a piece of
2 evidence that Plaintiff disclosed and stipulated into evidence, the
3 prejudicial nature of it should not be -- have to be addressed by the
4 Defense, and out of curiosity or out of doing their job for them, I don't
5 know, but I know that admissible evidence, it can be used for any
6 purpose.

7 And I know that Plaintiff initially elicited and had
8 impermissible and unethical character evidence. What the Defense is
9 allowed to do in response to that, and what I actually have an ethical
10 duty to my client, a person of color to do, is to use that evidence in
11 impeachment. I'm allowed to do it, I should do it, and I did do it, and
12 they did nothing about it.

13 THE COURT: So you think that the jury is allowed to
14 consider whether Mr. Landess is a racist?

15 MS. GORDON: I think that I am allowed to use impeachment
16 evidence that has not been objected to, and has been admitted into
17 evidence by stipulation. I absolutely think I'm allowed to use it. I should
18 use it on behalf of my client, and the burden should not be shifted to me
19 to assist with eliminating or reducing the prejudicial value of that piece
20 of evidence.

21 Dr. Debiparshad was asked about his race during his
22 deposition. Mr. Daryanani went on for the first 15, 20 minutes of his
23 testimony about his race. It's not new. Motive is always relevant in
24 terms of Mr. Landess' reason for setting up our, you know, view on this
25 case --

1 THE COURT: Um-hum.

2 MS. GORDON: -- setting up Dr. Debiparshad. I don't think
3 it's completely irrelevant, and you know, it hurts. It hurts. I don't care.
4 That's our job, and I'm sorry that it hurts and it's damaging, but it's not
5 so prejudicial that it shouldn't be considered at all. They opened the
6 door, and we're allowed to use it. I have an ethical obligation to use it.
7 We're here, Your Honor, because of a cumulative effect of Plaintiff's
8 errors. They disclosed it, they redisclosed it, they stipulated to its
9 admission, they didn't object to it, they didn't ask for a sidebar at any
10 point.

11 We're here because of their error. Trying to shift the burden
12 for that error to us now, it's absurd. It just is, and trying to make it look
13 like an ethical issue on the Defense side for using this piece of evidence
14 is absurd, as well.

15 THE COURT: All right. Just to be sure, it sounds like what
16 you're saying to me is that, in your view, under all of the circumstances
17 that you've already described or that you otherwise know, that whether
18 Mr. Landess is a racist is something the jury should weigh and it's
19 admissible, and it's evidence that they should consider.

20 MS. GORDON: I think that the entirety of the passages from
21 that email is impeachment testimony to the character evidence that was
22 improperly and unethically elicited by Plaintiff, and I don't know that it's
23 so much exactly what that bad character evidence consists of --

24 THE COURT: Um-hum.

25 MS. GORDON: -- it's bad character evidence that we're

1 allowed to use as impeachment.

2 I don't know, Your Honor, and perhaps you found cases that I
3 did not, but I don't know that there is a subsection under impeachment,
4 and what evidence we can use as impeachment that says, oh you can
5 use impeachment evidence, but you can't if it has to do with race. You
6 can use impeachment evidence, but you can't, if it has to do with -- I
7 don't know. There's no, you know, subsection --

8 THE COURT: Okay, let me take it from a different perspective
9 then. Let's assume you never put that item up in the questioning of Mr.
10 Daryanani. However, it's admitted as Exhibit 56, page 44. Let's further
11 assume that then, the first time you ever use it, is in your closing
12 argument, and you put it up just the same way you did with Mr.
13 Daryanani. I take it you're going to tell me that that's not -- essentially,
14 it's already misconduct under the *Lioce* standard. In other words, you
15 can tell me that, at least in part, you could make a closing argument that
16 Mr. Landess is a racist and the jury ought to consider that.

17 MS. GORDON: I'm saying that respectfully, I don't know that
18 that has anything to do with what we're talking about now, because we
19 were talking about impeachment evidence for someone who improperly
20 gave character evidence, and I was impeaching him.

21 THE COURT: Well, let me explain that. Let me explain. If
22 you're telling me it's impeachment evidence, that means it is evidence,
23 and that means you could argue the evidence. I just think this is a good
24 illustration of the concern. I mean, you and your wisdom used it for
25 impeachment. I get that, but it's evidence. And so I'm just trying to see

1 and leaves me alone.

2 I was hoping to be done to at least have a Sunday for good
3 health reasons, but unfortunately, that didn't happen, so I talked her into
4 going to yoga and grocery shopping without me yesterday, which she
5 went and did. And all the while, while that's happening, while I'm at
6 home by myself, you know, as I'm on my laptop, and I'm actually half the
7 time corresponding with my law clerk, who was nice enough to work on
8 Saturday with me remotely by emails and such.

9 It comes to my attention that on pretty much every 24/7 news
10 station for the entire weekend there's a story about someone who drove
11 nine hours across Texas -- nine hours across Texas to go to El Paso and
12 picked that place because in the Walmart in El Paso there would be those
13 from Mexico shopping -- that he was going to go shoot and kill, as a hate
14 crime. That's what seemed to be the upshot of that circumstance.

15 Okay. Mr. Landess may take this as a criticism. I don't really
16 mean it that much, but some would argue he drove nine hours to go kill
17 Mexicans in his mind. I'm sure that's what he thought. That's exactly
18 what I'm dealing with in this thing.

19 Okay. Then later that night what happens in Dayton? Are
20 you kidding? Another one. In this situation African Americans are killed.
21 And is that part of another hate-based incident?

22 None of that really matters to this decision, because it is my
23 strong view that in this case racial discrimination can't be a basis upon
24 which this civil jury can give their decision, but it's not lost on me that
25 it's highly likely, unless Mr. Cardoza, and Ms. Asuncion, Ms. Brazil, and

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1 Stidhum put their heads in the sand and didn't watch any news, or have
2 a cell phone, or a have a friend, or have a family, or go to church, or do
3 anything, that this is out there to just aggravate what we already have as
4 my view being a big problem.

5 Bottom line is, how in the world can we expect this jury,
6 which is the verse -- and by the way, none of those people are alternates,
7 because we decided before trial that seats 9 and 10 would be the
8 alternates, so they're all four deliberating jurors -- how in the world can
9 we reasonably think that they're going to give a fair verdict and not base
10 the whole decision, at least in part, on the issue of whether Mr. Landess
11 is a racist.

12 That's the basis for the decision. The Plaintiffs can draft the
13 order. And so concludes the most difficult thing I've done since I've
14 been here.

15 Anything else from either side?

16 MR. JIMMERSON: Yes, Your Honor. Relative to the briefing
17 on the cost matter, in light of this, I don't see a need for an expeditious
18 order, or shortening time. Fourteen days from today would be an
19 approximately time for the Defense to file their opposition, and then we
20 would file the reply in the normal course, and you would give us a
21 hearing date sometime about 30 days from now.

22 THE COURT: Well, okay. Mr. Vogel, how much time do you
23 want to respond to this pleading?

24 MR. VOGEL: That's fine. Two weeks is fine. I appreciate it.

25 THE COURT: Okay. Two weeks will be?

1 hustling Mexicans, Blacks and rednecks on Fridays, which
2 was usually payday. I learned that it's not a good idea to sell
3 something that you cannot control and protect, a lesson
4 reinforced on in life, when an attorney friend of mine and I
5 bought a truck stop here in Las Vegas, where the Mexican
6 laborers stole everything that wasn't welded to the ground."

7 I'm not saying that as a court, I'm drawing a conclusion that
8 Mr. Landess is racist. But what I am saying is, based upon these two
9 paragraphs, it is clear to me anyway that the author, a reasonable
10 conclusion would be drawn again, that the author of these two
11 paragraphs is racist.

12 So that's the issue. The question for me is, as a matter of
13 law, in this case, which is not an employment discrimination case or
14 anything where the issue of race is clearly an element of the case, can
15 our jury in this civil case consider the issue even with the opening of the
16 door as to character of whether Mr. Landess is a racist?

4/15
17 And I think the clear answer to that is no, that that is not a
18 basis upon which this jury should or can decide the verdict. Now I know
19 that the issue having to do with fees and costs regarding the decision I
20 made to grant this mistrial is left for another day because I am going to
21 give an opportunity for the, of course, for the Defense to file a pleading
22 on this, given that the pleading I did receive -- I didn't see it until this
23 morning. It was filed by the Plaintiffs. And so, we'll have to establish
24 that little briefing schedule.

25 But it is apparent to me, you know, especially in light of the

1 performance, but due to his inability to perform both mentally and
2 physically, to make meetings, to be able to withstand the pain that he
3 was going under, and that that continued from October 2017 through
4 June of 2018, whereupon the necessity of Cognotion to have someone to
5 fulfil this responsibility became so apparent and needy that he was -- a
6 new associate counsel -- or a new general counsel was found by the
7 name of David Kaplan.

8 What led to this -- what's being argued by the Defendant as
9 to the justification is that Mr. Dariyanani was asked by me a question
10 that did not call for in any regard character evidence at all. The question
11 was benign. The question was did you find it difficult -- or did Cognotion
12 find it difficult, or yourself, to terminate Mr. Landess. And he answered
13 yes. Please explain. Mr. Dariyanani's response was in some regards
14 very responsive to the question; in other regards, nonresponsive to the
15 question. The obligation to move to strike testimony that is
16 nonresponsive to the question lies with the Defendant, as well as with
17 the Plaintiff. In the sense, it's a shared responsibility that when a witness
18 responds in a way that in part is responsive, in other ways not, the
19 Defense certainly has that right and obligation to move to strike that.

20 The point in this is just simply first of all, to be accurate in
21 terms of the procedural posture of how we got here. Secondly is to
22 reveal that there was no opening of any door by the Plaintiff to character
23 evidence. Indeed, I think a fair statement can be made, and the Defense
24 don't argue to the contrary, that there was essentially no character
25 evidence offered by the Plaintiff or by the Defendant in this case

1 irrelevant to the testimony of Mr. Dariyanani. The nonresponsive words
2 of he's a beautiful man, as well as having he's both good and
3 [indiscernible], that and flawed, giving a balanced view, would be --
4 would not be the predicate for which to introduce such prejudicial
5 examination and the use of materials that are so prejudicial. I would say
6 as a footnote to this Court, as already stated on Friday of last, that were a
7 motion in limine submitted by the Plaintiff to the Court, or vice-versa
8 where the roles were reversed and the Defense were to seek a motion in
9 limine to preclude the use of the information on either side, the Court
10 would have granted the same -- or likely have granted the same. And
11 that clearly is the case here.

12 The premeditated nature of this examination by the
13 Defendant is clear. And it's -- it cannot be reasonably argued to the
14 contrary that the Defendant did not understand the radioactive nature of
15 the material that they were going to introduce in front of the jury,
16 recognizing that our jury is racially diverse, both in terms of African-
17 Americans, as well as Hispanic jurors, which there are two of each, out of
18 only eight regular jurors, plus two alternates. And I could be missing
19 other overtones. But those were the four most obvious.

20 And so the impact of the --

21 THE COURT: Which four do you think?

22 MR. JIMMERSON: Well, I believe that for African-Americans,
23 Juror Number 2, Ms. Brazil, and Juror Number 5, Ms. Stidhum, are
24 African-American women. And I believe that Juror Number 4 and Juror
25 Number 6, Ms. Asuncion and Mr. Cardoza are both Hispanics.

1 know this is not a new trial request. This is a mistrial request. But I think
2 that concept is similar, certainly. And I think the philosophy of this case
3 gives guidance to the Court is all I'm saying.

4 So, again, the Supreme Court says,

5 "The proper standard the district courts to use when deciding
6 a motion for new trial based upon unobjected to attorney
7 misconduct is as follows; one, the district court shall first
8 conclude that the failure to object is critical and the district
9 court must treat the attorney misconduct issue as have been
10 waived unless plain error exists."

11 So, there you go. That, I think clearly sends me a message
12 that though the Plaintiffs acquiesced in the admittance of 56 and though
13 the Plaintiffs did not contemporaneously object when Ms. Gordon put
14 the item up, a plain error review still has to be held.

15 In applying the plain error review, the next sentence in *Lioce*
16 says,

17 "In deciding whether there is plain error, the district court
18 must then determine whether the complaining party met its
19 burden of demonstrating that its case is a rare circumstance
20 in which the attorney misconduct amounted to irreparable
21 and fundamental error."

22 Again, that concept of misconduct notwithstanding. It is my
23 specific finding that this did resolved in irreparable and fundamental
24 error, as I have described.

25 The Supreme Court says in the next sentence that, the

8
1 use Exhibit 56, page 44 of Mr. Dariyanani. Well, unless something
2 happened that we wouldn't anticipate that being that somehow the
3 Plaintiffs come to discover that the item is in there and bring it to the
4 Court's attention prior to the Defense trying to use it in some stage of the
5 trial. Now it's in evidence.

6 And I asked that hypothetical question. Let's assume you
7 didn't use it with Dariyanani, but you did use it and put it up on the
8 ELMO in closing argument. It's my view that it's really the same
9 philosophical thought, its use of the item in front of the jury and asking
10 them to draw a conclusion relevant to the verdict based upon it.

11 My view is if that would have happened, if Exhibit 56, which
12 was in evidence, was put up in closing, that under the definition given by
13 the Supreme Court of misconduct in the *Lioce* case, that I think it's likely
14 that that would be seen as misconduct because whether it's with
15 Dariyanani or whether it's in closing or both, the clear -- and now I've
16 heard it in court this morning, it seems like the Defense is still taking this
17 position. They're urging the jury to at least in part, render the verdict
18 based upon race, based upon Mr. Landess being a racist, based upon
19 something that I think is emotional in nature. This is an emotional style
20 piece of evidence.

21 The idea, I think fairly and I'm sure the Defense would
22 disagree with this, but fairly is give us a verdict. Whether it's reducing
23 the damages or give us the whole verdict, because Mr. Landess is a
24 racist. That is impermissible.

25 Even if some universe in some universal sense, if he were a

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1 know this is not a new trial request. This is a mistrial request. But I think
2 that concept is similar, certainly. And I think the philosophy of this case
3 gives guidance to the Court is all I'm saying.

4 So, again, the Supreme Court says,

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20 in which the attorney misconduct amounted to irreparable
21 and fundamental error."

22 Again, that concept of misconduct notwithstanding. It is my
23 specific finding that this did resolved in irreparable and fundamental
24 error, as I have described.

25 The Supreme Court says in the next sentence that, the

1 mistakes that Plaintiff did make, and if they had not been made, we
2 wouldn't be here right now with maybe not bringing up that this is what
3 this bomb consists of.

4 THE COURT: Okay.

5 MS. GORDON: I think that was my distinction, because it's
6 hard for me to hear the words attorney misconduct, attorney
7 misconduct.

8 THE COURT: Yes.

9 MS. GORDON: I know you were citing a case --

10 THE COURT: I get that. I know.

11 MS. GORDON: -- but that's hard.

12 THE COURT: And that brings up something that maybe
13 should be part of this briefing; and that is, if you look at these -- I used
14 the Liocce case as guidance obviously, and they talk about these
15 arguments that you shouldn't make as "attorney misconduct", and that's
16 an interesting thing, because I don't know if you have to have bad intent
17 to make an argument that amounts to attorney misconduct; in other
18 words, maybe it could be a mistake, you know, you could say something
19 in a closing argument that by definition under the law is misconduct, for
20 purposes of improper closing argument, but we all know that
21 misconduct when it comes to attorneys sometimes is also connoted with
22 ethical misconduct.

23 Well, you know, I know in Liocce referred Mr. Emerson to the
24 bar, because guess who prosecuted Mr. Emerson for, you know, a few
25 days in Reno once upon a time when a guy name Dave Grundy

1 all of our common collective experience. And I call that upon opposing
2 counsel as well. We all have practiced law for extended periods of time.
3 We all have had life experiences that affect our being, and affect our
4 behavior, and our intellect, and our view of the world. In the courtroom
5 we've had many, many experiences that would guide us to our behavior
6 that we hope is appropriate and reasonable, and certainly ethical, and
7 within the rules.

8 And for the reasons that the Court noted in eight and a half
9 years of the judicial experience of this Court, and my many years of
10 experience, and opposing counsel's many years of experience, this is
11 unprecedented in the sense of the extraordinary way in which a
12 prejudicial piece of evidence that had no business ever to be admitted,
13 and certainly, no business to ever be used, even if it was inadvertently or
14 by accident admitted, can be undone. It's really -- because it's
15 unprecedented, it's hard to point to other fact situations in our court
16 system and in the administration of justice where such a taint could be
17 articulated and explained. And because it is so extraordinary and
18 unprecedented and devastating and outrageous, that mistrial is the only
19 remedy.

20 And may I say that the Court on Friday in the off-the-record
21 discussion, contrary to opposing representations as to what he
22 remembers, my remembrance of the Court was not that the case was
23 going Defendant's way, but the Court saw a mixed result; saw a leaning
24 of the majority of jurors with the Plaintiff, but that the unwillingness, the
25 Court perceived to grant the damages sought by the Plaintiff being a

1 And that's why we were actually quite careful making sure
2 we had the basis to bring it in, between Mr. Dariyanani's testimony, the
3 daughter's testimony, and Dr. Mills' testimony even. We felt that they
4 had opened the door quite wide on character. And that it was perfectly
5 appropriate to use it. We gave them every opportunity to object to it.
6 Ms. Gordon asked repeated questions before coming to that union. And,
7 yet, I guess it -- it comes down to, you're asking could we have done
8 something to try to remove that. I suppose in hindsight I guess we could
9 have. But I don't think we had to. Reason being is they stipulated it in
10 and it was -- when it's really without any sort of objection.

11 So now we're judging it by hindsight. And according to
12 *Nevada vs. Battle*, they can't establish prejudice, because they didn't
13 object to it.

14 THE COURT: Okay, all right. It's your motion, Mr.
15 Jimmerson, you get the last word.

16 MR. JIMMERSON: Thank you, Judge. Let me have those
17 two cups, please. Now the Nevada Supreme Court in *Hylton*,
18 H-Y-L-T-O-N *v. Eighth Judicial District Court*, 103 Nev 418, 423, 743 Pac.
19 2d 622, 626, 1970 Dec. said that a manifest necessity to declare a mistrial
20 may also arise in situations which there is interference with the
21 administration of honest, fair, even-handed justice to either both, or any
22 of the parties to receive. And in *State vs. Wilson*, 404 So.2d 968, 970, La.
23 1981, raises such a sensitive matter that a single appeal to racial
24 prejudice furnishes grounds for a mistrial. And that a mere admonition
25 to the jury to disregard the remark is insufficient in occult.

9

1 context of irreparable and fundamental error is, "Error that results in a
2 substantial impairment of justice or denial of fundamental rights such
3 that but for the misconduct, the verdict would have been different."

4 And I get that's in the new trial context, but I think it gives
5 guidance because my view is the dilemma as a judge, this thing first
6 came up as a motion to strike from the Plaintiffs. And I have to say that
7 bell can't be un-rung. That's my opinion.

8 Even if I granted the motion to strike, I don't know what type
9 of contemporaneous curative instruction I could have ever come up with
10 to ask Ms. Stidhum, especially, Ms. Brazil, especially Mr. Cardoza,
11 especially, Ms. Asuncion, especially to now disregard the author's racial
12 discriminatory comments.

13 In addition, you know, sometimes life events happen and I
14 know, we all, as lawyers -- since we deal with fact patterns, and people
15 more than most human beings -- I'm sure most lawyers think man, my
16 life is just different than everybody else's. Well, I can share that with you
17 too, from my perspective as a judge, because I deal with facts and things
18 all the time, but not necessary to my decision, but I have to say it's lost
19 on me that this whole situation is even more magnified given the recent
20 events of the weekend.

21 I mean, think about how strange this is for me too. I'm
22 sitting at home and so my wife is a hard worker. And I told her well,
23 leave me alone all day Saturday. So she goes off to her office in Howard
24 U Center at Marcus & Millichap because she does commercial realty --
25 commercial brokerage, so she goes there all day Saturday and works,

1 THE CLERK: Two weeks will be August -- oh, you're going to
2 be gone all that week.

3 THE COURT: That's okay. It's a pleading deadline.

4 THE CLERK: Okay. August 19th.

5 THE COURT: Okay. So the opposition will be due by close of
6 business on August 19th.

7 And then a reply?

8 THE CLERK: A week later August 26th.

9 MR. JIMMERSON: Could we have the following Monday, the
10 29th?

11 THE CLERK: Okay. We'll do it the Tuesday, September 3rd,
12 Labor Day.

13 THE COURT: All right. And then the hearing, we'll probably
14 need a couple of hours for that, given our track record.

15 THE CLERK: You want it on a motion day or on a
16 Wednesday?

17 THE COURT: Well, I need two hours, so either way is fine
18 with me, but it's probably going to be a separate day of a Wednesday.

19 THE CLERK: Okay. Let me see what we have going on here.

20 THE COURT: And of course, the focus of this now is the fees
21 and costs aspect. I granted a mistrial.

22 MR. JIMMERSON: Yes, Your Honor.

23 THE COURT: Although, I do want to want to say that -- I
24 mean, there's always the idea that you can ask for reconsideration, but I
25 mean, to me, the focus really is the fees and costs aspect of the motion.

1 And I want to give some context to that too. I actually made a note here
2 on that. Let me find that note. In covering everything else, I forgot about
3 that one.

4 Oh, yeah. All right. So both sides -- here's my note -- both
5 sides made mistakes. In other words, what I'm saying is, both sides are
6 practically responsible for what happened. To me, the issue remains
7 which side is legally responsible for what happened; in other words, we
8 know the Plaintiffs made a mistake in a definitional sense if you look up
9 the word mistake in the dictionary. You made a mistake.

10 The question is, given what happened, and how it actually
11 happened, is the Defense legally responsible, or is the Plaintiff legally
12 responsible, is it 50/50, or how does that work. So that's a technical
13 point, but in causing a mistrial, is there a standard that applies that I
14 should be made aware of along these lines? Because again, there's no
15 doubt the Plaintiffs made a mistake in not catching the item and stopping
16 its use.

17 The Defense used it, as they did, as we have talked about
18 enough already, but what's the legal standard having to do with
19 responsibility because the statute talks about fees and costs, right, if you
20 cause a mistrial through misconduct, I think is what it says. And so
21 that'll be part and parcel of what we'll have to figure out.

22 But here is Terra (phonetic). So we need two hours for a
23 hearing on this motion for fees and costs having to do with a mistrial.

24 THE CLERK: How far out?

25 THE COURT: Well, what's the last date on there?



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10 *Attorneys for Defendants*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 JASON GEORGE LANDESS a.k.a. KAY
14 GEORGE LANDESS, as an individual;

CASE NO. A-18-776896-C
DEPT. NO. XXXII

15 **Plaintiffs,**

16 **vs.**

MOTION FOR MISTRIAL AND FEES/COSTS

HEARING REQUESTED

17 KEVIN PAUL DEBIPARSHAD, M.D., an
18 individual; KEVIN P. DEBIPARSHAD PLLC,
19 a Nevada professional limited liability company
20 doing business as "SYNERGY SPINE AND
21 ORTHOPEDICS"; DEBIPARSHAD
22 PROFESSIONAL SERVICES LLC, a Nevada
23 professional limited liability company doing
24 business as "SYNERGY SPINE AND
25 ORTHOPEDICS"; ALLEGIANT INSTITUTE
26 INC., a Nevada domestic professional
27 corporation doing business as "ALLEGIANT
SPINE INSTITUTE"; JASWINDER S.
GROVER, M.D., an individual; JASWINDER
S. GROVER, M.D. Ltd. doing business as
"NEVADA SPINE CLINIC"; VALLEY
HEALTH SYSTEM LLC, a Delaware limited
liability company doing business
as "CENTENNIAL HILLS HOSPITAL"; UHS
OF DELAWARE, INC., a Delaware corporation
also doing business as "CENTINNIAL HILLS
HOSPITAL"; DOES 1-X, inclusive; and ROE
CORPORATIONS I-X, inclusive,
Defendants.

Defendants.

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Jason George Landess, aka Kay George Landess (“Landess” or “Plaintiff”) moves the court for a mistrial, and for an award of fees and costs associated with trial expenses up through this point in the proceedings.

DATED this 4th day of August, 2019.

HOWARD & HOWARD ATTORNEYS PLLC

By: /s/Martin A. Little
Martin A. Little (#7067)
Alexander Villamar (#9927)
3800 Howard Hughes Parkway, #1000
Las Vegas, Nevada 89169
Attorneys for Plaintiff

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POINTS AND AUTHORITIES

In a premeditated tactical ambush, Defense counsel introduced inadmissible character evidence to persuade the jury that Landess is a racist. This issue is obviously completely irrelevant to a medical malpractice case—its only utility was to poison a racially diverse jury against Landess. Defendants intended to prevent Landess from getting a fair trial, and they have succeeded; the jury’s perception of him has been irreparably tarnished based upon irrelevant and inadmissible information, and no curative instruction can undo the damage. The Court should declare a mistrial and award Plaintiff fees and costs associated with the time and expense wasted by Defendants’ conduct.

I. FACTS

The Medical Malpractice Incident

This is a medical malpractice case arising from Defendants’ negligent treatment of Mr. Landess following a golf cart accident. Defendants conducted a closed reduction of Landess’s left tibia, in which they misaligned the bone and failed to properly reduce the fracture. These errors required a second surgery, and they caused Landess significant pain and suffering.

Dariyanani Testifies Regarding Landess’s Wages Claim

Landess’s debilitation following the botched surgery also cost him his job at Cognition, and his claims therefore include lost wages. Cognition’s CEO, Johnathan Dariyanani, therefore testified at trial. In order to establish that Landess lost his job as a result of the incident rather than any reason based on poor job performance, Plaintiff’s counsel asked Dariyanani to elaborate on the reason for Landess’s termination:

BY MR. JIMMERSON:

Q. Was the termination of Mr. Landess a hard decision for Cognition or for yourself?

A. Very much.

Q. Please explain why.

A. Well, I cared about Mr. Landess, and everybody has good qualities and bad qualities, right. So if you ask Mr. Landess to tell

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you Little Red Riding Hood, after three days you wouldn't get to the wolf, but he's also a beautiful person who, like, is still supporting his ex-wife after 22 years and doesn't have to, and he cares. And we do our courses, the number one -- so you know, we have General Casey and the cardiologist on the ACC Board of Governors, and the number one speaker consistently is Mr. Landess. And I cared about him as a person, and I feel like he was genuinely wronged. I mean, I don't -- you know, to me, no one could have done a better job in physical therapy, and yet, you know, from my perspective, because of essentially the same neglect I see of elder people in the work that I do in day-to-day basis, here we are.

And so --

MS. GORDON: Objection, Your Honor. There's no foundation for that comment.

[Colloquy omitted.]

Q. You may continue.

A. Yeah, so that was hard because I didn't feel like he did anything wrong, but I have responsibilities to 40 shareholders, and just because I'm friends with Mr. Landess, work has to get done, and work was not getting done. And I had someone who was qualified, Harvard educated lawyer who could do the work, in many ways who was faster, as many young people are, was faster and put out more output that was, sort of more cutting edge than Mr. Landess. But he didn't have the depth and wisdom and heart and character.

And so it was a loss for the company. It was a loss for me, and I knew -- I knew what a loss it would be for him because he was not getting hired by another startup. They were not going to hire some shaky-headed verbally incontinent person to -- you know, and see his inner greatness. And I despaired for him, but you know, I have a business to run, and ultimately October, November, December, January, February, March, April, May, June was enough. And so it was very difficult.

(Trial Transcript, attached as Exhibit A, at 108:20–110:15.) Although Dariyanani expressed opinions that Landess is a “beautiful person” whom he cared about, those comments were off-handed asides in response to a question aimed at the reason behind Landess’s termination.

...

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1 *Defendants' Counsel Springs Their Trap: The Inadmissible Character Evidence*

2 Defendant's counsel had been waiting for this. During cross examination, counsel
3 exhumed Dariyanani's off-handed comments as an ostensible excuse to introduce evidence
4 concerning Landess's character:

5 Q. Mr. Dariyanani, you testified earlier that Mr. Landess is a
6 beautiful person in your mind.

7 A. We're all beautiful and flawed. He's beautiful and flawed.

8 Q. And you respect him a great deal?

9 A. I do.

10 Q. And this was, that portion any way is consistent with your
11 impression of Mr. Landess for at least the past five years, I believe
you said?

12 A. Yeah, and he's had -- he's had tough periods as, you know,
as everybody has had. You know, as I've had tough periods.

13 Q. And that was before five years ago, correct?

14 A. I think so.

15 Q. This is -- I'm going to try to blow it up, but this is an email
16 that Mr. Landess sent to you and it's part of admitted Exhibit 56,
dated November 15th, 2016. It's quite long, but the part I'm
17 interested in is Mr. Landess appears to be giving a summary of his
prior work experience and some experiences that he has gone
18 through in his life.

19 A. Uh-huh.

20 Q. And the highlighted portion starts, "So I got a job working
in a pool hall on weekends." And I'll represent to you, Mr. Landess
21 testified earlier about working in a pool hall.

22 A. Uh-huh.

23 Q. "To supplement my regular job of working in a sweat
factory with a lot of Mexicans, and taught myself how to play
24 Snooker. I became so good at it, that I developed a route in East
L.A. hustling Mexicans, blacks, and rednecks on Fridays, which
25 was usually payday. From that lesson, I learned how to use my
skill to make money by taking risk, serious risk." When you read
26 this, did that change your impression of Mr. Landess at all?
27

1 (Ex. A at 161:3–162:6.) In an apparent effort to drive the point home to the jury, counsel twice
2 returned to the theme of racism during follow-up questioning:

3 Q. Does it sound to you at all from this email that he’s
4 bragging about his past as a hustler, and particularly hustling
Mexicans, blacks, and rednecks on payday?

5 [* * *]

6 Q. He talks about a time when he bought a truck stop here in
7 Las Vegas when the Mexican laborer stole everything that wasn’t
welded to the ground. You still don’t take that as being at all a
racist comment?

8
9 (Ex. A at 162:23–163:8.) This subject matter was completely irrelevant to the merits of the case,
10 and its only potential use was to poison the jury’s perception of Landess, as it almost certainly
11 did.¹

12 Plaintiff now moves for a mistrial, and for an award of his fees and costs associated with
13 the first trial.

14 II. LEGAL ARGUMENT

15 The issues relevant to this medical malpractice case are those related to Defendants’
16 treatment of Landess, and Landess’s resulting damages. His character is completely irrelevant,
17 as are his views on race. Defendants nevertheless presented evidence on this point, and they
18 knew exactly what they were doing: They had the exhibit ready with the relevant language
19 highlighted, and they questioned Dariyanani about whether he believed that the highlighted
20 language constituted “racist comment[s].” The only potential impact of this line of questioning
21 is to persuade the jury that Landess is a racist, which may in turn affect the jury’s adjudication
22 of his case based on irrelevant information. This is nothing short of an invitation for jury
23 nullification, and it cannot be undone through a curative instruction. A mistrial is warranted, as
24 is a fees and costs award.

25
26
27 ¹ Two of the jurors are Mexican American, and two are African American. Although the
materials at issue are likely to be upsetting to the entire jury, the four jurors who are members
of the ethnic groups raised in those materials may feel particularly acute outrage.

1 **A. Legal Standard**

2 The decision to grant a mistrial is within the sound discretion of the trial court and will
3 not be overturned absent an abuse of that discretion. *Khoury v. Seastrand*, 132 Nev. Adv. Op.
4 52, 377 P.3d 81, 86 (2016). “A defendant’s request for a mistrial may be granted for any number
5 of reasons where some prejudice occurs that prevents the defendant from receiving a fair trial.”
6 *Rudin v. State*, 120 Nev. 121, 144, 86 P.3d 572, 587 (2004). A district court may also declare a
7 mistrial *sua sponte* where inherently prejudicial conduct occurs during the proceedings. *See*
8 *Baker v. State*, 89 Nev. 87, 88, 506 P.2d 1261, 1261 (1973).

9 The Nevada Supreme Court has held that “[g]reat deference is due a trial judge’s decision
10 to declare a mistrial based on his assessment of the prejudicial impact of improper argument on
11 the jury.” *Glover v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 125 Nev. 691,
12 703, 220 P.3d 684, 693 (2009), *as corrected on denial of reh’g* (Feb. 17, 2010) This is so
13 “[b]ecause the trial judge is in the advantageous position of listening to the tone and tenor of the
14 arguments and observes the trial presentation firsthand, the trial judge is in the best position to
15 assess the impact on the jury.” *Moore v. State*, 67281, 2015 WL 4503341, at *2 (Nev. App. July
16 17, 2015) (citing *Glover*, 165 Nev. at 703, 220 P.3d at 693); *see also Payne v. Fiesta Corp.*, 543
17 S.W.3d 109, 123 (Mo. Ct. App. 2018) (“We recognize that the trial court is better positioned to
18 assess the prejudicial effect that improper evidence has on the jury.”).

19 **B. A Mistrial Is Necessary to Prevent Unfair Prejudice**

20 Defendants made irrelevant, character-based arguments that Landess is a racist, which
21 were intended only to poison the jury. The only viable remedy is a mistrial.

22 **1. The Evidence at Issue is Irrelevant and Inadmissible Character Evidence**

23 Only relevant evidence is admissible. “Relevant evidence means evidence which has any
24 tendency to make the existence of any fact that is of consequence to the determination of the
25 action more or less probable than it would be without the evidence.” NRS 48.015. Here,
26 Defendant’s suggestion that Landess is a racist has absolutely no bearing on any fact of
27 consequence in this medical malpractice case. Even if this suggestion had some conceivable

4

1 relevance, its probative value would be far outweighed by the unfair prejudice that it presents.
2 See NRS 48.035(1).

3 Moreover, “character evidence is generally inadmissible in civil cases.” *In re Janac*, 407
4 B.R. 540, 548 (Bankr. S.D.N.Y. 2009). To whatever extent Defendants were attempting to
5 impugn Landess’s character, that attempt was improper in the absence of any opening of the door
6 by Landess himself.

7 **2. Landess Did Not Open the Door to Character Evidence**

4

8 A party may open the door to character evidence when he chooses to place his own good
9 character at issue. See *Newman v. State*, 129 Nev. 222, 235, 298 P.3d 1171, 1180 (2013).
10 However, “[a]n inadvertent or nonresponsive answer by a witness that invokes the [party’s] good
11 character . . . does not automatically put his character at issue so as to open the door to character
12 evidence.” *Montgomery v. State*, 828 S.E.2d 620, 624 (Ga. Ct. App. 2019) (citing Christopher
13 B. Mueller et al., FEDERAL EVIDENCE § 4:43 (4th ed. updated July 2018) (“It seems that if a . . .
14 witness gives a nonresponsive answer that contains an endorsement of the good character of the
15 defendant . . . the [opposing party] should not be allowed to exploit this situation by cross-
16 examining on bad acts or offering other negative character evidence.”).

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17 Here, Landess did not place his own character at issue, and Dariyanani’s statement
18 regarding his character was gratuitously offered and irrelevant. Landess’s line of questioning to
19 Dariyanani was intended to establish that Landess was not terminated from his job for reasons
20 related to his performance. Dariyanani’s statement that he believed Landess to be a “beautiful
21 person” was a gratuitous addition. If Defendants wanted the jury to disregard this statement,
22 their remedy was a simple motion to strike. See *Wiggins v. State*, 778 S.W.2d 877, 892 (Tex.
23 App. 1989) (holding that motion to strike—and not introduction of rebuttal evidence—was
24 proper non-responsive statement from witness attesting to party’s good character). However, it
25 appears clear that defendants preferred to allow the irrelevant statement to stand and to attempt
26 to use it as an excuse to put more irrelevant evidence in front of the jury. The Court should not
27 countenance this kind of gamesmanship.

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to Appellant's status as a sex offender. Assuming such veracity of Appellant's counsel, we must acknowledge that one cannot knowingly and intentionally waive something of which one has no knowledge. As Justice Miller astutely articulated in his dissent in *State v. Layton*, 189 W.Va. 470, 432 S.E.2d 740 (1993), with regard to waiver of a right to be present at trial, "the defendant could not waive what he did not know had occurred." 189 W.Va. at 500, 432 S.E.2d at 770 (Miller, J., dissenting).

6 *State v. White*, 678 S.E.2d 33, 37 (W. Va. 2009) (emphases added). So it is here: Landess's
7 counsel was, in good faith, unaware that Exhibit 56 contained a statement which was irrelevant,
8 clearly prejudicial, and inadmissible for any purpose in this case. Landess's stipulation to
9 admit the document for proper purposes does not amount to a stipulation that it be used for
10 improper purposes of which Landess was not aware.

11 **4. A Mistrial is Necessary to Correct Unfair Prejudice**

12 A mistrial is necessary where unfair prejudice is so drastic that a curative instruction
13 cannot correct the damage. *Pope v. Babick*, 178 Cal. Rptr. 3d 42, 50 (2014). In particular,
14 misconduct and inflammatory statements from opposing counsel are sufficient basis for granting
15 a new trial where the district court concludes that they create substantial bias in the jury. See,
16 e.g., *Lioce v. Cohen*, 124 Nev. 1, 17, 174 P.3d 970, 980 (2008); *Commil USA, LLC v. Cisco Sys.,*
17 *Inc.*, 720 F.3d 1361, 1370 (Fed. Cir. 2013), vacated in part on other grounds, 135 S. Ct. 1920
18 (2015). For example, in *Commil USA*, counsel for one of the parties attempted to instill in the
19 jury, through irrelevant references to ethnicity and religion, an "us versus them" mentality by
20 making repeated references to the opposing party's Jewish faith. *Id.* at 1370. The district court
21 granted a new trial, even though the offending statements drew no objection during trial. *Id.* The
22 United States Court of Appeal for the Federal Circuit affirmed, holding that the improper and
23 irrelevant arguments raised below tainted the jury and placed substantial justice at stake. *Id.* at
24 1370-71. The appellate court additionally reasoned that it would not substitute its judgment for
25 that of the district court, "whose on-the-scene assessment of the prejudicial effect, if any, carries
26 considerable weight." *Id.* at 1371 (citing *United States v. Munoz*, 150 F.3d 401, 415 (5th
27 Cir.1998).

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1 Here, Defendants' tactic in raising the irrelevant and improper character evidence at issue
2 taints the entire trial. *Coastal Oil & Gas Corp. v. Garza Energy Tr.*, 268 S.W.3d 1, 26 (Tex.
3 2008) (affirming grant of new trial where a memorandum referencing "illiterate Mexicans" was
4 "never used . . . in any relevant way [except] to create unfair prejudice."). *Coastal Oil* was a
5 case involving claims subsurface trespass, breach of duty, and breach of implied covenants to
6 develop, market, and protect against drainage. At trial, the plaintiffs introduced a memorandum
7 from the defendants' files in which the defendants attributed title problems which delayed the
8 project to the fact that the owners' ancestors were, in their words, "mostly illiterate Mexicans."
9 *Id.* at 8. The district court admitted the document, the jury ultimately awarded damages to the
10 plaintiff. Defendant appealed, alleging (among other things) that the district court had erred by
11 admitting the memorandum. The Texas Supreme Court reversed and ordered a new trial,
12 reasoning as follows:

Evidentiary rulings are committed to the trial court's sound, not boundless, discretion. Because the significant danger of unfair prejudice presented by the memo substantially outweighed its probative value, which was zero, the trial court abused its discretion in admitting the memo in evidence.

[* * *]

[Respondents] never used the memo in any relevant way, only in a way calculated to create unfair prejudice. We think [respondents] succeeded. We therefore conclude that the trial court's abuse of discretion in admitting the 1977 memo was harmful error and requires a new trial.

20 *Coastal Oil*, 268 S.W.3d at 26. Writing in concurrence, three justices of the court noted that
21 "[respondent] ha[d] not claimed that the offensive phrase was relevant to an issue regarding race,
22 such as discrimination, or that [appellant's] . . . actions were racially motivated." *Id.* at 50
23 (concurring in part and dissenting in part).

24 So it is here: The e-mail at issue here presents significant danger of unfair prejudice,
25 which is substantially outweighed by its probative value, which is zero. Defendants cannot claim
26 that the offensive material at issue is relevant to an issue regarding race—no such issue exists in
27 this case—and its only potential utility is to poison the jury. See *Capital Loan Co. v. Keeling*,

1 259 N.W. 194, 196 (Iowa 1935) (“Attorneys have no right to go outside of the record and make
2 . . . remarks and try to inject racial prejudice into a case[.]”). This danger is particularly acute as
3 to the Mexican American and African American members of the jury, who may reasonably find
4 the material at issue to be particularly offensive. Landess has no realistic possibility of obtaining
5 substantial justice under these circumstances, and a mistrial is warranted.

6 **C. The Court Should Award Plaintiff Fees and Costs**

7 Nevada Revised Statute 18.070(2) provides as follows:

8 A Court may impose costs and reasonable attorney’s fees against
9 a party or an attorney who, in the judgment of the court, purposely
caused a mistrial to occur.

10 Here, Defendants’ counsel knew exactly what they were doing. They had the e-mail at
11 issue ready, with the offending sentence highlighted. They were waiting for what they perceived
12 to be an opportunity to shoehorn it into the case, and when such an opportunity arose, they seized
13 upon it. Defendants performed the act which necessitated a mistrial in a calculated and tactical
14 manner, and for their own benefit.

15 Moreover, this is not the first time that Defendants’ counsel has improperly
16 indoctrinated the jury. They had previously misled the jury about the quality of the x-rays that
17 were reviewed showing Landess’s broken hardware, and they had improperly informed the jury
18 about the alleged “portal” through which the x-rays were reviewed in spite of a prior order by the
19 court precluding them from doing so. The cumulative effect of these tactics renders the conduct
20 at issue even more egregious, and it strengthens the justification for a mistrial. *See Lioce v.*
21 *Cohen*, 124 Nev. 1, 15, 174 P.3d 970, 979 (2008).

22 In preparation and presentation of the Plaintiff’s case at trial, Plaintiff’s attorneys spent
23 hours of time preparing and conducting their case which are now essentially time wasted. These
24 hours were spent preparing for the testimony of the witnesses, pre-trial interview of witness and
25 medical professionals, drafting direct and cross examination, and being present in Court to
26 present the case. As a result, Plaintiff’s counsel was unable to perform other functions or service
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other clients in the firm. None of those hours can be recouped. If this matter goes to trial again, all of that work will need to be duplicated.

Plaintiff has also incurred substantial costs in order to present his case. Witnesses had to be subpoenaed and served. All of the medical providers who were to testify had cleared their schedules and required up-front payment for their appearance. These are costs which the Plaintiff was required to pay once, and will be required to pay again if this matter is retried.

III. CONCLUSION

The Court should declare a mistrial and award fees and costs associated with the trial proceedings up through this point.

DATED this 4th day of August, 2019.

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