

FILED

SEP 24 2020

JACQUELINE BRYANT, CLERK

By: *[Signature]*
DEPUTY CLERK

Electronically Filed

Sep 28 2020 10:21 a.m.

Elizabeth A. Brown

Clerk of Supreme Court

DAVID ALVAREZ VENTURA
NDOC NO. 80079
HIGH DESERT STATE PRISON
POST OFFICE BOX 650
INDIAN SPRINGS, NV,
89070

PLAINTIFF IN PRO SE

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE

DAVID ALVAREZ VENTURA,
PLAINTIFF,

CIVIL ACTION NUMBER
CV-20-00866

DEPT NO. 8

VS.

PLAINTIFF'S NOTICE OF APPEAL
PURSUANT TO NEAP RULE 4

JOHN H. GANSER, MD.,
ET AL.,

DEFENDANTS.

PLAINTIFF DAVID ALVAREZ VENTURA HEREBY NOTICES
ALL PARTIES OF RECORD OF HIS INTENT OF PURSUING APPELL-
ATE REVIEW OF THE COURT'S SEPTEMBER 04, 2020 ORDER
DISPOSING OF THIS ACTION.

THE INSTANT NOTICE IS PROVIDED PURSUANT TO
NEVADA RULES OF APPELLATE PROCEDURE, RULE 4.

IN ACCORDANCE THE INSTANT NOTICE IS RESPECT-
FULLY SUBMITTED.

RESPECTFULLY SUBMITTED,

DATED: SEPTEMBER 21, 2020

BY:

[Signature]
(DAVID ALVAREZ VENTURA) 80079
PLAINTIFF / APPELLANT
IN PRO SE

CERTIFICATE OF SERVICE BY MAILING

I, DAVID ALVAREZ VENTURA, hereby certify, pursuant to NRCP 5(b), that on this 21
day of SEPTEMBER, 2020, I mailed a true and correct copy of the foregoing, "PLAINTIFF
NOTICE OF APPEAL PURSUANT TO NRAP RULE 4"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

CLERK OF THE COURT
SECOND JUDICIAL DISTRICT
COURT FILING OFFICE
75 COURT STREET
RENO NV. 89501

CC:FILE

DATED: this 21 day of SEPTEMBER 2020

DAVID ALVAREZ VENTURA # 80079
PLAINTIFF /In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS

1 Code 1310

2
3
4
5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 **DAVID ALVAREZ VENTURA,**

10 **Plaintiff,**

Case No. CV20-00866

11 **vs.**

Dept. No. 8

12 **JOHN H. GANSER, M.D. LIC #9279,**
13 **GOMEZ, KOZAR, MCELREATH AND**
14 **SMITH, a Professional Corporation,**

15 **Defendants.**
16 _____/

17 **CASE APPEAL STATEMENT**

18 This case appeal statement is filed pursuant to NRAP 3(f).

- 19 1. Appellant is David Alvarez Ventura.
- 20 2. This appeal is from an order entered by the Honorable Judge Barry L. Breslow.
- 21 3. Appellant is representing himself in Proper Person on appeal, the Appellant's
22 address is:
23 David Alvarez Ventura #80079
24 High Desert State Prison
25 P.O. Box 650
26 Indian Springs, Nevada 89070
- 27 4. Respondents are John H. Ganser, M.D. and Gomez, Kozar, McElreath and Smith.
28 Respondents were represented in District Court by:
Edward J. Lemons, Esq. SBN 699
Alice Campos Mercado, Esq. SBN 4555
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519

5. Respondent's attorney is not licensed to practice law in Nevada: n/a
6. Appellant is not represented by retained counsel in District Court.
7. Appellant is not represented by retained counsel on appeal.
8. Appellant was not granted leave to proceed in forma pauperis in the District Court.
9. Proceeding commenced by the filing of a Civil Complaint filed previously in Eighth Judicial District Court, Clark County, NV on January 13th, 2020. The change of venue to Second Judicial District Court, Washoe County, NV was filed June 5th, 2020 .
10. This is a civil proceeding and the Appellant is appealing the Order Granting Motion to Dismiss Without Prejudice filed September 4th, 2020.
11. The case has not been the subject of a previous appeals to the Supreme Court.
12. This case does not involve child custody or visitation.
13. It is unknown if the case involves the possibility of a settlement.

Dated this 24th day of September, 2020.

Jacqueline Bryant
Clerk of the Court
By: /s/ YViloria
YViloria
Deputy Clerk

SECOND JUDICIAL DISTRICT COURT**STATE OF NEVADA****COUNTY OF WASHOE****Case History - CV20-00866****Case Description: DAVID VENTURA VS. JOHN GANSER, M.D. ET AL (D8)****Case Number: CV20-00866 Case Type: MEDICAL/DENTAL - Initially Filed On: 6/5/2020****Parties**

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - BARRY L. BRESLOW - D8	Active
PLTF - DAVID VENTURA - @1356831	Active
DEFT - GOMEZ, KOZAR, McELREATH & SMITH, A PROFESSIONAL CORP - @1356832	Active
DEFT - JOHN H. GANSER - @114201	Active
ATTY - Alice G. Campos Mercado, Esq. - 4555	Active
ATTY - Edward J. Lemons, Esq. - 699	Active

Disposed Hearings

- 1 Department: D9 -- Event: Request for Submission -- Scheduled Date & Time: 7/10/2020 at 16:17:00
Extra Event Text: MOTION TO PROCEED IN FORMA PAUPERIS (NO ORDER PROVIDED)
Event Disposition: S200 - 8/17/2020
- 2 Department: D8 -- Event: Request for Submission -- Scheduled Date & Time: 7/10/2020 at 12:30:00
Extra Event Text: DEFT MOTION TO DISMISS
Event Disposition: S200 - 7/31/2020
- 3 Department: D8 -- Event: Request for Submission -- Scheduled Date & Time: 7/10/2020 at 12:30:00
Extra Event Text: PLTF MOTION TO DEFER CONSIDERATION OF MOTION TO DISMISS
Event Disposition: S200 - 7/31/2020
- 4 Department: D8 -- Event: Request for Submission -- Scheduled Date & Time: 8/3/2020 at 16:12:00
Extra Event Text: REPLY TO DEFENDANT'S OPPOSITION (NO ORDER PROVIDED)
Event Disposition: S200 - 8/3/2020
- 5 Department: D8 -- Event: Request for Submission -- Scheduled Date & Time: 8/5/2020 at 14:34:00
Extra Event Text: OPPOSITION TO DEFENDANT'S MOTION TO DISMISS (NO ORDER PROVIDED)
Event Disposition: S200 - 8/5/2020
- 6 Department: D8 -- Event: Request for Submission -- Scheduled Date & Time: 8/13/2020 at 16:21:00
Extra Event Text: MOTION TO DISMISS
Event Disposition: S200 - 9/4/2020
- 7 Department: D8 -- Event: Request for Submission -- Scheduled Date & Time: 8/26/2020 at 15:33:00
Extra Event Text: PLAINTIFF'S NOTICE OF ERRATA
Event Disposition: S200 - 9/4/2020

Actions

- | <u>Filing Date</u> | <u>-</u> | <u>Docket Code & Description</u> |
|--------------------|----------|--|
| 1 | 6/5/2020 | - 3373 - Other ...

Additional Text: DEFENDANT'S FEE REMITTANCE FROM PRIOR COURT FILED 5-1-2020 - Transaction 7910941 - Approved By: BBLOUGH : 06-05-2020:11:11:38 |

Report Does Not Contain Sealed Cases or Confidential Information

- 2 6/5/2020 - 2385 - Mtn Proceed Forma Pauperis
Additional Text: MOTION TO PROCEED INFORMA PAUPERIS FROM PRIOR COURT FILED 1-13-2020 - Transaction 7910941 - Approved By: BBLOUGH : 06-05-2020:11:11:38
- 3 6/5/2020 - 2610 - Notice ...
Additional Text: COURT DEFICIENCY NOTICE FROM PRIOR COURT FILED 3-20-2020 - Transaction 7910941 - Approved By: BBLOUGH : 06-05-2020:11:11:38
- 4 6/5/2020 - 3105 - Ord Granting ...
Additional Text: ORDER FROM PRIOR COURT GRANTING IFP FILED 1-19-2020 - Transaction 7910941 - Approved By: BBLOUGH : 06-05-2020:11:11:38
- 5 6/5/2020 - 1375 - Certified Copy of Docket
Additional Text: CERTIFIED COPY OF DOCKET FROM PRIOR COURT - Transaction 7910941 - Approved By: BBLOUGH : 06-05-2020:11:11:38
- 6 6/5/2020 - 1475 - Consent ...
Additional Text: CONSENT TO SERVICE BY ELECTRONIC MEANS THROUGH E-FILING PRORAM FROM PRIOR COURT FILED 3-20-2020 - Transaction 7910941 - Approved By: BBLOUGH : 06-05-2020:11:11:38
- 7 6/5/2020 - 1520 - Declaration
Additional Text: DECLARATION OF SERVICE FROM PRIOR COURT UPON DEFT JOHN GANSER, M.D. 3-13-2020 FILED 3-24-2020 - Transaction 7910941 - Approved By: BBLOUGH : 06-05-2020:11:11:38
- 8 6/5/2020 - 1520 - Declaration
Additional Text: DECLARATION OF SERVICE FROM PRIOR COURT UPON DEFENDANTS GOMEZ, KOSAR, McELREATH & SMITH 3-13-2020 FILED ON 3-24-2020 - Transaction 7910941 - Approved By: BBLOUGH : 06-05-2020:11:11:38
- 9 6/5/2020 - 1575 - Demand for Change of Venue
Additional Text: DEMAND FOR CHANGE OF VENUE FROM PRIOR COURT FILED 3-20-2020 - Transaction 7910941 - Approved By: BBLOUGH : 06-05-2020:11:11:38
- 10 6/5/2020 - 1650 - Errata...
Additional Text: ERRATA FROM PRIOR COURT FILED 4-13-2020 - Transaction 7910941 - Approved By: BBLOUGH : 06-05-2020:11:11:38
- 11 6/5/2020 - 1930 - Letters ...
Additional Text: LETTER FROM PLAINTIFF FROM PRIOR COURT FILED 2-17-2020 - Transaction 7910941 - Approved By: BBLOUGH : 06-05-2020:11:11:38
- 12 6/5/2020 - 1930 - Letters ...
Additional Text: LETTER FROM PLAINTIFF FROM PRIOR COURT FILED 1-27-2020 - Transaction 7910941 - Approved By: BBLOUGH : 06-05-2020:11:11:38
- 13 6/5/2020 - 2145 - Mtn Ord to Show Cause
Additional Text: MOTION FOR ORDER TO SHOW CAUSE FROM PRIOR COURT FILED 5-15-2020 - Transaction 7910941 - Approved By: BBLOUGH : 06-05-2020:11:11:38
- 14 6/5/2020 - 1380 - Change of Venue - Accepting
Additional Text: ORDER CHANGING VENUE FROM 8TH JUDICIAL DISTRICT COURT CLARK COUNTY - Transaction 7910941 - Approved By: BBLOUGH : 06-05-2020:11:11:38
- 15 6/5/2020 - 1817 - Initial Appear. Fee Disclosure
Additional Text: INITIAL APPEARANCE FEE DISCLOSURE FROM PRIOR COURT FILED 3-20-2020 - Transaction 7910941 - Approved By: BBLOUGH : 06-05-2020:11:11:38
- 16 6/5/2020 - MIN - ***Minutes
Additional Text: MINUTES FROM PRIOR COURT FILED 5-18-2020 - Transaction 7910941 - Approved By: BBLOUGH : 06-05-2020:11:11:38
- 17 6/5/2020 - 1312 - Case Assignment Notification
Additional Text: CHANGE OF VENUE FROM CLARK COUNTY - Transaction 7910946 - Approved By: NOREVIEW : 06-05-2020:11:11:04
- 18 6/5/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7910948 - Approved By: NOREVIEW : 06-05-2020:11:12:04
- 19 6/5/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7910951 - Approved By: NOREVIEW : 06-05-2020:11:12:34

- 20 6/5/2020 - 1425 - Complaint - Civil
Additional Text: COMPLAINT FROM PRIOR COURT FILED 1-13-2020 - Transaction 7911021 - Approved By: BBLOUGH : 06-05-2020:11:36:04
- 21 6/5/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7911031 - Approved By: NOREVIEW : 06-05-2020:11:37:04
- 22 6/8/2020 - 2610 - Notice ...
Additional Text: Notice of Transfer of Venue and Case Assignment - Transaction 7914383 - Approved By: KJONES : 06-08-2020:16:15:48
- 23 6/8/2020 - 2315 - Mtn to Dismiss ...
Additional Text: DEFENDANTS JOHN H. GANSER, MD. AND GOMEZ KOZAR, MCELREATH AND SMITH'S MOTION TO DISMISS - Transaction 7914393 - Approved By: KJONES : 06-08-2020:16:24:44
- 24 6/8/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7914545 - Approved By: NOREVIEW : 06-08-2020:16:16:48
- 25 6/8/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7914598 - Approved By: NOREVIEW : 06-08-2020:16:25:52
- 26 6/22/2020 - 2490 - Motion ...
Additional Text: PLAINTIFF'S MOTION SEEKING THAT COURT DEFER CONSIDERATION OF DEFENDANTS MOTION TO DISMISS PENDING RESTORATION OF NORMAL PRISON OPERATIONS
- 27 6/24/2020 - \$1380 - \$Change of Venue - Accepting
No additional text exists for this entry.
- 28 6/24/2020 - PAYRC - **Payment Receipted
Additional Text: A Payment of -\$255.00 was made on receipt DCDC660188.
- 29 6/29/2020 - 3880 - Response...
Additional Text: Defendants John H. Ganser, MD and Gomez, Kozar, McElreath and Smith's Opposition to Motion Seeking the Court Defer Consideration of Motion to Dismiss - Transaction 7948011 - Approved By: NMASON : 06-29-2020:16:38:50
- 30 6/29/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7948048 - Approved By: NOREVIEW : 06-29-2020:16:42:05
- 31 7/10/2020 - 3860 - Request for Submission
Additional Text: Transaction 7965140 - Approved By: NOREVIEW : 07-10-2020:12:14:32
DOCUMENT TITLE: Defendants' Motion to Dismiss
PARTY SUBMITTING: ALICE MERCADO, ESQ
DATE SUBMITTED: 07/10/2020
SUBMITTED BY: SJA
DATE RECEIVED JUDGE OFFICE:
- 32 7/10/2020 - 3860 - Request for Submission
Additional Text: Transaction 7965146 - Approved By: NOREVIEW : 07-10-2020:12:15:43
DOCUMENT TITLE: Plaintiff's Motion to Defer Consideration of Motion to Dismiss
PARTY SUBMITTING: ALICE MERCADO, ESQ
DATE SUBMITTED: 07/10/2020
SUBMITTED BY: SJA
DATE RECEIVED JUDGE OFFICE:
- 33 7/10/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7965143 - Approved By: NOREVIEW : 07-10-2020:12:15:32
- 34 7/10/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7965150 - Approved By: NOREVIEW : 07-10-2020:12:16:51
- 35 7/10/2020 - 3860 - Request for Submission

Additional Text: Transaction 7965930 - Approved By: NOREVIEW : 07-10-2020:16:16:15
DOCUMENT TITLE: MOTION TO PROCEED IN FORMA PAUPERIS (NO ORDER PROVIDED)
PARTY SUBMITTING: DAVID VENTURA
DATE SUBMITTED: JULY 10, 2020
SUBMITTED BY: BBLOUGH
DATE RECEIVED JUDGE OFFICE:

36 7/10/2020 - NEF - Proof of Electronic Service

Additional Text: Transaction 7965932 - Approved By: NOREVIEW : 07-10-2020:16:17:05

37 7/16/2020 - 3790 - Reply to/in Opposition

Additional Text: DFX: NO AFFIRMATION PROVIDED ; PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION AND REQUEST FOR
CONVERSION OF JUNE 22, 2020 MOTION TO REQUEST FOR EXTENSION OF TIME AND FOR COURT ORDER - Transaction
7975008 - Approved By: BBLOUGH : 07-16-2020:15:41:02

38 7/16/2020 - NEF - Proof of Electronic Service

Additional Text: Transaction 7975114 - Approved By: NOREVIEW : 07-16-2020:15:41:59

39 7/31/2020 - S200 - Request for Submission Complet

No additional text exists for this entry.

40 7/31/2020 - S200 - Request for Submission Complet

No additional text exists for this entry.

41 7/31/2020 - 2682 - Ord Addressing Motions

Additional Text: Transaction 7998178 - Approved By: NOREVIEW : 07-31-2020:16:52:12

42 7/31/2020 - NEF - Proof of Electronic Service

Additional Text: Transaction 7998186 - Approved By: NOREVIEW : 07-31-2020:16:53:12

43 8/3/2020 - 3860 - Request for Submission

Additional Text: Transaction 8000973 - Approved By: NOREVIEW : 08-03-2020:16:06:25
DOCUMENT TITLE: REPLY TO DEFENDANT'S OPPOSITION (NO ORDER PROVIDED)
PARTY SUBMITTING: DAVID VENTURA
DATE SUBMITTED: AUGUST 3, 2020
SUBMITTED BY: BBLOUGH
DATE RECEIVED JUDGE OFFICE:

44 8/3/2020 - NEF - Proof of Electronic Service

Additional Text: Transaction 8000976 - Approved By: NOREVIEW : 08-03-2020:16:07:20

45 8/3/2020 - S200 - Request for Submission Complet

Additional Text: ORDER ISSUED JULY 31, 2020

46 8/5/2020 - 2645 - Opposition to Mtn ...

Additional Text: OPPOSITION TO DEFENDANT'S MOTION TO DISMISS - Transaction 8005022 - Approved By: BBLOUGH :
08-05-2020:14:32:57

47 8/5/2020 - 3860 - Request for Submission

Additional Text: Transaction 8005022 - Approved By: BBLOUGH : 08-05-2020:14:32:57
DOCUMENT TITLE: OPPOSITION TO DEFENDANT'S MOTION TO DISMISS (NO ORDER PROVIDED)
PARTY SUBMITTING: DAVID VENTURA
DATE SUBMITTED: AUGUST 5, 2020
SUBMITTED BY: BBLOUGH
DATE RECEIVED JUDGE OFFICE:

48 8/5/2020 - NEF - Proof of Electronic Service

Additional Text: Transaction 8005066 - Approved By: NOREVIEW : 08-05-2020:14:33:55

49 8/5/2020 - S200 - Request for Submission Complet

No additional text exists for this entry.

- 50 8/13/2020 - 3790 - Reply to/in Opposition
Additional Text: DEFENDANTS JOHN H. GANSER, M.D. AND GOMEZ, KOZAR, MCELREATH AND SMITH'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS - Transaction 8018753 - Approved By: CSULEZIC : 08-13-2020:16:35:54
- 51 8/13/2020 - 3860 - Request for Submission
Additional Text: - Transaction 8018753 - Approved By: CSULEZIC : 08-13-2020:16:35:54
DOCUMENT TITLE: REQUEST FOR SUBMISSION OF MOTION TO DISMISS FILED 6/08/2020
PARTY SUBMITTING: ALICE CAMPOS MERCADO ESQ
DATE SUBMITTED: 8/13/2020
SUBMITTED BY: CS
DATE RECEIVED JUDGE OFFICE:
- 52 8/13/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8018815 - Approved By: NOREVIEW : 08-13-2020:16:36:47
- 53 8/17/2020 - 3370 - Order ...
Additional Text: Transaction 8021739 - Approved By: NOREVIEW : 08-17-2020:11:07:17
- 54 8/17/2020 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 55 8/17/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8021742 - Approved By: NOREVIEW : 08-17-2020:11:08:14
- 56 8/17/2020 - 2540 - Notice of Entry of Ord
Additional Text: Notice of Entry of Order - Transaction 8023070 - Approved By: NOREVIEW : 08-17-2020:15:59:17
- 57 8/17/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8023088 - Approved By: NOREVIEW : 08-17-2020:16:00:52
- 58 8/26/2020 - 2610 - Notice ...
Additional Text: PLAINTIFF'S NOTICE OF ERRATA - Transaction 8039043 - Approved By: BBLOUGH : 08-26-2020:15:34:03
- 59 8/26/2020 - 3860 - Request for Submission
Additional Text: Transaction 8039043 - Approved By: BBLOUGH : 08-26-2020:15:34:03
DOCUMENT TITLE: PLAINTIFF'S NOTICE OF ERRATA (NO ORDER PROVIDED)
PARTY SUBMITTING: DAVID VENTURA
DATE SUBMITTED: AUGUST 26, 2020
SUBMITTED BY: BBLOUGH
DATE RECEIVED JUDGE OFFICE:
- 60 8/26/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8039061 - Approved By: NOREVIEW : 08-26-2020:15:37:48
- 61 9/4/2020 - 3060 - Ord Granting Mtn ...
Additional Text: ORDER GRANTING MOTION TO DISMISS WITHOUT PREJUDICE Transaction 8054784 - Approved By: NOREVIEW : 09-04-2020:14:38:18
- 62 9/4/2020 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 63 9/4/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8054789 - Approved By: NOREVIEW : 09-04-2020:14:39:18
- 64 9/4/2020 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 65 9/4/2020 - F135 - Adj Motion to Dismiss by DEFT
No additional text exists for this entry.

- 66 9/4/2020 - 1360 - Certificate of Service
Additional Text: Transaction 8054866 - Approved By: NOREVIEW : 09-04-2020:15:07:06
- 67 9/4/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8054869 - Approved By: NOREVIEW : 09-04-2020:15:07:59
- 68 9/8/2020 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 8056378 - Approved By: NOREVIEW : 09-08-2020:12:12:30
- 69 9/8/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8056381 - Approved By: NOREVIEW : 09-08-2020:12:13:29
- 70 9/24/2020 - 2515 - Notice of Appeal Supreme Court
Additional Text: DFX: FILING FEES REQUIRED - NOTICE OF APPEAL - 9/4/2020
- 71 9/24/2020 - 3860 - Request for Submission
Additional Text: REQUEST FOR SUBMISSION FOR NOTICE OF APPEAL (NO S1 BUILT)
- 72 9/24/2020 - 1350 - Certificate of Clerk
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 8084655 - Approved By: NOREVIEW : 09-24-2020:14:42:25
- 73 9/24/2020 - 1310E - Case Appeal Statement
Additional Text: CASE APPEAL STATEMENT - Transaction 8084655 - Approved By: NOREVIEW : 09-24-2020:14:42:25
- 74 9/24/2020 - 4113 - District Ct Deficiency Notice
Additional Text: NOTICE OF APPEAL DEFICIENCY - FILING FEES - Transaction 8084655 - Approved By: NOREVIEW : 09-24-2020:14:42:25
- 75 9/24/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8084659 - Approved By: NOREVIEW : 09-24-2020:14:43:25

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

DAVID ALVAREZ VENTURA,
Plaintiff,

vs.

Case No. CV20-00866

Dept. No. 8

JOHN H. GANSER, M.D. LIC #9279,
GOMEZ, KOZAR, MCELREATH AND
SMITH, A Professional Corporation,
Defendants.

ORDER GRANTING MOTION TO DISMISS WITHOUT PREJUDICE

Before the Court is *Defendants John H. Ganser, M.D. and Gomez, Kozar, McElreath and Smith's Motion to Dismiss* ("Motion to Dismiss") filed by Defendants, JOHN H. GANSER, M.D. AND GOMEZ, KOZAR, MCELREATH AND SMITH (collectively, "Defendants") on June 8, 2020. Plaintiff, DAVID ALVAREZ VENTURA filed an opposition on August 5, 2020, to which Defendants replied on August 13, 2020.

Having reviewed the pleadings and the relevant authorities, the Court **GRANTS** Defendants' *Motion to Dismiss*.

BACKGROUND

According to the record, the instant matter arises from a surgical procedure performed by Defendants on or about October 24, 2016, in which Defendants allegedly left surgical instruments in Plaintiff's body. Plaintiff brought an action for medical malpractice in the Eighth

1 Judicial District Court. Defendants moved for a change of venue, and the action was reassigned
2 to the Second Judicial District. Subsequently, Defendants filed its *Motion to Dismiss* for failure
3 to provide a medical expert's affidavit pursuant to NRS 41A.071.

4 On July 31, 2020, the Court granted Plaintiff's request for an extension of time, giving
5 Plaintiff 45 days to file an opposition to Defendants' *Motion to Dismiss*. Plaintiff timely filed his
6 opposition on August 5, 2020.

7 **LEGAL STANDARD**

8 Pursuant to NRCP 12(b)(5), a claim may be dismissed for failure to state a claim upon
9 which relief can be granted. When ruling on a motion to dismiss, the Court's task is to determine
10 whether or not the challenged pleading sets forth allegations sufficient to make out the elements
11 of a right to relief." *Edgar v. Wagner*, 101 Nev. 226, 227 (1985).¹ Further, the Court must accept
12 the allegations in the complaint as true and "construe the pleadings liberally and draw every fair
13 intendment in favor of the plaintiff." *Capital Mortg. Holding v. Hahn*, 101 Nev. 314, 314 (1985);
14 *See Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228 (2008). The Court need not
15 blindly accept conclusory allegations, unwarranted factual deductions, or unreasonable
16 inferences. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the
17 Court required to accept as true allegations contradicted by the exhibits attached to the
18 complaint. *Id.*

19 **DISCUSSION**

20 Defendants rely on NRS 41A.071 to argue that Plaintiff's failure to include an affidavit
21 by a medical expert warrants dismissal the claim. NRS 41A.071 provides that a district court
22 shall dismiss a medical malpractice action, without prejudice, "if the action is filed without an
23 affidavit that ... [s]upports the allegations contained in the action." NRS. 41A.071.

24 In his opposition, Plaintiff asserts that he is exempt from the affidavit requirement
25 because his claim falls under the *res ipsa loquitor* exception of NRS 41A.100(1)(a). The relevant
26

27
28 ¹ A pleading party "must set forth sufficient facts to establish all necessary elements of a claim" against the opposing party. *Hay. v. Hay*, 100 Nev. 196, 198 (1984) (citing *Johnson v. Travelers Inc. Co.*, 89 Nev. 467, 472 (1973)).

1 *res ipsa loquitor* exception applies in cases where “[a] foreign substance other than medication
2 or a prosthetic device was unintentionally left within the body of a patient following surgery[.]”
3 NRS 41A.100(1). Particularity, Plaintiff argues that the surgical instruments left within his body
4 falls within NRS 41A.1001(1)(a), which exempts him from the expert affidavit requirement.

5 The *res ipsa loquitor* exception requires “*some evidence*” of one of the factual predicates
6 enumerated in NRS 41A.100(1). *Johnson v. Egtegar*, 112 Nev. 428, 433-34 (1996). Although the
7 Court does not consider matters outside the pleadings when ruling a motion to dismiss,
8 Plaintiff’s pleadings fail to logically support a viable claim under the *res ipsa loquitor* exception.
9 For instance, Plaintiff alleges that a surgical instrument was left in his body by during a surgery
10 performed by Defendant’s on October 24, 2016. Plaintiff further alleges that an ultrasound
11 performed on September 15, 2017, failed to identify the instrument. A subsequent ultrasound,
12 conducted on November 30, 2018, identified the surgical instrument for the first time. However,
13 the radiology report of ultrasound states that “[it] seems unlikely to be related to the patient[’]s
14 history of previous esophageal surgery [referring the October 24, 2016 surgery].” These
15 contradictions suggest Plaintiff’s allegations are unsupported and insufficient to meet the *res*
16 *ipsa loquitor* exception. Unable to meet the *res ipsa loquitor* exception, Plaintiff is subject to the
17 affidavit requirement.² Having not provided the required affidavit, this Court must dismiss
18 Plaintiff’s complaint without prejudice. *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122
19 Nev. 1298, 1304 (2006).³
20
21
22
23

24 _____
25 ² The Court concludes *Jaramillo v. Ramos*, 136 Nev. Adv. Op. 17 (2020) does not compel a different result. Here,
26 unlike *Jaramillo*, Plaintiff has not pled “facts entitling [him] to NRS 41A.100(1)(a)’s *res ipsa loquitor* theory of
negligence.” That case is, therefore, readily distinguishable.

27 ³ “The Legislature’s choice of the words ‘shall dismiss’ instead of ‘subject to dismissal’ indicates that the
28 Legislature intended that the court have no discretion with respect to dismissal and that a complaint filed without an
expert affidavit would be void and must be automatically dismissed.” *Washoe Med. Ctr. v. Second Judicial Dist.*
Court, 122 Nev. 1298, 1304 (2006).

1 Furthermore, even in the light most favorable to Plaintiff, the complaint and exhibits'
2 contradictions render Plaintiff's allegations as mere conclusory and based on unreasonable
3 inferences.⁴

4 The Court finds that Plaintiff is not entitled to leave to amend. Generally, "when a
5 complaint that can be amended to state a claim for relief, leave to amend, rather than dismissal,
6 is the preferred remedy." *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 22 (2003). "However, leave
7 to amend should not be granted if the proposed amendment would be futile." *Halcrow, Inc. v.*
8 *Eighth Judicial Dist. Court of the State*, 129 Nev. 394, 398 (2013) (citing *Allum v. Valley Bank*
9 *of Nev.*, 109 Nev. 280, 287 (1993)). "A proposed amendment may be deemed futile if the
10 plaintiff seeks to amend the complaint in order to plead an impermissible claim." *Id.* Here,
11 Plaintiff may not amend his complaint under *Washoe Med. Ctr. v. Second Judicial Dist. Court*,
12 122 Nev. 1298, 1304 (2006). ("A complaint that does not comply with NRS 41A.071 is void and
13 must be dismissed; no amendment is permitted.").⁵

14
15 The Court further finds that no viable amendment would relieve Plaintiff from the
16 affidavit requirement. Plaintiff reaches his allegations through the unreasonable inference that
17 Defendants' malpractice is responsible for the presence of the instrument which; (1) was
18 removed from an entirely different area of Plaintiff's body than Defendants' operated on; (2)
19 failed to appear on an ultrasound performed a year after the surgery; (3) the ultrasound that first
20 identified the instrument occurred two years after the alleged malpractice, and one year after the
21 first ultrasound which failed to identify the instrument; and (4) the report of the second
22 ultrasound states that the presence of the instrument is unlikely related to the surgery performed
23 by Defendants. Because of this unreasonable inference to reach the allegations, the Court finds
24

25 ⁴ The Court may consider exhibits attached to the pleading and incorporated by reference when ruling on a motion to
26 dismiss without transposing the motion into a motion for summary judgment. See *Brelant v. Preferred Equities*
Corp., 109 Nev. 842, 847 (1993); *Schmidt v. Washoe Cty.*, 123 Nev. 128, 133 (2007).

27 ⁵ The Nevada Supreme Court reasons that when a complaint does not comply with NRS 41A.071, the complaint "is
28 void ab initio, it does not legally exist and thus it cannot be amended. Therefore, NRCP 15(a)'s amendment
provisions, whether allowing amendment as a matter of course or leave to amend, are inapplicable." *Washoe Med.*
Ctr. v. Second Judicial Dist. Court, 122 Nev. 1298, 1304 (2006).

1 that any attempt to amend the complaint to demonstrate that an affidavit is not required would
2 be futile.

3 In sum, the inconsistencies in Plaintiff's allegations fail to invoke NRS 41A.100(1)'s
4 medical expert affidavit exception and overcome Defendants' *Motion to Dismiss*. Moreover,
5 adherence to Nevada Supreme Court precedent, the Court finds the Plaintiff is not entitled to
6 leave to amend. The Court further exercises its discretion to find that an amendment
7 demonstrating why there is not a need for an affidavit would be futile.

8 **CONCLUSION**

9 Based on the foregoing, and good cause appearing, the Court **GRANTS** Defendants'
10 *Motion to Dismiss* without prejudice. This case is therefore **DISMISSED WITHOUT**
11 **PREJUDICE**.

12 **IT IS SO ORDERED.**

13 **DATED** this 4 day of September, 2020.

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16 **BARRY L. BRESLOW**
17 District Judge
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 4 day of September, 2020, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

David A. Ventura

Edward J. Lemons, Esq.

Alice Campos Mercado, Esq.



Judicial Assistant

1 **2540**
EDWARD J. LEMONS, ESQ.
2 Bar No. 699
eij@lge.net
3 ALICE CAMPOS MERCADO, ESQ.
Bar No. 4555
4 acm@lge.net
LEMONS, GRUNDY & EISENBERG
5 6005 Plumas Street
Third Floor
6 Reno, Nevada 89519
(775) 786-6868

7 *Attorneys for Defendants*

8
9 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE**
10 **STATE OF NEVADA IN AND FOR THE**
11 **COUNTY OF WASHOE**

12 -o0o-

13 **DAVID ALVAREZ VENTURA,**
14 Plaintiff,

Case No.: CV20-00866

Dept. No.: 8

15 vs.

16 **JOHN H. GANSER, M.D. LIC #9279**
GOMEZ, KOZAR, McELREATH AND SMITH,
A Professional Corporation,
17 Defendants.
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19
20 **NOTICE OF ENTRY OF ORDER**

21 PLEASE TAKE NOTICE that on September 4, 2020, the court entered its *Order*
22 *Granting Defendants' Motion to Dismiss* the above-entitled matter. A copy of said
23 *Order* is attached hereto.

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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the Social Security number of any person.

DATED this 8th day of September, 2020.

LEMONS, GRUNDY & EISENBERG
Attorneys for Defendants

By: 

EDWARD J. LEMONS
ALICE CAMPOS MERCADO

CERTIFICATE OF SERVICE

I am a citizen of the United States. My business address is 6005 Plumas Street, Third Floor, Reno, NV 89519, and I am employed by LEMONS, GRUNDY & EISENBERG in the City of Reno and County of Washoe where this service occurs

On September 08, 2020, following the ordinary business practice, I caused to be served to the addressee(s) listed below, a true copy of the foregoing document(s) and described as **Notice of Entry of Order**.

☒ **BY MAIL:** in an envelope with postage thereon fully prepaid to be placed in the U.S. Mail at Reno, Nevada;

David Alvarez Ventura, #80079
HIGH DESERT STATE PRISON
P.O. Box 650
Indian Springs, Nevada 89070

☐ **BY PERSONAL SERVICE:** in an envelope to be hand delivered this date;

☐ **BY OVERNIGHT DELIVERY:** in an envelope to be delivered to an overnight delivery carrier with delivery fees provided for;

☐ **BY FACSIMILE:** by transmitting by facsimile to the respective fax telephone phone number(s).

☐ **BY USING THE COURT'S EFS** which electronically served the following individual(s):

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



IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

DAVID ALVAREZ VENTURA,

Plaintiff,

vs.

Case No. CV20-00866

Dept. No. 8

JOHN H. GANSER, M.D. LIC #9279,
GOMEZ, KOZAR, MCELREATH AND
SMITH, A Professional Corporation,

Defendants.

ORDER GRANTING MOTION TO DISMISS WITHOUT PREJUDICE

Before the Court is *Defendants John H. Ganser, M.D. and Gomez, Kozar, McElreath and Smith's Motion to Dismiss* ("Motion to Dismiss") filed by Defendants, JOHN H. GANSER, M.D. AND GOMEZ, KOZAR, MCELREATH AND SMITH (collectively, "Defendants") on June 8, 2020. Plaintiff, DAVID ALVAREZ VENTURA filed an opposition on August 5, 2020, to which Defendants replied on August 13, 2020.

Having reviewed the pleadings and the relevant authorities, the Court **GRANTS** Defendants' *Motion to Dismiss*.

BACKGROUND

According to the record, the instant matter arises from a surgical procedure performed by Defendants on or about October 24, 2016, in which Defendants allegedly left surgical instruments in Plaintiff's body. Plaintiff brought an action for medical malpractice in the Eighth

1 Judicial District Court. Defendants moved for a change of venue, and the action was reassigned
2 to the Second Judicial District. Subsequently, Defendants filed its *Motion to Dismiss* for failure
3 to provide a medical expert's affidavit pursuant to NRS 41A.071.

4 On July 31, 2020, the Court granted Plaintiff's request for an extension of time, giving
5 Plaintiff 45 days to file an opposition to Defendants' *Motion to Dismiss*. Plaintiff timely filed his
6 opposition on August 5, 2020.

7 LEGAL STANDARD

8 Pursuant to NRCP 12(b)(5), a claim may be dismissed for failure to state a claim upon
9 which relief can be granted. When ruling on a motion to dismiss, the Court's task is to determine
10 whether or not the challenged pleading sets forth allegations sufficient to make out the elements
11 of a right to relief." *Edgar v. Wagner*, 101 Nev. 226, 227 (1985).¹ Further, the Court must accept
12 the allegations in the complaint as true and "construe the pleadings liberally and draw every fair
13 intendment in favor of the plaintiff." *Capital Mortg. Holding v. Hahn*, 101 Nev. 314, 314 (1985);
14 *See Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228 (2008). The Court need not
15 blindly accept conclusory allegations, unwarranted factual deductions, or unreasonable
16 inferences. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the
17 Court required to accept as true allegations contradicted by the exhibits attached to the
18 complaint. *Id.*

19 DISCUSSION

20 Defendants rely on NRS 41A.071 to argue that Plaintiff's failure to include an affidavit
21 by a medical expert warrants dismissal the claim. NRS 41A.071 provides that a district court
22 shall dismiss a medical malpractice action, without prejudice, "if the action is filed without an
23 affidavit that ... [s]upports the allegations contained in the action." NRS. 41A.071.

24 In his opposition, Plaintiff asserts that he is exempt from the affidavit requirement
25 because his claim falls under the *res ipsa loquitor* exception of NRS 41A.100(1)(a). The relevant
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28 ¹ A pleading party "must set forth sufficient facts to establish all necessary elements of a claim" against the opposing party. *Hay. v. Hay*, 100 Nev. 196, 198 (1984) (citing *Johnson v. Travelers Inc. Co.*, 89 Nev. 467, 472 (1973)).

1 *res ipsa loquitor* exception applies in cases where “[a] foreign substance other than medication
2 or a prosthetic device was unintentionally left within the body of a patient following surgery[.]”
3 NRS 41A.100(1). Particularity, Plaintiff argues that the surgical instruments left within his body
4 falls within NRS 41A.1001(1)(a), which exempts him from the expert affidavit requirement.

5 The *res ipsa loquitor* exception requires “some evidence” of one of the factual predicates
6 enumerated in NRS 41A.100(1). *Johnson v. Egtegar*, 112 Nev. 428, 433-34 (1996). Although the
7 Court does not consider matters outside the pleadings when ruling a motion to dismiss,
8 Plaintiff’s pleadings fail to logically support a viable claim under the *res ipsa loquitor* exception.
9 For instance, Plaintiff alleges that a surgical instrument was left in his body by during a surgery
10 performed by Defendant’s on October 24, 2016. Plaintiff further alleges that an ultrasound
11 performed on September 15, 2017, failed to identify the instrument. A subsequent ultrasound,
12 conducted on November 30, 2018, identified the surgical instrument for the first time. However,
13 the radiology report of ultrasound states that “[it] seems unlikely to be related to the patient[’]s
14 history of previous esophageal surgery [referring the October 24, 2016 surgery].” These
15 contradictions suggest Plaintiff’s allegations are unsupported and insufficient to meet the *res*
16 *ipsa loquitor* exception. Unable to meet the *res ipsa loquitor* exception, Plaintiff is subject to the
17 affidavit requirement.² Having not provided the required affidavit, this Court must dismiss
18 Plaintiff’s complaint without prejudice. *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122
19 Nev. 1298, 1304 (2006).³

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25 ² The Court concludes *Jaramillo v. Ramos*, 136 Nev. Adv. Op. 17 (2020) does not compel a different result. Here,
26 unlike *Jaramillo*, Plaintiff has not pled “facts entitling [him] to NRS 41A.100(1)(a)’s *res ipsa loquitor* theory of
negligence.” That case is, therefore, readily distinguishable.

27 ³ “The Legislature’s choice of the words ‘shall dismiss’ instead of ‘subject to dismissal’ indicates that the
28 Legislature intended that the court have no discretion with respect to dismissal and that a complaint filed without an
expert affidavit would be void and must be automatically dismissed.” *Washoe Med. Ctr. v. Second Judicial Dist.*
Court, 122 Nev. 1298, 1304 (2006).

1 Furthermore, even in the light most favorable to Plaintiff, the complaint and exhibits'
2 contradictions render Plaintiff's allegations as mere conclusory and based on unreasonable
3 inferences.⁴

4 The Court finds that Plaintiff is not entitled to leave to amend. Generally, "when a
5 complaint that can be amended to state a claim for relief, leave to amend, rather than dismissal,
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21 first ultrasound which failed to identify the instrument; and (4) the report of the second
22 ultrasound states that the presence of the instrument is unlikely related to the surgery performed
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Ctr. v. Second Judicial Dist. Court, 122 Nev. 1298, 1304 (2006).

1 that any attempt to amend the complaint to demonstrate that an affidavit is not required would
2 be futile.

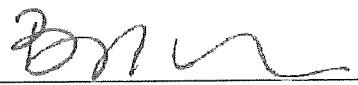
3 In sum, the inconsistencies in Plaintiff's allegations fail to invoke NRS 41A.100(1)'s
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5 adherence to Nevada Supreme Court precedent, the Court finds the Plaintiff is not entitled to
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8 **CONCLUSION**

9 Based on the foregoing, and good cause appearing, the Court **GRANTS** Defendants'
10 *Motion to Dismiss* without prejudice. This case is therefore **DISMISSED WITHOUT**
11 **PREJUDICE**.

12 **IT IS SO ORDERED.**

13 **DATED** this 4 day of September, 2020.

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16 **BARRY L. BRESLOW**
17 District Judge
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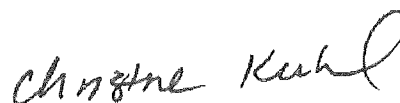
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 4 day of September, 2020, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

David A. Ventura

Edward J. Lemons, Esq.

Alice Campos Mercado, Esq.



Judicial Assistant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

May 18, 2020

A-20-809397-C David Ventura, Plaintiff(s)
vs.
John Ganser, M.D., Defendant(s)

**May 18, 2020 3:00 AM Motion for Change of
Venue**

HEARD BY: Scotti, Richard F.

COURTROOM: RJC Courtroom 03B

COURT CLERK: Elizabeth Vargas

PARTIES Minute Order- No parties present.
PRESENT:

JOURNAL ENTRIES

- The Court GRANTS the Demand and Motion for Change of Venue as unopposed, pursuant to EDCR 2.20. Defendants to prepare and submit the proposed Order.

CLERK'S NOTE: A copy of this Minute Order was electronically served to all registered parties by the Courtroom Clerk, Elizabeth Vargas via Odyssey Efile and Serve. //ev 5/20/20

Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

DAVID ALVAREZ VENTURA,

Case No. CV20-00866

Plaintiff,

Dept. No. 8

vs.

**JOHN H. GANSER, M.D. LIC #9279,
GOMEZ, KOZAR, MCELREATH AND
SMITH, a Professional Corporation,**

Defendants.

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 24th day of September, 2020, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 24th day of September, 2020.

Jacqueline Bryant
Clerk of the Court
By /s/YViloria
YViloria
Deputy Clerk

Code 4132

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

DAVID ALVAREZ VENTURA,

Case No. CV20-00866

Plaintiff,

Dept. No. 8

vs.

**JOHN H. GANSER, M.D. LIC #9279,
GOMEZ, KOZAR, MCELREATH AND
SMITH, a Professional Corporation,**

Defendants.

NOTICE OF APPEAL DEFICIENCY

TO: Clerk of the Court, Nevada Supreme Court,
and All Parties or their Respective Counsel Of Record:

On September 24th, 2020, Plaintiff, David A. Ventura, filed a Notice of Appeal with the Court. Plaintiff failed to include the Twenty-Four Dollar (\$24.00) Notice of Appeal filing fee, the Five Hundred Dollar (\$500.00) District Court appeal bond, and the Two Hundred Fifty Dollar (\$250.00) Supreme Court filing fee.

Pursuant to NRAP 3(a)(3), on September 24th, 2020, the Notice of Appeal was filed with the Nevada Supreme Court. By copy of this notice David Ventura will be notified by mail of the deficiency.

Dated this 24th day of September, 2020.

Jacqueline Bryant
Clerk of the Court
By: /s/YViloria
YViloria
Deputy Clerk

CERTIFICATE OF SERVICE

CASE NO. CV20-00866

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County Of Washoe; that on the 24th day of September, 2020, I electronically filed the Notice of Appeal Deficiency with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

ALICE CAMPOS MERCADO, ESQ. for GOMEZ, KOZAR, MCELREATH & SMITH, A PROFESSIONAL CORP et al

EDWARD LEMONS, ESQ. for GOMEZ, KOZAR, MCELREATH & SMITH, A PROFESSIONAL CORP et al

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada:

David A. Ventura #80079
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

/s/YViloria
YViloria
Deputy Clerk