

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARIA HARPER, an individual; and
DANIEL WININGER, an individual,

Appellants,

vs.

COPPERPOINT MUTUAL
INSURANCE HOLDING COMPANY,
an Arizona corporation;
COPPERPOINT GENERAL
INSURANCE COMPANY, an Arizona
corporation; LAW OFFICES OF
MARSHALL SILVERBERG, P.C., a
California corporation; KENNETH
MARSHALL SILVERBERG aka
MARSHALL SILVERBERG aka K.
MARSHALL SILVERBERG, an
individual,

Respondents.

Case No. 82158

Electronically Filed
Jun 21 2021 02:53 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from an order entered by the
Eighth Judicial District Court, Clark County, Nevada
The Honorable Jerry A. Wiese, III, District Court Judge
District Court Case No. A-20-814541-C

JOINT APPENDIX VOLUME III

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Facsimile: (702) 919-4672
Attorneys for Respondents
Copperpoint Mutual Insurance
Holding Co. and Copperpoint General
Insurance Company

DATE	DESCRIPTION	VOLUME	PAGES
05/04/2020	Complaint	I	0001-0022
06/01/2020	Defendants Copperpoint Mutual Insurance Holding Company & Copperpoint General Insurance Company's Answer to Plaintiffs' Complaint	I	0039-0051
09/04/2020	Defendants Copperpoint Mutual Insurance Holding Company and Copperpoint General Insurance Company's Motion to Dismiss Plaintiffs' Complaint or Alternatively, Motion for Summary Judgment	III	0593-0671
09/09/2020	Defendants Copperpoint Mutual Insurance Holding Company and Copperpoint General Insurance Company's Opposition to Plaintiffs' Motion for Partial Summary Judgment	III	0672-0741
10/07/2020	Defendants Copperpoint Mutual Insurance Holding Company and Copperpoint General Insurance Company's Reply in Support of Their Motion to Dismiss Plaintiffs' Complaint or Alternatively, Motion for Partial Summary Judgment	VI	1411-1491
05/06/2020	Errata to complaint	I	0023-0030
09/25/2020	Errata to Plaintiffs' Opposition to Defendant Copperpoint Mutual Insurance Holding Company and Copperpoint General Insurance Company's Motion to Dismiss Plaintiffs' Complaint or, Alternatively, Motion for Summary Judgment	V/VI	1107-1410
11/24/2020	Motion to Certify Order Entered on 10/26/20 as Final Pursuant to NRCP 54(B)	VII	1530-1538
11/24/2020	Notice of Appeal	VII	1509-1529

02/08/2021	Notice of Entry of Order	VII	1571-1598
10/26/2020	Order	VII	1492-1508
07/06/2020	Order Admitting to Practice	I	0052-0055
02/06/2021	Order Granting Plaintiffs' Motion to Certify Order Entered on 10/26/20 as Final Pursuant to NRCP 54(B)	VII	1546-1570
08/26/2020	Plaintiffs' Motion for Partial Summary Judgment	I/II/III	0056-0592
09/18/2020	Plaintiffs' Opposition to Defendants Copperpoint Mutual Insurance Holding Company and Copperpoint General Insurance Company's Motion to Dismiss Plaintiffs' Complaint or Alternatively, Motion for Summary Judgment	IV/V	0742-1087
09/22/2020	Plaintiffs' Reply in Support of Plaintiffs' Motion for Partial Summary Judgment	V	1088-1106
01/29/2021	Stipulation and Order for Dismissal of Defendant, Shoop, a Professional Law Corporation, Without Prejudice	VII	1539-1545
5/14/2020	Summons with proof of service to defendant Copperpoint General Insurance Company	I	0035-0038
5/14/2020	Summons with proof of service to defendant Copperpoint Mutual Insurance Holding Company	I	0031-0034

CERTIFICATE OF SERVICE

I certify that on the 21st day of June, 2021, this document was electronically filed with the Nevada Supreme Court. Electronic service of the foregoing: **APPELLANTS' OPENING BRIEF** and **VOLUMES I-VII** of the **JOINT APPENDIX** shall be made in accordance with the Master Service List as follows:

Dalton L. Hooks, Jr., Esq.
HOOKS MENG & CLEMENT
2820 West Charleston Blvd., Suite C-23
Las Vegas, Nevada 89102
*Attorneys for Defendants Copperpoint Mutual Insurance Holding Company
and Copperpoint General Insurance Company*

Robert C. McBride, Esq.
Heather S. Hall, Esq.
MCBRIDE HALL
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113

and

James Kjar, Esq.
Jon Schwalbach, Esq.
KJAR, MCKENNA & STOCKALPER LLP
841 Apollo Street, Suite 100
El Segundo, California 90245
*Attorneys for Defendants Kenneth Marshall Silverberg and
Law Offices of Marshall Silverberg*

DATED this 21st day of June, 2021.

/s/ Natalie Vazquez

An Employee of MAIER GUTIERREZ & ASSOCITES

EXHIBIT 18

EXHIBIT 18



Nevada State BOARD OF OSTEOPATHIC MEDICINE

Licensee Information

Nevada State - Board of Osteopathic Medicine Verification as of July, 24 2020

Licensee Information

Name: Cyndi Tran
Address: Desert Neurology
2020 Wellness Way, Suite 202
Las Vegas, NV 89106
Phone: (702) 732-2600
Fax:
School: Touro University College of Osteopathic
Medicine Nevada
Residency: Valley Hospital Medical Center (Residency)
(2011-07-01 to 2015-06-30)
Specialty: AOA - Neurology

License Details

License Type: D.O. License
License Number: DO1934
License Status: Active
Effective: 07/01/2015
Expires: 12/31/2020

License History

License	License Number	License Date	Status
D.O. License	DO1934	07/01/2015 to 12/31/2020	Active
SL License	SL0822	07/01/2011 to 06/30/2015	Expired

Disciplinary Action

Licensee has no Disciplinary Actions

Other State Disciplinary Actions

Licensee has no Disciplinary Actions Outside of Nevada

Malpractice Claims

Court Case #	Date	Status	Loss Location
A-16-738004-C	06/07/2016	Settled	Clark County, NV

This is a Primary Source Verification.

Please note that the settlement of a medical malpractice action may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the provider. Therefore, there may be no disciplinary action appearing for a licensee even though there is a closed malpractice claim on file. A payment in the settlement of medical malpractice does not create a presumption that medical malpractice occurred.

For further questions regarding discipline or malpractice information, please contact us at: 702-732-2147

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Nevada State BOARD OF OSTEOPATHIC MEDICINE

Licensee Information

Nevada State - Board of Osteopathic Medicine Verification as of July, 24 2020

Licensee Information

Name: Paul Harlan Janda
 Address: Las Vegas Neurology Center
 2020 Wellness Way, Suite 306
 Las Vegas, NV 89106
 Phone: (702) 432-2233
 Fax: (702) 800-5456
 School: Touro University College of Osteopathic
 Medicine California
 Residency: Valley Hospital Medical Center (Residency)
 (2007-06-24 to 2012-06-30)
 Specialty: AOA - Neurology

License Details

License Type: D.O. License
 License Number: DO1588
 License Status: Active
 Effective: 01/11/2011
 Expires: 12/31/2020

License History

License	License Number	License Date	Status
D.O. License	DO1588	01/11/2011 to 12/31/2020	Active
SL License	SL0516	06/24/2007 to 06/30/2012	Expired

Disciplinary Action

Licensee has no Disciplinary Actions

Other State Disciplinary Actions

Licensee has no Disciplinary Actions Outside of Nevada

Malpractice Claims

Court Case #	Date	Status	Loss Location
A-17-759169-C	07/31/2017	Dismissed	Clark County, NV
A-16-738004-C	06/16/2016	Settled	Clark County, NV

This is a Primary Source Verification.

Please note that the settlement of a medical malpractice action may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the provider. Therefore, there may be no disciplinary action appearing for a licensee even though there is a closed malpractice claim on file. A payment in the settlement of medical malpractice does not create a presumption that medical malpractice occurred.

For further questions regarding discipline or malpractice information, please contact us at: 702-732-2147

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EXHIBIT 20

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Nevada State BOARD OF OSTEOPATHIC MEDICINE

Licensee Information

Nevada State - Board of Osteopathic Medicine Verification as of July, 24 2020

Licensee Information

Name: Elizabeth Pui Phung-Hart
Address:
Phone:
Fax:
School: Touro University College of Osteopathic
Medicine Nevada
Residency: Valley Hospital Medical Center (Residency)
(2014-07-01 to 2017-06-30)
Specialty: Internal Medicine

License Details

License Type: D.O. License
License Number: DO2071
License Status: Expired: Elective Non-Renew
Effective: 07/01/2016
Expires: 01/01/2017

License History

License	License Number	License Date	Status
D.O. License	DO2071	01/01/2017 to 01/01/2017	Elective Non-Renew
D.O. License	DO2071	07/01/2016 to 12/31/2016	Active
SL License	SL1020	07/01/2014 to 06/30/2017	Expired

Disciplinary Action

Licensee has no Disciplinary Actions

Other State Disciplinary Actions

Licensee has no Disciplinary Actions Outside of Nevada

Malpractice Claims

Court Case #	Date	Status	Loss Location
A-16-738004-C	06/07/2016	Settled	Clark County, NV

This is a Primary Source Verification.

Please note that the settlement of a medical malpractice action may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the provider. Therefore, there may be no disciplinary action appearing for a licensee even though there is a closed malpractice claim on file. A payment in the settlement of medical malpractice does not create a presumption that medical malpractice occurred.

For further questions regarding discipline or malpractice information, please contact us at: 702-732-2147

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EXHIBIT 21

EXHIBIT 21



Nevada State BOARD OF OSTEOPATHIC MEDICINE

Licensee Information

Nevada State - Board of Osteopathic Medicine Verification as of July, 23 2020

Licensee Information

Name: Andrea Leigh Agcaoili
 Address: 1450 Treat Blvd
 Walnut Creek, CA 94597
 Phone: (925) 296-9720
 Fax: (925) 296-9030
 School: Touro University College of Osteopathic
 Medicine Nevada
 Residency: Valley Hospital Medical Center (Residency)
 (2014-07-01 to 2016-09-30)
 South Hampton Hospital (Internship) (2013-
 07-01 to 2014-06-30)
 Specialty: AOA - Family Practice/General
 Practice/Family Medicine

License Details

License Type: SL License
 License Number: SL1012
 License Status: Expired
 Effective: 07/01/2014
 Expires: 06/30/2017

License History

License	License Number	License Date	Status
SL License	SL1012	07/01/2014 to 06/30/2017	Expired

Disciplinary Action

Licensee has no Disciplinary Actions

Other State Disciplinary Actions

Licensee has no Disciplinary Actions Outside of Nevada

Malpractice Claims

Court Case #	Date	Status	Loss Location
A-16-738004-C	06/07/2016	Settled	Clark County, NV

This is a Primary Source Verification.

Please note that the settlement of a medical malpractice action may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the provider. Therefore, there may be no disciplinary action appearing for a licensee even though there is a closed malpractice claim on file. A payment in the settlement of medical malpractice does not create a presumption that medical malpractice occurred.

For further questions regarding discipline or malpractice information, please contact us at: 702-732-2147

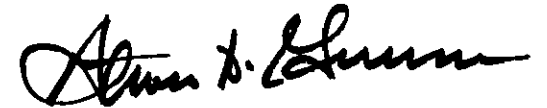
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CLERK OF THE COURT

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Telephone: (702) 832-5909
Facsimile: (702) 832-5910
Attorneys for Defendant, Paul Janda, D.O.

DISTRICT COURT

CLARK COUNTY, NEVADA

DARIA HARPER, DANIEL WININGER,

Plaintiffs,

v.

VALLEY HOSPITAL MEDICAL CENTER,
INC., doing business as VALLEY HOSPITAL
MEDICAL CENTER; VALLEY HEALTH
SYSTEMS, LLC, doing business as VALLEY
HOSPITAL MEDICAL CENTER; JEFFREY
DAVIDSON, M.D.; CYNDI TRAN, D.O. PAUL
JANDA, D.O.; ELIZABEETH PHUNG-HART,
D.O.; ANDREA AGCAOILI, D.O.; MURAD
JUSSA, M.D., and, DOES 1 through 250,
inclusive,

Defendants.

Case No.: A-16-738004-C

Dept. No.: XVII

**DEFENDANT PAUL JANDA, D.O.'S
ANSWER TO PLAINTIFF'S
COMPLAINT**

DEFENDANT JANDA, D.O.'S ANSWER TO PLAINTIFF'S COMPLAINT

Defendant Paul Janda, D.O. (Defendant herein), by and through his attorneys of record
the law firm of John H. Cotton & Associates, hereby Answer Plaintiff's Complaint (Complaint
herein) as follows:

STATEMENT OF FACTS

1. Answering Paragraph 1 of Plaintiff's Complaint, Defendant responds he lacks sufficient
information and/or knowledge to form a belief about the truth or falsity of the facts alleged

1 therein and therefore denies them on that basis.

2 2. Answering Paragraph 2 of Plaintiff's Complaint, Defendant responds he lacks sufficient
3 information and/or knowledge to form a belief about the truth or falsity of the facts alleged
4 therein and therefore denies them on that basis.

5 3. Answering Paragraph 3 of Plaintiff's Complaint, Defendant responds he lacks sufficient
6 information and/or knowledge to form a belief about the truth or falsity of the facts alleged
7 therein and therefore denies them on that basis.

8 4. Answering Paragraph 4 of Plaintiff's Complaint, Defendant responds he lacks sufficient
9 information and/or knowledge to form a belief about the truth or falsity of the facts alleged
10 therein and therefore denies them on that basis.

11 5. Answering Paragraph 5 of Plaintiff's Complaint, Defendant admits he was and now is a
12 physician and holds himself out as duly licensed to practice his profession under and by virtue of
13 the laws of the State of Nevada and was and now is engaged in the practice of his profession in
14 the State of Nevada, and he lacks sufficient information and/or knowledge to form a belief about
15 the truth or falsity of the remaining facts alleged therein and therefore denies them on that basis.
16

17 6. Answering Paragraph 6 of Plaintiff's Complaint, Defendant responds he lacks sufficient
18 information and/or knowledge to form a belief about the truth or falsity of the facts alleged
19 therein and therefore denies them on that basis.

20 7. Answering Paragraph 7 of Plaintiff's Complaint, Defendant responds he lacks sufficient
21 information and/or knowledge to form a belief about the truth or falsity of the facts alleged
22 therein and therefore denies them on that basis.

23 8. Answering Paragraph 8 of Plaintiff's Complaint, Defendant responds he lacks sufficient
24 information and/or knowledge to form a belief about the truth or falsity of the facts alleged
25 therein and therefore denies them on that basis.

1 9. Answering Paragraph 9 of Plaintiff's Complaint, Defendant responds he lacks sufficient
2 information and/or knowledge to form a belief about the truth or falsity of the facts alleged
3 therein and therefore denies them on that basis.

4 10. Answering Paragraph 10 of Plaintiff's Complaint, Defendant responds he lacks sufficient
5 information and/or knowledge to form a belief about the truth or falsity of the facts alleged
6 therein and therefore denies them on that basis.

7
8 11. Answering Paragraph 11 of Plaintiff's Complaint, Defendant responds he lacks sufficient
9 information and/or knowledge to form a belief about the truth or falsity of the facts alleged
10 therein and therefore denies them on that basis.

11 12. Answering Paragraph 12 of Plaintiff's Complaint, Defendant responds he lacks sufficient
12 information and/or knowledge to form a belief about the truth or falsity of the facts alleged
13 therein and therefore denies them on that basis.

14
15 13. Answering Paragraph 13 of Plaintiff's Complaint, Defendant admits the declarations of
16 Drs. Beer and Ritter were attached to the Complaint served upon Defendant, but affirmatively
17 denies all allegations of negligence and wrongdoing continued with those declarations.

18 **I.**

19 **PLAINTIFF DARIA HARPER'S CAUSE OF ACTION**

20 14. Answering Paragraph 14 of Plaintiff's Complaint, Defendant refers to Paragraphs 1
21 through 13 of this Answer, and by reference, incorporate the same herein as if fully set forth.

22
23 15. Answering Paragraph 15 of Plaintiff's Complaint, Defendant responds he lacks sufficient
24 information and/or knowledge to form a belief about the truth or falsity of the facts alleged
25 therein and therefore denies them on that basis.

26 16. Answering Paragraph 16 of Plaintiff's Complaint, Defendant responds he lacks sufficient
27 information and/or knowledge to form a belief about the truth or falsity of the facts alleged
28

therein and therefore denies them on that basis.

17. Answering Paragraph 17 of Plaintiff's Complaint, Defendant denies all allegations of negligence and wrongdoing, and he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the remainder of the facts alleged therein and therefore denies them on that basis.

18. Answering Paragraph 18 of Plaintiff's Complaint, Defendant responds he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the facts alleged therein and therefore denies them on that basis.

19. Answering Paragraph 19 of Plaintiff's Complaint, Defendant denies all allegations of negligence and wrongdoing, and he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the remainder of the facts alleged therein and therefore denies them on that basis.

20. Answering Paragraph 20 of Plaintiff's Complaint, Defendant denies all allegations of negligence and wrongdoing, and he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the remainder of the facts alleged therein and therefore denies them on that basis.

21. Answering Paragraph 21 of Plaintiff's Complaint, Defendant denies all allegations of negligence and wrongdoing, and he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the remainder of the facts alleged therein and therefore denies them on that basis.

22. Answering Paragraph 22 of Plaintiff's Complaint, Defendant denies all allegations of negligence and wrongdoing, and he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the remainder of the facts alleged therein and therefore denies them on that basis.

//

II.

PLAINTIFF DANIEL WINIGER'S CAUSE OF ACTION

23. Answering Paragraph 23 of Plaintiff's Complaint, Defendant refers to Paragraphs 1 through 22 of this Answer, and by reference, incorporate the same herein as if fully set forth.

24. Answering Paragraph 24 of Plaintiff's Complaint, Defendant responds that he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the facts alleged therein and therefore denies them on that basis.

25. Answering Paragraph 25 of Plaintiff's Complaint, Defendant denies all allegations of negligence and wrongdoing, and he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the remainder of the facts alleged therein and therefore denies them on that basis.

AFFIRMATIVE DEFENSES

1. Defendant performed and fully discharged all medical and legal obligations to Plaintiff, including meeting the requisite standard of care to which Plaintiff was entitled.

2. In all of the treatment provided and rendered to Plaintiff by Defendant, the Plaintiff was fully informed of the risks inherent in such medical procedures and the risks inherent in her own failure to comply with instructions, and did voluntarily assume all risks attendant thereto.

3. Plaintiff's damages, if any, were caused by the disease process and/or medical condition of Plaintiff and not by any act and/or omission by Defendant.

4. Defendant alleges that the Complaint fails to state a compensable claim for relief as against this Defendant.

5. This answering Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the

1 event further investigation or discovery reveals the applicability of any such defenses, this
2 answering Defendant reserves the right to seek leave of court to amend this Answer to
3 specifically assert any such defenses. Such defenses are herein incorporated by reference for the
4 specific purpose of not waiving any such defenses.

5
6 6. Defendant was required to retain the services of an attorney to defend this action and is
7 entitled to an award of reasonable attorney's fees and costs of suit.

8 7. Plaintiff failed to take reasonable efforts to mitigate damages, if any, and is therefore
9 barred from recovering any damages from this answering Defendant.

10 8. Plaintiff failed to join a party pursuant to N.R.C.P. 19 necessary for the just adjudication
11 of the claims at issue in this action.

12 9. This answering Defendant denies each and every allegation of the Complaint not
13 specifically admitted or otherwise pled herein.

14
15 10. Defendant asserts that Plaintiff's injuries, if any, were caused by the actions or inactions
16 of persons over whom Defendant had neither control nor right of control and for whom this
17 answering Defendant are not liable or responsible.

18 11. Pursuant to N.R.C.P. 11 and 15, Defendant reserves the right to amend this Answer to
19 include any cross-claims, third-party complaints, or counter cross-claims, and any and all
20 affirmative defenses which have a reasonable basis in both law and fact and which are heretofore
21 unknown.

22
23 12. Defendant avails to all affirmative defenses as set forth in NRS 41A.035, 41A.045,
24 41A.100, 11.220, 41A.110, 41.141, 41.503, 41.505, and 42.021.

25 13. Plaintiff is barred from asserting claims against Defendant because the alleged damages
26 were the result of one or more unforeseeable intervening and superceding causes.

1 14. Defendant asserts that the Complaint should be dismissed on the basis that all treatment
2 that Defendant rendered to Plaintiff was not the proximate cause of any alleged injury sustained
3 by Plaintiff.

4 15. Defendant asserts that the Complaint should be dismissed on the basis that Plaintiff has
5 not complied with NRS 41A.071.

6 16. Defendant asserts that the Complaint is barred by the statute of limitations.

7 17. Defendant alleges that any injuries or damages allegedly sustained or suffered by the
8 Plaintiff at the times and places referred to in the Complaint, were caused, in whole or in part, or
9 were contributed to, by the negligence or fault or want of care of the Plaintiff, and the
10 negligence, fault or want of care on the part of the Plaintiff was greater than that, if any, of these
11 answering Defendants, the existence of which is specifically denied.

12 18. Plaintiff's cause of actions must be dismissed based upon the reasoning of Zohar v.
13 Zbiegien, 130 Nev. Adv. Op. 74, 334 P.3d 402 (2014) wherein no qualified expert affidavit
14 opines on Plaintiff's injuries as attributable to Defendant's alleged negligence.

15 19. Plaintiff's Complaint must be dismissed due to violation of N.R.C.P. 4(i).

16 20. Defendant alleges that the injuries and damages, if any, complained of by the Plaintiff
17 were unforeseeable.

18 21. Plaintiff's Complaint violates the Statute of Frauds.

19 22. Defendant alleges that the injuries and damages, if any, suffered by Plaintiff can and do
20 occur in the absence of negligence.

21 23. Plaintiff's claims are barred by the equitable doctrines of waiver, release, laches, unclean
22 hands, and equitable estoppel, including but not limited to Plaintiff and other third-parties and
23 their agents and employees inspected and approved the work performed by Defendant and
24 agreed and approved that Defendant's work performed was satisfactory.

25 24. Plaintiff received all or effectively all of the benefit of the Defendants' treatment that
26 Plaintiff hoped and intended to receive and to that extent any damages that Plaintiff might be
27 entitled to recover must be correspondingly reduced.
28

1 WHEREFORE, Defendant prays for judgment as follows:

2 1. That Plaintiffs take nothing by way of the Complaint and that the Complaint be
3 dismissed with prejudice;

4 2. That Defendant be awarded the costs and attorneys' fees incurred in defending
5 this action; and

6 3. That the Court award Defendant any other relief it deems appropriate under the
7 circumstances.
8

9 Dated this 11th day of October 2016.

10 **JOHN H. COTTON & ASSOCIATES, LTD.**

11 7900 West Sahara Avenue, Suite 200

12 Las Vegas, Nevada 89117

13 /s/ Adam Schneider

14 JOHN H. COTTON, ESQ.

15 ADAM SCHNEIDER, ESQ.

16 *Attorneys for Defendant*

17 *Paul Janda, D.O.*
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October 2016, I served the foregoing
DEFENDANT PAUL JANDA, D.O.'S ANSWER TO PLAINTIFF'S COMPLAINT by
filing a true and correct copy of the same through the Clerk of the Court using the Wiznet
Electronic Filing and Service system upon all parties with an email address on record in this
action:

Thomas S. Alch, Esq.
LAW OFFICES OF THOMAS S. ALCH
500 N. Rainbow Blvd., Ste. 300
Las Vegas, Nevada 89107

-and-

100 N. Crescent Dr., Ste. 360
Beverly Hills, California 90210
Attorney for Plaintiffs

ALVERSON TAYLOR MORTENSEN & SANDERS
Brigette Foley bfoley@alversontaylor.com
David J. Mortensen efile@alversontaylor.com
David Mortensen dmortensen@alversontaylor.com
Jared Herling jherling@alversontaylor.com
Tya Frabott tfrabott@alversontaylor.com

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Sharlene Reed sreed@cktfmlaw.com
Terri Strickland tstrickland@cktfmlaw.com

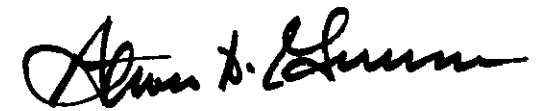
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Amanda Rosenthal ARosenthal@DaehnkeStevens.com
Katherine Gordon kgordon@daehnkeStevens.com
Laura Lucero LLucero@DaehnkeStevens.com
Linda Rurangirwa LRurangirwa@DaehnkeStevens.com
Melissa Gutbrodt MGutbrodt@DaehnkeStevens.com
Patricia Daehnke PDaehnke@DaehnkeStevens.com

HALL PRANGLE & SCHOONVELD, LLC
Contact Email
HPS Las Vegas efile@hpslaw.com
Tamie Phillips tphillips@hpslaw.com


An Employee of JOHN H. COTTON & ASSOCIATES, LTD.

EXHIBIT 23

EXHIBIT 23



CLERK OF THE COURT

1 ANS
2 DAVID J. MORTENSEN, ESQ.
3 Nevada Bar No. 002547
4 BRIGETTE E. FOLEY, ESQ.
5 Nevada Bar No. 012965
6 ALVERSON, TAYLOR,
7 MORTENSEN & SANDERS
8 7401 West Charleston Boulevard
9 Las Vegas, NV 89117-1401
10 Phone: (702) 384-7000
11 Facsimile: (702) 385-7000
12 efile@alversontaylor.com
13 Attorneys for DEFENDANTS
14 Cyndi Tran, D.O.
15 Elizabeth Phung-Hart, D.O.
16 Andrea Agcaoili, D.O.

DISTRICT COURT
CLARK COUNTY, NEVADA

13 DARIA HARPER, DANIEL WININGER,

14 Plaintiffs,

15 vs.

16 VALLEY HOSPITAL MEDICAL
17 CENTER, INC., doing business as VALLEY
18 HOSPITAL MEDICAL CENTER;
19 VALLEY HEALTH SYSTEM, LLC, doing
20 business as VALLEY HEALTH
21 MEDICAL CENTER; JEFFREY
22 DAVIDSON, M.D.; CYNDI TRAN, D.O.;
23 PAUL JANDA, D.O.; ELIZABETH
24 PHUNG-HART, D.O.; ANDREA
25 AGCAOILI, D.O.; MURAD JUSSA, M.D.,
26 and, DOES 1 through 250, inclusive,

27 Defendants.

CASE NO.: A-16-738004-C
DEPT. NO.: XVII

25 **ELIZABETH PHUNG-HART, D.O.'S ANSWER TO PLAINTIFFS' COMPLAINT**

26 COMES NOW Defendant ELIZABETH PHUNG-HART, D.O. (hereinafter "Dr. Phung-
27 Hart"), by and through her attorneys of record, DAVID J. MORTENSEN, ESQ. and BRIGETTE
28

1 E. FOLEY, ESQ. of the law firm of ALVERSON, TAYLOR, MORTENSEN & SANDERS, and
2 hereby answers Plaintiffs' Complaint, as follows:

3 **GENERAL ALLEGATIONS**

4 1. Answering Defendant is without sufficient knowledge to form a belief as to the
5 truth of the allegations contained in paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 12 of Plaintiffs'
6 Complaint, and therefore denies the same.

7
8 2. In answering paragraph 5 of Plaintiffs' Complaint, Answering Defendant admits
9 she was at all times a physician holding herself out as duly licensed to practice her profession
10 under and by virtue of the laws of the State of Nevada, and was engaged in the practice of that
11 profession in the State of Nevada. The remainder of the allegations contained in this paragraph
12 refer to other Defendants, which Defendant is without sufficient knowledge to form a belief as to
13 the truth of such allegations, and therefore denies the same.

14
15 3. Paragraph 13 of Plaintiffs' Complaint calls for a legal conclusion to which no
16 answer or response is necessary, and on that basis, Defendant denies the same.

17 **FIRST CAUSE OF ACTION**
18 **(Medical Malpractice)**

19 4. Answering Defendants repeat and reallege their answers to the allegations
20 contained within paragraphs 1 through 13 of Plaintiffs' Complaint as if the same were more fully
21 set forth herein.

22 5. Answering Defendants deny the allegations contained in paragraphs 15 and 16 of
23 Plaintiffs' Complaint.

24 6. Paragraphs 17, 19, 20, 21, and 22 of Plaintiffs' Complaint calls for legal
25 conclusions to which no answer or response is necessary, and on that basis, Defendant denies the
26 same.
27

1 7. Answering Defendant is without sufficient knowledge to form a belief as to the
2 truth of the allegations contained in paragraph 18 of Plaintiffs' Complaint, and therefore denies
3 the same.

4 **SECOND CAUSE OF ACTION**
5 **(Loss of Consortium)**

6 8. Answering Defendants repeat and reallege their answers to the allegations
7 contained within paragraphs 1 through 22 of Plaintiffs' Complaint as if the same were more fully
8 set forth herein.

9 9. Answering Defendant is without sufficient knowledge to form a belief as to the
10 truth of the allegations contained in paragraph 24 of Plaintiffs' Complaint, and therefore denies
11 the same.

12 10. Paragraph 25 of Plaintiffs' Complaint calls for a legal conclusion to which no
13 answer or response is necessary, and on that basis, Defendant denies the same.
14

15 **PRAYER FOR RELIEF**

16 Answering Defendant denies that Plaintiffs are entitled to any of the requested relief as
17 contained within their Complaint.
18

19 **GENERAL DENIAL**

20 Answering Defendant denies each and every allegation contained in Plaintiffs' Complaint
21 that is not specifically admitted to be true.

22 **FIRST AFFIRMATIVE DEFENSE**

23 Defendant alleges that Plaintiffs' Complaint on file herein fails to state a claim upon
24 which relief can be granted.

25 **SECOND AFFIRMATIVE DEFENSE**

26 Defendant alleges that Plaintiffs' damages, if any, were caused in whole or in part, or
27
28

1 were contributed to by reason of the negligence or wrongful conduct of Plaintiffs.

2 **THIRD AFFIRMATIVE DEFENSE**

3 All risks and dangers involved in the factual situation described in the Complaint were
4 open, obvious, and known to Plaintiffs and said Plaintiffs voluntarily assumed said risks and
5 dangers.
6

7 **FOURTH AFFIRMATIVE DEFENSE**

8 The incident alleged in Plaintiffs' Complaint and the resulting damages, if any, to
9 Plaintiffs were proximately caused or contributed to by Plaintiffs' own negligence, and such
10 negligence was greater than the alleged negligence of Defendant.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 Defendant alleges that the occurrence referred to in the Complaint, and all injuries and
13 damages, if any, resulting there from were caused by the acts or omissions of a third party over
14 whom Defendant had no control.
15

16 **SIXTH AFFIRMATIVE DEFENSE**

17 Defendant has fully performed and discharged all obligations owed to Plaintiffs,
18 including meeting the requisite standard of care to which Plaintiffs were entitled.
19

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 Defendant alleges that at all times mentioned in Plaintiffs' Complaint, Plaintiffs were
22 suffering from a medical condition(s) that Defendant did not cause, nor was Defendant
23 responsible for said medical condition(s).

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 If Plaintiffs have sustained any injuries or damages, such were the result of intervening
26 and/or superseding events, factors, occurrences, or conditions, which were in no way caused by
27 Defendant, and for which Defendant is not liable.
28

NINTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovering any special damages herein as a result of the failure to comply with the provisions of NRCP 9(g).

TENTH AFFIRMATIVE DEFENSE

Defendant alleges that, pursuant to Nevada law, Defendants would not be jointly liable, and that if liability is imposed, such liability would be several for that portion of Plaintiffs' damages, if any, that represents the percentage attributable to Defendants.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are governed and/or barred pursuant to NRS Chapters 1, 40, 41, and 41A, and by the provisions of Question 3 passed by the People of the State of Nevada on November 2, 2004.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint is void *ab initio* as it does not include an affidavit which meets with requirements of N.R.S. 41A.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs had a duty to mitigate their damages and failed to do so.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the applicable statutes of limitations and/or repose.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' action is barred and/or diminished by the doctrines of waiver, laches, estoppels, and/or unclean hands.

SIXTEENTH AFFIRMATIVE DEFENSE

All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer and,

1 therefore, Defendant reserves the right to amend the Answer, and to allege additional
2 Affirmative Defenses if subsequent investigation so warrants.

3 **SEVENTEENTH AFFIRMATIVE DEFENSE**

4 Defendant did not violate any statute, ordinance, or regulation referenced in Plaintiffs'
5 Amended Complaint.

6 **EIGHTEENTH AFFIRMATIVE DEFENSE**

7
8 It been necessary for this Defendant to employ the services of an attorney to defend this
9 action and a reasonable sum should be allowed to Defendant for attorney's fees, together with
10 costs of suit incurred herein.

11 **NINETEENTH AFFIRMATIVE DEFENSE**

12 Defendant hereby incorporates by reference those affirmative defenses enumerated in
13 Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further
14 investigation or discovery reveals the applicability of any such defenses, Defendant reserves the
15 right to seek leave of Court to amend the Answer to specifically assert the same. Such defenses
16 are herein incorporated by reference for the specific purpose of not waiving the same.
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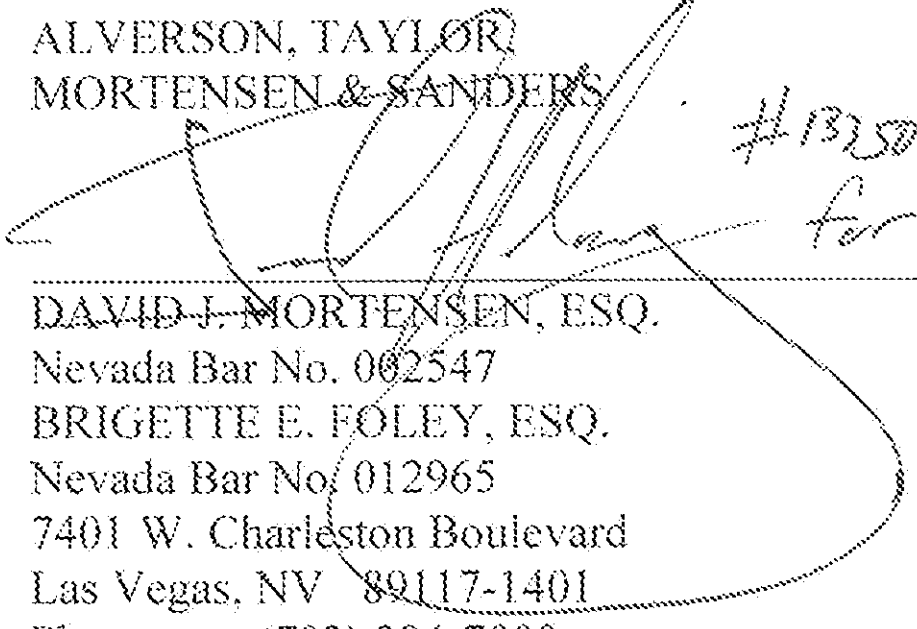
27 / / /

1 WHEREFORE, Defendant prays for relief as follows:

- 2 1. That Plaintiffs take nothing by way of their Complaint on file herein.
- 3 2. For reasonable attorney's fees and costs incurred in defending this litigation.
- 4 3. For such other and further relief as this Court deems just and proper.
- 5

6 DATED this 19 day of October, 2016:

7 ALVERSON, TAYLOR
8 MORTENSEN & SANDERS

9  #13,500 for
10 DAVID J. MORTENSEN, ESQ.

11 Nevada Bar No. 002547

12 BRIGETTE E. FOLEY, ESQ.

13 Nevada Bar No. 012965

14 7401 W. Charleston Boulevard

15 Las Vegas, NV 89117-1401

16 Phone: (702) 384-7000

17 Facsimile: (702) 385-7000

18 E-File: efile@alversontaylor.com

19 Attorneys for DEFENDANTS

20 Cyndi Tran, D.O.

21 Elizabeth Phung-Hart, D.O.

22 Andrea Agcaoili, D.O.

23

24

25

26

27

28

CERTIFICATE OF SERVICE

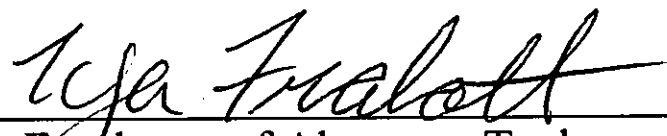
The undersigned hereby certifies that on the 19th day of October, 2016, the foregoing **ELIZABETH PHUNG-HART, D.O.'S ANSWER TO PLAINTIFFS' COMPLAINT** was served on the following by Electronic Service to All parties on the Wiznet Service List, addressed as follows:

Thomas S. Alch, Esq.
LAW OFFICES OF THOMAS S. ALCH
500 N. Rainbow Blvd, Suite 300
Las Vegas, Nevada 89107
Phone: (702) 740-4140
Attorney for Plaintiffs

Patricia Daehnke, Esq.
DAEHNKE STEVENS LLP
2300 W. Sahara Ave
Suite 680 Box 32
Las Vegas, NV 89102
Phone: (702) 979-2132
Attorney for Jussa Murad, M.D.

Kenneth M. Webster, Esq.
Tyson J. Dobbs, Esq.
Kirill V. Mikhaylov, Esq.
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
Phone: (702) 889-6400
Attorneys for Defendant Valley Health System, LLC and Valley Hospital Medical Center, Inc.

Robert C. McBride, Esq.
Chelsea R. Hueth, Esq.
CARROLL, KELLY, TROTTER, FRANZEN,
McKENNA & PEABODY
8329 W. Sunset Road, Suite 260
Las Vegas, NV 89113
Phone: (702) 792-5855
Attorneys for Jeffrey Davidson, M.D.


An Employee of Alverson, Taylor,
Mortensen & Sanders

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **ELIZABETH PHUNG-HART,**
D.O.'S ANSWER TO PLAINTIFFS' COMPLAINT filed in District Court Case No. A-16-
738004-C

X Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for
a federal or state grant.

DATED this 14 day of October, 2016.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

BRIGETTE E. FOLEY, ESQ.

Nevada Bar No. 012965

7401 W. Charleston Boulevard

Las Vegas, NV 89117-1401

(702) 384-7000

E-File: efile@alversontaylor.com

Attorneys for DEFENDANT

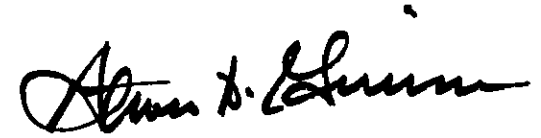
Cyndi Tran, D.O.

Elizabeth Phung-Hart, D.O.

Andrea Agcaoili, D.O.

EXHIBIT 24

EXHIBIT 24



CLERK OF THE COURT

1 ANSC
2 ROBERT C. MCBRIDE, ESQ.
3 Nevada Bar No.: 007082
4 CHELSEA R. HUETH, ESQ.
5 Nevada Bar No.: 010904
6 CARROLL, KELLY, TROTTER,
7 FRANZEN, McKENNA & PEABODY
8 8329 W. Sunset Road, Suite 260
9 Las Vegas, Nevada 89113
10 Telephone No. (702) 792-5855
11 Facsimile No. (702) 796-5855
12 E-mail: rmcbride@cktfmlaw.com
13 E-mail: crhueth@cktfmlaw.com
14 Attorneys for Defendant
15 *Jeffrey Davidson, M.D.*

DISTRICT COURT

CLARK COUNTY, NEVADA

12 DARIA HARPER, DANIEL WININGER,

13 Plaintiffs,

14 vs.

15 VALLEY HOSPITAL MEDICAL CENTER,
16 INC., doing business as VALLEY HOSPITAL
17 MEDICAL CENTER; VALLEY HEALTH
18 SYSTEM, LLC, doing business as VALLEY
19 HOSPITAL MEDICAL CENTER; JEFFREY
20 DAVIDSON, M.D.; CYNDI TRAN, D.O.;
21 PAUL JANDA, D.O.; ELIZABETH PHUNG-
22 HART, D.O.; ANDREA AGCAOILI, D.O.;
23 MURAD JUSSA, M.D.; and DOES 1 through
24 250, inclusive,

25 Defendants.

CASE NO.: A-16-738004-C
DEPT: XVII

23 DEFENDANT, JEFFREY DAVIDSON, M.D.'S
24 ANSWER TO PLAINTIFFS' COMPLAINT

25 COMES NOW Defendant, JEFFREY DAVIDSON, M.D., by and through his attorneys
26 of record, ROBERT C. MCBRIDE, ESQ. and CHELSEA R. HUETH, ESQ. of the law firm of
27 CARROLL, KELLY, TROTTER, FRANZEN, MCKENNA & PEABODY and hereby submits
28 his Answer to Plaintiffs' Complaint as follows:

1 MEDICAL MALPRACTICE

2 LOSS OF CONSORTIUM

3 1. Answering paragraphs 1, 2, 3, 4, 6, 7, 8, 9, and 11, Answering Defendant is without
4 sufficient knowledge to form a belief as to the truth of the allegations contained in said
5 paragraphs and therefore denies the same.

6 2. Answering paragraph 5, this Answering Defendant admits the allegations as to
7 Jeffrey Davidson, M.D. and as to all remaining allegations, this answering Defendant is without
8 sufficient knowledge and information to formulate a belief as to the truth of the allegations
9 contained therein and, based upon such lack of information and belief, the same are hereby
10 denied.

11 3. Answering paragraphs 10 and 12, this Answering Defendant denies each and
12 every allegation contained therein.

13 4. Answering paragraph 13, this Answering Defendant admits that the expert
14 declarations of David A. Neer, M.D. and Michael Steven Ritter, M.D. are attached to the
15 complaint.

16 I.

17 **PLAINTIFF DARIA HARPER ALLEGES FOR A CAUSE OF ACTION FOR MEDICAL**
18 **MALPRACTICE AGAINST DEFENDANTS AND EACH OF THEM AS FOLLOWS:**

19 5. Defendant repeats and re-alleges his answers to Paragraph 1 through 13,
20 inclusive, as if fully set forth herein.

21 6. Answering paragraphs 15, 16, 17, 18, 19, 20, 21, and 22 this Answering
22 Defendant denies each and every allegation contained therein.

23 II.

24 **PLAINTIFF DANIEL WININGER ALLEGES FOR A CAUSE OF ACTION FOR LOSS**
25 **OF CONSORTIUM AGAINST DEFENDANTS AND EACH OF THEM AS FOLLOWS:**

26 7. Defendant repeats and re-alleges his answers to Paragraph 1 through 22,
27 inclusive, as if fully set forth herein.

28 ///

1 8. Answering paragraph 24, this answering Defendant is without sufficient
2 knowledge and information to formulate a belief as to the truth of the allegations contained
3 therein and, based upon such lack of information and belief, the same are hereby denied.

4 9. Answering paragraph 25, this Answering Defendant denies said allegations in
5 said paragraph.

6 **PRAYER FOR RELIEF**

7 This Answering Defendant denies that Plaintiffs are entitled to any of the requested relief
8 as contained within Plaintiffs' Complaint.

9 **GENERAL DENIAL**

10 This Answering Defendant denies each and every allegation contained in Plaintiffs'
11 Complaint that is not specifically admitted to be true.

12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

14 **FIRST AFFIRMATIVE DEFENSE**
15 Defendant alleges that Plaintiffs' Complaint on file herein fails to state claims upon
16 which relief can be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 Defendant alleges that the damages, if any, were caused in whole or in part, or were
19 contributed to by reason of the negligence or wrongful conduct of Plaintiffs'.

20 **THIRD AFFIRMATIVE DEFENSE**

21 All risks and dangers involved in the factual situation described in the Complaint were
22 open, obvious, and known to Plaintiffs' and said Plaintiffs' voluntarily assumed said risks and
23 dangers.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 The incident alleged in the Complaint and the resulting damages, if any, to Plaintiffs were
26 proximately caused or contributed to by Plaintiffs' own negligence, and such negligence was
27 greater than the alleged negligence of this Answering Defendant.

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FIFTH AFFIRMATIVE DEFENSE

Defendant alleges that the occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom were caused by the acts or omissions of a third party over whom Defendant had no control.

SIXTH AFFIRMATIVE DEFENSE

Defendant has fully performed and discharged all obligations owed to Plaintiffs, including meeting the requisite standard of care to which Plaintiff was entitled.

SEVENTH AFFIRMATIVE DEFENSE

Defendant alleges that at all times mentioned in Plaintiffs' Complaint, Plaintiff was suffering from a medical condition(s) which Defendant did not cause, nor was Defendant responsible for said medical condition(s).

EIGHTH AFFIRMATIVE DEFENSE

If Plaintiffs have sustained any injuries or damages, such were the result of intervening and/or superseding events, factors, occurrences, or conditions, which were in no way caused by Defendant, and for which Defendant is not liable.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovering any special damages herein as a result of the failure to comply with the provisions of N.R.C.P. 9(g).

TENTH AFFIRMATIVE DEFENSE

Defendant alleges that pursuant to Nevada law, they would not be jointly liable and that if liability is imposed, such liability would be several for that portion of Plaintiffs' damages, if any, that represents the percentage attributable to Defendants.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are governed and/or barred pursuant to N.R.S. Chapter 1, N.R.S. Chapter 40, N.R.S. Chapter 41, and N.R.S. Chapter 41A and by the provisions of Question 3 passed by the People of the State of Nevada on November 2, 2004.

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TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint is void ab initio as it does not include an affidavit which meets with requirements of N.R.S. 41A.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiffs have a duty to mitigate her damages and has failed to do so.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the applicable statutes of limitations and/or repose.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that if he is found negligent, and Defendant denies all allegations of negligence, that he is not jointly liable and would be only severally liable for the portion of the claim that represents the percentage of negligence attributable to this Defendant.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' action is barred and/or diminished by the doctrines of waiver, laches, estoppels, and/or unclean hands.

SEVENTEENTH AFFIRMATIVE DEFENSE

All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendants' Answer and, therefore, Defendants reserve the right to amend their Answers to allege additional Affirmative Defenses if subsequent investigation so warrants.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendant did not violate any statute, ordinance, or regulation referenced in Plaintiffs' Complaint herein.

NINETEENTH AFFIRMATIVE DEFENSE

Defendant alleges it has been necessary for this Defendant to employ the services of an attorney to defend this action and a reasonable sum should be allowed to Defendant for attorney's fees, together with costs of suit incurred herein.

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TWENTIETH AFFIRMATIVE DEFENSE

Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendant reserves the right to seek leave of Court to amend their Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs have failed to join all necessary parties.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs' non-economic damages, if any, may not exceed \$350,000.00 pursuant to NRS 41A.035; Defendants are otherwise entitled to all protections, benefits, and set offs available to Defendants in medical malpractice actions under NRS Chapters 41, 41A and 42.

TWENTY-THIRD AFFIRMATIVE DEFENSE

To the extent Plaintiff has been reimbursed from any source for any special damages claimed to have been sustained as a result of the incidents alleged in Plaintiffs' Complaint, Defendants may elect to offer those amounts into evidence and, if Defendants so elect, Plaintiff's special damages shall be reduced by those amounts pursuant to NRS 42.021.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

To the extent Plaintiffs are entitled to recover any future damages from Defendant, Defendant may satisfy that amount through periodic payments pursuant to NRS 42.021(3).

TWENTY-FIFTH AFFIRMATIVE DEFENSE

The limitation on recovery of non-economic damages under NRS 41A.035 was enacted pursuant to a valid legislative action.

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WHEREFORE, Defendant prays for relief as follows:

1. That Plaintiffs' take nothing by way of the Complaint on file herein.
2. For reasonable attorney's fees and costs incurred in defending this litigation.
3. For such other and further relief as this Court deems just and proper in the premises.

DATED this 12th day of July, 2016.

CARROLL, KELLY, TROTTER,
FRANZEN, McKENNA & PEABODY



ROBERT C. MCBRIDE, ESQ.
Nevada Bar No.: 007082
CHELSEA R. HUETH, ESQ.
Nevada Bar No. 10904
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Attorneys for Defendant
Jeffrey Davidson, M.D.

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 12th day of July, 2016, I served a true and correct copy
3 of the foregoing **DEFENDANT, JEFFREY DAVIDSON, M.D.'S ANSWER TO**
4 **PLAINTIFFS' COMPLAINT** addressed to the following counsel of record at the following
5 address(es):
6

7 ☒ ***VIA ELECTRONIC SERVICE: by mandatory electronic service (e-service), proof of e-***
8 ***service attached to any copy filed with the Court; or***

9 ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with
10 postage thereon fully prepaid, addressed as indicated on the service list below in the
United States mail at Las Vegas, Nevada

11 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number
12 indicated on the service list below.

13
14 Thomas S. Alch, Esq.
15 Law Offices of Thomas S. Alch
500 N. Rainbow Boulevard, Suite 300
16 Las Vegas, NV 89107
Attorney for Plaintiffs

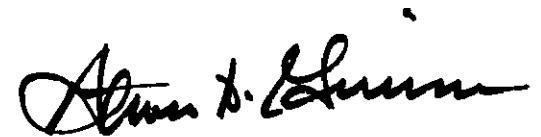
Kenneth M. Webster, Esq.
Tyson J. Dobbs, Esq.
Kirill V. Mikhaylov, Esq.
Hall Prangle & Schoonveld, LLC
1160 North Town Center Drive
Suite 200
Las Vegas, NV 89144
Attorneys for Defendant
Valley Health System, LLC d/b/a
Valley Hospital Medical Center

17
18
19
20 James E. Murphy, Esq.
Daniel C. Tetreault, Esq.
21 Laxalt & Nomura, Ltd.
6720 Via Ausi Parkway, Suite 430
22 Las Vegas, NV 89119
Attorneys for Defendant
23 *Neuromonitoring Associates, Inc.*

24
25
26 
27 An Employee of CARROLL, KELLY, TROTTER,
FRANZEN, McKENNA & PEABODY
28

EXHIBIT 25

EXHIBIT 25



CLERK OF THE COURT

1 **ANS**
2 Patricia Egan Daehnke
3 Nevada Bar No. 4976
4 PDaehnke@DaehnkeStevens.com
5 Katherine J. Gordon
6 Nevada Bar No. 5813
7 KGordon@DaehnkeStevens.com
8 DAEHNKE STEVENS LLP
9 2300 W. Sahara Avenue, Suite 680 Box 32
10 Las Vegas, Nevada 89102
11 (702) 979-2132 Telephone
12 (702) 979-2133 Facsimile
13
14 Attorneys for Defendant,
15 MURAD JUSSA, M.D.

16
17 DISTRICT COURT
18 CLARK COUNTY, NEVADA
19

20 DARIA HARPER, DANIEL WININGER

21 Plaintiffs,

22 vs.

23 VALLEY HOSPITAL MEDICAL
24 CENTER, INC., doing business as
25 VALLEY HOSPITAL MEDICAL
26 CENTER; VALLEY HEALTH SYSTEM,
27 LLC, doing business as VALLEY
28 HOSPITAL MEDICAL CENTER;
JEFFREY DAVIDSON, M.D.; CYNDI
TRAN, D.O.; PAUL JANDA, D.O.;
ELIZABETH PHYNG-HART, D.O.;
ANDREA AGCAOILI, D.O.; MURAD
JUSSA, M.D., and, DOES 1 through 250,
inclusive,

Defendants.

CASE NO. A-16-738004-C
DEPT. NO. XVII

**DEFENDANT MURAD JUSSA, M.D.'S
ANSWER TO PLAINTIFFS'
COMPLAINT**

COMES NOW Defendant, MURAD JUSSA, M.D. ("the Answering Defendant")
by and through his attorneys, DAEHNKE STEVENS, LLP and in answer to Plaintiffs'
Complaint on file herein, admits, denies and alleges as follows:

1. Answering Paragraphs 1, 2, 3 and 4 of Plaintiffs' Complaint on file herein, the
Answering Defendant is without sufficient knowledge or information to form a belief as to

1 the truth of the allegations contained in said paragraphs, and on that basis denies each and
2 every allegation contained therein.

3 2. Answering Paragraph 5 of Plaintiffs' Complaint on file herein, the Answering
4 Defendant admits that Murad Jussa, M.D. is duly licensed in Nevada to practice medicine.

5 As to all remaining allegations contained therein, this Answering Defendant is without
6 sufficient knowledge or information to form a belief as to the truth of the allegations
7 contained in said paragraph, and on that basis denies each and every allegation contained
8 therein.

9 3. Answering Paragraphs 6, 7, 8, 9, 10, 11 and 12 of Plaintiffs' Complaint on file
10 herein, the Answering Defendant is without sufficient knowledge or information to form a
11 belief as to the truth of the allegations contained in said paragraphs, and on that basis
12 denies each and every allegation contained therein.

13 4. Answering Paragraph 13 of Plaintiffs' Complaint on file herein, the Answering
14 Defendant admits that the Affidavits of David A. Neer, M.D. and Michael Steven Ritter,
15 M.D. are attached to the Complaint. As to all remaining allegations contained therein, this
16 Answering Defendant is without sufficient knowledge or information to form a belief as to
17 the truth of the allegations contained in said paragraph, and on that basis denies each and
18 every allegation contained therein.

19 **I.**

20 **PLAINTIFF DARIA HARPER ALLEGES FOR A CAUSE OF ACTION FOR**
21 **MEDICAL MALPRACTICE AGAINST DEFENDANTS AND EACH OF**
22 **THEM AS FOLLOWS:**

23 5. Answering Paragraph 14 of Plaintiffs' Complaint on file herein, the Answering
24 Defendant repeats and realleges each and every response to the allegations in the
25 Complaint and reincorporates those responses by reference, as if the same were fully set
26 forth in detail herein.

27 6. Answering Paragraph 15 of Plaintiffs' Complaint on file herein, the Answering
28 Defendant is without sufficient knowledge or information to form a belief as to the truth of

1 the allegations contained in said paragraphs, and on that basis denies each and every
2 allegation contained therein.

3 7. Answering Paragraphs 16 and 17 of Plaintiffs' Complaint on file herein, the
4 Answering Defendant denies the allegations contained therein.

5 8. Answering Paragraph 18 of Plaintiffs' Complaint on file herein, the Answering
6 Defendant is without sufficient knowledge or information to form a belief as to the truth of
7 the allegations contained in said paragraphs, and on that basis denies each and every
8 allegation contained therein.

9 9. Answering Paragraphs 19, 20, 21 and 22 of Plaintiffs' Complaint on file herein, the
10 Answering Defendant denies the allegations contained therein.

11 II.

12 PLAINTIFF DANIEL WININGER ALLEGES FOR A CAUSE OF ACTION 13 FOR LOSS OF CONSORTIUM AGAINST DEFENDANTS AND EACH OF 14 THEM AS FOLLOWS:

15 10. Answering Paragraph 23 of Plaintiffs' Complaint on file herein, the Answering
16 Defendant repeats and realleges each and every response to the allegations in the
17 Complaint and reincorporates those responses by reference, as if the same were fully set
18 forth in detail herein.

19 11. Answering Paragraph 24 of Plaintiffs' Complaint on file herein, the Answering
20 Defendant is without sufficient knowledge or information to form a belief as to the truth of
21 the allegations contained in said paragraphs, and on that basis denies each and every
22 allegation contained therein.

23 12. Answering Paragraph 25 of Plaintiffs' Complaint on file herein, the Answering
24 Defendant denies the allegations contained therein.

25 AFFIRMATIVE DEFENSES

26 FIRST AFFIRMATIVE DEFENSE

27 Plaintiffs' Complaint fails to state a claim against this Answering Defendant upon
28 which relief can be granted.

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SECOND AFFIRMATIVE DEFENSE

The Answering Defendant alleges that in all medical care rendered to Plaintiff, Daria Harper, this Answering Defendant possessed and exercised that degree of skill and learning ordinarily possessed and exercised by members of the medical profession in good standing practicing in similar localities and that at all times the Answering Defendant used reasonable care and diligence in the exercise of this skill and application of this learning, and at all times acted in accordance with his best medical judgment.

THIRD AFFIRMATIVE DEFENSE

The Answering Defendant alleges that any injuries or damages allegedly sustained or suffered by Plaintiff, Daria Harper, at the times and places referred to in the Complaint, were caused, in whole or in part, or were contributed to, by the negligence or fault or want of care of Plaintiff, and that the negligence, fault or want of care on the part of Plaintiff was greater than that, if any, of the Answering Defendant, the existence of which is specifically denied.

FOURTH AFFIRMATIVE DEFENSE

The Answering Defendant alleges that he made, consistent with good medical practice, a full and complete disclosure to Plaintiff, Daria Harper, of all material facts known to him or reasonably believed by him to be true concerning Plaintiff's physical condition and the appropriate alternative procedures available for treatment of such condition. Further, each and every service rendered to Plaintiff by the Answering Defendant was expressly and impliedly consented to and authorized by Plaintiff, on the basis of said full and complete disclosure.

FIFTH AFFIRMATIVE DEFENSE

The Complaint is barred by the applicable statute of limitations.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff, Daria Harper, assumed the risks of the procedures performed.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' damages, if any, were caused by and due to an unavoidable condition or occurrence.

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EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to mitigate their damages, if any, in spite of a duty to do so.

NINTH AFFIRMATIVE DEFENSE

The injuries and damages, if any, alleged by Plaintiffs were caused by the actions or inactions of third parties over whom the Answering Defendant has no liability, responsibility or control.

TENTH AFFIRMATIVE DEFENSE

The injuries and damages, if any, complained of by Plaintiffs were unforeseeable.

ELEVENTH AFFIRMATIVE DEFENSE

The injuries and damages, if any, complained of by Plaintiffs were caused by forces of nature over which the Answering Defendant had no responsibility, liability or control.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint violates the Statute of Frauds.

THIRTEENTH AFFIRMATIVE DEFENSE

Pursuant to Nevada law, Defendants named in the Complaint cannot be jointly liable and that if liability is imposed, such liability would be several for that portion of Plaintiffs' damages, if any, which represents the percentage attributed to the Answering Defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

The injuries and damages, if any, suffered by Plaintiffs were caused by new, independent, intervening and superseding causes and not by the Answering Defendant's alleged negligence or other actionable conduct, the existence of which is specifically denied.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' damages, if any, are subject to the limitations and protections as set forth in Chapter 41A of the Nevada Revised Statutes including, without limitation, several liability and limits on noneconomic damages.

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SIXTEENTH AFFIRMATIVE DEFENSE

It has been necessary to employ the services of an attorney to defend this action and a reasonable sum should be allowed this Answering Defendant for attorney’s fees, together with his costs expended in this action.

SEVENTEENTH AFFIRMATIVE DEFENSE

The injuries and damages, if any, suffered by Plaintiffs can and do occur in the absence of negligence.

EIGHTEENTH AFFIRMATIVE DEFENSE

Should liability be found against the Answering Defendant—which is expressly denied—and damages assessed, the proportionate degree of negligence, fault, and/or legal responsibility of each and every person or entity (whether such other person or entity were served or not served in this matter, and/or other persons or entities not presently parties to this action) must be determined and prorated, and any judgment which may be rendered against the Answering Defendant must be reduced by the degree of negligence, fault and/or other legal responsibility found to exist as to the other parties, persons or entities.

NINETEENTH AFFIRMATIVE DEFENSE

No contractual guarantees or warranties were in existence and there is no privity of contract between Plaintiffs and the Answering Defendant.

TWENTETH AFFIRMATIVE DEFENSE

The Answering Defendant is entitled to assert all available defenses to contract, the existence of which is specifically denied.

TWENTY-FIRST AFFIRMATIVE DEFENSE

This Answering Defendant asserts all defenses available to him in law and equity, including without limitation, and all available defenses pursuant to Nevada Rule of Civil Procedure 12.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs’ non-economic damages, if any, may not exceed \$350,000 pursuant to NRS 41A.035; the Answering Defendant is otherwise entitled to all protections, benefits, and set offs available to Answering Defendant in medical malpractice actions under Nevada Revised Statute Chapters 41A and 42.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

To the extent Plaintiffs have been reimbursed from any source for any special damages claimed to have been sustained as a result of the incidents alleged in Plaintiffs' Complaint, the Answering Defendant may elect to offer those amounts into evidence and, if the Answering Defendant so elects, Plaintiffs' special damages shall be reduced by those amounts pursuant to Nevada Revised Statute 42.021.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

To the extent Plaintiffs are entitled to recover any future damages from the Answering Defendant, the Answering Defendant may satisfy that amount through payments pursuant to Nevada Revised Statute 42.021.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

At all times mentioned herein, the Answering Defendant acted reasonably, in good faith, and within the applicable standard of care with regard to the acts and transactions which are the subject of the Complaint.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The complained of acts of this Answering Defendant were justified under the circumstances.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The injuries suffered by Plaintiff, Daria Harper, if any, as set forth in the Complaint, were caused by a pre-existing condition.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

The Answering Defendant is entitled to a conclusive presumption of informed consent pursuant to NRS 41A.110.

TWENTY-NINTH AFFIRMATIVE DEFENSE

The expert affidavits attached to Plaintiffs' Complaint do not comply with NRS 41A.071 in that they fail to demonstrate that the Answering Defendant breached the standard of care in Plaintiffs' case, and fail to demonstrate an alleged causal link between the Answering Defendant's treatment of Plaintiff, Daria Harper, and Plaintiffs' alleged injuries and damages.

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THIRTEETH AFFIRMATIVE DEFENSE

The expert affidavits attached to Plaintiffs’ Complaint do not comply with NRS 41A.071 in that they fail to support the allegations contained in the Complaint.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs’ Complaint fails to comply with NRS 41A.100 as Plaintiffs have failed to provide expert medical testimony to demonstrate the alleged deviation from the accepted standard of care in the specific circumstances of this case and to prove causation of the alleged personal injury.

THIRTY-SECOND AFFIRMATIVE DEFENSE

The Answering Defendant has fully performed his duties owed to Plaintiffs and Plaintiffs are, therefore, estopped to assert any claim against him.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovering any special damages herein as a result of the failure to comply with the provisions of NRCPP 9(g).

THIRTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiffs approved and ratified the alleged acts of the Answering Defendant for which Plaintiffs now complain.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiffs have not suffered any compensable injury as a result of the Answering Defendant’s alleged actions and, as a result, are not entitled to an award against them.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiffs failed to allege facts in support of any award of pre-judgment or post-judgment interest.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs’ causes of action are duplicative and are, therefore, an improper attempt to seek relief to which Plaintiffs are not entitled as such would constitute a double recovery.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Pursuant to Nevada Rule of Civil Procedure 11, all possible affirmative defenses may not have been alleged as sufficient facts were not available, after reasonable inquiry, upon the filing of the Answering Defendant’s Answer and therefore the Answering

1 Defendant reserves the right to amend his Answer to allege additional affirmative defenses
2 if subsequent investigation warrants. Additionally, one or more of these affirmative
3 defenses may have been pled for the purposes of non-waiver.

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- I. WHEREFORE, the Answering Defendant prays as follows:
- 1. That Plaintiff, Daria Harper, take nothing by reason of her Complaint;
 - 2. For all attorney’s fees incurred in the defense of Plaintiffs’ Complaint against the Answering Defendant;
 - 3. For costs and disbursements incurred herein; and
 - 4. For such other and further relief as the Court may deem just and proper in these premises.
- II. WHEREFORE, the Answering Defendant prays as follows:
- 1. That Plaintiff, Daniel Wininger, take nothing by reason of his Complaint;
 - 2. For all attorney’s fees incurred in the defense of Plaintiffs’ Complaint against the Answering Defendant;
 - 3. For costs and disbursements incurred herein; and
 - 4. For such other and further relief as the Court may deem just and proper in these premises.

DATED: this 13th day of July, 2016.

DAEHNKE STEVENS LLP

By /s/ Patricia Egan Daehnke
PATRICIA EGAN DAEHNKE
Nevada Bar No. 4976
KATHERINE J. GORDON
Nevada Bar No. 5813
2300 W. Sahara Ave., Suite 680 Box 32
Las Vegas, Nevada 89102
Tel. (702) 979-2132
Fax (702) 979-2133

Attorneys for Defendant,
MURAD JUSSA, M.D.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on July 13, 2016, a true and correct copy of
3 DEFENDANT MURAD JUSSA, M.D.'S ANSWER TO PLAINTIFFS' COMPLAINT
4 was served by electronically filing with the Clerk of the Court using the Wiznet Electronic
5 Service system and serving all parties with an email-address on record, who have agreed to
6 receive Electronic Service in this action.

7
8 Thomas S. Alch, Esq.
9 Law Offices of Thomas S. Alch
10 500 N. Rainbow Blvd., Suite 300
Las Vegas, NV 89107

11 ***Attorneys for Plaintiffs***

David J. Mortensen, Esq.
Brigette E. Foley, Esq.
Alverson, Taylor, Mortensen & Sanders
7401 W Charleston Blvd
Las Vegas NV 89117

12 ***Attorneys for Defendants,***
Cyndi Tran, DO, Elizabeth Phung-Hart,
DO and Andrea Agcaoili. DO

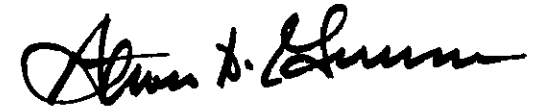
13 Kenneth M. Webster, Esq.
14 Tyson J. Dobbs, Esq.
Kirill V. Mikhaylov, Esq.
Hall Prangle & Schoonveld, LLC
15 1160 N. Town Center Dr., Suite 200
Las Vegas, NV 89144

16 ***Attorneys for Defendants,***
17 Valley Hospital Medical Center, Inc. and
Valley Health System. LLC

18
19
20
21 By /s/ Melissa Gutbrodt
22 Melissa Gutbrodt, an employee of
23 DAEHNKE STEVENS LLP
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EXHIBIT 26

EXHIBIT 26



CLERK OF THE COURT

ANS
DAVID J. MORTENSEN, ESQ.
Nevada Bar No. 002547
BRIGETTE E. FOLEY, ESQ.
Nevada Bar No. 012965
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Attorneys for DEFENDANTS
Cyndi Tran, D.O.
Elizabeth Phung-Hart, D.O.
Andrea Agcaoili, D.O.

DISTRICT COURT
CLARK COUNTY, NEVADA

DARIA HARPER, DANIEL WININGER,

Plaintiffs,

vs.

VALLEY HOSPITAL MEDICAL
CENTER, INC., doing business as VALLEY
HOSPITAL MEDICAL CENTER;
VALLEY HEALTH SYSTEM, LLC, doing
business as VALLEY HEALTH
MEDICAL CENTER; JEFFREY
DAVIDSON, M.D.; CYNDI TRAN, D.O.;
PAUL JANDA, D.O.; ELIZABETH
PHUNG-HART, D.O.; ANDREA
AGCAOILI, D.O.; MURAD JUSSA, M.D.,
and, DOES 1 through 250, inclusive,

Defendants.

CASE NO.: A-16-738004-C
DEPT. NO.: XVII

CYNDI TRAN, D.O.'S ANSWER TO PLAINTIFFS' COMPLAINT

COMES NOW Defendant CYNDI TRAN, D.O. (hereinafter "Dr. Tran"), by and through
her attorneys of record, DAVID J. MORTENSEN, ESQ. and BRIGETTE E. FOLEY, ESQ. of

1 the law firm of ALVERSON, TAYLOR, MORTENSEN & SANDERS, and hereby answers
2 Plaintiffs' Complaint, as follows:

3 **GENERAL ALLEGATIONS**

4 1. Answering Defendant is without sufficient knowledge to form a belief as to the
5 truth of the allegations contained in paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 12 of Plaintiffs'
6 Complaint, and therefore denies the same.

7
8 2. In answering paragraph 5 of Plaintiffs' Complaint, Answering Defendant admits
9 she was at all times a physician holding herself out as duly licensed to practice her profession
10 under and by virtue of the laws of the State of Nevada, and was engaged in the practice of that
11 profession in the State of Nevada. The remainder of the allegations contained in this paragraph
12 refer to other Defendants, which Defendant is without sufficient knowledge to form a belief as to
13 the truth of such allegations, and therefore denies the same.

14
15 3. Paragraph 13 of Plaintiffs' Complaint calls for a legal conclusion to which no
16 answer or response is necessary, and on that basis, Defendant denies the same.

17 **FIRST CAUSE OF ACTION**
18 **(Medical Malpractice)**

19 4. Answering Defendants repeat and reallege their answers to the allegations
20 contained within paragraphs 1 through 13 of Plaintiffs' Complaint as if the same were more fully
21 set forth herein.

22 5. Answering Defendants deny the allegations contained in paragraphs 15 and 16 of
23 Plaintiffs' Complaint.

24 6. Paragraphs 17, 19, 20, 21, and 22 of Plaintiffs' Complaint calls for legal
25 conclusions to which no answer or response is necessary, and on that basis, Defendant denies the
26 same.
27

1 7. Answering Defendant is without sufficient knowledge to form a belief as to the
2 truth of the allegations contained in paragraph 18 of Plaintiffs' Complaint, and therefore denies
3 the same.

4 **SECOND CAUSE OF ACTION**
5 **(Loss of Consortium)**

6 8. Answering Defendants repeat and reallege their answers to the allegations
7 contained within paragraphs 1 through 22 of Plaintiffs' Complaint as if the same were more fully
8 set forth herein.

9 9. Answering Defendant is without sufficient knowledge to form a belief as to the
10 truth of the allegations contained in paragraph 24 of Plaintiffs' Complaint, and therefore denies
11 the same.

12 10. Paragraph 25 of Plaintiffs' Complaint calls for a legal conclusion to which no
13 answer or response is necessary, and on that basis, Defendant denies the same.

14 **PRAYER FOR RELIEF**

15 Answering Defendant denies that Plaintiffs are entitled to any of the requested relief as
16 contained within their Complaint.

17 **GENERAL DENIAL**

18 Answering Defendant denies each and every allegation contained in Plaintiffs' Complaint
19 that is not specifically admitted to be true.

20 **FIRST AFFIRMATIVE DEFENSE**

21 Defendant alleges that Plaintiffs' Complaint on file herein fails to state a claim upon
22 which relief can be granted.

23 **SECOND AFFIRMATIVE DEFENSE**

24 Defendant alleges that Plaintiffs' damages, if any, were caused in whole or in part, or
25

1 were contributed to by reason of the negligence or wrongful conduct of Plaintiffs.

2 **THIRD AFFIRMATIVE DEFENSE**

3 All risks and dangers involved in the factual situation described in the Complaint were
4 open, obvious, and known to Plaintiffs and said Plaintiffs voluntarily assumed said risks and
5 dangers.
6

7 **FOURTH AFFIRMATIVE DEFENSE**

8 The incident alleged in Plaintiffs' Complaint and the resulting damages, if any, to
9 Plaintiffs were proximately caused or contributed to by Plaintiffs' own negligence, and such
10 negligence was greater than the alleged negligence of Defendant.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 Defendant alleges that the occurrence referred to in the Complaint, and all injuries and
13 damages, if any, resulting there from were caused by the acts or omissions of a third party over
14 whom Defendant had no control.
15

16 **SIXTH AFFIRMATIVE DEFENSE**

17 Defendant has fully performed and discharged all obligations owed to Plaintiffs,
18 including meeting the requisite standard of care to which Plaintiffs were entitled.
19

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 Defendant alleges that at all times mentioned in Plaintiffs' Complaint, Plaintiffs were
22 suffering from a medical condition(s) that Defendant did not cause, nor was Defendant
23 responsible for said medical condition(s).

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 If Plaintiffs have sustained any injuries or damages, such were the result of intervening
26 and/or superseding events, factors, occurrences, or conditions, which were in no way caused by
27 Defendant, and for which Defendant is not liable.
28

1 **NINTH AFFIRMATIVE DEFENSE**

2 Plaintiffs are barred from recovering any special damages herein as a result of the failure
3 to comply with the provisions of NRCP 9(g).

4 **TENTH AFFIRMATIVE DEFENSE**

5 Defendant alleges that, pursuant to Nevada law, Defendants would not be jointly liable,
6 and that if liability is imposed, such liability would be several for that portion of Plaintiffs'
7 damages, if any, that represents the percentage attributable to Defendants.

8 **ELEVENTH AFFIRMATIVE DEFENSE**

9 Plaintiffs' claims are governed and/or barred pursuant to NRS Chapters 1, 40, 41, and
10 41A, and by the provisions of Question 3 passed by the People of the State of Nevada on
11 November 2, 2004.

12 **TWELFTH AFFIRMATIVE DEFENSE**

13 Plaintiffs' Amended Complaint is void *ab initio* as it does not include an affidavit which
14 meets with requirements of N.R.S. 41A.

15 **THIRTEENTH AFFIRMATIVE DEFENSE**

16 Plaintiffs had a duty to mitigate their damages and failed to do so.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 Plaintiffs' claims are barred by the applicable statutes of limitations and/or repose.

19 **FIFTEENTH AFFIRMATIVE DEFENSE**

20 Plaintiffs' action is barred and/or diminished by the doctrines of waiver, laches,
21 estoppels, and/or unclean hands.

22 **SIXTEENTH AFFIRMATIVE DEFENSE**

23 All possible affirmative defenses may not have been alleged herein insofar as sufficient
24 facts were not available after reasonable inquiry upon the filing of Defendant's Answer and,
25

1 therefore, Defendant reserves the right to amend the Answer, and to allege additional
2 Affirmative Defenses if subsequent investigation so warrants.

3 **SEVENTEENTH AFFIRMATIVE DEFENSE**

4 Defendant did not violate any statute, ordinance, or regulation referenced in Plaintiffs'
5 Amended Complaint.

6 **EIGHTEENTH AFFIRMATIVE DEFENSE**

7
8 It been necessary for this Defendant to employ the services of an attorney to defend this
9 action and a reasonable sum should be allowed to Defendant for attorney's fees, together with
10 costs of suit incurred herein.

11 **NINETEENTH AFFIRMATIVE DEFENSE**

12 Defendant hereby incorporates by reference those affirmative defenses enumerated in
13 Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further
14 investigation or discovery reveals the applicability of any such defenses, Defendant reserves the
15 right to seek leave of Court to amend the Answer to specifically assert the same. Such defenses
16 are herein incorporated by reference for the specific purpose of not waiving the same.
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WHEREFORE, Defendant prays for relief as follows:

1. That Plaintiffs take nothing by way of their Complaint on file herein.
2. For reasonable attorney's fees and costs incurred in defending this litigation.
3. For such other and further relief as this Court deems just and proper.

DATED this 19 day of October, 2016.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

BRIGETTE E. FOLEY, ESQ.

Nevada Bar No. 012965

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Phone: (702) 384-7000

Facsimile: (702) 385-7000

E-File: efile@alversontaylor.com

Attorneys for DEFENDANTS

Cyndi Tran, D.O.

Elizabeth Phung-Hart, D.O.

Andrea Agcaoili, D.O.

CERTIFICATE OF SERVICE


The undersigned hereby certifies that on the 19th day of October, 2016, the foregoing
CYNDI TRAN, D.O.'S ANSWER TO PLAINTIFFS' COMPLAINT was served on the
following by Electronic Service to All parties on the Wiznet Service List, addressed as follows:

Thomas S. Alch, Esq.
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Phone: (702) 740-4140
Attorney for Plaintiffs

Patricia Daehnke, Esq.
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Attorney for Jussa Murad, M.D.

Kenneth M. Webster, Esq.
Tyson J. Dobbs, Esq.
Kirill V. Mikhaylov, Esq.
HALL PRANGLE & SCHOONVELD, LLC
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Phone: (702) 889-6400
*Attorneys for Defendant Valley Health System,
LLC and Valley Hospital Medical Center, Inc.*

Robert C. McBride, Esq.
Chelsea R. Hueth, Esq.
CARROLL, KELLY, TROTTER, FRANZEN,
McKENNA & PEABODY
8329 W. Sunset Road, Suite 260
Las Vegas, NV 89113
Phone: (702) 792-5855
Attorneys for Jeffrey Davidson, M.D.


An Employee of Alverson, Taylor,
Mortensen & Sanders

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **CYNDI TRAN, D.O.'S**
ANSWER TO PLAINTIFFS' COMPLAINT filed in District Court Case No. A-16-738004-C

X Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for
a federal or state grant.

DATED this 19 day of October, 2016.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

BRIGETTE E. FOLEY, ESQ.

Nevada Bar No. 012965

7401 W. Charleston Boulevard

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E-File: efile@alversontaylor.com

Attorneys for DEFENDANT

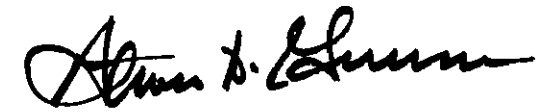
Cyndi Tran, D.O.

Elizabeth Phung-Hart, D.O.

Andrea Agcaoili, D.O.

EXHIBIT 27

EXHIBIT 27



CLERK OF THE COURT

ANS
KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
TYSON J. DOBBS, ESQ.
Nevada Bar No. 11953
KIRILL V. MIKHAYLOV, ESQ.
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Attorneys for Defendants
Valley Hospital Medical Center, Inc.
and Valley Health System, LLC, doing business as
Valley Hospital Medical Center

DISTRICT COURT
CLARK COUNTY, NEVADA

DARIA HARPER, DANIEL WININGER,

Plaintiffs,

vs.

VALLEY HOSPITAL MEDICAL CENTER,
INC., doing business as VALLEY HOSPITAL
MEDICAL CENTER; VALLEY HEALTH
SYSTEM, LLC, doing business as VALLEY
HOSPITAL MEDICAL CENTER; JEFFREY
DAVIDSON, M.D.; CYNDI TRAN, D.O.;
PAUL JANDA, D.O.; ELIZABETH PHUNG-
HART, D.O.; ANDREA AGCAOILI, D.O.;
MURAD JUSSA, M.D., and, DOES 1 through
250, inclusive,

Defendants.

CASE NO. A-16-738004-C
DEPT NO. XVII

**DEFENDANTS VALLEY HOSPITAL
MEDICAL CENTER, INC. AND
VALLEY HEALTH SYSTEM, LLC,
DOING BUSINESS AS VALLEY
HOSPITAL MEDICAL CENTER'S
ANSWER TO PLAINTIFFS'
COMPLAINT FOR MEDICAL
MALPRACTICE**

COMES NOW, Defendants, VALLEY HOSPITAL MEDICAL CENTER, INC., doing
business as VALLEY HOSPITAL MEDICAL CENTER, and VALLEY HEALTH SYSTEM,
LLC, doing business as VALLEY HOSPITAL MEDICAL CENTER (collectively
"Defendants"), by and through their attorneys of record, the law firm of Hall Prangle &

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE, STE. 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

Schoonveld, LLC, and hereby provides its Answer to Plaintiffs' Complaint for Medical Malpractice as follows:

MEDICAL MALPRACTICE

LOSS OF CONSORTIUM

1. In answering paragraphs 1, 2, 3, 4, 5, 6, 9, 10 and 12 of Plaintiffs' Complaint, these answering Defendants are without sufficient information to form a belief as to the truth of the allegations contained therein and therefore deny the same.

2. In answering paragraph 7 of Plaintiffs' Complaint, these answering Defendants admit that Valley Hospital Medical Center, Inc. is a corporation organized and existing in Nevada, with its principal place of business situated in the State of Nevada. Defendants admit that Valley Health System, LLC, doing business as Valley Hospital Medical Center is a Delaware corporation authorized to do business in the State of Nevada, with its principal place of business situated in the State of Nevada. In answering the remaining allegations of said paragraph, these answering Defendants deny each and every allegation contained therein.

3. In answering paragraph 8 of Plaintiffs' Complaint, these answering Defendants admit that Valley Health System, LLC owned and operated Valley Hospital Medical Center. These answering defendants deny that Valley Hospital Medical Center, Inc. owned and operated Valley Hospital Medical Center. As to the remaining allegations contained therein, these answering Defendants are without sufficient information to form a belief as to the truth of the remaining allegations and therefore deny the same.

4. In answering paragraph 11 of Plaintiffs' Complaint, these answering Defendants admit that Valley Health System, LLC dba Valley Hospital Medical Center was at all times mentioned in the Complaint accredited by the Joint Commission. As to the remaining allegations contained therein, these answering Defendants are without sufficient information to form a belief as to the truth of the remaining allegations and therefore deny the same.

5. In answering paragraph 13 of Plaintiffs' Complaint, these answering Defendants admit that declarations are attached to the Complaint. In answering the remaining allegations of

1 said paragraph, these answering Defendants are without sufficient information to form a belief as
2 to the truth of the remaining allegations and therefore deny the same.

3 I.

4 **PLAINTIFF DARIA HARPER ALLEGES FOR A CAUSE OF ACTION FOR**
5 **MEDICAL MALPRACTICE AGAINST DEFENDANTS AND EACH OF THEM**
6 **AS FOLLOWS:**

7 6. In answering paragraph 14 of Plaintiffs' Complaint, these answering Defendants
8 hereby incorporate its answers to paragraphs 1 through 13 as though fully set forth herein.

9 7. In answering paragraphs 15 and 16 of Plaintiffs' Complaint, these answering
10 Defendants are without sufficient information to form a belief as to the truth of the allegations
11 contained therein and therefore deny the same.

12 8. In answering paragraphs 17, 18, 19, 20, 21 and 22 of Plaintiffs' Complaint, these
13 answering Defendants deny each and every allegation contained therein.

14 II.

15 **PLAINTIFF DANIEL WININGER ALLEGES FOR A CAUSE OF ACTION FOR**
16 **LOSS OF CONSORTIUM AGAINST DEFENDANTS AND EACH OF THEM AS**
17 **FOLLOWS:**

18 9. In answering paragraph 23 of Plaintiffs' Complaint, these answering Defendants
19 hereby incorporate its answers to paragraphs 1 through 22 as though fully set forth herein.

20 10. In answering paragraph 24 of Plaintiffs' Complaint, these answering Defendants
21 are without sufficient information to form a belief as to the truth of the allegations contained
22 therein and therefore deny the same.

23 11. In answering paragraphs 25 of Plaintiffs' Complaint, these answering Defendants
24 deny each and every allegation contained therein.

25 **AFFIRMATIVE DEFENSES**

26 **FIRST AFFIRMATIVE DEFENSE**

27 Plaintiffs' Complaint on file herein fails to state a claim against these Defendants upon
28 which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The injuries, if any, complained of by Plaintiffs in the Complaint were proximately caused by the acts or omissions of unknown third parties or other persons over whom these Defendants exercised no control and over who these Defendants have no right or duty to control, nor ever has had a right or duty to exercise control.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs did not exercise ordinary care, caution or prudence in the conduct of their affairs relating to the allegations of the Complaint herein for damages in order to avoid the injuries or damages of which Plaintiffs complained and said injuries or damages, if any, were directly and proximately contributed to or caused by the fault, carelessness and negligence of the Plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

The risks and consequences, if any, attendant to the recommendations and treatment proposed by these Defendants were fully explained to the Plaintiffs who freely consented to such treatment and thereby assumed risks involved in such matter.

FIFTH AFFIRMATIVE DEFENSE

The damages, if any, alleged by Plaintiffs were not the result of any acts of omission, or commission, or negligence, but were the results of known risks which were consented to by the Plaintiffs, such risks being inherent in the nature of the care rendered and such risks were assumed by the Plaintiffs when they consented to treatment.

SIXTH AFFIRMATIVE DEFENSE

In all medical attention rendered by these Defendants to Plaintiffs, these Defendants possessed and exercised that degree of skill and learning ordinarily possessed and exercised by the members of its profession in good standing, practicing in similar localities, and that at all times these Defendants used reasonable care and diligence in the exercise of its skills and the application of its learning, and at all times acted according to their best judgment; that the medical treatment administered by these Defendants were the usual and customary treatment for the physical condition and symptoms exhibited by Plaintiffs, and that at no time were these

1 Defendants guilty of negligence or improper treatment; that, on the contrary, these Defendants
2 did perform each and every act of such treatment in a proper and efficient manner and in a
3 manner most thoroughly approved and followed by the medical profession generally and under
4 the circumstances and conditions as they existed when such medical attention was rendered.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 The injuries complained of in the Complaint, if any, were not the result of willful,
7 malicious or deliberate conduct on the part of these answering Defendants.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 That it has been necessary for the Defendants to employ the services of an attorney to
10 defend this action and a reasonable sum should be allowed Defendants for attorneys' fees,
11 together with costs of suit incurred herein.

12 **NINTH AFFIRMATIVE DEFENSE**

13 Each Defendant is liable for only that portion of the Plaintiffs' claims that represents the
14 percentage of negligence, if any, attributed to it.

15 **TENTH AFFIRMATIVE DEFENSE**

16 Plaintiffs have failed to plead any acts or omissions of these answering Defendants
17 sufficient to constitute punitive damages.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 Plaintiffs failed to file their Complaint before the running of the applicable statute of
20 limitation, thereby barring their claims for relief.

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 Plaintiffs' Complaint, and each claim asserted therein and the relief sought, is barred by
23 the statute of frauds.

24 **THIRTEENTH AFFIRMATIVE DEFENSE**

25 Pursuant to N.R.C.P. 11, as amended, all possible Affirmative Defenses may not have
26 been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon
27 the filing of Defendants' Answer, and therefore, Defendants reserve the right to amend its
28 Answer to allege additional Affirmative Defenses if subsequent investigation warrants.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendants hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendants reserve the right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendants assert that the Complaint should be dismissed on the basis that Plaintiffs have not complied with NRS 41A.071.

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiffs take nothing by virtue of their Complaint;
2. For reasonable attorney's fees and costs of suit incurred herein; and
3. For such other and further relief as the Court deems just and proper.

DATED this 14th day of October, 2016.

HALL PRANGLE & SCHOONVELD, LLC

By: 

KENNETH M. WEBSTER, ESQ.

Nevada Bar No. 7205

TYSON J. DOBBS, ESQ.

Nevada Bar No. 11953

KIRILL V. MIKHAYLOV, ESQ.

Nevada Bar No. 13538

HALL PRANGLE & SCHOONVELD, LLC

1160 North Town Center Drive, Ste. 200

Las Vegas, Nevada 89144

Attorneys for Defendants

Valley Hospital Medical Center, Inc.

and Valley Health System, LLC, doing business as

Valley Hospital Medical Center

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 11 day of October, 2016, I served a true and correct copy of the foregoing DEFENDANTS VALLEY HOSPITAL MEDICAL CENTER, INC. AND VALLEY HEALTH SYSTEM, LLC, DOING BUSINESS AS VALLEY HOSPITAL MEDICAL CENTER'S ANSWER TO PLAINTIFFS' COMPLAINT FOR MEDICAL MALPRACTICE via the E-Service Master List for the above referenced matter in the Eighth Judicial District Court e-filing System in accordance with the electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules to the following:

Thomas S. Alch, Esq.
LAW OFFICES OF THOMAS S. ALCH
500 N. Rainbow Blvd., Suite 300
Las Vegas, NV 89107
Attorneys for Plaintiffs

Patricia Egan Daehnke, Esq.
Katherine J. Gordon, Esq.
DAEHNKE STEVENS, LLP
2300 W. Sahara Ave., Ste. 680, Box 32
Las Vegas, NV 89102
*Attorneys for Defendant
Murad Jussa, M.D.*

Robert C. McBride, Esq.
Chelsea R. Hueth, Esq.
CARROLL, KELLY TROTTER, FRANZEN,
MCKENNA & PEABODY
8329 W. Sunset Rd., Ste. 260
Las Vegas, NV 89113
*Attorneys for Defendants
Steven B. Harter, M.D.; Woemen's Specialty
Care, P.C.; and Wellhealth Quality Care*

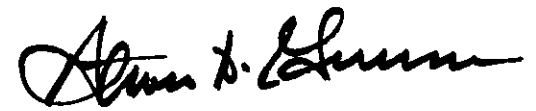
David J. Mortensen, Esq.
ALVERSON, TAYLOR, MORTENSEN &
SANDERS
7401 W. Charleston Blvd.
Las Vegas, NV 89117-1401
*Attorneys for Defendants
Cyndi Tran, D.O.; Elizabeth Phung-Hart,
D.O.; and Andrea Agcaoili, D.O.*

John H. Cotton, Esq.
Adam A. Schneider, Esq.
JOHN H. COTTON & ASSOCIATES, LTD.
7900 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
*Attorneys for Defendant
Paul Janda, D.O.*


An employee of HALL PRANGLE & SCHOONVELD, LLC

EXHIBIT 28

EXHIBIT 28



CLERK OF THE COURT

1 **ANS**
2 **DAVID J. MORTENSEN, ESQ.**
3 Nevada Bar No. 002547
4 **BRIGETTE E. FOLEY, ESQ.**
5 Nevada Bar No. 012965
6 **ALVERSON, TAYLOR,**
7 **MORTENSEN & SANDERS**
8 7401 West Charleston Boulevard
9 Las Vegas, NV 89117-1401
10 Phone: (702) 384-7000
11 Facsimile: (702) 385-7000
12 **efile@alversontaylor.com**
13 **Attorneys for DEFENDANTS**
14 Cyndi Tran, D.O.
15 Elizabeth Phung-Hart, D.O.
16 Andrea Agcaoili, D.O.

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

13 **DARIA HARPER, DANIEL WININGER,**

14 **Plaintiffs,**

15 **vs.**

16 **VALLEY HOSPITAL MEDICAL**
17 **CENTER, INC., doing business as VALLEY**
18 **HOSPITAL MEDICAL CENTER;**
19 **VALLEY HEALTH SYSTEM, LLC, doing**
20 **business as VALLEY HEALTH**
21 **MEDICAL CENTER; JEFFREY**
22 **DAVIDSON, M.D.; CYNDI TRAN, D.O.;**
23 **PAUL JANDA, D.O.; ELIZABETH**
24 **PHUNG-HART, D.O.; ANDREA**
25 **AGCAOILI, D.O.; MURAD JUSSA, M.D.,**
26 **and, DOES 1 through 250, inclusive,**

27 **Defendants.**

CASE NO.: A-16-738004-C
DEPT. NO.: XVII

28 **ANDREA AGCAOILI, D.O.'S ANSWER TO PLAINTIFFS' COMPLAINT**

29 COMES NOW Defendant ANDREA AGCAOILI, D.O. (hereinafter "Dr. Agcaoili"), by
30 and through her attorneys of record, DAVID J. MORTENSEN, ESQ. and BRIGETTE E.

1 FOLEY, ESQ. of the law firm of ALVERSON, TAYLOR, MORTENSEN & SANDERS, and
2 hereby answers Plaintiffs' Complaint, as follows:

3 **GENERAL ALLEGATIONS**

4 1. Answering Defendant is without sufficient knowledge to form a belief as to the
5 truth of the allegations contained in paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 12 of Plaintiffs'
6 Complaint, and therefore denies the same.

7
8 2. In answering paragraph 5 of Plaintiffs' Complaint, Answering Defendant admits
9 she was at all times a physician holding herself out as duly licensed to practice her profession
10 under and by virtue of the laws of the State of Nevada, and was engaged in the practice of that
11 profession in the State of Nevada. The remainder of the allegations contained in this paragraph
12 refer to other Defendants, which Defendant is without sufficient knowledge to form a belief as to
13 the truth of such allegations, and therefore denies the same.

14
15 3. Paragraph 13 of Plaintiffs' Complaint calls for a legal conclusion to which no
16 answer or response is necessary, and on that basis, Defendant denies the same.

17 **FIRST CAUSE OF ACTION**
18 **(Medical Malpractice)**

19 4. Answering Defendants repeat and reallege their answers to the allegations
20 contained within paragraphs 1 through 13 of Plaintiffs' Complaint as if the same were more fully
21 set forth herein.

22 5. Answering Defendants deny the allegations contained in paragraphs 15 and 16 of
23 Plaintiffs' Complaint.

24 6. Paragraphs 17, 19, 20, 21, and 22 of Plaintiffs' Complaint calls for legal
25 conclusions to which no answer or response is necessary, and on that basis, Defendant denies the
26 same.
27
28

1 7. Answering Defendant is without sufficient knowledge to form a belief as to the
2 truth of the allegations contained in paragraph 18 of Plaintiffs' Complaint, and therefore denies
3 the same.

4 **SECOND CAUSE OF ACTION**
5 **(Loss of Consortium)**

6 8. Answering Defendants repeat and reallege their answers to the allegations
7 contained within paragraphs 1 through 22 of Plaintiffs' Complaint as if the same were more fully
8 set forth herein.

9 9. Answering Defendant is without sufficient knowledge to form a belief as to the
10 truth of the allegations contained in paragraph 24 of Plaintiffs' Complaint, and therefore denies
11 the same.

12 10. Paragraph 25 of Plaintiffs' Complaint calls for a legal conclusion to which no
13 answer or response is necessary, and on that basis, Defendant denies the same.

14 **PRAYER FOR RELIEF**

15 Answering Defendant denies that Plaintiffs are entitled to any of the requested relief as
16 contained within their Complaint.

17 **GENERAL DENIAL**

18 Answering Defendant denies each and every allegation contained in Plaintiffs' Complaint
19 that is not specifically admitted to be true.

20 **FIRST AFFIRMATIVE DEFENSE**

21 Defendant alleges that Plaintiffs' Complaint on file herein fails to state a claim upon
22 which relief can be granted.

23 **SECOND AFFIRMATIVE DEFENSE**

24 Defendant alleges that Plaintiffs' damages, if any, were caused in whole or in part, or
25
26
27
28

1 were contributed to by reason of the negligence or wrongful conduct of Plaintiffs.

2 **THIRD AFFIRMATIVE DEFENSE**

3 All risks and dangers involved in the factual situation described in the Complaint were
4 open, obvious, and known to Plaintiffs and said Plaintiffs voluntarily assumed said risks and
5 dangers.
6

7 **FOURTH AFFIRMATIVE DEFENSE**

8 The incident alleged in Plaintiffs' Complaint and the resulting damages, if any, to
9 Plaintiffs were proximately caused or contributed to by Plaintiffs' own negligence, and such
10 negligence was greater than the alleged negligence of Defendant.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 Defendant alleges that the occurrence referred to in the Complaint, and all injuries and
13 damages, if any, resulting there from were caused by the acts or omissions of a third party over
14 whom Defendant had no control.
15

16 **SIXTH AFFIRMATIVE DEFENSE**

17 Defendant has fully performed and discharged all obligations owed to Plaintiffs,
18 including meeting the requisite standard of care to which Plaintiffs were entitled.
19

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 Defendant alleges that at all times mentioned in Plaintiffs' Complaint, Plaintiffs were
22 suffering from a medical condition(s) that Defendant did not cause, nor was Defendant
23 responsible for said medical condition(s).

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 If Plaintiffs have sustained any injuries or damages, such were the result of intervening
26 and/or superseding events, factors, occurrences, or conditions, which were in no way caused by
27 Defendant, and for which Defendant is not liable.
28

NINTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovering any special damages herein as a result of the failure to comply with the provisions of NRCP 9(g).

TENTH AFFIRMATIVE DEFENSE

Defendant alleges that, pursuant to Nevada law, Defendants would not be jointly liable, and that if liability is imposed, such liability would be several for that portion of Plaintiffs' damages, if any, that represents the percentage attributable to Defendants.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are governed and/or barred pursuant to NRS Chapters 1, 40, 41, and 41A, and by the provisions of Question 3 passed by the People of the State of Nevada on November 2, 2004.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint is void *ab initio* as it does not include an affidavit which meets with requirements of N.R.S. 41A.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs had a duty to mitigate their damages and failed to do so.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the applicable statutes of limitations and/or repose.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' action is barred and/or diminished by the doctrines of waiver, laches, estoppels, and/or unclean hands.

SIXTEENTH AFFIRMATIVE DEFENSE

All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer and,

1 therefore, Defendant reserves the right to amend the Answer, and to allege additional
2 Affirmative Defenses if subsequent investigation so warrants.

3 **SEVENTEENTH AFFIRMATIVE DEFENSE**

4 Defendant did not violate any statute, ordinance, or regulation referenced in Plaintiffs'
5 Amended Complaint.

6 **EIGHTEENTH AFFIRMATIVE DEFENSE**

7
8 It been necessary for this Defendant to employ the services of an attorney to defend this
9 action and a reasonable sum should be allowed to Defendant for attorney's fees, together with
10 costs of suit incurred herein.

11 **NINETEENTH AFFIRMATIVE DEFENSE**

12 Defendant hereby incorporates by reference those affirmative defenses enumerated in
13 Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further
14 investigation or discovery reveals the applicability of any such defenses, Defendant reserves the
15 right to seek leave of Court to amend the Answer to specifically assert the same. Such defenses
16 are herein incorporated by reference for the specific purpose of not waiving the same.
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CERTIFICATE OF SERVICE

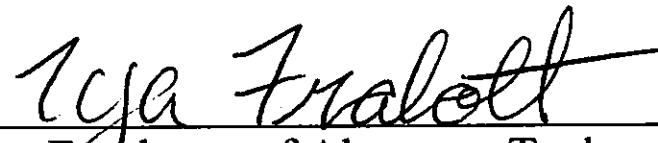
The undersigned hereby certifies that on the 19th day of October, 2016, the foregoing
ANDREA AGCAOILI, D.O.'S ANSWER TO PLAINTIFFS' COMPLAINT was served on
the following by Electronic Service to All parties on the Wiznet Service List, addressed as
follows:

Thomas S. Alch, Esq.
LAW OFFICES OF THOMAS S. ALCH
500 N. Rainbow Blvd, Suite 300
Las Vegas, Nevada 89107
Phone: (702) 740-4140
Attorney for Plaintiffs

Patricia Daehnke, Esq.
DAEHNKE STEVENS LLP
2300 W. Sahara Ave
Suite 680 Box 32
Las Vegas, NV 89102
Phone: (702) 979-2132
Attorney for Jussa Murad, M.D.

Kenneth M. Webster, Esq.
Tyson J. Dobbs, Esq.
Kirill V. Mikhaylov, Esq.
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
Phone: (702) 889-6400
*Attorneys for Defendant Valley Health System,
LLC and Valley Hospital Medical Center, Inc.*

Robert C. McBride, Esq.
Chelsea R. Hueth, Esq.
CARROLL, KELLY, TROTTER, FRANZEN,
McKENNA & PEABODY
8329 W. Sunset Road, Suite 260
Las Vegas, NV 89113
Phone: (702) 792-5855
Attorneys for Jeffrey Davidson, M.D.


An Employee of Alverson, Taylor,
Mortensen & Sanders

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **ANDREA AGCAOILI, D.O.'S**
ANSWER TO PLAINTIFFS' COMPLAINT filed in District Court Case No. A-16-738004-C

X Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for
a federal or state grant.

DATED this 19 day of October, 2016.

ALVERSON, TAYLOR
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

BRIGETTE E. FOLEY, ESQ.

Nevada Bar No. 012965

7401 W. Charleston Boulevard

Las Vegas, NV 89117-1401

(702) 384-7000

E-File: efile@alversontaylor.com

Attorneys for DEFENDANT

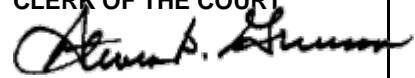
Cyndi Tran, D.O.

Elizabeth Phung-Hart, D.O.

Andrea Agcaoili, D.O.

EXHIBIT 29

EXHIBIT 29



OPPS

DALTON L. HOOKS, JR., ESQ., Nevada Bar No. 8121

SAMI RANDOLPH, ESQ., Nevada Bar No. 7876

HOOKS MENG & CLEMENT

2820 W. Charleston Boulevard, Ste. C-23

Las Vegas, NV 89102

Telephone No. (702) 766-4672

Facsimile No. (702) 919-4672

Attorneys for Defendants

COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and

COPPERPOINT GENERAL INSURANCE COMPANY

DISTRICT COURT

CLARK COUNTY NEVADA

DARIA HARPER, an individual; and
DANIEL WININGER, an individual,

Plaintiffs,

vs.

COPPERPOINT MUTUAL INSURANCE
HOLDING COMPANY, an Arizona
corporation; COPPERPOINT GENERAL
INSURANCE COMPANY, an Arizona
corporation; LAW OFFICES OF
MARSHALL SILBERBERG, P.C., a
California Corporation; KENNETH
MARSHALL SILBERBERG aka
MARSHALL SILBERBERG aka K.
MARSHALL SILBERBERG, an individual;
THOMAS S. ALCH aka THOMAS
STEVEN ALCH, an individual; SHOOP, A
PROFESSIONAL LAW CORPORATION,
a California Corporation; DOES 1-50,
inclusive,

Defendants.

Case No.: A-20-814541-C

Dept. No.: XXX

**COPPERPOINT MUTUAL INSURANCE
HOLDING COMPANY and
COPPERPOINT GENERAL INSURANCE
COMPANY'S OPPOSITION TO
PLAINTIFFS' APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND MOTION FOR PRELIMINARY
INJUNCTION**

Hearing date: July 1, 2020

Hearing time: 9:00 a.m.

...

...

1 Plaintiffs when the Complaint was filed on June 7, 2016. *See Exhibit E.* The Complaint was
2 filed against Valley Hospital Medical Center, Inc., Valley Health System, LLC., Jeffrey
3 Davidson, M.D., Cyndi Tran, D.O., Paul Janda, D.O., Elizabeth Phung-Hart, D.O., Andrea
4 Agcaoili, D.O., Murad Jussa, M.D., and Does I through 250. *See Exhibit E.* The parties
5 ultimately settled, and Plaintiffs dismissed the lawsuit in July 2018. *See Exhibit E.* According to
6 her affidavit dated May 19, 2020, Plaintiff Harper received \$ 6,250,000.00 in settlement funds.
7 *See Exhibit D.*

8 On June 22, 2018, prior to settlement of the medical malpractice action CopperPoint sent
9 Plaintiffs' then-attorney Defendant Marshall Silberberg a letter asking for an update on the
10 medical malpractice litigation. *See Exhibit C.* Defendant Silberberg denied that CopperPoint
11 was entitled to a lien. *See Exhibit C.*

12 CopperPoint attempted to negotiate a resolution to its lien issue with the Plaintiffs and
13 their counsel. Unable to reach a resolution with the Plaintiffs, on October 30, 2019, CopperPoint
14 mailed a Notice of Claim Status to the Plaintiff. *See Exhibit A.*

15 In the October 30, 2019, Notice of Claim Status, CopperPoint informed Plaintiff Harper
16 that it has a lien against her medical malpractice settlement in the amount of medical, surgical,
17 and hospital benefits paid by CopperPoint. *See Exhibit A.* Further, CopperPoint advised
18 Plaintiff Harper that CopperPoint was not required to pay further medical expenses until it has
19 recouped its lien. *See Exhibit A.*

20 Another Notice of Claim Status was sent by CopperPoint to Plaintiff Harper on May 1,
21 2020. *See Exhibit B.* In the Notice of Claim Status dated May 1, 2020, Plaintiff was advised
22 benefits were terminated effective May 2, 2020 until CopperPoint's current lien of \$3,171,095.00
23 is fully exhausted. *See Exhibit B.* Matters related to the administration of and the payment of
24

EXHIBIT C

EXHIBIT C

July 2, 2018

VIA EMAIL AND U.S. MAIL

Pam Fudge
Recovery Specialist
Legal Department
CopperPoint Insurance Companies
3030 N. 3rd Street
Phoenix, AZ 85012-3039
FAX – (602)631-2188

Re: Daria Harper
Claim No.: 14G01532
DOI: 08/11/2014
Employer: Islander RV Resort LLC

Dear Ms. Fudge:

I received your letter dated June 22, 2018, regarding your request for an update and your claim to a lien in this matter. As of this time, Mrs. Harper's case has settled. You were not made aware of the settlement because CopperPoint is not entitled to a lien, as will be explained in more detail below.

As I understand it, CopperPoint claims it is entitled to a lien based upon A.R.S. § 23-1023(D). Mrs. Harper's case was never filed in Arizona, it was filed, litigated, and resolved in Nevada as that is where the injury occurred. Hence, Arizona law has no application or enforceability in Nevada. Therefore, the aforementioned code section does not permit a lien in another state, which is a position supported by the Nevada courts and case law.

As for Nevada law, that State does not permit Workers' Compensation to assert a lien in a medical malpractice case. NRS § 42.021 sets forth "**In an action for injury or death against a provider of health care based upon professional negligence**, if the defendant so elects, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the injury or death pursuant to the United States Social Security Act, any state or federal income disability or **worker's compensation** act, any health, sickness or income-disability insurance, accident insurance that provides health benefits or income-disability coverage, and any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services. If the defendant elects to introduce such evidence, the plaintiff may introduce evidence of any amount that the plaintiff has

May 12, 2020

Page 2

paid or contributed to secure the plaintiff's right to any insurance benefits concerning which the defendant has introduced evidence."

Section 42.021, goes on to state, specifically in subsection (2), that "a source of collateral benefits introduced pursuant to subsection (1) **may not....(a) Recover any amount against the plaintiff.**" (I have attached a copy of this statute for your convenience). Quite clearly, this means that in the State of Nevada, any workers compensation insurance company may not recover any amount against a plaintiff. This also means that any such insurance company may not place a lien on any proceeds of a settlement.

Here, there is no dispute that Mrs. Harper suffered an injury in the State of Nevada as a result of medical malpractice. For this reason, Mrs. Harper's case was filed in Nevada, governed by Nevada law, thereby implicating the statute cited above, along with the protections that preclude CopperPoint having a lien on any proceeds. Nevada law is identical to California law, and Courts in both states do not permits liens, such as the one to which you claim to be entitled.

Moving forward, it is my expectation, and that of my client, that CopperPoint will continue to provide for Mrs. Harper's care. Should CopperPoint at any point in time intentionally, or otherwise, withhold any medical care to which Mrs. Harper is entitled, our office will take immediate legal action.

Please call to discuss the foregoing.

I remain,

Very truly yours,

Marshall Silberberg

EXHIBIT 30

EXHIBIT 30



COPPERPOINT INSURANCE COMPANIES ANNOUNCES ACQUISITION OF ALASKA NATIONAL INSURANCE COMPANY

September 17, 2019

Transaction advances company's geographic expansion and product diversification strategy

PHOENIX – CopperPoint Insurance Companies, a western-based regional commercial insurance company, today announced an agreement to acquire Alaska National Corporation and its wholly owned subsidiary Alaska National Insurance Company (ANIC), an Alaska domiciled workers' compensation and commercial insurance carrier. As of mid-year, Alaska National Insurance Company has a statutory surplus of approximately \$550 million. In 2018, the company had gross written premium of \$250 million and the combined companies will represent approximately \$650 million in premium and an asset base of nearly \$4.8 billion.

"It's an exciting time in our nearly 95-year history as we look forward to welcoming Alaska National and their 250 employees into the CopperPoint Family of Insurance Companies," said Marc Schmittlein, President and CEO of CopperPoint Insurance Companies. "We have been on a journey of transformation as we continue our geographic and product diversification strategy with the vision of becoming the leading regional commercial insurance company for the western United States."

Alaska National brings a proven track record of strong underwriting discipline and exemplary service as evidenced by the company's inclusion in the Property-Casualty Ward's 50[®] Companies for each of the past nine years. Alaska National is licensed in 26 states, opening opportunities for CopperPoint to continue its diversification strategy. CopperPoint's headquarters will remain in Phoenix, Arizona, while Alaska National will continue operating under its company name and will remain domiciled and home-based in Anchorage, Alaska. The



distribution partners and their policyholder customers.

"For nearly 40 years, our company has focused on building personal relationships and developing customized solutions designed to achieve safer futures and better outcomes for our customers," said Craig Nodtvedt, CEO of Alaska National. "CopperPoint is an ideal strategic partner and strong cultural fit for us. Both of our companies are deeply committed to employee excellence and to delivering best in class service to all of our stakeholders. We especially like that Alaska National will become part of CopperPoint's mutual holding company structure where we can maintain our long-term view of the business allowing us to concentrate first on the needs of our customers."

"Alaska National helps us significantly expand our portfolio of insurance products and geography, enabling us to better meet the evolving needs of our brokers, agents and customers," Marc Schmittlein continued. "They are highly respected in the industry, recognized for their stellar service, exceptional financial performance, and talented employees. We are excited and confident about the future."

CopperPoint privatized from the state of Arizona and converted to a mutual insurance company in 2013. Subsequently, CopperPoint introduced additional commercial insurance products, including commercial package, auto and umbrella in Arizona. In 2017, the company acquired Pacific Compensation Insurance Company, a California domiciled company, expanding into the California market. In 2018, CopperPoint further expanded and began to offer products under the CopperPoint brand in Colorado, Nevada, New Mexico and Utah. Earlier in 2019, CopperPoint adopted a new mutual insurance holding company corporate structure to support the continued growth of the company.

The transaction is expected to close once customary regulatory reviews and approvals are received.

Waller Helms Advisors and Locke Lord LLP served as advisors to CopperPoint Insurance Companies. Macquarie Capital and Debevoise & Plimpton LLP served as advisors to Alaska National Corporation.

About CopperPoint Insurance Companies

Founded in 1925, CopperPoint Insurance Companies, www.copperpoint.com, is a leading provider of workers' compensation and commercial insurance solutions. With an expanded line of insurance products and a growing six state footprint in the western United States,



Insurance Companies, California based Pacific Compensation Insurance Company, and other CopperPoint insurance entities. All companies are rated A- (Excellent) by A.M. Best.

About Alaska National Insurance Company

Founded in 1980, Alaska National Insurance Company, www.alaskanational.com, is a leading commercial insurance provider in the western United States. Operating in four regions — Alaska, Pacific Northwest, Inland Northwest and California — the company focuses on workers' compensation, commercial property and auto, general liability, inland marine, umbrella, crime and other commercial insurance services. The company is rated A (Excellent) by A.M. Best. In 2019, Alaska National Insurance Company was again named to the **Property-Casualty Ward's 50® Companies** list of top performers, an honor it has earned across nine consecutive years.

CONTACT:

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⏮ BACK

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EXHIBIT 31

EXHIBIT 31

Department of Business and Industry

Nevada Division of Insurance



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CopperPoint Insurance Company

Address:

3030 N 3rd St
Phoenix, AZ 8-5012

Phone

602-631-2136

URL:**Email:**

sbegley@copperpoint.com

NAIC ID:

14216

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Company Type	License #	Original Issue Date	Status	Status Date	Domicile State
Property and Casualty Insurer	147558	08/14/2018	Active	08/14/2018	Arizona

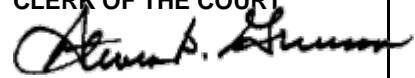
Authorized Line	Status	Effective Date	Reinsurer
Workers Compensation - Property and Casualty Insurer	Approved	08/14/2018	No
Casualty	Approved	08/14/2018	No
Property	Approved	08/14/2018	No

Authorized Line	Status	Effective Date	Reinsurer
Surety	Approved	08/14/2018	No

▶ 14 Agency Appointments

▶ 37 Agent Appointements

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1 **MDSM / MPSJ**

2 DALTON L. HOOKS, JR., ESQ., Nevada Bar No. 8121

3 SAMI RANDOLPH, ESQ., Nevada Bar No. 7876

4 HOOKS MENG & CLEMENT

5 2820 W. Charleston Boulevard, Ste. C-23

6 Las Vegas, NV 89102

7 Telephone No. (702) 766-4672

8 Facsimile No. (702) 919-4672

9 Attorneys for Defendants

10 COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and

11 COPPERPOINT GENERAL INSURANCE COMPANY

12
13 DISTRICT COURT

14
15 CLARK COUNTY NEVADA

16 DARIA HARPER, an individual; and
17 DANIEL WININGER, an individual,

18
19 Plaintiffs,

20 vs.

21
22 COPPERPOINT MUTUAL INSURANCE
23 HOLDING COMPANY, an Arizona
24 corporation; COPPERPOINT GENERAL
INSURANCE COMPANY, an Arizona
corporation; LAW OFFICES OF
MARSHALL SILBERBERG, P.C., a
California Corporation; KENNETH
MARSHALL SILBERBERG aka
MARSHALL SILBERBERG aka K.
MARSHALL SILBERBERG, an individual;
THOMAS S. ALCH aka THOMAS
STEVEN ALCH, an individual; SHOOP, A
PROFESSIONAL LAW CORPORATION,
a California Corporation; DOES 1-50,
inclusive,

25
26 Defendants.

CASE NO.: A-20-814541-C

DEPT NO.: XXX

**DEFENDANTS COPPERPOINT MUTUAL
INSURANCE HOLDING COMPANY and
COPPERPOINT GENERAL INSURANCE
COMPANY'S MOTION TO DISMISS
PLAINTIFFS' COMPLAINT OR
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT**

[HEARING REQUESTED]

27
28 **NOTICE: YOU MAY FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE**
29 **CLERK OF THE COURT AND PROVIDE THE UNDERSIGNED WITH A COPY OF**
30 **YOUR RESPONSE WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION.**
31 **FAILURE TO FILE A WRITTEN RESPONSE WITHIN 14 DAYS OF YOUR RECEIPT**

1 **OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED**
2 **BY THE COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED HEARING**
3 **DATE.**

4 COMES NOW, Defendants, COPPERPOINT MUTUAL INSURANCE HOLDING
5 COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY (COPPERPOINT or
6 COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY or COPPERPOINT
7 GENERAL INSURANCE COMPANY or Defendants), by and through their attorneys of record,
8 the law firm of HOOKS MENG & CLEMENT, and files this Motion to Dismiss Plaintiffs
9 Complaint or Alternatively, Motion for Summary Judgment. This Motion is filed pursuant to
10 NRCP 12(b)(1), NRCP 12(b)(2), NRCP 12(b)(6), and NRCP 56.

11 This Motion is made and based on the papers and pleadings on file herein as well as the
12 following points and authorities submitted in support hereof, and any oral arguments that may be
13 heard regarding this matter.

14 Dated this 4th day of September 2020.

15 HOOKS MENG & CLEMENT

16 By:

17 *Sami Randolph*

18 DALTON L. HOOKS, JR., ESQ.

19 SAMI RANDOLPH, ESQ.

20 Attorneys for Defendants

21 COPPERPOINT MUTUAL INSURANCE
22 HOLDING COMPANY and

23 COPPERPOINT GENERAL INSURANCE
24 COMPANY

DISTRICT COURT
CLARK COUNTY, NEVADA

Daria Harper, Plaintiff(s)

vs.

CopperPoint Mutual Insurance Holding
Company, Defendant(s).

CASE NO.: A-20-814541-C

DEPT NO.: XXX

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR RESPECTIVE COUNSEL

PLEASE TAKE NOTICE that Defendants', COPPERPOINT MUTUAL INSURANCE
HOLDING COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY'S
MOTION TO DISMISS PLAINTIFFS' COMPLAINT OR ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT in the above-captioned matter is set for hearing before the Court on
the ____ day of _____, 2020 at _____AM / PM.

HOOKS MENG & CLEMENT

By:

Sami Randolph

DALTON L. HOOKS, JR., ESQ.

SAMI RANDOLPH, ESQ.

Attorneys for Defendants

COPPERPOINT MUTUAL INSURANCE

HOLDING COMPANY and

COPPERPOINT GENERAL INSURANCE

COMPANY

MEMORANDUM OF POINTS AND AUTHORITIES

I.
STATEMENT OF FACTS

This litigation arises out of an industrial injury that occurred on or about August 11, 2014. *See Exhibit G*; *see also* Plaintiffs' Complaint at pg. 2. COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY is an Arizona Corporation. *See Exhibit K*; *see also* Plaintiffs' DARIA HARPER and DAVID WININGER Complaint at pg. 2. COPPERPOINT GENERAL INSURANCE COMPANY is an Arizona corporation that provided workers' compensation insurance to HARPER'S Employer, Islander RV Resort, LLC. *See Exhibit L*; *see also EXHIBIT H*; Plaintiffs' Complaint at pg. 2. Subsequent to her injury, HARPER filed an Arizona workers' compensation claim. *See Exhibit H*; *see also* Plaintiffs' Complaint at pg. 2. COPPERPOINT accepted HARPER'S claim for workers' compensation benefits. *See id.* Upon information and belief, HARPER never filed an administrative appeal with the Arizona Industrial Commission regarding COPPERPOINT'S determination to accept her claim and administer benefits under Arizona law. Ultimately, COPPERPOINT paid benefits in an amount in excess of \$ 3,171,095. *See Exhibit I*; *see also Exhibit J* at pg. 29.

On June 9, 2015, HARPER presented to Valley Hospital Medical Center for an emergency consultation. HARPER sustained injury as a result of her medical treatment. *See* COPPERPOINT'S Answer at pg. 3; *see also Exhibit J* at pg. 28.

As early as January 5, 2016, COPPERPOINT inquired as to whether HARPER intended to pursue litigation related to the claim. *See Exhibit A.*

Your claim file shows that you may have been injured by the negligence of wrongdoing of another. To help us process your claim, it is important that we know whether you intend to take any action against the person (s) who may have been responsible for your injury.

1 *See id.*

2 On January 5, 2016, COPPERPOINT contacted Defendant Marshall SILBERBERG, the
3 attorney retained by Plaintiff HARPER. *See Exhibit B; see also Exhibit J* at pg. 28.

4 COPPERPOINT stated,

5 I have been notified that you have been hired by Ms. Harper for a med-malpractice
6 case.

7 Please note that we have a lien and are requesting you to provide us with a letter of
8 representation and something signed by Ms. Harper that indicates she hired your
9 firm, such as a release.

10 Please provide us a copy of the conformed complaint at your earliest convenience.

11 *See Exhibit B.* COPPERPOINT sent a second request to SILBERBERG on or about February
12 25, 2016. *See Exhibit C.*

13 On March 22, 2016, SILBERBERG informed COPPERPOINT,

14 Relative to the above, please be advised that our office has been retained to
15 represent the interests of Daria Harper. We are evaluating all potential claims and
16 will timely file a Complaint on Ms. Harper's behalf. We will continue to keep you
17 apprised of all significant developments as they occur.

18 In the meantime, we would appreciate it if you could forward us a copy of Ms.
19 Harper's CD of medical records from Valley Hospital in Las Vegas.

20 *See Exhibit D.*

21 On June 7, 2016, HARPER and WININGER filed a complaint in the Eighth Judicial
22 District Court against Valley Hospital Medical Center, Inc., Valley Health System, LLC., Jeffrey
23 Davidson, M.D., Cyndi Tran, D.O., Paul Janda, D.O., Elizabeth Phung-Hart, D.O., Andrea
24 Agcaoili, D.O., Murad Jussa, M.D., and Does I through 250. *See Exhibit E* at pg. 10; *see also*
Exhibit J at pg. 28. The parties ultimately reached a settlement, and Plaintiffs HARPER and
WININGER dismissed the lawsuit. *See Exhibit J* at pg. 29. In an affidavit dated May 19, 2020,

1 Plaintiff HARPER states that she received \$ 6,250,000.00 in settlement from the malpractice
2 lawsuit. *See id.*

3 On June 22, 2018, COPPERPOINT sent SILBERBERG a letter that stated;

4 Please provide an update on this case and please remember that pursuant to A.R.S.
5 §23-1023(C), to please keep CopperPoint apprised of the status of the claim and
6 notify us upon any resolution of the claim.

7 As you are aware, A.R.S. §23-1023(C), provides for a statutory lien and credit for
8 any amounts collected on the third-party claim. Any resolution of the claim for
9 less than a statutory lien requires our written approval. While it is the position of
10 CopperPoint that we are entitled to our full statutory lien and credit, there may be
11 circumstances where CopperPoint will reduce our statutory lien or credit if
12 warranted depending upon the particular facts and circumstances of each claim.
13 Any agreement to reduce or waive our statutory lien or future credit must be
14 acknowledged by CopperPoint in writing. Any alleged oral waiver or reduction of
15 our lien or future credit will not be recognized unless it is acknowledged by us in
16 writing.

17 We will provide you with our current lien information as you request during your
18 handling of the third-party claim. Once a claim has settled, it is imperative that
19 you notify us for a current lien amount. Please note that until you are in agreement
20 with an offer and have contacted us for approval, the lien is subject to change.
21 Also, please verify all bills are paid "prior to settlement" or they can become the
22 claimant's responsibility.

23 *See Exhibit F* at pg. 20.

24 On June 22, 2018, SILBERBERG acknowledged receipt of the June 22, 2018 letter from
COPPERPOINT. *See Exhibit G* at pg. 22; *see also Exhibit J* at pg. 29. SILBERBERG stated,

I received your letter dated June 22, 2018, regarding your request for an update
and your claim to a lien in this matter. As of this time, Ms. Harper's case has
settled. You were not made aware of the settlement because CopperPoint is not
entitled to a lien, as will be explained in more detail below.

See Exhibit G at pg. 22.

On October 30, 2019, COPPERPOINT sent HARPER a Notice of Claim Status. *See*
Exhibit H; *see also Exhibit J* at pg. 29. In the Notice of Claim Status, COPPERPOINT
informed HARPER that it has a lien against her medical malpractice settlement in the amount of

1 medical, surgical, and hospital benefits paid by COPPERPOINT. *See id.* COPPERPOINT
2 further advised HARPER that it is/was not required to pay further medical expenses until it has
3 recouped its lien. *See id.*

4 On May 20, 2020, Plaintiffs filed an action for declaratory and injunctive relief in Clark
5 County District Court in Las Vegas, Nevada. *See* Plaintiffs’ Complaint at pp. 1, 10–11. Plaintiffs
6 seek a declaratory judgment stating that COPPERPOINT is required to continue paying workers’
7 compensation benefits despite controlling Arizona law to the contrary. *See id.* at pp. 10–11.
8 COPPERPOINT now submits this Motion to Dismiss Plaintiffs’ Complaint or Alternatively,
9 Motion for Summary Judgment.

10 **II.** 11 **LAW & ARGUMENT**

12 **I. PLAINTIFFS’ CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF 13 MUST BE DISMISSED PURSUANT TO NRCP 12(B)(1), 12(B)(2), AND 12(B)(5).**

14 **A. Pursuant to NRCP 12(B)(1), this Court Lacks Subject-Matter Jurisdiction.**

15 NRCP 12(b), provides as follows:

16 Every defense, in law or fact, to a claim for relief in any pleading ...
17 shall be asserted in the responsive pleading thereto if one is
18 required, except that the following defenses may ... be made by
19 motion: ... (1) lack of subject-matter jurisdiction;

20 Additionally, NRCP 12(h)(3) states that “If the court determines at any time that it lacks
21 subject-matter jurisdiction, the court must dismiss the action.” Under Nevada law, a motion to
22 dismiss for lack of subject matter jurisdiction is proper when “a lack of jurisdiction over the
23 subject matter appears on the face of the pleading.” *See Girola v. Roussille*, 81 Nev. 661, 663
24 (1965). Where a statute provides an administrative remedy, declaratory relief is inappropriate.
See Baldonado v. Wynn Las Vegas, LLC., 124 Nev. 951, 964 (2008). In matters of workers’
compensation, NRS §616A.020 provides that the “rights and remedies provided in chapters 616A

to 616D, inclusive, of NRS” to a claimant who suffers a workplace injury “shall be exclusive.” Under Arizona law, ARS §23-1022 provides that the workers’ compensation system is an injured worker’s exclusive remedy against *both* the employer and the employer’s workers’ compensation carrier.

As a result, NRS §616A.020 bars an injured worker from filing *any* action in District Court regarding his or her workers’ compensation claim prior to the conclusion of the Department of Administration’s administrative appeals process. Thusly, any claimant may not file an action directly with the District Court but must rather request a hearing within (70) days before the Nevada Department of Administration, Hearing Division. *See* NRS § 616C.315.

Under Nevada law, failure to adhere to administrative appeals deadlines renders a claim determination final and non-justiciable. *See Reno Sparks Convention Visitors Auth. v. Jackson*, 112 Nev. 62, 67 (1996) (holding that the timeframe to request a hearing is mandatory and jurisdictional; failure to timely request a hearing strips the Department of Administration of jurisdiction to adjudicate the matter). Any party aggrieved by the Hearing Officer’s Decision and Order may request further review by filing an appeal with the Department of Administration, Appeals Division. *See* NRS §616C.345.

Subsequent review is *only* available by filing a Petition for Judicial Review with the District Court. *See* NRS §233B.130. Under NRS § 233B.130, only the Department of Administration’s *final* Decision and Order is subject to judicial review. Pursuant to NRS §233B.135, the District Court must confine its review to the administrative record. In regard to the Department of Administration’s final Decision and Order, the District Court may only 1) affirm the order or 2) set aside the order in whole or part. *See* NRS §233B.135.

Accordingly, under Nevada law, this court is without subject-matter jurisdiction to provide declaratory or injunctive relief in the instant case. First, Plaintiffs did not adhere to the

1 administrative appeals process, which pursuant to *Reno Sparks Convention Visitors Auth. v.*
2 *Jackson*, 112 Nev. 62, 67 (1996) strips the Department of Administration and any subsequent
3 judicial court of jurisdiction. Second, pursuant to NRS §233B.135, in reviewing a workers'
4 compensation administrative decision, the District court is limited to either 1) affirming the order
5 or 2) setting the order aside in whole or part. NRS § 233B.135 does not allow the District Court
6 to grant any form of declaratory or injunctive relief in a workers' compensation matter.

7 Similar to Nevada, Arizona's ARS §23-947 establishes the procedure under which a
8 claimant may administratively appeal a determination of the workers' compensation carrier.
9 Under ARS §23-947 (A), an aggrieved party must request a hearing before the Arizona Industrial
10 Commission within ninety (90) days of the date the carrier mailed the notice. Failure to request a
11 hearing within the allotted ninety (90) day period results in the decision becoming "final and res
12 judicata" pursuant to ARS §23-947 (B).

13 What's more, Arizona law also establishes the procedure through which a judicial court
14 can review a workers' compensation case. First, the Arizona Industrial Commission will hold a
15 hearing on the matter in accordance with ARS §23-941 if the claimant timely requests a hearing.
16 The administrative law judge will issue a final order resolving all legal and factual issues.
17 Subsequent to the administrative law judge issuing his or her final order, the only avenue to
18 further appeal is for the aggrieved party to file a petition for writ of certiorari with the Arizona
19 Court of Appeals, as established by ARS §23-951.

20 ARS §23-951 *also* establishes a judicial court's limited role in reviewing a workers'
21 compensation matter. First, the court's only role is limited to (1) whether the administrative law
22 judge acted "without or in excess of its power" and (2) whether the administrative law judge's
23 findings of fact support the order. Second, under ARS §23-951, the court is limited to either (1)
24

affirming or (2) setting aside the award. At no point does ARS §23-951 allow a judicial court to issue a restraining order or preliminary injunction.

As a result, Plaintiffs argument is a non-starter. Even if this Court retains jurisdiction over an Arizona workers' compensation case, it is limited to either 1) affirming or 2) setting aside the award or order. Accordingly, under Arizona law, this court has no authority to issue declaratory or injunctive relief in a worker's compensation matter and Plaintiffs' complaint, therefore, must be dismissed.

B. The Instant Complaint Must Be Dismissed for Lack of Personal Jurisdiction Pursuant to NRCP 12(b)(2).

NRCP 12(b), provides as follows:

Every defense, in law or fact, to a claim for relief in any pleading ... shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may ... be made by motion: ... (2) lack of personal jurisdiction;

In *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court*, the Nevada Supreme Court stated that:

To obtain jurisdiction over a non-resident defendant, a plaintiff must show: (1) that the requirements of the state's long-arm statute have been satisfied, and (2) that due process is not offended by the exercise of jurisdiction. First, Nevada's long-arm statute, NRS 14.065, reaches the limits of due process set by the United States Constitution. Second, the Due Process Clause of the Fourteenth Amendment requires a nonresident defendant to have "minimum contacts" with the forum state sufficient to ensure that exercising personal jurisdiction over him would not offend "traditional notions of fair play and substantial justice." The defendant must have sufficient contacts with the forum such that he or she could reasonably anticipate being hauled into court there.

See Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court, 122 Nev. 509, 513 (2006). In *Sinatra v. Nat'l Enquirer, Inc.*, the Ninth Circuit Court of Appeals stated that:

When a defendant challenges the sufficiency of personal jurisdiction, the plaintiff bears the burden of establishing personal jurisdiction over the defendant.

See Sinatra v. Nat'l Enquirer, Inc., 854 F.2d 1191, 1194 (9th Cir. 1988).

Here, Plaintiffs have not established that Nevada courts have personal jurisdiction over COPPERPOINT. Both COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY are Arizona Corporations. In this case, COPPERPOINT GENERAL INSURANCE COMPANY, an Arizona Corporation, provided workers' compensation coverage under Arizona law to HARPER's Arizona employer. HARPER, a resident of Arizona, received benefits from COPPERPOINT GENERAL INSURANCE COMPANY under Arizona workers' compensation law. COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY did not provide workers' compensation insurance to HARPER'S employer nor administer benefits under HARPER'S claim, and otherwise has no connection to HARPER.

Under such facts, Plaintiffs have not established that this Court has personal jurisdiction over COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and/or COPPERPOINT GENERAL INSURANCE COMPANY. As the Ninth Circuit Court of Appeals stated in *Sinatra v. Nat'l Enquirer, Inc.*, Plaintiffs—not Defendants—have the burden of establishing personal jurisdiction. See *Sinatra v. Nat'l Enquirer, Inc.*, 854 F.2d 1191, 1194 (9th Cir. 1988). Accordingly, the instant complaint must be dismissed for lack of personal jurisdiction pursuant to NRCP 12(b)(2).

C. Plaintiff's Claims for Declaratory and Injunctive Relief Must be Dismissed Pursuant to NRCP 12(b)(5).

NRCP 12(b), provides as follows:

Every defense, in law or fact, to a claim for relief in any pleading ... shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may ... be made by motion: ... (5) failure to state a claim upon which relief can be granted.

When considering a motion to dismiss, this Court must determine “whether or not the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief.” *See Edgar v. Wager*, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985) (emphasis added). Thus, the focus is on the allegations in Plaintiff’s Complaint. Nevertheless, despite the lenience of notice pleading, in *Bell Atlantic v. Twombly*, 127 S. Ct. 1555, 1574 (1997), the United States Supreme Court held that a Motion to Dismiss should be granted if the Plaintiff does not delineate enough facts to state a claim for relief that is plausible on its face.” “[A] plaintiff’s obligation to provide the grounds of its entitlement to relief requires more than labels and conclusion and formulaic recitation of the elements of a cause of action will not do.” *Id.* at 1564-65. “Factual allegations in the Complaint must be enough to raise the right to relief above the speculative level on the assumption that all the allegations in the Complaint are true. *Id.* (citation omitted).

1. Plaintiffs’ Claim for Declaratory Relief Must Be Dismissed.

Plaintiffs’ first cause of action is for declaratory relief. *See* Complaint at pp. 10-11. However, it is clear that the requirements for declaratory relief remain unmet. Viewing the facts in the light most favorable to Plaintiffs indicate that HARPER sustained an industrial injury for which COPPERPOINT provided workers’ compensation benefits under Arizona law. Further taking the facts in the light most favorable to Plaintiffs indicate that HARPER underwent a surgery under her workers’ compensation claim.

NRS § 616A.020 provides that the rights and remedies detailed within Chapters 616A through 616D are the exclusive means of securing compensation for an industrial injury. In other words, NRS § 616A.020 bars declaratory relief in a workers’ compensation claim. Similarly, ARS § 23-1022 provides that the Arizona workers’ compensation system is the exclusive remedy for an Arizona worker, such as HARPER, who sustains an industrial injury. Applying the facts of this case in the light most favorable to Plaintiffs to NRS § 616A.020 and ARS § 23-1022 indicate

1 that there is no plausible avenue to obtain declaratory relief. Accordingly, Plaintiffs' complaint
2 must be dismissed.

3 **2. Plaintiffs' Second Cause of Action of "Injunctive Relief" Is a Remedy and**
4 **Thus Non-Actionable.**

5 Plaintiffs' second cause of action is for "injunctive relief." See Complaint at pp. 11-12.
6 However, it is a well-settled principal that injunctive relief is a remedy, not a cause of action. In
7 *Shell Oil Co. v. Richter*, the California Court of Appeals explained that a valid cause of action
8 must exist before a court grants an injunction because injunctive relief itself is a remedy. See
9 *Shell Oil Co. v. Richter*, 52 Cal.App.2d 164, 168 (1942) (cited with approval by the Nevada
10 Supreme Court in *Luckett v. Mohamed*, No. 60201, 2012 Nev. Unpub. LEXIS 1590, *3 (Nov. 16,
11 2012)).

12 Here, Plaintiffs have not pleaded any cause of action that injunctive relief should remedy.
13 Plaintiffs must first plead a cause of action before they can request injunctive relief. Accordingly,
14 Plaintiffs' second cause of action must be dismissed because it is not a claim under which relief
15 may be granted.

16 **3. COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY Must Be**
17 **Dismissed as a Party as It Did Not Administer HARPER'S Workers'**
18 **Compensation Claim.**

19 The facts of this case, taken in the light most favorable to Plaintiffs, indicate that
20 COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY did not administer any
21 workers' compensation benefits to HARPER. COPPERPOINT GENERAL INSURANCE
22 COMPANY administered all relevant workers' compensation benefits to HARPER.
23 COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY owed no duty to HARPER
24 under Arizona law and continues to owe no duty to HARPER. Accordingly, there is no possible
set of facts, taken in the light most favorable to Plaintiffs, under which Plaintiffs may obtain

1 declaratory or injunctive relief against COPPERPOINT MUTUAL INSURANCE HOLDING
2 COMPANY. Thus, COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY is an
3 improper party to the instant suit and must be dismissed.

4 **II. ALTERNATIVELY, THIS COURT SHOULD GRANT SUMMARY**
5 **JUDGMENT TO COPPERPOINT.**

6 The Nevada Supreme Court has continuously held that summary judgement “is
7 appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories,
8 admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine
9 issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” *See*
10 *Wood v. Safeway, Inc.*, 121 Nev. 724, 731 (2005) (citations omitted) (citing NRCP 56). As
11 discussed below, no genuine issue of material fact exists as to the nature and extent of
12 HARPER’S industrial and medical malpractice injuries as well as COPPERPOINT’S lien
13 stemming therefrom. Nor can it be disputed that Plaintiffs have refused to honor
14 COPPERPOINT’S lien. Additionally, COPPERPOINT is entitled to judgement as a matter of
15 law because its lien exists under both Nevada and Arizona law. Accordingly, this Court should
16 grant partial summary judgement in favor of COPPERPOINT as to Plaintiffs’ first and second
17 causes of action regarding declaratory and injunctive relief.

18 **A. No Genuine Issue of Material Fact Exists Regarding COPPERPOINT’S**
19 **Statutory Lien on Plaintiffs’ Medical Malpractice Settlement.**

20 The substantive law that is relevant to the instant dispute exclusively “controls which
21 factual disputes are material.” *See Wood v. Safeway, Inc.*, 121 Nev. 724, 731 (2005). A genuine
22 factual dispute exists when “the evidence is such that a rational trier of fact could return a verdict
23 for the nonmoving party.” *See id.* In considering a Motion for Partial Summary Judgement, this
24 Court is required to construe evidence “in a light most favorable to the nonmoving party.” *See id.*

at 732. The Court must not “pass upon the credibility or weight of the opposing affidavits or evidence” but rather must “accept as true all evidence favorable to the party against whom the motion is made.” *See Hidden Wells Ranch v. Strip Realty*, 83 Nev. 143, 145 (1967).

As a preliminary matter, ARS § 23-1022, NRS § 616C.215, and NRS § 42.021 are the *exclusive* statutory provisions that control “which factual disputes are material” because the instant dispute centers on Defendant COPPERPOINT’s lien rights. Applying ARS § 23-1022, NRS § 616C.215, and NRS § 42.021 to the instant case indicates that no genuine issue of material fact exists as to the nature of and circumstances surrounding HARPER’S, industrial injury, workers’ compensation claim, subsequent medical malpractice lawsuit, COPPERPOINT’S attempts to enforce its lien rights, and Plaintiffs’ refusal to honor the same.

To reiterate what is relevant, on or about August 11, 2014 HARPER suffered an industrial injury for which COPPERPOINT provided workers’ compensation benefits. *See Exhibit G*; *see also EXHIBIT H*; Plaintiffs’ Complaint at pg. 2. COPPERPOINT paid benefits in an amount in excess of \$ 3,171,095. *See Exhibit I*; *see also Exhibit J* at pg. 29. On June 9, 2015, HARPER presented to Valley Hospital Medical Center for an emergency consultation wherein she sustained injury as a result of said medical treatment. *See COPPERPOINT’S Answer* at pg. 3; *see also Exhibit J* at pg. 28.

On January 5, 2016, COPPERPOINT contacted SILBERBERG, the attorney retained by HARPER. *See Exhibit B*; *see also Exhibit J* at pg. 28. On June 7, 2016, HARPER and WININGER filed a complaint in the Eighth Judicial District Court against healthcare providers who she alleged to be liable for her injuries. *See Exhibit E* at pg. 10; *see also Exhibit J* at pg. 28. The parties ultimately reached a settlement, and HARPER and WININGER dismissed the malpractice lawsuit. *See Exhibit J* at pg. 29. HARPER states that she received \$ 6,250,000.00 in settlement from the malpractice lawsuit. *See id.*

On June 22, 2018, SILBERBERG informed COPPERPOINT that the malpractice case had settled and HARPER would not provide any settlement proceeds to COPPERPOINT, *See Exhibit G* at pg. 22; *see also Exhibit J* at pg. 29. On October 30, 2019, COPPERPOINT sent HARPER a Notice of Claim Status informing HARPER that her workers' compensation benefits are suspended unless and until she reimburses its lien *See Exhibit H*; *see also Exhibit J* at pg. 29.

Viewing the above facts in the light most favorable to the non-moving party, there is no genuine issue of material fact remains as to the circumstances surrounding HARPER's workers' compensation claim and COPPERPOINT'S lien related thereto. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 732 (2005). As no genuine issue of material fact exists and COPPERPOINT, as discussed below, is entitled to judgement as a matter of law, this court should grant summary judgement in favor of COPPERPOINT as to Plaintiffs' first and second causes of action.

B. COPPERPOINT is Entitled to Judgment as a Matter of Law.

The Nevada Supreme Court has held that summary judgment is only appropriate if "the party moving for summary judgment [submits] evidence that negates an essential element of the [plaintiffs] claim" or [points out] that there is an absence of evidence to support the nonmoving party's case." *See Cummings v. Barber*, 460 P.3d 963, 968 (Nev. 2020). Further, in *Cuzze v. Univ. & Cmty. College Sys.*, the Nevada Supreme Court stated that:

The manner in which each party may satisfy its burden of production depends on which party will bear the burden of persuasion on the challenged claim at trial. If the moving party will bear the burden of persuasion, that party must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence. But if the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party's claim, or (2) pointing out . . . that there is an absence of evidence to support the nonmoving party's case. In such instances, in order to defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.

See *Cuzze v. Univ. & Cmty. College Sys.*, 123 Nev. 598, 602–03 (2007) (citations and quotations omitted).

1. As a Matter of Law, this Matter Must First Proceed Through the Workers’ Compensation Administrative Courts.

As discussed in Part I-A, both Nevada and Arizona law requires that all workers’ compensation matters must first proceed through the administrative appeals process *before* this Court takes jurisdiction. *See supra*, part I-A. The instant matter is currently before the Arizona Industrial Commission. Thus, Plaintiffs have not presented sufficient evidence to establish that this court retains jurisdiction over this Arizona workers’ compensation matter. *See Cuzze v. Univ. & Cmty. College Sys.*, 123 Nev. 598, 602–03 (2007) (citations and quotations omitted). Accordingly, this court should grant the instant motion for partial summary judgement on these grounds alone.

2. Arizona Law Which Recognizes COPPERPOINT’S Lien Controls the Instant Dispute Because the Weight of Interstate Authority Indicates that Once an Employee Files a Workers’ Compensation Claim, the Law of that State Must Administer the Claim.

Assuming, arguendo, that the instant workers’ compensation matter is somehow exempt from well-settled law requiring adherence to the administrative adjudication procedure, this Court should apply §23-1023 which recognizes COPPERPOINT’S lien rights. In *GMC v. Eighth Judicial Dist. Court of Nev.*, the Nevada Supreme Court adopted the *Restatement (Second) of Conflict of Laws* regarding conflict of laws issues arising in tort. *See GMC v. Eighth Judicial Dist. Court of Nev.*, 122 Nev. 466, 468, 134 P.3d 111, 113 (2006). Regarding workers’ compensation matters, the *Restatement (Second) of Conflict of Laws* states that:

A peculiarity of the area is that usually relief under a particular statute may be obtained only in the state of its enactment. This is because the statutes normally provide for their enforcement by special administrative tribunals and such tribunals do not consider themselves competent to give relief under any statute but their own.

...

1 *See Restat 2d of Conflict of Laws*, § 185 (2nd 1988). Further, the restatement provides that:

2 The local law of the state under whose workmen's compensation statute an
3 employee has received an award for an injury determines what interest the person
4 who paid the award has in any recovery for tort or wrongful death that the
5 employee may obtain against a third person on account of the same injury.

6 *See Restat 2d of Conflict of Laws*, § 185 (2nd 1988).

7 Here, Plaintiff HARPER sustained a compensable industrial injury in Arizona.
8 COPPERPOINT accepted her claim under Arizona law. Harper received an award of
9 compensation under Arizona law, including medical and wage replacement benefits. While a
10 resident of Arizona, HARPER required emergency medical treatment in Nevada for the injuries
11 stemming from her Arizona workers' compensation claim.

12 On October 23, 2019, COPPERPOINT mailed a Notice of Claim Status to HARPER
13 advising her that pursuant to ARS §23-1023, she is not entitled to further benefits in light of her
14 refusal to repay COPPERPOINT'S lien.

15 All worker's compensation benefits received by HARPER have been in accord with
16 Arizona law. Pursuant to the *Restatement (Second) of Conflict of Laws* §185, the local law of the
17 state where a workers' compensation claimant received an award determines all subsequent
18 subrogation rights. As such, Arizona law—not Nevada law—must govern COPPERPOINT'S
19 subrogation rights because HARPER received workers' compensation benefits under Arizona law.

20 While the Nevada Supreme Court has never directly addressed a conflict of laws issue
21 arising out of a workers' compensation claim, the weight of interstate authority mirrors the
22 approach adopted by the *Restatement (Second) of Conflict of Laws*. For example, in *Quiles v.*
23 *Heflin Steel Supply Co.*, the Arizona Supreme Court ruled that workers' compensation acts are
24 substantive and that the law of the state where the injured worker filed a claim and received

benefits must govern all subsequent aspects of claim administration. *See Quiles v. Heflin Steel Supply Co.*, 145 Ariz. 73, 78, 699 P.2d 1304, 1309 (Ariz. Ct. App. 1985).

In *Quiles*, the workers' compensation claimant suffered an industrial injury when a Heflin Steel employee improperly unloaded wire from a truck, causing the wire to fall on the claimant. *See id.* at pg. 1306. At the time of his injury, the claimant was a resident of California and employed by a California employer. *See id.* at pp. 1305–06. The claimant filed his claim for workers' compensation benefits in California, even though the injury occurred in Arizona. *See id.* at pg. 1306. The workers' compensation carrier paid over \$50,000 in benefits. *See id.*

The carrier filed suit against Heflin Steel. *See id.* The claimant filed a motion to intervene that was granted by the trial court. However, the trial court dismissed the claimant's complaint in intervention under the theory that it was barred by ARS §23-1023 and ARS §12-542. The claimant appealed on the basis that California law, as the law of the state where he received workers' compensation benefits, would have allowed his complaint in intervention. *See id.*

In reversing the trial court, the Arizona Court of Appeals held that courts must apply the law of the state where the claimant received benefits in foreign state litigation arising out of workers' compensation matters. *See id.* at pg. 1308. The court noted that:

In the present case we are dealing with a California worker, a California employer, and an application for workers' compensation benefits from California. Under these circumstances we hold the rights as between the worker and the employer and its carrier (or the worker and the carrier) are governed by California law, not by A.R.S. § 23-1023. The carrier commenced this action within one year of the date of injury pursuant to rights given to it under the applicable California statutes.

Arizona has adopted a policy of allowing a worker injured in a multistate context to choose the state in which to seek compensation. A.R.S. § 23-904(B) permits a foreign worker injured in this state to enforce his rights against his employer in this state if they can reasonably be determined by the courts in this state. Quiles sought and received compensation in California. **We hold that workers' compensation rights are substantive not merely procedural and therefore once the worker has exercised his choice of where to seek compensation the compensation scheme of that state shall apply.**

1 *See id.* at pp. 1308–09 (citations omitted, and emphasis added).

2 Here, like the claimant in *Quiles* who litigated in a foreign state concerning his workers’
3 compensation benefits, so too HARPER seeks to litigate in a foreign state benefits related to her
4 Arizona worker’s compensation claim. HARPER sustained an industrial injury in Arizona while
5 a resident of Arizona and received workers’ compensation benefits under Arizona law. Applying
6 any law other than Arizona law would substantially alter HARPER’S workers’ compensation
7 rights. Accordingly, this court should decline to hear this matter given the action pending before
8 the Industrial Commission of Arizona. In the alternative, this court should apply Arizona law,
9 which grants COPPERPOINT a lien on HARPER’S medical malpractice settlement and dismiss
10 Plaintiffs’ complaint in its entirety.

11 In the context of workers’ compensation subrogation matters, the Iowa Supreme Court has
12 expressly ruled that subrogation rights must be determined in accord with the law of the state
13 under which the claimant has received benefits. *See Moad v. Dakota Truck Underwriters*, 831
14 N.W.2d 111, 118 (Iowa Ct. App. 2015). In *Moad*, the claimant suffered an industrial injury. *See*
15 *id.* at pg. 112. The carrier reported the incident to South Dakota’s workers’ compensation
16 administrator, who administered all relevant benefits under South Dakota law. *See id.* The
17 claimant’s survivors filed an action in Iowa to recover damages on behalf of the deceased. *See id.*
18 The carrier filed a notice asserting its lien rights. *See id.*

19 Plaintiffs moved to strike the lien on the basis that Iowa law did not permit a lien under
20 such circumstances. *See id.* at pg.113. The trial court granted Plaintiff’s motion to strike,
21 applying Iowa law. *See id.* On appeal, the Iowa Supreme Court reversed the trial court, noting
22 that:

23 Based on our review of the applicable provisions of the Restatement (Second) and
24 the conflict of laws caselaw, we conclude there are sound reasons for

1 applying section 185 to this case. Although conflict rules are rarely
2 perfect, section 185 in most cases will provide a clear rule of decision for workers'
3 compensation carriers and claimants alike. Because workers' compensation is
4 designed to be an efficient method for dealing with workplace injuries, we view
5 the application of section 185 as superior to the more open-ended considerations of
6 the most-significant-relationship tests.

7 *See id.* at pg. 118.

8 Importantly, in *Moad*, the Iowa Supreme Court rejected the most-significant-relationship
9 test in favor of the *Restatement (Second) of Conflict of Laws* §185 locus test. *See id.* In doing so,
10 the court noted the predictability and efficiency of §185's locus of claim test. *See id.*
11 Accordingly, this court should hold as the Iowa Supreme Court did in *Moad*, and apply the local
12 law of the state wherein HARPER filed her workers' compensation claim.

13 Applying Arizona law, COPPERPOINT prevails as ARS §23-1023 grants workers'
14 compensation carriers' lien rights in medical malpractice settlements. ARS §23-1023 (D) states
15 that:

16 **ARS § 23-1023. Liability of third persons to injured employee; election of remedies**

17 D. If the employee proceeds against the other person, compensation and medical,
18 surgical and hospital benefits shall be paid as provided in this chapter and the
19 insurance carrier or other person liable to pay the claim shall have a lien on the
20 amount actually collectable from the other person to the extent of such
21 compensation and medical, surgical and hospital benefits paid. This lien shall not
22 be subject to a collection fee. The amount actually collectable shall be the total
23 recovery less the reasonable and necessary expenses, including attorney fees,
24 actually expended in securing the recovery. In any action arising out of an
aggravation of a previously accepted industrial injury, the lien shall only apply to
amounts expended for compensation and treatment of the aggravation. The
insurance carrier or person shall contribute only the deficiency between the amount
actually collected and the compensation and medical, surgical and hospital benefits
provided or estimated by this chapter for the case. Compromise of any claim by the
employee or the employee's dependents at an amount less than the compensation
and medical, surgical and hospital benefits provided for shall be made only with
written approval of the insurance carrier or self-insured employer liable to pay the
claim.

See ARS §23-1023 (2020). Further, in *State Compensation Fund v. Nelson*, the Arizona Supreme Court explained that:

According to this statute, the Fund "shall have a lien on the amount actually collectable." The statute describes the "amount actually collectable" as the "total recovery less the reasonable and necessary expenses." The issue, therefore, "resolves into a determination of what sums constitute the 'amount actually collectable' or the 'amount actually collected.'" We believe that the "total recovery" refers only to the total sum of money awarded by judgment. It should be noted that the phrase "amount actually collectable" refers to the sum of money the compensation carrier's lien rights can reach, not when the funds can be reached.

See *State Comp. Fund v. Nelson*, 153 Ariz. 450, 453, 737 P.2d 1088, 1091 (1987).

Under ARS § 23-1022, COPPERPOINT has a valid lien on Plaintiffs' medical malpractice settlement. Indeed, ARS § 23-1022 *specifically* grants COPPERPOINT lien rights in cases of *any* aggravation of an industrial injury, including through medical malpractice. As the Arizona Supreme Court explained in *State Comp. Fund v. Nelson*, the carrier's lien rights extend to "the amount actually collectible" as subtracting "reasonable and necessary" expenses from the "total recovery" received via judgement. Accordingly, COPPERPOINT'S lien is valid under Arizona law and this Court should grant the instant Motion for Partial Summary Judgement.

3. As to Nevada Law, NRS 616C.215 Protects COPPERPOINT'S Lien Rights.

NRS § 616C.215, which conclusively governs matters of workers' compensation subrogation matters, contains no lien limitation simply because the aggravating injury arose from medical malpractice. Indeed, in *Tri-County Equip. & Leasing, LLC v. Klinke*, the Nevada Supreme Court determined that NRS § 616C.215(10) "creates an exception to the collateral source rule." See *Tri-County Equip. & Leasing, LLC v. Klinke*, 128 Nev. 352, 356 (2012). In *Klinke*, the Nevada Supreme Court stated that:

The collateral source doctrine does not change this result. As noted, this court has adopted a per se rule barring the admission of a collateral source of payment for an injury into

evidence for any purpose. **Nevada recognizes a limited exception to the collateral source rule for workers' compensation payments.** In Cramer v. Peavy, this court expressly held that NRS 616C.215(10) creates an exception to the collateral source rule. Pursuant to NRS 616C.215(10), "[i]n any trial of an action by the injured employee . . . against a person other than the employer or a person in the same employ, the jury must receive proof of the amount of all payments made or to be made by the insurer or the Administrator [of the Division of Industrial Relations]." The court must then instruct the jury to follow the court's damages instructions without reducing any award by the amount of workers' compensation paid, thus leaving unaltered the general substantive law on calculating damages. The jury-instruction language specifically suggested by the statute reads:

Payment of workmen's compensation benefits by the insurer, or in the case of claims involving the Uninsured Employers' Claim Account or a subsequent injury account the Administrator, is based upon the fact that a compensable industrial accident occurred, and does not depend upon blame or fault. If the plaintiff does not obtain a judgment in his or her favor in this case, the plaintiff is not required to repay his or her employer, the insurer or the Administrator any amount paid to the plaintiff or paid on behalf of the plaintiff by the plaintiff's employer, the insurer or the Administrator.

If you decide that the plaintiff is entitled to judgment against the defendant, you shall find damages for the plaintiff in accordance with the court's instructions on damages and return your verdict in the plaintiff's favor in the amount so found without deducting the amount of any compensation benefits paid to or for the plaintiff. The law provides a means by which any compensation benefits will be repaid from your award.

We have previously recognized that this statute benefits both the plaintiff and the defendant by preventing jury speculation as to workers' compensation benefits received.

616C.215(10)'s application to "any trial" gives the statute universal applicability to trials involving a plaintiff receiving workers' compensation payments, at least when the plaintiff is required to first use any recovery to reimburse the insurer for amounts paid.

See Tri-County Equip. & Leasing, LLC v. Klinke, 128 Nev. 352, 355–56 (2012) (quotations omitted and emphasis added).

Should this Court apply Nevada law, NRS §616C.215 as interpreted by *Klinke* preserves COPPERPOINT'S lien rights. In *Klinke*, the Nevada Supreme Court stated that NRS §616C.215 creates an exception to the collateral source rule in any workers' compensation matter. NRS

§616C.215 contains a jury instruction wherein jurors are directed to award damages as warranted without regard for collateral payments. As the jury instruction notes, “the law provides a means by which any compensation benefits will be repaid from your award.” Additionally, *Klink* was decided after NRS §42.021’s 2004 passage by voters. As the Nevada Supreme Court did not qualify its directive regarding NRS §616C.215’s applicability to any trial stemming from a workers’ compensation matter, NRS §616C.215 can only be held to apply to the instant case, thus recognizing COPPERPOINT’S lien. Accordingly, this Court should grant COPPERPOINT’S Motion for Summary Judgement.

Additionally, the Nevada Supreme Court has long interpreted workers’ compensation statutes so as to forbid a double recovery of workers’ compensation benefits. For example, in *Emplrs Ins. Co. v. Chandler*, the Nevada Supreme Court stated that:

Further, the contemplated purpose of NRS 616C.215 is to make the insurer whole and to prevent an employee from receiving an impermissible double recovery. Defining the term "compensation" in NRS 616C.215 to include medical benefits prevents an employee from receiving a double recovery. Thus, the plain meaning of NRS 616C.215(2)(a) is consistent with the purpose of the statute.

See Emplrs Ins. Co. v. Chandler 117 Nev. 421, 426, 23 P.3d 255, 258 (2001). Additionally, in *Poremba v. S. Nev. Paving*, the Nevada Supreme Court stated that:

S&C, however, mischaracterizes double recovery. **Double recovery is characterized based not on the event necessitating the compensation, but on the nature of the compensation provided.** S&C cites to *Tobin v. Department of Labor & Industries*, 145 Wn. App. 607, 187 P.3d 780 (Wash. Ct. App. 2008), for the proposition that a claimant should not receive a double recovery as well. *Tobin*, however, explains that double recovery prevents the claimant from receiving compensation from the insurer and "retain[ing] the portion of damages which would include those same elements.

See Poremba v. S. Nev. Paving, 388 P.3d 232, 237 (Nev. 2017) (emphasis added).

Applying *Poremba* to the instant case indicates that the Nevada Supreme Court would likely hold medical malpractice settlements subject to a workers’ compensation carrier’s lien

rights. In *Poremba*, the claimant suffered an industrial injury when a third-party driver struck the vehicle that he was driving. *See id.* at pg. 234. The claimant filed a tort claim against the third-party driver, which settled for \$63,500. *See id.* at pg. 235. The claimant personally received \$34,631.51 from the settlement and spent \$14,000 on additional medical treatment. *See id.* The claimant eventually attempted to reopen his claim, which the Employer's Third-Party Administrator denied on the basis that the claimant spent the settlement on expenses other than medical treatment. *See id.* The Nevada Department of Administration and the District Court affirmed denial of reopening. *See id.*

In analyzing whether the claimant is entitled to further workers' compensation benefits, the Nevada Supreme Court determined that a workers' compensation carrier's lien rights extend to all payment sources within NRS §616A.090. *See id.* at pg. 237. In doing so, the Nevada Supreme Court stated that "a worker should not receive funds from two sources to pay for the same expenses." *See id.* at pp 237-38. Ultimately, the Nevada Supreme Court remanded the matter to the Department of Administration for further fact finding to determine what portion of the settlement was attributed to expenses within the definition of NRS §616A.090. *See id.* at pg. 239.

In accordance with *Poremba*, COPPERPOINT'S lien rights extend, without limitation, to all payment sources within NRS §616A.090's definition of compensation. Accordingly, NRS §42.021 must be read as merely evidentiary without any effect on COPPERPOINT'S lien rights. Any interpretation to the contrary violates well-settled Nevada Supreme Court precedent regarding subrogation in the context of workers' compensation claims. As a settlement for medical malpractice which compensates HARPER for her medical expenses and other workers' compensation benefits are within NRS §616A.090's compensation definition, COPPERPOINT'S

1 lien is valid under Nevada law and this Court should grant the instant Motion for Summary
2 Judgement.

3 **III.**
4 **CONCLUSION**

5 Plaintiffs' complaint is without merit. This Court lacks subject-matter jurisdiction to
6 adjudicate the instant case pursuant to NRCP 12(b)(1) as NRS §616A.020 and ARS §23-1022 bar
7 declaratory and injunctive relief in workers' compensation matters. This Court further lacks
8 personal jurisdiction over COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY
9 and COPPERPOINT GENERAL INSURANCE HOLDING COMPANY pursuant to NRCP
10 12(b)(2). Moreover, Plaintiffs have failed to state a claim under which this court may grant relief
11 pursuant to NRCP 12(b)(5). Thus, the instant complaint must be dismissed. Alternatively, this
12 Court should grant COPPERPOINT'S Motion for Summary Judgement as no issue of material
13 fact remains and COPPERPOINT is entitled to judgment as a matter of law.

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24 ...

1 WHEREFORE, Defendants, COPPERPOINT MUTUAL INSURANCE HOLDING
2 COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY, respectfully requests
3 that the District Court grant the following relief:

- 4 1) That the District Court DISMISS Plaintiffs' complaint in its entirety WITH
5 PREJUDICE.
6 2) Alternatively, that the District Court GRANT COPPERPOINT'S Motion for
7 Summary Judgment.

8 Dated this 4th day September 2020.

HOOKS MENG & CLEMENT
By:

10 *Sami Randolph*
11 DALTON L. HOOKS, JR., ESQ.
SAMI RANDOLPH, ESQ.
Attorneys for Defendants
12 COPPERPOINT MUTUAL INSURANCE
13 HOLDING COMPANY and
14 COPPERPOINT GENERAL INSURANCE
15 COMPANY
16
17
18
19
20
21
22
23
24

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Motion filed concerning Clark County, District Court **Case No.: A-20-814541-C** does not contain the social security number of any person.

Sami Randolph

September 4, 2020

DALTON L. HOOKS, JR., ESQ.
SAMI RANDOLPH, ESQ.
2820 W. Charleston Blvd., Ste. C-23
Las Vegas, NV 89102

Dated

Telephone No.: (702) 766-4672
Facsimile No.: (702) 919-4672

Attorneys for Defendants
COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and
COPPERPOINT GENERAL INSURANCE COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 4th day of September 2020, the forgoing
**COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and COPPERPOINT
GENERAL INSURANCE COMPANY'S MOTION TO DISMISS PLAINTIFFS'
COMPLAINT OR ALTERNATIVELY, MOTION TO DISMISS** was served on the following
by Electronic Service to all parties on the Odyssey Service List.

JASON R. MAIER, ESQ.
MAIER GUTIERREZ & ASSOCIATES
8816 SPANISH RIDGE AVENUE
LAS VEGAS NV 89148
Attorney for Plaintiffs DARIA HARPER and DANIEL WININGER

JOHN P. BLUMBERG, ESQ.
BLUMBERG LAW CORPORATION
444 W OCEA BLVD., STE 1500
LONG BEACH CA 90802-4330
Attorney for Plaintiffs DARIA HARPER and DANIEL WININGER

JAMES KJAR, ESQ.
JON SCHWALBACH, ESQ.
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841 APOLLO STREET, SUITE 101
EL SEGUNDO CA 90245
*Attorneys for Defendants
KENNETH MARSHALL SILBERBERG and LAW OFFICES OF MARSHALL SILBERBERG*

THOMAS S. ALCH, ESQ.
SHOOP, A PROFESSIONAL LAW CORPORATION
9701 WILSHIRE BLVD., STE 950
BEVERLY HILLS CA 90212

Dated this 4th day of September 2020.

/s/ Terry Rodriguez
An Employee of HOOKS MENG & CLEMENT

EXHIBIT A

EXHIBIT A



CPM002361

3030 N. 3rd St PHOENIX, AZ 85012-3039, 602-631-2300

January 5, 2016

DARIA HARPER
#C332
3485 S GAYLORD COURT
ENGLEWOOD CO 80113

Claimant: Daria Harper
Claim No: 14G01532
DOI: 08/11/2014
Employer: Islander RV Resort LLC

Doc Type: 41200

NOTICE OF INTENTION
(Pursuant to ARS 23-1023)

Dear Daria Harper:

Your claim file shows that you may have been injured by the negligence or wrongdoing of another. To help us process your claim, it is important that we know whether you intend to take any action against the person(s) who may have been responsible for your injury.

Please fill in the information on the attached form and return the form.

Sincerely,

Pam Fudge

CC: Islander RV Resort LLC

Enclosure

EXHIBIT B

EXHIBIT B

Subroxy



3030 N. 3rd St. Phoenix AZ 85012-3039 602-631-2300

January 5, 2016

The Law Office of Marshall Silberberg
3333 Michelson Drive, Suite 710
Irvine, CA 92612

Claimant: Daria Harper
DOI: 8/11/2014
Claim No.: 14-G01532 /
Employer: Islander RV Resort

Dear Attorney:

I have been notified that you have been hired by Ms. Harper for a med-malpractice case.

Please note that we have a lien and are requesting you to provide us with a letter of representation and something signed by Ms. Harper that indicates she hired your firm, such as a release.

Please provide us a copy the conformed complaint at your earliest convenience.

I look forward to hearing from your office.

Thank you

Sincerely,

Pam Fudge
Recovery Specialist
602-631-2024
602-631-2188

000002

0625

EXHIBIT C

EXHIBIT C

2/25/14

Subroxy

SECOND REQUEST



3030 N. 3rd St. Phoenix AZ 85012-3039 602-631-2300

~~January 5, 2016~~

The Law Office of Marshall Silberberg
3333 Michelson Drive, Suite 710
Irvine, CA 92612

Claimant: Daria Harper
DOI: 8/11/2014
Claim No.: 14-G01532 ✓
Employer: Islander RV Resort

Dear Attorney:

I have been notified that you have been hired by Ms. Harper for a med-malpractice case.

Please note that we have a lien and are requesting you to provide us with a letter of representation and something signed by Ms. Harper that indicates she hired your firm, such as a release.

Please provide us a copy the conformed complaint at your earliest convenience.

I look forward to hearing from your office.

Thank you

Sincerely,

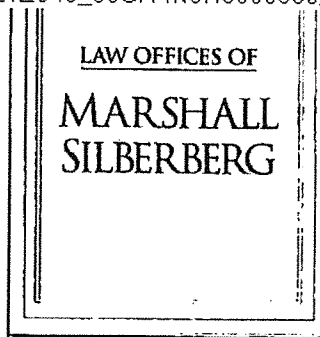
Pam Fudge
Recovery Specialist
602-631-2024
602-631-2188

000003

0627

EXHIBIT D

EXHIBIT D



Subro X



March 22, 2016

Pam Fudge
Copper Point Insurance Companies
PO Box 33069
Phoenix, AZ 85067-3069

Re: Daria Harper
Claim No.: 14G01532 ✓
DOI: 08/11/2014
Employer: Islander RV Resort LLC

Dear Ms. Fudge:

Relative to the above, please be advised that our office has been retained to represent the interests of Daria Harper. We are evaluating all potential claims and will timely file a Complaint on Ms. Harper's behalf. We will continue to keep you apprised of all significant developments as they occur.

In the meantime, we would appreciate it if you could forward us a copy of Ms. Harper's CD of medical records from Valley Hospital in Las Vegas.

I remain,

Very truly yours,

A handwritten signature in cursive script, appearing to read "Marshall Silberberg".

Marshall Silberberg

MS/jd

RECEIVED

MAR 28 2016

LEGAL

3333 Michelson Drive, Suite 710 | Irvine, CA 92612 | (949) 718-0960 Phone | (949) 266-5811 Fax

11755 Wilshire Boulevard, Suite 1845 | Los Angeles, CA 90025 | (949) 718-0960 Phone | (949) 266-5811 Fax

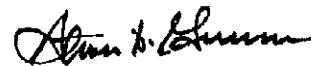
www.silberberg-law.com

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EXHIBIT E

EXHIBIT E



CLERK OF THE COURT

Thomas S. Alch, Esquire
Nevada State Bar No. 6876
Law Offices of Thomas S. Alch
500 N. Rainbow Boulevard, Suite 300
Las Vegas, Nevada 89107
Telephone: (702) 740-4140

100 N. Crescent Drive, Suite 360
Beverly Hills, California 90210
Telephone: (310) 281-8700

Attorney for Plaintiffs DARIA HARPER and DANIEL WININGER

DISTRICT COURT

CLARK COUNTY NEVADA

DARIA HARPER, DANIEL WININGER,

Plaintiffs,

vs.

VALLEY HOSPITAL MEDICAL
CENTER, INC., doing business as VALLEY
HOSPITAL MEDICAL CENTER;
VALLEY HEALTH SYSTEM, LLC, doing
business as VALLEY HOSPITAL
MEDICAL CENTER; JEFFREY
DAVIDSON, M.D.; CYNDI TRAN, D.O.;
PAUL JANDA, D.O.; ELIZABETH
PHUNG-HART, D.O.; ANDREA
AGCAOILI, D.O.; MURAD JUSSA, M.D.,
and, DOES 1 through 250, inclusive,

Defendants.

CASE NO A- 16- 738004- C

DEPARTMENT NO. XVI I

ARBITRATION EXEMPTION CLAIMED:
MEDICAL MALPRACTICE - RULE 3(A)(9)

COMPLAINT FOR MEDICAL MALPRACTICE

MEDICAL MALPRACTICE

LOSS OF CONSORTIUM

Plaintiffs DARIA HARPER and DANIEL WININGER, through Counsel, allege in
their Complaint for Medical Malpractice and Loss of Consortium, as follows:

///

1 1. The true names, identities or capacities, whether individual, associate,
2 corporate or otherwise of Defendants DOES 1 through 250, inclusive, are unknown to
3 Plaintiffs who, therefore, sue said Defendants by such fictitious names. When the true names,
4 identities or capacities of such fictitiously-designated Defendants are ascertained, Plaintiffs
5 will ask leave of Court to amend the Complaint to insert said true names, identities and
6 capacities, together with the proper charging allegations.

7 2. Plaintiffs are informed and believe and thereon allege that each of the
8 Defendants sued herein as a DOE is responsible in some manner for the events and
9 happenings herein referred to, thereby legally causing the injuries and damages to the
10 Plaintiffs as herein alleged.

11 3. All of the facts, acts, events and circumstances herein mentioned and described
12 occurred in Clark County, State of Nevada, and all Defendants are residents of Clark County,
13 State of Nevada, doing business in said county, State of Nevada.

14 4. At all times herein mentioned Plaintiffs and each of them, were and currently
15 are residents of Lake Havasu City, state of Arizona.

16 5. At all times herein mentioned, Defendants JEFFREY DAVIDSON, M.D.,
17 CYNDI TRAN, D.O., PAUL JANDA, D.O. ELIZABETH PHUNG-HART, D.O., ANDREA
18 AGCAOILI, D.O., MURAD JUSSA, M.D., and DOES 1 through 50, inclusive, were, and now
19 are, physicians and surgeons, holding themselves out as duly licensed to practice their
20 profession under and by virtue of the laws of the State of Nevada and were, and now are,
21 engaged in the practice of their profession in the State of Nevada.

22 6. At all times herein mentioned, Defendants DOES 51 through 100, inclusive,
23 were, and now are, registered nurses, licensed vocational nurses, practical nurses, physician
24 assistants, aids, technicians, attendants, students or other paramedical personnel, holding
25 themselves out as duly able to practice their profession under and by virtue of the laws of the
26 State of Nevada and were, and now are, engaged in the practice of their profession in the State
27 of Nevada and acting as agents, employees and servants of some or all of the other Defendants
28 within the course and scope of said agency or employment.

1 7. At all times herein mentioned, Defendants VALLEY HOSPITAL MEDICAL
2 CENTER, INC., doing business as VALLEY HOSPITAL MEDICAL CENTER, and
3 VALLEY HEALTH SYSTEM, LLC., doing business as VALLEY HOSPITAL MEDICAL
4 CENTER and DOES 101 through 150, and 151-250, and each of them, were corporations,
5 partnerships, joint ventures, or other entities organized and existing under the laws of the State
6 of Nevada and Delaware, with their principal place of business situated in the State of Nevada.

7 8. Defendants VALLEY HOSPITAL MEDICAL CENTER, INC., doing business
8 as VALLEY HOSPITAL MEDICAL CENTER and VALLEY HEALTH SYSTEM, LLC.,
9 doing business as VALLEY HOSPITAL MEDICAL CENTER and DOES 151 through 200,
10 inclusive, were at all times herein mentioned duly organized Nevada corporations or hospitals
11 existing under and by virtue of the laws of the State of Nevada and other States; that said
12 Defendant corporations, hospitals and the remaining Defendants, and each of them, owned,
13 operated, managed and controlled a general hospital facility within Clark County, State of
14 Nevada, held out to the public at large and to the Plaintiffs herein, as properly equipped, fully
15 accredited, competently staffed by qualified and prudent personnel and operating in
16 compliance with the standard of due care maintained in other properly equipped, efficiently
17 operated and administered, accredited hospitals in said community commonly known as
18 VALLEY HOSPITAL MEDICAL CENTER.

19 9. At all times herein mentioned Defendants DOES 201 through 250 were doing
20 business as a district hospital, a hospital operated by a government entity open to the public, or
21 a medical facility operated by a government entity open to the public rendering medical,
22 surgical, hospital, diagnostic, nursing and other care to the general public for compensation.

23 10. All of the acts complained of herein by Plaintiffs against said Defendants were
24 done and performed by said Defendants by and through their duly authorized agents, servants
25 and employees, each of whom and all of whom were at all times mentioned herein acting
26 within the course, purpose, and scope of their said agency, service and employment, and
27 whose conduct was ratified by all Defendants, and each of them. Further, each Defendant
28 ratified and affirmed the conduct of each other Defendant. At all times set forth herein, each of

1 the Defendants were acting as the agents, servants, and employees of the other Defendants.

2 11. Defendants VALLEY HOSPITAL MEDICAL CENTER, INC., doing business
3 as VALLEY HOSPITAL MEDICAL CENTER and VALLEY HEALTH SYSTEM, LLC.,
4 doing business as VALLEY HOSPITAL MEDICAL CENTER and DOES 151 through 250,
5 and each of them, at all times herein mentioned were institutions or controlled institutions,
6 duly accredited by the Joint Commission on Hospital Accreditation, and assumed and held
7 themselves out to the public as in compliance with the minimum standards required by said
8 Joint Commission for such accreditation.

9 12. Plaintiffs are informed and believe and upon such information and belief allege
10 that at all times herein mentioned, Defendants and other Defendants named fictitiously, were
11 the agents, servants, employees, joint-venturers, and copartners of their said co-Defendants
12 and, as such, were acting within the course and scope of such agency, service, partnership,
13 venture, and employment at all times herein mentioned; that each and every Defendant, as
14 aforesaid, when acting as a principal, was negligent in the selection and hiring of each and
15 every other Defendant, as its agent, servant, employee, joint-venturer and partner. Further,
16 each and every Defendant ratified the conduct of the other Defendants.

17 13. Attached to this complaint are the following expert declarations supporting the
18 allegations of this complaint;

19 (1) David A. Neer, M.D., Neurology specialist;

20 (2) Michael Steven Ritter M.D., Emergency Medicine specialist;

21 I.

22 **PLAINTIFF DARIA HARPER ALLEGES FOR A CAUSE OF ACTION FOR**
23 **MEDICAL MALPRACTICE AGAINST DEFENDANTS AND EACH OF**
24 **THEM AS FOLLOWS:**

25 14. Plaintiff DARIA HARPER repeats and repleads each and every allegation
26 contained in all prior paragraphs and incorporates the same herein by reference as to
27 Defendants and each of them.

28 ///

1 15. At all times herein mentioned, the Plaintiff, DARIA HARPER, was in the
2 exclusive control of the Defendants, and each of them, and that at no time prior to the events,
3 conduct, activities, care and treatment herein complained of did the Defendants herein, or any
4 of them, obtain knowledgeable, informed consent for said care, treatment or conduct; that
5 prior to the initiation of or performance of said care, treatment, procedure or conduct no
6 opportunity was afforded the Plaintiff or any authorized agent of the Plaintiff to exercise
7 voluntary, knowledgeable and informed consent to said care, treatment, procedure or conduct.

8 16. On or about June 9, 2015 Plaintiff employed Defendants, and each of them, to
9 diagnose and treat her medical condition, and to do all things necessary for her care and
10 treatment, including, but not limited to surgery and hospitalization.

11 17. While Plaintiff DARIA HARPER was under the sole and exclusive care and
12 control of the Defendants, and each of them, Defendants, and each of them negligently,
13 carelessly and unskillfully examined, treated, cared for, diagnosed, operated upon, attended
14 and otherwise handled and controlled the Plaintiff herein, thereby proximately causing
15 injuries and damages to the. Said acts of negligence include, but are not limited to that
16 although the plaintiff was emergently transferred to Valley Hospital Medical Center on June 9,
17 2015, for an emergency neurosurgical consultation because of weakness and an inability to
18 move, as well as a CT scan that showed a mass compressing her spinal cord, the defendants
19 and each of them negligently delayed the diagnosis and treatment, and surgery was not
20 performed until June 11, 2015. The negligent failure to diagnose and treat Daria Harper's
21 condition caused her permanent paralysis.

22 18. Defendants VALLEY HOSPITAL MEDICAL CENTER, INC., doing business
23 as VALLEY HOSPITAL MEDICAL CENTER and VALLEY HEALTH SYSTEM, LLC.,
24 doing business as VALLEY HOSPITAL MEDICAL CENTER, and DOES 101-250, neglected
25 to adequately select a competent medical staff and to periodically review the competency of its
26 medical staff and failed to adequately monitor its staff such that the Plaintiff was caused to,
27 and did suffer damages.

28 ///

19. As a legal result of the negligence of the Defendants, and each of them, the Plaintiff was injured in health, strength and activity, sustaining severe shock, and injury to the body, all of which said injuries have caused and continue to cause Plaintiff great physical, emotional, and nervous pain and suffering, and which said injuries Plaintiff is informed and believes, and thereon alleges, will result in loss of earnings, permanent disability, loss of enjoyment of life, and impairment of earning capacity all to Plaintiff's damage, exceeding \$10,000 and the minimum jurisdictional limit of the Court.

20. As a further legal result of the negligence of the Defendants, and each of them, and the resulting injuries to the Plaintiff, said Plaintiff was compelled to, and did, incur expenses for medical and surgical attention, hospitalization, nursing, medication and incidentals for said Plaintiff in an amount unknown to Plaintiff at present.

21. As a further legal result of the negligence of the Defendants, and each of them, and of the resulting injuries, Plaintiff will be obliged to incur expenses for medical care and hospitalization for an indefinite period in the future and to pay for these expenses in the treatment and relief of injuries for medical and surgical attention, hospitalization, nursing, medication, and incidentals for said Plaintiff in an amount unknown to Plaintiff at present.

22. As a further legal result of the negligence of the Defendants, and each of them, Plaintiff will suffer a decreased earning capacity in the future and future earnings to Plaintiff's further damage in a sum unknown at present.

II.

**PLAINTIFF DANIEL WININGER ALLEGES FOR A CAUSE OF ACTION
FOR LOSS OF CONSORTIUM AGAINST DEFENDANTS AND EACH OF
THEM AS FOLLOWS:**

23. Plaintiff, Daniel Wininger, alleges and incorporates herein all the allegations contained in paragraphs 1 through 22 of this Complaint.

24. Plaintiffs, Daria Harper and Daniel Winger, were legally married at the time of defendants' negligence.

///

1 25. As a direct and legal result of the defendants', and each of them, negligence,
2 carelessness, and unskillfulness, plaintiff, Daniel Wininger, has and will continue to be
3 deprived of the consortium of his wife, Daria Harper, all to his general and special damages,
4 including pain, suffering, mental, physical and emotional distress. (Please see Expert
5 Affidavits of Michael Ritter, MD, and David Neer, MD, attached hereto as Exhibit 1 and
6 incorporated fully herein.)

7 WHEREFORE, Plaintiffs pray for damages against the
8 Defendants, and each of them, as follows:

9 I. FOR THE CAUSE OF ACTION FOR MEDICAL MALPRACTICE FOR
10 PLAINTIFF DARIA HARPER:

- 11 1. General damages, according to proof and exceeding \$10,000.
- 12 2. Past and future medical expenses, according to proof;
- 13 3. For loss of future earnings and earning capacity,
14 according to proof;
- 15 4. Costs of suit incurred herein, and
- 16 5. For such other and further relief as to the Court appears just and proper.

17 II. FOR THE CAUSE OF ACTION FOR LOSS OF CONSORTIUM FOR
18 PLAINTIFF DANIEL WININGER

- 19 1. General damages, according to proof and exceeding \$10,000.
- 20 2. Past and future medical expenses, according to proof;
- 21 3. For loss of future earnings and earning capacity,
22 according to proof;
- 23 4. Costs of suit incurred herein, and
- 24 5. For such other and further relief as to the Court appears just and proper.

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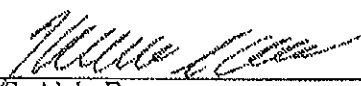
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DATED: June 7, 2016

LAW OFFICES OF THOMAS S. ALCH

By: 

Thomas S. Alch, Esq.
Nevada State Bar No. 6876
Law Offices of Thomas S. Alch
500 N. Rainbow Boulevard, Suite 300
Las Vegas, Nevada 89107
Telephone: (702) 740-4140

100 N. Crescent Drive, Suite 360
Beverly Hills, California 90210
Telephone: (310) 281-8700
Attorney for Plaintiffs

EXHIBIT "A"

AFFIDAVIT OF DAVID NEER, M.D.

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

DAVID NEER, M.D., being duly sworn, deposes and says:

1. I received my medical degree from the University of Illinois College of Medicine in 1969. In 1973, I graduated from the University of Illinois Graduate School, Department of Pharmacology. I completed an internship in Internal Medicine at the University of Illinois Hospital and Veterans Administration Hospital in 1970. I completed a residency in Neurology at Rush-Presbyterian-St. Luke's Medical Center in 1973. I have been an Assistant Professor and Assistant Clinical Professor of Neurology at both Rush Medical College and UCLA Hospitals and Clinics. I was engaged in the private practice of Neurology for 37 years. I have held staff positions at Lakewood Regional Medical Center, UCLA-Harbor General Medical Center, UCLA Hospitals and Clinics, and Long Beach Memorial Medical Center, in California. At those facilities I also held various administrative positions, such as Chief of Staff, Consulting Staff, and member of the Governing Board.

2. During the time of the care at issue in this case my area of practice was and is substantially similar to the practice being engaged at the time herein. Based upon my education, training, experience and review of the materials set forth below, I am familiar with the standard of care expected of reasonably prudent physicians practicing medicine in the state of Nevada during the time relevant to this lawsuit. We are dealing with a national standard of care. As a neurologist I was involved on a daily basis with critically ill patients and patients with emergent neurological conditions, such as spinal epidural abscesses. As such, I am familiar with the standard of care applicable to hospitals, nursing staff, neurologists, hospitalists, and critical care physicians when faced with a patient with an emergent spinal cord condition. Further, I am familiar with the standard of care applicable to all physicians and healthcare providers in the setting of an emergent spinal cord condition, both in Nevada and nationally. Specifically, I am familiar with the standard of care as it applies to Valley Hospital Medical Center with regard to the medical care that the hospitals, their nurses and staff, and the physicians, including, Dr. Cyndi Tran, Dr. Paul Janda, Dr. Andrea Agcaouli, Dr. Elizabeth Phung-Hart and Dr. Murrad Jussa, were required to provide to Daria Harper. Finally, it is

1 my understanding that the multiple residents who examined Ms. Harper were employees of Valley
2 Hospital, with the attending physicians and hospital both bearing responsibility for their actions and
3 inactions. Finally, as indicated above, the standard of practice in this context is a national standard, and
4 therefore applies to Las Vegas, Nevada as of June 2015.

5 3. I have reviewed the Havasu Regional Medical Center and Valley Hospital Medical Center
6 records, including diagnostic imaging from those facilities, all pertaining to Daria Harper, who was a
7 patient at Havasu Regional Medical Center and Valley Hospital Medical Center on June 8, 2015 to July
8 15, 2015. Ms. Harper was admitted to each facility with complaints of inability to move her upper and
9 lower extremities.

10 4. Ms. Harper arrived at Valley Hospital at approximately 6:00 AM on June 9, 2015.
11 Thereafter, she was examined by an emergency room physician, who noted that she was unable to move,
12 was not responsive, and had been admitted for further neurology and possible neurosurgical evaluation.
13 The emergency room physician also noted the CT scan from Havasu Regional revealed displacement of
14 the thecal sac of Ms. Harper's spine. Given this information, the standard of care required stat neurology
15 and neurosurgical consultations, along with a stat CT scan and/or MRI of the spine. A breach of the
16 standard of care occurred when no such orders were placed.

17 5. Thereafter, Ms. Harper was evaluated by Dr. Cyndi Tran and Dr. Paul Janda. Both
18 physicians noted that Ms. Harper was unable to move her extremities, with an impaired neurological
19 examination. Further, Dr. Tran and Dr. Janda noted that the CT scan of the spine revealed no acute
20 pathology, fracture, malalignment or soft tissue swelling, which was incorrect and demonstrates that
21 neither physician reviewed the imaging or the report. Based upon this information, the standard of care
22 required that Dr. Tran and Dr. Janda order a stat neurosurgical consultation and a stat MRI of the spine.
23 However, neither physician issued such orders, thereby breaching the standard of care. Further, as stated
24 above, as Dr. Tran was a resident, both Valley Hospital and Dr. Janda are responsible for her breach of the
25 standard of care.

26 6. At or about 12:15 PM, Ms. Harper was evaluated by Dr. Andrea Agcaoili. At or about that
27 time, Dr. Agcaoili issued an order for a stat CT scan of the thorax. Given Ms. Harper's condition,
28 including the emergent findings of the CT scan from Havasu Regional, her inability to move, low tone, and

1 lack of motor response; the standard of care required that Dr. Agcaoili review the chart and issue stat orders
2 for a neurosurgical consultation and an MRI of the spine. Dr. Agcaoili's failure to properly assess the
3 patient, review the chart, and ensure that Ms. Harper was receiving treatment, which would have prompted
4 the aforementioned orders, was a breach of the standard of care. As stated above, as Dr. Agcaoili was a
5 resident, both Valley Hospital and Dr. Murrad Jussa are responsible for her breach of the standard of care.

6 7. At or about 12:15 PM, Ms. Harper was also evaluated by Dr. Elizabeth Phung-Hart. Dr.
7 Phung-Hart issued orders for neurological assessments. However, the records do not reveal that Dr.
8 Phung-Hart examined the patient prior to issuing such orders, nor did she review the chart to ensure that
9 Ms. Harper was receiving proper care. Given Ms. Harper's condition, including the emergent findings of
10 the CT scan from Havasu Regional, her inability to move, low tone, and lack of motor response, the
11 standard of care required that Dr. Phung-Hart review the chart and issue stat orders for a neurosurgical
12 consultation and an MRI of the spine. The failure to do so was a breach of the standard of care. Assuming
13 that Dr. Phung-Hart is a resident, both her attending physician, whose identity is unknown at this time, and
14 Valley Hospital are responsible for her breach of the standard of care.

15 8. It was not until the following morning at 7:13 AM that Ms. Harper was next evaluated by
16 a physician. At that time, she was examined by Dr. Agcaoili and Dr. Murrad Jussa. Both physicians noted
17 that Ms. Harper was unable to move her arms and legs, with no motor response, and that overnight she had
18 developed a high fever, which is a sign of infection. Dr. Agcaoili and Dr. Jussa also noted, incorrectly, that
19 a CT scan of Ms. Harper's spine revealed no acute pathology, fracture, malalignment or soft tissue
20 swelling. Dr. Agcaoili's and Dr. Jussa's plan noted weakness in the upper and lower extremities secondary
21 to a "CVA vs spinal lesion vs acute inflammatory demyelination polyradiculoneuropathy (AIDP) vs opiate
22 overdose," with a follow up brain MRI of the spine. However, given those findings the standard of care
23 required that both Dr. Agcaoili and Dr. Jussa order a stat neurosurgical consultation and a stat MRI of the
24 spine. The failure to do so was a breach of the standard of care. Further, as stated above, as Dr. Agcaoili
25 was a resident, both Valley Hospital and Dr. Jussa are responsible for her breach of the standard of care.

26 9. Finally, it was not until the evening of June 10, 2015, that Ms. Harper received an MRI of
27 her spine which identified a spinal epidural abscess and prompted notification of neurosurgeon Dr. Gregory
28 Douds. By that time, more than 48 hours had elapsed from the start of Ms. Harper's symptoms. It is my

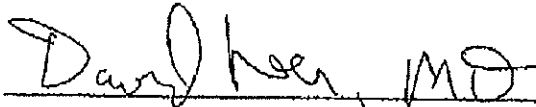
1 opinion, to a reasonable degree of medical probability, that by the time Ms. Harper's abscess was identified
2 on MRI and Dr. Douds notified, Ms. Harper's spinal cord was irreparably damaged. It is also my opinion,
3 to a reasonable degree of medical probability, had Ms. Harper received earlier medical treatment,
4 compliant with the standard of care, she would not be paralyzed.

5 10. It is my opinion to a reasonable degree of medical certainty that each of the standard of care
6 violations set forth in this affidavit were substantial factors in causing permanent paralysis and injury to
7 Daria Harper, as well as her husband's loss of consortium.

8 FURTHER YOUR AFFIANT SAYETH NAUGHT

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

11 Executed this 3 day of June, 2016, at Santa Monica, California.

12
13 

14 DAVID NEER, MD

EXHIBIT “B”

AFFIDAVIT OF MICHAEL STEVEN RITTER, MD, FAAEM, FACEP

STATE OF CALIFORNIA)

COUNTY OF ORANGE)

MICHAEL STEVEN RITTER, MD, FAAEM, FACEP, being duly sworn, deposes and says:

1. I received my medical degree from the University of California, Irvine, in 1991. I completed a residency in Emergency Medicine at the University of California, Irvine, Medical Center in 1994. Since 1996 I have been an Attending Physician in the emergency department at Mission Hospital and Regional Medical Center & Children's Hospital at Mission, in Mission Viejo, California. From 1999 to 2012, I was the Associate Medical Director, Emergency Department, at Mission Hospital and Children's Hospital at Mission. Additionally, since 1998, I have been an Assistant Clinical Professor, Department of Emergency Medicine, at the University of California, Irvine Medical Center. I am currently the Medical Director, Emergency Department, at Mission Hospital and Children's Hospital at Mission. I am Board Certified in Emergency Medicine.

2. During the time of the care at issue in this case and currently my area of practice was and is substantially similar to the practice being engaged at the time herein. Based upon my education, training experience and review of the materials set forth below, I am familiar with the standard of care expected of reasonably prudent physicians practicing medicine in the state of Nevada during the time relevant to this lawsuit. We are dealing with a national standard of care. As medical director of the emergency department I am involved on a daily basis with administrative responsibilities at Mission Hospital, which includes review of hospital and nursing protocols and thus, I am also familiar with the standard of care applicable to hospitals, nursing staff and all other health care providers who provide emergency services in the state of Nevada during the time relevant to this lawsuit. Specifically, I am familiar with the standard of care as it applies to Valley Hospital Medical Center, their nurses and health care providers, including, but not limited to, Dr. Jeffrey Davidson, with regard to the medical care that the hospitals and their nurses and staff were required to provide to Daria Harper. As indicated, the standard of practice is a national standard therefore applies to Las Vegas, Nevada as of June 2015.

3. I have reviewed the Havasu Regional Medical Center and Valley Hospital Medical Center

1 records, including diagnostic imaging from those facilities, all pertaining to Daria Harper, who was a
2 patient at Havasu Regional Medical Center and Valley Hospital Medical Center from June 8, 2015 to July
3 15, 2015. Ms. Harper was admitted to each facility with complaints of inability to move her upper and
4 lower extremities.

5 4. Ms. Harper presented to Havasu Regional Medical Center on June 8, 2015, with complaints
6 of bilateral lower and upper extremity weakness, with inability to move and low tone. A CT scan
7 performed at 1:44 AM on June 9, 2015, revealed anterior and rightward displacement of the thecal sac,
8 suspicious for either a hematoma or an abscess. Such a finding is an emergent condition. The standard
9 of care in this setting, required that Ms. Harper be transferred on a stat bases to another facility for higher
10 level care.

11 5. Ms. Harper arrived at Valley Hospital at approximately 6:00 AM on June 9, 2015.
12 Thereafter, she was examined by Dr. Jeffrey Davidson, who noted that she was unable to move, was not
13 responsive, and had been admitted for further neurology and possible neurosurgical evaluation. Dr.
14 Davidson also noted the CT scan from Havasu Regional revealed displacement of the thecal sac of Ms.
15 Harper's spine. Given this information, the standard of care to a reasonable degree of medical certainty
16 required stat neurology and neurosurgical consultations, along with a stat CT scan and/or MRI of the spine.
17 Dr. Davidson breached the standard of care by failing to issue such orders. Plaintiff, Daria Harper, did not
18 exercise any independent choice in the selection of her physicians and other healthcare professionals at the
19 time that she presented with her neurosurgical emergency. Physicians and staff were selected for her and,
20 as such, the physicians and staff were acting as agents for Valley Hospital Medical Center.

21 6. By that time Ms. Harper underwent surgery to decompress her spine, more than 48 hours
22 had elapsed from the start of Ms. Harper's symptoms. It is my opinion, to a reasonable degree of medical
23 probability, that by the time Ms. Harper's abscess was identified on MRI and Dr. Douds notified, Ms.
24 Harper's spinal cord was irreparably damaged. It is also my opinion, to a reasonable degree of medical
25 probability, had Ms. Harper received earlier medical treatment, compliant with the standard of care, she
26 would not be paralyzed.

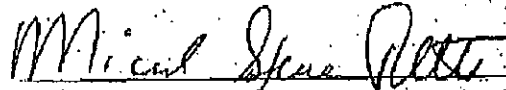
27 7. It is my opinion to a reasonable degree of medical certainty that each of the standard of care
28 violations set forth in this affidavit were substantial factors in causing permanent paralysis and injury to

1 Daria Harper, as well as her husband's loss of consortium.

2 FURTHER YOUR AFFIANT SAYETH NAUGHT

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

5 Executed this 3rd day of June, 2016, at Orange County, California.

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8 MICHAEL STEVEN RITTER, MD, FAAEM, FACEP
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EXHIBIT F

EXHIBIT F

Subro



Legal Department
3030 N. 3rd Street
Phoenix, AZ 85012

June 22, 2018

LAW OFFICES OF MARSHALL SILBERBERG
3333 MICHELSON DR STE 710
IRVINE CA 92612
F 949-266-5811

Claimant: Daria Harper
DOI: 08/11/14
Claim No.: 14G01532
Employer: Islander R V Resort L L C

Dear Attorney:

Please provide an update on this case and please remember that pursuant to A.R.S. §23-1023(C), to please keep CopperPoint apprised of the status of the claim and notify us upon any resolution of the claim.

As you are aware, A.R.S. §23-1023(D) provides for a statutory lien and credit for any amounts collected on the third-party claim. Any resolution of the claim for less than the statutory lien requires our written approval. While it is the position of CopperPoint that we are entitled to our full statutory lien and credit, there may be circumstances where CopperPoint will reduce our statutory lien or credit if warranted depending upon the particular facts and circumstances of each claim. Any agreement to reduce or waive our statutory lien or future credit must be acknowledged by CopperPoint in writing. Any alleged oral waiver or reduction of our lien or future credit will not be recognized unless it is acknowledged by us in writing.

We will provide you with our current lien information as you request during your handling of the third-party claim. Once a claim has settled, it is imperative that you notify us for a current lien amount. Please note that until you are in agreement with an offer and have contacted us for approval, the lien is subject to change. Also, please verify all bills are paid "prior to settlement" or they can become the claimant's responsibility.

Sincerely,

Pam Fudge

Pam Fudge
Recovery Specialist
602-631-2024
602-631-2188 (fax)

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Fudge, Pam

From: Rightfax E-mail Gateway <sv-rightfaxprd-svc@copperpoint.com>
Sent: Friday, June 22, 2018 10:58 AM
To: Fudge, Pam
Subject: Your fax has been successfully sent to MARSHALL SILBERBERG at 9492665811.

Your fax has been successfully sent to MARSHALL SILBERBERG at 9492665811.

6/22/2018 10:56:46 AM Transmission Record

Sent to 99492665811 with remote ID "19492665811"

Result: (0/339;0/0) Success

Page record: 1 - 2

Elapsed time: 01:25 on channel 8

EXHIBIT G

EXHIBIT G

July 2, 2018

VIA EMAIL AND U.S. MAIL

Pam Fudge
Recovery Specialist
Legal Department
CopperPoint Insurance Companies
3030 N. 3rd Street
Phoenix, AZ 85012-3039
FAX – (602)631-2188

Re: Daria Harper
Claim No.: 14G01532
DOI: 08/11/2014
Employer: Islander RV Resort LLC

Dear Ms. Fudge:

I received your letter dated June 22, 2018, regarding your request for an update and your claim to a lien in this matter. As of this time, Mrs. Harper's case has settled. You were not made aware of the settlement because CopperPoint is not entitled to a lien, as will be explained in more detail below.

As I understand it, CopperPoint claims it is entitled to a lien based upon A.R.S. § 23-1023(D). Mrs. Harper's case was never filed in Arizona, it was filed, litigated, and resolved in Nevada as that is where the injury occurred. Hence, Arizona law has no application or enforceability in Nevada. Therefore, the aforementioned code section does not permit a lien in another state, which is a position supported by the Nevada courts and case law.

As for Nevada law, that State does not permit Workers' Compensation to assert a lien in a medical malpractice case. NRS § 42.021 sets forth "**In an action for injury or death against a provider of health care based upon professional negligence**, if the defendant so elects, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the injury or death pursuant to the United States Social Security Act, any state or federal income disability or **worker's compensation** act, any health, sickness or income-disability insurance, accident insurance that provides health benefits or income-disability coverage, and any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services. If the defendant elects to introduce such evidence, the plaintiff may introduce evidence of any amount that the plaintiff has

May 12, 2020

Page 2

paid or contributed to secure the plaintiff's right to any insurance benefits concerning which the defendant has introduced evidence."

Section 42.021, goes on to state, specifically in subsection (2), that "a source of collateral benefits introduced pursuant to subsection (1) **may not....(a) Recover any amount against the plaintiff.**" (I have attached a copy of this statute for your convenience). Quite clearly, this means that in the State of Nevada, any workers compensation insurance company may not recover any amount against a plaintiff. This also means that any such insurance company may not place a lien on any proceeds of a settlement.

Here, there is no dispute that Mrs. Harper suffered an injury in the State of Nevada as a result of medical malpractice. For this reason, Mrs. Harper's case was filed in Nevada, governed by Nevada law, thereby implicating the statute cited above, along with the protections that preclude CopperPoint having a lien on any proceeds. Nevada law is identical to California law, and Courts in both states do not permits liens, such as the one to which you claim to be entitled.

Moving forward, it is my expectation, and that of my client, that CopperPoint will continue to provide for Mrs. Harper's care. Should CopperPoint at any point in time intentionally, or otherwise, withhold any medical care to which Mrs. Harper is entitled, our office will take immediate legal action.

Please call to discuss the foregoing.

I remain,

Very truly yours,

Marshall Silberberg

000023

0653

EXHIBIT H

EXHIBIT H

NOTICE OF CLAIM STATUS

Carrier or Self-Insured Name and Address CopperPoint General Insurance Company / CLAIMS DEPT. P.O. Box 33069 Phoenix, AZ 85067-3069
Authorized Third Party Administrator (TPA) Name and Address
Claimant's Name and Address DARIA HARPER 3336 DATE PALM DR. LAKE HAVASU CITY, AZ 86404

ICA Claim No.	20142520533
Soc. Sec. No.	###/###/####
SSN not required if correct ICA claim number is provided	
Carrier Claim No.	14G01532
Employer	ISLANDER RV RESORT LLC
Address	LAKE HAVASU CITY, AZ 86403
	LAKE HAVASU CITY, AZ 86403
Date of Injury	08/11/2014

- ☐ 1. Claim is accepted.
- ☐ 2. Claim is denied.
- ☐ 3. No temporary compensation paid because the claimant has not currently sustained a temporary disability entitlement attributable to this injury beyond seven consecutive days.
- ☐ 4. Enclosed check for _____ for period of _____ through _____. Seven days deducted if disability is less than 14 calendar days. Payment has been made based on 66 2/3 percent of the wage of _____ based on the following:
- ☐ A. Statutory minimum or estimated monthly wage pending determination of Average Monthly Wage within 30 days.
- ☐ B. Average monthly wage at time of injury (see attached calculation), subject to final determination by the Industrial Commission of Arizona within 30 days.
- ☐ 5. Return to light duty effective _____. Per A.R.S. §23-1044(A) and A.R.S. §23-1062(D) benefits are payable at least monthly. Return to regular duty effective _____.
- ☐ 6. Temporary compensation and active medical treatment terminated on _____ because claimant was discharged.
- ☐ 7. Injury resulted in no permanent disability.
- ☐ 8. Injury resulted in permanent disability. Amount of permanent benefits, if any, and supportive medical maintenance benefits, if any, will be authorized by separate Notice.
- ☐ 9. Petition to Reopen accepted.
- ☐ 10. Petition to Reopen denied.
- ☒ 11. Other:

• Pursuant to A.R.S. § 23-1023, CopperPoint has a lien against Claimant's third-party recovery from a medical malpractice action (case No. A-16-738004-C) brought in the District Court of Clark County, Nevada, in an amount equal to compensation

Mailed on: 10/30/2019

By: Jeff de Veuve

Copy to: Industrial Commission of Arizona

(Authorized Representative) Tel. #: (602) 631-2966

The insurance carrier/employer will, upon request, provide claimant a copy of the medical report to support Findings 5, 6, 7 or 8.

NOTICE TO CLAIMANT: If you do not agree with this NOTICE and wish a hearing on the matter, your written Request for Hearing must be received at either office of the Industrial Commission listed below within NINETY (90) DAYS after the date of mailing of this Notice, pursuant to A.R.S. 23-941 and 23-947. IF NO SUCH APPLICATION IS RECEIVED WITHIN THAT NINETY DAY PERIOD, THIS NOTICE IS FINAL.

AVISO AL RECLAMANTE: Si usted no esta de acuerdo con este AVISO, y desea una audiencia en este caso, su peticion por escrito pidiendo una audiencia debera ser recibida en cualquiera de las oficinas de la Comision Industrial a las direcciones abajo indicadas dentro de NOVENTA (90) DIAS despues de la fecha de este AVISO, de acuerdo con las leyes A.R.S. 23-941 y 23-947. SI DICHA PETICION NO ESTA RECIBIDA DENTRO DEL PERIODO DE NOVENTA (90) DIAS, ESTE AVISO SERA CONSIDERADO FINAL.

Phoenix Office: Industrial Commission of Arizona
800 W Washington Street
Phoenix, Arizona 85007-2922

PO Box 19070
Phoenix, AZ 85005-9070

Tucson Office: Industrial Commission of Arizona
2675 E Broadway
Tucson, Arizona 85716-5342

THIS FORM APPROVED BY THE INDUSTRIAL COMMISSION OF ARIZONA FOR CARRIER USE

Date: 10/30/19
Claimant Name: Daria Harper
Claim Number: 14G01532

II. Continued from page 1

- and medical, surgical, and hospital benefits paid by CopperPoint.
- CopperPoint is entitled to accrued interest on the lien from the date settlement proceeds were disbursed.
- CopperPoint is entitled to a future credit against Claimant's recovery equal to the amount of money received by the Claimant in the malpractice action after subtracting expenses and attorney fees.
- CopperPoint is not required to pay claimant compensation or medical, surgical, or hospital benefits until the claimant's post-settlement accrued entitlement to compensation and medical benefits exceeds the credit amount.
- To the extent the settlement in the malpractice action was less than the workers' compensation benefits provided by CopperPoint, Claimant's failure to obtain CopperPoint's prior approval before settling results in forfeiture of her workers' compensation claim.

CC: Marshall Silberberg
William Stephens Collins
LAW OFFICES OF MARSHALL
SILBERBERG
3333 Michelson Drive, Suite 710
Irvine, CA 92612

EXHIBIT I

EXHIBIT I

NOTICE OF CLAIM STATUS

Carrier or Self-Insured Name and Address CopperPoint General Insurance Company 3030 N 3rd St Phoenix, AZ 85012	ICA Claim No. 20142520533
Authorized Third Party Administrator (TPA) Name and Address	Soc. Sec. No. _____ SSN not required if correct ICA claim number is provided
Claimant's Name and Address Daria Harper C/O SCHIFFMAN LAW OFFICE PC 4506 N 12TH ST PHOENIX AZ 85014	Carrier Claim No. 14G01532
	Employer Islander RV Resort LLC
	Address 751 Beachcomber Blvd Lake Havasu City, AZ 86403
	Date of Injury 08/11/2014

- ☐ 1. Claim is accepted.
- ☐ 2. Claim is denied.
- ☐ 3. No temporary compensation paid because the claimant has not currently sustained a temporary disability entitlement attributable to this injury beyond seven consecutive days.
- ☐ 4. Enclosed check for _____ for period of _____ through _____. Seven days deducted if disability is less than 14 calendar days. Payment has been made based on 66 2/3 percent of the wage of _____ based on the following:
- ☐ A. Statutory minimum or estimated monthly wage pending determination of Average Monthly Wage within 30 days.
- ☐ B. Average monthly wage at time of injury (see attached calculation), subject to final determination by the Industrial Commission of Arizona within 30 days.
- ☐ 5. Return to light duty effective _____. Per A.R.S. §23-1044(A) and A.R.S. §23-1062(D) benefits are payable at least monthly. Return to regular duty effective _____.
- ☐ 6. Temporary compensation and active medical treatment terminated on _____ because claimant was discharged.
- ☐ 7. Injury resulted in no permanent disability.
- ☐ 8. Injury resulted in permanent disability. Amount of permanent benefits, if any, and supportive medical maintenance benefits, if any, will be authorized by separate Notice.
- ☐ 9. Petition to Reopen accepted.
- ☐ 10. Petition to Reopen denied.
- ☒ 11. Other:

Future compensation, medical, surgical, hospital, pharmacy, caretaker & other benefits payable to applicant or behalf of applicant are terminated effective May 2, 2020 until CopperPoint's current lien of \$3,171,095.00 is fully exhausted

Mailed on: 05/01/2020

By: Jeffrey Deveau

Copy to: Industrial Commission of Arizona

(Authorized Representative) Tel. #: (602) 631-2300

The insurance carrier/employer will, upon request, provide claimant a copy of the medical report to support Findings 5, 6, 7 or 8.

NOTICE TO CLAIMANT: If you do not agree with this NOTICE and wish a hearing on the matter, your written Request for Hearing must be received at either office of the Industrial Commission listed below within NINETY (90) DAYS after the date of mailing of this Notice, pursuant to A.R.S. 23-941 and 23-947. IF NO SUCH APPLICATION IS RECEIVED WITHIN THAT NINETY DAY PERIOD, THIS NOTICE IS FINAL.

AVISO AL RECLAMANTE: Si usted no esta de acuerdo con este AVISO, y desea una audiencia en este caso, su peticion por escrito pidiendo una audiencia debiera ser recibida en cualquiera de las oficinas de la Comision Industrial a las direcciones abajo indicadas dentro de NOVENTA (90) DIAS despues de la fecha de este AVISO, de acuerdo con las leyes A.R.S. 23-941 y 23-947. SI DICHA PETICION NO ESTA RECIBIDA DENTRO DEL PERIODO DE NOVENTA (90) DIAS, ESTE AVISO SERA CONSIDERADO FINAL.

Phoenix Office: Industrial Commission of Arizona
800 W Washington Street
Phoenix, Arizona 85007-2922

PO Box 19070
Phoenix, AZ 85005-9070

Tucson Office: Industrial Commission of Arizona
2675 E Broadway
Tucson, Arizona 85716-5342

THIS FORM APPROVED BY THE INDUSTRIAL COMMISSION OF ARIZONA FOR CARRIER USE

EXHIBIT J

EXHIBIT J



AFFIDAVIT OF PLAINTIFF IN SUPPORT OF TEMPORARY RESTRAINING ORDER.pdf

DocVerify ID: E8821848-68D7-4E96-AD0F-12E35DA0EE55

Created: May 19, 2020 13:02:54 -8:00

Pages: 3

Remote Notary: Yes / State: NV

This document is a DocVerify VeriVaulted protected version of the document named above. It was created by a notary or on the behalf of a notary, and it is also a DocVerify E-Sign document, which means this document was created for the purposes of Electronic Signatures and/or Electronic Notary. Tampered or altered documents can be easily verified and validated with the DocVerify veriCheck system. This remote online notarization involved the use of communication technology.

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E-Signature Summary

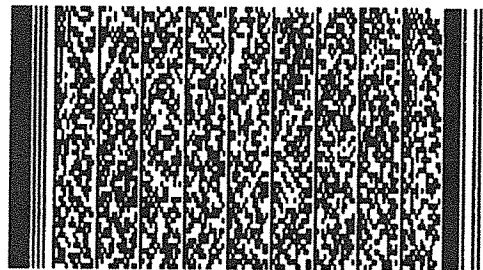
E-Signature 1: Daria Harper (dh)

May 19, 2020 15:22:34 -8:00 [9E75F2FD8A58] [47.216.32.12]
daria.harper@yahoo.com (Principal) (ID Verified)

E-Signature Notary: Brooke N Kuderer (BNK)

May 19, 2020 15:22:34 -8:00 [EAB029BC9FDA] [70.165.14.10]
brooke.kuderer@gmail.com

I, Brooke N Kuderer, did witness the participants named above electronically sign this document.



1 **AFFIDAVIT OF PLAINTIFF IN SUPPORT OF TEMPORARY RESTRAINING ORDER**

2
3 STATE OF NEVADA)
4 COUNTY OF CLARK) ss.

5 Daria Harper, being duly sworn, deposes and says that:

6 1. I am a plaintiff in this lawsuit. I am knowledgeable of the facts contained herein and
7 am competent to testify thereto.

8 2. I am over the age of eighteen and I have personal knowledge of all matters set forth
9 herein. If called to do so, I would competently and truthfully testify to all matters set forth herein,
10 except for those matters stated to be based upon information and belief.

11 3. On or about August 11, 2014, I sustained a knee injury while in the course and scope
12 of my employment in the state of Arizona, where I was a resident. My employer was insured by
13 Defendant COPPERPOINT GENERAL INSURANCE COMPANY ("COPPERPOINT") which
14 provided workers' compensation benefits to me.

15 4. On or about June 9, 2015, I required medical treatment in Las Vegas, Nevada that was
16 related to my original August 11, 2014 injury. As a result of this medical treatment, I suffered serious
17 injury resulting in quadriplegia.

18 5. On or about June 7, 2016, my husband, Daniel Wininger, and I filed a complaint in the
19 District Court of Nevada, Clark County, as Case Number A-16-738004-C ("the underlying medical
20 malpractice action"), alleging that we sustained damages as a result of the medical negligence of the
21 named health care providers ("health care providers").

22 6. When COPPERPOINT became aware of the above-described underlying medical
23 malpractice action, it sent a letter to my attorney, claiming a right to participate in any settlement
24 thereof and that it was entitled to a lien for repayment of financial benefits paid to or on my behalf. A
25 true copy of that letter is attached as **Exhibit 2**.

26 7. In the underlying medical malpractice action, (a) my medical experts determined that
27 I would require 24-hour per day care for the remainder of my life, and (b) my economic expert
28 determined that the present value of the cost of my future required future care was \$14,291,374 and

1 that I incurred past and future earnings losses of \$322,579. A true copy of Life Care Plan that itemized
2 my care needs is attached as **Exhibit 3**.

3 8. My husband and I settled with the health care providers for the total sum of
4 \$6,250,000.00. Thereafter, in or about July 2018, the lawsuit was dismissed and the settlement
5 monies were paid by the settling health care providers.

6 9. Based on a letter in my then-attorney's file, it is my information and belief that he
7 informed COPPERPOINT on or about July 2, 2018, that it was not entitled to any lien. A true copy
8 of that letter is attached as **Exhibit 4**.

9 10. On or about October 30, 2019, COPPERPOINT served me with the "Notice of Claim
10 Status", attached hereto as **Exhibit 5** that stated in part that it had a lien from my medical malpractice
11 case, that it was entitled to interest from the date of the settlement, that it was entitled to a future credit
12 against my recovery equal to the amount of money I received in the malpractice action after
13 subtracting expenses and attorney fees, that it was not required to pay me compensation or medical,
14 surgical, or hospital benefits until my post-settlement accrued entitlement to compensation and
15 medical benefits exceeds the credit amount, and that to the extent the settlement in the malpractice
16 action was less than the workers' compensation benefits it provided, my failure to obtain its prior
17 approval before settling results in forfeiture of my workers' compensation claim.

18 11. On April 2, 2020, I was served with a letter from COPPERPOINT, attached as **Exhibit**
19 **6**, notifying me that it would terminate all benefits, in thirty days.

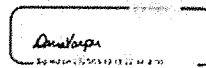
20 12. On May 1, 2020, I was served with a "Notice of Claims Status" by COPPERPOINT,
21 attached as **Exhibit 7**, which stated, "Future compensation, medical, surgical, hospital, pharmacy,
22 caretaker & other benefits payable to applicant or behalf of applicant are terminated effective May 2,
23 2020 until CopperPoint's current lien of \$3,171,095.00 is fully exhausted."

24 13. Among the benefits terminated are payments being made for the services of my
25 husband, Daniel Wininger, who was being compensated to provide 24-hour per day care to me.

26 14. The net proceeds from my malpractice case settlement that were not invested in
27 annuities have been largely expended for goods and services that are necessary for my survival.
28 Because COPPERPOINT terminated payments for the care services provided by my husband, our

1 sole monthly income from annuities is \$8,333, which is greatly exceeded by the monthly expenses for
2 the medical supplies that I require (including bladder supplies, bowel program, personal care and
3 respiratory); medical equipment that I require (including vent, oxygenator condenser and oxygen
4 canisters), my regular appointments with four doctors, therapists and nurses, and my prescription
5 medications. If I do not have these medical supplies and services, my already precarious condition
6 will worsen.

7 FURTHER AFFIANT SAYETH NAUGHT

8
9 

DARIA HARPER

10
11 SUBSCRIBED and SWORN to before
me this 19th day of May, 2020.

12
13 
14 Notary Public for Said County and State

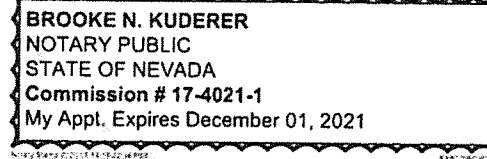
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EXHIBIT K

EXHIBIT K

ENTITY INFORMATION

Search Date and Time: 6/2/2020 4:47:58 PM

Entity Details

Entity Name:

COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY

Entity ID:

1895549

Entity Type:

Domestic Insurer

Entity Status:

Active

Formation Date:

11/7/2018

Reason for Status:

In Good Standing

Approval Date:

11/16/2018

Status Date:

11/16/2018

Original Incorporation Date:

11/7/2018

Life Period:

Perpetual

Business Type:

Last Annual Report Filed:

Domicile State:

Arizona

Annual Report Due Date:

Years Due:

Original Publish Date:

Name:

SARA M BEGLEY

Appointed Status:

Active 11/16/2018

Attention:

Address:

3030 N. 3RD STREET, PHOENIX, AZ 85012, USA

Agent Last Updated:

11/16/2018

E-mail:

Attention:

Mailing Address:

County:

Maricopa

Principal Information

Title	Name	Attention	Address	Date of Taking Office	Last Updated
Director	JUDITH PATRICK		3030 N. 3RD STREET, PHOENIX, AZ, 85012, Maricopa County, USA	8/21/2018	11/16/2018
Director	STEPHEN TULLY		3030 N. 3RD STREET, PHOENIX, AZ, 85012, Maricopa County, USA	8/21/2018	11/16/2018
Director	RONNIE LOPEZ		3030 N. 3RD STREET, PHOENIX, AZ, 85012, Maricopa County, USA	8/21/2018	11/16/2018
Director	KENNETH KIRK		3030 N. 3RD STREET, PHOENIX, AZ, 85012, Maricopa County, USA	8/21/2018	11/16/2018
Director	LORI ANN LOWERY BIGGERS		3030 N. 3RD STREET, PHOENIX, AZ, 85012, Maricopa County, USA	8/21/2018	11/16/2018

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Page 1 of 3, records 1 to 5 of 11

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Address 

Attention:

Address: 3030 N. 3RD STREET, PHOENIX, AZ, 85012, USA

County: Maricopa

Last Updated: 11/16/2018

Entity Principal Office Address

Attention:

Address:

County:

Last Updated:

Back

Return to Search

Return to Results

Document History

Name/Restructuring History

Pending Documents

Microfilm History

EXHIBIT L

EXHIBIT L

ENTITY INFORMATION

Search Date and Time: 6/2/2020 4:46:34 PM

Entity Details

Entity Name:

COPPERPOINT GENERAL INSURANCE COMPANY

Entity ID:

14897834

Entity Type:

Domestic Insurer

Entity Status:

Active

Formation Date:

11/19/2008

Reason for Status:

In Good Standing

Insurer

Approval Date:

11/24/2008

Status Date:

Original Incorporation Date:

11/19/2008

Life Period:

Perpetual

Business Type:

Last Annual Report Filed:

Domicile State:

Arizona

Annual Report Due Date:

Years Due:

Original Publish Date:

12/5/2008

Statutory Agent Information

Name:

SARA M BEGLEY

Appointed Status:

Active

Attention:

Address:

3030 N 3RD STREET , PHOENIX, AZ 85012, USA

Agent Last Updated:

9/11/2014

E-mail:

Attention:

Mailing Address:

County:

Principal Information

Title	Name	Attention	Address	Date of Taking Office	Last Updated
Director	SCOTT SHADER		3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA	6/12/2017	7/5/2017
Director	MARK JOOS		3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA	6/12/2017	7/5/2017
Director	MARC SCHMITTLEIN		3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA	6/1/2016	6/29/2016
Director	VIRGINIA ARNETT CARO		3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA	6/1/2016	6/29/2016
Director	SARA BEGLEY		3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA	6/1/2016	6/29/2016

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Page 1 of 2, records 1 to 5 of 9

Go to Page

Attention:

Address: 3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA

County: Maricopa

Last Updated:

Entity Principal Office Address

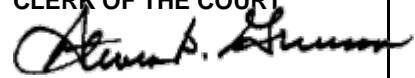
Attention:

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County:

Last Updated:

[Back](#)[Return to Search](#)[Return to Results](#)[Document History](#)[Name/Restructuring History](#)[Pending Documents](#)[Microfilm History](#)



OPPS

DALTON L. HOOKS, JR., ESQ., Nevada Bar No. 8121

SAMI RANDOLPH, ESQ., Nevada Bar No. 7876

HOOKS MENG & CLEMENT

2820 W. Charleston Boulevard, Ste. C-23

Las Vegas, NV 89102

Telephone No. (702) 766-4672

Facsimile No. (702) 919-4672

Attorneys for Defendants

COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and

COPPERPOINT GENERAL INSURANCE COMPANY

DISTRICT COURT

CLARK COUNTY NEVADA

DARIA HARPER, an individual; and
DANIEL WININGER, an individual,

Plaintiffs,

vs.

COPPERPOINT MUTUAL INSURANCE
HOLDING COMPANY, an Arizona
corporation; COPPERPOINT GENERAL
INSURANCE COMPANY, an Arizona
corporation; LAW OFFICES OF
MARSHALL SILBERBERG, P.C., a
California Corporation; KENNETH
MARSHALL SILBERBERG aka
MARSHALL SILBERBERG aka K.
MARSHALL SILBERBERG, an individual;
THOMAS S. ALCH aka THOMAS
STEVEN ALCH, an individual; SHOOP, A
PROFESSIONAL LAW CORPORATION,
a California Corporation; DOES 1-50,
inclusive,

Defendants.

CASE NO.: A-20-814541-C

DEPT NO.: XXX

**DEFENDANTS COPPERPOINT MUTUAL
INSURANCE HOLDING COMPANY and
COPPERPOINT GENERAL INSURANCE
COMPANY'S OPPOSITION TO
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Hearing Date: September 30, 2020

Hearing Time: 9:00 am

...

...

1 COMES NOW, Defendants, COPPERPOINT MUTUAL INSURANCE HOLDING
2 COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY (COPPERPOINT or
3 COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY or COPPERPOINT
4 GENERAL INSURANCE COMPANY or Defendants), by and through their attorneys of record,
5 the law firm of HOOKS MENG & CLEMENT, and opposes Plaintiffs' Motion for Partial
6 Summary Judgment. This Opposition is filed pursuant to NRCp 56.

7 This Opposition is made and based on the papers and pleadings on file herein as well as
8 the following points and authorities submitted in support hereof, and any oral arguments that may
9 be heard regarding this matter.

10 Dated this 9th day of September 2020.

11 HOOKS MENG & CLEMENT
12 By:

13 *Sami Randolph*

14 DALTON L. HOOKS, JR., ESQ.
15 SAMI RANDOLPH, ESQ.

16 Attorneys for Defendants
17 COPPERPOINT MUTUAL INSURANCE
18 HOLDING COMPANY and
19 COPPERPOINT GENERAL INSURANCE
20 COMPANY
21
22
23
24

MEMORANDUM OF POINTS AND AUTHORITIES

I.
STATEMENT OF FACTS

This litigation arises out of an industrial injury that occurred on or about August 11, 2014. See **Exhibit G**; *see also* Plaintiffs' Complaint at pg. 2. COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY is an Arizona Corporation. See **Exhibit K**; *see also* Plaintiffs' Complaint at pg. 2. COPPERPOINT GENERAL INSURANCE COMPANY is an Arizona corporation that provided workers' compensation insurance to HARPER'S Employer, Islander RV Resort, LLC. See **Exhibit L**; *see also* **EXHIBIT H**; Plaintiffs' Complaint at pg. 2. Subsequent to her injury, HARPER filed an Arizona workers' compensation claim. See **Exhibit H**; *see also* Plaintiffs' Complaint at pg. 2. COPPERPOINT accepted HARPER'S claim for workers' compensation benefits. See *id.* Upon information and belief, HARPER never filed an administrative appeal with the Arizona Industrial Commission regarding COPPERPOINT'S determination to accept her claim and administer benefits under Arizona law. Ultimately, COPPERPOINT paid benefits in an amount in excess of \$ 3,171,095. See **Exhibit I**; *see also* **Exhibit J** at pg. 29.

On June 9, 2015, HARPER presented to Valley Hospital Medical Center for an emergency consultation. HARPER sustained injury as a result of her medical treatment. See COPPERPOINT'S Answer at pg. 3; *see also* **Exhibit J** at pg. 28.

As early as January 5, 2016, COPPERPOINT inquired as to whether HARPER intended to pursue litigation related to the claim. See **Exhibit A**.

Your claim file shows that you may have been injured by the negligence of wrongdoing of another. To help us process your claim, it is important that we know whether you intend to take any action against the person (s) who may have been responsible for your injury.

See id.

1 On January 5, 2016, COPPERPOINT contacted SILBERBERG, the attorney retained by
2 Plaintiff HARPER. *See Exhibit B; see also Exhibit J* at pg. 28. COPPERPOINT stated,

3 I have been notified that you have been hired by Ms. Harper for a med-malpractice
4 case.

5 Please note that we have a lien and are requesting you to provide us with a letter of
6 representation and something signed by Ms. Harper that indicates she hired your
7 firm, such as a release.

8 Please provide us a copy of the conformed complaint at your earliest convenience.

9 *See Exhibit B.* COPPERPOINT sent a second request to SILBERBERG on or about February
10 25, 2016. *See Exhibit C.*

11 On March 22, 2016, SILBERBERG informed COPPERPOINT,

12 Relative to the above, please be advised that our office has been retained to
13 represent the interests of Daria Harper. We are evaluating all potential claims and
14 will timely file a Complaint on Ms. Harper's behalf. We will continue to keep you
15 apprised of all significant developments as they occur.

16 In the meantime, we would appreciate it if you could forward us a copy of Ms.
17 Harper's CD of medical records from Valley Hospital in Las Vegas.

18 *See Exhibit D.*

19 On June 7, 2016, HARPER and WININGER filed a complaint in the Eighth Judicial
20 District Court against Valley Hospital Medical Center, Inc., Valley Health System, LLC., Jeffrey
21 Davidson, M.D., Cyndi Tran, D.O., Paul Janda, D.O., Elizabeth Phung-Hart, D.O., Andrea
22 Agcaoili, D.O., Murad Jussa, M.D., and Does I through 250. *See Exhibit E* at pg. 10; *see also*
23 *Exhibit J* at pg. 28. The parties ultimately reached a settlement, and Plaintiffs HARPER and
24 WININGER dismissed the lawsuit. *See Exhibit J* at pg. 29. In an affidavit dated May 19, 2020,
Plaintiff HARPER states that she received \$ 6,250,000.00 in settlement from the malpractice
lawsuit. *See id.*

...

1 On June 22, 2018, COPPERPOINT sent SILBERBERG a letter that stated:

2 Please provide an update on this case and please remember that pursuant to A.R.S.
3 §23-1023(C), to please keep CopperPoint apprised of the status of the claim and
notify us upon any resolution of the claim.

4 As you are aware, A.R.S. §23-1023(C), provides for a statutory lien and credit for
5 any amounts collected on the third-party claim. Any resolution of the claim for
6 less than a statutory lien requires our written approval. While it is the position of
7 CopperPoint that we are entitled to our full statutory lien and credit, there may be
8 circumstances where CopperPoint will reduce our statutory lien or credit if
warranted depending upon the particular facts and circumstances of each claim.
Any agreement to reduce or waive our statutory lien or future credit must be
acknowledged by CopperPoint in writing. Any alleged oral waiver or reduction of
our lien or future credit will not be recognized unless it is acknowledged by us in
writing.

9 We will provide you with our current lien information as you request during your
10 handling of the third-party claim. Once a claim has settled, it is imperative that
11 you notify us for a current lien amount. Please note that until you are in agreement
12 with an offer and have contacted us for approval, the lien is subject to change.
Also, please verify all bills are paid "prior to settlement" or they can become the
claimant's responsibility.

13 See **Exhibit F** at pg. 20.

14 On June 22, 2018, SILBERBERG acknowledged receipt of the June 22, 2018 letter from
15 COPPERPOINT. See **Exhibit G** at pg. 22; see also **Exhibit J** at pg. 29. SILBERBERG stated,

16 I received your letter dated June 22, 2018, regarding your request for an update
17 and your claim to a lien in this matter. As of this time, Ms. Harper's case has
settled. You were not made aware of the settlement because CopperPoint is not
entitled to a lien, as will be explained in more detail below.

18 See **Exhibit G** at pg. 22.

19 On October 30, 2019, COPPERPOINT sent HARPER a Notice of Claim Status. See
20 **Exhibit H**; see also **Exhibit J** at pg. 29. In the Notice of Claim Status, COPPERPOINT
21 informed HARPER that it has a lien against her medical malpractice settlement in the amount of
22 medical, surgical, and hospital benefits paid by COPPERPOINT. See *id.* COPPERPOINT
23
24

further advised HARPER that it is/was not required to pay further medical expenses until it has recouped its lien. *See id.*

On May 20, 2020, Plaintiffs filed an action for declaratory and injunctive relief in Clark County District Court in Las Vegas, Nevada. *See* Plaintiffs’ Complaint at pp. 1, 10–11. Plaintiffs seek a declaratory judgment stating that COPPERPOINT is required to continue paying workers’ compensation benefits despite controlling Arizona law to the contrary. *See id.* at pp. 10–11. On August 26, 2020, Plaintiffs filed their Motion for Partial Summary Judgment. COPPERPOINT now submits its Opposition to Plaintiffs’ Motion for Partial Summary Judgment.

II. LAW & ARGUMENT

I. PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT SHOULD BE DENIED.

The Nevada Supreme Court has continuously held that summary judgment “is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” *See Wood v. Safeway, Inc.*, 121 Nev. 724, 731 (2005) (citations omitted) (citing NRCP 56). The substantive law that is relevant to the instant dispute exclusively “controls which factual disputes are material.” *See Wood v. Safeway, Inc.*, 121 Nev. 724, 731 (2005).

A. NRS 616C.215, NOT NRS 42.021, Governs Liens Arising out of ANY Workers’ Compensation Case.

NRS §616C.215, governs matters of workers’ compensation subrogation matters, imposes no lien limitation simply because the aggravating injury arose from medical malpractice. Indeed, in *Tri-County Equip. & Leasing, LLC v. Klinke*, the Nevada Supreme Court determined that NRS §616C.215(10) “creates an exception to the collateral source rule.” *See Tri-County Equip. &*

1 *Leasing, LLC v. Klinke*, 128 Nev. 352, 356 (2012). In *Klinke*, the Nevada Supreme Court stated
2 that:

3 The collateral source doctrine does not change this result. As noted, this court has adopted
4 a per se rule barring the admission of a collateral source of payment for an injury into
5 evidence for any purpose. **Nevada recognizes a limited exception to the collateral**
6 **source rule for workers' compensation payments.** In *Cramer v. Peavy*, this court
7 expressly held that NRS 616C.215(10) creates an exception to the collateral source rule.
8 Pursuant to NRS 616C.215(10), "[i]n any trial of an action by the injured employee . . .
9 against a person other than the employer or a person in the same employ, the jury must
10 receive proof of the amount of all payments made or to be made by the insurer or
11 the Administrator [of the Division of Industrial Relations]." The court must then instruct
12 the jury to follow the court's damages instructions without reducing any award by the
13 amount of workers' compensation paid, thus leaving unaltered the general substantive law
14 on calculating damages. The jury-instruction language specifically suggested by the
15 statute reads:

16 Payment of workmen's compensation benefits by the insurer, or in the case of
17 claims involving the Uninsured Employers' Claim Account or a subsequent injury
18 account the Administrator, is based upon the fact that a compensable industrial
19 accident occurred, and does not depend upon blame or fault. If the plaintiff does
20 not obtain a judgment in his or her favor in this case, the plaintiff is not required to
21 repay his or her employer, the insurer or the Administrator any amount paid to the
22 plaintiff or paid on behalf of the plaintiff by the plaintiff's employer, the insurer or
23 the Administrator.

24 If you decide that the plaintiff is entitled to judgment against the defendant, you
shall find damages for the plaintiff in accordance with the court's instructions on
damages and return your verdict in the plaintiff's favor in the amount so found
without deducting the amount of any compensation benefits paid to or for the
plaintiff. The law provides a means by which any compensation benefits will
be repaid from your award.

We have previously recognized that this statute benefits both the plaintiff and the
defendant by preventing jury speculation as to workers' compensation benefits
received.

**616C.215(10)'s application to "any trial" gives the statute universal applicability to
trials involving a plaintiff receiving workers' compensation payments, at least when
the plaintiff is required to first use any recovery to reimburse the insurer for
amounts paid.**

See Tri-County Equip. & Leasing, LLC v. Klinke, 128 Nev. 352, 355–56 (2012) (quotations
omitted, and emphasis added).

Assuming, *arguendo*, that this Court applies Nevada law, NRS §616C.215 as interpreted by *Klinke* preserves COPPERPOINT’S lien rights because the underlying lien arose from a workers’ compensation matter. In *Klinke*, the Nevada Supreme Court stated that NRS §616C.215 creates an exception to the collateral source rule in any workers’ compensation matter. NRS §616C.215 contains a jury instruction wherein jurors are directed to award damages as warranted without regard for collateral payments. As the jury instruction notes, “the law provides a means by which any compensation benefits will be repaid from your award.” Additionally, *Klinke* was decided after NRS §42.021’s 2004 passage by voters. The Nevada Supreme Court in *Klinke* did not qualify its directive regarding NRS §616C.215’s applicability to “any trial” stemming from a workers’ compensation matter, thusly NRS §616C.215 can only be held to apply to the instant case and so recognizes COPPERPOINT’S lien.

Plaintiffs’ attempts to persuade this court that NRS §42.021 somehow precludes COPPERPOINT’S lien rights is nothing more than an attempt to couch the law of this case in the most lopsided way possible, all to their benefit, of course. In *Klinke*, the Nevada Supreme Court made it clear that NRS §616C.215 protects a workers’ compensation carrier’s lien rights in “any” matter. *See Tri-County Equip. & Leasing, LLC v. Klinke*, 128 Nev. 352, 355–56 (2012). *Klinke* was decided in 2012, subsequent to NRS § 42.021’s 2004 passage by voters.

In light of the foregoing, Plaintiffs’ assertion in Footnote 4 of their Motion should be ignored. Without citing any authority whatsoever, Plaintiffs contend that “[i]n cases other than medical malpractice, the workers’ compensation carrier has a lien in an action by an employee against a third party. NRS 616C.215.” In reality, NRS §616C.215 does not contain such a limitation. Nor does any Nevada Supreme Court case state that NRS §616C.215 does not apply to a workers’ compensation claimant’s third-party claim stemming from medical malpractice. To the contrary, *Klinke*, protects a workers’ compensation carriers’ lien rights in “any” matter. *See*

Tri-County Equip. & Leasing, LLC v. Klinke, 128 Nev. 352, 355–56 (2012). Thus, NRS §42.021 does not bar COPPERPOINT’s lien rights and the instant Motion should therefore be denied.

1. The Settlement Agreement Between Plaintiffs and the Defendants in the Prior Medical Malpractice Action is Irrelevant.

Plaintiffs argue that “A Settlement Agreement Stated That the Collateral Source Payments Would be Introduced at Trial, Thereby Barring COPPERPOINT from Any Lien or Credit.” *See* Plaintiffs’ Motion for Partial Summary Judgment at pg. 9. Quite apart from the fact that the alleged settlement agreement references “health insurance” as opposed to workers’ compensation benefits, Plaintiffs and the medical malpractice defendants had no authority to bind COPPERPOINT via their settlement. *See Bank of Cal. v. White*, 14 Nev. 373, 376 (1879) (stating that “[a contract] has no application whatever as against any party who is a stranger to the instrument”).

Here, Plaintiffs have not presented any evidence indicating that COPPERPOINT agreed to waive its lien rights under NRS §616C.215, which apply in “any trial” wherein the plaintiff received workers’ compensation benefits. *See Tri-County Equip. & Leasing, LLC v. Klinke*, 128 Nev. 352, 355–56 (2012). What’s more, Plaintiffs’ claim that “the parties agree and acknowledge by reason of the admission of collateral source evidence, there was a substantial likelihood the jury would not have awarded any damages for past medical expenses or related costs” is essentially meaningless in light of their obligations under NRS §616C.215. Plaintiffs’ Motion for Partial Summary Judgment at pg. 9.

The truth is that NRS §616C.215(10) states that “the jury must receive proof of the amount of all payments made or to be made by the [workers’ compensation] insurer...” (emphasis added). In the event a jury finds for the Plaintiff, NRS §616C.215(10) further requires the court to instruct the jury to award damages without reduction due to a collateral source as “[t]he law

provides a means by which any compensation benefits will be repaid from your award.” Plaintiffs have no authority to modify the above procedure articulated in NRS §616C.215(10), especially without the workers’ compensation lienholder’s consent. Their argument here is a nonstarter.

2. Plaintiffs’ Arguments Regarding Statutory Interpretation Must Be Ignored Because NRS § 616C.215(10) Unambiguously Protects COPPERPOINT’S Lien.

In *Orion Portfolio Servs. 2, LLC v. Cty. Of Clark ex rel. Univ. Med. Ctr.*, the Nevada Supreme Court stated that:

The construction of a statute is a question of law, which we review de novo. **When a statute is clear and unambiguous, this court gives effect to the plain and ordinary meaning of the words and does not resort to the rules of construction.** Where a statute's language is ambiguous, however, the court must look to legislative history and rules of statutory interpretation to determine its meaning. A statute's language is ambiguous when it is capable of more than one reasonable interpretation. Internal conflict can also render a statute ambiguous.

...

The Legislature's intent is the primary consideration when interpreting an ambiguous statute.

...

See Orion Portfolio Servs. 2, LLC v. Cty. Of Clark ex rel. Univ. Med. Ctr., 126 Nev. 397, 402–03 (2010) (emphasis added, and citations omitted).

Here, further analysis beyond NRS § 616C.215’s plain language is unwarranted because NRS §616C.215(10) unambiguously protects a workers’ compensation carrier’s lien rights in “any trial.” *See Tri-County Equip. & Leasing, LLC v. Klinke*, 128 Nev. 352, 355–56 (2012). Through enacting NRS § 616C.215, the Nevada Legislature granted all workers’ compensation carriers, such as COPPERPOINT, a statutory lien on the proceeds of all third-party settlements through which the carrier has expended benefits. The Legislature further specified that evidence of such payments “must” be introduced into evidence whereupon the jury would award

1 compensation, if warranted, without reduction of the collateral payments. Finally, the Legislature
2 articulated via NRS §616C.215(10) that the workers’ compensation benefits would be “repaid”
3 from the jury award. Simply stated, there is no room in the analysis for differential treatment for
4 third-party medical malpractice claims as Plaintiffs allege.

5 In *Tri-County Equip. & Leasing, LLC v. Klinke*, 128 Nev. 352, 355–56 (2012), the Nevada
6 Supreme Court held that NRS § 616C.215 applies to “any trial” without limitation. Despite NRS
7 §42.021’s 2004 passage, the Court carved out no limitation for trials resulting from medical
8 malpractice. There is no ambiguity here except from that introduced by Plaintiffs in an effort to
9 obtain further workers’ compensation benefits in addition to their windfall settlement.
10 Accordingly, any further statutory interpretation analysis is unnecessary and should be avoided by
11 this Court.

12 **3. Plaintiffs Reliance Upon California Law Must Be Disregarded as NRS §616A.010**
13 ***Specifically* Forbids Courts from Liberally Construing Workers’ Compensation**
14 **Statutes in Favor of the Injured Worker.**

15 Here, Plaintiffs’ argument is based on the legally erroneous premise that Nevada courts
16 must liberally construe workers’ compensation statutes in favor of the injured worker. *See*
17 Plaintiffs Motion for Partial Summary Judgment at pp. 13–16. Plaintiffs argue that this Court
18 should adopt the California Supreme Court’s holdings in *Barme v. Wood*, 37 Cal. 3d 174, 689
19 P.2d 446 (1984) and *Graham v. Workers' Comp. Appeals Bd.*, 210 Cal. App. 3d 499, 258 Cal.
20 Rptr. 376 (1989) because they erroneously believe that Nevada law mandates a liberal
21 construction of workers’ compensation statutes.

22 However, the Nevada Legislature forbid the approach Plaintiffs argue this Court adopt.
23 NRS §616A.010 *specifically* forbids courts from liberally construing workers’ compensation
24 statutes in favor of the injured worker. Importantly, in *Law Offices of Barry Levinson, P.C. v.*
Milko, 124 Nev. 355, 363, 184 P.3d 378, 384 (2008), the Nevada Supreme Court stated that

“under this (the neutrality) rule, we have rejected tests derived from jurisdictions in which liberal construction is the law.”

Accordingly, pursuant to *Milko*, this court must reject the California Supreme Court’s tests in *Barme v. Wood*, 37 Cal. 3d 174, 689 P.2d 446 (1984) and *Graham v. Workers’ Comp. Appeals Bd.*, 210 Cal. App. 3d 499, 258 Cal. Rptr. 376 (1989) because Cal. Lab. Code §3202 requires that California courts liberally construe workers’ compensation statutes in favor of the injured worker. Indeed, under *Milko*, any test “derived from jurisdictions in which liberal construction is the law” must be disregarded because adjudication based on liberal construction cannot be reconciled with NRS §616A.010’s clear mandate that courts undertake a balanced interpretation of workers’ compensation statutes. *See id.* Thus, Plaintiffs’ reliance on California law is irrelevant to this Court’s determination of whether COPPERPOINT has a valid lien on the proceeds of Plaintiffs’ medical malpractice settlement.

B. Arizona Law Controls the Instant Dispute Because the Weight of Interstate Authority Indicates that Once an Employee Files a Workers’ Compensation Claim, the Law of that State Must Administer the Claim.

In *GMC v. Eighth Judicial Dist. Court of Nev.*, the Nevada Supreme Court adopted the *Restatement (Second) of Conflict of Laws* regarding conflict of laws issues arising in tort. *See GMC v. Eighth Judicial Dist. Court of Nev.*, 122 Nev. 466, 468, 134 P.3d 111, 113 (2006). As to workers’ compensation matters, the *Restatement (Second) of Conflict of Laws* states that:

A peculiarity of the area is that usually relief under a particular statute may be obtained only in the state of its enactment. This is because the statutes normally provide for their enforcement by special administrative tribunals and such tribunals do not consider themselves competent to give relief under any statute but their own.

...

See Restat 2d of Conflict of Laws, §185 (2nd 1988). Further, the restatement provides that:

The local law of the state under whose workmen's compensation statute an employee has received an award for an injury determines what interest the person

1 who paid the award has in any recovery for tort or wrongful death that the
2 employee may obtain against a third person on account of the same injury.

3 *See Restat 2d of Conflict of Laws*, §185 (2nd 1988).

4 Here, HARPER sustained a compensable industrial injury in Arizona. COPPERPOINT
5 accepted her claim under Arizona law. HARPER received an award of compensation under
6 Arizona law, including medical and wage replacement benefits. While a resident of Arizona,
7 Plaintiff HARPER required emergency medical treatment in Nevada for the injuries stemming
8 from her Arizona workers' compensation claim.

9 On October 23, 2019, COPPERPOINT mailed a Notice of Claim Status to HARPER
10 advising her that pursuant to ARS §23-1023, she is not entitled to further benefits in light of her
11 refusal to repay COPPERPOINT'S lien.

12 All worker's compensation benefits received by HARPER have been in accord with
13 Arizona law. Pursuant to the *Restatement (Second) of Conflict of Laws* §185, the local law of the
14 state where a workers' compensation claimant received an award determines all subsequent
15 subrogation rights. As such, Arizona law—not Nevada law—must govern COPPERPOINT'S
16 subrogation rights because HARPER received workers' compensation benefits under Arizona law.

17 While the Nevada Supreme Court has never directly addressed a conflict of laws issue
18 arising out of a workers' compensation claim, the weight of interstate authority mirrors the
19 approach adopted by the *Restatement (Second) of Conflict of Laws*. For example, in *Quiles v.*
20 *Heflin Steel Supply Co.*, the Arizona Supreme Court ruled that workers' compensation acts are
21 substantive and that the law of the state where the injured worker filed a claim and received
22 benefits must govern all subsequent aspects of claim administration. *See Quiles v. Heflin Steel*
23 *Supply Co.*, 145 Ariz. 73, 78, 699 P.2d 1304, 1309 (Ariz. Ct. App. 1985).

In *Quiles*, the workers' compensation claimant suffered an industrial injury when a Heflin Steel employee improperly unloaded wire from a truck, causing the wire to fall on the claimant. *See id.* at pg. 1306. At the time of his injury, the claimant was a resident of California and employed by a California employer. *See id.* at pp. 1305–06. The claimant filed his claim for workers' compensation benefits in California, even though the injury occurred in Arizona. *See id.* at pg. 1306. The claimant's workers' compensation carrier expended over \$50,000 to provide benefits to the claimant. *See id.*

The carrier filed a lawsuit against Heflin Steel. *See id.* The claimant filed a motion to intervene, which the trial court granted. However, the trial court dismissed the claimant's complaint in intervention under the theory that it was barred by ARS §23-1023 and ARS §12-542. The claimant appealed on the basis that California law, as the law of the state where he received workers' compensation benefits, would have allowed his complaint in intervention. *See id.*

In reversing the trial court, the Arizona Court of Appeals held that courts must apply the law of the state where the claimant received benefits in foreign state litigation arising out of workers' compensation matters. *See id.* at pg. 1308. The court noted that:

In the present case we are dealing with a California worker, a California employer, and an application for workers' compensation benefits from California. Under these circumstances we hold the rights as between the worker and the employer and its carrier (or the worker and the carrier) are governed by California law, not by A.R.S. §23-1023. The carrier commenced this action within one year of the date of injury pursuant to rights given to it under the applicable California statutes.

Arizona has adopted a policy of allowing a worker injured in a multistate context to choose the state in which to seek compensation. A.R.S. §23-904(B) permits a foreign worker injured in this state to enforce his rights against his employer in this state if they can reasonably be determined by the courts in this state. *Quiles* sought and received compensation in California. **We hold that workers' compensation rights are substantive not merely procedural and therefore once the worker has exercised his choice of where to seek compensation the compensation scheme of that state shall apply.**

See id. at pp. 1308–09 (citations omitted, and emphasis added).

Here, like the claimant in *Quiles* who litigated in a foreign state concerning his workers' compensation benefits, so too HARPER seeks to litigate in a foreign state benefits related to her Arizona worker's compensation claim. HARPER sustained an industrial injury in Arizona while a resident of Arizona and received workers' compensation benefits under Arizona law. Applying any law other than Arizona law would substantially alter HARPER'S workers' compensation rights. Accordingly, this court should deny the instant Motion for Partial Summary Judgement in its entirety because it seeks to apply Nevada law.

In the context of workers' compensation subrogation matters, the Iowa Supreme Court has expressly ruled that subrogation rights must be determined in accord with the law of the state under which the claimant has received benefits. *See Moad v. Dakota Truck Underwriters*, 831 N.W.2d 111, 118 (Iowa Ct. App. 2015). In *Moad*, the claimant suffered an industrial injury. *See id.* at pg. 112. The carrier reported the incident to South Dakota's workers' compensation administrator, who administered all relevant benefits under South Dakota law. *See id.* The claimant's survivors filed an action in Iowa to recover damages on behalf of the deceased. *See id.* The carrier filed a notice asserting its lien rights. *See id.*

Plaintiffs moved to strike the lien on the basis that Iowa law did not permit a lien under such circumstances. *See id.* at pg.113. The trial court granted Plaintiff's motion to strike, applying Iowa law. *See id.* On appeal, the Iowa Supreme Court reversed the trial court, noting that:

Based on our review of the applicable provisions of the Restatement (Second) and the conflict of laws caselaw, we conclude there are sound reasons for applying section 185 to this case. Although conflict rules are rarely perfect, section 185 in most cases will provide a clear rule of decision for workers' compensation carriers and claimants alike. Because workers' compensation is designed to be an efficient method for dealing with workplace injuries, we view the application of section 185 as superior to the more open-ended considerations of the most-significant-relationship tests.

See id. at pg. 118.

Importantly, in *Moad*, the Iowa Supreme Court rejected the most-significant-relationship test in favor of the *Restatement (Second) of Conflict of Laws* §185 locus test. *See id.* In doing so, the court noted the predictability and efficiency of §185’s locus of claim test. *See id.* Accordingly, this court should hold as the Iowa Supreme Court did in *Moad*, and apply the local law of the state wherein Harper filed her workers’ compensation claim.

1. This Court Lacks Jurisdiction to Grant Any Remedy as Under Both Arizona Law, All Workers’ Compensation Appeals MUST First Be Heard Through Administrative Review.

Pursuant to ARS §23-1022, an injured worker is prohibited from proceeding in any private right of action against his or her employer or the employer’s workers’ compensation carrier.¹ To the contrary, ARS §23-1022 provides that the workers’ compensation system is an injured worker’s exclusive remedy against *both* the employer and the employer’s carrier.

ARS §23-947 establishes the procedure under which a claimant may administratively appeal a determination of the workers’ compensation carrier. Under ARS §23-947 (A), an aggrieved party must request a hearing before the Arizona Industrial Commission within ninety (90) days of the date the carrier mailed the notice. Failure to request a hearing within the allotted ninety (90) day period results in the decision becoming “final and res judicata” pursuant to ARS §23-947 (B).

What’s more, Arizona law also establishes the procedure through which a judicial court can review a workers’ compensation case. First, the Industrial Commission of Arizona will hold

¹ Under ARS §23-1022, an injured worker may file a tort claim against the Employer in certain circumstances, including when the injured workers sustains an injury through the Employer’s “willful misconduct.” While ARS 23-906 grants employees the right to reject workers’ compensation benefits and proceed in tort, any such election must be issued prior to the date of injury. As HARPER did not reject workers’ compensation benefits prior to her injury, all aspects of her claim must be administered under Arizona workers’ compensation law.

1 a hearing on the matter in accordance with ARS §23-941 if the claimant timely requests a hearing.
2 The administrative law judge will issue a final order resolving all legal and factual issues.
3 Subsequent to the administrative law judge issuing his or her final order, the only avenue to
4 further appeal is for the aggrieved party to file a petition for writ of certiorari with the Arizona
5 Court of Appeals, as established by ARS §23-951.

6 ARS §23-951 *also* establishes a judicial court's limited role in reviewing a workers'
7 compensation matter. First, the court's only role is limited to (1) whether the administrative law
8 judge acted "without or in excess of its power" and (2) whether the administrative law judge's
9 findings of fact support the order. Second, under ARS §23-951, the court is limited to either (1)
10 affirming or (2) setting aside the award. At no point does ARS §23-951 allow a judicial court to
11 grant a Motion for Partial Summary Judgment as Plaintiffs seek.

12 In light of the above-mentioned statutes, this matter is improperly before this Court. The
13 instant case is currently pending before the Arizona Industrial Commission and any judicial
14 review of the same is thusly unripe.

15 **2. Similar to Nevada Law, ARS §23-1023 Grants COPPERPOINT a Lien on All**
16 **Proceeds of Third-Party Settlements.**

17 Applying Arizona law, COPPERPOINT has a valid lien as ARS §23-1023 similarly grants
18 workers' compensation carriers lien rights in medical malpractice settlements. ARS §23-1023
19 (D) states that:

20 **ARS §23-1023. Liability of third persons to injured employee; election of remedies**

21 D. If the employee proceeds against the other person, compensation and medical,
22 surgical and hospital benefits shall be paid as provided in this chapter and the
23 insurance carrier or other person liable to pay the claim shall have a lien on the
24 amount actually collectable from the other person to the extent of such
compensation and medical, surgical and hospital benefits paid. This lien shall not
be subject to a collection fee. The amount actually collectable shall be the total
recovery less the reasonable and necessary expenses, including attorney fees,
actually expended in securing the recovery. In any action arising out of an

aggravation of a previously accepted industrial injury, the lien shall only apply to amounts expended for compensation and treatment of the aggravation. The insurance carrier or person shall contribute only the deficiency between the amount actually collected and the compensation and medical, surgical and hospital benefits provided or estimated by this chapter for the case. Compromise of any claim by the employee or the employee's dependents at an amount less than the compensation and medical, surgical and hospital benefits provided for shall be made only with written approval of the insurance carrier or self-insured employer liable to pay the claim.

See ARS §23-1023 (2020). Further, in *State Compensation Fund v. Nelson*, the Arizona Supreme Court explained that:

According to this statute, the Fund "shall have a lien on the amount actually collectable." The statute describes the "amount actually collectable" as the "total recovery less the reasonable and necessary expenses." The issue, therefore, "resolves into a determination of what sums constitute the 'amount actually collectable' or the 'amount actually collected.'" We believe that the "total recovery" refers only to the total sum of money awarded by judgment. It should be noted that the phrase "amount actually collectable" refers to the sum of money the compensation carrier's lien rights can reach, not when the funds can be reached.

See *State Comp. Fund v. Nelson*, 153 Ariz. 450, 453, 737 P.2d 1088, 1091 (1987).

Under ARS §23-1022, COPPERPOINT has a valid lien on Plaintiffs' medical malpractice settlement. Indeed, ARS §23-1022 *specifically* grants COPPERPOINT lien rights in cases of *any* aggravation of an industrial injury, including through medical malpractice. As the Arizona Supreme Court explained in *State Comp. Fund v. Nelson*, the carrier's lien rights extend to "the amount actually collectible" as subtracting "reasonable and necessary" expenses from the "total recovery" received via judgement. Accordingly, COPPERPOINT'S lien is valid under Arizona law and the instant Motion must therefore be denied.

WHEREFORE, Defendants, COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY, respectfully requests that the District Court grant the following relief:

- 1) That the District Court DENY Plaintiffs' Motion for Partial Summary Judgment.

2) That the District Court award COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY attorneys' fees for having to defend against Plaintiffs' motion.

Dated this 9th day September 2020.

HOOKS MENG & CLEMENT
By:

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SAMI RANDOLPH, ESQ.
Attorneys for Defendants
COPPERPOINT MUTUAL INSURANCE
HOLDING COMPANY and
COPPERPOINT GENERAL INSURANCE
COMPANY

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Opposition filed concerning Clark County, District Court **Case No.: A-20-814541-C** does not contain the social security number of any person.

Sami Randolph
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SAMI RANDOLPH, ESQ.
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Attorneys for Defendants
COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and
COPPERPOINT GENERAL INSURANCE COMPANY

September 9, 2020
Date

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that on the 9th day of September 2020, the forgoing
3 **COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and COPPERPOINT**
4 **GENERAL INSURANCE COMPANY'S OPPOSITION TO PLAINTIFFS' MOTION FOR**
5 **PARTIAL SUMMARY JUDGMENT** was served on the following by Electronic Service to all
6 parties on the Odyssey Service List.

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16 KJAR, McKENNA & STOCKALPER LLP
841 APOLLO STREET, SUITE 101
EL SEGUNDO CA 90245
17 *Attorneys for Defendants*
18 *KENNETH MARSHALL SILBERBERG and LAW OFFICES OF MARSHALL SILBERBERG*

19 THOMAS S. ALCH, ESQ.
20 SHOOP, A PROFESSIONAL LAW CORPORATION
21 9701 WILSHIRE BLVD., STE 950
22 BEVERLY HILLS CA 90212

23 Dated this 9th day of September 2020.

24 /s/ Terry Rodriguez
An Employee of HOOKS MENG & CLEMENT

EXHIBIT A

EXHIBIT A



3030 N. 3rd St PHOENIX, AZ 85012-3039, 602-631-2300

January 5, 2016

DARIA HARPER
#C332
3485 S GAYLORD COURT
ENGLEWOOD CO 80113

Claimant: Daria Harper
Claim No: 14G01532
DOI: 08/11/2014
Employer: Islander RV Resort LLC

Doc Type: 41200

NOTICE OF INTENTION
(Pursuant to ARS 23-1023)

Dear Daria Harper:

Your claim file shows that you may have been injured by the negligence or wrongdoing of another. To help us process your claim, it is important that we know whether you intend to take any action against the person(s) who may have been responsible for your injury.

Please fill in the information on the attached form and return the form.

Sincerely,

Pam Fudge

CC: Islander RV Resort LLC

Enclosure

EXHIBIT B

EXHIBIT B

Subro



3030 N. 3rd St. Phoenix AZ 85012-3039 602-631-2300

January 5, 2016

The Law Office of Marshall Silberberg
3333 Michelson Drive, Suite 710
Irvine, CA 92612

Claimant: Daria Harper
DOI: 8/11/2014
Claim No.: 14-G01532 /
Employer: Islander RV Resort

Dear Attorney:

I have been notified that you have been hired by Ms. Harper for a med-malpractice case.

Please note that we have a lien and are requesting you to provide us with a letter of representation and something signed by Ms. Harper that indicates she hired your firm, such as a release.

Please provide us a copy the conformed complaint at your earliest convenience.

I look forward to hearing from your office.

Thank you

Sincerely,

Pam Fudge
Recovery Specialist
602-631-2024
602-631-2188

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EXHIBIT C

EXHIBIT C

2/25/14

Subroxy

SECOND REQUEST



3030 N. 3rd St. Phoenix AZ 85012-3039 602-631-2300

~~January 5, 2016~~

The Law Office of Marshall Silberberg
3333 Michelson Drive, Suite 710
Irvine, CA 92612

Claimant: Daria Harper
DOI: 8/11/2014
Claim No.: 14-G01532 ✓
Employer: Islander RV Resort

Dear Attorney:

I have been notified that you have been hired by Ms. Harper for a med-malpractice case.

Please note that we have a lien and are requesting you to provide us with a letter of representation and something signed by Ms. Harper that indicates she hired your firm, such as a release.

Please provide us a copy the conformed complaint at your earliest convenience.

I look forward to hearing from your office.

Thank you

Sincerely,

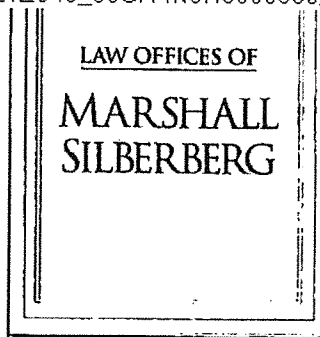
Pam Fudge
Recovery Specialist
602-631-2024
602-631-2188

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EXHIBIT D

EXHIBIT D



Subro X



March 22, 2016

Pam Fudge
Copper Point Insurance Companies
PO Box 33069
Phoenix, AZ 85067-3069

Re: Daria Harper
Claim No.: 14G01532 ✓
DOI: 08/11/2014
Employer: Islander RV Resort LLC

Dear Ms. Fudge:

Relative to the above, please be advised that our office has been retained to represent the interests of Daria Harper. We are evaluating all potential claims and will timely file a Complaint on Ms. Harper's behalf. We will continue to keep you apprised of all significant developments as they occur.

In the meantime, we would appreciate it if you could forward us a copy of Ms. Harper's CD of medical records from Valley Hospital in Las Vegas.

I remain,

Very truly yours,

A handwritten signature in dark ink, appearing to read "Marshall Silberberg".

Marshall Silberberg

MS/jd

RECEIVED

MAR 28 2016

LEGAL

3333 Michelson Drive, Suite 710 | Irvine, CA 92612 | (949) 718-0960 Phone | (949) 266-5811 Fax

11755 Wilshire Boulevard, Suite 1845 | Los Angeles, CA 90025 | (949) 718-0960 Phone | (949) 266-5811 Fax

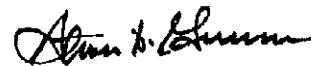
www.silberberg-law.com

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EXHIBIT E

EXHIBIT E



CLERK OF THE COURT

Thomas S. Alch, Esquire
Nevada State Bar No. 6876
Law Offices of Thomas S. Alch
500 N. Rainbow Boulevard, Suite 300
Las Vegas, Nevada 89107
Telephone: (702) 740-4140

100 N. Crescent Drive, Suite 360
Beverly Hills, California 90210
Telephone: (310) 281-8700

Attorney for Plaintiffs DARIA HARPER and DANIEL WININGER

DISTRICT COURT

CLARK COUNTY NEVADA

DARIA HARPER, DANIEL WININGER,

Plaintiffs,

vs.

VALLEY HOSPITAL MEDICAL
CENTER, INC., doing business as VALLEY
HOSPITAL MEDICAL CENTER;
VALLEY HEALTH SYSTEM, LLC, doing
business as VALLEY HOSPITAL
MEDICAL CENTER; JEFFREY
DAVIDSON, M.D.; CYNDI TRAN, D.O.;
PAUL JANDA, D.O.; ELIZABETH
PHUNG-HART, D.O.; ANDREA
AGCAOILI, D.O.; MURAD JUSSA, M.D.,
and, DOES 1 through 250, inclusive,

Defendants.

CASE NO A- 16- 738004- C

DEPARTMENT NO. XVI I

ARBITRATION EXEMPTION CLAIMED:
MEDICAL MALPRACTICE - RULE 3(A)(9)

COMPLAINT FOR MEDICAL MALPRACTICE

MEDICAL MALPRACTICE

LOSS OF CONSORTIUM

Plaintiffs DARIA HARPER and DANIEL WININGER, through Counsel, allege in
their Complaint for Medical Malpractice and Loss of Consortium, as follows:

///

1 1. The true names, identities or capacities, whether individual, associate,
2 corporate or otherwise of Defendants DOES 1 through 250, inclusive, are unknown to
3 Plaintiffs who, therefore, sue said Defendants by such fictitious names. When the true names,
4 identities or capacities of such fictitiously-designated Defendants are ascertained, Plaintiffs
5 will ask leave of Court to amend the Complaint to insert said true names, identities and
6 capacities, together with the proper charging allegations.

7 2. Plaintiffs are informed and believe and thereon allege that each of the
8 Defendants sued herein as a DOE is responsible in some manner for the events and
9 happenings herein referred to, thereby legally causing the injuries and damages to the
10 Plaintiffs as herein alleged.

11 3. All of the facts, acts, events and circumstances herein mentioned and described
12 occurred in Clark County, State of Nevada, and all Defendants are residents of Clark County,
13 State of Nevada, doing business in said county, State of Nevada.

14 4. At all times herein mentioned Plaintiffs and each of them, were and currently
15 are residents of Lake Havasu City, state of Arizona.

16 5. At all times herein mentioned, Defendants JEFFREY DAVIDSON, M.D.,
17 CYNDI TRAN, D.O., PAUL JANDA, D.O. ELIZABETH PHUNG-HART, D.O., ANDREA
18 AGCAOILI, D.O., MURAD JUSSA, M.D., and DOES 1 through 50, inclusive, were, and now
19 are, physicians and surgeons, holding themselves out as duly licensed to practice their
20 profession under and by virtue of the laws of the State of Nevada and were, and now are,
21 engaged in the practice of their profession in the State of Nevada.

22 6. At all times herein mentioned, Defendants DOES 51 through 100, inclusive,
23 were, and now are, registered nurses, licensed vocational nurses, practical nurses, physician
24 assistants, aids, technicians, attendants, students or other paramedical personnel, holding
25 themselves out as duly able to practice their profession under and by virtue of the laws of the
26 State of Nevada and were, and now are, engaged in the practice of their profession in the State
27 of Nevada and acting as agents, employees and servants of some or all of the other Defendants
28 within the course and scope of said agency or employment.

1 7. At all times herein mentioned, Defendants VALLEY HOSPITAL MEDICAL
2 CENTER, INC., doing business as VALLEY HOSPITAL MEDICAL CENTER, and
3 VALLEY HEALTH SYSTEM, LLC., doing business as VALLEY HOSPITAL MEDICAL
4 CENTER and DOES 101 through 150, and 151-250, and each of them, were corporations,
5 partnerships, joint ventures, or other entities organized and existing under the laws of the State
6 of Nevada and Delaware, with their principal place of business situated in the State of Nevada.

7 8. Defendants VALLEY HOSPITAL MEDICAL CENTER, INC., doing business
8 as VALLEY HOSPITAL MEDICAL CENTER and VALLEY HEALTH SYSTEM, LLC.,
9 doing business as VALLEY HOSPITAL MEDICAL CENTER and DOES 151 through 200,
10 inclusive, were at all times herein mentioned duly organized Nevada corporations or hospitals
11 existing under and by virtue of the laws of the State of Nevada and other States; that said
12 Defendant corporations, hospitals and the remaining Defendants, and each of them, owned,
13 operated, managed and controlled a general hospital facility within Clark County, State of
14 Nevada, held out to the public at large and to the Plaintiffs herein, as properly equipped, fully
15 accredited, competently staffed by qualified and prudent personnel and operating in
16 compliance with the standard of due care maintained in other properly equipped, efficiently
17 operated and administered, accredited hospitals in said community commonly known as
18 VALLEY HOSPITAL MEDICAL CENTER.

19 9. At all times herein mentioned Defendants DOES 201 through 250 were doing
20 business as a district hospital, a hospital operated by a government entity open to the public, or
21 a medical facility operated by a government entity open to the public rendering medical,
22 surgical, hospital, diagnostic, nursing and other care to the general public for compensation.

23 10. All of the acts complained of herein by Plaintiffs against said Defendants were
24 done and performed by said Defendants by and through their duly authorized agents, servants
25 and employees, each of whom and all of whom were at all times mentioned herein acting
26 within the course, purpose, and scope of their said agency, service and employment, and
27 whose conduct was ratified by all Defendants, and each of them. Further, each Defendant
28 ratified and affirmed the conduct of each other Defendant. At all times set forth herein, each of

1 the Defendants were acting as the agents, servants, and employees of the other Defendants.

2 11. Defendants VALLEY HOSPITAL MEDICAL CENTER, INC., doing business
3 as VALLEY HOSPITAL MEDICAL CENTER and VALLEY HEALTH SYSTEM, LLC.,
4 doing business as VALLEY HOSPITAL MEDICAL CENTER and DOES 151 through 250,
5 and each of them, at all times herein mentioned were institutions or controlled institutions,
6 duly accredited by the Joint Commission on Hospital Accreditation, and assumed and held
7 themselves out to the public as in compliance with the minimum standards required by said
8 Joint Commission for such accreditation.

9 12. Plaintiffs are informed and believe and upon such information and belief allege
10 that at all times herein mentioned, Defendants and other Defendants named fictitiously, were
11 the agents, servants, employees, joint-venturers, and copartners of their said co-Defendants
12 and, as such, were acting within the course and scope of such agency, service, partnership,
13 venture, and employment at all times herein mentioned; that each and every Defendant, as
14 aforesaid, when acting as a principal, was negligent in the selection and hiring of each and
15 every other Defendant, as its agent, servant, employee, joint-venturer and partner. Further,
16 each and every Defendant ratified the conduct of the other Defendants.

17 13. Attached to this complaint are the following expert declarations supporting the
18 allegations of this complaint;

19 (1) David A. Neer, M.D., Neurology specialist;

20 (2) Michael Steven Ritter M.D., Emergency Medicine specialist;

21 I.

22 **PLAINTIFF DARIA HARPER ALLEGES FOR A CAUSE OF ACTION FOR**
23 **MEDICAL MALPRACTICE AGAINST DEFENDANTS AND EACH OF**
24 **THEM AS FOLLOWS:**

25 14. Plaintiff DARIA HARPER repeats and repleads each and every allegation
26 contained in all prior paragraphs and incorporates the same herein by reference as to
27 Defendants and each of them.

28 ///

1 15. At all times herein mentioned, the Plaintiff, DARIA HARPER, was in the
2 exclusive control of the Defendants, and each of them, and that at no time prior to the events,
3 conduct, activities, care and treatment herein complained of did the Defendants herein, or any
4 of them, obtain knowledgeable, informed consent for said care, treatment or conduct; that
5 prior to the initiation of or performance of said care, treatment, procedure or conduct no
6 opportunity was afforded the Plaintiff or any authorized agent of the Plaintiff to exercise
7 voluntary, knowledgeable and informed consent to said care, treatment, procedure or conduct.

8 16. On or about June 9, 2015 Plaintiff employed Defendants, and each of them, to
9 diagnose and treat her medical condition, and to do all things necessary for her care and
10 treatment, including, but not limited to surgery and hospitalization.

11 17. While Plaintiff DARIA HARPER was under the sole and exclusive care and
12 control of the Defendants, and each of them, Defendants, and each of them negligently,
13 carelessly and unskillfully examined, treated, cared for, diagnosed, operated upon, attended
14 and otherwise handled and controlled the Plaintiff herein, thereby proximately causing
15 injuries and damages to the. Said acts of negligence include, but are not limited to that
16 although the plaintiff was emergently transferred to Valley Hospital Medical Center on June 9,
17 2015, for an emergency neurosurgical consultation because of weakness and an inability to
18 move, as well as a CT scan that showed a mass compressing her spinal cord, the defendants
19 and each of them negligently delayed the diagnosis and treatment, and surgery was not
20 performed until June 11, 2015. The negligent failure to diagnose and treat Daria Harper's
21 condition caused her permanent paralysis.

22 18. Defendants VALLEY HOSPITAL MEDICAL CENTER, INC., doing business
23 as VALLEY HOSPITAL MEDICAL CENTER and VALLEY HEALTH SYSTEM, LLC.,
24 doing business as VALLEY HOSPITAL MEDICAL CENTER, and DOES 101-250, neglected
25 to adequately select a competent medical staff and to periodically review the competency of its
26 medical staff and failed to adequately monitor its staff such that the Plaintiff was caused to,
27 and did suffer damages.

28 ///

19. As a legal result of the negligence of the Defendants, and each of them, the Plaintiff was injured in health, strength and activity, sustaining severe shock, and injury to the body, all of which said injuries have caused and continue to cause Plaintiff great physical, emotional, and nervous pain and suffering, and which said injuries Plaintiff is informed and believes, and thereon alleges, will result in loss of earnings, permanent disability, loss of enjoyment of life, and impairment of earning capacity all to Plaintiff's damage, exceeding \$10,000 and the minimum jurisdictional limit of the Court.

20. As a further legal result of the negligence of the Defendants, and each of them, and the resulting injuries to the Plaintiff, said Plaintiff was compelled to, and did, incur expenses for medical and surgical attention, hospitalization, nursing, medication and incidentals for said Plaintiff in an amount unknown to Plaintiff at present.

21. As a further legal result of the negligence of the Defendants, and each of them, and of the resulting injuries, Plaintiff will be obliged to incur expenses for medical care and hospitalization for an indefinite period in the future and to pay for these expenses in the treatment and relief of injuries for medical and surgical attention, hospitalization, nursing, medication, and incidentals for said Plaintiff in an amount unknown to Plaintiff at present.

22. As a further legal result of the negligence of the Defendants, and each of them, Plaintiff will suffer a decreased earning capacity in the future and future earnings to Plaintiff's further damage in a sum unknown at present.

II.

**PLAINTIFF DANIEL WININGER ALLEGES FOR A CAUSE OF ACTION
FOR LOSS OF CONSORTIUM AGAINST DEFENDANTS AND EACH OF
THEM AS FOLLOWS:**

23. Plaintiff, Daniel Wininger, alleges and incorporates herein all the allegations contained in paragraphs 1 through 22 of this Complaint.

24. Plaintiffs, Daria Harper and Daniel Winger, were legally married at the time of defendants' negligence.

///

1 25. As a direct and legal result of the defendants', and each of them, negligence,
2 carelessness, and unskillfulness, plaintiff, Daniel Wininger, has and will continue to be
3 deprived of the consortium of his wife, Daria Harper, all to his general and special damages,
4 including pain, suffering, mental, physical and emotional distress. (Please see Expert
5 Affidavits of Michael Ritter, MD, and David Neer, MD, attached hereto as Exhibit 1 and
6 incorporated fully herein.)

7 WHEREFORE, Plaintiffs pray for damages against the
8 Defendants, and each of them, as follows:

9 I. FOR THE CAUSE OF ACTION FOR MEDICAL MALPRACTICE FOR
10 PLAINTIFF DARIA HARPER:

- 11 1. General damages, according to proof and exceeding \$10,000.
- 12 2. Past and future medical expenses, according to proof;
- 13 3. For loss of future earnings and earning capacity,
14 according to proof;
- 15 4. Costs of suit incurred herein, and
- 16 5. For such other and further relief as to the Court appears just and proper.

17 II. FOR THE CAUSE OF ACTION FOR LOSS OF CONSORTIUM FOR
18 PLAINTIFF DANIEL WININGER

- 19 1. General damages, according to proof and exceeding \$10,000.
- 20 2. Past and future medical expenses, according to proof;
- 21 3. For loss of future earnings and earning capacity,
22 according to proof;
- 23 4. Costs of suit incurred herein, and
- 24 5. For such other and further relief as to the Court appears just and proper.

25 ///

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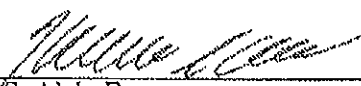
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DATED: June 7, 2016

LAW OFFICES OF THOMAS S. ALCH

By: 
Thomas S. Alch, Esq.
Nevada State Bar No. 6876
Law Offices of Thomas S. Alch
500 N. Rainbow Boulevard, Suite 300
Las Vegas, Nevada 89107
Telephone: (702) 740-4140

100 N. Crescent Drive, Suite 360
Beverly Hills, California 90210
Telephone: (310) 281-8700
Attorney for Plaintiffs

EXHIBIT "A"

AFFIDAVIT OF DAVID NEER, M.D.

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

DAVID NEER, M.D., being duly sworn, deposes and says:

1. I received my medical degree from the University of Illinois College of Medicine in 1969. In 1973, I graduated from the University of Illinois Graduate School, Department of Pharmacology. I completed an internship in Internal Medicine at the University of Illinois Hospital and Veterans Administration Hospital in 1970. I completed a residency in Neurology at Rush-Presbyterian-St. Luke's Medical Center in 1973. I have been an Assistant Professor and Assistant Clinical Professor of Neurology at both Rush Medical College and UCLA Hospitals and Clinics. I was engaged in the private practice of Neurology for 37 years. I have held staff positions at Lakewood Regional Medical Center, UCLA-Harbor General Medical Center, UCLA Hospitals and Clinics, and Long Beach Memorial Medical Center, in California. At those facilities I also held various administrative positions, such as Chief of Staff, Consulting Staff, and member of the Governing Board.

2. During the time of the care at issue in this case my area of practice was and is substantially similar to the practice being engaged at the time herein. Based upon my education, training, experience and review of the materials set forth below, I am familiar with the standard of care expected of reasonably prudent physicians practicing medicine in the state of Nevada during the time relevant to this lawsuit. We are dealing with a national standard of care. As a neurologist I was involved on a daily basis with critically ill patients and patients with emergent neurological conditions, such as spinal epidural abscesses. As such, I am familiar with the standard of care applicable to hospitals, nursing staff, neurologists, hospitalists, and critical care physicians when faced with a patient with an emergent spinal cord condition. Further, I am familiar with the standard of care applicable to all physicians and healthcare providers in the setting of an emergent spinal cord condition, both in Nevada and nationally. Specifically, I am familiar with the standard of care as it applies to Valley Hospital Medical Center with regard to the medical care that the hospitals, their nurses and staff, and the physicians, including, Dr. Cyndi Tran, Dr. Paul Janda, Dr. Andrea Agcaoglu, Dr. Elizabeth Phung-Hart and Dr. Murrad Jussa, were required to provide to Daria Harper. Finally, it is

1 my understanding that the multiple residents who examined Ms. Harper were employees of Valley
2 Hospital, with the attending physicians and hospital both bearing responsibility for their actions and
3 inactions. Finally, as indicated above, the standard of practice in this context is a national standard, and
4 therefore applies to Las Vegas, Nevada as of June 2015.

5 3. I have reviewed the Havasu Regional Medical Center and Valley Hospital Medical Center
6 records, including diagnostic imaging from those facilities, all pertaining to Daria Harper, who was a
7 patient at Havasu Regional Medical Center and Valley Hospital Medical Center on June 8, 2015 to July
8 15, 2015. Ms. Harper was admitted to each facility with complaints of inability to move her upper and
9 lower extremities.

10 4. Ms. Harper arrived at Valley Hospital at approximately 6:00 AM on June 9, 2015.
11 Thereafter, she was examined by an emergency room physician, who noted that she was unable to move,
12 was not responsive, and had been admitted for further neurology and possible neurosurgical evaluation.
13 The emergency room physician also noted the CT scan from Havasu Regional revealed displacement of
14 the thecal sac of Ms. Harper's spine. Given this information, the standard of care required stat neurology
15 and neurosurgical consultations, along with a stat CT scan and/or MRI of the spine. A breach of the
16 standard of care occurred when no such orders were placed.

17 5. Thereafter, Ms. Harper was evaluated by Dr. Cyndi Tran and Dr. Paul Janda. Both
18 physicians noted that Ms. Harper was unable to move her extremities, with an impaired neurological
19 examination. Further, Dr. Tran and Dr. Janda noted that the CT scan of the spine revealed no acute
20 pathology, fracture, malalignment or soft tissue swelling, which was incorrect and demonstrates that
21 neither physician reviewed the imaging or the report. Based upon this information, the standard of care
22 required that Dr. Tran and Dr. Janda order a stat neurosurgical consultation and a stat MRI of the spine.
23 However, neither physician issued such orders, thereby breaching the standard of care. Further, as stated
24 above, as Dr. Tran was a resident, both Valley Hospital and Dr. Janda are responsible for her breach of the
25 standard of care.

26 6. At or about 12:15 PM, Ms. Harper was evaluated by Dr. Andrea Agcaoili. At or about that
27 time, Dr. Agcaoili issued an order for a stat CT scan of the thorax. Given Ms. Harper's condition,
28 including the emergent findings of the CT scan from Havasu Regional, her inability to move, low tone, and

1 lack of motor response; the standard of care required that Dr. Agcaoili review the chart and issue stat orders
2 for a neurosurgical consultation and an MRI of the spine. Dr. Agcaoili's failure to properly assess the
3 patient, review the chart, and ensure that Ms. Harper was receiving treatment, which would have prompted
4 the aforementioned orders, was a breach of the standard of care. As stated above, as Dr. Agcaoili was a
5 resident, both Valley Hospital and Dr. Murrad Jussa are responsible for her breach of the standard of care.

6 7. At or about 12:15 PM, Ms. Harper was also evaluated by Dr. Elizabeth Phung-Hart. Dr.
7 Phung-Hart issued orders for neurological assessments. However, the records do not reveal that Dr.
8 Phung-Hart examined the patient prior to issuing such orders, nor did she review the chart to ensure that
9 Ms. Harper was receiving proper care. Given Ms. Harper's condition, including the emergent findings of
10 the CT scan from Havasu Regional, her inability to move, low tone, and lack of motor response, the
11 standard of care required that Dr. Phung-Hart review the chart and issue stat orders for a neurosurgical
12 consultation and an MRI of the spine. The failure to do so was a breach of the standard of care. Assuming
13 that Dr. Phung-Hart is a resident, both her attending physician, whose identity is unknown at this time, and
14 Valley Hospital are responsible for her breach of the standard of care.

15 8. It was not until the following morning at 7:13 AM that Ms. Harper was next evaluated by
16 a physician. At that time, she was examined by Dr. Agcaoili and Dr. Murrad Jussa. Both physicians noted
17 that Ms. Harper was unable to move her arms and legs, with no motor response, and that overnight she had
18 developed a high fever, which is a sign of infection. Dr. Agcaoili and Dr. Jussa also noted, incorrectly, that
19 a CT scan of Ms. Harper's spine revealed no acute pathology, fracture, malalignment or soft tissue
20 swelling. Dr. Agcaoili's and Dr. Jussa's plan noted weakness in the upper and lower extremities secondary
21 to a "CVA vs spinal lesion vs acute inflammatory demyelination polyradiculoneuropathy (AIDP) vs opiate
22 overdose," with a follow up brain MRI of the spine. However, given those findings the standard of care
23 required that both Dr. Agcaoili and Dr. Jussa order a stat neurosurgical consultation and a stat MRI of the
24 spine. The failure to do so was a breach of the standard of care. Further, as stated above, as Dr. Agcaoili
25 was a resident, both Valley Hospital and Dr. Jussa are responsible for her breach of the standard of care.

26 9. Finally, it was not until the evening of June 10, 2015, that Ms. Harper received an MRI of
27 her spine which identified a spinal epidural abscess and prompted notification of neurosurgeon Dr. Gregory
28 Douds. By that time, more than 48 hours had elapsed from the start of Ms. Harper's symptoms. It is my

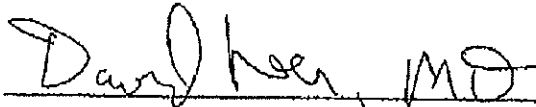
1 opinion, to a reasonable degree of medical probability, that by the time Ms. Harper's abscess was identified
2 on MRI and Dr. Douds notified, Ms. Harper's spinal cord was irreparably damaged. It is also my opinion,
3 to a reasonable degree of medical probability, had Ms. Harper received earlier medical treatment,
4 compliant with the standard of care, she would not be paralyzed.

5 10. It is my opinion to a reasonable degree of medical certainty that each of the standard of care
6 violations set forth in this affidavit were substantial factors in causing permanent paralysis and injury to
7 Daria Harper, as well as her husband's loss of consortium.

8 FURTHER YOUR AFFIANT SAYETH NAUGHT

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

11 Executed this 3 day of June, 2016, at Santa Monica, California.

12
13 

14 DAVID NEER, MD

EXHIBIT “B”

AFFIDAVIT OF MICHAEL STEVEN RITTER, MD, FAAEM, FACEP

STATE OF CALIFORNIA)

COUNTY OF ORANGE)

MICHAEL STEVEN RITTER, MD, FAAEM, FACEP, being duly sworn, deposes and says:

1. I received my medical degree from the University of California, Irvine, in 1991. I completed a residency in Emergency Medicine at the University of California, Irvine, Medical Center in 1994. Since 1996 I have been an Attending Physician in the emergency department at Mission Hospital and Regional Medical Center & Children's Hospital at Mission, in Mission Viejo, California. From 1999 to 2012, I was the Associate Medical Director, Emergency Department, at Mission Hospital and Children's Hospital at Mission. Additionally, since 1998, I have been an Assistant Clinical Professor, Department of Emergency Medicine, at the University of California, Irvine Medical Center. I am currently the Medical Director, Emergency Department, at Mission Hospital and Children's Hospital at Mission. I am Board Certified in Emergency Medicine.

2. During the time of the care at issue in this case and currently my area of practice was and is substantially similar to the practice being engaged at the time herein. Based upon my education, training experience and review of the materials set forth below, I am familiar with the standard of care expected of reasonably prudent physicians practicing medicine in the state of Nevada during the time relevant to this lawsuit. We are dealing with a national standard of care. As medical director of the emergency department I am involved on a daily basis with administrative responsibilities at Mission Hospital, which includes review of hospital and nursing protocols and thus, I am also familiar with the standard of care applicable to hospitals, nursing staff and all other health care providers who provide emergency services in the state of Nevada during the time relevant to this lawsuit. Specifically, I am familiar with the standard of care as it applies to Valley Hospital Medical Center, their nurses and health care providers, including, but not limited to, Dr. Jeffrey Davidson, with regard to the medical care that the hospitals and their nurses and staff were required to provide to Daria Harper. As indicated, the standard of practice is a national standard therefore applies to Las Vegas, Nevada as of June 2015.

3. I have reviewed the Havasu Regional Medical Center and Valley Hospital Medical Center

1 records, including diagnostic imaging from those facilities, all pertaining to Daria Harper, who was a
2 patient at Havasu Regional Medical Center and Valley Hospital Medical Center from June 8, 2015 to July
3 15, 2015. Ms. Harper was admitted to each facility with complaints of inability to move her upper and
4 lower extremities.

5 4. Ms. Harper presented to Havasu Regional Medical Center on June 8, 2015, with complaints
6 of bilateral lower and upper extremity weakness, with inability to move and low tone. A CT scan
7 performed at 1:44 AM on June 9, 2015, revealed anterior and rightward displacement of the thecal sac,
8 suspicious for either a hematoma or an abscess. Such a finding is an emergent condition. The standard
9 of care in this setting, required that Ms. Harper be transferred on a stat bases to another facility for higher
10 level care.

11 5. Ms. Harper arrived at Valley Hospital at approximately 6:00 AM on June 9, 2015.
12 Thereafter, she was examined by Dr. Jeffrey Davidson, who noted that she was unable to move, was not
13 responsive, and had been admitted for further neurology and possible neurosurgical evaluation. Dr.
14 Davidson also noted the CT scan from Havasu Regional revealed displacement of the thecal sac of Ms.
15 Harper's spine. Given this information, the standard of care to a reasonable degree of medical certainty
16 required stat neurology and neurosurgical consultations, along with a stat CT scan and/or MRI of the spine.
17 Dr. Davidson breached the standard of care by failing to issue such orders. Plaintiff, Daria Harper, did not
18 exercise any independent choice in the selection of her physicians and other healthcare professionals at the
19 time that she presented with her neurosurgical emergency. Physicians and staff were selected for her and,
20 as such, the physicians and staff were acting as agents for Valley Hospital Medical Center.

21 6. By that time Ms. Harper underwent surgery to decompress her spine, more than 48 hours
22 had elapsed from the start of Ms. Harper's symptoms. It is my opinion, to a reasonable degree of medical
23 probability, that by the time Ms. Harper's abscess was identified on MRI and Dr. Douds notified, Ms.
24 Harper's spinal cord was irreparably damaged. It is also my opinion, to a reasonable degree of medical
25 probability, had Ms. Harper received earlier medical treatment, compliant with the standard of care, she
26 would not be paralyzed.

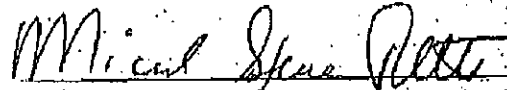
27 7. It is my opinion to a reasonable degree of medical certainty that each of the standard of care
28 violations set forth in this affidavit were substantial factors in causing permanent paralysis and injury to

1 Daria Harper, as well as her husband's loss of consortium.

2 FURTHER YOUR AFFIANT SAYETH NAUGHT

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

5 Executed this 3rd day of June, 2016, at Orange County, California.

6
7 

8 MICHAEL STEVEN RITTER, MD, FAAEM, FACEP
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EXHIBIT F

EXHIBIT F

Subro



Legal Department
3030 N. 3rd Street
Phoenix, AZ 85012

June 22, 2018

LAW OFFICES OF MARSHALL SILBERBERG
3333 MICHELSON DR STE 710
IRVINE CA 92612
F 949-266-5811

Claimant: Daria Harper
DOI: 08/11/14
Claim No.: 14G01532
Employer: Islander R V Resort L L C

Dear Attorney:

Please provide an update on this case and please remember that pursuant to A.R.S. §23-1023(C), to please keep CopperPoint apprised of the status of the claim and notify us upon any resolution of the claim.

As you are aware, A.R.S. §23-1023(D) provides for a statutory lien and credit for any amounts collected on the third-party claim. Any resolution of the claim for less than the statutory lien requires our written approval. While it is the position of CopperPoint that we are entitled to our full statutory lien and credit, there may be circumstances where CopperPoint will reduce our statutory lien or credit if warranted depending upon the particular facts and circumstances of each claim. Any agreement to reduce or waive our statutory lien or future credit must be acknowledged by CopperPoint in writing. Any alleged oral waiver or reduction of our lien or future credit will not be recognized unless it is acknowledged by us in writing.

We will provide you with our current lien information as you request during your handling of the third-party claim. Once a claim has settled, it is imperative that you notify us for a current lien amount. Please note that until you are in agreement with an offer and have contacted us for approval, the lien is subject to change. Also, please verify all bills are paid "prior to settlement" or they can become the claimant's responsibility.

Sincerely,

Pam Fudge

Pam Fudge
Recovery Specialist
602-631-2024
602-631-2188 (fax)

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Fudge, Pam

From: Rightfax E-mail Gateway <sv-rightfaxprd-svc@copperpoint.com>
Sent: Friday, June 22, 2018 10:58 AM
To: Fudge, Pam
Subject: Your fax has been successfully sent to MARSHALL SILBERBERG at 9492665811.

Your fax has been successfully sent to MARSHALL SILBERBERG at 9492665811.

6/22/2018 10:56:46 AM Transmission Record

Sent to 99492665811 with remote ID "19492665811"

Result: (0/339;0/0) Success

Page record: 1 - 2

Elapsed time: 01:25 on channel 8

EXHIBIT G

EXHIBIT G

July 2, 2018

VIA EMAIL AND U.S. MAIL

Pam Fudge
Recovery Specialist
Legal Department
CopperPoint Insurance Companies
3030 N. 3rd Street
Phoenix, AZ 85012-3039
FAX – (602)631-2188

Re: Daria Harper
Claim No.: 14G01532
DOI: 08/11/2014
Employer: Islander RV Resort LLC

Dear Ms. Fudge:

I received your letter dated June 22, 2018, regarding your request for an update and your claim to a lien in this matter. As of this time, Mrs. Harper's case has settled. You were not made aware of the settlement because CopperPoint is not entitled to a lien, as will be explained in more detail below.

As I understand it, CopperPoint claims it is entitled to a lien based upon A.R.S. § 23-1023(D). Mrs. Harper's case was never filed in Arizona, it was filed, litigated, and resolved in Nevada as that is where the injury occurred. Hence, Arizona law has no application or enforceability in Nevada. Therefore, the aforementioned code section does not permit a lien in another state, which is a position supported by the Nevada courts and case law.

As for Nevada law, that State does not permit Workers' Compensation to assert a lien in a medical malpractice case. NRS § 42.021 sets forth "**In an action for injury or death against a provider of health care based upon professional negligence**, if the defendant so elects, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the injury or death pursuant to the United States Social Security Act, any state or federal income disability or **worker's compensation** act, any health, sickness or income-disability insurance, accident insurance that provides health benefits or income-disability coverage, and any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services. If the defendant elects to introduce such evidence, the plaintiff may introduce evidence of any amount that the plaintiff has

May 12, 2020

Page 2

paid or contributed to secure the plaintiff's right to any insurance benefits concerning which the defendant has introduced evidence."

Section 42.021, goes on to state, specifically in subsection (2), that "a source of collateral benefits introduced pursuant to subsection (1) **may not....(a) Recover any amount against the plaintiff.**" (I have attached a copy of this statute for your convenience). Quite clearly, this means that in the State of Nevada, any workers compensation insurance company may not recover any amount against a plaintiff. This also means that any such insurance company may not place a lien on any proceeds of a settlement.

Here, there is no dispute that Mrs. Harper suffered an injury in the State of Nevada as a result of medical malpractice. For this reason, Mrs. Harper's case was filed in Nevada, governed by Nevada law, thereby implicating the statute cited above, along with the protections that preclude CopperPoint having a lien on any proceeds. Nevada law is identical to California law, and Courts in both states do not permits liens, such as the one to which you claim to be entitled.

Moving forward, it is my expectation, and that of my client, that CopperPoint will continue to provide for Mrs. Harper's care. Should CopperPoint at any point in time intentionally, or otherwise, withhold any medical care to which Mrs. Harper is entitled, our office will take immediate legal action.

Please call to discuss the foregoing.

I remain,

Very truly yours,

Marshall Silberberg

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EXHIBIT H

EXHIBIT H

NOTICE OF CLAIM STATUS

Carrier or Self-Insured Name and Address CopperPoint General Insurance Company / CLAIMS DEPT. P.O. Box 33069 Phoenix, AZ 85067-3069	ICA Claim No. <u>20142520533</u> Soc. Sec. No. <u>###/###/####</u> SSN not required if correct ICA claim number is provided
Authorized Third Party Administrator (TPA) Name and Address 	Carrier Claim No. <u>14G01532</u> Employer <u>ISLANDER RV RESORT LLC</u>
Claimant's Name and Address DARIA HARPER 3336 DATE PALM DR. LAKE HAVASU CITY, AZ 86404	Address <u>LAKE HAVASU CITY, AZ 86403</u> <u>LAKE HAVASU CITY, AZ 86403</u> Date of Injury <u>08/11/2014</u>

- ☐ 1. Claim is accepted.
- ☐ 2. Claim is denied.
- ☐ 3. No temporary compensation paid because the claimant has not currently sustained a temporary disability entitlement attributable to this injury beyond seven consecutive days.
- ☐ 4. Enclosed check for _____ for period of _____ through _____. Seven days deducted if disability is less than 14 calendar days. Payment has been made based on 66 2/3 percent of the wage of _____ based on the following:
- ☐ A. Statutory minimum or estimated monthly wage pending determination of Average Monthly Wage within 30 days.
- ☐ B. Average monthly wage at time of injury (see attached calculation), subject to final determination by the Industrial Commission of Arizona within 30 days.
- ☐ 5. Return to light duty effective _____. Per A.R.S. §23-1044(A) and A.R.S. §23-1062(D) benefits are payable at least monthly. Return to regular duty effective _____.
- ☐ 6. Temporary compensation and active medical treatment terminated on _____ because claimant was discharged.
- ☐ 7. Injury resulted in no permanent disability.
- ☐ 8. Injury resulted in permanent disability. Amount of permanent benefits, if any, and supportive medical maintenance benefits, if any, will be authorized by separate Notice.
- ☐ 9. Petition to Reopen accepted.
- ☐ 10. Petition to Reopen denied.
- ☒ 11. Other:

• Pursuant to A.R.S. § 23-1023, CopperPoint has a lien against Claimant's third-party recovery from a medical malpractice action (case No. A-16-738004-C) brought in the District Court of Clark County, Nevada, in an amount equal to compensation

Mailed on: 10/30/2019

By: Jeff de Veuve

Copy to: Industrial Commission of Arizona

(Authorized Representative) Tel. #: (602) 631-2966

The insurance carrier/employer will, upon request, provide claimant a copy of the medical report to support Findings 5, 6, 7 or 8.

NOTICE TO CLAIMANT: If you do not agree with this NOTICE and wish a hearing on the matter, your written Request for Hearing must be received at either office of the Industrial Commission listed below within NINETY (90) DAYS after the date of mailing of this Notice, pursuant to A.R.S. 23-941 and 23-947. IF NO SUCH APPLICATION IS RECEIVED WITHIN THAT NINETY DAY PERIOD, THIS NOTICE IS FINAL.

AVISO AL RECLAMANTE: Si usted no esta de acuerdo con este AVISO, y desea una audiencia en este caso, su peticion por escrito pidiendo una audiencia debera ser recibida en cualquiera de las oficinas de la Comision Industrial a las direcciones abajo indicadas dentro de NOVENTA (90) DIAS despues de la fecha de este AVISO, de acuerdo con las leyes A.R.S. 23-941 y 23-947. SI DICHA PETICION NO ESTA RECIBIDA DENTRO DEL PERIODO DE NOVENTA (90) DIAS, ESTE AVISO SERA CONSIDERADO FINAL.

Phoenix Office: Industrial Commission of Arizona
800 W Washington Street
Phoenix, Arizona 85007-2922

PO Box 19070
Phoenix, AZ 85005-9070

Tucson Office: Industrial Commission of Arizona
2675 E Broadway
Tucson, Arizona 85716-5342

THIS FORM APPROVED BY THE INDUSTRIAL COMMISSION OF ARIZONA FOR CARRIER USE

Date: 10/30/19
Claimant Name: Daria Harper
Claim Number: 14G01532

II. Continued from page 1

- and medical, surgical, and hospital benefits paid by CopperPoint.
- CopperPoint is entitled to accrued interest on the lien from the date settlement proceeds were disbursed.
- CopperPoint is entitled to a future credit against Claimant's recovery equal to the amount of money received by the Claimant in the malpractice action after subtracting expenses and attorney fees.
- CopperPoint is not required to pay claimant compensation or medical, surgical, or hospital benefits until the claimant's post-settlement accrued entitlement to compensation and medical benefits exceeds the credit amount.
- To the extent the settlement in the malpractice action was less than the workers' compensation benefits provided by CopperPoint, Claimant's failure to obtain CopperPoint's prior approval before settling results in forfeiture of her workers' compensation claim.

CC: Marshall Silberberg
William Stephens Collins
LAW OFFICES OF MARSHALL
SILBERBERG
3333 Michelson Drive, Suite 710
Irvine, CA 92612

EXHIBIT I

EXHIBIT I

NOTICE OF CLAIM STATUS

Carrier or Self-Insured Name and Address CopperPoint General Insurance Company 3030 N 3rd St Phoenix, AZ 85012	ICA Claim No. 20142520533
Authorized Third Party Administrator (TPA) Name and Address	Soc. Sec. No. _____ SSN not required if correct ICA claim number is provided
Claimant's Name and Address Daria Harper C/O SCHIFFMAN LAW OFFICE PC 4506 N 12TH ST PHOENIX AZ 85014	Carrier Claim No. 14G01532
	Employer Islander RV Resort LLC
	Address 751 Beachcomber Blvd Lake Havasu City, AZ 86403
	Date of Injury 08/11/2014

- ☐ 1. Claim is accepted.
- ☐ 2. Claim is denied.
- ☐ 3. No temporary compensation paid because the claimant has not currently sustained a temporary disability entitlement attributable to this injury beyond seven consecutive days.
- ☐ 4. Enclosed check for _____ for period of _____ through _____. Seven days deducted if disability is less than 14 calendar days. Payment has been made based on 66 2/3 percent of the wage of _____ based on the following:
- ☐ A. Statutory minimum or estimated monthly wage pending determination of Average Monthly Wage within 30 days.
- ☐ B. Average monthly wage at time of injury (see attached calculation), subject to final determination by the Industrial Commission of Arizona within 30 days.
- ☐ 5. Return to light duty effective _____. Per A.R.S. §23-1044(A) and A.R.S. §23-1062(D) benefits are payable at least monthly. Return to regular duty effective _____.
- ☐ 6. Temporary compensation and active medical treatment terminated on _____ because claimant was discharged.
- ☐ 7. Injury resulted in no permanent disability.
- ☐ 8. Injury resulted in permanent disability. Amount of permanent benefits, if any, and supportive medical maintenance benefits, if any, will be authorized by separate Notice.
- ☐ 9. Petition to Reopen accepted.
- ☐ 10. Petition to Reopen denied.
- ☒ 11. Other:

Future compensation, medical, surgical, hospital, pharmacy, caretaker & other benefits payable to applicant or behalf of applicant are terminated effective May 2, 2020 until CopperPoint's current lien of \$3,171,095.00 is fully exhausted

Mailed on: 05/01/2020

By: Jeffrey Deveau

Copy to: Industrial Commission of Arizona

(Authorized Representative) Tel. #: (602) 631-2300

The insurance carrier/employer will, upon request, provide claimant a copy of the medical report to support Findings 5, 6, 7 or 8.

NOTICE TO CLAIMANT: If you do not agree with this NOTICE and wish a hearing on the matter, your written Request for Hearing must be received at either office of the Industrial Commission listed below within NINETY (90) DAYS after the date of mailing of this Notice, pursuant to A.R.S. 23-941 and 23-947. IF NO SUCH APPLICATION IS RECEIVED WITHIN THAT NINETY DAY PERIOD, THIS NOTICE IS FINAL.

AVISO AL RECLAMANTE: Si usted no esta de acuerdo con este AVISO, y desea una audiencia en este caso, su peticion por escrito pidiendo una audiencia debiera ser recibida en cualquiera de las oficinas de la Comision Industrial a las direcciones abajo indicadas dentro de NOVENTA (90) DIAS despues de la fecha de este AVISO, de acuerdo con las leyes A.R.S. 23-941 y 23-947. SI DICHA PETICION NO ESTA RECIBIDA DENTRO DEL PERIODO DE NOVENTA (90) DIAS, ESTE AVISO SERA CONSIDERADO FINAL.

Phoenix Office: Industrial Commission of Arizona
800 W Washington Street
Phoenix, Arizona 85007-2922

PO Box 19070
Phoenix, AZ 85005-9070

Tucson Office: Industrial Commission of Arizona
2675 E Broadway
Tucson, Arizona 85716-5342

THIS FORM APPROVED BY THE INDUSTRIAL COMMISSION OF ARIZONA FOR CARRIER USE

EXHIBIT J

EXHIBIT J



AFFIDAVIT OF PLAINTIFF IN SUPPORT OF TEMPORARY RESTRAINING ORDER.pdf

DocVerify ID: E8821848-68D7-4E96-AD0F-12E35DA0EE55

Created: May 19, 2020 13:02:54 -8:00

Pages: 3

Remote Notary: Yes / State: NV

This document is a DocVerify VeriVaulted protected version of the document named above. It was created by a notary or on the behalf of a notary, and it is also a DocVerify E-Sign document, which means this document was created for the purposes of Electronic Signatures and/or Electronic Notary. Tampered or altered documents can be easily verified and validated with the DocVerify veriCheck system. This remote online notarization involved the use of communication technology.

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E-Signature Summary

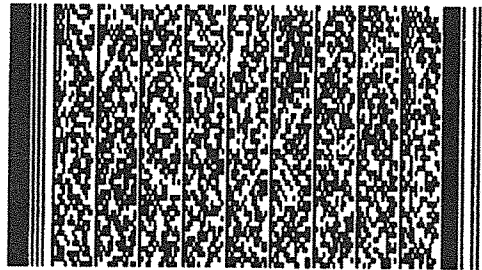
E-Signature 1: Daria Harper (dh)

May 19, 2020 15:22:34 -8:00 [9E75F2FD8A58] [47.216.32.12]
daria.harper@yahoo.com (Principal) (ID Verified)

E-Signature Notary: Brooke N Kuderer (BNK)

May 19, 2020 15:22:34 -8:00 [EAB029BC9FDA] [70.165.14.10]
brooke.kuderer@gmail.com

I, Brooke N Kuderer, did witness the participants named above electronically sign this document.



DocVerify documents cannot be altered or tampered with in any way once they are protected by the DocVerify VeriVault System. Best viewed with Adobe Reader or Adobe Acrobat. All visible electronic signatures contained in this document are symbolic representations of the persons' signature, and not intended to be an accurate depiction of the persons' actual signature as defined by various Acts and/or Laws.

1 **AFFIDAVIT OF PLAINTIFF IN SUPPORT OF TEMPORARY RESTRAINING ORDER**

2
3 STATE OF NEVADA)
4 COUNTY OF CLARK) ss.

5 Daria Harper, being duly sworn, deposes and says that:

6 1. I am a plaintiff in this lawsuit. I am knowledgeable of the facts contained herein and
7 am competent to testify thereto.

8 2. I am over the age of eighteen and I have personal knowledge of all matters set forth
9 herein. If called to do so, I would competently and truthfully testify to all matters set forth herein,
10 except for those matters stated to be based upon information and belief.

11 3. On or about August 11, 2014, I sustained a knee injury while in the course and scope
12 of my employment in the state of Arizona, where I was a resident. My employer was insured by
13 Defendant COPPERPOINT GENERAL INSURANCE COMPANY ("COPPERPOINT") which
14 provided workers' compensation benefits to me.

15 4. On or about June 9, 2015, I required medical treatment in Las Vegas, Nevada that was
16 related to my original August 11, 2014 injury. As a result of this medical treatment, I suffered serious
17 injury resulting in quadriplegia.

18 5. On or about June 7, 2016, my husband, Daniel Wininger, and I filed a complaint in the
19 District Court of Nevada, Clark County, as Case Number A-16-738004-C ("the underlying medical
20 malpractice action"), alleging that we sustained damages as a result of the medical negligence of the
21 named health care providers ("health care providers").

22 6. When COPPERPOINT became aware of the above-described underlying medical
23 malpractice action, it sent a letter to my attorney, claiming a right to participate in any settlement
24 thereof and that it was entitled to a lien for repayment of financial benefits paid to or on my behalf. A
25 true copy of that letter is attached as **Exhibit 2**.

26 7. In the underlying medical malpractice action, (a) my medical experts determined that
27 I would require 24-hour per day care for the remainder of my life, and (b) my economic expert
28 determined that the present value of the cost of my future required future care was \$14,291,374 and

1 that I incurred past and future earnings losses of \$322,579. A true copy of Life Care Plan that itemized
2 my care needs is attached as **Exhibit 3**.

3 8. My husband and I settled with the health care providers for the total sum of
4 \$6,250,000.00. Thereafter, in or about July 2018, the lawsuit was dismissed and the settlement
5 monies were paid by the settling health care providers.

6 9. Based on a letter in my then-attorney's file, it is my information and belief that he
7 informed COPPERPOINT on or about July 2, 2018, that it was not entitled to any lien. A true copy
8 of that letter is attached as **Exhibit 4**.

9 10. On or about October 30, 2019, COPPERPOINT served me with the "Notice of Claim
10 Status", attached hereto as **Exhibit 5** that stated in part that it had a lien from my medical malpractice
11 case, that it was entitled to interest from the date of the settlement, that it was entitled to a future credit
12 against my recovery equal to the amount of money I received in the malpractice action after
13 subtracting expenses and attorney fees, that it was not required to pay me compensation or medical,
14 surgical, or hospital benefits until my post-settlement accrued entitlement to compensation and
15 medical benefits exceeds the credit amount, and that to the extent the settlement in the malpractice
16 action was less than the workers' compensation benefits it provided, my failure to obtain its prior
17 approval before settling results in forfeiture of my workers' compensation claim.

18 11. On April 2, 2020, I was served with a letter from COPPERPOINT, attached as **Exhibit**
19 **6**, notifying me that it would terminate all benefits, in thirty days.

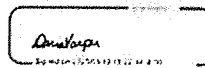
20 12. On May 1, 2020, I was served with a "Notice of Claims Status" by COPPERPOINT,
21 attached as **Exhibit 7**, which stated, "Future compensation, medical, surgical, hospital, pharmacy,
22 caretaker & other benefits payable to applicant or behalf of applicant are terminated effective May 2,
23 2020 until CopperPoint's current lien of \$3,171,095.00 is fully exhausted."

24 13. Among the benefits terminated are payments being made for the services of my
25 husband, Daniel Wininger, who was being compensated to provide 24-hour per day care to me.

26 14. The net proceeds from my malpractice case settlement that were not invested in
27 annuities have been largely expended for goods and services that are necessary for my survival.
28 Because COPPERPOINT terminated payments for the care services provided by my husband, our

1 sole monthly income from annuities is \$8,333, which is greatly exceeded by the monthly expenses for
2 the medical supplies that I require (including bladder supplies, bowel program, personal care and
3 respiratory); medical equipment that I require (including vent, oxygenator condenser and oxygen
4 canisters), my regular appointments with four doctors, therapists and nurses, and my prescription
5 medications. If I do not have these medical supplies and services, my already precarious condition
6 will worsen.

7 FURTHER AFFIANT SAYETH NAUGHT

8
9 

DARIA HARPER

10
11 SUBSCRIBED and SWORN to before
me this 19th day of May, 2020.

12
13 
14 Notary Public for Said County and State

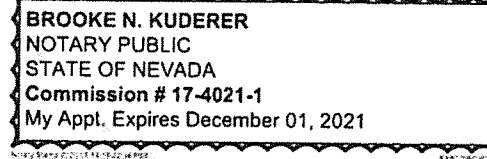
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EXHIBIT K

EXHIBIT K

ENTITY INFORMATION

Search Date and Time: 6/2/2020 4:47:58 PM

Entity Details

Entity Name:

COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY

Entity ID:

1895549

Entity Type:

Domestic Insurer

Entity Status:

Active

Formation Date:

11/7/2018

Reason for Status:

In Good Standing

Approval Date:

11/16/2018

Status Date:

11/16/2018

Original Incorporation Date:

11/7/2018

Life Period:

Perpetual

Business Type:

Last Annual Report Filed:

Domicile State:

Arizona

Annual Report Due Date:

Years Due:

Original Publish Date:

Name:

SARA M BEGLEY

Appointed Status:

Active 11/16/2018

Attention:

Address:

3030 N. 3RD STREET, PHOENIX, AZ 85012, USA

Agent Last Updated:

11/16/2018

E-mail:

Attention:

Mailing Address:

County:

Maricopa

Principal Information

Title	Name	Attention	Address	Date of Taking Office	Last Updated
Director	JUDITH PATRICK		3030 N. 3RD STREET, PHOENIX, AZ, 85012, Maricopa County, USA	8/21/2018	11/16/2018
Director	STEPHEN TULLY		3030 N. 3RD STREET, PHOENIX, AZ, 85012, Maricopa County, USA	8/21/2018	11/16/2018
Director	RONNIE LOPEZ		3030 N. 3RD STREET, PHOENIX, AZ, 85012, Maricopa County, USA	8/21/2018	11/16/2018
Director	KENNETH KIRK		3030 N. 3RD STREET, PHOENIX, AZ, 85012, Maricopa County, USA	8/21/2018	11/16/2018
Director	LORI ANN LOWERY BIGGERS		3030 N. 3RD STREET, PHOENIX, AZ, 85012, Maricopa County, USA	8/21/2018	11/16/2018

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Page 1 of 3, records 1 to 5 of 11

Go to Page

Address 

Attention:

Address: 3030 N. 3RD STREET, PHOENIX, AZ, 85012, USA

County: Maricopa

Last Updated: 11/16/2018

Entity Principal Office Address

Attention:

Address:

County:

Last Updated:

[Back](#)[Return to Search](#)[Return to Results](#)[Document History](#)[Name/Restructuring History](#)[Pending Documents](#)[Microfilm History](#)

EXHIBIT L

EXHIBIT L

ENTITY INFORMATION

Search Date and Time: 6/2/2020 4:46:34 PM

Entity Details

Entity Name:

COPPERPOINT GENERAL INSURANCE COMPANY

Entity ID:

14897834

Entity Type:

Domestic Insurer

Entity Status:

Active

Formation Date:

11/19/2008

Reason for Status:

In Good Standing

Insurer

Approval Date:

11/24/2008

Status Date:

Original Incorporation Date:

11/19/2008

Life Period:

Perpetual

Business Type:

Last Annual Report Filed:

Domicile State:

Arizona

Annual Report Due Date:

Years Due:

Original Publish Date:

12/5/2008

Statutory Agent Information

Name:

SARA M BEGLEY

Appointed Status:

Active

Attention:

Address:

3030 N 3RD STREET , PHOENIX, AZ 85012, USA

Agent Last Updated:

9/11/2014

E-mail:

Attention:

Mailing Address:

County:

Principal Information

Title	Name	Attention	Address	Date of Taking Office	Last Updated
Director	SCOTT SHADER		3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA	6/12/2017	7/5/2017
Director	MARK JOOS		3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA	6/12/2017	7/5/2017
Director	MARC SCHMITTLEIN		3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA	6/1/2016	6/29/2016
Director	VIRGINIA ARNETT CARO		3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA	6/1/2016	6/29/2016
Director	SARA BEGLEY		3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA	6/1/2016	6/29/2016

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Page 1 of 2, records 1 to 5 of 9

Go to Page

Attention:

Address: 3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA

County: Maricopa

Last Updated:

Entity Principal Office Address

Attention:

Address:

County:

Last Updated:

[Back](#)[Return to Search](#)[Return to Results](#)[Document History](#)[Name/Restructuring History](#)[Pending Documents](#)[Microfilm History](#)